

No. 12289

**FRANCE
and
AUSTRIA**

**General Convention on social security (with protocol).
Signed at Vienna on 28 May 1971**

Authentic texts: French and German.

Registered by France on 8 February 1973.

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et
AUTRICHE**

**Convention générale sur la sécurité sociale (avec protocole).
Signée à Vienne le 28 mai 1971**

Textes authentiques : français et allemand.

Enregistrée par la France le 8 février 1973.

[TRANSLATION — TRADUCTION]

GENERAL CONVENTION¹ BETWEEN THE FRENCH REPUBLIC
AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

The President of the French Republic and the Federal President of the Republic of Austria, desiring to secure the benefit of the legislation on social security in force in the two Contracting States for persons to whom such legislation applies or has applied, have resolved to conclude a Convention and, for this purpose, have appointed as their plenipotentiaries:

The President of the French Republic:

Mr. François Leduc, Ambassador Extraordinary and Plenipotentiary;

The Federal President of the Republic of Austria:

Mr. Rudolf Kirchschräger, Federal Minister for Foreign Affairs,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1. For the purposes of this Convention:

1. "Territory of a Contracting State" means:

In relation to France: the European departments and the overseas departments (Guadeloupe, Martinique, French Guiana, Réunion) of the French Republic;

In relation to Austria: the federal territory.

2. "Nationals of a Contracting State" means:

In relation to France: French nationals;

In relation to Austria: Austrian nationals.

3. "Legislation" means the existing or future laws, regulations and statutory provisions of each of the two States relating to the schemes and branches of social security specified in article 2.

4. "Competent authority" means:

In relation to the French Republic: The Ministers responsible for implementing the legislation specified in article 2 of this Convention;

In relation to the Republic of Austria: The federal Ministers responsible for implementing the legislation specified in article 2 of this Convention.

5. "Competent institution" means:

(a) The institution with which the person concerned is insured at the time of the claim to benefit, or from which he would continue to be entitled to benefits if he were resident in the territory of the Contracting State in which the institution is situated, or

¹ Came into force on 1 November 1972, i.e. the first day of the second month following the exchange of the instruments of ratification, which took place at Paris on 28 September 1972, in accordance with article 42 (1).

(b) The institution designated by the competent authority of the Contracting State concerned.

6. “Competent State” means the Contracting State in whose territory the competent institution is situated.

7. “Employed persons” means wage-earners and all persons treated as such under the relevant legislation.

8. “Family members” means the members of a family under the relevant legislation.

9. “Insurance periods” means contribution periods, equivalent periods and periods of employment.

(a) “Contribution periods” means periods in respect of which contributions are paid or should be treated as having been paid under the legislation of a Contracting State.

(b) “Equivalent periods” means periods which are equivalent to contribution periods.

(c) “Periods of employment” means periods which, in accordance with the legislation under which they have been completed, are qualified as such or should be treated as such.

10. “Cash benefits”, “pensions”, “annuities” means any cash benefits, pensions or annuities covered by the legislation specified in article 2, including any increments or adjustments, capital benefits which may be substituted for pensions or annuities, and payments made for the reimbursement of contributions, where appropriate.

11. “Family benefits” means any benefits in kind or in cash designed to compensate for family expenses, with the exception of the maternity allowance provided for by French legislation and the birth allowance provided for by Austrian legislation, while “family allowances” means only periodic cash benefits granted according to the number and age of the children.

Article 2. 1. This Convention shall apply to the following social security legislation:

A. In Austria:

(a) Legislation on sickness insurance, excluding the following special insurance schemes:

(aa) Special insurance for self-employed persons;

(bb) Special insurance for persons receiving unemployment insurance benefits;

(cc) Special insurance for the survivors of war victims and the survivors of deceased military personnel and persons treated as such;

(dd) Special insurance for war invalids and disabled military personnel and persons treated as such undergoing vocational training;

(ee) Special insurance for civil servants and persons treated as such;

- (b) Legislation on accident insurance, excluding:
 - (aa) Partial accident insurance for self-employed persons;
 - (bb) Accident insurance for war invalids and disabled military personnel and persons treated as such undergoing vocational training;
 - (cc) Accident insurance for civil servants and persons treated as such;
- (c) Legislation on pensions insurance for manual workers, salaried workers and miners;
- (d) Legislation on family allowances.

B. In France:

- (a) The legislation establishing the organization of social security;
- (b) The legislation establishing the social insurance scheme applicable to persons employed in non-agricultural occupations and the social insurance legislation applicable to persons employed in agricultural occupations, with the exception of the provisions relating to voluntary old-age insurance for French nationals who are or have been employed outside French territory;
- (c) The legislation relating to the prevention of, and compensation for, industrial accidents and occupational diseases;
- (d) The legislation relating to family benefits;
- (e) The legislation relating to special social security schemes, in particular the social security scheme for the mining industry.

2. Notwithstanding the provisions of paragraph 1 B (b) above, this Convention shall not apply to the provisions of Book VI, Title I, of the Social Security Code relating to students, unless an agreement is reached to that effect.

3. This Convention shall not apply to the French non-contributory old-age insurance schemes, the Austrian supplementary benefit, the insurance schemes for the benefit of victims of war or of its consequences, the special schemes for civil servants or equivalent personnel, or the schemes for seafarers.

4. This Convention shall also apply to subsequent legislation extending the existing insurance schemes to new classes of persons, where the Contracting State which has modified its legislation proposes the said modification to the other Contracting State within a period of three months from the date of the official enactment of the modification and where the latter State gives its agreement to that proposal within a period of six months.

Article 3. 1. The provisions of this Convention shall be applicable to employed persons who are or have been subject to the legislation of one of the Contracting States and are nationals of one of the Contracting States, and to the members of their families and their survivors.

2. In addition, the provisions of this Convention shall be applicable to the survivors of employed persons who have been subject to the legislation of one of the two Contracting States, irrespective of the nationality of the latter, where the survivors in question are nationals of one of the Contracting States.

Article 4. 1. Subject to the other provisions of this Convention, persons resident in the territory of one of the Contracting States to whom the provisions of this Convention are applicable shall be subject to the obligations and enjoy the benefit of the social security legislation of that State, in the same conditions as the nationals of the said State.

2. The provisions of this Convention shall be without prejudice to the legislation of each of the Contracting States concerning the participation of insured persons and their employers in the management of social security institutions and the functioning of social security jurisdictions.

Article 5. 1. For the purpose of qualifying for compulsory, voluntary or optional continuing insurance, in accordance with the legislation of the Contracting State in whose territory the person concerned resides, the insurance periods completed under the legislation of the other Contracting State shall be taken into account, where necessary, as insurance periods completed under the legislation of the first-mentioned State.

2. In respect of sickness insurance, the provisions of paragraph 1 shall apply *mutatis mutandis* to persons qualified under Austrian law to benefit from continuing insurance by virtue of another person's insurance.

3. The provisions of paragraphs 1 and 2 shall apply only to employed persons who are ineligible to benefit from compulsory insurance because of the legislation of the country of employment.

4. Voluntary or optional continuing insurance shall be possible only in one of the two Contracting States.

Article 6. Pensions, annuities, survivors' allowances and other cash benefits acquired under the legislation of one of the Contracting States shall not be reduced, modified, suspended, discontinued or confiscated on the ground that the beneficiary is resident in the territory of the Contracting State other than the one in which the institution liable for the benefits is situated.

Article 7. 1. The provisions of this Convention shall not operate to confer or maintain any right to receive, under the legislation of either of the Contracting States, more than one benefit of the same nature or more than one benefit relating to the same insurance period. This provisions shall not apply to benefits payable under title III, chapters 2 and 3.

2. The legislation of one of the Contracting States concerning the reduction or suspension of a benefit when it is combined with other social security benefits or other income, or on the ground that the person concerned is gainfully employed, may be applied to the beneficiary, even in the case of benefits acquired under a scheme of the other Contracting State or income obtained or employment carried on in the territory of that same State. This rule shall not apply, however, in cases where benefits of the same nature are acquired in accordance with the provisions of articles 21 and 23 of this Convention.

TITLE II. PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 8. Subject to the provisions of this title, a person who is employed in the territory of one of the Contracting States shall be subject to the legislation of that State, even if he is resident in the territory of the other Contracting State, or his

employer or the principal place of business of the enterprise which employs him is in the territory of the last-mentioned State.

Article 9. The principle laid down in the preceding article shall be subject to the following exceptions:

(a) An employed person who is in the service of an enterprise which has in the territory of one of the States an establishment in which he is normally employed, and who is sent by that enterprise to the territory of the other State in order to carry out specific occasional work in that State, shall remain subject to the legislation in force in the State of his normal place of work, provided that his employment in the territory of the second State does not last longer than one year, inclusive of leave.

(b) An employed person who is in the service of an enterprise engaged, on behalf of others or on its own account, in the transport of passengers or goods by rail, road or inland waterway, with its principal place of business in the territory of one of the Contracting States, and who is employed in the territory of the other Contracting State in a travelling or seagoing capacity, shall be subject to the legislation of the Contracting State in whose territory the enterprise has its principal place of business; if, however, the enterprise has a branch or permanent agency in the territory of the Contracting State other than the one in which its principal place of business is established, persons employed by such branch or agency shall be subject to the legislation of the Contracting State in whose territory the branch or permanent agency is situated; if the person is employed exclusively or chiefly in the territory of one of the Contracting States and is resident there, the legislation of the said State shall be applicable even if the enterprise which employs him does not have its principal place of business, or a branch or a permanent agency, in that territory.

(c) Persons employed in public administrative offices who are sent from one of the Contracting States to the other State shall be subject to the legislation in force in the sending State.

Article 10. 1. Subject to the provisions of paragraph 4 of this article, diplomatic officers shall be excepted from the application of the social security legislation of the receiving State in respect of their services on behalf of the sending State.

2. (a) The dispensation provided for in paragraph 1 shall also apply to the administrative and technical staff of the mission, as well as the service staff of the mission who are not nationals of the receiving State or are not permanent residents thereof.

(b) Notwithstanding the provisions of subparagraph (a) above, members of the administrative and technical staff of the mission whose nationality is that of the sending State and who are permanently resident in the receiving State may choose to be subject to the legislation of the sending State. For that purpose, they shall be allowed three months from the date of the entry into force of this Convention or from the date of their assumption of their duties.

3. The dispensation provided for in paragraph 1 shall also apply to private servants who are in the exclusive service of a diplomatic officer, provided that:

- (a) They are not nationals of the receiving State or do not have their permanent residence there, and
- (b) They are subject in the sending State or in a third State to the social security legislation in force.

4. Where a diplomatic officer employs persons to whom the dispensation provided for in paragraph 3 is not applicable, he must conform to the social security legislation in force for employers in the receiving State.

5. Paragraphs 1 to 4 of this article shall apply *mutatis mutandis* to members of consular posts and to private staff employed exclusively in their service.

Article 11. The competent authority of the Contracting State whose legislation is applicable under articles 8 to 10 of this Convention may, at the request of the competent authority of the other Contracting State, agree to exempt certain employed persons or groups of employed persons from such legislation, if that is in their interest and taking into consideration the nature and circumstances of their employment. In such case, the legislation of the last-mentioned Contracting State shall be applied to the persons concerned.

TITLE III. SPECIAL PROVISIONS

Chapter 1. SICKNESS AND MATERNITY

Article 12. 1. Where the legislation of a Contracting State makes the acquisition, maintenance or recovery of entitlement to benefits conditional upon the completion of insurance periods, the competent institution of the said State shall take into consideration for that purpose, to the extent that they do not overlap, the insurance periods completed under the legislation of the other State, as if they were periods completed under its own legislation.

2. If, however, an employed person is not entitled to benefits in the new country of employment but is still entitled to benefits under the legislation of the Contracting State in whose territory he was last insured before the transfer of his residence or where he would be so entitled if he were present in the said territory, he may claim the benefit of the provisions of article 15, paragraphs 4 to 7.

Article 13. 1. If, under the legislation of a Contracting State, the payment of cash contributions is based on the average wage for a certain period, the average wage taken into account for the calculation of such benefits shall be determined in the light of the wages recorded during the period completed under the legislation of the said Contracting State.

2. If, under the legislation of a Contracting State, the amount of cash benefits varies in relation to the number of family members, the competent institution shall also take account for the calculation of such benefits of the family members resident in the territory of the other Contracting State.

Article 14. Where, under the legislation of the two Contracting States, an occupational activity carried out in either of the two States would confer entitlement to benefits in kind on the family members of an employed person, such benefits shall be granted only under the legislation of that State in whose territory the family members are resident.

Article 15. 1. An employed person who is insured with an institution in one of the two Contracting States and is resident in the territory of the said State shall be entitled to benefits during a temporary stay in the territory of the other Contracting State, if his condition necessitates immediate medical treatment, including hospitalization. This provision shall also apply to an employed person who is not insured with the said institution, but who is entitled to receive benefits from that institution or would be so entitled if he were present in the territory of the first-mentioned State.

2. Where the provisions of paragraph 1 refer to treatment administered in Austria by self-employed physicians and dentists, they shall apply to the following persons:

- (a) Persons and accompanying family members present in the territory of the other Contracting State in the performance of their occupation;
- (b) Persons present in the territory of the other Contracting State for the purpose of visiting their families who are resident there;
- (c) Members of the family of a person insured with an institution of one Contracting State who are present in the territory of the other Contracting State;
- (d) Persons who are present in the territory of the other Contracting State for other reasons, and who have received medical treatment for the account of the competent institution at the place of stay.

3. An employed person who has acquired entitlement to benefits from an institution of one of the Contracting States and who is resident in the territory of the said State shall retain that entitlement if he transfers his residence to the territory of the other Contracting State. Before transferring his residence, he must obtain the authorization of the competent institution. Such authorization may not be refused unless the move by the person concerned is likely to jeopardize the state of his health or the provision of medical treatment.

4. Where an employed person is entitled to benefits under the provisions of the preceding paragraph, benefits in kind shall be provided by the institution of his new or temporary place of residence in accordance with the legislation applied by the said institution, particularly as regards the scale of such benefits and the manner of providing them; the duration of such benefits shall, however, be that prescribed by the legislation of the competent State.

5. In the cases specified in paragraphs 1 and 3 of this article, the provision of prosthesis, of large prosthetic appliances and of other major benefits in kind shall be subject to prior authorization by the competent institution, except where the granting of the benefit cannot be deferred without seriously endangering the life or health of the person concerned.

6. In the cases specified in paragraphs 1 and 3 of this article, cash benefits shall be provided in accordance with the legislation of the competent State.

7. The provisions of the above paragraphs shall be applicable *mutatis mutandis* to family members during their temporary stay in the territory of one of the two Contracting States or when they transfer their residence to the territory of one of the two Contracting States after the occurrence of the sickness or maternity contingency.

8. The right to benefits referred to in paragraphs 1 and 3 of this article which may be enjoyed by the members of the family of an employed person shall not be affected.

Article 16. 1. The member of the family of an employed person who:

- (a) Is insured with an institution of one of the two Contracting States, or
- (b) Is entitled to benefits from an institution of one of the two Contracting States, or
- (c) Would be entitled to benefits from an institution of one of the two Contracting States if he were resident in the territory in which the said institution is situated,

shall receive benefits in kind in the territory of the Contracting State other than the one in which the competent institution is situated, as if the employed person were insured with the institution of his place of residence or as if he were entitled to benefits from that institution. The scale of such benefits and the manner of providing them shall be determined in accordance with the legislation applied by the last-mentioned institution; however, the duration of such benefits shall be that prescribed by the legislation of the competent State.

2. Where the family members transfer their residence to the territory of the competent State, they shall receive benefits under the legislation of that State. This rule shall also apply where the family members have already received, in respect of the same case of sickness or maternity, benefits provided by the institutions of the Contracting State in whose territory they were resident before the transfer; if the legislation applicable to the competent institution prescribes a maximum duration for the granting of benefits, the period of provision of benefits immediately prior to the transfer of residence shall be taken into account.

3. The provisions of this article shall not apply to family members as specified in paragraph 1 of this article who carry out in their country of residence an occupational activity which entitles them to benefits in kind.

Article 17. In cases where the application of this chapter would entitle an employed person or a member of his family to receive maternity benefits under the legislation of the two Contracting States, the person concerned would be subject to the legislation in force in the territory of the Contracting State in which the birth occurred, taking account where necessary of the aggregation of periods prescribed in article 12 of this Convention.

Article 18. 1. Where a person in receipt of a pension or annuity payable under the legislation of the two Contracting States is resident in the territory of one of those States and is entitled to benefits in kind under the legislation of that State, such benefits shall be provided for him and for the members of his family by the institution of his place of residence, as if he were in receipt of a pension or annuity payable solely under the legislation of the States of residence. The cost of such benefits shall be borne by the institution of the State in which he is resident.

2. Where a person in receipt of a pension or annuity payable under the legislation of only one of the Contracting States is resident in the territory of the other State, benefits in kind shall be provided for him and for the members of his family by the institution of his place of residence, as if he were in receipt of a pension or annuity payable under the legislation of the State in which he is resident, provided that he is entitled to such benefits under the said legislation and under the legislation by virtue of which the pension or annuity is payable. The cost of such benefits shall be borne by the competent institution of the State in which the institution providing the pension has its principal place of business.

3. For the purpose of the operation of paragraph 2 of this article, the provisions of article 15, paragraphs 4 and 5, shall apply *mutatis mutandis*.

4. Where the members of the family of a person in receipt of a pension or annuity payable under the legislation of a Contracting State are resident in the territory of the Contracting State other than the State in which the person concerned is himself resident, they shall receive benefits in kind as if the head of family were resident in the same State. The provisions of article 16 of this Convention shall apply to them *mutatis mutandis*.

5. A person in receipt of a pension or annuity payable under the legislation of a Contracting State, or a member of his family, shall receive benefits in kind during a temporary stay in the territory of the Contracting State other than the State in which he is resident. Such benefits shall be provided by the institution of the place of stay, in accordance with the legislation applicable to that institution. Their cost shall be borne by that institution, if one of the institutions liable for the pension or annuity is situated in the territory of the State in which the person concerned or the member of his family receives benefits in kind. Otherwise their cost shall continue to be borne by the institution specified in the last sentence of paragraph 1 or in paragraph 2 of this article; in such case, the provisions of article 15, paragraphs 4 and 5, of this Convention shall apply *mutatis mutandis*.

6. If under the legislation of either of the Contracting States contributory deductions are to be made from the pension or annuity payable to the beneficiary in order to cover the cost of benefits in kind, the institution which is liable for the pension or annuity shall be entitled to make such deductions in the cases specified in this article.

7. The provisions of paragraphs 1 and 2 of this article shall apply *mutatis mutandis* to persons already receiving pensions or annuities.

Article 19. In the cases specified in article 15, article 16, paragraph 1, and article 18, paragraphs 2, 4 and 5, benefits in kind shall be provided:

In France: by the Sickness Insurance Fund for Industrial Employees (Caisse d'assurance maladie dont relèvent les salariés de l'industrie) competent for the place of stay of the person concerned;

In Austria: by the Local Sickness Fund for Manual and Clerical Workers (Gebietskrankenkasse für Arbeiter und Angestellte) competent for the place of stay of the person concerned.

Article 20. 1. The benefits in kind provided under the terms of article 12, paragraph 2, article 15, paragraphs 1, 3 and 7, article 16, paragraph 1, and article 18, paragraphs 2, 4 and 5 (last sentence) of this Convention shall be repaid to the institutions which provided them.

2. The competent institution shall be obliged to repay the amount of benefits in kind provided in the cases specified in article 12, paragraph 2, article 15, and article 18, paragraphs 2 and 5 (last sentence).

3. The competent institution shall be obliged to repay amounts equivalent to three quarters of the expenditures relating to benefits in kind provided to the family members specified in article 16, paragraph 1, and article 18, paragraph 4.

4. Repayment shall be determined and effected in accordance with procedures to be established by the competent administrative authorities of the two Contracting States.

5. The competent authorities of the two Contracting States may agree, particularly in the interests of administrative simplification, that repayment shall not be made between the institutions of their States.

Chapter 2. INVALIDITY (REDUCTION OF WORK CAPACITY)

Article 21. 1. The provisions of chapter 3 shall apply *mutatis mutandis* to the award of the benefit which an insured person may claim in the event of invalidity or reduction of his work capacity.

2. If, after suspension of the benefit, the insured person recovers his entitlement to the benefit, the institution which originally granted the benefit shall be responsible for resuming payment thereof.

3. The benefit shall be converted where appropriate into an old-age pension under the conditions of the legislation by virtue of which it was granted and in accordance with the provisions of chapter 3.

4. If, under the legislation of one of the Contracting States, the amount of the benefit varies with the number of family members, the institution which awarded the benefit shall also take account, for the calculation of the benefit, of the number of family members resident in the territory of the other Contracting State.

Chapter 3. OLD AGE AND DEATH (PENSIONS)

Article 22. 1. For the purposes of the acquisition, maintenance or recovery of entitlement to benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting States, the insurance periods completed under the legislation of each of the Contracting States, shall be aggregated, provided that they do not overlap. The extent to which and the manner in which insurance periods are to be taken into account shall be determined in accordance with the legislation of the Contracting State under whose insurance scheme such periods were completed.

2. Where the legislation of one of the Contracting States makes it a condition for the award of particular benefits that the insurance periods should have been completed in an occupation which is subject to a special scheme, only the periods completed under the corresponding scheme of the other Contracting State and the periods completed in the same occupation under other schemes of the last-mentioned Contracting State shall be aggregated, provided that they do not overlap, for the purpose of qualification for such benefits. If, notwithstanding the aggregation of the said periods, the insured person does not qualify to receive the said benefits, the periods in question shall also be aggregated for the purpose of qualification for the benefits of the general scheme of the Contracting States.

Article 23. 1. Where an insured person as specified in article 22 of this Convention or his survivors claims benefits under the legislation of both Contracting States under which he has completed insurance periods, such benefits shall be determined in the following manner:

(a) The institution of each of the Contracting States shall determine in accordance with its own legislation whether the person concerned satisfies the conditions for entitlement to the benefits provided for by that legislation, account being taken of the aggregation of periods referred to in the preceding article.

(b) If the entitlement is acquired by virtue of the preceding subparagraph, the said institution shall in the first instance ascertain the amount of the benefit to which the person concerned would be entitled if all the insurance periods aggregated in the manner specified in the preceding article had been completed exclusively under its own legislation. On the basis of that amount, the institution shall determine the proportionate duration of the periods completed under the said legislation before the occurrence of the insurance contingency in relation to the total duration of the periods completed under the legislation of both Contracting States before the occurrence of the insurance contingency. That amount shall constitute the benefit payable to the person concerned from the institution in question.

(c) If, under the legislation of one of the Contracting States, the calculation of benefits is based on an average wage, an average contribution or an average increment, or on the ratio that existed, during the completed contribution periods, between the gross wage of the person concerned and the average gross wage of all insured persons, excluding apprentices, such averages or proportionate figures shall, in calculating the benefits for which the institution of the said State is liable, be determined taking into account only the insurance periods completed under the legislation of the said Contracting State or the gross wage of the person concerned for those periods. If, under the legislation of one of the Contracting States, the benefits are calculated in relation to the amount of wages earned or contributions paid, the wages or contributions for the insurance periods completed under the scheme of the other Contracting State shall be taken into consideration by the institution determining benefits, on the basis of the average wages or average contributions recorded for the insurance periods completed under its own scheme. The rules of adjustment shall be taken into account in each body of legislation, subject to any arrangements which may be determined by a subsequent agreement in order to avoid any double adjustment.

(d) If, under the legislation of one of the Contracting States, the amount of the benefit varies with the number of family members, the institution determining such benefit shall take account, in calculating it, of the number of family members resident in the territory of the other Contracting State.

(e) Where, at a given time, account being taken of the aggregation of periods referred to in the preceding article, the person concerned does not satisfy the conditions imposed by the legislation of both Contracting States applicable to him but does satisfy the conditions imposed by such legislation of only one of the Contracting States, the amount of the benefit shall be determined in accordance with the provisions of subparagraph (b) above.

(f) Where, at a given time, the person concerned does not satisfy the conditions imposed by the legislation of both Contracting States applicable to him but does satisfy the conditions imposed by such legislation of one of the Contracting States, irrespective of the periods completed under the legislation of the other Contracting State, the amount of the benefit shall be determined solely in accordance with the legislation which confers the entitlement, account being taken only of the periods completed under the last-mentioned legislation.

(g) In the cases specified in subparagraphs (e) and (f) above, the benefits already determined shall be revised in accordance with the provisions of subparagraph (b) above, when the conditions imposed by the legislation of both Contracting States are satisfied, account being taken of the aggregation of periods referred to in the preceding article.

2. (a) Where a compulsory insurance period completed under the legislation of one of the Contracting States coincides with a period of voluntary insurance completed under the legislation of the other Contracting State, only the compulsory insurance period shall be taken into account for the calculation of benefits in accordance with paragraph 1 (b) of this article.

(b) If a contribution period completed under the legislation of one Contracting State coincides with an equivalent period under the legislation of the other Contracting State, only the first shall be taken into account for the calculation of benefits in accordance with paragraph 1 (b) of this article.

(c) Any period which is an equivalent period under the legislation of both Contracting States shall be taken into account only by the competent institution of the Contracting State under whose legislation the insured person was last subject to compulsory insurance before the said period; if the insured person was not subject to compulsory insurance under the legislation of a Contracting State before the said period, that period shall be taken into account by the competent institution of the Contracting State under whose legislation he was first subject to compulsory insurance after the said period.

(d) If, in accordance with subparagraph (a) above, any periods of voluntary insurance completed under the legislation of a Contracting State are not to be taken into account, the contributions paid in respect of such periods shall be considered as increments to the benefits payable under the legislation in question; if such legislation provides for supplementary insurance, the said contributions shall be taken into account for the calculation of benefits payable under such insurance.

3. If the insurance periods completed under the legislation of one of the Contracting States amount to less than 12 months in all, no benefit shall be granted under that legislation; in such case, the above-mentioned periods shall be taken into consideration for the purposes of the acquisition, maintenance or recovery of entitlement to benefits on the part of the other Contracting State, but not for determining the proportionate amount payable under paragraph 1 (b) of this article. This provision shall not apply if the entitlement to benefits is acquired under the legislation of the first-mentioned State solely on the basis of periods completed under its legislation.

Article 24. 1. If the amount of benefits which the person concerned may claim under the legislation of a Contracting State, irrespective of the provisions of articles 22 and 23, is larger than the total amount of benefits payable under those provisions, the competent institution shall be responsible for providing him with an additional benefit equal to the difference between those two amounts. The cost of such additional benefit shall be borne entirely by the said institution.

2. Where the application of the provisions of the preceding paragraph would have the effect of awarding to the person concerned additional benefits from institutions of both Contracting States, he shall receive only the higher additional benefit. The cost of such additional benefit shall be shared between the competent institutions of the said States in the proportion corresponding to the ratio between the amount of the additional benefit for which each of them would be liable if it were the only institution involved and the total amount of the additional benefits which all such institutions should provide.

3. The additional benefit referred to in the preceding paragraphs of this article shall be deemed to be an element of the benefits provided by the liable institution. The determination of the amount shall be definitive, except in cases where the provisions of article 23, paragraph 1 (g), should be applied.

Chapter 4. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 25. 1. Any employed person who sustains an industrial accident or contracts an occupational disease:

- (a) Either in the territory of the Contracting State other than the competent State;
- (b) Or in the territory of the competent State;

- (aa) And who transfers his residence to the territory of the other Contracting State;
- (bb) Or whose condition, in case of a temporary stay in such territory, necessitates immediate medical treatment, including hospitalization,

shall receive, at the expense of the competent institution, benefits in kind provided by the institution of the place of stay or residence. In the event of a transfer of residence, such persons shall, before transferring their residence, obtain the authorization of the competent institution. Such authorization may not be refused unless the move by the person concerned is likely to jeopardize the state of his health or the provision of medical treatment. In exceptional cases, the authorization may be given after the transfer of residence, where there are legitimate reasons why it could not be applied for before the transfer.

2. With regard to the scale, duration and manner of providing benefits in kind which are provided in the cases specified in the preceding paragraph, the provision of article 15, paragraphs 4 and 5, of this Convention shall apply *mutatis mutandis*.

3. If the legislation of a Contracting State specifies a maximum duration for the granting of benefits, the institution applying such legislation shall take account, where appropriate, of periods during which the benefits have already been provided by an institution of the other Contracting State.

4. The cost of benefits in kind provided in the cases specified in paragraph 1 of this article shall be repaid to the institutions which provided them in accordance with the provisions of article 20 of this Convention.

5. Cash benefits shall, in the cases specified in paragraph 1 of this article, be provided in accordance with the legislation of the competent State.

6. However, in the case of a person employed in an agricultural occupation in France, benefits of all kinds shall be provided directly by the responsible employer or by the insurer acting for him.

Article 26. 1. Where, for the purpose of assessing the degree of disability in a case of industrial accident or occupational disease, the legislation of one of the Contracting States implicitly or explicitly provides that previous industrial accidents or occupational diseases as defined in that legislation shall be taken into account, industrial accidents sustained and occupational diseases contracted at an earlier date under the legislation of the other Contracting State shall also be taken into account as if they had been sustained or contracted under the legislation of the first-mentioned Contracting State.

2. With regard to cash benefits, the provisions of article 13 of this Convention shall apply *mutatis mutandis*.

Article 27. 1. Occupational disease benefits payable under the legislation of both Contracting States shall be provided only under the legislation of the State in whose territory the occupation capable of producing such an occupational disease was last carried on, and only if the person concerned fulfils the requirements laid down by that legislation.

2. If the legislation of a Contracting State makes it a condition for the award of occupational disease benefits that the disease should have been medically certified for the first time in the territory of the said State, that requirement shall be deemed to have been fulfilled if the disease was certified for the first time in the territory of the other Contracting State.

Article 28. Where, in the case of a deterioration in the state of an occupational disease, an employed person who has received or is receiving compensation for an occupational disease under the legislation of one of the Contracting States claims a benefit under the legislation of the other Contracting State in respect of a like occupational disease, the following rules shall apply:

(a) If the employed person has not carried on in the territory of the latter State an occupation capable of producing or aggravating the occupational disease in question, the competent institution of the first State shall continue to be responsible for the benefits payable under its own legislation, taking the said deterioration into account.

(b) If the employed person has carried on such an occupation in the territory of the latter State, the competent institution of the first State shall continue to be responsible for providing the benefit payable under its own legislation, no account being taken of the said deterioration; the competent institution of the other State shall pay the employed person an additional benefit the amount of which shall be fixed in accordance with the legislation of that other State and shall be equal to the difference between the amount of benefit payable after the said deterioration and that which would have been payable if the disease, before the deterioration, had been contracted in its territory.

Chapter 5. SURVIVOR'S ALLOWANCE

Article 29. 1. For the purposes of the acquisition, maintenance or recovery of entitlement to survivors' allowances provided for under legislation other than that concerning industrial accidents and occupational diseases, where an employed person has been subject successively or alternately to the legislation of both Contracting States, the insurance periods completed under the legislation of each of the Contracting States shall be aggregated, provided that they do not overlap.

2. Where an employed person who is subject to the legislation of one of the Contracting States or a person in receipt of a pension or annuity, or a member of his family, dies in the territory of the other Contracting State, the death shall be deemed to have occurred in the territory of the competent State.

3. The competent institution shall assume liability for the survivor's allowance, even if the beneficiary is present in the territory of the Contracting State other than the competent State.

4. The provisions of paragraphs 2 and 3 of this article shall also apply in cases where death occurs as a result of an industrial accident or an occupational disease.

Chapter 6. FAMILY BENEFITS

Article 30. French persons employed in Austria and Austrian persons employed in France, and the members of their families, shall be subject to the legislation relating to family benefits applicable in Austria and in France, respectively, and shall benefit therefrom under the same conditions as the nationals of each of those States.

Article 31. Where the legislation of the Contracting States makes the acquisition of entitlement to benefits conditional upon the completion of periods of employment or activity in a trade, the institution which applies that legislation shall for that purpose take account, where necessary, of the periods of employment or activity completed under the legislation of the other Contracting State.

Article 32. 1. For the purpose of the application of this article, “children” means children defined or qualified as such by the legislation under which the benefits are payable.

2. Employed persons who are subject to the legislation of a Contracting State and have children who reside or are brought up in the territory of the other State shall be entitled, in respect of such children, to the family allowances provided for by the legislation of the first-mentioned State as if they were resident or were brought up in the territory of that State.

3. However, the amount of family allowances paid shall be limited to a sum not exceeding the amount of family allowances that would be payable under the legislation of the State in whose territory the children are resident.

4. Where the provisions of the preceding paragraph are applied, the comparison between the amounts of family allowances under the legislation of the two States in question shall be carried out taking into account the total number of children dependent on the same beneficiary.

5. The provisions of paragraphs 3 and 4 shall not apply to employed persons as specified in the articles 9 (a) and 11 of this Convention, who shall be entitled, in respect of children who accompany them to the territory of the State to which they are sent, to the family benefits provided for by the legislation to which they remain subject. Such benefits shall be provided by the competent institution.

Article 33. Where the entitlement to benefits is granted successively under the legislation of both Contracting States, the amount of benefits payable for the current month shall continue to be payable by the institution of the State to which the beneficiary belonged on the first day of the calendar month in question.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 34. 1. The competent authorities shall agree directly between themselves on the measures necessary to implement this Convention. They may, in particular, agree to establish bilateral liaison agencies with a view to facilitating the implementation of this Convention.

2. The competent authorities of both Contracting States shall inform each other of:

- (a) Any measures taken by them for the application of this Convention;
- (b) Any changes made in their legislation which affect the application of this Convention.

3. The authorities and the institutions of the Contracting States shall furnish assistance to one another with regard to any matter relating to the application of this Convention and shall act as if the matter were one affecting the application of their own legislation. Such administrative assistance shall be given free of charge.

4. As far as mutual legal aid is concerned, the Hague Convention of 1 March 1954¹ and the Supplementary Agreement of 15 July 1966² between the French Republic and the Republic of Austria shall apply *mutatis mutandis*.

¹ See “Convention relating to civil procedure” in United Nations, *Treaty Series*, vol. 286, p. 265.

² *Ibid.*, vol. 634, p. 3.

5. The institutions and the authorities of each of the Contracting States may, for the purpose of the application of this Convention, communicate directly with one another and with the persons concerned or their representatives.

6. The institutions and the authorities of one of the Contracting States shall not reject claims or other documents submitted to them on the ground that they are drawn up in the official language of the other Contracting State.

7. Medical examinations required under the legislation of one of the Contracting States in respect of persons resident in the territory of the other Contracting State shall, at the request of the competent authorities, be carried out at their expense by the institution of the place of residence.

Article 35. 1. Any exemption from or reduction of legal dues, stamp duties, court fees or registration fees provided for by the legislation of one of the Contracting States in respect of papers or documents required to be submitted under that legislation shall be extended to similar papers and documents required to be submitted under the legislation of the other Contracting State or in implementation of this Convention.

2. Certificates, documents and papers of every kind required to be submitted under this Convention need not be authenticated.

Article 36. 1. Any claim, notice or appeal submitted, for the purpose of this Convention or of the legislation of a Contracting State, to an authority, institution or other competent agency of one of the Contracting States should be treated as a claim, notice or appeal submitted to an authority, institution or other competent agency of the other State.

2. Any claim, notice or appeal which should, for the purpose of the application of the legislation of one of the Contracting States, have been submitted within a prescribed time-limit to an authority, institution or other competent agency of the said State shall be admissible if it is submitted within the same time-limit to an authority, institution or other competent agency of the other Contracting State.

3. In the cases specified in paragraphs 1 and 2, the authority, institution or agency to which the claim, notice or appeal has been submitted shall transmit it without delay to the authority, institution or competent agency of the first-mentioned State, either directly or through the competent authorities of the two Contracting States.

Article 37. 1. Agencies liable under this Convention for the payment of benefits shall validly discharge their liability by payment in the currency of their country.

2. Repayments provided for by this Convention shall be expressed in the currency of the State of the institution which provided the benefits.

3. Transfers required for the implementation of this Convention shall be effected in accordance with the agreements on this subject in force in the two States at the time of the transfer.

Article 38. 1. Any disputes concerning the interpretation of application of the provisions of this Convention shall be settled through diplomatic channels.

2. If a dispute cannot be settled in this manner, it shall, at the request of one of the two Contracting States, be submitted to an arbitral tribunal which shall be constituted in the following manner:

(a) Each of the Parties shall appoint an arbitrator within one month of the date of receipt of the request for arbitration. The two arbitrators thus appointed shall agree on a national of a third State as a third arbitrator within two months of the notification from the last Party to appoint its arbitrator.

(b) If one of the Parties fails to appoint an arbitrator within the prescribed time-limit, the other Party may request the President of the International Court of Justice to make the appointment. The same request may be made by either Party if the two arbitrators fail to agree on the choice of a third arbitrator.

(c) However, if the President of the International Court of Justice is a national of one of the Contracting Parties, the functions which devolve upon him by virtue of this article shall be conferred on the Vice-President of the Court or the next most senior member of the Court who is not in that situation.

3. The decisions of the arbitral tribunal shall be by majority vote. Its decisions shall be binding on both States. Each Contracting State shall defray the expenses of the arbitrator whom it appoints. The other expenses shall be shared equally between the two States. The arbitral tribunal shall establish its own rules of procedure.

Article 39. Contributions which are owed to an institution of one of the Contracting States may be collected in the territory of the other Contracting State by the same administrative procedure as applies to the collection of contributions owed to a corresponding institution of the last-mentioned State. The implementation of this provision shall be the subject of subsequent agreements which may also relate to the judicial procedure for collection.

Article 40. 1. Where a person who is in receipt of benefits under the legislation of one Contracting State in respect of an injury sustained in the territory of the other State is entitled in the territory of the last-mentioned State to claim damages for such injury from a third party, the rights of the institution liable for the benefits vis-à-vis the third party shall be as follows:

- (a) Where the institution liable for the benefits is subrogated to the rights of the beneficiary vis-à-vis the third party, in accordance with the legislation applicable to that institution, each Contracting State shall recognize such subrogation;
- (b) Where the institution liable for the benefits has a direct right vis-à-vis the third party, each Contracting State shall recognize such right.

2. The application of paragraph 1 above shall be the subject of subsequent agreements.

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 41. 1. This Convention shall in no case confer any right to the payment of benefits for a period before the date of its entry into force.

2. Any insurance period completed under the legislation of a Contracting State before the date of the entry into force of this Convention shall be taken into account for the purpose of determining entitlement to benefits in accordance with the provisions of this Convention.

3. Subject to the provisions of paragraph 1 of this article, a benefit shall be payable under this Convention even in respect of an event which occurred before the date of its entry into force. To this end, any benefit which has not been paid or which has been suspended by reason of the nationality of the person concerned or

because he is resident in the territory of the Contracting State other than the one in which the institution liable for the benefits is situated shall, upon his application, be paid or reinstated as from the date of the entry into force of this Convention, provided that the entitlement previously awarded has not been liquidated by a lump-sum payment.

4. Pensions or annuities determined before the date of the entry into force of this Convention may be determined afresh upon the application of the person concerned or on the initiative of an institution. The effect of the revision shall be to grant to the beneficiaries, as from the date of the entry into force of this Convention, the same rights as if the Convention had been in force at the time of the determination of the pension or annuity. The application for revision shall be submitted within two years of the date of the entry into force of this Convention.

5. With regard to the rights arising out of the application of paragraphs 3 and 4 of this article, the legislation of the two Contracting States concerning the lapse and extinction of rights shall not apply to the beneficiary, provided that the application referred to in paragraphs 3 and 4 of this article is submitted within two years of the date of the entry into force of this Convention. If the application is submitted after the expiry of that period, such right to benefits as has not lapsed or been extinguished shall be acquired as from the date of the application, unless more favourable provisions of the legislation of a Contracting State are applicable.

Article 42. 1. This Convention shall be ratified in accordance with the constitutional procedures in force in each of the two States and shall come into force on the first day of the second month following the exchange of the instruments of ratification.

2. This Convention shall remain in force for a period of one year. Thereafter it shall continue in force from year to year unless it is denounced in writing three months before the expiry of any such yearly period.

3. In the event of the denunciation of this Convention, any right acquired in accordance with its provisions shall be maintained, notwithstanding any restrictive provision made in the schemes concerned for cases where an insured person is resident abroad.

4. This Convention shall replace the corresponding provisions of the Treaty on Labour, Social Insurance and Assistance between France and Austria of 27 May 1930.

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

DONE AT VIENNA, on 28 May 1971, in duplicate in the French and German languages, both texts being equally authentic.

For the Republic
of Austria:

[Signed]

RUDOLF KIRCHSCHLÄGER

For the French Republic:

[Signed]

F. LEDUC

PROTOCOL

At the time of signing the General Convention on Social Security between the French Republic and the Republic of Austria, the plenipotentiaries have agreed upon the following provisions which shall form an integral part of the Convention:

1. *Ad article 3*

(a) In accordance with a generally recognized principle concerning matters governed by this Convention, the advantages which the two Contracting States have granted to one another may not be claimed by nationals of third States.

(b) This Convention shall also apply to refugees within the meaning of the Convention relating to the Status of Refugees of 28 July 1951.¹

2. *Ad article 4*

(a) The provisions of the Austrian federal law of 22 November 1961 on entitlements to benefits and entitlements to pensions (or annuities) insurance and accident insurance during training by reason of employment in a foreign country shall not apply to French nationals.

(b) The equal treatment of nationals of the two Contracting Parties provided for in paragraph 1 shall not apply to the requirements which insured persons are required to fulfil in person, under Austrian legislation, for the purpose of taking into account periods of military service during time of war and equivalent periods.

3. *Ad article 7*

For the purpose of the application of paragraph 2, the provisions of Austrian legislation relating to the absence or limitation of an entitlement to benefits are to be treated as provisions concerning reduction or suspension.

4. *Ad article 22*

(a) Periods which have not been completed under Austrian legislation but which should be considered as insurance periods shall be treated in the same way as if they had been completed under Austrian legislation.

(b) Paragraph 1 shall not apply to the entitlement to an early old-age pension in case of unemployment or a lengthy insurance period under Austrian legislation.

(c) Paragraph 1 shall not apply to the entitlement to an early miner's retirement pension under French legislation.

(d) The children's allowances provided for by special French legislation in respect of miners shall be provided under the conditions established by French legislation.

(e) The cumulative compensation and special allowance provided for by French legislation in respect of miners shall be provided only to persons who work in French mines.

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

5. *Ad article 23*

(a) For the purpose of determining attribution to a scheme and the competence of such a scheme in respect of the Austrian pensions insurance scheme, French insurance periods shall be taken into account according to the nature of the gainful employment carried on during those periods.

(b) The statutory date under Austrian legislation shall replace the date on which the insurance contingency occurs as specified in paragraph 1 (b).

(c) If the crediting of substitute periods depends, under Austrian legislation, on a preceding or subsequent insurance period, account should also be taken in such cases of any such period completed under the French old-age insurance scheme.

(d) Similar periods completed in the French Republic shall also be treated as neutral periods within the meaning of Austrian legislation.

(e) For the purpose of the calculation of the total benefit in accordance with paragraph 1 (b), the French insurance periods to be taken into account in respect of the French pension scheme shall be assessed irrespective of the Austrian legislation on the crediting of insurance periods.

(f) For the purpose of the application of the first sentence of paragraph 1 (b), the Austrian insurance institution shall not take into account contributions in respect of the supplementary insurance scheme. The amount specified in the last sentence of paragraph 1 (b) shall be supplemented by the increments for contributions which have been paid into the supplementary insurance scheme or which are deemed to have been paid into the supplementary insurance scheme.

(g) Where, for the purpose of the application of paragraph 1 (b), contribution bases cannot be established under Austrian legislation for the purpose of determining a calculation base, in cases where the statutory date is prior to 1 January 1962, the contribution base shall be deemed to be the multiple currently applicable under Austrian legislation to the daily 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.

(h) For the purpose of the application of the first sentence of paragraph 1 (b), in cases of insurance to which the fourth part of the Austrian general law on social insurance is not applicable, the Austrian insurance institution shall establish the increments for French insurance periods by adopting the rule that the annual increment to be allowed on the basis of the legislation in force as at 31 December 1946 is as follows:

- (aa) The sum of 40 g for men's disability pensions, and for women's disability pensions the sum of 25 g for each week which may be taken into account;
- (bb) The sum of 2.7 S for men's old-age pensions, and for women's old-age pensions the sum of 1.9 S for each month which may be taken into account;
- (cc) In respect of full miners' pensions, the sum of 4.6 S for men and 3 S for women, for each month which may be taken into account;
- (dd) In respect of miners' pensions, the sum of 2.9 S for men and 1.9 S for women, for each month which may be taken into account.

If a lump-sum allowance is granted under the Austrian pensions insurance scheme in respect of periods of employment before 1 January 1939, increments need not be applied except for French insurance periods subsequent to 31 December 1938.

(i) Where the calculation of Austrian increments is subject to a maximum, the ratio referred to in paragraph 1 (b) shall be determined on the basis of all the insurance periods taken into account in the two Contracting States, irrespective of such maximum.

(j) For the purpose of the application of paragraph 1 (b), contributions which have been made for the acquisition of equivalent periods under the Austrian pensions insurance scheme shall not be treated as contributions under the supplementary insurance scheme.

(k) For the purpose of the application of paragraph 1 (b), insurance periods which overlap shall be taken into account for their effective duration, without prejudice to paragraph 2.

(l) Where, under Austrian legislation, the granting of benefits under the miners' pensions insurance scheme depends on the completion of miners' insurance periods, account shall be taken of the insurance periods to be taken into consideration in accordance with French legislation concerning the miners' special social security scheme. If a benefit depends on the carrying out of an essentially mining activity or equivalent activity, activities which should be considered by the French institution as qualified activities under the legislation in force for the said institution shall also be considered as similar activities.

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

(n) French insurance periods shall not be taken into account for the calculation of the lump-sum allowance.

(o) The supplementary allowance for disabled persons (*Hilflosenzuschuss*) shall be calculated on the basis of the Austrian pension scheme, the limits prescribed by Austrian legislation being proportionately reduced in accordance with the provisions of paragraph 1 (b). Where entitlement to an Austrian pension exists under that legislation irrespective of article 22, paragraph 1, of the Convention, the limits shall not be reduced unless a supplementary allowance for disabled persons is granted under French legislation.

(p) Special payments under the Austrian pensions insurance scheme shall be payable in proportion to the partial Austrian benefit; article 24 of the Convention shall apply *mutatis mutandis*.

6. Ad article 32

The benefits provided for in paragraph 5 shall, in relation to French legislation, comprise family allowances proper, the single wage allowance and pre-natal allowances.

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

DONE at Vienna, on 28 May 1971, in duplicate in the French and German languages, both texts being equally authentic.

For the Republic
of Austria:

[Signed]

RUDOLF KIRCHSCHLÄGER

For the French Republic:

[Signed]

F. LEDUC
