

No. 23231

**AUSTRIA
and
ITALY**

**Agreement on social security (with final protocol). Signed at
Vienna on 21 January 1981**

Authentic texts: German and Italian.

Registered by Austria on 9 January 1985.

**AUTRICHE
et
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**Convention de sécurité sociale (avec protocole final). Signée
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Textes authentiques : allemand et italien.

Enregistrée par l'Autriche le 9 janvier 1985.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE ITALIAN REPUBLIC ON SOCIAL SECURITY

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

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

Have decided to conclude an Agreement which shall supersede the Agreement of 30 December 1950,² and have for this purpose appointed as their Plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Willibald Pahr,

The President of the Italian Republic: The Under-Secretary of State in the Ministry of Foreign Affairs, Senator Libero Della Briotta.

The Plenipotentiaries, after exchanging their full powers, found in good and due form, have agreed on the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1. (1) For the purposes of this Agreement, the terms listed below have the meanings indicated:

1. "Austria" means the Republic of Austria; "Italy" means the Italian Republic;

2. "Legislation" means the laws, ordinances and regulations relating to the branches of social security specified in article 2;

3. "Competent governmental authority" means:
— In relation to Austria, the Federal Minister of Social Administration and, with respect to family allowances, the Federal Minister of Finance;
— In relation to Italy, the Minister of Labour and Social Welfare and, with respect to health matters, the Minister of Health;

4. "Insurance authority" means the institutions or authority responsible for applying the legislation, or any part thereof, specified in article 2;

5. "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 has title to benefit, or would have title if he were resident in the territory of the Contracting State in which he was last insured;

¹ Came into force on 1 July 1983, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Rome on 28 April 1983, in accordance with article 42 (2); with retroactive effect from 1 January 1967 for article 41, in accordance with article 42 (3).

² United Nations, *Treaty Series*, vol. 1365, p. 207.

6. "Dependent" means a dependant, as defined in the legislation of the Contracting State in which the insurance authority liable for the benefits has its seat;

7. "Insurance periods" means contribution periods and equivalent periods valid as such under the legislation of a Contracting State;

8. "Cash benefit", "pension" or "annuity" means a cash benefit, a pension or an annuity including all parts thereof from public funds, all supplements, adjustments amounts, allowances and lump-sum payments and payments made as refunds of contributions.

(2) For the purposes of this Agreement other terms have the meanings attributed to them in the relevant legislation.

Article 2. (1) This Agreement shall apply:

1. In Austria, to the legislation concerning:

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

2. In Italy, to the legislation concerning:

- (a) Sicknes insurance (sicknes and maternity);
- (b) Tuberculosis insurance;
- (c) Disability, old-age and survivors' insurance;
- (d) Industrial accident and occupational disease insurance;
- (e) Unemployment insurance;
- (f) Family allowances;
- (g) Special insurance schemes for specific occupations, including special insurance schemes for specific self-employed groups, in so far as they concern the above-mentioned risks or benefits.

(2) This Agreement shall apply also to all legislative provisions which amend or supplement the legislation defined in paragraph 1.

(3) This Agreement shall not apply to legislation relating to a new scheme 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 application of this Agreement.

Article 3. This Agreement shall apply, except as otherwise provided, to nationals of the Contracting States, to persons who are or have been subject to the legislation of one or both of the Contracting States, and to persons who derive their rights from such persons.

Article 4. 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;

- (b) Refugees within the meaning of the Convention relating to the Status of Refugees of 28 July 1951¹ and the Protocol thereto of 31 January 1967,² who are habitually resident in the territory of one of the Contracting States;
- (c) Stateless persons within the meaning of the Convention relating to the Status of Stateless Persons of 28 September 1954,³ who are habitually resident in the territory of one of the Contracting States.

Article 5. (1) Pensions, annuities and other cash benefits payable to a national of one of the Contracting States and to his dependants and survivors under the legislation of one of the Contracting States shall, unless otherwise provided in this Agreement, be paid also where the person entitled is resident in the territory of the other Contracting State.

(2) Paragraph 1 shall apply, *mutatis mutandis*, to a refugee within the meaning of the Convention relating to the Status of Refugees of 28 July 1951 and of the Protocol thereto of 31 January 1967, and to a stateless person within the meaning of the Convention of 28 September 1954 relating to the Status of Stateless Persons.

(3) Benefits under paragraph 1 which are covered in the insurance of one of the Contracting States shall be paid to nationals of the other Contracting State 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 State resident in the territory of that third State.

(4) Paragraph 1 shall not affect the legislation on measures for maintaining, improving and restoring fitness for work.

Article 6. For the purpose of qualifying for voluntary insurance, in accordance with the legislation of a Contracting State, the insurance periods completed under the legislation of that State shall, where necessary, be counted as insurance periods completed under legislation of the other Contracting State.

TITLE II. IMPLEMENTING LEGISLATION

Article 7. Unless otherwise provided in articles 8 and 9, the legislation of the Contracting State in whose territory the gainful employment is engaged in shall apply. This shall apply also to wage earners if the wage earner is resident in, or the place of business of his employer is in, the territory of the other Contracting State.

Article 8. (1) Persons normally employed by an enterprise in the territory of one of the Contracting States, or persons assimilated thereto, who are sent by that enterprise to the territory of the other Contracting State shall, until the end of the twenty-fourth calendar month after being sent there, continue to be subject to the legislation of the first-mentioned Contracting State as if they were still employed in its territory.

(2) A person employed by an airline having its principal place of business in the territory of one of the Contracting States who is sent from that territory to the territory of the other Contracting State shall continue to be subject to the

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

legislation of the first-mentioned Contracting State as if he were still employed in its territory.

(3) The crew of a seagoing vessel and other persons employed otherwise than purely temporarily on board a seagoing vessel shall be subject to the legislation of the Contracting State whose flag the vessel flies.

(4) Persons employed in an enterprise which extends from the territory of one of the Contracting States into the territory of the other Contracting State shall be deemed to be employed in the territory of the Contracting State in which the enterprise has its principal place of business.

(5) Paragraph 4 shall apply, *mutatis mutandis*, to self-employed persons.

Article 9. (1) In the case of diplomats and career consuls and the administrative and technical staff of posts headed by diplomats and career consuls, and in the case of members of the service staff of such posts and private servants in the exclusive employ of diplomats, career consuls and members of posts headed by career consuls — in so far as this category of persons is covered by the Vienna Convention on Diplomatic Relations¹ or the Vienna Convention on Consular Relations² the provisions of those Conventions shall apply.

(2) In the case of nationals of one of the Contracting States employed in scientific or cultural institutes or schools of that Contracting State in the territory of the other Contracting State and of persons of the same nationality employed in their private service, the legislation of the Contracting State to which the institute or school belongs shall apply, provided that they have not requested, within three months from the start of their employment, to be subject to the legislation of the Contracting State in which they are employed.

Article 10. At the joint request of the employed persons and employers concerned, or at the request of other self-employed persons, the competent governmental authority of the Contracting State whose legislation should apply under articles 7 to 9 may grant exemption from the effects of that legislation when the person in question becomes subject to the legislation of the other Contracting State. The nature and circumstances of the gainful activity shall be taken into account in that decision. The competent governmental authority of the other Contracting State shall be given an opportunity to express its views before this decision is taken. If the employed person is not employed in the territory of the last-mentioned Contracting State, he shall be treated as if he were employed there.

TITLE III. SPECIAL PROVISIONS

CHAPTER I. SICKNESS AND MATERNITY

Article 11. Where a person has completed insurance periods in accordance with the legislation of both Contracting States, such periods shall be aggregated, for the establishment of entitlement to benefits in so far as they do not overlap.

Article 12. (1) A person who fulfils the requirements for entitlement to benefits under the legislation of one of the Contracting States, or who would fulfil them if he were situated in the territory of that State, shall be entitled to

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

benefits in kind during a temporary stay in the territory of the other Contracting State at the expense of the competent insurance authority from the insurance authority of his place of stay under the legislation of the last-mentioned authority; this shall apply to a temporary stay only when his condition makes the provision of such benefits necessary.

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

(3) The provisions of the foregoing paragraphs shall apply also, *mutatis mutandis*, to dependants.

(4) Where a person staying in the territory of one of the Contracting States is entitled to benefits in kind under the legislation of both Contracting States, entitlement under the legislation of the other Contracting State shall be suspended.

Article 13. (1) In the case of persons in receipt of a pension from the pensions insurance of the Contracting States, the legislation on sickness insurance for pensioners of the Contracting State in whose territory such pensioners reside shall apply. Where a pension is provided only under the legislation of the other Contracting State, it shall be regarded as a pension under the legislation of the first-mentioned Contracting State.

(2) Paragraph 1 shall apply, *mutatis mutandis*, to persons claiming a pension.

Article 14. The benefits referred to in article 12, paragraphs 1 and 3, and in article 13 shall be provided:

- In Austria, by the Regional Sickness Fund for Manual and Salaried Workers competent for the place of stay of the person concerned;
- In Italy, by the local health establishment competent for the place of stay of the person concerned.

Article 15. (1) The competent insurance authority shall reimburse the insurance authority of the place of stay for the costs of benefits provided in the cases referred to in article 12 and article 13, paragraph 1, second sentence, except for administrative costs.

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

CHAPTER 2. OLD-AGE, DISABILITY AND SURVIVORS BENEFITS (PENSIONS)

Article 16. (1) Where a person has completed insurance periods in accordance with the legislation of each of the two Contracting States, such periods shall, unless otherwise provided for, be aggregated for the establishment of entitlement to benefits in so far as they do not overlap.

(2) Paragraph 1 shall apply, *mutatis mutandis*, to benefits provided at the discretion of an insurance authority.

Article 17. (1) Where a pension is claimed by a person who has completed insurance periods under the legislation of both Contracting States, or by

his survivors, the competent insurance authority shall establish the benefits as follows:

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

(2) Where, for calculating the benefit, the insurance periods completed under the legislation of one of the Contracting States do not amount *in toto* to twelve months and no entitlement to benefits solely on the basis of these periods exists under that legislation, no benefit shall be granted under that legislation; in that case, the insurance authority of the other Contracting State shall take the above-mentioned periods into consideration in respect of the acquisition of an entitlement to benefits and the scale thereof as if they were periods completed under the legislation applicable to it.

Article 18. The competent Austrian insurance authorities shall apply articles 16 and 17 according to the following rules:

1. For the purpose of determining the insurance authority, only Austrian insurance periods shall be taken into account.

2. Articles 16 and 17 shall not apply to the long-service bonus for miners from the Austrian pensions insurance scheme for miners.

3. In the implementation of article 17, paragraph 1, the following rules shall apply:

- (a) Italian insurance periods shall be taken into account without regard to Austrian accountability legislation;
- (b) Periods during which the person insured is entitled to an old-age or disability insurance pension under Italian legislation shall also count as neutral periods;
- (c) The basis of calculation shall consist exclusively of insurance periods completed under the Austrian pensions insurance scheme;
- (d) Contributions under the supplementary insurance scheme, the supplementary benefits scheme for miners, the supplementary allowance to disabled persons and the equalization allowance shall not be taken into account.

4. For the purpose of implementing article 17, paragraph 1, subparagraphs (b) and (c), overlapping insurance periods shall be taken into account in accordance with their actual duration.

5. If, in the implementation of 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 fixed by Austrian legislation for calculating the increased benefit, the partial pension payable shall be calculated on the basis of the ratio between the duration of the insurance periods to be taken into account under Austrian legislation and the aforementioned maximum of the insurance months.

6. The supplementary allowance to disabled persons shall be calculated in accordance with article 17, paragraph 1, subparagraphs (b) and (c); article 21 shall apply *mutatis mutandis*.

7. The amount calculated on the basis of article 17, paragraph 1, subparagraph (c), shall, if required, be increased by supplements for contributions paid to the supplementary insurance scheme, by the supplementary benefits scheme 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 upon the performance in specific industries of an activity which is essentially a mining activity within the meaning of Austrian legislation, only those Italian insurance periods shall be taken into account which are based on employment in a similar Italian industry involving the performance of a similar activity.

9. Special payments under the Austrian pensions insurance scheme shall be payable on the same scale as the Austrian partial benefit; article 21 shall apply *mutatis mutandis*.

Article 19. The competent Italian insurance authorities shall apply articles 16 and 17 according to the following rules:

1. Where the Italian legislation makes it a condition for awarding certain benefits that the insurance periods must have been completed in an occupation subject to a special scheme, for the purpose of providing such benefit Austrian insurance periods shall be taken into account only in so far as they have been completed in the same occupation. Where, although such periods are taken into account, the person insured does not fulfil the requirements for entitlement to such benefits, such periods shall be taken into account for providing benefits under the general scheme.

2. (a) The insurance authority responsible for the calculation shall first determine the amount of benefit to which the insured person would be entitled according to articles 16 and 17 if all the insurance periods to be taken into account under an Italian insurance scheme had been completed. So far as insurance periods completed under Austrian legislation are concerned, the contributions or remuneration for such periods shall be taken into account only on the basis of the average contribution or remuneration established for the insurance periods completed under Italian legislation.

(b) The insurance authority shall then determine the actual amount of the benefit payable on the basis of the amount calculated under subparagraph (a) above in the ratio of the insurance periods to be taken into account under Italian legislation to the total number of insurance periods to be taken into account under the legislation of both Contracting States; the periods to be taken into account

under Austrian legislation, however, shall be taken into account only in so far as they do not overlap with the Italian periods.

(c) Where the total duration of the insurance periods to be taken into account under the legislation of both Contracting States is greater than the maximum prescribed under Italian legislation for granting a full benefit, the competent insurance authority shall, when applying subparagraph (b), take that maximum into consideration instead of the total duration of the periods concerned.

3. Where a person meets all the requirements prescribed under Italian legislation for claiming a benefit and there is no need to add up the insurance periods to be taken into account under Austrian legislation, the Italian insurance authority shall be obliged to provide the amount of the benefit due exclusively on the basis of the insurance periods to be taken into account under Italian legislation. This shall also apply in cases where a claim exists, under Austrian legislation, to a benefit calculated pursuant to articles 16 and 17.

Article 20. (1) Where, under Austrian legislation, pension entitlement exists even without the application of article 16, the competent Austrian insurance authority shall grant the pension payable solely on the basis of the insurance periods to be taken into account under the legislation applicable by it, provided that no entitlement to corresponding benefits exists under Italian legislation.

(2) Where an entitlement to a corresponding benefit arises under Italian legislation, a pension determined under paragraph 1 shall be revised in accordance with article 17. The revision shall take effect on the date on which the benefit under Italian legislation begins. The validity of earlier decisions shall not preclude such revision.

Article 21. Where a person is entitled to benefit under Austrian legislation even without the application of article 16, and where the benefit would be greater than the aggregate of the Austrian benefit, calculated pursuant to article 17, paragraph 1, subparagraph (c), and the Italian benefit, the Austrian insurance authority shall pay, as a partial benefit, its own benefit thus calculated plus a supplement consisting of the difference between this aggregate and the benefit which would be payable solely under the legislation applicable by it.

CHAPTER 3. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 22. (1) A person who is entitled, as the result of an industrial accident or occupational disease, to sickness benefits under the legislation of one Contracting State, while staying in the other Contracting State, shall receive sickness benefits in kind, at the expense of the competent insurance authority, from the insurance authority of his place of stay in accordance with the laws applicable to such insurance authority. Article 12, paragraph 2, shall apply *mutatis mutandis*.

(2) In the cases provided for in paragraph 1, sickness benefits in kind shall be granted:

- In Austria, by the Regional Sickness Fund for Manual and Salaried Workers competent for the place of stay;
- In Italy, by the local health establishment competent for the place of stay of the person concerned.

(3) Article 15 shall apply, *mutatis mutandis*, for the reimbursement of costs incurred under paragraph 1.

(4) In the cases referred to in paragraph 1, the cash benefits shall be provided by the competent insurance authority under its own legislation.

Article 23. Where an accident befalls a national of one of the two Contracting States who proceeds to the other State to begin work on the basis of a regular employment contract, while he is travelling by the shortest route to his place of gainful employment without interrupting his journey, the insurance authority of the last-mentioned State shall pay compensation for such accident in accordance with the accident insurance provisions; the same shall apply in the case of an accident that befalls an employed person during the return to his State of origin immediately following termination of the employment contract on the basis of which he had proceeded to the other State.

Article 24. (1) If an occupational disease is compensable under the legislation of both Contracting States, benefits shall be granted only under the legislation of the Contracting State in whose territory an occupation liable to cause such an occupational disease was last engaged in. In such a case, where necessary, every such employment in the territory of the other Contracting State shall be taken into account.

(2) In cases of silicosis or asbestosis, the insurance authority of the other Contracting State shall reimburse to the insurance authority liable under paragraph 1 for providing the benefits, one half of the amount disbursed as cash benefits including annuities; this shall not apply where the employment period, in the said other Contracting State, which might have caused the silicosis or asbestosis is less than ten per cent of the total employment period which might have caused the silicosis or asbestosis in both Contracting States.

CHAPTER 4. UNEMPLOYMENT BENEFITS

Article 25. (1) For the purposes of acquiring entitlement and of determining the duration of the unemployment benefit, the periods of contributory employment completed under the legislation of the other Contracting State shall be aggregated, provided that, during the last 12 months prior to the date of the application for unemployment benefits, the person concerned was employed in that State for a total period of not less than 13 weeks in an occupation covered by compulsory unemployment insurance.

(2) The requirement specified in paragraph 1 concerning the minimum period of employment of 13 weeks shall not apply to unemployed persons who became unemployed involuntarily or who possesses the nationality of the State in which they apply for unemployment benefits.

(3) The period of entitlement shall be reduced by the period during which the unemployed person received benefits from the other Contracting State within the last 12 months prior to the date of application for unemployment benefits.

(4) Where an unemployed person received unemployment payments not in the Contracting State in which he was employed and in which his unemployment began (employment country) but in the other Contracting State, the insurance authority of that other Contracting State shall have the right to obtain from the insurance authority of the employment country reimbursement of the unemployment payments made by it on the following conditions and to the following extent:

Where within the last two years prior to the start of unemployment, the period of employment in the employment country has amounted to:

- (a) At least 26 weeks, for a maximum of 60 benefit days;
- (b) At least 52 weeks, for a maximum of 120 benefit days;
- (c) More than 26 weeks, but less than 52 weeks, for which benefits were paid for a period of days in proportion to the relevant periods of work, having regard to the provisions of subparagraphs (a) and (b).

(5) Where the insurance authority of the employment country has already made unemployment payments to the unemployed person for a certain number of days before unemployment payments were made to him in the other Contracting State, the claim to reimbursement under paragraph 4 shall be reduced by such number of days.

(6) Article 4 shall not apply to the Austrian legislation on public relief. The aggregation referred to in paragraph 1 and in article 26, paragraph 1, shall not apply to maternity-leave benefits.

(7) Article 5 shall not apply to unemployment benefits.

Article 26. (1) Frontier workers shall receive unemployment benefits in the Contracting State in whose territory they are habitually resident. For the purposes of ascertaining whether the qualification requirement is met and of determining the period of entitlement, the periods of contributory employment in the other Contracting State shall be taken into account.

(2) Frontier workers who were employed for at least 18 months in the employment country directly prior to the start of unemployment within the last three years shall, however, receive unemployment payments in that Contracting State. Article 25, paragraph 3 shall apply.

(3) For the purposes of this article "frontier worker" shall mean a person who is employed in the territory of a Contracting State, is resident in the territory of the other Contracting State and returns to the last-mentioned State as a rule every day or at least once a week.

CHAPTER 5. FAMILY ALLOWANCES

Article 27. (1) A person who is gainfully employed in one of the Contracting States shall be entitled under the legislation of that State to family allowances also for such children as are resident in the other Contracting State.

(2) For the purpose of claiming family allowances, employed persons shall be treated as if they were resident solely in the Contracting State in which the employment is engaged in.

(3) In cases where a person is employed in the territory of one of the Contracting States to whom, within the meaning of article 8 or article 10, the legislation of the other Contracting State applies, such of the children as reside in the first-mentioned Contracting State shall be treated as if they were resident in the Contracting State whose legislation applies to them.

Article 28. Family allowances granted for children who are resident in the other Contracting State shall be paid the full amount of the benefit as is provided for children who are resident in the Contracting State under whose legislation the family allowances are granted.

Article 29. (1) Where the legislation of one of the Contracting States provides for specific waiting periods for acquiring entitlement to family allowances, the similar periods completed in the other Contracting State shall be taken into account.

(2) Employed persons in receipt of cash benefits under the legislation on sickness or unemployment insurance of one of the Contracting States, shall be treated, as regards entitlement to family allowances, as if they were employed in the Contracting State under whose legislation they receive such cash benefits.

Article 30. Where, under the legislation of both Contracting States and having regard to this Agreement, the conditions for granting family allowances in respect of a child in both Contracting States are met, family allowances in respect of such child shall be granted solely under the legislation of the Contracting State in which the child is resident.

Article 31. Children within the meaning of this chapter are persons for whom family allowances are provided under the applicable legislation.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 32. (1) The competent governmental authorities of the two Contracting States shall prescribe in an arrangement the administrative measures necessary for the implementation of this Agreement. Such arrangement may be concluded before the entry into force of this Agreement but may not enter into force earlier than simultaneously with this Agreement.

(2) The competent governmental authorities of both Contracting States shall inform each other concerning:

- (a) All measures taken in implementing this Agreement;
- (b) All changes in their legislation which affect the implementation of this Agreement.

(3) In the implementation of this Agreement, the administrative authorities and insurance authorities of the two Contracting States shall assist each other as if applying their own legislation. Such assistance shall be free of charge. The competent governmental authorities of the two Contracting States may, however, jointly determine the reimbursement of certain costs.

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

(5) The insurance authorities, governmental authorities and courts of one of the Contracting States 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 State.

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

(7) In matters of judicial assistance, the provisions applicable at the time to legal assistance in civil cases shall apply.

Article 33. In order to facilitate implementation of this Agreement and, in particular, to establish simple and rapid communication between the insurance authorities concerned on both sides, the competent governmental authorities shall establish liaison offices.

Article 34. (1) Any exemption from or reduction of charges, stamp duties, court fees or registration fees which is provided for by the legislation of one of the Contracting States in respect of certificates or other papers required to be submitted in implementation of that legislation shall be extended to corresponding certificates and other papers required to be submitted in implementation of this Agreement or the legislation of the other Contracting State.

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

Article 35. (1) Claims, declarations or appeals which, in implementation of this Agreement or the legislation of one of the Contracting States, are submitted to a governmental authority, insurance authority or other competent agency of one of the Contracting States shall be considered as claims, declarations or appeals submitted to a governmental 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 a corresponding benefit covered by this Agreement under the legislation of the other Contracting State. This 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, in implementation of the legislation of one of the Contracting States, must be submitted within a prescribed time-limit to a governmental authority, insurance authority or other competent agency of that Contracting State, may be submitted within the same time-limit to the corresponding office of the other Contracting State.

(4) In the cases referred to in paragraphs 1 to 3, the office to which the claim, declaration or appeal has been submitted shall transmit it without delay to the corresponding competent office of the other Contracting State.

Article 36. (1) Where insurance authorities of one of the Contracting States has to make payments under this Agreement to beneficiaries in the territory of the other Contracting State, such payments shall be made validly in the currency of the first-mentioned Contracting State; where they have to make payments to insurance authorities situated in the territory of the other Contracting State, such payments shall be made in the currency of that Contracting State.

(2) Transfers of the amounts necessary for implementing this Agreement shall be effected in accordance with the payment arrangements in force between the Contracting States at the time of the transfer.

Article 37. (1) Enforceable court orders and enforceable decisions of the insurance authorities and governmental authorities of one of the Contracting States in matters concerning the social security branches specified in article 2 shall be recognized in the other Contracting State.

(2) In the event of a refusal to recognize judicial decisions, the provisions, where applicable, of article 7 of the Convention of 16 November 1971 between the Republic of Austria and the Italian Republic concerning the recognition and enforcement of judicial decisions in civil and commercial matters, of judicial settlements and of notarial acts¹ shall apply, *mutatis mutandis*. In the case of the other instruments referred to in paragraph 1, however, recognition may be refused only where it would be contrary to the public policy of the Contracting State in which recognition of the instrument is sought.

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

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

Article 38. 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 State 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 payable, shall be deemed to be an advance payment within the meaning of the first sentence of this paragraph.

Article 39. (1) Disputes between the Contracting States concerning the interpretation or application of this Agreement shall be settled, so far as possible, by the competent authorities of the Contracting States.

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

(a) Each party shall, within one month from the date of receipt of the request for an arbitral decision, appoint one arbitrator. The two arbitrators so appointed shall, within two months from the date on which the last party to appoint its arbitrator has given notice thereof, select a national of a third State as the third arbitrator.

(b) If one of the Contracting States has not appointed an arbitrator within the specified time-limit, the other Contracting State may request the President of the European Court of Human Rights to make the appointment. The same pro-

¹ See p. 277 of this volume.

cedure may be followed, at the request of one of the Contracting States, if the two arbitrators are unable to agree on the choice of the third arbitrator.

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

TITLE V. TRANSITIONAL AND FINAL PROVISIONS

Article 40. (1) On the basis of this Agreement, notwithstanding paragraph 2 hereof, point 8 of the Final Protocol to the Agreement and article 42, paragraph 2, and article 43, paragraph 2, of the Agreement,

(a) Benefits shall be granted also in respect of insurance contingencies which occurred prior to its entry into force.

(b) For the purpose of determining benefits, insurance periods completed before its entry into force shall also be taken into account.

(c) No claim to payment of benefits in respect of periods prior to its entry into force shall be valid.

(d) In the implementation of legislation comprising article 2, paragraph 1, subparagraph 1 (c) of this Agreement, concerning pensions insurance for self-employed persons,

(aa) Pensions to which entitlement arises only under this Agreement for insurance contingencies that occurred prior to its entry into force, and/or

(bb) Pensions which were determined prior to the entry into force of this Agreement,

shall, upon the application of the beneficiary, be determined or revised. If the application for determination or revision is submitted within two years following the entry into force of this Agreement, the pensions shall be payable as from the date of the entry into force of this Agreement. In other cases, they shall be payable as from the date determined under the legislation of each of the Contracting States.

(2) In the event of any departure by Austria, during the period prior to the entry into force of this Agreement, from the provisions of the Convention of 30 December 1950 mentioned in article 43, paragraph 1, of this Agreement, with respect to decisions concerning the establishment of entitlement to and the amount of benefits, such departures shall be allowed to stand in respect of the period prior to the entry into force of this Agreement where they become necessary for the purpose of applying changes occurring in national legislation after the entry into force of the Convention of 30 December 1950 and where they do not conflict with the principles of this Agreement.

Article 41. 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 this Agreement.

Article 42. (1) This Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Rome.

(2) This Agreement shall enter into force on the first day of the third month following the date of the exchange of the instruments of ratification.

(3) Article 41 of this Agreement shall enter into force retroactively to 1 January 1967.

(4) This Agreement is concluded for an indefinite period. Either Contracting State may denounce it in writing, through the diplomatic channel, subject to not less than three months' notice.

(5) In the event of denunciation, this Agreement 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 43. (1) Upon the entry into force of this Agreement, the Agreement between Italy and Austria on Social Security of 30 December 1950, the Additional Protocol thereto of the same date and the second Additional Protocol of 29 May 1952¹ shall cease to have effect.

(2) Notwithstanding paragraph 1 and article 40, subparagraph (d)(bb), shall not affect entitlements acquired prior to its entry into force.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States have signed this Agreement.

DONE at Vienna on 21 January 1981 in two originals in German and Italian, both texts being equally authentic.

For the Republic of Austria:
WILLIBALD B. PAHR

For the Italian Republic:
LIBERO DELLA BRIOTTA

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

At the time of signing the Agreement on Social Security concluded today between the Republic of Austria and the Italian Republic, the Plenipotentiaries of the two Contracting States declare that agreement has been reached on the following:

1. *Ad article 2 of the Agreement*

- (a) Paragraph (1), subparagraph 1, does not refer to Austrian legislation on notary insurance.
- (b) Paragraph (4) shall not apply to agreements concluded by Austria that give rise to regulations governing the assumption of insurance liability.

2. *Ad article 4 of the Agreement*

- (a) The legislation of the two Contracting States concerning the participation of insured persons and employers in the organs of insurance authorities and

¹ United Nations, *Treaty Series*, vol. 1365, p. 207.

associations and in establishing the *usus fori* in social security matters shall not be affected.

- (b) The legislation of the two Contracting States concerning the insurance of persons employed in the mission of one of the two Contracting States in third States or of persons employed by members of such a mission shall not be affected.
- (c) Regulations included in agreements concluded by Austria governing the assumption of insurance liability shall not be affected.
- (d) The provisions of the Austrian Federal Act of 22 November 1961 concerning entitlements, benefits and rights in course of acquisition under the pensions insurance and accident insurance schemes by reason of employment abroad, and the provisions relating to the taking into account of periods of self-employment completed in the territory of the former Austro-Hungarian monarchy outside Austria, shall not be affected.

3. Ad article 5 of the Agreement

Paragraph (1) does not refer to the equalization allowance under Austrian legislation.

4. Ad article 9 of the Agreement

Paragraph (1) shall apply, *mutatis mutandis*, to the commercial attaché and his colleagues.

5. Ad article 12 of the Agreement

In the case of a temporary stay, paragraph (1), second phrase shall, as regards treatment by self-employed physicians, dentists with medical degrees and other dentists, apply in Austria only in respect of the following persons:

- (a) Persons who are in Austria in exercise of their employment and dependants accompanying them;
- (b) Persons who are in Austria visiting their family;
- (c) Persons who are in Austria for other reasons and have received ambulatory treatment at the expense of the insurance authority competent for the place of stay.

6. Ad article 15 of the Agreement

Payments made to persons entitled thereto under the Austrian pensions insurance scheme pursuant to article 13, paragraph (1), second sentence, of the Agreement shall be refunded out of the contributions to sickness insurance received by the Association of Austrian Social Security Insurance Authorities.

7. Ad articles 27 and 28 of the Agreement

- (a) Claims for family allowances under Austrian legislation shall be valid provided that the employment concerned does not violate the provisions in force governing the employment of foreign workers.
- (b) Under Austrian legislation family allowances shall be paid after an employment period in Austria of at least one calendar month.
- (c) Claims for increased family allowances for seriously handicapped children shall be valid under Austrian legislation only for children who are resident in Austria.

8. *Ad article 40 of the Agreement*

The procedure for Austrian insurance authorities shall be as follows: As regards the calculation of benefits for the period 1 January 1956 to the entry into force of this Agreement, Title III, chapter 2, shall apply to the insurance contingencies to which Part IV of the General Social Insurance Act applies. Where, from the period 1 January 1956 onwards partial benefits were acknowledged or paid on a provisional basis and were higher than the partial benefits payable as calculated under Title III, chapter 2, of this Agreement, such acknowledged or paid benefits shall be deemed to be partial benefits.

This Final Protocol shall form an integral part of the Agreement between the Republic of Austria and the Italian Republic on Social Security. It shall enter into force on the same date as the Agreement 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 Vienna on 21 January 1981 in two originals in German and Italian, both texts being equally authentic.

For the Republic of Austria:

WILLIBALD P. PAHR

For the Italian Republic:

LIBERO DELLA BRIOTTA