

No. 10090

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

Convention on social security (with annex and final protocol). Signed at Vienna on 22 December 1966

Agreement for the implementation of the above-mentioned Convention. Signed at Vienna on 22 December 1966

Additional Convention to the above-mentioned Convention (with annex). Signed at Vienna on 10 April 1969

Additional Agreement to the above-mentioned Agreement of 22 December 1966. Signed at Vienna on 10 April 1969

Authentic texts : German.

Registered by Austria on 8 December 1969.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA
AND THE FEDERAL REPUBLIC OF GERMANY ON
SOCIAL SECURITY

The Federal President of the Republic of Austria and
The President of the Federal Republic of Germany,

Desiring to foster relations between the two States in the matter of
social security and to bring them into line with current legislation,

Have agreed to conclude a Convention, to replace the Convention of
21 April 1951, and for this purpose have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Hans Reichmann, Envoy Extraordinary and Minister Plenipoten-
tiary;

The President of the Federal Republic of Germany :

Dr. Kurt Jantz, *Ministerialdirektor*.

The plenipotentiaries, having exchanged their full powers, found in good
and due form, have agreed as follows :

PART I

GENERAL PROVISIONS

Article 1

For the purposes of this Conventions

1. "Territory" means, in relation to the Republic of Austria, the federal
territory of that State and,

in relation to the Federal Republic of Germany, the area in which the Basic
Law for the Federal Republic of Germany is in force :

¹ Came into force on 1 November 1969, the first day of the second month following the
month in which the instruments of ratification were exchanged (28 September 1969), in accor-
dance with article 51 (2).

2. "Nationals" means, in relation to the Republic of Austria, the nationals of that State and,

in relation to the Federal Republic of Germany, a German within the meaning of the Basic Law for the Federal Republic of Germany;

3. "Legislation" means the laws, ordinances and regulations relating to the branches of social security specified in article 2, paragraph (1), which are in force in the territory of one of the Contracting States or in part of that territory;

4. "Competent public authority" means, in relation to the Republic of Austria, the Federal Ministry of Finance in respect of family allowances and the Federal Ministry of Social Affairs in respect of other matters and, in relation to the Federal Republic of Germany, the Federal Minister of Labour and Social Affairs;

5. "Frontier region" means the part of the territory of each Contracting State extending, in general, to a depth of up to ten kilometres on each side of the common frontier. The Austrian and German communes situated in the said region are specified in the annex to this Convention, which forms an integral part of the Convention; the competent public authorities may, by agreement, revise the list when the designations of communes are changed or when communes are subdivided or combined;

6. "Frontier commuter" means a person who is subject to the legislation of one of the Contracting States by reason of his employment in the frontier region of that State and who is normally resident in the frontier region of the other Contracting State and returns there, as a rule, at least once a week;

7. "Insurance authority" means the institute or authority appropriate for the application of the legislation, or any part thereof, specified in article 2;

8. "Competent insurance authority" means the insurance authority which is competent under the relevant legislation;

9. "Employment" means an employment or occupation within the meaning of the relevant legislation;

10. "Contribution periods" means periods in respect of which contributions have been paid or are treated as having been paid under the legislation of one of the Contracting States;

11. "Equivalent periods" means periods which are equivalent to contribution periods;

12. "Insurance periods" means contribution periods and equivalent periods;

13. "Cash benefit", "annuity" or "pension" means a cash benefit, annuity or pension including any increase therein and any supplement or additional allowance payable therewith;

14. "Family allowance" means, in relation to the Republic of Austria, the children's allowance, the supplement to the children's allowance, the family allowance and the mothers' allowance and,

in relation to the Federal Republic of Germany, the children's allowance.

Article 2

(1) This Convention shall apply :

1. To the Austrian legislation concerning :

- (a) Sickness insurance, excluding special insurance for the survivors of war victims and the survivors of persons who died during their period of compulsory military service;
- (b) Accident insurance;
- (c) Pensions insurance for manual workers, for salaried workers and for miners;
- (d) The children's allowance, the supplement to the children's allowance, the family allowance and the mothers' allowance;

2. To the German legislation concerning :

- (a) Sickness insurance;
- (b) Protection of working mothers, in so far as relates to cash benefits or benefits in kind to be granted by the statutory sickness insurance authority during pregnancy and after confinement;
- (c) Accident insurance;
- (d) Pensions insurance for manual workers, including the legislation relating to craftsmen, pensions insurance for salaried workers and for miners and the Saar pensions insurance scheme for iron and steel workers;
- (e) Children's allowances.

(2) This Convention shall not apply to any legislation concerning a new system or new branch of social security.

(3) Legislation which arises out of international treaties concluded with third States or out of supranational law, or which serves for their implementation, shall not be taken into consideration in relations between the Contracting States except in so far as it contains regulations concerning insurance liability.

Article 3

For the purpose of applying the legislation of one of the Contracting States, nationals of that State shall be equated with :

- (a) Nationals of the other Contracting State;
- (b) Refugees within the meaning of article 1 of the Convention on the Legal Status of Refugees of 28 July 1951¹ who are normally resident in the territory of one of the Contracting States;
- (c) Persons normally resident in the territory of one of the Contracting States who are not nationals of either Contracting State, in respect of rights which they derive from a national of one of the Contracting States.

Article 4

(1) Except as otherwise provided in this Convention, the legislation of a Contracting State under which the acquisition of entitlement to benefits or the granting of benefits or the payment of cash benefits is conditional upon residence in the country concerned shall not apply to the persons referred to in article 3 who are resident in the territory of the other Contracting State. The same shall apply *mutatis mutandis* to other persons except in relation to the payment of annuities or lump-sum cash benefits under an accident insurance scheme or pensions (or annuities) or lump-sum cash benefits under a pensions (or annuities) insurance scheme.

(2) Paragraph (1) above shall not affect the legislation concerning the measures of the pensions (or annuities) insurance authorities for maintaining, improving or restoring earning capacity.

¹ United Nations, *Treaty Series*, vol. 189, p. 137.

Article 5

Except as otherwise provided in articles 6 to 10, the obligation of employed persons to participate in an insurance scheme shall be governed by the legislation of the Contracting State in the territory of which they are employed; this shall apply even where the employer is in the territory of the other Contracting State.

Article 6

(1) A person employed by an enterprise extending from the frontier region of one of the Contracting States into the frontier region of the other Contracting State who is not employed in the part of the enterprise in which the enterprise has its principal place of business shall be subject to the legislation of the Contracting State in whose territory the principal place of business is situated.

(2) An employed person who is sent from the territory of one of the Contracting States to the territory of the other Contracting State shall remain subject to the legislation of the first-mentioned Contracting State, as if he were still employed in its territory, for the first twenty-four calendar months of his employment in the territory of the other Contracting State.

(3) A person employed by an airline having its principal place of business in the territory of one of the Contracting States who is sent from that territory to the territory of the other Contracting State shall be subject to the legislation of the first-mentioned Contracting State as if he were still employed in its territory.

(4) A person employed by a transport enterprise having its principal place of business in the territory of one of the Contracting States who is employed in the territory of the other Contracting State shall be subject to the legislation of the first-mentioned Contracting State as if he were employed in its territory; if the enterprise has a branch in the territory of the other Contracting State, the persons employed by the branch shall be subject to the legislation of the latter Contracting State.

(5) A person employed in a travelling capacity by a shipping enterprise engaged in public transport on the Danube or its tributaries and having its principal place of business in the territory of one of the Contracting States who has his place of residence, as recognized under the regulations of the service, in the territory of the other Contracting State shall, provided that his employment in the capacity mentioned is not of a temporary nature, be subject to the legislation of the latter Contracting State as if he were employed at his place of residence.

Article 7

(1) The crew of a sea-going vessel shall be subject to the legislation of the Contracting State whose flag the vessel flies.

(2) An employed person who is normally resident in the territory of one of the Contracting States and is temporarily employed on board a sea-going vessel flying the flag of the other Contracting State by an employer having his principal place of business in the territory of the first-mentioned Contracting State who is not the owner of the vessel shall be subject to the legislation of the first-mentioned Contracting State as if he were employed in its territory.

Article 8

Articles 5 to 7 shall apply *mutatis mutandis* to persons who are treated as employed persons under the legislation referred to in article 2.

Article 9

(1) A national of one of the Contracting States who is in the service of the said Contracting State or of another public employer of the said Contracting State and is employed in the territory of the other Contracting State shall be subject to the legislation of the first-mentioned Contracting State.

(2) An Austrian national normally resident in the territory of the Federal Republic of Germany and employed there in the diplomatic mission or in a career consular mission of the Republic of Austria shall be subject to German legislation. A German national normally resident in the territory of the Republic of Austria and employed there by an office of the Federal Republic of Germany shall be subject to Austrian legislation. The employed person may, within three months from the start of his employment, opt to be subject to the legislation of the Contracting State of which he is a national. He shall then be deemed to be employed at the place at which the Government of that Contracting State has its seat. The choice shall be declared to the employer. The chosen legislation shall be applicable from the date of the declaration.

(3) A national of one of the Contracting States who is employed in the territory of the other Contracting State in the personal service of a member of the diplomatic mission or of a consular mission of the first-mentioned Contracting State shall be subject to the provisions of paragraph (2) above *mutatis mutandis*.

(4) Paragraphs (1) to (3) above shall not apply to persons in the service of an honorary consul.

Article 10

At the joint request of the employed persons and employers concerned, or at the request of persons treated as employed persons within the meaning of article 8, the competent public authority of the Contracting State whose legislation should apply under articles 5 to 9 may grant exemption from the effects of that legislation when the persons in question become subject to the legislation of the other Contracting State. The nature and circumstances of the employment shall be taken into account in that decision. The competent public authority of the other Contracting State shall be given an opportunity to express its views before the decision is taken. If the employed person is not employed in the territory of the last-mentioned Contracting State, he shall be deemed to be employed there.

Article 11

(1) The legislation of one of the Contracting States concerning the limitation of an entitlement to benefits or the limitation of a benefit when it coincides with other entitlements to benefits or other benefits or other forms of income shall also be applicable in respect of similar circumstances arising from the application of the legislation of the other Contracting State or in the territory of that State. If the results of such application, where a pension (or annuity) coincides with sickness benefits, would be that both benefits would be suspended, reduced or cease to exist, each benefit shall be paid, reduced by half the amount of the smaller benefit. The first sentence above shall also apply *mutatis mutandis* to the legislation of one of the Contracting States concerning the non-existence of a right to continued insurance or of any entitlement to benefits as long as the person concerned is employed or covered by compulsory insurance.

(2) Paragraph (1), first sentence, above shall not apply to the coincidence of pensions (or annuities) of the same kind which are determined as described in part II, chapter 3.

PART II
SPECIAL PROVISIONS

Chapter 1
SICKNESS INSURANCE

Article 12

(1) Voluntary insurance under the legislation of one of the Contracting States shall not be precluded by residence in the territory of the other Contracting State.

(2) A person who has been insured under the legislation of one of the Contracting States and transfers his normal residence to the territory of the other Contracting State may voluntarily continue the insurance under the latter's legislation. Separation from a compulsory insurance scheme shall in such cases be equivalent to separation from a voluntary insurance scheme. The insurance coverage shall be continued

In the Republic of Austria :

With the Regional Sickness Fund for Manual and Salaried Workers (*Gebietskrankenkasse für Arbeiter und Angestellte*) competent for the place of normal residence;

In the Federal Republic of Germany :

With the competent insurance authority.

(3) Paragraph (2) above shall apply *mutatis mutandis* to persons whose right to continued insurance coverage derives from the insurance coverage of another person.

Article 13

(1) So far as compulsory insurance, the right to voluntary insurance, entitlement to benefits and the duration of benefits are concerned, the insurance periods and periods of receipt of benefits completed under the legislation of both Contracting States shall be aggregated, provided that they do not overlap.

(2) Paragraph (1) above shall apply *mutatis mutandis* to benefits which may be granted at the discretion of an insurance authority.

Article 14

(1) Article 4, paragraph (1), shall apply to a person

- (a) Who transfers his residence to the territory of the other Contracting State after the insurance contingency has arisen only if the competent insurance authority has consented to the change of residence in advance;
- (b) Who is temporarily resident in the territory of the other Contracting State at the time the insurance contingency arises only if his condition necessitates immediate benefits.

(2) The consent referred to in paragraph (1) above may be refused only on the ground of the state of health of the person concerned. It may be

granted subsequently if the person concerned has not obtained it in advance for reasonable cause.

(3) Article 4, paragraph (1), shall not apply to any dependant of an insured person so long as benefits may be claimed for such dependant under the legislation of the Contracting State in whose territory the dependant is resident.

(4) Paragraphs (1) and (2) above shall not apply to frontier commuters or maternity benefits.

Article 15

(1) Benefits in kind under article 4, paragraph (1), shall be provided :

In the Republic of Austria :

By the Regional Sickness Fund for Manual and Salaried Workers (*Gebietskrankenkasse für Arbeiter und Angestellte*) competent for the place of residence;

In the Federal Republic of Germany :

By the General Local Sickness Fund (*Allgemeine Ortskrankenkasse*) or, where it does not exist, the *Land* Sickness Fund (*Landkrankenkasse*) competent for the place of residence.

(2) For the provision of benefits in kind, the legislation applicable to the insurance authority of the place of residence shall apply, with the exception of legislation concerning the duration of benefits and of the relevant legislation concerning the procedure for settling disputes.

(3) Except in dire emergencies, artificial parts of the body and other major benefits in kind shall be provided only with the authorization of the competent insurance authority. A dire emergency shall be deemed to exist in cases where provision of the benefits cannot be delayed without seriously endangering the life or health of the person concerned.

(4) Persons and institutions that have concluded agreements with the insurance authorities referred to in paragraph (1) above concerning the provision of benefits in kind to persons insured with the said insurance authorities and their dependants shall also be required to provide benefits in kind to the persons referred to in article 4, paragraph (1), in the same way as if the last-mentioned persons were insured with the insurance authorities referred to in paragraph (1) above or were dependants of such insured persons and as if the agreements also applied to the persons referred to in article 4, paragraph (1).

Article 16

Cash benefits under article 4, paragraph (1), shall be paid, at the request of the competent insurance authority, by the insurance authority of the place of residence referred to in article 15, paragraph (1).

Article 17

(1) Pensioners (or annuitants) under the pensions (or annuities) insurance schemes of the Contracting States and applicants for pensions (or annuities) shall, without prejudice to paragraphs (3) to (6) below, be subject to the legislation relating to the sickness insurance of pensioners (or annuitants) of the Contracting State in whose territory the persons referred to are normally resident; this shall hold irrespective of whether a pension (or annuity) is to be provided by the insurance authorities of both Contracting States or only by the insurance authority of one of them. Receipt of a pension (or annuity) shall be deemed to include receipt of a pension (or annuity) under the legislation of the other Contracting State.

(2) Where, under the applicable legislation of one of the Contracting States, insurance is conditional upon the completion of insurance periods, the completion of such periods shall not be required if the person concerned was already regarded under the legislation of the other Contracting State, by reason of receiving a pension (or annuity), as being insured under a compulsory insurance scheme.

(3) Where a pensioner (or annuitant) transfers his normal residence from the territory of one of the Contracting States to the territory of the other Contracting State, the legislation of the first-mentioned Contracting State concerning the sickness insurance of pensioners (or annuitants) shall be applicable until the end of the month in respect of which the pension (or annuity) is paid for the last time in the territory of that Contracting State.

(4) Where an applicant for a pension (or annuity) transfers his normal residence from the territory of one of the Contracting States to the territory of the other Contracting State, the legislation of the first-mentioned Contracting State shall apply until the end of the month during which the pensions insurance authority or the annuities insurance liaison office of the other Contracting State is informed of the transfer of residence.

(5) Funds for the sickness insurance of pensioners (or annuitants) shall, without prejudice to paragraph (6) below, be provided by the pensions

(or annuities) insurance authorities in the territory of the Contracting State under whose legislation the insurance is effected and under the legislation applicable to the said insurance authorities. A deduction for the sickness insurance of pensioners shall also be made from annuities under the German annuities insurance scheme to be paid in the territory of the Republic of Austria, but no such deduction shall be made from pensions under the Austrian pensions insurance scheme to be paid in the territory of the Federal Republic of Germany.

(6) Expenditure incurred in connexion with the sickness insurance of pensioners (or annuitants) under the pensions (or annuities) insurance scheme for miners shall be reciprocally refunded. The competent public authorities may agree, at the suggestion of the insurance authorities concerned, that the procedure described in paragraph (5) above will be applied in the interests of administrative simplification.

Article 18

(1) The competent insurance authority shall refund the amounts disbursed in accordance with articles 15 and 16 less administrative costs to the insurance authority of the place of residence.

(2) The competent public authorities may agree, at the suggestion of the insurance authorities concerned, that in the interests of administrative simplification the amounts disbursed in accordance with article 15 shall in all cases or in particular categories of cases be repaid in lump sums.

Article 19

(1) Where a maternity insurance contingency arises, according to the legislation of one of the Contracting States, at a time when the person concerned is insured by an insurance authority of the other Contracting State but, according to the legislation of the latter Contracting State, at a time when the person concerned is insured by an insurance authority of the first-mentioned Contracting State, the legislation of the Contracting State in whose territory the confinement took place shall be deemed to be applicable to the insurance contingency.

(2) The insurance authority responsible for paying benefits under paragraph (1) above shall be refunded half of the amounts concerned by the insurance authority of the other Contracting State; article 18 shall apply *mutadis mutandis*.

Chapter 2

ACCIDENT INSURANCE

Article 20

(1) Where, for the purpose of assessing the degree of disability resulting from an industrial accident (or occupational disease), the legislation of one of the Contracting States provides that previous industrial accidents (or occupational diseases) as defined in that legislation shall be taken into account, industrial accidents sustained (or occupational diseases contracted) at an earlier date which are covered by the legislation of the other Contracting State shall also be taken into account as if they were covered by the legislation of the first-mentioned Contracting State. Contingencies which are recognized as accidents or as giving entitlement to compensation under other provisions of public law shall be treated in the same way as the accidents (or diseases) in question.

(2) The competent insurance authority liable for payment of compensation in respect of the later insurance contingency shall determine its benefit on the basis of the degree of disability resulting from the industrial accident (or occupational disease) which it is required to take into account under its own national legislation.

Article 21

(1) When considering a claim for benefits on grounds of an occupational disease, the insurance authority of one of the Contracting States shall also take into account the occupations in which the person concerned has been employed in the territory of the other Contracting State and to which the disease may be attributed. Where there is entitlement to benefits under the legislation of both Contracting States, the benefits in kind and the cash benefits, with the exception of the annuity, shall be granted only in accordance with the legislation of the Contracting State in whose territory the person concerned is normally resident. Each insurance authority shall grant only that part of the annuity which corresponds to the ratio of the period of employment in the territory of its own State to the total period spent in occupations of the kind which qualify under the first sentence of this article; this shall also apply when the annuity is revised on the ground of a worsening of the occupational disease.

(2) Paragraph (1) above shall also apply to the granting of the survivors' annuity and the survivors' allowance.

Article 22

(1) Article 4, paragraph (1), shall apply in respect of benefits in kind to a person who transfers his residence to the territory of the other Contracting State during medical treatment only if the competent insurance authority has consented to the change of residence in advance. Consent may be refused only on the ground of the state of health of the person concerned. It may be granted subsequently, if the person concerned has not obtained it in advance for reasonable cause.

(2) Paragraph (1) above shall not apply to frontier commuters.

Article 23

(1) For the purpose of applying article 4, paragraph (1), benefits in kind, with the exception of occupational rehabilitation (*Berufsfürsorge*) [or occupational assistance (*Berufshilfe*)], shall be provided

In the Republic of Austria :

By the Regional Sickness Fund for Manual and Salaried Workers competent for the place of residence;

In the Federal Republic of Germany :

By the General Local Sickness Fund or, where it does not exist, the *Land* Sickness Fund competent for the place of residence.

(2) For the provision of benefits in kind, the legislation applicable to the insurance authority of the place of residence shall apply.

(3) Where pursuant to article 4, paragraph (1), occupational rehabilitation (occupational assistance) is to be provided, it shall be provided by an accident insurance authority in the territory of the State of residence in accordance with the legislation applicable to it. The competent insurance authority shall be the accident insurance authority which would be competent if the decision on the claim to benefits were governed by the legislation of the said State.

(4) The insurance authority referred to in paragraph (3), second sentence, above may provide the benefits in lieu of the insurance authority referred to in paragraph (1) above.

(5) Article 15, paragraphs (3) and (4), shall apply *mutatis mutandis*.

(6) Cash benefits, with the exception of annuities, nursing grants and death grants, shall be paid, at the requests of the competent insurance authority, by the insurance authority referred to in paragraph (1) above.

Article 24

(1) The competent insurance authority shall refund the amounts disbursed in accordance with article 23, less administrative costs, to the insurance authority of the place of residence.

(2) The competent public authorities may agree, at the suggestion of the insurance authorities concerned, that in the interests of administrative simplification the amounts disbursed shall in all cases or in particular categories of cases be repaid in lump sums.

Article 25

For the purpose of determining an annuity under the legislation of one of the contracting States, normal residence in the territory of the other Contracting State shall not be deemed to be normal residence abroad.

Chapter 3

PENSIONS (OR ANNUITIES) INSURANCE

Article 26

(1) Insurance periods completed in accordance with the legislation of both Contracting States shall be aggregated, provided that they do not overlap, in order to establish the right to continued insurance and for the purpose of the acquisition of entitlement to benefits. The extent to which insurance periods are to be taken into account and the cases in which they are to be aggregated shall be determined in accordance with the legislation of the Contracting State under whose insurance scheme such periods were completed.

(2) Periods which were not completed in accordance with the legislation of one of the Contracting States but which are to be counted as insurance periods under its legislation shall be taken into account as if they had been completed in accordance with the legislation of that Contracting State.

(3) Paragraph (1) above shall apply *mutatis mutandis* to benefits which may be granted at the discretion of an insurance authority.

(4) If the insurance periods to be taken into account under the legislation of one of the Contracting States amount in all to less than twelve months for the calculation of the pension (or annuity), the insurance authority of

that Contracting State shall pay no pension (or annuity), and the insurance authority of the other Contracting State shall pay the pension (or annuity) calculated without the application of article 27, paragraph (4). This provision shall not, however, apply where entitlement to a pension (or annuity) exists under the legislation of the first-mentioned Contracting State without the application of paragraph (1) above.

(5) Contributions for continued insurance may not be paid in respect of the same period of time under the insurance schemes of both Contracting States.

Article 27

(1) Where an insured person who satisfies the conditions laid down in article 26, paragraph (1), or his survivors claim a pension (or annuity), the competent insurance authority of each Contracting State shall ascertain in accordance with the legislation to which it is subject whether the person concerned is entitled to the pension (or annuity), taking into account the aggregation of insurance periods referred to in article 26, paragraph (1).

(2) Where

- (a) Entitlement to a pension (or annuity) exists under the legislation of both Contracting States, whether or not article 26, paragraph (1), is taken into account, or
- (b) Entitlement to a pension (or annuity) exists under the legislation of one of the Contracting States only if article 26, paragraph (1), is taken into account but no entitlement to a pension (or annuity) exists under the legislation of the other Contracting State even when article 26, paragraph (1), is taken into account.

the following paragraphs shall apply in the calculation of the said pension (or annuity).

(3) The competent insurance authority of each of the Contracting States shall first calculate the amount of the pension (or annuity) which would have been payable to the person concerned under the national legislation to be applied by that insurance authority, without taking into account contributions under the supplementary insurance scheme (*Höherversicherung*) and a children's supplement (*Kinderzuschuss*) to the pension (or annuity) of an insured person, if all the insurance periods which are to be taken into account in calculating the pension (or annuity) under the legislation of the other Contracting State had also been insurance periods which were to be taken into account in calculating the pension (or annuity) under the national legislation to be applied by the said insurance authority.

(4) The competent insurance authority of each of the Contracting States shall next calculate the amount of that part of the said pension (or annuity) which bears the same relation to the whole as the insurance periods which have been taken into account under national legislation bear to the total of all the insurance periods which have been taken into account under the legislation of both Contracting States. This provision shall apply *mutatis mutandis* to the calculation of the supplementary benefits scheme (*Leistungszuschlag*), with the proviso that only periods to be taken into account for the purposes of the supplementary benefits scheme shall be included. The partial benefit thus arrived at shall be increased by any amounts paid or treated as having been paid in respect of contributions to the supplementary insurance scheme and by the children's supplement to the pension (or annuity) of an insured person which is payable under paragraph (8) below.

(5) For the purpose of applying the provisions of paragraphs (3) and (4) above, contribution periods and equivalent periods shall be taken into account as follows :

- (a) If a compulsory insurance period completed under the legislation of one of the Contracting States coincides with a period of voluntary insurance under the legislation of the other Contracting State, only the compulsory insurance period shall be taken into account.
- (b) If a contribution period under the legislation of one of the Contracting States coincides with an equivalent period under the legislation of the other Contracting State, only the contribution period shall be taken into account.
- (c) Equivalent periods which would be countable for the calculation of benefits under the legislation of both Contracting States shall be taken into account only by the insurance authority of the Contracting State under whose legislation the last countable insurance period prior to the equivalent period concerned, or, if there was no prior insurance period, the first insurance period after the equivalent period concerned, is to be taken into account.
- (d) If, in accordance with sub-paragraph (a) above, any periods of voluntary insurance are not to be taken into account, the contributions paid in respect of such periods shall be deemed to be contributions under the supplementary insurance scheme.

(6) Only those insurance periods which are to be taken into account under the national legislation applicable to the competent insurance authority shall be used as a calculation base.

(7) Legislation relating to the extinction, reduction, suspension or cessation of a pension (or annuity) shall be applied after determination of the partial benefits if the extinction, reduction, suspension or cessation

is due to residence abroad, and before determination of those benefits if it is due to other causes.

(8) During such time as a children's supplement to a pension (or annuity) of an insured person would be payable under the legislation of both Contracting States to a person normally resident in the territory of one of the Contracting States, the children's supplement under the legislation of the other Contracting State shall be suspended. During such time as a children's supplement to a pension (or annuity) of an insured person would be payable under the legislation of both Contracting States to a person resident outside the territory of the Contracting States, the children's supplement payable under the legislation under which the shorter contribution time has been completed shall be suspended. Where a claim to a children's supplement exists only under the legislation of one of the Contracting States because the conditions for the granting of a pension (or annuity) or of a children's supplement under the legislation of the other Contracting State are not met, even where article 26, paragraph (1), is taken into account, the insurance authority shall pay only half the amount of the children's supplement if the conditions for entitlement are met only when article 26, paragraph (1), is taken into account.

Article 28

The following provisions shall apply to the Austrian insurance authority :

1. In so far as under Austrian legislation an insurance relationship or gainful employment has legal effects on the acquisition or continuance of entitlement to a pension, the same effects shall also be attributed to similar circumstances in the territory of the Federal Republic of Germany.

2. For the purpose of determining the insurance authority competent to provide a benefit under the Austrian pensions insurance scheme (*Leistungszugehörigkeit und Leistungszuständigkeit*), German insurance periods shall be taken into account in the same way as Austrian insurance periods; the German annuities insurance for manual workers (*Rentenversicherung der Arbeiter*) shall correspond to the Austrian pensions insurance for manual workers (*Pensionsversicherung der Arbeiter*), the German annuities insurance for salaried workers (*Rentenversicherung der Angestellten*) to the Austrian pensions insurance for salaried workers (*Pensionsversicherung der Angestellten*), and the German annuities insurance for miners (*knappschaftliche Rentenversicherung*) to the Austrian pensions insurance for miners (*knappschaftliche Pensionsversicherung*). Periods during which an annuity was

received on the ground of the insurance contingency of old age or invalidity under German legislation shall be taken into account in the insurance scheme under which the benefit (total benefit) was granted. For the purpose of determining the insurance authority competent to provide a benefit under the pensions insurance scheme for manual workers, the employment to be taken into account shall be the relevant employment on which the insurance under German legislation was based; where the kind of employment followed during a specified period can no longer be established, the periods based on the said employment shall be taken into account as if they had been completed under an insurance scheme for which the Austrian Manual Workers' Pensions Insurance Institute (*Pensionsversicherungsanstalt der Arbeiter*) would have been competent.

3. Periods of a similar nature completed in the territory of the Federal Republic of Germany shall be deemed to be neutral periods within the meaning of Austrian legislation.

4. For the purpose of calculating the total benefits under article 27, paragraph (3), the German insurance periods which are to be taken into account in calculating the German benefit shall be taken into account without the application of the Austrian legislation concerning the taking into account of insurance periods.

5. For the purpose of determining the extent to which the insurance periods prior to 1 January 1939 which are to be taken into account in calculating a pension should be reduced by other insurance periods and by periods of self-employment, insurance periods to be taken into account under German legislation and periods of self-employment completed in the territory of the Federal Republic of Germany shall be treated as equivalent to the aforementioned other insurance periods and periods of self-employment.

6. Where the number of insurance months taken into account for the purpose of calculating Austrian pension increments is subject to a maximum, the ratio referred to in article 27, paragraph (4), shall be determined on the basis of all the insurance periods to be taken into account by both Contracting States, irrespective of such maximum.

7. For the purpose of the application of article 27, paragraph (3), contributions paid, or regarded as having been paid, for the acquisition of equivalent periods under the Austrian pensions insurance scheme shall not be deemed to be contributions to the supplementary insurance scheme.

8. Where, under Austrian legislation, the granting of benefits under the pensions insurance scheme for miners depends upon the completion of miners' insurance periods, insurance periods which, pursuant to German legislation, are to be taken into account under the annuities insurance

scheme for miners shall be taken into account. Where a benefit depends upon the performance of an activity which is essentially mining activity or of a similar activity, any activity which is to be taken into account by the German insurance authority, under the legislation applicable to it, as employment as a hewer under-ground or as similar work shall also be taken into account as such activity.

9. German insurance periods shall not be taken into account with respect to the conditions for entitlement to, and the granting of, the long-service bonus for miners (*Bergmannstreuegeld*) under the Austrian pensions insurance scheme for miners.

10. German insurance periods shall not be taken into account for the calculation of the dowry and lump-sum payment.

11. The supplementary allowance to disabled persons (*Hilflosenzuschuss*) shall be calculated according to Austrian legislation on the basis of the Austrian pension, the limits being proportionately reduced in accordance with the provisions of article 27, paragraph (4). Where entitlement to an Austrian pension exists under the said legislation irrespective of the provisions of article 26, paragraph (1), the limits shall not be reduced.

12. Special pension payments under the Austrian pensions insurance scheme shall be payable on the same scale as the Austrian partial pension; article 31 shall be applied *mutatis mutandis*.

Article 29

The following provisions shall apply to the German insurance authority :

1. Where no contributions are to be taken into account for the appropriate German annuities insurance scheme in determining the calculation base applicable to the insured person, the general calculation basis specified for that insurance scheme shall apply. Where the legislation in force before 1 January 1957 is to be applied for the purpose of calculating the annuity, the Austrian insurance periods to be taken into account under article 26, paragraph (1), shall be taken into account together with the average increment computed on the basis of all the periods taken into account in calculating the annuity under German legislation.

2. (a) Insurance periods to be taken into account under Austrian legislation shall be taken into account in that branch of the annuities insur-

ance scheme which, for the purpose of granting benefits, corresponds under Austrian legislation to the pensions insurance scheme responsible for payment.

(b) Where, at the time the benefits are determined by the German insurance authority, the pensions insurance scheme responsible for payment has not yet been determined, the Austrian insurance periods to be taken into account under article 26, paragraph (1), shall initially be taken into account in that branch of the annuities insurance scheme which corresponds to the pensions insurance scheme that would be responsible for the payment if the statutory date under Austrian legislation coincided with the date of occurrence of the insurance contingency under German legislation.

3. For the purpose of calculating intervals in respect of which no lump-sum payment is made and for the purpose of adding a supplementary period, admission to the German insurance scheme and payment of German compulsory contributions shall be equivalent to their counterparts under Austrian legislation. For the purpose of calculating the number of calendar months from admission to the insurance scheme until the onset of the insurance contingency, periods during which an Austrian pension is drawn which are part of this period shall not be taken into account, provided that the Austrian pension does not correspond to the miners' annuity under German legislation.

4. The liability of the German miners' annuities insurance scheme, as laid down in German legislation, for the addition of a supplementary period shall not be affected by the provisions of paragraph 3 above.

5. For the purpose of refunding contributions, as provided for in German legislation, admission to the insurance scheme, cessation of the obligation to participate in an insurance scheme and contribution periods under German legislation shall be equivalent to their counterparts under Austrian legislation.

6. Where, under German legislation, one of the conditions for entitlement is that the person concerned is employed as a hewer under ground or engaged in similar work or in an underground occupation, the German insurance authorities shall also take into account employment as a hewer under ground or similar work, or an underground occupation, if the miners' pensions insurance scheme is responsible for payment in respect of the insurance periods during which the work was done.

7. As regards cessation of the miners' compensation benefit, Austrian mining enterprises shall be treated in the same way as German mining enterprises.

8. Article 27, paragraphs (3) and (4), shall apply to the calculation of annuities only if :

- (a) The legislation in force prior to 1 January 1957 concerning the calculation of the annuity is to be applied, or
- (b) Orphans' benefits are involved.

Article 26, paragraph (4), shall not be affected.

9. Where, pursuant to the foregoing paragraph 8, article 27, paragraphs (3) and (4), do not apply to the calculation of the annuity, half of the partial benefit corresponding to the supplementary period shall be granted where the conditions for entitlement to benefits are met only when article 26, paragraph (1), is taken into account.

10. Where, in addition to an annuity under the German annuities insurance scheme, calculated independently of article 27, a person also receives a pension under the Austrian pensions insurance scheme, the pension shall be taken into account at half of its value in determining the relevant total amount for the purpose of applying the German legislation relating to cases in which a person receives both an annuity under the annuities insurance scheme and an annuity under the accident insurance scheme.

11. Where the obligation to participate in an insurance scheme depends on the fact that fewer than a specified number of contributions have been paid, the contribution periods to be taken into account under Austrian legislation shall be taken into account for the purpose of deciding whether there is an obligation to participate in an insurance scheme.

Article 30

(1) Where entitlement to a benefit exists under the legislation of one of the Contracting States irrespective of the provisions of article 26, paragraph (1), the insurance authority of that Contracting State shall not apply article 27, paragraphs (3) and (4), so long as no entitlement to benefits exists under the legislation of the other Contracting State even when article 26, paragraph (1), is taken into account.

(2) In the cases specified in paragraph (1) above and in article 27, paragraph (2) (b), the benefits already determined shall be revised in accordance with the provisions of article 27, paragraphs (3) and (4), when an entitlement to benefits arises under the legislation of the other Contracting State through the aggregation of the periods in accordance with article 26, paragraph (1). The benefit granted by the insurance authority of one

Contracting State shall be revised with effect from the date on which benefits become payable under the insurance scheme of the other Contracting State. The validity of earlier decisions shall not preclude such revision.

(3) The benefit shall be revised when under the legislation of the other Contracting State a situation arises which affects any ratio determined in accordance with article 27, paragraph (4). The benefit granted by the insurance authority of one Contracting State shall be revised with effect from the date on which the revised benefit becomes payable under the insurance scheme of the other Contracting State. If the revision entails a reduction in the total amount of benefit paid hitherto, the insurance authority under whose legislation the benefit has been reduced shall increase the benefit by the difference. The validity of earlier decisions shall not preclude such revision.

(4) Paragraph (3), third sentence, above shall not apply if the reduction results from the disqualification of insurance periods previously taken into account. If in such a case the conditions for entitlement to benefits under the legislation of one of the Contracting States are no longer met, the benefit shall cease as from the date on which the benefit in the other Contracting State is reduced or ceases.

Article 31

(1) Where a person is entitled to a pension (or annuity) under the legislation of one of the Contracting States irrespective of article 26, paragraph (1), and that pension (or annuity) would be greater than the aggregate of the benefits calculated in accordance with article 27, paragraph (4), the insurance authority of the said Contracting State shall pay, as a partial benefit, its own benefit, thus calculated, plus the difference between the aggregate of the benefits calculated in accordance with article 27, paragraph (4), and the pension (or annuity) which would be the only benefit payable under the legislation applicable to the said insurance authority.

(2) In the cases referred to in article 27, paragraph (8), the children's supplement shall not be taken into account for the purpose of applying paragraph (1) above.

(3) The partial benefit referred to in paragraph (1) above shall be revised *ex officio* when the amount of the benefits on which the calculation of the partial benefit is based changes, except as a result of minor adjustments, or in the event of changes of more than 10 per cent in the rate of exchange.

Chapter 4

FAMILY ALLOWANCES

Article 32

(1) Where under the legislation of one of the Contracting States entitlement to family allowances depends on the fact that the children are domiciled or normally resident in the territory of the said Contracting State, children normally resident in the territory of the other Contracting State shall be taken into account as if they were resident in the territory of the first-mentioned Contracting State.

(2) Persons who are domiciled or normally resident in the territory of one of the Contracting States and are gainfully employed in the territory of the other Contracting State shall be entitled to family allowances, under the legislation of the latter Contracting State, as if they were domiciled or normally resident in its territory, if the occupation in question is authorized by a work permit issued under the general provisions governing the employment of foreign workers, this provision shall not apply if the employment lasts no longer than three months. Where an employed person is sent from the territory of one of the Contracting States to the territory of the other Contracting State, the first sentence above shall not apply during the first twenty-four calendar months of employment in the territory of the latter Contracting State, unless the enterprise has a branch in the territory of that Contracting State.

(3) Legislation of one of the Contracting States which precludes entitlement to family allowances on the ground of gainful employment abroad shall not apply in the case of gainful employment in the territory of the other Contracting State unless entitlement to family allowances exists for the children under paragraph (2) above.

(4) Where, subject to this Convention, the conditions for entitlement in respect of a child are met under the legislation of both Contracting States, family allowances in respect of the said child shall be granted solely under the legislation of the Contracting State in which the child is normally resident.

(5) Persons employed in Austrian mining at the Hallein Salt Works and who hold a shift permit in accordance with article 22 of the Convention of 18 March 1829 between Austria and Bavaria concerning salt works arrangements between the two countries, as amended by the Agreement of 25 March 1957, shall, for the duration of such employment, be treated with regard to the granting of family allowances as if they were domiciled or normally resident at their place of work.

(6) Articles 4 to 10 shall not apply in respect of entitlement to family allowances.

Article 33

The provisions of this Convention shall not apply to the Austrian maternity allowance (*Geburtenhilfe*), the Austrian infants' allowance (*Säuglingshilfe*) or the German education grant (*Ausbildungszulage*).

Article 34

Where, subject to this Convention, a person has successively met during one calendar month the conditions for entitlement in respect of a child under the legislation of each of the Contracting States, the family allowance for the entire month shall be paid by the Contracting State under whose legislation it was payable at the beginning of the month.

PART III

MISCELLANEOUS PROVISIONS

Chapter 1

OFFICIAL AND LEGAL ASSISTANCE

Article 35

(1) The insurance authorities, associations of insurance authorities, public authorities and courts of the Contracting States shall assist one another in the implementation of the legislation referred to in article 2, paragraph (1), and of this Convention as if they were applying the legislation applicable to themselves. Such assistance shall be free of charge apart from out-of-pocket expenses incurred.

(2) Paragraph (1), first sentence, above shall also apply to medical examinations. The cost of such examinations, travel expenses, loss of earnings, the cost of hospitalisation for observation and other out-of-pocket expenses, excluding postages, shall be repaid by the requesting agency. The cost shall not be repaid if the medical examination is in the interest of the competent insurance authorities of both Contracting States.

Article 36

(1) Enforceable court orders and enforceable decisions, statements of arrears and extracts from the tax rolls (certificates) issued by the insurance or public authorities of one of the Contracting States in matters concerning contributions and other social insurance requirements shall be recognized in the other Contracting State.

(2) Recognition may be refused only where it would run counter to the public policy of the Contracting State in which recognition of the order or certificate is sought.

(3) Enforceable orders and certificates recognized in accordance with paragraph (1) above shall be enforced in the other Contracting State. The enforcement procedure shall conform to the legislation which would be applicable in the Contracting State in whose territory enforcement is sought to the enforcement of the corresponding orders and certificates issued in that State. The copy of the order or certificate must contain a statement to the effect that it is enforceable (enforceability clause).

(4) Demands for payment made by insurance authorities in the territory of one of the Contracting States on the ground of arrears in contributions shall, in the event of mandatory enforcement or bankruptcy proceedings in the territory of the other Contracting State, be given priority equal to that given to corresponding demands for payment in the territory of the latter Contracting State. The same shall apply to such demands for payment made by German insurance authorities in compensation proceedings in the Republic of Austria.

Article 37

(1) Where certificates or other papers required to be submitted to one of the agencies mentioned in article 35, paragraph (1), of one of the Contracting States are wholly or partly exempt from legal dues or charges, including consular and administrative fees, such exemption shall also extend to certificates and other papers required to be submitted to a corresponding agency of the other Contracting State in implementation of the legislation referred to in article 2, paragraph (1).

(2) Certificates which, in implementation of the legislation referred to in article 2, paragraph (1), are required to be submitted to one of the agencies mentioned in article 35, paragraph (1), of one of the Contracting States need not be authenticated for use in dealing with agencies of the other Contracting State.

Article 38

The agencies mentioned in article 35, paragraph (1), may, during the implementation of the legislation referred to in article 2, paragraph (1), and of this Convention, communicate with one another and with the persons concerned and their representatives direct.

Article 39

(1) Where a claim to a benefit under the legislation of one of the Contracting States has been submitted in the other Contracting State to an agency which is competent to receive a claim to a corresponding benefit under the legislation to which that agency itself is subject, the claim shall be deemed to have been submitted to the competent insurance authority. The same shall apply *mutatis mutandis* to other claims and also to notices and appeals.

(2) A claim to a benefit under the legislation of one of the Contracting States which is lodged with a competent agency in the territory of that Contracting State shall also be deemed to be a claim to any corresponding benefit covered by this Convention under the legislation of the other Contracting State.

(3) Claims, notices and appeals shall be transmitted without delay by the agency to which they have been submitted to the appropriate agency of the other Contracting State.

Article 40

Decisions of an insurance authority of one of the Contracting States may be served on a person resident in the territory of the other Contracting State direct by means of a registered letter with return receipt.

Article 41

Career consular authorities in the territory of both Contracting States shall be authorized, upon application by the competent persons, to take, without requiring the power of attorney, such steps as may be necessary to ensure and uphold the rights of nationals, of their own State. They may, in particular, petition, make statements to or institute remedies with the agencies referred to in article 35, paragraph (1), in the interest of the said nationals.

Chapter 2

IMPLEMENTATION AND INTERPRETATION OF THE CONVENTION

Article 42

(1) The competent authorities may prescribe in an agreement the administrative measures necessary for implementing this Convention.

(2) The competent authorities shall inform each other of measures taken to implement this Convention and of any changes in, and additions to, their legislation which affect its implementation.

(3) In order to facilitate the implementation of this Convention, liaison offices shall be set up. The following shall be liaison offices :

In the Republic of Austria :

- For sickness, accident and pensions insurance,
The Federation of Austrian Social Insurance Authorities—Liaison Office for International Social Security (*Hauptverband der österreichischen Sozialversicherungsträger—Verbindungsstelle für zwischenstaatliche Sozialversicherung*),
- For family allowances,
The Federal Ministry of Finance;

In the Federal Republic of Germany :

- For sickness insurance,
The Federal Association of Local Sickness Funds (*Bundesverband der Ortskrankenkassen*), Bad Godesberg,
- For accident insurance,
The Federation of Trade Associations (*Hauptverband der gewerblichen Berufsgenossenschaften e.V.*), Bonn,
- For manual workers' annuities insurance,
The Upper Bavaria Land Insurance Institute (*Landesversicherungsanstalt Oberbayern*), Munich,
- For salaried workers' annuities insurance,
The Federal Insurance Institute for Salaried Workers (*Bundesversicherungsanstalt für Angestellte*), Berlin,
- For miners' annuities insurance,
The Ruhr Miners' Insurance Association (*Ruhrknappschaft*), Bochum,

- For the Saar pensions insurance scheme for iron and steel workers, The *Land* Insurance Institute for the Saar (*Landesversicherungsanstalt für das Saarland*), Saarbrücken,
- For family allowances, The Central Office of the Federal Employment and Unemployment Insurance Institute (Children's Benefit Fund) [*Hauptstelle der Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung (Kindergeldkasse)*], Nuremberg.

(4) The German liaison offices for manual workers' annuities insurance and for miners' annuities insurance shall also be responsible for determining and granting annuities and for refunding contributions where entitlement is acquired under part II, chapter 3, unless the German Federal Railway Insurance Institute (*Bundesbahn-Versicherungsanstalt*) or the Seamen's Fund (*Seekasse*) is liable.

Article 43

(1) Where a person who is to receive benefits under the legislation of one of the Contracting States in respect of an injury sustained in the territory of the other Contracting State is entitled, in accordance with the regulations of the latter State, to claim damages for such injury from a third party, the claim for damages shall be transferred to the insurance authority of the first-mentioned Contracting State in accordance with the legislation applicable to that insurance authority.

(2) Where both an insurance authority of one of the Contracting States and an insurance authority of the other Contracting State are entitled to claim damages in respect of similar benefits as a result of the same contingency, the third party may discharge the claims transferred to the two insurance authorities in accordance with paragraph (1) above by making payment either to the one or to the other. The insurance authorities shall make the necessary internal arrangements to divide the payment between them in proportion to the benefits payable by each of them.

Article 44

Liability for cash benefits may be discharged by an insurance authority of one of the Contracting States in favour of a person resident in the territory of the other Contracting State by payment in the currency of the latter State. In transactions between the insurance authority and the beneficiary, conversion shall be effected at the rate of exchange prevailing on the date of

remittance of the cash benefits. Payments to be made by an insurance authority to an insurance authority of the other Contracting State shall be effected in the currency of the latter Contracting State.

Article 45

(1) Where an insurance authority of one of the Contracting States has made an advance payment, the payment of arrears, due in the same period, of a corresponding benefit to which entitlement exists under the legislation of the other Contracting State may be withheld. Where the insurance authority of one of the Contracting States has paid an amount in excess of the correct benefit for a period for which the insurance authority of the other Contracting State is required to pay arrears in respect of a corresponding benefit, the overpayment, up to the amount of the arrears due, shall be regarded as an advance payment within the meaning of the first sentence above.

(2) Where, under the legislation of one of the Contracting States, a person is entitled to a cash benefit for a period for which the person or his dependants have received benefits from a public assistance agency of the other Contracting State, the cash benefit shall be withheld in favour of the public assistance agency at its request as if it were a public assistance agency having its head office in the territory of the first-mentioned Contracting State.

Article 46

The obligation of an insured person to report his place of residence to the competent insurance authority and, if resident abroad, to present himself at an office to be specified by the said insurance authority shall not be affected by this Convention.

Article 47

(1) Disputes between the Contracting States concerning the interpretation or application of this Convention shall be settled, as far as possible, by the competent public authorities of the Contracting States.

(2) Where a dispute cannot be settled in this manner, it shall, at the request of one of the Contracting States, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted *ad hoc*; each Contracting State shall appoint one member, and the two members shall agree on the national of a third State who is to be Chairman and who shall be appointed by the Governments of both Contracting States. The members shall be

appointed within two months and the Chairman within three months after one of the Contracting States has informed the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time-limits mentioned in paragraph (3) above are not adhered to, either of the Contracting States may request the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of one of the Contracting States or if he is unable to act, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the Contracting States or also unable to act, the next most senior member of the Court who is not a national of one of the Contracting States shall make the appointments.

(5) The decisions of the arbitral tribunal shall be by majority vote. Its decisions shall be binding. Each Contracting State shall defray the expenses of its member and the costs of its representation in the arbitral proceedings; the expenses of the Chairman and other expenses shall be shared equally by the Contracting States. The arbitral tribunal may make some other ruling concerning costs. In all other respects the arbitral tribunal shall establish its own rules of procedure.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 48

(1) Except as otherwise provided herein, this Convention shall not confer any right to benefits for periods prior to the date of its entry into force.

(2) Insurance periods completed before the entry into force of this Convention shall also be taken into account in the determination of entitlement to benefits under this Convention.

(3) Without prejudice to paragraph (1) above, this Convention shall also apply to insurance contingencies which occurred before its entry into force. In such cases, in accordance with the provisions of this Convention :

(a) Pensions (or annuities) to which entitlement exists solely by virtue of this Convention shall, upon the application of the beneficiary, be determined as from the date of the entry into force of this Convention;

(b) Pensions (or annuities) which were determined before the date of the entry into force of this Convention shall, upon the application of the beneficiary, be revised; they may also be revised *ex officio*, and in that event the date on which the insurance authority dispatches to the beneficiary the required notification of the initiation of proceedings shall be deemed to be the date of the application.

The pensions (or annuities) shall be payable as from the date of the entry into force of this Convention. This provision shall not apply where entitlement to benefits would already have existed under the previous legislation if a claim had been entered at the appropriate time.

(4) If the result of the revision referred to in paragraph (3) above is to make the amount of the benefit, or the partial benefits, for the same insurance contingency, calculated in accordance with this Convention lower than the amount of the benefit or partial benefits payable on the day before the date of the entry into force of this Convention, the insurance authority whose benefit would be reduced as a result of the revision shall grant, as a benefit or partial benefit, its own benefit, so calculated, plus the difference between the amounts which are subject to comparison. If the result of the revision would be to reduce the partial benefit payable under the legislation of each of the Contracting States, each insurance authority shall grant, as a partial benefit under this Convention, the partial benefit already determined before the entry into force of this Convention.

(5) Where the legislation of both Contracting States provides for the exclusion or prescription of entitlements, the relevant legislation of the Contracting States shall not be applied to the beneficiary in respect of entitlements arising out of the application of paragraph (3) (a) above.

(6) In the cases referred to in paragraph (3) above, article 45, paragraph (1), shall apply *mutatis mutandis*.

(7) Paragraph (3) above shall not apply to benefits granted under the sickness insurance scheme; under accident insurance schemes and pensions insurance schemes (annuities insurance schemes) it shall apply only to pensions and annuities.

(8) The initiation *proprio motu* of proceedings for revision by an insurance authority shall be deemed, as concerns the insurance authority of the other Contracting State, to be an application for initial determination or revision of the benefit.

(9) If, in the period before the entry into force of this Convention, there were deviations from the provisions of the First Convention referred to in article 53 in the determination of benefits pursuant to a decision, the *status quo* shall be maintained in respect of the period before the entry into force

of this Convention, in so far as the deviations were necessary in order to take into account either the changes made in national legislation since the entry into force of the said First Convention or the basic principles of the present Convention.

(10) The validity of earlier decisions shall not preclude revision.

Article 49

The Final Protocol annexed to this Convention shall form an integral part thereof.

Article 50

This Convention shall also apply to *Land* Berlin, unless the Government of the Federal Republic of Germany notifies the Federal Government of the Republic of Austria to the contrary within three months after the entry into force of the Convention.

Article 51

(1) This Convention shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Article 52

(1) This Convention is concluded for an indefinite period. Either of the Contracting States may denounce it upon three months' notice.

(2) If, as a result of denunciation, the Convention is terminated, its provisions shall continue to apply to entitlements to benefits acquired up to that time; restrictive legislation relating to the preclusion of an entitlement or the suspension or withdrawal of benefits owing to residence abroad shall not be taken into account in respect of such entitlements.

Article 53

Upon the entry into force of this Convention the following shall cease to apply, without prejudice to items 18 and 19 of the Final Protocol to this Convention :

The First Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951, as

amended by the Additional Protocol of 25 January 1952 to the Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951 and by the Second Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 11 July 1953.

The Final Protocol of 21 April 1951 to the First Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951, as amended by the Additional Protocol of 25 January 1952 to the Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951.

The Second Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 11 July 1953 in so far as it has not already been invalidated by article 18 of the Treaty between the Republic of Austria and the Federal Republic of Germany for the Settlement of Damages Suffered by Displaced, Resettled and Persecuted Persons, Other Financial Questions and Questions in the Social Field (Financial and Compensation Treaty) of 27 November 1961.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Vienna on 22 December 1966, in two original copies.

For the Republic of Austria :

Dr. REICHMANN

For the Federal Republic of Germany :

Dr. JANTZ

ANNEX

[For the text of this annex see p. 34 of this volume.]

FINAL PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Convention on Social Security concluded this day between the Republic of Austria and the Federal Republic of Germany, the plenipotentiaries of the two Contracting States declare that agreement has been reached on the following :

1. *Ad* article 1 of the Convention :

The term "pension", defined in paragraph 13, shall not include the equalization allowance (*Ausgleichszulage*) under Austrian legislation.

2. *Ad* article 2 of the Convention :

(a) For the purpose of applying the legislation referred to in paragraph (1), sub-paragraph 1 (a), with respect to sickness insurance for salaried federal employees, habitual domicile in the territory of the Federal Republic of Germany shall be deemed to be equivalent to habitual domicile in Austria with respect mandatory participation in an insurance scheme.

(b) The provisions of part II, chapter 3, of the Convention shall not apply to the Saar pensions insurance scheme for iron and steel workers.

(c) The Convention shall not affect the Convention on the Social Security of Rhine Boatmen as in force at present or hereafter.

(d) The Convention shall not apply to German legislation concerning the inclusion of additional self-employed persons in an existing branch of the annuities insurance scheme.

(e) In so far as, under the legislation referred to in paragraph (3) concerning the apportionment of liability, the assignment of insurance liability depends on whether the person concerned was resident on a specified date in the territory of one of the Contracting States, such assignment shall remain valid even if the person concerned subsequently transfers his residence to the territory of the other Contracting State.

3. *Ad* article 3 of the Convention :

(a) Austrian nationals within the meaning of the Convention shall be deemed to include persons of German mother tongue (*Volksdeutsche*) who are stateless or of indeterminate nationality and who are resident in the territory of the Republic of Austria or were resident there, otherwise than purely temporarily, after 26 August 1939.

(b) Regulations concerning insurance liability laid down in international treaties concluded by the Contracting States with other States shall not be affected.

(c) Danube boatmen who have been employed in that capacity for a total of five years and are neither Austrian nor German nationals shall be assimilated to the nationals of the Contracting State whose legislation is applicable.

(d) Under the Austrian pensions insurance scheme, without prejudice to other requirements, the following periods shall be deemed, in the case of insured persons of German nationality, to be equivalent periods :

(aa) With respect to the First World War, periods of active military service in the Austro-Hungarian Army or the army of an allied State, and such periods of captivity as a prisoner of war (or civilian internee) and of return from such captivity as are assimilated thereto;

(bb) With respect to the Second World War, periods of active military service in the armed forces of the German Reich and of its allies, periods of compulsory service in the defence forces or the labour force, and such periods of emergency or civil defence service, of captivity as a prisoner of war (or civilian internee) and of return from such captivity as are assimilated thereto.

(e) Where, under the Austrian pensions insurance scheme, periods of full-time education are taken into account subject to the subsequent completion of a period of active military service or of a period assimilated thereto, only the periods referred to in section (d) above shall be deemed to constitute such periods of service in the case of insured persons of German nationality.

(f) The legislation of the Contracting States which guarantees participation of insured persons and employers in the organs of insurance authorities and associations and in establishing the *usus fori* in social security matters shall not be affected.

4. *Ad* articles 3 and 4 of the Convention :

Austrian legislation concerning privileges accorded to persons who have suffered injury on political, religious or racial grounds shall not be affected.

5. *Ad* article 4 of the Convention :

(a) Paragraph (1) shall not apply where its application would alter the insurance liability of the insurance authorities of the other Contracting State.

(b) Where a person in receipt of a pension is resident in the territory of the Federal Republic of Germany, the equalization allowance under Austrian legislation shall not be payable.

6. *Ad* article 5 of the Convention :

(a) Persons employed by a German enterprise shall be deemed to be employed in the territory of the Republic of Austria even if they do not satisfy the conditions relating to domicile laid down by Austrian legislation.

(b) Where, under German legislation, receipt of an annuity affects exemption from the obligation to participate in an insurance scheme, receipt of a corresponding benefit under the Austrian pensions insurance scheme shall have the same effect.

7. *Ad* article 9 of the Convention :

(a) Persons who are nationals of both Contracting States shall be subject to the legislation of the Contracting State in whose territory they are employed. The *status quo* shall be maintained in so far as on the date of the entry into force of the Convention the said persons are subject to the legislation of the other Contracting State.

(b) The provision in paragraph (1) shall apply to the Austrian Trade Delegate and the technical staff assigned to him by the Federal Chamber of Commerce (*Bundeskammer der gewerblichen Wirtschaft*) to the extent that the employment in the territory of the Federal Republic of Germany of the persons referred to is subject to Austrian legislation.

(c) Where German legislation is applicable under paragraph (1), the national shall be deemed to be employed at the employer's head office.

(d) Paragraph (2) shall apply *mutatis mutandis* to members of the foreign service of the Republic of Austria who are employed at the office of an honorary consul.

(e) For persons who are in employment on the date of the entry into force of the Convention the period prescribed in paragraph (2) shall begin on that date.

8. *Ad* article 15, paragraph (4), and article 23, paragraph (5), of the Convention :

(a) The provisions shall apply in respect of ambulatory treatment by professional physicians, dentist and dental techniques until the date to be specified in accordance with subparagraph (d) below, only in respect of the following persons :

1. Frontier commuters and their dependants,
2. Persons who are in the territory of the Contracting State concerned in the course of their employment, and dependants accompanying them,

3. Persons who are in the territory of the Contracting State concerned for the purpose of visiting dependants who are domiciled in that territory,
4. Persons domiciled in the territory of the Contracting State concerned who are dependants of a person insured with an insurance authority of the other Contracting State.

(b) Where the ambulatory treatment of a person not covered by sub-paragraph (a) above is given as if the provisions were applicable without limitation, the insurance authority of the place of residence shall proceed as if the person concerned were covered by sub-paragraph (a) above.

(c) Where the provisions are not applicable in accordance with sub-paragraph (a), the competent insurance authority shall refund the out-of-pocket expenses of the beneficiary up to the amount of the expenditure he would have incurred had the treatment been given at the head office of the competent insurance authority; if the competent German insurance authority does not refund the cost of the medical (or dental) treatment on the basis of individual services, the currently applicable individual rates of the scale of charges for physicians or of the scale of charges for dentists shall be used as a basis.

(d) The date on which the provisions enter into force without limitation shall be determined by the competent public authorities as soon as ambulatory treatment within the meaning of these provisions has been confirmed.

9. *Ad* article 17 of the Convention :

(a) With respect to the period 1 August 1956 to 30 June 1958, the amounts in question shall continue to be the lump sums paid by the insurance authorities of both Contracting States for that period. Where the procedure followed in respect of the period 1 July 1958 up to the date of the entry into force of the Convention was already consistent with the principles of article 17, the *status quo* shall be maintained.

(b) Where the persons referred to in paragraph (1) transfer their normal residence to the territory of the other Contracting State, the insurance authority thereafter competent shall continue, in accordance with the legislation applicable to it, to provide any existing additional death benefit insurance as if the insurance had been hitherto provided by it. Contributions shall not be transferred or refunded.

(c) Amounts withheld from annuities received under the German annuities insurance scheme which are paid in the territory of the Republic of Austria shall be apportioned among the authorities of the Austrian pensions insurance scheme in proportion to the pensions to be paid by the said authorities in the territory of the Federal Republic of Germany.

10. *Ad* article 19 of the Convention :

Where the principles of paragraphs (1) and (2) have already been follo-

wed, in respect of the period before the entry into force of the Convention, the *status quo* shall be maintained.

11. *Ad* article 20 of the Convention :

(a) Austrian legislation concerning the determination of the aggregate amount of an annuity granted for a recent industrial accident (or occupational disease) shall not apply to an industrial accident (or occupational disease) which is subject to German legislation.

(b) Where, under German legislation, receipt of an annuity under the annuities insurance scheme affects the amount of the entitlement under the accident insurance scheme, receipt of a pension under the Austrian pensions insurance scheme shall have the same effect.

12. *Ad* article 26 of the Convention :

Where Austrian periods of full-time education are taken into account subject to the subsequent completion of an insurance period, a period completed under the German annuities insurance scheme shall also be deemed to constitute such an insurance period.

13. *Ad* article 27 of the Convention :

Where the statutory date (*Stichtag*) is prior to 1 January 1962 and contribution bases cannot be established under Austrian legislation for the purpose of determining a calculation base, the contribution base shall be deemed to be the multiple currently applicable under Austrian legislation to the ordinary rate of pay, as at 31 December 1946, of employed persons following the same kind of occupation, provided that such contribution base shall not exceed the highest contribution base currently applicable.

14. *Ad* article 28 of the Convention :

(a) For the purpose of applying paragraph 1, an occupation which under German legislation is exempt from the obligation to participate in an insurance scheme shall not preclude the acquisition of entitlement to an old-age pension (or miners' old-age pension) other than an early pension.

(b) For the purpose of applying paragraph 5, the provisions of paragraph 19 (b), 4, of this Final Protocol shall apply.

15. *Ad* articles 32 to 34 of the Convention :

The prescribed regulation of the payment of family allowances shall be based substantially on the law in force as laid down in regulations 3 and 4 of the Council of the European Economic Community concerning the social security of migrant workers. In the event of the amendment by the Council of the European Economic Community of the principles governing the payment of family allowances to persons employed in a State member of the European Economic Community in respect of their children resident in

another member State, the Contracting States shall enter into negotiations with a view to reviewing the provisions of part II, chapter 4, of the Convention. The same shall apply when either of the Contracting States substantially amends the principles governing the payment of family allowances applicable at the time of signature of this Final Protocol.

16. *Ad* article 37 of the Convention :

Paragraph (2) shall apply *mutatis mutandis* where a similar formality is prescribed instead of authentication.

17. *Ad* article 41 of the Convention :

The consular sections of diplomatic missions shall also be deemed to be career consular authorities.

18. *Ad* article 48 of the Convention :

(a) For the purpose of applying the legislation referred to in article 2, the Convention on the Legal Status of Refugees of 28 July 1951 shall be applicable in relations between the Contracting States as from 1 January 1953.

(b) Austrian insurance authorities shall proceed as follows :

(aa) Part II, chapter 3, shall apply for the purpose of calculating benefits for the period 1 January 1956 until the date of the entry into force of the Convention in respect of insurance contingencies to which part four of the Austrian General Social Insurance Act is applicable. Where in respect of the period after 1 January 1956 partial benefits have been adjudicated or provisionally paid which are higher than the partial benefits that would be payable if the calculation had been made in accordance with part II, chapter 3, of the Convention, the benefits previously adjudicated or paid shall be deemed to be partial benefits. The amounts previously paid shall be deducted from the benefits payable.

(bb) Insurance contingencies to which part four of the Austrian General Social Insurance Act is not applicable shall continue to be governed not by article 27 and article 28, paragraphs 1 to 9, and paragraphs 3 (d) and 3 (e) of this Final Protocol but by article 18 and article 19, paragraphs (1) and (2), of the First Convention referred to in article 53 of the Convention, *mutatis mutandis*, with the following supplementary provisions :

1. If the insurance contingency occurred before 1 January 1939, the widows' pension under the pensions insurance scheme shall be deemed to be a benefit the amount of which is independent of the duration of the insurance periods, except where entitlement exists solely on the basis of Austrian insurance periods.

2. Where, in accordance with article 11, paragraph (1), benefits or payments received from one Contracting State result in the suspension of benefits under the legislation of both Contracting States, the benefits or payments shall be taken into account for the purposes of suspension proportionately to the ratio which the insurance periods to be taken into account for the purpose of calculating benefits under Austrian legislation bear to the aggregate of the insurance periods to be taken into account under the legislation of both Contracting States.
- (cc) With regard to the insurance contingencies referred to in (bb) above article 28, paragraph 11, shall apply retroactively in respect of the period beginning 1 January 1956 and article 31 shall apply retroactively in respect of the period beginning 1 January 1953. Where annuities assessed under the legislation in force prior to 1 January 1956 are to be recalculated in conformity with part four of the Austrian General Social Insurance Act, the provisions of article 26, paragraph (4), article 27, paragraphs (1) to (7), and article 28, paragraph 6, shall apply retroactively in respect of the period beginning 1 January 1961.
- (dd) As regards entitlement to benefits based on a occupational disease arising during the period before the entry into force of the Convention, article 16 of the First Convention referred to in article 53 of the Convention shall continue to apply in the event of aggravation of the disease.
19. *Ad* article 53 of the Convention :
- (a) The time-limit referred to in article 39, paragraph (2), of the First Convention referred to in article 53 of the Convention shall be deemed to have expired on 31 December 1956 in respect of *Land* Berlin and on 31 December 1958 in respect of the Saar.
 - (b) 1. (a) In apportioning the insurance liability pursuant to articles 23 and 24 of the First Convention referred to in article 53 of the Convention, the *status quo* shall also be maintained in respect of the period from the date of the entry into force of the Convention. This provision shall not apply where the arrangement resulting from the application of the domestic legislation of one of the Contracting States in respect of the industrial accidents (or occupational diseases) or insurance periods to be taken into account if the provisions of the Convention are taken into consideration is more favourable to the beneficiary and does not give rise to a reduction in the insurance liability of the other insurance authority as apportioned pursuant to article 23 or article 24 of the First Convention referred to in article 53 of the Convention.

- (b) 31 December 1952 shall be deemed to be the date on which the conditions prescribed in article 23, 2 (b), (aa), of the First Convention referred to in article 53 of the Convention must be met.
2. (a) For the purpose of applying German legislation concerning annuities accruing from third parties, the Convention shall not be deemed to be a convention within the meaning of the said legislation. The provisions of 3 (c), third and fourth sentences, below shall apply *mutatis mutandis*.
- (b) Sub-paragraph (b), 2 (a), above shall not apply to industrial accidents (or occupational diseases) which occurred
- (aa) Before 1 January 1939 or after 10 April 1945 in the territory of the Republic of Austria, or
- (bb) Between 31 December 1938 and 11 April 1945 in the territory of the Republic of Austria, provided that the injured or sick person meets the conditions prescribed in article 24, paragraph (2), of the First Convention referred to in article 53 of the Convention.
- An industrial accident (or occupational disease) which occurred outside the territory of the Republic of Austria in connexion with employment in that territory shall also be deemed to be an industrial accident (or occupational disease) for the purposes of this provision.
- (c) Sub-paragraph (b), 2 (a), above shall also be inapplicable in respect of insurance periods which were completed
- (aa) Before 1 January 1939 or after 10 April 1945 in the territory of the Republic of Austria, or
- (bb) During the period 31 December 1938 to 11 April 1945 in the territory of the Republic of Austria by insured persons who meet the conditions prescribed in article 24, paragraph (2), of the First Convention referred to in article 53 of the Convention.
- (d) The assignment of insurance liability specified in article 24 of the First Convention referred to in article 53 of the Convention shall not affect the obligations of German insurance authorities under German national legislation to provide benefits in respect of insurance periods completed in accordance with earlier legislation relating to disability insurance or salaried workers' insurance under the law of the Reich or German miners' annuities insurance (or pensions insurance) by persons who do not meet the conditions prescribed in article 24, paragraph (2), of the First Convention referred to in article 53 of the Convention.
3. (a) Where a previous decision in respect of periods prior to the date of the entry into force of the Convention is at variance with subparagraph (b), 1 (b), above, a new decision shall be rendered.

- (b) Where an insurance authority of one of the Contracting States has withdrawn or reduced an annuity which was payable in respect of periods prior to the date of the entry into force of the Convention or has refused to pay an annuity in respect of such periods on the ground that the industrial accident (or occupational disease) or the insurance periods concerned was (were) assigned to an insurance authority of the other Contracting State under the Convention concerning Social Insurance referred to in article 53 of the Convention or under the statutory arrangement made pursuant to letter No. V, 1 annexed to the Financial and Compensation Treaty referred to in article 53 of the Convention, the insurance authority of the first-mentioned Contracting State shall render a new decision in respect of the period beginning not earlier than 1 January 1953. In rendering its decision it shall not take
- (aa) Articles 23 and 24 of the First Convention referred to in article 53 of the Convention,
 - (bb) Part III of the Second Convention referred to in article 53 of the Convention or
 - (cc) The statutory arrangement made pursuant to letter No. V, 1 annexed to the Financial and Compensation Treaty referred to in article 53 of the Convention
- into consideration for the purpose of determining and paying the annuity. The preceding sentences shall not apply in cases where a German insurance authority revises an annuity the payment of which was refused, provided that the conditions prescribed in subparagraph (b), 2 (b) and 2 (c), above are met.
- (c) In the cases referred to in subparagraph (b), 3 (a) and 3 (b), above, a decision shall be rendered on request. A decision *proprio motu* shall not be precluded. The insurance authority competent to render the decision shall take into account benefits granted by an insurance authority of the other Contracting State in respect of the same industrial accident (or occupational disease) or the same insurance periods for the same period. Where the benefits granted by the latter insurance authority were based only partly on insurance periods that had also been taken into account by the insurance authority competent to render the decision, they shall be taken into account proportionately to the ratio of the above-mentioned periods to the aggregate of all periods on which the benefits granted by the insurance authority of the other Contracting State are based.
4. Benefits granted by a German accident insurance authority or annuities insurance authority for periods prior to or following the entry into force of the Convention in respect of industrial accidents (or

occupational diseases) or insurance periods which are assigned to Austrian insurance authorities under Austrian national legislation or under an international treaty shall not be taken into consideration by the Austrian insurance authorities. The industrial accidents (or occupational diseases) or insurance periods to which the said benefits refer shall not be regarded for the purposes of the Austrian insurance authority as industrial accidents (or occupational diseases) under German legislation or insurance periods to be taken into account under German legislation, except in respect of insurance periods completed before 1 January 1939 for which contributions to a statutory insurance scheme have been paid under the relevant statutory provisions.

20. (a) In the case of insurance contingencies occurring after the entry into force of the Convention, residence, otherwise than purely temporarily, in the territory of the Republic of Austria on a specified date within the meaning of the statutory arrangement made pursuant to letter No. V, 1, annexed to the Financial and Compensation Treaty referred to in article 53 of the Convention, shall be deemed to exist where the insured or beneficiary has resided for an uninterrupted period of at least three years in the territory of the Republic of Austria, residence outside the territory of the Republic of Austria for periods amounting in the aggregate to nine months or less being discounted.

(b) Where the Austrian insurance authority has refused, prior to the date of the entry into force of the Convention, to grant a benefit or part thereof on the ground that on a date referred to in (a) above the beneficiary or insured person resided purely temporarily in the territory of the Republic of Austria, it shall, on request, render a new decision, due regard being paid to (a) above, except where a German insurance authority has granted a benefit in respect of the same industrial accident (or occupational disease) or the same insurance periods. The validity of earlier decisions shall not preclude revision. The date on which the original application was submitted shall be deemed to be the date of application for the purpose of determining the benefit.

21. For the purpose of implementing the Austrian social insurance scheme in the communes of Jungholz (political district of Reutte) and Mittelberg (political district of Bregenz), the competent Austrian public authority may lay down full particulars by ordinance. The responsible insurance authorities of the Contracting States may agree on the details of their official assistance to one another in connexion with the granting of benefits in kind under the sickness insurance scheme and accident insurance scheme, subject to the consent of the competent public authorities of the Contracting

States. The obligation to provide benefits in respect of industrial accidents and occupational diseases which occurred during the period 30 April 1945 to 1 January 1948 in the territory of the communes mentioned in the first sentence above and to provide benefits in respect of annuities insurance periods completed during the period 30 April 1945 to 1 May 1953 in the territory of the communes mentioned in the first sentence above shall lie with the German insurance authorities; the Convention shall be applicable in such cases.

IN WITNESS WHEREOF the plenipotentiaries have signed this Final Protocol and have thereto affixed their seals.

DONE at Vienna on 22 December 1966, in two original copies.

For the Republic of Austria :

Dr. REICHMANN

For the Federal Republic of Germany :

Dr. JANTZ

AGREEMENT¹ FOR THE IMPLEMENTATION OF THE
CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA
AND THE FEDERAL REPUBLIC OF GERMANY ON
SOCIAL SECURITY²

Pursuant to article 42, paragraph (1), of the Convention between the Republic of Austria and the Federal Republic of Germany on Social Security of 22 December 1968² (hereinafter referred to as "the Convention") the competent public authorities, namely :

For the Republic of Austria :

The Federal Ministry of Social Affairs, represented by Dr. Ernst Willas,
Sektionschef;

The Federal Ministry of Finance, represented by Dr. Johann Tramer,
Ministerialrat;

For the Federal Republic of Germany :

The Federal Minister of Labour and Social Affairs, represented by
Dr. Kurt Jantz, *Ministerialdirektor*,

have agreed on the following provisions for the implementation of the Convention :

PART I

GENERAL PROVISIONS

Article 1

For the purposes of this Agreement, the expressions defined in the Convention have the meanings ascribed to them therein.

Article 2

In order to facilitate the implementation of the Convention, the liaison offices established pursuant to article 42, paragraph (3), of the Convention

¹ Came into force on 1 November 1969, simultaneously with the Convention, immediately after the competent public authorities had notified each other (on October 10, 1969) that the conditions prescribed under their own national legislation had been met, in accordance with article 17.

² See p. 74 of this volume.

shall, in addition to the functions prescribed in this Agreement, be responsible for all other administrative measures, especially the provision and organization of administrative assistance and the devising of standard forms.

Article 3

In the cases referred to in article 6, paragraph (2), of the Convention, the sickness insurance authority of the sending State shall, on request, certify the starting date of the period during which the employed person remains subject to the legislation of that State. Where the only insurance is with an accident insurance authority, the certificate shall be issued by that authority.

PART II

SPECIAL PROVISIONS

Chapter I

SICKNESS INSURANCE

Article 4

In the cases referred to in articles 12, 13 and 17, paragraph (2), of the Convention, the competent insurance authority shall, on request, issue a certificate of the insurance periods or the periods of receipt of a benefit which have been completed under the legislation applicable to that authority.

Article 5

(1) For the purpose of applying article 15 of the Convention, the competent insurance authority shall issue a certificate of entitlement on request.

(2) The insurance authority of the place of residence shall observe the course of the sickness as if the person concerned were insured with that authority itself and shall inform the competent insurance authority of the results of the observation.

(3) The benefits referred to in article 15, paragraph (3), of the Convention shall include the following :

1. Artificial parts of the body, orthopaedic appliances and braces, including orthopaedic corsets lined with fabric, together with replacement parts, accessories and instruments;
2. Orthopaedic footwear and, where appropriate, the corresponding normal (non-orthopaedic) shoe;
3. Prosthesis of the jaw and face, wigs;
4. Anatomical models (reproductions of various parts of the body) used to ensure the correct fitting of the articles referred to in items 1 to 3 above;
5. Artificial eyes, contact lenses, magnifying and telescopic spectacles;
6. Hearing aids, especially acoustic and phonetic appliances;
7. Dental prosthesis (fixed and removable) and occlusion prosthesis for the oral cavity;
8. Invalid carriages, wheel chairs and other mechanical means of locomotion;
9. Guide-dogs for the blind;
10. Replacement of the articles referred to in items 1 to 8 above;
11. All other curative and protective appliances and similar articles the cost of which exceeds, in Austria, 1,500 schillings and, in the Federal Republic of Germany, 220 DM.

Where such benefits have been granted in cases of absolute urgency, the insurance authority of the place of residence shall notify the competent insurance authority accordingly without delay.

Article 6

(1) In implementation of article 17, paragraph (3) or paragraph (4), of the Convention, the pensions (or annuities) insurance authority or the liaison office for the pensions (or annuities) insurance scheme of the State in which the beneficiary was hitherto normally resident shall issue him a certificate concerning his status at the time in question.

(2) The calculation of the amount to be withheld from the German annuity for pensioner's sickness insurance, the deduction of the amount from the annuity and the apportionment under paragraph 9 (c) of the Final Protocol to the Convention shall be carried out by the Austrian liaison office.

Article 7

(1) In the implementation of article 18 of the Convention, repayment shall be claimed through the liaison offices, either after the termination

of the contingency giving rise to the payment of benefits or for each calendar quarter, and shall be effected within two months following submission of the claim.

(2) Out-of-pocket expenditures for frontier commuters and their dependants shall be settled directly between the insurance authorities concerned.

(3) Paragraph (1) above shall apply *mutatis mutandis* in the cases referred to in article 19, paragraph (2), of the Convention.

Chapter 2

ACCIDENT INSURANCE

Article 8

Chapter 3 below shall apply *mutatis mutandis* to the payment of annuities and death benefits.

Article 9

For the purpose of implementing article 23 of the Convention article 5 and article 7, paragraph (1) and (2), above shall apply *mutatis mutandis*.

Chapter 3

PENSIONS (OR ANNUITIES) INSURANCE

Article 10

(1) The competent insurance authorities shall notify each other without delay of claims for benefits to which part II, chapter 3, of the Convention is applicable.

(2) The competent insurance authorities shall subsequently notify each other also of any other facts which may be important for determining the benefits, appending medical reports where applicable.

(3) The competent insurance authorities shall notify each other and the liaison offices of the decisions reached in the assessment of benefits and of the transmittal of decisions to the parties concerned.

Article 11

The competent insurance authorities shall notify each other without delay of any change in the amount of a benefit.

Article 12

In implementation of article 4 of the Convention, pensions (or annuities) shall be paid through the liaison office of one of the Contracting States by the liaison office of the other Contracting State in accordance with the legislation in force in the latter Contracting State concerning the method of payment.

Article 13

Cover for payment of the benefits shall be remitted to the liaison office of the State of domicile not later than the fifteenth day of the calendar month preceding the month of payment.

Article 14

If the liaison office of the State of domicile learns of a circumstance giving rise to the reduction of an entitlement to benefits or of a benefit, it shall notify the liaison office of the other Contracting State accordingly without delay; it shall at the same time discontinue the payment unless the circumstance is that the beneficiary has taken up a gainful occupation.

Chapter 4

FAMILY ASSISTANCE

Article 15

The certificates required by the competent insurance authority of one of the Contracting States for the purpose of applying article 32 of the Convention shall, on request, be issued by those offices in the territory of the other Contracting State which are competent under the legislation of the latter State to issue them.

PART III
FINAL PROVISIONS

Article 16

This Agreement shall also apply to *Land* Berlin, unless the Federal Minister of Labour and Social Affairs of the federal Republic of Germany notifies the Federal Ministry of Social Affairs of the Republic of Austria to the contrary within three months after the entry into force of the Agreement.

Article 17

This Agreement shall enter into force simultaneously with the Convention, as soon as the competent public authorities have notified each other that the conditions prescribed under their own national legislation have been met.

DONE at Vienna on 22 December 1966, in two original copies.

For the Federal Ministry
of Social Affairs :

Dr. WILLAS

For the Federal Minister
of Labour and Social Affairs :

Dr. JANTZ

For the Federal Ministry
of Finance :

Dr. Johann TRAMER

ADDITIONAL CONVENTION¹ TO THE CONVENTION OF
22 DECEMBER 1966² BETWEEN THE REPUBLIC OF
AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY
ON SOCIAL SECURITY

The Republic of Austria and
The Republic Federal of Germany,

with a view to amending and supplementing the Convention on Social Security concluded on 22 December 1966² (hereinafter referred to as "the Convention"), have agreed as follows :

Article 1

(1) Article 1, paragraph 5, of the Convention is amended to read as follows :

"Frontier region means the part of the territory of each Contracting State extending, in general, to a depth of up to ten kilometres on each side of the common frontier. The Austrian and German communes situated in the said region are specified in the annex to this Convention."

(2) The list of frontier communes in the annex to the Convention shall be replaced by the list annexed to this Additional Convention.

(3) Article 14, paragraph (3), of the Convention is amended to read as follows :

"(3) Article 4, paragraph (1), shall not apply in respect of legislation concerning the granting of benefits in kind so long as benefits in kind may be claimed under the legislation of the Contracting State in whose territory the person concerned is resident."

¹ Came into force on 1 November 1969, simultaneously with the Convention of 22 December 1966, in accordance with article 4 (2).

² See p. 74 of this volume.

(4) Article 17 is amended to read as follows :

“Article 17

“Article 4, paragraph (1), shall apply *mutatis mutandis* in respect of legislation under which the obligation of pensioners (or annuitants) and applicants for pensions (or annuities) to participate in an insurance scheme is conditional upon residence in the country concerned.”

(5) Paragraph 1 of the Final Protocol to the Convention is amended to read as follows :

“1. *Ad* article 1 of the Convention :

(a) The competent public authorities shall notify one another of any changes in the designation of the communes situated in the frontier region and of cases in which communes are merged or subdivided; any other changes in the list referred to in article 1, paragraph 5, shall be made by them by mutual agreements.

(b) The term ‘pension’, defined in paragraph 13, shall not include the equalization allowance (*Ausgleichszulage*) under Austrian legislation.”

(6) Paragraph 8 of the Final Protocol to the Convention is amended to read as follows :

“8. *Ad* article 15, paragraph (4), and article 23, paragraph (5), of the Convention :

“The provisions shall apply in the Republic of Austria in respect of ambulatory treatment by professional physicians, dental surgeons and dentists only in respect of the following persons :

1. Frontier commuters and their dependants,
2. Persons who are in the territory of the Contracting State concerned in the course of their employment, and dependants accompanying them,
3. Persons who are in the territory of the Contracting State concerned for the purpose of visiting dependants who are domiciled in that territory,
4. Persons domiciled in the territory of the Contracting State concerned who are dependants of a person insured with an insurance authority of the other Contracting State.

“For other persons the arrangement agreed to on a unified federal basis between the Federation of Austrian Social Insurance Authorities

and the medical associations of the Federal *Länder* or the Austrian Dental Technicians' Association on the basis of the general contract pertaining to the Vorarlberg Regional Sickness Fund for Manual and Salaried Workers as in force at present or hereafter shall apply."

(7) Paragraph 9 of the Final Protocol to the Convention is amended to read as follows :

"9. *Ad* article 17 of the Convention :

"Where, during the period prior to the entry into force of the Convention, in implementing the sickness insurance scheme for pensioners (or annuitants) and applicants for pensions (or annuities), the insurance authorities of the two States made lump-sum payments to each other or followed a procedure not consistent with the principles of article 14 of the First Convention referred to in article 53 of the Convention, the *status quo* shall be maintained."

(8) The following sentence is added to paragraph 19 (b), 3 (b), of the Final protocol to the Convention :

"The annuities insurance authority shall pay the annuity in respect of the period beginning not earlier than 1 January 1967."

Article 2

In so far as the application of paragraph 19 of the Final Protocol to the Convention requires that the conditions prescribed in article 24, paragraph (2), of the First Convention referred to in article 53 of the Convention should be met, any other nationality or statelessness shall be deemed to be equivalent to German nationality.

Article 3

This Additional Convention shall also apply to *Land* Berlin, unless the Government of the Federal Republic of Germany notifies the Federal Government of the Republic of Austria to the contrary within three months after the entry into force of this Additional Convention.

Article 4

(1) This Additional Convention shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Additional Convention shall enter into force simultaneously with the Convention.

DONE at Vienna on 10 April 1969, in two original copies.

For the Republic of Austria :

PLATZER

For the Federal Republic of Germany :

JANTZ

A N N E X

[For the text of this annex see p. 63 of this volume.]

ADDITIONAL AGREEMENT¹ TO THE AGREEMENT OF
22 DECEMBER 1966² FOR THE IMPLEMENTATION OF
THE CONVENTION BETWEEN THE REPUBLIC OF
AUSTRIA AND THE FEDERAL REPUBLIC OF GER-
MANY ON SOCIAL SECURITY

Pursuant to article 42, paragraph (1), of the Convention between the Republic of Austria and the Federal Republic of Germany on Social Security of 22 December 1966³ (hereinafter referred to as "the Convention"), the competent public authorities, namely :

For the Republic of Austria :

The Federal Minister of Social Affairs, represented by Dr. Franz Hausner, *Ministerialrat*;

The Federal Minister of Finance, represented by Dr. Leopold Wohlmann, *Sektionsrat* ;

For the Federal Republic of Germany :

The Federal Minister of Labour and Social Affairs, represented by Dr. Kurt Jantz, *Ministerialdirektor*,

with a view to amending the Agreement concluded on 22 December 1966³ for the implementation of the Convention on Social Security concluded on the same date (hereinafter referred to as "the Implementation Agreement"), have agreed as follows :

Article 1

1. Article 4 of the Implementation Agreement is amended to read as follows :

"Article 4

"In the cases referred to in articles 12 and 13 of the Convention, the competent insurance authority shall, on request, issue a certificate

¹ Came into force 1 November 1969, simultaneously with the Implementation Agreement, immediately after the Contracting Parties had informed each other (on October 10, 1969) that the conditions prescribed under their national legislation had been met, in accordance with article 3.

² See p. 162 of this volume.

³ See p. 74 of this volume.

of the insurance periods or periods of receipt of a benefit which have been completed under the legislation applicable to that authority.”

2. Article 6 of the Implementation Agreement is deleted.

Article 2

This Additional Agreement shall also apply to *Land* Berlin, unless the Federal Minister of Labour and Social Affairs of the Federal Republic of Germany notifies the Federal Minister of Social Affairs of the Republic of Austria to the contrary within three months after the entry into force of the Additional Agreement.

Article 3

This Additional Agreement shall enter into force simultaneously with the Implementation Agreement, as soon as the Contracting Parties have informed each other that the conditions prescribed under their national legislation have been met.

DONE at Vienna on 10 April 1969, in two original copies.

For the Federal Minister of Social Affairs :

Dr. HAUSNER

For the Federal Minister of Finance :

Dr. WOHLMANN

For the Federal Minister of Labour and Social Affairs :

Dr. JANTZ
