

No. 19600

**SPAIN
and
AUSTRIA**

**Agreement on social security (with final protocol). Signed at
Madrid on 23 October 1969**

*Authentic texts: Spanish and German.
Registered by Spain on 25 February 1981.*

**ESPAGNE
et
AUTRICHE**

**Accord relatif à la sécurité sociale (avec protocole final).
Signé à Madrid le 23 octobre 1969**

*Textes authentiques : espagnol et allemand.
Enregistré par l'Espagne le 25 février 1981.*

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE SPANISH STATE AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

The Head of the Spanish State and the Federal President of the Republic of Austria,

Desiring to promote relations between the two States in the matter of social security and to harmonize them with the development of their respective legislations,

Have decided to conclude an agreement to replace the Agreement of 15 July 1964 and its final protocol and the Additional Protocol of 27 November 1964,²

For which purpose they have appointed the following plenipotentiaries:

The Head of the Spanish State: Mr. Fernando María Castiella y Maiz, Minister for Foreign Affairs;

The Federal President of the Republic of Austria: Dr. Wolfgang Höller, Ambassador of Austria at Madrid,

who, after exchanging 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 Agreement, the terms listed below have the following meanings:

1. "Spain" means the Spanish State; "Austria" means the Republic of Austria;
2. "Territory" means, in relation to Spain, the peninsular provinces, the Balearic Islands, the Canary Islands and the Spanish provinces in North Africa; in relation to Austria, the federal territory of Austria;
3. "National" means, in relation to Spain, any person who proves that he possesses Spanish nationality; in relation to Austria, a national of Austria;
4. "Legislation" means the laws, ordinances and regulations relating to the matters specified in article 2 which are in force in the territory, or any part of the territory, of one of the Contracting Parties;
5. "Competent governmental authority" means, in relation to Spain, the Ministry of Labour; in relation to Austria, the Federal Minister of Social Administration and, with respect to family allowances, the Federal Minister of Finance;
6. "Place of residence" means the place of domicile or the place of habitual abode;
7. "Place of sojourn" means a place of temporary abode;
8. "Insurance authority" means the institution or authority appropriate for the application of the legislation, or any part thereof, specified in article 2;
9. "Competent insurance authority" means the insurance authority with which the person concerned is insured at the time of the claim to benefit, or with which he

¹ Came into force on 1 December 1970, 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 5 October 1970, in accordance with article 47.

² United Nations, *Treaty Series*, vol. 589, p. 169.

has title to benefit, or would have title if he were resident in the territory of the Contracting Party in which he was last employed;

10. "Insurance authority of the place of residence" means the insurance authority which, under the legislation of the Contracting Party concerned, is competent for the place of residence;

11. "Insurance authority of the place of sojourn" means the insurance authority which, under the legislation of the Contracting Party concerned, is competent for the place of sojourn;

12. "Dependant" means a dependant as defined in the applicable legislation;

13. "Employment" means an employment or occupation as defined in the applicable legislation;

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

15. "Contribution periods" means periods in respect of which contributions have actually been paid, should have been paid or are treated as having been paid under the legislation of one of the Contracting Parties;

16. "Equivalent periods" means periods which are deemed to be substitute periods or are treated as equivalent to contribution periods under the legislation of one of the Contracting Parties;

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

18. "Family allowances" means, in relation to Austria, the family allowance; in relation to Spain, family protection benefits.

Article 2. (1) This Agreement shall apply:

1. In Austria, to the legislation concerning:

(a) Sicknes insurance, excluding the following special insurance schemes:

(aa) Special insurance for the survivors of war victims and the survivors of persons performing military service;

(bb) Special insurance for war-disabled persons and persons disabled while performing military service who are undergoing vocational training;

(b) Accident insurance, excluding accident insurance for war-disabled persons and persons disabled while performing military service who are undergoing vocational training;

(c) Pensions insurance for manual workers, for salaried workers and for miners;

(d) Pensions insurance for self-employed persons;

(e) Agricultural supplementary pensions insurance;

(f) Unemployment insurance;

(g) Family allowances;

2. In Spain:

(a) To the legislation of the general social security system with respect to:

(aa) Maternity, ordinary or occupational disease, temporary disability and accidents, whether industrial or non-industrial;

(bb) Temporary and permanent disability;

- (cc) Old age, death and survival;
- (dd) Unemployment;
- (ee) Family protection;
- (b) The legislation concerning special systems:
 - (aa) For agriculture;
 - (bb) For seamen;
 - (cc) For coal-mining;
 - (dd) For railway employees;
 - (ee) For domestic employees;
 - (ff) For self-employed persons;
 - (gg) For commercial representatives.

(2) Subject to the provisions of paragraphs (3) and (4) below, the Agreement shall apply also to any legislation which consolidates, amends or supplements the legislation specified in paragraph (1) above.

(3) This Agreement shall not apply to legislation relating to a new system or new branch of social security.

(4) Legislation which arises out of, or serves for the implementation of, international treaties with third States or supranational law shall not be taken into account in the relationship between the Contracting Parties.

Article 3. This Agreement shall apply to nationals of the Contracting Parties and to their dependants and survivors.

Article 4. (1) Nationals of one of the Contracting Parties to whom the provisions of this Agreement apply shall, except as otherwise provided in this Agreement, have the same obligations and rights under the legislation referred to in article 2 as nationals of the other Contracting Party.

(2) This Agreement shall be without prejudice to the legislation of either of the Contracting Parties concerning the participation of insured persons or of other interested classes of persons in the administration of social security and in jurisdiction relating to social security.

Article 5. (1) Cash benefits, including increments, acquired under the legislation of one of the Contracting Parties shall not be reduced, suspended, discontinued or withheld on the ground that the beneficiary is resident in the territory of the other Contracting Party.

(2) Cash benefits under the social security system of one of the Contracting Parties shall be paid to nationals of the other Contracting Party resident in the territory of a third State on the same conditions and to the same extent as if they were nationals of the first-mentioned Contracting Party resident in the territory of that third State.

Article 6. (1) The provisions of this Agreement shall not operate to confer or maintain any right to receive, under the legislation of the two Contracting Parties, more than one benefit of the same nature or more than one benefit relating to the same contribution period or equivalent period, save in the case of benefits under a pensions insurance (annuity insurance) scheme where they are divided between the

insurance authorities of the two Contracting Parties in accordance with the provisions of this Agreement.

(2) Where, under the legislation of one of the Contracting Parties, the fact of being in receipt of a social security benefit or income of any other kind, or of being gainfully employed, or of participating in a social insurance scheme has any legal effect on the entitlement to or granting of a benefit, or on compulsory participation in the social insurance system, or on participation in the voluntary insurance scheme, any of the aforementioned circumstances shall have the same effect even if it occurs or occurred in the other Contracting Party.

(3) Where the application of paragraph (2) above would result in the reduction or the total or partial suspension, simultaneously and reciprocally, of the benefits from both Contracting Parties, each such benefit shall be reduced or suspended only by an amount not exceeding one half of the amount which is subject to reduction or suspension in accordance with the legislation under which the benefit is payable.

Article 7. (1) Subject to the provisions of articles 8, 9 and 10, obligation to participate in an insurance scheme shall be governed by the legislation of the Contracting Party in whose territory the gainful employment is engaged in.

(2) Where, as a result of the application of paragraph (1) above, an obligation to participate in an insurance scheme would exist simultaneously under the legislation of both Contracting Parties, the following shall apply:

- (a) If the person concerned is simultaneously employed by another and self-employed, the obligation to participate in an insurance scheme shall be governed by the legislation of the Contracting Party in whose territory he is employed by another.
- (b) If the person concerned is simultaneously self-employed in both Contracting Parties, the obligation to participate in an insurance scheme shall be governed by the legislation of the Contracting Party in which the worker is habitually resident.

Article 8. The principle laid down in article 7 shall be subject to the following exceptions:

- (a) An employed person or a person treated as such who is resident in the territory of one of the Contracting Parties and is sent to the territory of the other Contracting Party by the enterprise which normally employs him in the territory of the first-mentioned Contracting Party shall remain subject to the legislation of the first-mentioned Contracting Party, as if he were employed in its territory, for the first 24 months of his employment in the territory of the other Contracting Party. If the duration of his employment in the territory of the said other Contracting Party exceeds 24 months, the legislation of the first-mentioned Contracting Party shall continue to apply for a further period of not more than 24 months, provided that the employer and the employed person jointly so request not later than one month before the end of the first period of 24 months and that the competent governmental authority of the said other Contracting Party or the agency designated by it gives its consent. The competent governmental authority of the first-mentioned Contracting Party or the agency designated by it shall be given an opportunity to express its views before the decision is taken.

- (b) An employed person or a person treated as such who is in the service of an enterprise engaged, on behalf of another or on its own account, in the transport of passengers or goods, with its principal place of business in the territory of one of the Contracting Parties, and who is employed in a travelling or seagoing capacity shall be deemed to be employed in the territory of the Contracting Party in which the enterprise has its principal place of business; if, however, the enterprise has a branch in the territory of the other Contracting Party, persons employed by such branch shall be deemed to be employed in the territory of the Contracting Party in which the branch is situated.

Article 9. (1) Without prejudice to the provisions of paragraph (2) below, members of a diplomatic mission or consular post of one of the Contracting Parties and the administrative and technical staff of such a mission or post who are nationals of the said Contracting Party shall be exempt from the legislation of the other Contracting Party.

(2) Where an Austrian national is habitually resident in Spain and is employed there at the diplomatic mission or a consular post of Austria, Spanish legislation shall apply. Where a Spanish national is habitually resident in Austria and is employed there at the diplomatic mission or a consular post of Spain, Austrian legislation shall apply. The employed person may, within three months after the beginning of his employment, opt in favour of the application of the legislation of the Contracting Party whose national he is. He shall then be deemed to be employed at the place at which the Government of the said Contracting Party has its headquarters. The option must be declared to the diplomatic mission or consular post. The legislation selected shall apply as from the date of the declaration.

(3) Where a national of one of the Contracting Parties is employed in the territory of the other Contracting Party in the personal service of a member of the diplomatic mission or a consular post of the first-mentioned Contracting Party, paragraph (2) shall apply *mutatis mutandis*.

(4) Paragraphs (2) and (3) above shall not apply to persons employed by an honorary consul.

(5) Where a national of one of the Contracting Parties employed in the public administration of that Contracting Party is sent to the territory of the other Contracting Party, he shall be subject to the legislation of the first-mentioned Contracting Party.

Article 10. If the employer and the employed person concerned jointly so request, the competent governmental authority of the Contracting Party whose legislation should apply under the terms of articles 7, 8 and 9 may authorize the application of the legislation of the other Contracting Party; the employment shall then be deemed to be exercised in the territory of the last-mentioned Contracting Party. The competent governmental authority of the other Contracting Party shall be given an opportunity to express its views before the decision is taken.

TITLE II. SPECIAL PROVISIONS

Chapter 1. SICKNESS BENEFITS

Article 11. For the purposes of the acquisition, maintenance or recovery of the right to benefits, where a person has been subject successively or alternately to the

legislation of both Contracting Parties, the insurance periods completed under the legislation of each of the Contracting Parties shall be aggregated, provided that they do not overlap.

Article 12. (1) A person who has completed insurance periods under the legislation of one of the Contracting Parties and who moves to the territory of the other Contracting Party shall be entitled, for himself and for such of his dependants as are in that territory, to the benefits provided for by the legislation of the last-mentioned Contracting Party, provided that:

- (a) He was fit for employment when he last entered the territory of the last-mentioned Contracting Party;
- (b) He has been subject to compulsory insurance since he last entered that territory;
- (c) He satisfies the conditions imposed by the legislation of the last-mentioned Contracting Party, account being taken of the aggregation of periods referred to in article 11.

(2) Where, in the cases specified in paragraph (1) above, the person concerned does not satisfy the conditions laid down in subparagraphs (a), (b) and (c) of that paragraph, and where he would still be entitled to benefits under the legislation of the Contracting Party in whose territory he was last insured before his change of residence if he were in that territory, he shall remain entitled to benefits for a period of 21 days from the last day on which he was subject to the compulsory insurance scheme of that Contracting Party. The provisions of article 13, paragraphs (3), (4), (5) and (6), shall apply *mutatis mutandis*.

Article 13. (1) A person who is insured with an insurance authority of one of the Contracting Parties and is resident in the territory of that Contracting Party shall be entitled to benefits during a temporary stay in the territory of the other Contracting Party if his condition necessitates immediate medical treatment, including hospitalization.

(2) A person who has acquired the right to benefits from an insurance authority of one of the Contracting Parties and who is resident in the territory of that Contracting Party shall retain that right if he transfers his residence to the territory of the other Contracting Party. Before transferring his residence, he must obtain the consent of the competent insurance authority. Consent may be refused only on the ground of the state of health of the person concerned. Such consent may be granted subsequently, provided that the conditions therefor are satisfied and consent could not be obtained in advance for reasonable cause. In the case of maternity benefits, consent may be given before the occurrence of the insurance contingency.

(3) Where a person is entitled to benefits under the provisions of paragraphs (1) and (2) above, benefits in kind shall be provided by the insurance authority of his place of sojourn or his new place of residence in accordance with the legislation applicable to that insurance authority, 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 Contracting Party.

(4) In the cases specified in paragraphs (1) and (2) above, the provision of prosthesis, of large prosthetic appliances and of other major benefits in kind shall be subject, except in cases of absolute urgency, to prior authorization by the competent insurance authority. Absolute urgency shall be deemed to exist in cases in which provision of the benefit cannot be delayed without seriously endangering the life or health of the person concerned.

(5) In the cases specified in paragraphs (1) and (2) above, cash benefits shall be paid in accordance with the legislation applicable to the competent insurance authority. Such benefits may be paid by an insurance authority of the other Contracting Party as agent for the competent insurance authority in the manner to be laid down in an Administrative Agreement.

(6) The provisions of paragraphs (1) to (5) above shall apply *mutatis mutandis* to dependants.

Article 14. (1) Dependants of a person insured with an insurance authority of one of the Contracting Parties shall, when resident in the territory of the other Contracting Party, be entitled to benefits in kind as if the person concerned were insured with the insurance authority of their place of residence. The scale of such benefits and the manner of providing them shall be determined in accordance with the legislation applicable to the said insurance authority; their duration shall, however, be governed by the legislation of the first-mentioned Contracting Party.

(2) Where dependants transfer their residence to the territory of the Contracting Party in which the competent insurance authority is established, they shall be entitled to benefits in accordance with the legislation of that Contracting Party. This rule shall also apply where the dependants have already received, in respect of the same case of sickness or the same pregnancy, benefits provided by an insurance authority of the Contracting Party in whose territory they were resident before the transfer. If the legislation of one of the Contracting Parties prescribes a maximum duration for the provision of benefits, the competent insurance authority shall include in its computation of such maximum duration the period for which benefits were provided under the legislation of the other Contracting Party in respect of the same case of sickness or the same pregnancy.

(3) The provisions of this article shall not apply to dependants as specified in paragraph (1) above who are gainfully employed in the Contracting Party in which they are resident or who receive a pension or annuity which entitles them to benefits in kind.

Article 15. (1) Where a person in receipt of pensions or annuities payable under the legislation of both Contracting Parties is resident in the territory of one of the Contracting Parties and is entitled to benefits in kind under the legislation of that Contracting Party, such benefits shall be provided for him and for 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 Contracting Party in which he is resident. The cost of such benefits shall be borne by the insurance authority of the Contracting Party in which the beneficiary is resident. Article 13, paragraphs (1) and (3) to (6), and article 14 shall apply *mutatis mutandis*.

(2) Where a person in receipt of a pension or annuity payable under the legislation of only one of the Contracting Parties is resident in the territory of one of the Contracting Parties and is entitled to benefits in kind under the legislation of the first-mentioned Contracting Party, such benefits shall be provided for him and for his dependants by the insurance authority of his place of residence as if he were in receipt of a pension or annuity payable under the legislation of the Contracting Party in which he is resident. If the pensioner or annuitant is temporarily resident in the territory of the Contracting Party under whose legislation he is in receipt of the pension or annuity, the benefits in kind shall be provided for him and for his dependants by the insurance authority of his place of sojourn.

(3) If under the legislation of one of the Contracting Parties 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 insurance authority which is liable for the pension or annuity shall be entitled to make such deductions in the cases specified in this article.

Article 16. In the cases specified in article 12, paragraph (2), article 13, paragraphs (1), (2) and (6), article 14, paragraph (1), and article 15, paragraph (2), benefits in kind shall be provided:

- In Spain: by the Instituto Nacional de Previsión (National Provident Institute);
- In Austria: by the Gebietskrankenkasse für Arbeiter und Angestellte (Local Sickness Fund for Manual and Salaried Workers) competent for the place of residence of the person concerned.

Article 17. (1) The cost of benefits in kind provided under the terms of article 12, paragraph (2), article 13, paragraphs (1), (2) and (6), article 14, paragraph (1), and article 15, paragraph (2), of this Agreement shall be repaid by the competent insurance authorities to the insurance authorities which provided them.

(2) In the interests of administrative simplification, the insurance authorities concerned may, subject to the approval of the competent governmental authorities of both Contracting Parties, agree with respect to all cases or to certain classes of cases that repayment of the costs should be made in lump sums in lieu of individual settlements.

Article 18. (1) Where an employed person or a person treated as such who is subject to the legislation of one of the Contracting Parties, or a person in receipt of a pension or annuity, or a dependant of such person, dies in the territory of the other Contracting Party, the death shall be deemed to have occurred in the territory of the first-mentioned Contracting Party.

(2) The competent insurance authority shall assume liability for the death grant even if the beneficiary is in the territory of the other Contracting Party.

Chapter 2. SERVICES IN RESPECT OF OLD AGE, DISABILITY AND SURVIVORS

Article 19. (1) For the purposes of the acquisition, maintenance or recovery of the right to benefits, where an insured person has been subject successively or alternately to the legislation of both Contracting Parties, the insurance periods completed under the legislation of each of the Contracting Parties 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 Party under whose insurance system such periods were completed.

(2) Where the legislation of one of the Contracting Parties 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 schemes of the other Contracting Party and the periods completed in the same occupation under other schemes of the last-mentioned Contracting Party shall be aggregated, provided that they do not overlap, for the purpose of qualification for such benefits.

(3) If the insurance periods completed under the legislation of one of the Contracting Parties amount in all to less than six months for the calculation of the pension (annuity), the competent insurance authority of the said Contracting Party shall not grant any pension (annuity) and the competent insurance authority of the other Contracting Party shall grant the pension (annuity) calculated without applying the provisions of article 20, paragraph (3) (b). This rule shall not apply where, under the legislation of the first-mentioned Contracting Party, a right to a pension exists without the application of the provisions of paragraph (1) above.

Article 20. (1) Where an insured person as specified in article 19 of this Agreement or his survivors claim benefits under the legislation of both Contracting Parties, the benefits shall be determined in accordance with the provisions of paragraphs (2) to (5) below.

(2) The competent insurance authority of each of the Contracting Parties shall determine in accordance with its own legislation, taking into account the aggregation of periods referred to in article 19, whether the person concerned satisfies the conditions for entitlement to the benefits provided for by that legislation.

(3) Where entitlement to a pension exists, the competent insurance authority of each of the Contracting Parties shall calculate:

(a) First the amount of the pension which, subject to the provisions of paragraph (4) below, would have been due the person concerned under its own national legislation if all the insurance periods which he completed under the legislation of the other Contracting Party and which are to be taken into account in calculating the pension under that legislation had also been insurance periods which were to be taken into account in calculating the pension under its own national legislation; the Austrian insurance authority shall not, however, take into account any contributions under the Austrian supplementary insurance scheme; and

(b) Then the amount of that part of such pension which bears the same relation to the whole as the total of all the insurance periods completed by him under its own legislation before the occurrence of the insurance contingency bears to the total of all the insurance periods which he completed under the legislation of both Contracting Parties before the occurrence of the insurance contingency and which were taken into account, in accordance with the provisions of subparagraph (a) above, in calculating the amount of the pension. That amount shall be the pension actually due the person concerned from the insurance authority;

(c) The Austrian insurance authority shall increase the amount for which it is liable under subparagraph (b) above by any amount payable in respect of contributions paid under the supplementary insurance scheme.

(4) For the purpose of applying the provisions of paragraph (3) above, contribution periods and equivalent periods shall be aggregated as follows:

(a) If a compulsory insurance period completed under the legislation of one of the Contracting Parties coincides with a period of voluntary insurance under the legislation of the other Contracting Party, only the compulsory insurance period shall be taken into account.

(b) If a contribution period under the legislation of one of the Contracting Parties coincides with an equivalent period under the legislation of the other Contracting Party, only the contribution period shall be taken into account.

- (c) If an equivalent period under the legislation of one of the Contracting Parties coincides with an equivalent period under the legislation of the other Contracting Party, only the equivalent period under the legislation of the Contracting Party in whose territory the person concerned last completed an insurance period prior to the said equivalent period shall be taken into account. If the person concerned did not complete any insurance periods before the said period in the territory of either of the Contracting Parties, only the equivalent period under the legislation of the Contracting Party in whose territory he first completed an insurance period subsequent to the said period shall be taken into account.
- (d) If, in accordance with subparagraph (a) above, any periods of voluntary insurance under the Austrian pensions insurance scheme are not to be taken into account, the contributions paid in respect of such periods shall be deemed to be contributions under the Austrian supplementary insurance scheme.
- (5) The legislation concerning reduction or suspension of pensions shall apply to pensions calculated in accordance with paragraph (3) (a) above.

Article 21. The competent Austrian insurance authorities shall apply articles 19 and 20 in accordance with the following rules:

1. The equivalent periods to be taken into account under Austrian legislation in calculating the pension (annuity) and the insurance periods to be taken into account under the Federal Act referred to in item 3 (e) of the final protocol shall be deemed to be insurance periods completed under Austrian legislation.

2. Where the calculation of Austrian equivalent periods depends on a preceding or subsequent insurance period, a Spanish insurance period shall also be taken into account.

3. In the application of article 20, paragraph (3) (a), contributions subsequently made in order to acquire equivalent periods in the Austrian pensions insurance scheme shall not be treated as contributions in the Austrian supplementary insurance scheme.

4. In the determination of a pension in accordance with article 20, paragraph (3) (a), the basis for calculation shall be constituted solely by periods acquired in the Austrian pensions insurance scheme.

5. In the determination of a pension in accordance with article 20, paragraph (3) (a), the compensation supplement shall not be taken into account.

6. In the calculation of the total benefits in accordance with article 20, paragraph (3) (a), the Spanish insurance periods to be taken into account in the Spanish benefits shall be included by the Austrian insurance authorities without the application of Austrian legislation concerning the computability of insurance periods.

7. In respect of the insurance contingency specified in article 20, paragraph (3) (b), the date of the event giving rise to the benefit shall be the date determined in accordance with Austrian legislation.

8. For the designation of the insurance authority competent to recognize a benefit of the Austrian pensions insurance system, account shall be taken of the type of employment exercised during the Spanish insurance periods. Those periods during which there exists or existed a right to old-age or disability benefits under the Spanish social security system shall be calculated with due regard to the type of employment exercised immediately before the event giving rise to the benefit took place. If it is im-

possible to determine the type of work corresponding to a specified period of time, the insurance periods based on the said work shall be taken into account as if they were based on an insurance relationship subject to the competence of the Instituto de Seguro para Obreros (Manual Workers' Insurance Institute). For the purposes of designating the insurance authority competent to recognize a benefit provided by the Austrian miners' pensions insurance scheme, account shall be taken solely of such insurance periods completed in Spain as having been accumulated under the special scheme for coal-mining, in accordance with the provisions of item 12 of the final protocol. The foregoing provisions shall be applied only if, in accordance therewith, the person concerned is entitled to a pension (annuity) of the Austrian pensions (annuities insurance scheme.)

9. Where the date of the event giving rise to the benefit is earlier than 1 January 1962 and it is impossible to fix the basis for contributions in order to determine the basis for calculating the pension, the amount used as the basis for contributions shall be the appropriate multiple, according to Austrian legislation, of the daily wages payable on 31 December 1946 to workers of the same class, up to the maximum applicable basis for contributions.

10. Where, in calculating the progressive increment of Austrian pensions, the maximum number of months of insurance is taken into account, the apportionment ratio in accordance with article 20, paragraph (3) (b) shall be determined on the basis of all the insurance periods taken into account by the insurance authorities of both Contracting Parties, without regard to the said maximum number.

11. For the application of article 20, paragraph (3), without prejudice to the provisions of article 20, paragraph (4), account shall be taken of the insurance periods accumulated in both countries, even if they overlap, in order to determine the amount of the Austrian pension.

12. In respect of the miners' seniority premium (*Knappschaftssold*) and the miners' pension (*Knappschaftspension*) under the Austrian miners' pensions insurance scheme, account shall be taken of the insurance periods covered under one of the special insurance schemes specified in item 12 of the final protocol. Otherwise, in respect of supplementary benefits (*Leistungszuschlag*), account shall be taken only of those insurance periods during which supplements are granted for work under ground.

13. The provisions of articles 19 and 20 shall not be applied for the granting of miners' long-service assignment benefits (*Bergmannsteuergeld*) under the Austrian miners' pensions insurance schemes.

14. The supplement payable for major disability shall be calculated in accordance with Austrian legislation, on the basis of the Austrian partial pension, with the limit of the proportional reduction established in article 20, paragraph (3) (b). If the supplement for major disability is established at a fixed sum, the proportional reduction in accordance with article 20, paragraph (3) (b), shall be applied.

15. For the computation of neutral periods (unemployment periods) and of those periods which, under the pensions (annuities) insurance scheme for self-employed persons, extend the observation time-limit to be taken into account for completion of the waiting period, account shall also be taken of the equivalent periods completed in Spain.

16. For the application of the Austrian legislation relating to the computation of insurance periods in cases in which a widow continues to carry on an enterprise, Spanish insurance periods shall not be taken into account.

17. For the calculation of compensation, Spanish insurance periods shall not be taken into account.

18. Special payments for which the Austrian pensions (annuities) insurance scheme is liable shall be made in proportion to the Austrian partial benefits; the provisions of article 24 shall apply *mutatis mutandis*.

Article 22. (1) The Spanish insurance authorities competent for the General Scheme and the Special Scheme for Railway Workers shall apply the provisions of articles 19 and 20 in accordance with the following rules:

1. For the determination of the regulatory basis for pensions, account shall be taken of a period of 24 consecutive calendar months chosen by the person concerned within the seven years immediately preceding the event giving rise to the pension:
 - (a) If the person concerned has completed the said period solely in Spain, the regulatory basis for the pension shall be the quotient obtained when the sum of his contribution bases during the said period is divided by 28;
 - (b) If he has completed the said period solely in Austria, the regulatory basis for the pension shall be obtained by applying the basis for contribution in force in Spain, during the said chosen period, for workers of the same occupational category as the one for which he last made a contribution to the Spanish social security system;
 - (c) Lastly, in those cases in which the chosen period was completed partly under Spanish legislation and partly under Austrian legislation, the rules of (a) and (b) above shall be applied to the corresponding fractions of the said period;
2. Subparagraph 1 shall be applied *mutatis mutandis* to determine the regulatory basis for survivors' temporary allowances.

(2) A situation of permanent disability recognized as such under Austrian legislation shall, provided that it does not arise out of an industrial accident or occupational disease, be regarded as a permanent disability by the Spanish social security system for the purposes of entitlement to benefits in the event of permanent disability under Spanish social security legislation.

In such cases, the regulatory basis for allowances and compensations in respect of permanent disability shall be obtained by using the basis for contributions which was in force in Spain, on the date on which the insurance contingency arose, for workers in the occupational category to which the applicant last belonged in a Spanish enterprise.

Article 23. (1) Where, at a given time, account being taken of the aggregation of periods referred to in article 19, a person does not satisfy the conditions imposed by the legislation of both Contracting Parties applicable to him but does satisfy the conditions imposed by such legislation of one of the Contracting Parties, the amount of the benefit shall be determined in accordance with the provisions of article 20, paragraph (3).

(2) Where, at a given time, a person does not satisfy the conditions imposed by the legislation of both Contracting Parties applicable to him but does satisfy the conditions imposed by such legislation of one of the Contracting Parties irrespective of the periods completed under the legislation of the other Contracting Party, the amount of the benefit shall be determined exclusively in accordance with the legisla-

tion which confers the entitlement, account being taken only of the periods completed under the last-mentioned legislation.

(3) In the cases referred to in paragraphs (1) and (2) above, the benefits already determined shall be revised in accordance with the provisions of article 20, paragraph (3), as and when the conditions imposed by the legislation of the other Contracting Party are satisfied, account being taken of the aggregation of periods referred to in article 19. The benefit for which the competent insurance authority in the territory of one of the Contracting Parties is liable shall be determined and shall become effective as from the date of the beginning of the benefit provided under the insurance system of the other Contracting Party. The legal effect of earlier decisions shall not constitute an obstacle to the revision.

(4) The benefit shall also be revised if there arises a situation which has an effect on the apportionment ratio determined in accordance with article 20, paragraph (3). The revision shall take place with effect as from the date on which the benefit recognized by the other Party begins. If, as a result of the revision, the amount of benefits previously paid is reduced, then the insurance authority whose benefit has been reduced shall provide as partial benefit the benefit for which it is liable, increased by the difference between the amounts to be compared. The legal effect of earlier decisions shall not constitute an obstacle to the revision.

(5) Subject to the provisions of paragraph (2) above, persons to whom the provisions of this chapter apply may not claim a pension solely under the legislation of one of the Contracting Parties.

Article 24. (1) Where a person is entitled to a pension under the legislation of one of the Contracting Parties irrespective of the provisions of article 19, paragraph (1), and is entitled to a pension under the legislation of the other Contracting Party only if those provisions are taken into account, and where the pension under the legislation of the first-mentioned Contracting Party is greater than the aggregate of the partial pensions calculated in accordance with article 20, paragraph (3), the insurance authority of the first-mentioned Contracting Party shall increase the partial pension which it is liable to pay in accordance with article 20, paragraph (3), by the difference between the aggregate of the partial pensions and the pension payable solely under its own legislation.

(2) Where a person is entitled to pensions under the legislation of both Contracting Parties irrespective of the provisions of article 19, paragraph (1), and where both pensions are greater than the aggregate of the partial pensions calculated in accordance with article 20, paragraph (3), the competent insurance authority of the Contracting Party under whose legislation the greater of the two pensions is payable shall increase the amount of its payment by the difference between the aggregate of the partial pensions and the pension payable solely under its own legislation. The insurance authority of the other Contracting Party shall repay to the insurance authority liable for such payment a part of the said difference bearing the relation to the whole referred to in article 20, paragraph (3); such repayment shall not, however, exceed the amount which the insurance authority of the last-mentioned Contracting Party would have had to provide under its own legislation irrespective of the provisions of article 20, paragraph (3).

(3) In the case referred to in paragraphs (1) and (2) above, the amount of the difference shall be revised *ex officio* if the amount of the partial benefits on which the calculation of the difference is based is changed for reasons other than readjustments or if the rate of exchange changes by more than 10 per cent.

Chapter 3. BENEFITS IN THE CASE OF INDUSTRIAL ACCIDENTS
AND OCCUPATIONAL DISEASES

Article 25. (1) When, 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 Parties requires that previous industrial accidents or occupational diseases should be taken into account, industrial accidents sustained and occupational diseases contracted at an earlier date under the legislation of the other Contracting Party shall also be taken into account as if they had been sustained or contracted under the legislation of the first-mentioned Contracting Party.

(2) The insurance authority competent for the payment of compensation in respect of a new industrial accident or a new occupational disease shall fix the benefit, giving due regard to the degree of diminution of working capacity that results from the industrial accident or occupational disease, in accordance with the legislation applicable to the said insurance authority.

Article 26. (1) Where an insured person has been employed in both Contracting Parties in an occupation to which, under the legislation of both Contracting Parties, an occupational disease may be attributed, the benefits in respect of such occupational disease shall be payable by the insurance authority of the Contracting Party in whose territory the person concerned was last employed in an occupation to which such occupational disease may be attributed. If the legislation of one of the Contracting Parties makes it a condition for the obligatory provision of compensation in respect of an occupational disease that the person concerned should have been employed for a specific minimum period of time in types of work to which such occupational disease may be attributed, the insurance authority of that Contracting Party shall, in determining whether that condition is satisfied, take into account the periods of time for which the person concerned was employed in similar types of work in the other Contracting Party.

(2) Where a person who has received or is receiving compensation in respect of an occupational disease under the legislation of one of the Contracting Parties claims title to benefit under the legislation of the other Contracting Party on the ground of a worsening of such disease, and where the person concerned has not been employed in the last-mentioned Contracting Party in an occupation to which such occupational disease or the worsening thereof may be attributed, the insurance authority of the first-mentioned Contracting Party shall be liable for the benefits in respect of such worsening.

(3) Where a person who has received or is receiving compensation in respect of an occupational disease under the legislation of one of the Contracting Parties claims title to benefit under the legislation of the other Contracting Party on the ground of a worsening of such disease, and where the person concerned has been employed in the last-mentioned Contracting Party in an occupation to which the worsening of such disease may be attributed, the insurance authority of the last-mentioned Contracting Party shall be liable for all the benefits, account being taken of such worsening.

Article 27. (1) A person who has acquired entitlement to benefits in kind under the legislation of one of the Contracting Parties in respect of an industrial accident or occupational disease and who moves to the territory of the other Contracting Party shall retain such entitlement. If the legislation of one of the Contracting Parties makes it a condition for the provision of benefits in kind to a person who is resi-

dent in the other Contracting Party that the prior consent of the competent insurance authority should be obtained, such consent may be refused only on the ground of the state of health of the entitled person. The competent insurance authority may grant its consent subsequently, provided that the conditions therefor are satisfied and that the entitled person could not obtain consent in advance for reasonable cause.

(2) A person who is insured under the legislation of one of the Contracting Parties and who in the territory of the other Contracting Party sustains an industrial accident or contracts an occupational disease or is in need of benefits in kind by reason of a previous industrial accident or occupational disease shall be entitled to receive, upon application, benefits in kind under the legislation of the last-mentioned Contracting Party.

(3) In the cases specified in paragraphs (1) and (2) above, the cost of benefits in kind shall be defrayed, in accordance with the legislation applicable to the agency providing the benefits, by the competent insurance authority, namely:

- In Spain: the workers' mutual benefit schemes (*mutualidades laborales*);
- In Austria: the local Sickness Fund for Manual and Salaried Workers competent for the place of sojourn of the entitled person.

Article 13, paragraph (4), shall apply *mutatis mutandis*.

(4) The competent insurance authority shall repay the costs incurred to the agency which provided the benefits.

(5) In the cases specified in paragraphs (1) and (2) above, cash benefits shall be paid in accordance with the legislation of the competent Contracting Party. Such benefits may be paid by an insurance authority of the other Contracting Party as agent for the competent insurance authority in the manner to be laid down in an Administrative Agreement.

Chapter 4. UNEMPLOYMENT BENEFITS

Article 28. (1) An employed person or a person treated as such who moves from the territory of one of the Contracting Parties to the territory of the other Contracting Party shall be entitled, while in that territory, to the unemployment benefits provided for by the legislation of the last-mentioned Contracting Party, provided that during the last 12 months prior to the date of the application for unemployment benefits he was employed in that territory for a total period of 13 weeks in an occupation covered by compulsory unemployment insurance and that he satisfies the conditions for entitlement to unemployment benefits in that territory imposed by the legislation of the last-mentioned Contracting Party, account being taken of the aggregation of unemployment insurance periods completed in both countries.

(2) The condition, laid down in paragraph (1) above, that the person concerned must have been employed for a period of 13 weeks in an occupation covered by compulsory unemployment insurance shall not apply to employed persons or persons treated as such who become involuntarily unemployed.

Article 29. For the purposes of article 28, paragraph (1), insurance periods completed outside Austria shall not be taken into account for the acquisition of the right to the allowance payable to mothers in Austria in respect of unpaid leave of not more than one year after confinement (*Karenzurlaubsgeld*).

Article 30. Spanish employed persons in Austria shall not be entitled to receive public relief (*Notstandshilfe*).

Austrian employed persons in Spain shall not be entitled to benefits which may be granted in certain cases but to which no statutory entitlement exists.

Article 31. The provisions of article 5 shall not apply to unemployment insurance benefits.

Chapter 5. FAMILY ALLOWANCES

Article 32. Where, under the legislation of one of the Contracting Parties, entitlement to family allowances depends upon the completion of insurance periods, insurance periods completed in the other Contracting Party shall be counted, provided that they do not overlap.

Article 33. (1) An employed person who is resident in the territory of one of the Contracting Parties and engages in gainful employment in accordance with the legislation in force concerning the employment of foreign workers shall be entitled to family allowances in the said Contracting Party in accordance with that Party's legislation, even if the beneficiaries are staying in the territory of the other Contracting Party.

(2) Where an employed person is sent temporarily from one Contracting Party to the other Contracting Party, the legislation of the first-mentioned Contracting Party shall continue to apply.

(3) An employed person who, during one calendar month, is subject successively to the legislation of one Contracting Party and the other Contracting Party shall be entitled, in respect of the said calendar month, only to family allowances under the legislation of the first-mentioned Contracting Party.

(4) The term "beneficiaries" means those to whom family allowances are provided in accordance with the legislation of the Contracting Parties which is to be applied by the competent insurance authority.

Article 34. Articles 5, 8 and 10 shall not apply in respect of entitlement to family allowances.

TITLE III. MISCELLANEOUS PROVISIONS

Article 35. (1) The competent authorities may regulate in an Administrative Agreement the administrative measures necessary for the implementation of this Agreement.

(2) The competent authorities shall inform each other of any measures taken for the implementation of this Agreement and of any changes made in their legislation which affect the application of this Agreement.

(3) Liaison Offices shall be established to facilitate the implementation of this Agreement.

The following shall be Liaison Offices:

— In Spain: the Servicios Centrales del Instituto Nacional de Previsión (Central Services of the National Provident Institute) at Madrid;

— In Austria:

- In respect of sickness, accident and pensions (annuities) insurance, the Hauptverband der österreichischen Sozialversicherungsträger — Verbindungsstelle für zwischenstaatliche Sozialversicherung (Central Federation of Austrian Social Insurance Authorities — Liaison Office for Inter-State Social Insurance), at Vienna;
- In respect of family allowances, the Federal Ministry of Finance, at Vienna.

Article 36. (1) The governmental authorities and insurance authorities of the two Contracting Parties shall assist one another with regard to any matter relating to the application of this Agreement as if the matter were one affecting the application of their own legislation. Such assistance shall be free of charge. The competent governmental authorities may, however, agree upon the repayment of specified costs.

(2) Medical examinations required under the legislation of one of the Contracting Parties in respect of persons who are in the territory of the other Contracting Party shall be arranged, upon the application of the competent insurance authority, by the insurance authority of the Contracting Party in whose territory the persons to be examined are present. The cost of such examinations, travel expenses, loss of earnings, the cost of hospitalization for observation and other out-of-pocket expenses, excluding postage, shall be repaid by the competent insurance authority. The cost shall not be repaid if the medical examination is conducted in the interests of the competent insurance authorities of both Contracting Parties.

Article 37. Contributions which are owed to an insurance authority of one of the Contracting Parties may be collected in the territory of the other Contracting Party by the same procedure as applies to the collection of contributions owed to the corresponding insurance authorities of the last-mentioned Contracting Party.

Article 38. Where a person who is in receipt of benefits under the legislation of one of the Contracting Parties in respect of an injury sustained in the territory of the other Contracting Party is entitled in the territory of the last-mentioned Contracting Party to claim damages for such injury from a third party, the insurance authority liable for the benefits shall be subrogated to his rights *vis-à-vis* the third party in accordance with the legislation applicable to that insurance authority.

Article 39. (1) Any exemption from or reduction of taxes or charges, including consular and administrative fees, provided for by the legislation of one of the Contracting Parties in respect of certificates and other papers required to be submitted under that legislation shall be extended to certificates and other papers required to be submitted under the legislation of the other Contracting Party in implementation of this Agreement or by virtue of its provisions.

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

Article 40. The governmental authorities and insurance authorities of one of the Contracting Parties shall not reject claims or other papers submitted to them on the ground that they are drawn up in the official language of the other Contracting Party.

Article 41. (1) Where the claim to a benefit under the legislation of one of the Contracting Parties has been submitted in the other Contracting Party to an agency which is competent in respect of a claim to a corresponding benefit under the legislation applicable to it, the claim shall be deemed to have been submitted to the competent insurance authority. This provision shall apply *mutatis mutandis* to other claims and to notices or appeals.

(2) A claim submitted to a competent agency in the territory of one of the Contracting Parties in respect of a benefit under the legislation of that Contracting Party shall also be deemed to be a claim to a corresponding benefit under the legislation of the other Contracting Party which would have to be taken into account in accordance with the provisions of this Agreement.

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

Article 42. (1) Insurance authorities of one of the Contracting Parties which are liable under this Agreement for the payment of sums of money to beneficiaries who are in the territory of the other Contracting Party shall be deemed to have discharged their liability by payment in the currency of the first-mentioned Contracting Party; however, monies due from such insurance authorities to insurance authorities which are in the territory of the other Contracting Party must be paid in the currency of the last-mentioned Contracting Party.

(2) Transfers of funds required for the implementation of this Agreement shall be effected in accordance with the payments agreements in force between the two Contracting Parties at the time of the transfer.

Article 43. (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be the subject of direct negotiations between the competent governmental authorities of the Contracting Parties.

(2) If the dispute cannot be resolved in this manner within a period of six months from the opening of negotiations, it shall, at the request of one or both of the Contracting Parties, be submitted to an arbitral commission, whose composition shall be determined by agreement between the Contracting Parties. The rules of procedure to be applied shall be determined in the same manner.

(3) The arbitral commission shall resolve the dispute in accordance with the fundamental principles and the spirit of this Agreement.

Its decisions shall be binding and final.

Article 44. (1) Where an insurance authority of one of the Contracting Parties has made an advance payment to a person entitled to benefits, such insurance authority or, at its request, the competent insurance authority of the other Contracting Party may deduct the amount of the advance from the payments to which such person is entitled for the same period.

(2) Where, in the case of a revision under the terms of article 23, paragraph (3), an insurance authority of one of the Contracting Parties has paid to a beneficiary an amount higher than that to which he is entitled, that insurance authority may request the paying agency to deduct the amount of the overpayment from the payment of arrears for the same period.

The paying agency shall transmit the amount deducted to the insurance authority which made the request.

(3) Where one of the Contracting Parties has granted public assistance to a beneficiary during a period for which he is entitled to cash benefits, the insurance authority liable for such benefits or the paying agency shall, at the request and for the account of the public assistance authority, withhold payments of arrears for the same period until the amount of the public assistance granted has been recovered as if such assistance had been in the form of a cash benefit under the legislation of the Contracting Party in whose territory the public assistance authority making the request is established.

TITLE IV. TRANSITIONAL AND FINAL PROVISIONS

Article 45. (1) This Agreement shall not, irrespective of article 50, affect entitlements acquired before its entry into force.

(2) This Agreement shall in no case confer any right to the payment of benefits for a period before the date of its entry into force.

(3) Any insurance period completed under the legislation of one of the Contracting Parties before the date of the entry into force of this Agreement shall also be taken into account for the purpose of determining the right to benefits in accordance with the provisions of this Agreement.

(4) Subject to the provisions of paragraph (6) below, this Agreement shall also apply to insurance contingencies which arose before the date of its entry into force.

(5) In the cases referred to in paragraph (4) above, the following rules shall apply:

- (a) Pensions (annuities) determined before the date of the entry into force of this Agreement shall, upon application, be determined afresh as from the date of its entry into force; they may also be determined afresh *ex officio*.
- (b) Pensions (annuities) to which an entitlement would have existed even under the legislation previously in force if a claim had been submitted in good time shall, upon application, be determined in accordance with the provisions of this Agreement; the date of the start of benefits shall be determined by national legislation.
- (c) Pensions (annuities) to which an entitlement exists in accordance with this Agreement shall, upon application of the person entitled to benefits, be determined as from the date of the entry into force of this Agreement, provided that the application is submitted within one year after the entry into force of this Agreement; otherwise they shall be determined as from the date specified by domestic legislation.

(6) Until the date of the entry into force of this Agreement, pensions (annuities) for which an application has been submitted before the entry into force of this Agreement shall be governed by the Agreement referred to in article 50.

Article 46. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.

Article 47. This Agreement shall enter into force on the first day of the second month following the month during which the instruments of ratification are exchanged.

Article 48. This Agreement shall remain in force for an indefinite period. Either Contracting Party may, however, denounce it before the end of each calendar year upon one month's notice.

Article 49. (1) In the event of the termination of this Agreement, any right to benefits which has been acquired in accordance with its provisions shall be maintained.

(2) Rights which are in the course of acquisition in respect of periods completed before the date on which the termination takes effect shall not be affected by the termination; the preservation of such rights in respect of the period after termination shall be determined by agreement or, in the absence of such agreement, by the legislation applicable to the insurance authority concerned.

Article 50. Upon the date of the entry into force of this Agreement, the Agreement between the Spanish State and the Republic of Austria on Social Security of 15 July 1964 and its Final and Additional Protocols shall cease to have effect.

IN WITNESS WHEREOF the aforementioned plenipotentiaries have signed this Agreement.

DONE at Madrid on 23 October 1969, in four copies, two in the Spanish and two in the German language, both texts being equally authentic.

For the Spanish State:

[Signed]

FERNANDO M^a CASTIELLA
Minister for Foreign Affairs

For the Republic of Austria:

[Signed]

WOLFGANG HÖLLER
Ambassador Extraordinary
and Plenipotentiary

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE SPANISH STATE AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

At the time of signing the Agreement on social security concluded this day between the Spanish State and the Republic of Austria, the plenipotentiaries of the two Contracting Parties have agreed upon the following declarations:

1. *Ad* article 2 of the Agreement:

(a) In the application of the legislation referred to in paragraph (1), item 1 (a), with respect to sickness insurance of public employees, residence in Spain shall be equivalent to residence in Austria for the purposes of compulsory participation in an insurance scheme.

(b) Paragraph (4) shall not apply to the rules relating to acceptance of insurance periods.

2. *Ad* article 3 of the Agreement:

Austrian nationals within the meaning of the Agreement shall also be deemed to include persons who were resident in the territory of the Republic of Austria, otherwise than purely temporarily, on 11 July 1953, 1 January 1961 or 27 November 1961 and who were entitled on the date in question to be considered *Volksdeutsche* (persons of German mother tongue who are stateless or whose nationality is indeterminate).

3. *Ad* article 4 of the Agreement:

(a) Those rules relating to the acceptance of insurance periods which are contained in inter-State agreements concluded by the Contracting Parties with a third State shall not apply.

(b) The assimilation of Spanish nationals to Austrian nationals under the terms of paragraph (1) shall not apply with respect to the fulfilment of personal requirements under Austrian legislation as concerns:

(aa) In the case of pensions (or annuities) insurance, the taking into account of contribution periods completed after 12 March 1938 and prior to 10 April 1945 by reason of compulsory participation in an insurance scheme under an annuities insurance scheme of the former German Reich or of entitlement to insurance in respect of employment or residence outside the territory of Austria;

(bb) In the case of industrial accident insurance, the assumption of liability for compensation in respect of industrial accidents sustained (or occupational diseases contracted) outside the territory of Austria during the period specified in (aa) above under the accident insurance scheme of the former German Reich.

(c) Under the Austrian pensions (or annuities) insurance scheme, without prejudice to other requirements, the following periods shall be deemed, in the case of Spanish nationals within the meaning of the Agreement, to be equivalent periods:

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

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

The foregoing shall be without prejudice to the Austrian legislation concerning privileges accorded to persons who have suffered injury on political, religious or racial grounds.

(d) Where periods of full-time education are taken into account subject to the subsequent completion of a period of active military service or of a period assimilated thereto, only the periods referred to in sub-item (c) shall be deemed to constitute such periods of service.

(e) The provisions of the Austrian Federal Act of 22 November 1961 concerning the right to benefits and rights in course of acquisition under the pensions (or annuities) and accident insurance schemes arising out of employment abroad shall not apply to Spanish nationals.

(f) The provisions of the Austrian Federal Act of 21 May 1969 concerning the granting of a compensatory payment for the family allowance shall not apply to Spanish nationals.

4. *Ad* article 5 of the Agreement:

The equalization allowance (*Ausgleichszulage*) for which Austrian legislation provides shall be added to pensions granted under the Austrian pensions insurance scheme only while the beneficiary is in the territory of Austria.

5. *Ad* article 6, paragraph (2), of the Agreement:

For the creation of a right to pension of self-employed persons under the Austrian pensions insurance scheme, revocation of a business licence or dissolution of a company in Austria shall be deemed to be equivalent to the discontinuation in Spain of the corresponding self-employment.

6. *Ad* article 7 of the Agreement:

Persons employed by an enterprise registered in Spain shall be deemed to be employed in Austria even if they do not fulfil the conditions relating to residence laid down by Austrian legislation.

7. *Ad* articles 8 and 10 of the Agreement:

For the purpose of the application of the provisions of article 8 (a) and article 10, the competent governmental authority in Austria shall take into account the nature and circumstances of the employment.

8. *Ad* article 9 of the Agreement:

(a) The provisions of paragraph (1) shall be applied *mutatis mutandis* to the Austrian Trade Delegate and the technical assistants assigned to him by the Federal Chamber of Industrial Economy and to the representatives of the said Chamber in matters relating to the engagement of workers.

(b) With respect to persons who are employed on the date of the entry into force of the Agreement, the time-limit specified in paragraph (2) shall begin on that date.

9. *Ad* article 13 of the Agreement:

(a) The provisions of paragraph (1) shall be applied in Austria with respect to out-patient treatment dispensed by physicians, dentists and dental technicians who are engaged in the free pursuit of their profession, until the date which shall be fixed in accordance with the provisions of sub-item (b), only as concerns the following persons:

(aa) Persons who are staying temporarily in the territory of Austria in the exercise of their occupation, and their dependants accompanying them;

(bb) Persons who are staying temporarily in the territory of Austria in order to visit their dependants who are resident in that territory;

(cc) Dependants—resident in the territory of Austria—of persons included in the Spanish social security system;

(dd) Persons who are staying temporarily in the territory of Austria for other reasons, when they are given out-patient treatment at the expense of the insurance authority competent for their place of sojourn.

(b) The competent Austrian governmental authority shall establish the date from which the provisions of paragraph (1) are to be applied without restriction.

10. *Ad* article 15 of the Agreement:

With respect to paragraph (2), as regards sickness insurance for pensioners, a temporary stay in Spanish territory shall be deemed to be equivalent to a temporary stay in Austrian territory.

11. *Ad* article 17 of the Agreement:

The repayment of costs incurred under article 15, paragraph (2), in respect of persons in receipt of pensions or annuities under the Austrian pensions insurance accident insurance scheme shall be made from the pensioners' sickness insurance contributions deposited with the Central Federation of Austrian Social Insurance Authorities.

12. *Ad* article 19 of the Agreement:

For the purposes of the application of paragraph (2), the following shall be deemed to be special insurance schemes:

— In Spain: the special scheme for coal-mining;

— In Austria: the miners' pensions insurance scheme.

13. *Ad* article 25 of the Agreement:

Austrian restrictive legislation relating to the establishment of a total annuity by reason of a new industrial accident or a new occupational disease shall not apply.

14. *Ad* article 33 of the Agreement:

Entitlement to Austrian family allowances shall exist only when the work carried on in Austria lasts at least one uninterrupted calendar month.

15. *Ad* article 45 of the Agreement:

(a) The affiliation of self-employed persons of Austrian nationality to a self-employed persons' mutual benefit scheme which takes place prior to the entry into force of the Agreement shall be considered valid for all purposes.

(b) Any such affiliation which has been annulled or rejected *ex officio* by reason of the nationality of the person concerned shall also be considered valid, with retroactive effect, if the person concerned has submitted an application within the time-limit provided for in sub-item (d) of this protocol.

(c) Where, as a consequence of the discontinuation or annulment *ex officio* referred to in sub-item (b), there has been a reimbursement of contributions, the affiliation shall also be considered valid, the said contributions being included with those corresponding to the period between the date on which the person concerned ceased to make contributions to the mutual benefit scheme and the date of his reaffiliation to it.

(d) This application referred to in sub-item (b) above must be made by the person concerned within three months after the date of publication of the Agreement.

This final protocol shall form an integral part of the Agreement between the Spanish State and the Republic of Austria on social security. It shall enter into force on the same date and remain in force for the same period as the Agreement.

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

DONE at Madrid on 23 October 1969, in four copies, two in the Spanish and two in the German language, both texts being equally authentic.

For the Spanish State:

[Signed]

FERNANDO M^a CASTIELLA
Minister for Foreign Affairs

For the Republic of Austria:

[Signed]

WOLFGANG HÖLLER
Ambassador Extraordinary
and Plenipotentiary