

**No. 17605**

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**BELGIUM  
and  
AUSTRIA**

**Convention on social security (with final protocol). Signed  
at Brussels on 4 April 1977**

*Authentic texts: French, Dutch and German.*

*Registered by Belgium on 13 March 1979.*

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**BELGIQUE  
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AUTRICHE**

**Convention sur la sécurité sociale (avec protocole final).  
Signée à Bruxelles le 4 avril 1977**

*Textes authentiques : français, néerlandais et allemand.*

*Enregistrée par la Belgique le 13 mars 1979.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> ON SOCIAL SECURITY BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF AUSTRIA

His Majesty the King of the Belgians and the Federal President of the Republic of Austria,

Desiring to regulate the reciprocal relations between the two States in the matter of social security, have resolved to conclude a Convention and for that purpose have appointed as their plenipotentiaries:

His Majesty the King of the Belgians:

His Excellency Mr. Renaat Van Elslande, Minister for Foreign Affairs and Co-operation for Development of the Kingdom of Belgium;

The Federal President of the Republic of Austria:

Mr. Friedrich Posch, Chargé d'affaires a.i. of the Republic of Austria at Brussels,

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

## TITLE I. GENERAL PROVISIONS

*Article 1.* (1) For the purposes of this Convention:

1. "Austria" means the Republic of Austria, "Belgium" means the Kingdom of Belgium;

2. "Territory" means:

—For Austria: its federal territory,

—For Belgium: its territory;

3. "National" means:

—For Austria: its nationals,

—For Belgium: its nationals;

4. "Legislation" means: the laws, regulations and statutory provisions referring to the branches of social security specified in article 2, paragraph 1;

5. "Competent authority" means:

—In relation to Austria: the Federal Minister of Social Affairs and, in respect of family allowances, the Federal Minister of Finance;

—In relation to Belgium: the Minister for Social Insurance and, in respect of obligations arising from the social security scheme for self-employed persons as well as for family allowances and old age and death benefit (pension) entitlements under this scheme, the Minister for the Middle Classes;

<sup>1</sup> Came into force on 1 December 1978, i.e., the first day of the second month following the date of the exchange of the instruments of ratification, which took place at Vienna on 20 October 1978, in accordance with article 47 (2).

6. “Insurance authority” means: the agency or authority responsible for the implementation, in whole or in part, of the legislation specified in article 2;

7. “Competent insurance authority” means: the insurance authority which is competent under the relevant legislation;

8. “Competent State” means: the Contracting State in whose territory the competent insurance authority is situated;

9. “Cash benefit, annuity or pension” means: a cash benefit, annuity or pension including any part thereof paid out of public funds, increases or supplementary allowances as well as lump-sum payments, except, however, for the cost-of-living allowance under Austrian legislation;

10. “Family allowances” means: periodic cash benefits granted in relation to the number and age of the children, and higher allowances for handicapped children, but excluding the maternity benefit.

(2) For the purposes of this Convention, all other expressions shall have the meaning which they have under the relevant legislation.

*Article 2.* (1) This Convention shall apply:

1. In Austria to legislation concerning:

- (a) Sickness, maternity and death insurance except for special insurance schemes for survivors dependents of deceased conscripts, and disabled conscripts undergoing occupational training;
- (b) Pensions insurance for wage earners;
- (c) Pensions insurance for salaried employees;
- (d) Pensions insurance for miners;
- (e) Pensions insurance for self-employed persons in commerce and industry;
- (f) Pensions insurance for self-employed persons in agriculture and forestry;
- (g) Insurance for industrial accidents and occupational diseases, except for accident insurance for disabled conscripts undergoing occupational training;
- (h) Unemployment insurance;
- (i) Family allowances;

2. In Belgium to legislation concerning:

- (a) Sickness and invalidity insurance: schemes for employed persons and self-employed persons;
- (b) Retirement and survivors’ pensions: schemes for employed persons and self-employed persons;
- (c) Compensation for damage resulting from industrial accidents and occupational diseases;
- (d) Unemployment insurance;
- (e) Family benefits: schemes for employed persons and self-employed persons.

(2) This Convention shall not apply to any legislation concerning a new scheme or a new branch of social security, nor to schemes for compensating war victims or victims of the consequences of war.

(3) Legislation resulting from international agreements concluded with third States as well as provisions arising out of supranational law, in so far as they do not contain regulations concerning the apportionment of insurance charges, shall not be taken into consideration in relations between the two Contracting States.

*Article 3.* (1) This Convention shall apply, except as otherwise provided, to persons who are or have been subject to the legislation of one of the Contracting States and who are nationals of one of the said Contracting States, as well as to their dependants and survivors.

(2) This Convention shall also apply to the survivors of persons who have been subject to the legislation of one of the two Contracting States regardless of the nationality of those persons, if those survivors are nationals of one of the Contracting States.

(3) This Convention shall also apply to refugees as defined in the Convention of 28 July 1951<sup>1</sup> and in the Protocol of 31 January 1967 relating to the status of refugees and stateless persons.<sup>2</sup>

*Article 4.* The persons referred to in article 3, except as otherwise provided in this Convention, shall be treated in the same way as nationals of the Contracting States, so far as their rights and obligations under the social security legislation of each of those States are concerned.

*Article 5.* With regard to admission to continued voluntary or optional insurance, under the legislation of one of the Contracting States, insurance periods completed under the legislation of the other Contracting State shall be taken into account, to the extent required, as insurance periods completed under the legislation of the first State.

*Article 6.* Pensions, annuities and other cash benefits, except for unemployment benefits, obtained under the legislation of one of the Contracting States, shall not be reduced, modified, suspended, discontinued, or confiscated because the person entitled to the benefit is situated in the territory of the Contracting State other than the one where the insurance authority providing the benefit is situated.

*Article 7.* (1) The provisions of this Convention cannot confer or uphold entitlement, under the legislation of either of the Contracting States, to several benefits of the same kind in respect of the same period of insurance. This provision shall not apply to the benefits referred to in title III, chapters 2 and 3.

(2) Where, under the legislation of one of the two Contracting States, a gainful activity, income, a social security benefit or an insurance arrangement has legal effects on a social security benefit, the same effect shall be produced by a similar gainful activity, similar income, similar social security benefit or similar insurance arrangement in the other Contracting State.

<sup>1</sup> United Nations, *Treaty Series*, vol. 189, p. 137.

<sup>2</sup> *Ibid.*, vol. 606, p. 267.

## TITLE II. PROVISIONS CONCERNING THE APPLICABILITY OF LEGISLATION

*Article 8.* Without prejudice to the provisions of articles 9 and 10, wage earners shall be subject to the legislation of the country in whose territory they perform their activity. This shall apply even where the wage earner resides in the territory of the other Contracting State or where the enterprise or the employer providing the employment has his place of business or domicile in the territory of the other Contracting State.

*Article 9.* (1) A person normally employed by an enterprise in the territory of one of the Contracting States who is sent by that enterprise to work on its behalf in the territory of the other State shall continue to be subject to the legislation of the first Contracting State as if he continued to be employed there, provided that the prospective period of his secondment does not exceed 24 months.

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

(3) Itinerant personnel of a transport enterprise having its principal place of business in the territory of one of the Contracting States who are employed in the territory of the other Contracting State shall remain subject to the legislation of the first Contracting State as if they were working there; where the enterprise has a branch in the territory of the second Contracting State, the persons employed there shall be subject to the legislation of that Contracting State.

(4) Persons employed by administrative government departments seconded from the territory of one of the Contracting States to the territory of the other Contracting State and personnel who, according to the applicable legislation, are in the same situation, except for the persons referred to in article 10, shall be subject to the legislation of the Contracting State which employs them.

*Article 10.* (1) Subject to the provisions of paragraph 3 of this article, diplomats shall be exempt from social security legislation in the receiving State in respect of their services for the sending State.

(2) The exemption provided for in paragraph 1 shall also apply:

- (a) To members of the administrative and technical staff of the mission and to members of the domestic staff of the mission who are not nationals of the receiving State or do not live there permanently, and
- (b) To private household staff employed exclusively by a diplomat, provided that:
  - (aa) They are neither nationals of the receiving State nor permanently resident therein, and
  - (bb) They are subject to the social security legislation in force in the sending State or in a third State.

(3) Where a diplomat employs persons to whom the exemption provided for in paragraph 2, subparagraph (b), does not apply, he shall comply with the social security legislation applicable to employers in the receiving State.

(4) Paragraphs 1 to 3 of this article shall apply, *mutatis mutandis*, to members of consular posts as well as to domestic staff employed exclusively by them.

*Article 11.* For certain employees or groups of employees or for self-employed persons, the competent authority of the Contracting State whose legislation applies under articles 8 to 10 of this Convention may, if this is in their interest and taking into account the nature and the circumstances of their employment, grant exemption from the effects of that legislation at the request of the competent authority of the other Contracting State. In that case, the legislation of the latter Contracting State shall be applied to the parties concerned as if they were employed in its territory.

### TITLE III. SPECIAL PROVISIONS

#### Chapter 1. SICKNESS AND MATERNITY

*Article 12.* (1) In order to establish entitlement to benefits and the period for which benefits are to be granted, the insurance periods completed under the legislation of both Contracting States shall be aggregated in so far as they do not overlap.

(2) An insured person who is not entitled to benefits in the new country where he carries out his gainful activity may apply to qualify under article 13, paragraphs 4 to 7, if he is still entitled to benefits under the legislation of the Contracting State in whose territory he was last insured, before changing his residence, or if he would still have this entitlement if he lived in that territory.

*Article 13.* (1) A person who fulfils the requirements for entitlement to benefits in kind under the legislation of one of the Contracting States, or who would fulfil them if he were situated in the territory of that State, shall be entitled to benefits during a temporary stay in the territory of the other Contracting State when his condition requires immediate medical care, including hospitalization.

(2) A person qualifying for benefits payable by an insurance authority of one of the Contracting States shall retain this benefit when he transfers his residence to the territory of the other Contracting State. Such a person must obtain authorization from the competent insurance authority before the transfer. This authorization may be refused only if the change of residence of the Party concerned might jeopardize his health or medical treatment.

(3) A person who is entitled to benefits payable by an insurance authority of one of the Contracting States shall retain this entitlement when he proceeds to the territory of the other Contracting State in order to receive the care appropriate to his state of health. Such a person must obtain authorization from the competent insurance authority before his departure. This authorization may not be refused if the person concerned cannot obtain this care in the territory of the competent State.

(4) Where a person is entitled to benefits under the provisions of the preceding paragraphs, benefits in kind shall be provided by the insurance authority of the place where he is staying or of his new residence, in accordance with the provisions of the legislation applicable by that insurance authority.

(5) In the situations mentioned in paragraphs 1 to 3 of this article, the granting of prostheses, the fitting of major artificial limbs and other substantial benefits in kind shall be subject to authorization from the competent insurance authority, unless provision of the benefit cannot be postponed without seriously endangering the life or health of the person concerned.

(6) Benefits in kind, in the cases mentioned in paragraphs 1 to 3 of this article, shall be provided by the competent insurance authority under the legislation applicable by it.

(7) The provisions of the previous paragraphs shall also apply, *mutatis mutandis*, to family members.

(8) Paragraphs 1 and 4 to 7 shall apply irrespective of nationality, in so far as they concern employed persons as described in article 9.

*Article 14.* (1) Dependants of a person who qualifies for entitlement to benefits under the legislation of one of the Contracting States, or who would so qualify if he were in the territory of that State, shall receive benefits in kind when residing in the territory of the Contracting State other than the one where the competent insurance authority is situated as if the person through whom they obtain the entitlement also resided there.

Benefits shall be provided by the insurance authority of the country of residence of the dependants under the legislation applicable by that insurance authority and shall be payable by the competent insurance authority.

(2) When dependants transfer their residence to the territory of the Contracting State where the competent insurance authority is situated, they shall be entitled to benefits in accordance with the legislation of that State. This rule shall also apply when the dependants have already received, for the same sickness or maternity, benefits provided by the insurance authority of the Contracting State on whose territory they resided before transferring; if the legislation applied by the competent insurance authority stipulates a maximum period for the provision of benefits, the period during which the benefits were provided immediately prior to the transfer of residence shall be taken into account.

(3) When the dependants referred to in paragraph 1 receive benefits in kind in the Contracting State where they reside, paragraphs 1 and 2 of this article shall not apply.

*Article 15.* When implementation of this chapter entitles a person to maternity benefits under each of the legislations of the two Contracting States, only the legislation in force in the territory of the Contracting State where the child is born shall apply, account being taken as necessary of the aggregation of insurance periods indicated in article 12.

*Article 16.* (1) Where a person in receipt of pensions or annuities payable under the legislation of both Contracting States is resident in the territory of one of the Contracting States, and where he is entitled under the legislation of that State to benefits in kind, these benefits shall be provided to him and to his dependants by the insurance authority of his place of residence as if he were in receipt of a pension or annuity payable solely under the legislation of the State of residence. These benefits shall be payable by the insurance authority of the State of residence.

(2) Where a person in receipt of a pension or annuity payable solely under the legislation of one of the Contracting States resides in the territory of the other State, benefits in kind shall be provided to him and to his dependants by the insurance authority of his place of residence as if he were in receipt of a pension or an annuity under the legislation of the State where he resides. These benefits shall be payable by the competent insurance authority of the State in which the insurance authority responsible for the pension has its head office.

(3) For the purposes of the implementation of paragraph 2, the provisions of paragraphs 4 and 5 of article 13 shall apply.

(4) Where the dependants of a person in receipt of a pension or of an annuity payable under the legislation of one of the two Contracting States reside in the territory of the Contracting State other than the State where the beneficiary himself resides, they shall receive benefits in kind as if the beneficiary resided in the same State. The benefits in kind shall be provided by the insurance authority of the place of residence under the legislation applicable by it. The provisions of article 14, paragraph 3, shall apply to them *mutatis mutandis*.

(5) A person in receipt of a pension or annuity payable under the legislation of one of the two Contracting States, or a dependant of such person, shall receive benefits in kind during a temporary stay in the territory of the Contracting State other than the State of his residence. These benefits shall be provided by the insurance authority of the place visited, in accordance with the legislation applicable by that insurance authority. In such cases the provisions of paragraph 5 of article 13 shall apply *mutatis mutandis*.

(6) In the cases indicated in paragraphs 4 and 5, benefits in kind shall be payable by the insurance authority mentioned in paragraph 1 or 2.

(7) The provisions of the preceding paragraphs shall be applicable *mutatis mutandis* to persons claiming pensions or annuities.

*Article 17.* The benefits in kind referred to in paragraph 2 of article 12, paragraphs 1 to 3 of article 13, paragraph 1 of article 14 and paragraphs 2, 4 and 5 of article 16 shall be provided:

—In Austria, by the Gebietskrankenkasse für Arbeiter und Angestellte competent for the place visited or the place of residence of the person concerned;

—In Belgium, by the sickness and invalidity insurance bodies.

*Article 18.* (1) The competent insurance authority shall reimburse the insurance authority of the place visited or of the place of residence, as the case may be, for the costs of benefits provided, except for administrative costs.

(2) The competent authorities may agree, for the sake of simplifying administrative procedures, to replace reimbursement against invoice by a lump-sum reimbursement, either cross-the-board or in specific cases.

## Chapter 2. OLD-AGE BENEFITS AND SURVIVORS' BENEFITS (PENSIONS)

### A. Provisions in common

*Article 19.* Where a person has completed insurance periods in accordance with the legislation of each of the two Contracting States, such periods shall be aggregated for the establishment of entitlement to benefits in so far as they do not overlap.



*Article 20.* (1) Where a pension is claimed by a person who has completed insurance periods, pursuant to under the legislation of both Contracting States, or by his survivors, the competent insurance authority shall establish the benefits as follows:

- (a) The insurance authority shall determine according to the legislation applicable by it whether the person concerned is entitled to the benefit when the insurance periods are aggregated.
- (b) If an entitlement to the benefit exists, the insurance authority shall first calculate the theoretical amount of the benefit which would be due if all insurance periods completed under the legislation of the two Contracting States had been completed only under the legislation applicable by it. If the amount of the benefit does not depend on the duration of the insurance, that amount shall be deemed to be the theoretical amount.
- (c) The partial benefit due on the basis of the amount calculated according to subparagraph (b) shall then be calculated by the insurance authority according to the ratio between the duration of the insurance periods to be taken into account under its own legislation and the total duration of the insurance periods to be taken into account under the legislation of both Contracting States.

(2) Where, for the calculation of the benefit, the insurance periods completed under the legislation of one of the Contracting States do not amount together to 12 months, no benefit shall be granted under that legislation; in that case, the insurance authority of the other Contracting State shall take the above-mentioned periods into consideration in respect of the acquisition, maintenance and recovery of the entitlement to benefits, but not for the purpose of determining the amount due according to the ratio under paragraph 1, subparagraph (c), of this article. This provision shall not apply where the entitlement to benefits is acquired under the legislation of the first State and solely on the basis of periods completed under its legislation.

#### B. *Application of Austrian legislation*

*Article 21.* The competent Austrian insurance authority shall apply articles 19 and 20 according to the following rules:

(1) For the purpose of determining the insurance authority competent to provide a benefit under the pensions insurance scheme, only Austrian insurance periods shall be taken into account.

(2) Insurance periods which have been or would be taken into account for determining a Belgian pension shall be deemed to be insurance periods completed under Belgian legislation.

(3) The provisions of articles 19 and 20 shall not apply to the prerequisites for entitlement to and to the payment of the long-service bonus for miners (*Bergmannstreuegeld*) from the Austrian pensions insurance scheme for miners.

(4) In the implementation of article 20, paragraph 1, the following rules shall apply:

- (a) Belgian insurance periods shall be taken into account without regard to the Austrian accountability legislation;

- (b) Overlapping insurance periods shall be taken into account in accordance with their actual duration;
- (c) The basis of calculation shall consist exclusively of insurance periods completed under the Austrian pensions insurance scheme;
- (d) Contributions under the supplementary insurance scheme as well as the supplementary benefits scheme for miners shall not be taken into account.

(5) In the implementation of article 20, paragraph 1, subparagraph (c), the following shall apply:

- (a) If the total duration of the insurance periods to be taken into account under the legislation of both Contracting States exceeds the maximum fixed by Austrian legislation for the calculation of the increased benefit, the partial pension payable shall be calculated according to the ratio between the duration of the insurance periods to be taken into account under Austrian legislation and the aforementioned maximum of insurance months.
- (b) The supplementary allowance to disabled persons shall be calculated, in accordance with Austrian legislation, on the basis of the Austrian partial pension, the limits being proportionately reduced. On the other hand, where an entitlement to a pension exists solely on the basis of the insurance periods to be taken into account under Austrian legislation, the supplementary allowance to disabled persons shall be payable in an amount corresponding to the said pension, unless increased benefit for disability is payable under Belgian legislation.

(6) The amount calculated according to article 20, paragraph 1, subparagraph (c), shall in any event be increased by supplements for contributions paid or deemed to have been paid to the supplementary insurance scheme, by supplements from the miners' pension fund, by the supplementary allowance for disabled persons and by the compensatory supplement payable under Austrian legislation.

(7) Where, under Austrian legislation, the granting of benefits under the pensions insurance scheme for miners depends upon the performance in specific industries of an activity which is essentially mining activity within the meaning of Austrian legislation, only those Belgian insurance periods shall be taken into account which are based on employment in a similar Belgian industry involving the performance of a similar activity.

(8) Special payments under the Austrian pensions insurance scheme shall be payable on the same scale as the Austrian partial benefit; article 23 shall apply *mutatis mutandis*.

*Article 22.* (1) Where, under Austrian legislation, pension entitlement exists even without the application of article 19, the competent Austrian insurance authority shall grant the pension payable solely on the basis of the insurance periods to be taken into account under the legislation applicable by it, provided that no entitlement to corresponding benefits exists under Belgian legislation.

(2) Where an entitlement to a corresponding benefit arises under Belgian legislation, a pension determined according to paragraph 1 shall be revised according to the provisions of article 20. The revision shall take effect on the

date on which the benefit under the Belgian legislation begins. The validity of earlier decisions shall not preclude such revision.

*Article 23.* Where a person is entitled to benefit under Austrian legislation even without the application of article 19, and where that benefit would be greater than the aggregate of the Austrian benefit, calculated in accordance with article 20, paragraph 1, subparagraph (c), and the Belgian benefit, the Austrian insurance authority shall pay, as a partial benefit, its own benefit thus calculated plus a supplement consisting of the difference between this aggregate and the benefit which would be payable solely under the legislation applicable by it.

### C. *Application of Belgian legislation*

*Article 24.* The competent Belgian insurance authorities shall apply articles 19 and 20 according to the following rules:

(1) Where the Belgian legislation makes it a condition for the award of certain benefits that the insurance periods should have been completed in a given occupation, for the purpose of qualification or for the receipt of such benefits only the periods completed or recognized as equivalent in the same occupation in the other State shall be aggregated.

(2) Where an insured person fulfils the conditions for entitlement to benefits required by the Belgian legislation without any need for the aggregation referred to in article 19, the competent Belgian insurance authority shall calculate the pension entitlement directly and exclusively on the basis of the insurance periods completed in Belgium.

*Article 25.* The award of a retirement pension to mine workers before attainment of the age of 55 years, as provided for in Belgian legislation, shall be reserved for those persons concerned who fulfil the conditions required by the said legislation, taking into account only their service in Belgian coal mines.

## Chapter 3. INVALIDITY

### A. *Application of Austrian legislation*

*Article 26.* Chapter 2 shall apply for the purpose of paying invalidity benefits under Austrian legislation.

### B. *Application of Belgian legislation*

*Article 27.* (1) Articles 19 and 20 shall apply for the purpose of paying invalidity benefits under Belgian legislation.

(2) Where, under Belgian legislation, an entitlement to benefit exists without reference to the provisions of article 19, and where the amount of that benefit is higher than the aggregate of the Belgian and Austrian benefits calculated in accordance with article 20, paragraph 1, subparagraph (c), the Belgian insurance authority shall pay, in addition to the partial benefit for which it is responsible, a supplement equal to the difference between the aggregate of the benefits thus calculated and the amount of the benefit which would be payable solely under the legislation applicable by it.

(3) However, if as a result of the application of paragraph 2 and article 23 the person concerned would be entitled to a supplement from both insurance

authorities concerned, the Belgian insurance authority shall pay a supplement equal only to the difference between, on the one hand, the sum of the partial benefits and of the supplement payable under article 23 and, on the other hand, the amount of the benefit payable solely under the legislation applicable by it.

(4) Old-age insurance periods and assimilated periods completed under Belgian legislation, prior to the entry into force of invalidity insurance shall, for the purpose of determining the amount referred to in article 20, be treated as invalidity insurance periods.

*Article 28.* Where Belgian legislation makes it a condition for the award of certain benefits that the insurance periods should have been completed in a given occupation, periods completed under the Austrian legislation shall be taken into account for the purpose of awarding these benefits only if they have been completed in the same occupation. Where, account having been taken of periods thus completed, the person concerned has not fulfilled the conditions for entitlement to the said benefits, these periods shall be taken into account for purposes of awarding the benefits under the general scheme.

#### Chapter 4. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

*Article 29.* (1) A person who has suffered an industrial accident or contracted an occupational disease:

- (a) Either in the territory of the State which is not the competent State, or
- (b) In the territory of the competent State, and
  - (aa) Who transfers his residence to the territory of the other Contracting State, or
  - (bb) Whose condition, during a temporary stay in such territory, necessitates immediate medical care, including hospitalization,

shall receive, at the expense of the competent insurance authority benefits in kind to be provided to him by the insurance authority of his place of temporary stay or new place of residence. In the case of a change of residence, the consent of the competent insurance authority must be obtained by the said person prior to removal. Such consent may be refused only if the change of residence would have adverse effects on his condition or on the provision of medical treatment. In exceptional cases consent may be given after the fact if there were legitimate reasons why it could not have been requested before the transfer of residence.

(2) The benefits in kind referred to in paragraph (1) shall be provided:

- In Austria: by the Gebietskrankenkasse für Arbeiter und Angestellte competent for the place of temporary stay or place of residence of the person concerned;
- In Belgium: for industrial accidents, the insurance authorities for sickness and invalidity insurance; for occupational diseases, the occupational diseases fund.

(3) The benefits may be provided by an insurance authority for accident insurance instead of the Austrian insurance authorities mentioned in paragraph (2).

(4) For the extent, the duration and the manner of delivery of benefits in kind provided in the cases indicated in paragraph 1, the provisions of paragraphs (4) and (5) of article 13 shall apply.

(5) Where the legislation of one of the Contracting States prescribes a maximum length of time during which benefits may be granted, the insurance authority applying that legislation shall, should the need arise, take into account the periods during which benefits have already been provided by an insurance authority of the other Contracting State.

(6) The cost of benefits in kind provided in the cases referred to in paragraph (1) shall be refunded to the insurance authorities which have provided them, in accordance with article 18.

(7) In the cases referred to in paragraph (1), cash benefits shall be provided by the competent insurance authority in accordance with the legislation applicable by it.

(8) Paragraphs (2) to (7) shall apply to the employed persons referred to in article 9, without distinction as to nationality.

*Article 30.* (1) If, for the purpose of assessing the extent of incapacity as a result of an industrial accident or occupational disease under the legislation of one of the Contracting States, that legislation provides that industrial accidents sustained or occupational diseases contracted at an earlier date should be taken into consideration, 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 though they had been sustained or contracted under the legislation of the first Contracting State.

(2) The competent insurance authority in respect of compensation in relation to the later insurance contingency shall determine the benefit to be provided by it on the basis of the degree of incapacity for work resulting from the industrial accident or occupational disease which it must take into account under the national legislation which is applicable by it.

*Article 31.* (1) Benefits in the case of an occupational disease which are compensable under the legislation of both Contracting States shall be awarded only under the legislation of the State in whose territory the person concerned was last employed in the occupation likely to have caused such a disease, provided that the person concerned fulfils the conditions required by that legislation.

(2) Where the victim of an occupational disease has received or is receiving compensation at the expense of the insurance authority of one of the Contracting States and, after having also engaged in an occupational activity to which under the legislation of the other Contracting State the disease in question may be attributed, claims entitlement, in the event of a worsening of his condition, to benefits from the insurance authority of the other Contracting State, the following provisions shall apply: the competent insurance authority of the first State shall remain responsible for the benefits without taking the worsening into account, under the legislation which it applies; the competent insurance authority of the second State shall award the person concerned a supplement of which the amount shall be equal to the difference between the amount of the benefits payable after the worsening and the amount of benefits which would have been payable before the worsening, in accordance with the legislation applicable by it, if the disease in question had been contracted under the legislation of that State.

## Chapter 5. DEATH GRANTS

*Article 32.* (1) For purposes of obtaining, maintaining or recovering entitlement to death grants provided for in legislations other than those governing industrial accidents and occupational diseases, where a person has been successively or alternately subject to the legislation of the two Contracting States, the insurance periods completed under the legislation of each of the two Contracting States shall be aggregated in so far as they do not overlap.

(2) When a person subject to the legislation of one of the Contracting States, or the recipient of a pension or an annuity, or a dependant 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 insurance authority of the Contracting State where the person concerned was last insured shall be responsible for the death grant, even if the recipient is situated in the territory of the Contracting State other than the competent State.

(4) Paragraphs (2) and (3) of this article shall also apply when the death occurs as the result of an industrial accident or an occupational disease.

## Chapter 6. UNEMPLOYMENT

*Article 33.* (1) With regard to the acquisition of entitlement to benefits in case of unemployment, when an employee has been subject successively or alternately to the legislation of both Contracting States, the periods to be taken into account under the legislations of both Contracting States shall be aggregated, in so far as they do not overlap.

(2) Paragraph (1) shall apply only when the person concerned was last employed in the territory of the Contracting State under the legislation of which he claims the benefit.

## Chapter 7. FAMILY ALLOWANCES

*Article 34.* (1) Where, under the legislation of one of the Contracting States, entitlement to family allowances depends on the fact that the children for whom family allowances are to be provided are domiciled or resident in the territory of this Contracting State, children resident in the territory of the other Contracting State shall be taken into account as if they were domiciled or resident in the territory of the first Contracting State.

(2) Where, under the legislation of one of the Contracting States, entitlement to family allowances depends on the completion of specific periods of gainful employment or of residence, the periods of gainful employment or residence completed in the territory of the other Contracting State shall be taken into account.

*Article 35.* Persons who are domiciled or 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 resident in its territory.

*Article 36.* Children within the meaning of this chapter are persons for whom family allowances are provided under the applicable legislation.

## TITLE IV. MISCELLANEOUS PROVISIONS

*Article 37.* (1) The competent authorities may prescribe in an agreement the administrative measures necessary for the implementation of this Convention. This arrangement may be concluded before the entry into force of this Convention but it may not enter into force earlier than simultaneously with this Convention.

(2) The competent authorities of the two Contracting States:

- (a) Shall keep each other fully informed of the measures taken for the implementation of this Convention;
- (b) Shall keep each other fully informed of any changes in their legislation which may affect the implementation of this Convention.

(3) For the implementation of this Convention, the public authorities and insurance authorities of the Contracting States shall assist each other and shall act as if implementing their own legislation. Such administrative assistance shall be free of charge.

(4) For the purposes of implementing this Convention, the insurance authorities and public authorities of the Contracting States may enter into direct communication with each other, and with the persons concerned or their agents.

(5) The insurance authorities, administrative authorities and courts of either Contracting State shall not reject petitions or other documents submitted to them because they are drawn up in an official language of the other Contracting State.

(6) Medical examinations undertaken pursuant to legislation of one of the Contracting States in respect of persons who are staying in the territory of the other Contracting State shall be arranged, at the request and at the expense of the competent office, by the insurance authority of the place where the persons concerned are staying.

(7) In matters of judicial assistance, the provisions of conventions concerning civil procedure in force between the two Contracting States shall apply *mutatis mutandis*.

*Article 38.* In order to facilitate the implementation of this Convention, and in particular to establish simple and rapid contact between the insurance authorities concerned, the competent public authorities shall designate liaison offices.

*Article 39.* (1) Any exemption from or reduction of charges, stamp duties, court fees or registration fees which is provided for by the legislation of one of the Contracting States in respect of documents or other papers required to be submitted in implementation of that legislation shall be extended to the corresponding documents and other papers required to be submitted in implementation of this Convention or the legislation of the other Contracting State.

(2) Certificates and papers of any kind required to be submitted in implementation of this Convention need not be authenticated.

*Article 40.* (1) Claims, declarations or appeals which, in implementation of this Convention or the legislation of one of the Contracting States, are submitted to a public authority, court, insurance authority or other competent agency of one of the Contracting States, shall be considered as claims, declara-

tions or appeals submitted to a public authority, court, insurance authority or other competent agency of the other Contracting State.

(2) A claim to benefits submitted under the legislation of one of the Contracting States shall also be deemed to be a claim to a corresponding benefit covered by this Convention under such legislation of the other Contracting State as taken into consideration by this Convention; this provision shall not apply where the claimant expressly requests that the determination of an old-age benefit acquired under the legislation of one of the Contracting States should be deferred. Where, under Belgian legislation, entitlement to certain benefits is not made conditional upon an application, the date on which action is taken in Belgium shall be taken as the basis for the application for the corresponding benefit under Austrian legislation.

(3) Claims, declarations or appeals which, under the legislation of one of the Contracting States, should have been submitted within a prescribed time-limit to a public authority, court, insurance authority or other competent agency of that Contracting State may be submitted within the same time-limit to the corresponding office of the other Contracting State.

(4) In the cases referred to in paragraphs (1), (2) and (3), the office to which the claims, declarations or appeals have been submitted shall transmit them without delay to the competent office of the first State, either directly or through the competent authorities of the two Contracting States.

*Article 41.* (1) The insurance authorities liable for benefits under this Convention shall be held to discharge their liability validly by making payment in the currency of their State; conversion shall be made at the current rate of exchange on the day of transfer of the benefit.

(2) Reimbursements provided for in this Convention shall be made in the currency of the Contracting State in which the insurance authority which provided the benefits has its head office.

(3) Transfers required for the implementation of this Convention shall take place in accordance with the relevant agreements in force in both States at the time of the transfer.

*Article 42.* (1) Where an insurance authority of one Contracting State has made an advance payment, any arrears of a corresponding benefit which becomes payable for the same period under the legislation of the other Contracting State may be withheld. Where an insurance authority of one Contracting State has paid an amount in excess of the entitlement of the person concerned for a period for which the insurance authority of the other Contracting State afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded as an advance payment within the meaning of the first sentence, up to the amount of the arrears to be paid by the second State.

(2) Where a social assistance authority of one Contracting State has paid assistance to a person for a period for which he afterwards becomes entitled to cash benefits under the legislation of the other Contracting State, the competent insurance authority or the liaison body of that Contracting State shall, at the request and for the account of the public assistance authority, withhold arrears due for the same period of time up to the amount of the assistance provided as though such assistance had been provided by the social assistance authority of the last-mentioned Contracting State.



*Article 43.* Where a person who receives 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 the territory of that second State, to claim compensation for such injury from a third party, any claims of the authority responsible for payment *vis-à-vis* the third party shall be settled as follows:

- (a) Where the claims which the beneficiary asserts against the third party have been transferred to the authority responsible for payment, in accordance with the legislation applicable to it, each Contracting State shall recognize that transfer;
- (b) Where the authority responsible for payment has a direct claim against the third party, each Contracting State shall recognize that claim.

*Article 44.* (1) Disputes between the Contracting States concerning the interpretation or application of this Convention shall be settled, in so far as possible, by the competent authorities of the Contracting States.

(2) Where a dispute cannot be settled in such manner, it shall, at the request of one of the Contracting States, be submitted to an arbitration tribunal, to be constituted as follows:

- (a) Within one month from the receipt of a request for arbitration, each Party shall appoint an arbitrator. Within two months from the notification of appointment by the Party which has been last to make its appointment, the two arbitrators appointed shall choose a national of a third State as the third arbitrator.
- (b) If one of the Parties has not appointed an arbitrator within the specified time-limit, the other Party may request the president of the International Court of Justice to appoint him. Corresponding measures shall be taken at the instance of either Party, if the two arbitrators cannot agree on the choice of a third arbitrator.
- (c) If the President of the International Court of Justice is a national of one of the Contracting States, the functions conferred on him by this article shall be carried out by the Vice-President of the Court or by the next most senior judge of the Court who is not such a national.

(3) The decisions of the arbitration tribunal shall be by majority vote. Its decisions shall be binding upon both Contracting States. Each Contracting State shall defray the expenses of the arbitrator it appoints. Other expenses shall be shared equally by the two States. The arbitral tribunal shall establish its own rules of procedure.

#### TITLE V. TRANSITIONAL AND FINAL PROVISIONS

*Article 45.* (1) This Convention shall not confer any entitlement to the payment of benefits for periods prior to its entry into force.

(2) All insurance periods completed under the legislation of one of the Contracting States prior to the entry into force of this Convention shall be taken into account for the purpose of determining entitlement to benefits under this Convention.

(3) This Convention shall also apply to any contingencies which occurred prior to its entry into force, provided that entitlements have not been settled by a lump-sum or capital payment.

(4) Subject to the provisions of paragraph (3), any benefit which has not been paid or which has been suspended by reason of the nationality of the person concerned or of his residence in the territory of one of the Contracting States other than the one where the insurance authority responsible for payment is situated shall upon his application be determined or reinstated as from the date of the entry into force of this Convention.

(5) Pensions or annuities which were determined prior to the entry into force of this Convention shall, upon the application of the beneficiary, be revised, account being taken of the provisions of this Convention.

(6) If the application referred to in paragraph (4) or the application referred to in paragraph (5) of this article is submitted within two years from the date of the entry into force of this Convention, the rights to benefits conferred in accordance with the provisions of this Convention shall be acquired from that date, and the provisions in the legislation of both Contracting States concerning the lapse or extinction of rights shall be inapplicable to the persons concerned.

(7) If the application referred to in paragraph (4) or the application referred to in paragraph (5) of this article is submitted after the expiry of a period of two years following the entry into force of this Convention, such rights to benefits as have not lapsed or been extinguished shall be acquired as from the date of the application, except where there are more favourable provisions in the legislation of the Contracting State concerned.

(8) If a revision carried out under paragraph (5) results in the total of benefits calculated in accordance with this Convention for this insurance contingency being lower than the amount of the benefit payable before the date of the entry into force of this Convention, the competent insurance authority shall grant, as a partial benefit, its own benefit plus the difference between the amounts which are subject to comparison.

*Article 46.* The rights enjoyed under Austrian legislation by a person who has suffered impairment of his social security entitlements on political, religious or racial grounds shall not be affected by this Convention.

*Article 47.* (1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.

(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.

(3) This Convention is concluded for a period of one year. It shall continue in force by tacit extension of the period of validity from year to year unless three months' notice of denunciation is given before the expiry of the current period of validity.

(4) In the event of denunciation, the provisions of this Convention shall continue to apply to acquired entitlements, irrespective of restrictive provisions which may have been laid down by the schemes concerned to cover cases in which an insured person is staying abroad.

IN WITNESS WHEREOF the Plenipotentiaries named above have signed this Convention and affixed thereto their seals.

DONE at Brussels on 4 April 1977, in duplicate, in the French, Dutch and German languages, all three texts being equally authentic.

For the Kingdom of Belgium:

R. VAN ELSLANDE

For the Republic of Austria:

F. POSCH

## FINAL PROTOCOL TO THE CONVENTION ON SOCIAL SECURITY BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF AUSTRIA

At the time of signing the Convention on Social Security between the Kingdom of Belgium and the Republic of Austria, the plenipotentiaries have agreed on the following:

### I. *Ad article 1 of the Convention:*

Austrian nationals within the meaning of paragraph (1), subparagraph 3, shall be deemed to include persons who were resident in the territory of Austria, otherwise than purely temporarily, on 11 July 1953, 1 January 1961 or 27 November 1961 and who on the date in question were of German mother tongue and either stateless or of undetermined nationality.

### II. *Ad article 2 of the Convention:*

Where the legislation referred to in paragraph (1), subparagraph 1 (a), is applied to the sickness insurance of civil servants, residence in the territory of Belgium shall be assimilated to residence in Austrian territory for the purpose of insurance requirements.

### III. *Ad article 4 of the Convention:*

1. Regulations concerning insurance liability laid down in agreements concluded by the Contracting States with third States shall not be affected.

2. The provisions of the Austrian Federal Act of 22 November 1961 concerning entitlements to benefits and rights in course of acquisition under the pensions insurance and accident insurance schemes by reason of employment abroad, and the provisions relating to the taking into account of periods of self-employment completed in the territory of the former Austro-Hungarian monarchy outside Austria, shall not be affected.

3. The provisions of Austrian legislation concerning the taking into account of periods of insurance completed under the annuities insurance scheme of the former German Reich or of entitlements under the accident insurance scheme of the former German Reich shall not be affected.

4. The provisions of Austrian legislation concerning the taking into account of periods of wartime military service and equivalent periods shall not be affected.

5. The provisions of Austrian legislation concerning the participation of insured persons and employers in the organs of insurance authorities and federations and in establishing the *usus fori* in social security matters shall not be affected.

6. The provisions of Austrian legislation concerning the granting of unemployment relief shall not be affected.

IV. *Ad article 5 of the Convention:*

With regard to sickness insurance, these provisions shall apply, *mutatis mutandis*, to persons whose entitlement to continued insurance under Austrian legislation derives from the insurance of another person.

V. *Ad article 7 of the Convention:*

For the purpose of applying paragraph (2), as regards the acquisition of entitlement to a pension under the Austrian pensions insurance scheme for self-employed persons in commerce, the termination of the corresponding self-employment in Belgium shall be assimilated to the expiration of a business licence or the dissolution of a partnership in Austria.

VI. *Ad article 8 of the Convention:*

Where a person is simultaneously self-employed in Belgium and a wage earner in Austria, his activity as a wage earner shall, for the purpose of determining obligations under Belgian legislation relating to self-employed persons, be assimilated to activity as a wage earner exercised in Belgium.

VII. *Ad articles 9, 11 and 43 of the Convention:*

The provisions shall be applicable to the persons concerned without distinction as to nationality.

VIII. *Ad article 10 of the Convention:*

1. The provision of paragraph (1) shall apply, *mutatis mutandis*, to the Austrian Trade Delegate and the technical staff assigned to him by the Federal Chamber of Commerce and Industry.

2. Belgian workers employed by the diplomatic mission or in Belgian consular posts in Austria, as well as those in the personal service of officials of that mission or those posts, shall be subject to Belgian legislation unless they are permanently resident in Austria.

IX. *Ad article 13 of the Convention:*

The provisions of paragraph (1) shall, as regards treatment by self-employed physicians, medical dentists with medical degrees and other dentists, apply in Austria only in respect of the following persons:

- (a) Persons who are in Austria in exercise of their employment, and dependants accompanying them;
- (b) Persons who are in Austria visiting their family;
- (c) Dependants resident in Austria of persons affiliated with a Belgian insurance authority;
- (d) Persons who are in Austria for other reasons and have received medical treatment at the expense of the insurance authority competent for the place of stay.

X. *Ad article 16 of the Convention:*

In the cases referred to in paragraph (2), the cost of benefits provided to persons entitled to a pension under the Austrian pensions insurance scheme

shall be defrayed out of the contributions to the sickness insurance scheme for pensioners received by the Hauptverband der österreichischen Sozialversicherungsträger.

XI. *Ad article 30 of the Convention:*

With regard to an industrial accident under Belgian legislation, the provisions of Austrian legislation governing the determination of an all-inclusive annuity in the case of a subsequent industrial accident shall not apply.

XII. *Ad article 33 of the Convention:*

(a) If unemployment allowance benefits are claimed in Austria, the person concerned must, for the purpose of aggregating insurance periods, have been employed as a worker in Austrian territory for at least one month during the 12 months prior to the submission of the claim, unless the employment was terminated through no fault of the worker.

(b) Paragraph (1) shall not apply in respect of the establishment of entitlement to the leave-without-pay allowance (*Karenzurlaubsgeld*) provided for under Austrian legislation.

XIII. *Ad article 35 of the Convention:*

Entitlement to Austrian family allowances shall exist only where the employment in Austria does not contravene existing provisions concerning the employment of foreign workers and continues for at least one full calendar month. The provisions of article 34, paragraph (2), concerning aggregation shall not apply in respect of these periods of gainful employment.

XIV. *Ad article 45 of the Convention:*

Title III, chapters 2 and 3, shall not apply in cases where the legal provisions concerning supplementary annuities insurance for farmers continue to apply under the legislation concerning pensions insurance for self-employed persons in agriculture or forestry.

This final protocol shall form an integral part of the Convention on social security between the Kingdom of Belgium and the Republic of Austria. It shall enter into force on the same date as the Convention and shall remain in force so long as the Convention is in force.

IN WITNESS WHEREOF the Plenipotentiaries have signed this final protocol and affixed thereto their seals.

DONE at Brussels on 4 April 1977, in duplicate, in the French, Dutch and German languages, all three texts being equally authentic.

For the Kingdom of Belgium:

R. VAN ELSLANDE

For the Republic of Austria:

F. POSCH