

No. 22797

**SPAIN
and
AUSTRIA**

Convention on social security (with final protocol). Signed at Madrid on 6 November 1981

Agreement for the implementation of the above-mentioned Convention (with annex). Signed at Vienna on 8 April 1983

Authentic texts: Spanish and German.

Registered by Spain on 27 March 1984.

**ESPAGNE
et
AUTRICHE**

Convention de sécurité sociale (avec protocole final). Signée à Madrid le 6 novembre 1981

Arrangement pour l'exécution de la Convention susmentionnée (avec annexe). Signé à Vienne le 8 avril 1983

Textes authentiques : espagnol et allemand.

Enregistrés par l'Espagne le 27 mars 1984.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN SPAIN AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

Spain and the Republic of Austria, desiring to promote relations between the two States in step with the development of their laws, have decided to conclude the following Convention to supersede the Agreement of 23 October 1969² as amended by the Additional Agreement of 14 November 1979.³

TITLE I. GENERAL PROVISIONS

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

1. "Spain" means the Spanish State; "Austria" means the Republic of Austria;
2. "Territory" means, in the case of Spain, the sovereign territory of Spain; in the case of Austria, the federal territory of Austria;
3. "National" means, in the case of Spain, a national of Spain; in the case of Austria, a national of Austria;
4. "Legislation" means the laws, ordinances and regulations relating to the branches of social security specified in article 2, paragraph 1;
5. "Competent authority" means, in the case of Spain, the Minister of Health and Social Security; in the case of Austria, the Federal Minister of Social Administration, and for family allowances, the Federal Minister of Finance;
6. "Insurance authority" means the institute or authority responsible for application of the legislation, or any part thereof, specified in article 2;
7. "Competent insurance authority" means the insurance authority which is competent under the relevant legislation;
8. "Dependant" means a dependant within the meaning of the legislation of the Contracting State in which the insurance authority liable for the benefits has its seat;
9. "Cash benefit", "pension" or "annuity" means a cash benefit, pension or annuity including any part thereof paid out of public funds, increases, adjustments or supplementary allowances, as well as any lump-sum payments;
10. "Family allowances" means, in the case of Spain, the family welfare benefits, and, in the case of Austria, the family allowances.

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

Article 2. (1) This Convention shall apply:

1. In Spain:

(a) To the legislation of the general social security scheme concerning:

¹ Came into force on 1 July 1983, i.e., the first day of the third month following the date of the exchange of the instruments of ratification, which took place at Vienna on 29 April 1983, in accordance with article 46(1) and (2).

² United Nations, *Treaty Series*, vol. 1215, p. 247.

³ *Ibid.*, vol. 1222, p. 410.

- (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 survivors;
- (dd) Unemployment;
- (ee) Family protection;
- (b) To the legislation concerning special schemes for:
 - (aa) Agriculture;
 - (bb) Seamen;
 - (cc) Coal miners;
 - (dd) Railway employees;
 - (ee) Domestic employees;
 - (ff) Self-employed persons;
 - (gg) Commercial representatives;
 - (hh) Entertainers;
 - (ii) Authors;
 - (jj) Bullfighters;
 - (kk) Professional football players;
 - (ll) Schoolchildren and students;¹

2. In Austria, to the legislation concerning:

- (a) Sickness insurance;
- (b) Accident insurance;
- (c) Pensions insurance;
- (d) Unemployment insurance;
- (e) Family allowances.

(2) This Convention shall apply also to any legislation codifying, amending or supplementing the legislation specified in paragraph (1) above.

(3) This Convention shall not apply to legislation concerning a new scheme or new branch of social security.

(4) Legislation which arises out of agreements with third States or supra-national law shall not be taken into account in the application of this Convention.

Article 3. Except as otherwise provided, this Convention shall apply to persons who are or have been subject to the legislation specified in article 2, paragraph 1, and to their dependants and survivors.

Article 4. Except as otherwise provided in this Convention, for the purpose of applying the legislation of one of the Contracting States, the following shall be assimilated to nationals of that State:

- (a) Nationals of the other Contracting State;

¹ See note on page 192 of this volume.

(b) Refugees within the meaning of the Convention relating to the Status of Refugees of 28 July 1951¹ and the Protocol of 31 January 1967², who are habitually resident in the territory of one of the Contracting States.

Article 5. Except as otherwise provided in this Convention, pensions, annuities and other cash benefits, with the exception of unemployment cash benefits, acquired under the legislation of one of the Contracting States by a person specified in article 4, or his survivors, shall be paid even if the person concerned resides in the territory of the other Contracting State.

TITLE II. PROVISIONS TO DETERMINE WHICH LEGISLATION IS APPLICABLE

Article 6. Unless otherwise provided in articles 7 and 8, persons who are gainfully employed shall be subject to the legislation of the Contracting State in whose territory the gainful employment is exercised. The foregoing shall apply even where the place of residence of the employee or the principal place of business of his employer is in the territory of the other Contracting State.

Article 7. (1) Where an employed person who is in the service of an enterprise which normally employs him in the territory of one of the Contracting States is assigned by that enterprise to work on its behalf in the territory of the other Contracting State, the legislation of the first-mentioned State shall continue to apply, as though he were still employed in its territory, for the first 24 months of the period of assignment.

(2) Where an employed person in the service of an airline having its principal place of business in the territory of one of the Contracting States is assigned from that territory to work in the territory of the other Contracting State, the legislation of the first-mentioned State shall continue to apply as though he were still employed in its territory.

(3) Crews of seagoing vessels and other persons habitually employed on board shall be subject to the legislation of the Contracting State under whose flag the vessels sail. Persons habitually employed within the territorial waters, or in a port, of one of the Contracting States on board a vessel flying the flag of the other Contracting State but are not members of the crew shall be subject to the legislation of the first-mentioned State.

Article 8. Diplomats and career consuls, as also the administrative and technical staff of diplomatic and consular missions assigned to them, the domestic staff of such missions and private servants in the sole employ of diplomats, career consuls and mission members assigned to career consuls, shall be subject to the provisions of the Vienna Conventions, provided that such group of persons is included in the Convention on diplomatic relations³ or the Convention on consular relations.⁴

Article 9. At the request of both the employed person and the employer or of the employed person on his own behalf, the competent authority of the Contracting State whose legislation would be applicable under articles 6 to 8 may grant exemption from that legislation where the person concerned is subject to the

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 500, p. 95.

⁴ *Ibid.*, vol. 596, p. 261.

legislation of the other Contracting State. The nature and circumstances of the employment shall be taken into account in settling the matter. The competent authority of the other Contracting State shall be given an opportunity to express its views before the decision is taken. If the employed person is not employed in its territory, he shall be treated as if he were.

TITLE III. SPECIAL PROVISIONS

Chapter 1. SICKNESS, MATERNITY AND DEATH BENEFITS (GRANTS)

Article 10. For the purpose of entitlement to benefits, insurance periods completed under the legislation of both Contracting States shall be aggregated, provided that they do not overlap.

Article 11. (1) A person who is entitled to benefits in kind under the legislation of one of the Contracting Parties shall receive benefits in kind, at the expense of the competent insurance authority, during his stay in the territory of the other Contracting Party under the legislation applicable to that authority; where the stay is of a temporary nature, the foregoing shall apply only if his condition is such that the benefits must be provided immediately.

(2) In the case specified in paragraph 1, the provision of artificial parts of the body, large appliances and other major benefits in kind shall be subject to the authorization of the competent insurance authority, unless provision of the benefit cannot be postponed without seriously endangering the life or health of the person concerned.

(3) In the case specified in paragraph (1), cash benefits shall be paid by the competent insurance authority in accordance with the legislation applicable to that authority.

(4) The foregoing paragraphs shall be applicable *mutatis mutandis* to the dependants of persons covered by paragraph (1).

Article 12. Where a person who is in the territory of one of the Contracting States is entitled to benefits in kind in accordance with the legislation of both Contracting States, his entitlement deriving from the legislation of the other Contracting State shall be suspended.

Article 13. (1) The legislation governing pensioners' sickness insurance shall be applied to persons in receipt of pensions from the pension insurance scheme of the Contracting States in whose territory they habitually reside. Where a pension is provided solely under the legislation of the other Contracting State, it shall be deemed to be a pension from the first-mentioned Contracting State.

(2) Paragraph (1) shall apply *mutatis mutandis* to persons applying for a pension.

Article 14. In the cases specified in articles 11 and 13, paragraph (1), second sentence, benefits shall be provided:

—In Spain: by the National Social Security Institute (*Instituto Nacional de la Seguridad Social*);

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

Article 15. (1) The competent insurance authority shall reimburse to the insurance authority of the place of stay the amounts expended under articles 11 and 13, paragraph (1), second sentence, with the exception of administrative costs.

(2) In the interest of administrative simplification, the competent authorities may, at the request of the insurance authority concerned, agree, for all cases or for specific categories of cases, that lump-sum payments may be made in lieu of individual settlements.

Chapter 2. OLD-AGE, DISABILITY AND SURVIVORS' BENEFITS

Article 16. Where a person has completed insurance periods under the legislation of both Contracting States, such periods shall be aggregated for the purpose of acquiring entitlement to benefits, provided that they do not overlap.

Article 17. (1) Where a person who has completed insurance periods under the legislation of both Contracting Parties, or his survivors, claim benefits in accordance with the legislation of both Contracting States, the competent insurance authority shall determine the benefits in the following manner:

- (a) The insurance authority of each of the Contracting States shall determine, in accordance with the legislation which it applies, whether the person concerned is entitled to a benefit, account being taken of the aggregation of insurance periods;
- (b) Where entitlement to a benefit exists, the insurance authority shall first calculate the theoretical amount of the benefit to which the person concerned would be entitled if all insurance periods to be taken into account under the legislation of both Contracting States were to be taken into account only in the Contracting State concerned. If the amount of the benefit does not depend on the duration of the insurance periods, that amount shall be regarded as the theoretical amount;
- (c) The insurance authority shall then calculate, on the basis of the amount arrived at in accordance with subparagraph (b), the partial benefit for which it is liable according to the proportion which the duration of the insurance periods to be taken into account under its legislation bears to the total duration of the insurance periods to be taken into account under the legislation of both Contracting States.

(2) If the insurance periods to be taken into account for the purpose of calculating the benefit in accordance with the legislation of one of the Contracting States, amount *in toto* to less than 12 months, and if no entitlement to benefits exists on the basis of the said legislation, the insurance authority of the said Contracting State shall not provide any benefit. In such case, the insurance authority of the other State shall take over the said insurance periods and calculate the benefit as if those periods were completed under the legislation applicable to that State.

Article 18. For the purpose of applying the provisions of articles 16 and 17, the Austrian insurance authorities shall act in accordance with the following provisions:

1. For the purpose of determining under which pensions insurance scheme periods are deemed to have been completed and under which scheme the

- pension is to be granted, only Austrian insurance periods shall be taken into account.
2. Articles 16 and 17 shall not apply with respect to the conditions for entitlement to, and the granting of, the long-service bonus for miners under the insurance scheme for miners.
 3. For the purpose of applying the provisions of article 17, paragraph (1), the following provisions shall apply:
 - (a) Spanish insurance periods shall be aggregated without taking into account the Austrian legislation governing the calculation of insurance periods;
 - (b) Periods during which the insured person is in receipt of an old-age or invalidity pension shall also be deemed to be neutral periods, in accordance with Spanish legislation;
 - (c) The sole basis for calculating the pension shall be Austrian insurance periods;
 - (d) Contributions to the supplementary insurance scheme, the pensions insurance scheme for miners, the supplementary allowance to disabled persons and the equalization allowance shall not be taken into account.
 4. For the purpose of applying article 17, paragraph (1), subparagraphs (b) and (c), the real duration of the insurance periods shall be taken into account, even though they overlap.
 5. If, in applying article 17, paragraph (1), subparagraph (c), the total duration of the insurance periods to be taken into account under the legislation of both Contracting States exceeds the maximum duration prescribed under Austrian legislation for the purpose of calculating increments, the partial pension for which the insurance authority is liable shall be calculated according to the proportion which the duration of the insurance periods to be taken into account under Austrian legislation bears to the said duration of insurance periods.
 6. For the purpose of determining the supplementary allowance to disabled persons, article 17, paragraph (1), subparagraphs (b) and (c), shall apply; article 21 shall apply *mutatis mutandis*.
 7. The amount calculated in accordance with article 17, paragraph 1 (c), shall, where appropriate, be increased by increments for contributions paid, under the supplementary insurance scheme, by the supplementary benefit for miners, by the supplementary allowance for disabled persons and by the equalization allowance.
 8. Where, under Austrian legislation, the granting of benefits under the pensions insurance scheme for miners depends on the performance in specific industries of an activity which is essentially mining activity within the meaning of Austrian legislation, only such of the Spanish insurance periods as are based on employment in a similar industry involving the performance of a similar activity shall be taken into account.
 9. Special payments shall be payable on the same scale as the Austrian partial pension; article 21 shall apply *mutatis mutandis*.

Article 19. The competent Spanish insurance authorities shall apply articles 16 and 17 in accordance with the following provisions:

1. For the purpose of determining the pension basis, the competent insurance authority shall apply its own legislation.
2. Where a person entitled to benefits has completed in Austria all or part of the contributory period selected by him for determining his pension basis, the competent Spanish insurance authority shall establish that basis upon the minimum contributory bases applicable under its legislation, during the said period or part thereof, for employed persons belonging to the same occupational category as that to which the person concerned belonged or belongs in Spain, or upon the contributory bases selected by the employed person, as the case may be. In no case shall the pension basis for employed persons be less than the average amount of the minimum wage or salary of all occupational groups during the period selected.
3. In the application of article 17, paragraph (1), subparagraphs (b) and (c), solely the Spanish insurance periods shall be taken into account if they overlap with Austrian insurance periods.
4. Where, under Spanish legislation, the provision of certain benefits depends upon the insurance periods having been accumulated in an occupation subject to a special scheme, then, for the purpose of acquiring entitlement to such benefits, only those periods covered by the corresponding Austrian scheme or, failing that, the time periods completed in the same occupation under a different Austrian scheme, shall be aggregated provided that those periods do not overlap.
5. Where entitlement depends upon the employed person being subject to Spanish legislation at the time of the insurance contingency, this requirement shall be deemed to be met if the person concerned is subject to Austrian legislation during this period, or if, in lieu thereof, he can claim entitlement to benefits under Austrian legislation.
6. The competent insurance authority may grant the person concerned an advance during the processing of his file. The granting of such an advance shall be based principally on the neediness of the person concerned, once his entitlement has been confirmed.

Article 20. (1) Where under the legislation of one of the Contracting Parties entitlement to a benefit exists even without the application of article 16, the competent authority of such Contracting State shall be requested to grant the benefit which is payable solely on the basis of the insurance periods to be taken into account under the legislation applied by that insurance authority, so long as no entitlement to a corresponding benefit exists under the legislation of the other Contracting State.

(2) Any benefit granted in accordance with paragraph 1 shall be revised in accordance with the provisions of article 17, if entitlement to a corresponding benefit arises under the legislation of the other Contracting State. The revision shall take effect as from the date of commencement of the benefit payable under the legislation of the other Contracting State. The validity of earlier decisions shall not preclude such revision.

Article 21. Where a person is entitled to a benefit under the legislation of one of the Contracting States even without the application of article 16, and that benefit would be greater than the aggregate of the benefits calculated in accordance with article 17, paragraph 1(c), the insurance authority of that Contracting State

shall increase its partial benefit, thus calculated, by the amount of the difference between the aggregate of the benefits calculated in accordance with article 20, paragraph 1 (c), and the benefit which would be payable solely under the legislation applied by that insurance authority.

Chapter 3. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 22. (1) A person who is entitled to benefits in kind under the legislation of one of the Contracting States by reason of an industrial accident or occupational disease shall, if his place of stay is in the territory of the other Contracting State, receive benefits in kind at the expense of the competent insurance authority from the insurance authority of his place of stay, under the legislation applicable to that insurance authority. Article 11, paragraph (2), shall apply *mutatis mutandis*.

(2) In the cases specified in paragraph (1), benefits in kind shall be provided:
—In Spain: by the National Institute of Social Security;
—In Austria: by the Regional Sickness Fund for Manual and Salaried Workers competent for the place of stay of the person concerned.

(3) For the purpose of reimbursing the costs expended under paragraph (1), article 15 shall apply *mutatis mutandis*.

Article 23. Where compensation has to be given by reason of an occupational disease under the legislation of both Contracting States, the benefits shall be provided solely in accordance with the legislation of the Contracting State in whose territory an occupation was last exercised which may have given rise to such occupational disease; where necessary, every similar occupation in the territory of the other Contracting State shall be taken into account.

Chapter 4. UNEMPLOYMENT BENEFITS

Article 24. (1) Where a person has completed insurance periods under the legislation of both Contracting States, these periods, provided that they do not overlap, shall be aggregated for the purpose of acquiring entitlement to benefits.

(2) Paragraph (1) shall apply only where the person concerned has exercised an occupation for a total of four weeks in the last 12 months prior to submission of the claim in the Contracting State on the basis of whose legislation he claims entitlement, unless his employment ends for reasons beyond his control.

Article 25. The provisions of article 24, paragraph (1), concerning the aggregation of insurance period shall not apply for the purpose of acquiring entitlement to the maternity leave benefits (*Karenzurlaubsgeld*) payable under Austrian legislation.

Article 26. Spanish employed persons in Austria shall not be entitled to unemployment relief (*Notstandshilfe*).

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

Chapter 5. FAMILY ALLOWANCES

Article 27. If the legislation of one of the Contracting States provides for a period of waiting for entitlement to family allowances, similar periods completed in the territories of both Contracting States shall be aggregated.

Article 28. (1) Entitlement to family allowances under the legislation of one of the Contracting States shall extend also to those dependants whose place of residence is in the territory of the other Contracting State.

(2) As regards entitlement to family allowances, employed persons shall receive the same treatment as if their place of residence were situated solely in the territory of the Contracting State in which they work.

(3) As regards entitlement to family allowances, employed persons who are entitled to cash benefits under the sickness insurance or unemployment insurance scheme of one of the Contracting States shall be treated as if they worked in the territory of the Contracting State from whose insurance authorities they are in receipt of cash benefits.

Article 29. The amount of family allowances provided under Austrian legislation for dependants who reside permanently in Spain shall be 600 Austrian schillings per month for each child. After 1 January 1978, this amount shall be increased or reduced by the same percentage as that whereby family allowances for one child are increased or reduced in Austria.

Article 30. Family allowances for children which are provided under Spanish legislation shall also be provided in their entirety for such children as reside permanently in Austria.

Article 31. Where a person, during a calendar month, has met the conditions for entitlement in respect of a child in accordance with the legislations of both Contracting States, account having been taken of the provisions of this Convention, he shall receive the family allowances for that month, solely by virtue of the entitlement provided by the legislation of the State whose legislation was applicable to him at the beginning of the month.

Article 32. Where, in accordance with the legislation of both Contracting States, account having been taken of the provisions of this Agreement, entitlement to family allowances for a child exists in the territory of both Contracting States, such entitlement shall exist only in accordance with the provisions of the legislation of the Contracting State in whose territory the child resides.

Article 33. For the purposes of this chapter, children shall mean persons for whom family allowances are provided in accordance with the applicable legislation.

Article 34. Articles 4 and 5 shall not apply in respect of entitlement to family allowances.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 35. (1) The competent authorities may prescribe in an Agreement the administrative measures necessary for implementing this Convention. The said Agreement may be concluded even before the entry into force of this Convention. However, it shall not enter into force before this Convention.

(2) The competent authorities of the Contracting States shall inform one another of:

- (a) All measures taken to implement this Convention;
- (b) Any changes in their legislation which affect the implementation of this Convention.

(3) The authorities and insurance authorities of the Contracting States shall assist one another in the application of this Convention as though they were applying their own legislation. Such official assistance shall be free of charge.

(4) The insurance authorities and other authorities of the Contracting States may, for the purpose of applying this Convention, communicate directly with one another and with the persons concerned or their authorized representatives.

(5) The insurance authorities and other authorities of one of the Contracting States shall not reject claims or other documents submitted to them on the grounds that they are drawn up in the official language of the other Contracting State.

(6) Medical examinations, for the purposes of the legislation of one of the Contracting States, of persons who are in the territory of the other Contracting State shall, at the request of the competent agency, be arranged by the insurance authority of the place of stay at the expense of the said agency.

(7) With respect to judicial assistance, the relevant provisions concerning legal assistance in civil matters shall apply *mutatis mutandis*.

Article 36. In order to facilitate the application of this Convention, and in particular to establish a simple and speedy channel for communications between the insurance authorities concerned on both sides, liaison offices shall be set up.

Article 37. (1) Any exemption from or reduction of charges, stamp duties, court fees or registration fees provided for by the legislation of one of the Contracting States in respect of documents or instruments required to be produced for the purposes of that legislation shall be extended to similar documents or instruments required to be produced for the purposes of this Convention or of the legislation of the other Contracting State.

(2) Instruments and documents of any kind which are required to be produced for the purposes of this Convention shall be exempt from any requirement of legalization.

Article 38. (1) Claims, declarations or appeals which, for the purposes of this Convention or of the legislation of one of the Contracting States, are submitted to an authority, insurance authority or other competent agency of one of the Contracting States shall be regarded as claims, declarations or appeals submitted to an authority, insurance authority or other competent agency of the other Contracting State.

(2) A claim to a benefit submitted under the legislation of one of the Contracting States shall also be deemed to be a claim to any corresponding benefit covered by this Convention under the legislation of the other Contracting State; the foregoing 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.

(3) Claims, declarations or appeals which, for the purposes of the legislation of one of the Contracting States, must be submitted within a prescribed time-limit to an authority, insurance authority or other competent agency of that State may be submitted within the same time-limit to a corresponding authority, insurance authority or other competent agency of the other Contracting State.

(4) In the cases specified in paragraphs 1 to 3, the authority, insurance authority or other competent agency to which such claims, declarations or appeals are submitted shall transmit them without delay to the authority, insurance authority or other competent agency of the other Contracting State.

Article 39. (1) Insurance authorities which are liable for benefits under this Convention shall be held to discharge their liability validly by making payment in the currency of their own country.

(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 seat.

(3) Transfers of funds pursuant to this Convention shall be effected in accordance with the relevant agreements in force between the Contracting States at the time of the transfer.

Article 40. (1) Contributions payable to an insurance authority of one of the Contracting States may be collected in the territory of the other Contracting State, following the procedure applicable for the collection of contributions payable to the corresponding insurance authorities of that other Contracting State.

(2) Paragraph (1) shall apply, *mutatis mutandis*, to family allowances which were received without entitlement.

Article 41. (1) Where an insurance authority of one of the Contracting States has made an advance payment on a benefit, the insurance authority of the other Contracting State shall, at the request of the first-mentioned insurance authority, withhold subsequent payment of any corresponding benefit in respect of the same period to which entitlement exists under the legislation of the last-mentioned State. Where the insurance authority of one of the Contracting States has paid an amount in excess of the correct benefit for a period in respect of which the insurance authority of the other Contracting State is subsequently liable for a corresponding benefit, the overpayment, up to the amount subsequently payable, shall be deemed to be an advance payment within the meaning of the first sentence of this paragraph.

(2) Where an agency of one of the Contracting States has provided public assistance to a person during a period in respect of which entitlement to cash benefits subsequently arises under the legislation of the other Contracting State, the competent insurance authority of the last-mentioned State shall, at the request and for the account of the public assistance agency, withhold subsequent payments in respect of the same period, up to the amount of the public assistance provided, as though such assistance had been provided by a public assistance agency of the last-mentioned State.

Article 42. Where a person who is to receive benefits under the legislation of one of the Contracting States in respect of an injury sustained in the territory of the other Contracting State is entitled under the legislation of the last-mentioned

State, to claim compensation for such injury from a third party, the claim for compensation shall be transferred to the insurance authority of the first-mentioned Contracting State in accordance with the legislation applicable to that insurance authority.

Article 43. (1) Disputes between the two Contracting States concerning the interpretation or application of this Agreement shall be the subject of direct negotiations between the competent authorities of the two Contracting States.

(2) Where a 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 States, be submitted to an arbitral commission, whose composition shall be determined by agreement between the Contracting States. 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 spirit of this Convention. Its decisions shall be binding and final.

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 44. (1) This Convention shall apply also to benefits, other than lump-sum payments, for insurance contingencies which occurred prior to its entry into force. In the determination of benefits under this Convention, insurance periods completed prior to its entry into force shall also be taken into account.

(2) Paragraph (1) shall not give rise to any entitlement to benefits for periods prior to the entry into force of this Convention.

Article 45. The rights accorded under Austrian legislation to any person who has suffered impairment of his social security entitlements on political, religious or racial grounds shall not be affected by the Convention.

Article 46. (1) This Convention shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Vienna.

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

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

(4) In the event of denunciation, the provisions of this Convention shall continue to apply to acquired entitlements, irrespective of any restrictive provisions laid down by the schemes concerned to cover cases where an insured person is resident abroad.

Article 47. (1) Upon the entry into force of this Convention, the Agreement between the Spanish State and the Republic of Austria on Social Security of 23 October 1969 and its final protocol amended by the Additional Agreement of 14 November 1979 shall cease to have effect.

(2) Paragraph (1) shall not affect entitlements acquired before the entry into force of this Convention.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States have signed this Convention.

DONE at Madrid, on 6 November 1981, in two originals in the Spanish and German languages, both texts being equally authentic.

For Spain:

[Signed]

JOAQUIN ORTEGA SALINAS
Under-Secretary of the Ministry
of Foreign Affairs

For the Republic of Austria:

[Signed]

GERALD HINTEREGGER
General Secretary for Foreign Affairs

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

At the time of signing the Convention concluded today between Spain and the Republic of Austria, the plenipotentiaries of the two Contracting States have declared that agreement has been reached on the following:

I. *Ad article 2 of the Convention:*

1. Paragraph (1), subparagraph 2, does not refer to Austrian legislation on notarial insurance.

2. Paragraph (4) shall not apply to the rules governing acceptance of insurance periods.

II. *Ad article 4 of the Convention:*

1. It shall not affect the rules governing acceptance of insurance periods which are laid down in inter-state agreements concluded by the Contracting States with a third State.

2. It shall not affect the legislation of the two Contracting States governing the co-operation of insured persons and employers in agencies of the insurance authorities and of their federations, or in the tribunals of the social security administration.

3. It shall not affect the legislation governing the insurance of a person employed at an Austrian diplomatic mission in a third State or by members of that mission.

4. It shall not affect the provisions of the Austrian Federal Act of 22 November 1961 concerning rights to benefits or rights in course of acquisition under the pensions and accident insurance schemes arising out of employment abroad, nor shall it affect consideration of periods of self-employment completed in the territory of the former Austro-Hungarian monarchy, outside Austria.

III. *Ad article 5 of the Agreement:*

These provisions do not refer to the equalization allowance in Austrian law.

IV. *Ad article 8 of the Convention:*

These provisions shall apply *mutatis mutandis* to the Austrian trade delegates and to their assistants.

V. *Ad article 11 of the Convention:*

This shall apply in Austria, provided it is a matter of a temporary stay, in respect of treatment by physicians, dental surgeons and dentists who are engaged in the free pursuit of their profession, only to the following persons:

(a) Persons who are in Austria in the exercise of their occupation and their dependants accompanying them;

- (b) Persons who are staying temporarily in the territory of Austria in order to visit their dependants who are resident in that territory;
- (c) Persons who are in Austria for other reasons, if they have been given out-patient treatment at the expense of the Regional Sickness Fund for Manual and Salaried Employees competent for their place of stay.

VI. *Ad article 15 of the Convention:*

In the cases specified in article 13, paragraph (1), second sentence, the repayment of costs for beneficiaries of the Austrian pension insurance scheme shall be made from the Pensioners' Sickness Insurance contributions deposited with the Central Federation of Austrian Social Insurance Authorities (*Hauptverband der österreichischen Sozialversicherungsträger*).

VII. *Ad article 17 of the Convention:*

Paragraph (2), first sentence, under which benefits shall not be provided by the insurance authority of one of the Contracting States where the insurance periods completed in that State do not amount *in toto* to 12 months, shall not apply so far as the competent Spanish insurance authority is concerned when, considering article 16 of the Convention, the entitlement to survivors' benefits exists under Spanish legislation.

VIII. *Ad articles 28 to 30 of the Convention:*

1. Entitlement to family allowances shall exist only where the employment engaged in is not inconsistent with the law in force on the employment of foreigners.

2. Entitlement to family allowances under Austrian law shall exist only where the employment or habitual residence in Austria lasts for at least one calendar month; the aggregation of periods provided for in article 27 shall not apply.

3. Spanish nationals shall be entitled to the increased family allowance granted to disabled children under Austrian law only for such of their children as are resident in Austria.

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

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

DONE at Madrid, on 6 November 1981, in four copies, two in the Spanish and two in the German languages, both texts being equally authentic.

For Spain:

[Signed]

JOAQUIN ORTEGA SALINAS
Under-Secretary of the Ministry
of Foreign Affairs

For the Republic of Austria:

[Signed]

GERALD HINTEREGGER
General Secretary for Foreign Affairs

[TRANSLATION — TRADUCTION]

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

Pursuant to article 35, paragraph (1), of the Convention between Spain and the Republic of Austria on social security of 6 November 1981² (hereinafter referred to as “the Convention”), the competent authorities have agreed on the following provisions for implementing the Convention:

TITLE I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purposes of this Agreement, the terms specified in the Convention shall have the meaning ascribed to them therein.

Article 2. LIAISON OFFICES

(1) The liaison offices within the meaning of article 36 of the Convention shall be:

—In Spain: the National Institute of Social Security;

—In Austria:

—For sickness, accidents and pensions insurance, the Central Federation of Austrian Social Insurance Authorities;

—For unemployment insurance, the Labour Office of *Land* Vienna;

—For family allowances, the Federal Ministry of Finance.

(2) The liaison offices shall be responsible for the tasks specified in this Agreement. For the purpose of implementing the Convention on social security, they may communicate directly with one another and with the persons concerned or their representatives. They shall assist one another in the implementation of the Convention.

TITLE II. APPLICATION OF THE PROVISIONS CONCERNING APPLICABLE LEGISLATION

Article 3. ASSIGNMENTS

In the cases specified in article 7, paragraph (1), of the Convention, the fact that the legislation of the sending State continues to apply shall be certified. The certificate shall be issued:

—In Spain: by the National Institute of Social Security;

—In Austria: by the insurance authority for the sickness insurance scheme.

¹ Came into force on 1 July 1983, the date of entry into force of the Convention of 6 November 1981 on social security, in accordance with article 18 of the Agreement.

² See p. 210 of this volume.

TITLE III. APPLICATION OF THE SPECIAL PROVISIONS CONCERNING VARIOUS TYPES OF BENEFIT

Chapter 1. SICKNESS, MATERNITY AND DEATH (DEATH GRANT)

Article 4. AGGREGATION OF INSURANCE PERIODS

For the purpose of ensuring application of article 10 of the Convention by an insurance authority of one of the Contracting States, the person concerned shall submit a certificate for the insurance periods to be taken into account in accordance with the legislation of the other Contracting State. The certificate shall be issued:

—In Spain: by the National Institute of Social Security;

—In Austria: by the insurance authority for the sickness insurance scheme.

Article 5. PROVISION OF BENEFITS IN KIND DURING A TEMPORARY STAY

(1) For the purpose of applying article 11, paragraph (1), of the Convention in the case of a temporary stay, a certificate issued by the competent insurance authority establishing entitlement to benefits must be submitted to the insurance authority of the place of stay which is appropriate under article 14 of the Convention.

(2) The insurance authority of the place of stay shall verify the sickness, as if the person concerned was a person insured by it, and shall report the findings to the competent insurance authority.

(3) In the case of hospitalization, the insurance authority of the place of stay which is appropriate under article 14 of the Convention shall notify the competent insurance authority without delay of the date of hospital admittance, the probable length of the stay in the hospital and the date of release.

(4) For the purpose of applying article 11, paragraph (2), of the Convention, a list of the artificial parts of the body, large appliances and other major benefits in kind is annexed to this Agreement. If such benefits have been provided in an emergency, the insurance authority of the place of stay which is appropriate under article 14 of the Convention shall immediately notify the competent insurance authority to that effect.

Article 6. PROVISION OF BENEFITS IN KIND IN THE CASE OF HABITUAL RESIDENCE

(1) For the purpose of applying article 11, paragraph (1), of the Convention, in the case of habitual residence the persons concerned shall register with the insurance authority of the place of residence which is appropriate under article 14 of the Convention and shall present for that purpose a certificate issued by the competent insurance authority which establishes entitlement to benefits in kind. This certificate shall remain valid as long as the insurance authority of the place of residence has not been notified by the competent insurance authority of its cancellation. The insurance authority of the place of residence shall report all registrations to the competent insurance authority.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to the pensioners or applicants for pensions referred to in article 13, paragraph (1),

second sentence, and paragraph (2) of the Convention, and to their dependants, as the case may be.

(3) In the cases specified in paragraph (1), the provisions of article 5, paragraph (4), shall apply *mutatis mutandis*.

Chapter 2. OLD-AGE, DISABILITY AND SURVIVORS' BENEFITS

Article 7. PROCESSING OF CLAIMS TO BENEFITS

(1) The competent insurance authorities shall inform each other without delay of claims to benefits to which the provisions of title III, chapter 2, are applicable, in connection with the provisions of article 38, paragraph (2), of the Convention.

(2) Accordingly, the competent insurance authorities shall also notify each other of the other facts which were taken into account for the purpose of determining entitlement to benefits, enclosing a medical report, where appropriate.

(3) Certification of the personal data entered on the forms may be submitted in lieu of the original documents.

(4) The competent authorities shall inform one another of the decisions taken in the determination procedure.

Article 8. PAYMENT OF PENSIONS

The competent insurance authorities shall pay pensions in respect of old-age, disability and survivors' benefits directly to the beneficiaries.

Article 9. STATISTICAL RECORDS

The competent insurance authorities shall transmit to the appropriate liaison offices a statistical record, to be drawn up annually, of payments made in the other Contracting State in accordance with article 8. These statistical records shall be exchanged by the liaison offices.

Chapter 3. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 10. PROVISION OF BENEFITS IN KIND

In the cases specified in article 22, paragraph (1), of the Convention, articles 5 and 6 shall apply *mutatis mutandis*.

Article 11. PAYMENT OF ANNUITIES AND STATISTICAL RECORDS

Articles 8 and 9 shall apply to annuities *mutatis mutandis*.

Chapter 4. UNEMPLOYMENT BENEFITS

Article 12. AGGREGATION OF INSURANCE PERIODS

(1) In the cases referred to in article 24 of the Convention, the person concerned shall submit to the appropriate insurance authority a certificate concerning the insurance periods which he has completed under the legislation of the other Contracting State.

(2) The certificate shall be issued at the request of the person concerned by the insurance authority specified in article 4.

(3) Where the person concerned has already submitted a certificate in accordance with article 4, the appropriate insurance authority shall request the insurance authority to which the certificate was submitted to notify it of the insurance periods validated therein.

(4) Where the person concerned does not submit a certificate in accordance with subparagraph (1), the appropriate insurance authority of one of the Contracting States may request the competent insurance authority of the other Contracting State to issue and transmit the certificate.

Chapter 5. FAMILY ALLOWANCES

Article 13. PROOF OF WAITING PERIODS

For the purpose of establishing the waiting periods referred to in article 27 of the Convention, the competent insurance authorities shall issue the appropriate certificates specifying the dates and duration of such periods as were completed in its territory.

Article 14. CERTIFICATE OF FAMILY STATUS

(1) For the purpose of obtaining family allowances, the Finance Offices in Austria and the National Institute of Social Security in Spain shall issue certificates providing personal data concerning the employed person and the dependants for whom family allowances are claimed. These certificates shall include data on the permanent place of residence of the children, their family status and, where appropriate, their own income.

(2) These certificates shall be valid for one year from the date of issue.

Article 15. CERTIFICATE OF FAMILY ALLOWANCES PROVIDED

The competent insurance authority of each Contracting State shall issue upon request a certificate of the family allowances provided by it, where such certificate is necessary for establishing entitlement to family allowances in the other Contracting State. This certificate shall indicate:

- (a) The given names and family names of the dependants for whom the family allowances were provided;
- (b) The period for which the family allowances were provided;
- (c) The amount of the family allowances provided.

TITLE IV. FINANCIAL PROVISIONS

Article 16

For the purpose of applying articles 15 and 22, paragraph (3), of the Convention, claims for reimbursement of the costs of benefits in kind shall be presented after the case is closed or for each calendar half-year and shall be paid within two months from the date of receipt of the claim.

TITLE V. FINAL PROVISIONS

Article 17. STANDARD FORMS

Models of the certificates provided for in this Agreement shall be drawn up by the liaison offices concerned.

Article 18. ENTRY INTO FORCE

This Agreement shall enter into force on the same date as the Convention.

DONE at Vienna, on 8 April 1983, in two originals in the Spanish and German languages, both texts being equally authentic.

For the Spanish side:

[Signed]

JUAN LUIS PAN DE SORALUCE OLMOS
Ambassador of Spain at Vienna

For the Austrian side:

[Signed]

JOSEF SCHUH
Ministerial Adviser
in the Welfare Administration

[Signed]

LEOPOLD WOHLMANN
Ministerial Adviser
to the Federal Ministry of Finance

ANNEX

LIST OF ARTIFICIAL PARTS OF THE BODY, LARGE APPLIANCES
AND OTHER MAJOR BENEFITS IN KIND (ARTICLE 5, PARAGRAPH 4)

1. Artificial parts of the body, orthopaedic appliances and braces, including orthopaedic corsets lined with fabric, together with replacement parts, accessories and instruments;
2. Orthopaedic footwear and, where appropriate, the corresponding normal (non-orthopaedic) shoe;
3. Prosthesis of the jaw and face, wigs;
4. Moulds (replicas of various parts of the body) used to ensure that items 1 to 3 above fit properly;
5. Artificial eyes, contact lenses, magnifying and telescopic spectacles;
6. Hearing aids, especially acoustic and phonetic appliances;
7. Dental prosthesis (fixed and removable) and occlusion prosthesis for the oral cavity;
8. Carriages for invalids, wheel-chairs and other mechanical means of locomotion;
9. Replacement of articles referred to in items 1 to 8 above;
10. Guide-dogs for the blind;
11. Medical treatment and care at convalescent homes and sanatoria;
12. Measures of medical and vocational rehabilitation;
13. All other curative and protective appliances and similar articles the cost of which exceeds, in Austria, 5,000 schillings and, in Spain, 25,000 pesetas.