

No. 29456

AUSTRIA

and

FEDERAL REPUBLIC OF GERMANY

Convention concerning social insurance (with final protocol signed at Salzburg on 21 April 1951 and additional protocol signed at Vienna on 25 January 1952 and at Bonn on 1 March 1952). Signed at Salzburg on 21 April 1951

Second Convention concerning social insurance, amending the above-mentioned Convention (with final protocol). Signed at Salzburg on 11 July 1953

Authentic texts: German.

Registered by Austria on 19 January 1993.

AUTRICHE

et

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention de sécurité sociale (avec protocole final signé à Salzburg le 21 avril 1951 et protocole additionnel signé à Vienne le 25 janvier 1952 et à Bonn le 1^{er} mars 1952). Signée à Salzburg le 21 avril 1951

Deuxième Convention de sécurité sociale, modifiant l'Accord susmentionné (avec protocole final). Signée à Salzburg le 11 juillet 1953

Textes authentiques : allemand.

Enregistrées par l'Autriche le 19 janvier 1993.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE
FEDERAL REPUBLIC OF GERMANY CONCERNING SOCIAL
INSURANCE

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

Desiring to regulate relations between their two States in the matter of social insurance,

Have agreed to conclude a Convention and have appointed for that purpose as their Plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Arthur Rudolph, *Sektionschef* at the Federal Ministry of Social Administration,

The President of the Federal Republic of Germany: Mr. Josef Eckert, *Ministerialdirektor* at the Federal Ministry of Labour; Dr. Wilhelm Dobbernack, *Ministerialrat* at the Federal Ministry of Labour.

The Plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed upon the following provisions:

SECTION I. GENERAL PROVISIONS

Article 1

This Convention shall apply in the Republic of Austria and the Federal Republic of Germany to:

- (a) Sickness insurance;
- (b) Accident insurance;
- (c) Pensions insurance for manual workers (disability insurance);
- (d) Pensions insurance for salaried workers (salaried workers' insurance);
- (e) Pensions insurance for miners.

Article 2

Austrian and German nationals shall have the same obligations and rights as each other under the social insurance schemes (compulsory and voluntary insurance) of the two Contracting States. The same shall apply to the right to voluntary insurance; for this purpose, the periods of coverage completed under the insurance schemes of the two Contracting States shall be aggregated. For the application of the national legislation of one of the two Contracting States in the matter of social insurance which provides for different treatment of its own nationals and aliens,

¹ Came into force on 1 January 1953, i.e., the first day of the second month following the expiry of the month of the exchange of the instruments of ratification, which took place at Bonn on 20 November 1952, in accordance with article 42 (2).

nationals of the other State shall be equated with nationals of the first-mentioned State.

Article 3

(1) Except as otherwise provided in this Convention, benefits under the social insurance legislation of one of the two Contracting States shall be payable to Austrian and German nationals in the territory of the other State, inclusive of any supplements, as if they were resident in their own national territory. Under the legislation of one of the two Contracting States on the payment of benefit claims, residence in the territory of the other State shall, in respect of Austrian and German nationals, be deemed residence in their own natural territory.

(2) Benefits under the social insurance schemes of one of the two Contracting States shall be payable to nationals of the other State residing in the territory of a third State on the same conditions and to the same extent as its own nationals residing in the third State.

Article 4

The implementation of social insurance shall be governed by the legislative provisions of the State in whose territory the insurable activity is performed.

Article 5

(1) The following shall be deemed exceptions to the principle stated in article 4:

1. A person employed by an enterprise having its principal place of business in the territory of one of the Contracting States who is sent for a limited period of time to the territory of the other Contracting State shall be subject to the legislation of the State in whose territory the principal place of business is situated, provided that the period of residence in the other territory does not exceed six months. This shall also apply if a person employed by an enterprise having its principal place of business in the territory of one of the Contracting States is obliged, owing to the nature of the employment, to reside in the territory of the other State on repeated occasions, provided that no single period of residence exceeds six months.

2. If enterprises located in the frontier region of one of the Contracting States extend into the frontier region of the other Contracting State, persons employed by such enterprises shall be subject solely to the legislative provisions of the State in whose territory the enterprise has its principal place of business.

3. Permanent employees of a public transport enterprise, including shipping enterprises of the Danube or its tributaries (Danube Navigation), having its principal place of business in the territory of one of the Contracting States, who are employed temporarily or on junction lines in frontier railway stations or frontier ports of the other Contracting State, shall be subject solely to the legislation of the State in whose territory the enterprise has its principal place of business.

4. The provisions of subparagraph 3 shall also apply:

(a) To persons employed in a travelling capacity by a Danube navigation enterprise as referred to in subparagraph 3, where such persons are permanently employed in the territory of the other Contracting State outside a junction line or a frontier port,

(b) To persons employed by an airline having its principal place of business in the territory of one of the Contracting States, where such persons are nationals of that State and are temporarily or permanently employed in the territory of the State as members of the airline's flight or ground personnel, and also to other persons employed by such airline, irrespective of their nationality, who have temporarily been sent to the territory of the other State.

5. The crew of a company transport ship travelling on the Danube or its tributaries belonging to an enterprise having its principal place of business in one of the Contracting States which is temporarily or permanently employed in the territory of the other State shall be subject solely to the legislation of the State in whose territory the principal place of business is situated.

6. The crew of a sea-going vessel shall be subject to the legislation of the Contracting State whose flag the vessel flies.

7. Employees of public administrative authorities (customs, posts, passport control, etc.) who are sent from one Contracting State to the territory of the other shall be subject to the legislation of the sending State.

8. Persons who are members of the diplomatic mission or career consular mission of either of the Contracting States or who are employed in the personal service of such a member of a mission shall be subject to the legislation of the State of which they are nationals. Persons employed in the personal service of a member of such a mission may, however, within six weeks from the commencement of their employment, apply for insurance coverage in accordance with the legislation of the State in which they are employed.

(2) The provisions of paragraph (1), subparagraphs 1 and 2 shall apply *mutatis mutandis* to the social insurance of a person who is self-employed in one of the Contracting States and who, in performance of such employment, is active in the territory of the other State.

(3) The supreme administrative authorities of the two Contracting States may agree upon further exceptions to the principle stated in article 4; they may also, by mutual consent, allow departures from the provisions of paragraph (1) for individual cases or groups of cases.

Article 6

(1) If, under the legislation of one Contracting State the receipt of social security benefits or allowances of any other kind or the pursuit of employment or the establishment of a social security relationship has a legal effect on eligibility for social security benefits, on compulsory participation in an insurance scheme, on exemption from compulsory insurance or on membership of a voluntary insurance scheme, similar allowances from the other State or similar employment or a similar social security relationship in the other State shall have the same effect.

(2) If, pursuant to paragraph (1), allowances provided in one Contracting State result in the suspension or reduction of benefits in both Contracting States, only that portion of such income may be taken into account in each of the two States for the purpose of reduction or suspension which corresponds to the ratio between the periods of coverage used as a basis for calculating the amount of the benefit in the Austrian and German insurance schemes.

(3) The provisions of paragraphs (1) and (2) shall not apply to the ratio between benefits under the pension insurance schemes of the two States payable in accordance with section IV.

SECTION II. SICKNESS INSURANCE

Article 7

In so far as periods of coverage under a sickness insurance scheme constitute a condition for entitlement to benefits, the periods of coverage completed in the sickness insurance schemes of the two Contracting States shall be aggregated.

Article 8

If a claimant is eligible for benefits from insurance authorities of both Contracting States, he shall be entitled to claim the same benefits from one insurance authority only. The insurance authority liable to pay the benefits shall be that to which the claimant belonged at the time of the insurance contingency.

Article 9

(1) If an insured person entitled to claim on an insurance authority of one of the Contracting States transfers his place of residence to the territory of the other Contracting State after the insurance contingency has arisen, his entitlement shall be maintained provided that he obtains the consent of the competent insurance authority prior to the change of residence. Consent may be withheld solely on the ground of the claimant's state of health. In the case of maternity benefits, consent may be given before the insurance contingency arises. The insurance authority may give its consent subsequently if the eligibility conditions are fulfilled and the consent could not, for reasonable cause, be obtained in advance.

(2) An insured person shall continue to be entitled to claim on an insurance authority with whom he is insured even if the insurance contingency arises in the territory of the other Contracting State.

(3) A frontier commuter shall be entitled to claim on an insurance authority with whom he is insured in the Contracting State in whose territory he is resident and also in the State in which he is employed.

Article 10

(1) In the case referred to in article 9, benefits shall be provided by the competent insurance authority of the place of residence of the insured person. Benefits in kind shall be granted in accordance with the legislation to which the aforementioned insurance authority is subject, whereas cash benefits shall be governed by the legislation applying to the insurance authority on which the insured person has a claim. The latter insurance authority shall inform the insurance authority paying the benefit of the amount and maximum duration of the cash benefit provision.

(2) The liable insurance authority shall refund to the insurance authority providing the benefits any costs arising therefrom. More detailed arrangements for such refund shall be settled between the supreme administrative authorities of the two Contracting States; lump sum assessments may be established for the purposes of such refund.

(3) If, in the cases referred to in article 9, the authority liable to pay is the Austrian Master Craftsmen's Health Insurance Fund (*Meisterkrankenversicherung*) or other sickness insurance authority subject to Austrian legislation on the sickness insurance coverage of federal salaried workers, the provisions of paragraphs (1) and (2) shall apply only if such authority requests payment of the benefits by the General Local Sickness Fund (*Allgemeine Ortskrankenkasse*) for salaried workers that is competent for the place of residence of the insured person in the Federal Republic of Germany or, in the absence of the latter, the *Land* Sickness Fund (*Landkrankenkasse*). Benefits shall be subject to the regulations applied by the liable Austrian sickness insurance fund. The liable insurance authority shall notify the requested insurance authority of the provisions of such regulations.

Article 11

For the purposes of either Contracting Party's sickness insurance scheme covering persons in receipt of unemployment benefits, war-disabled persons undergoing vocational training or surviving dependants of persons killed in the war, the provisions of articles 7 and 8, article 9, paragraphs (1) and (2), and article 10 shall apply only; in the case of the two first-mentioned sickness insurance schemes, the provisions of article 12 shall also apply; and in the case of the first-mentioned, the provisions of articles 2 and 13 shall further apply.

Article 12

(1) Eligible family members of an insured person who is insured with an insurance authority of one Contracting State shall, if they are resident in the territory of the other Contracting State, receive benefits from the competent insurance authority for the place of residence of the family member concerned in accordance with the legislation to which that insurance authority is subject. In this regard, the periods for which benefits in respect of the same insurance contingency have already been granted shall be counted towards the maximum duration of the benefit provision. The benefits shall be to the charge of the insurance authority with which the insured person is insured. This insurance authority shall refund the insurance authority which has paid the benefits its costs incurred in doing so. The second sentence of paragraph (2), article 10, shall apply *mutatis mutandis*.

(2) In the case of eligible family members of an insured person insured with an Austrian sickness insurance authority within the meaning of article 10, paragraph (3), the specified provision shall apply *mutatis mutandis*.

Article 13

(1) The legislative provisions of one Contracting State under which an insured person continues to be entitled to claim a benefit if the insurance contingency arises within a given period following separation from the insurance fund shall not apply if the insurance contingency arises in the territory of the other State.

(2) If a person who has separated from the sickness insurance fund of one Contracting State within the time period specified in paragraph (1) transfers his residence to the territory of the other State and returns within two months of separation to the territory of the first-mentioned State, he shall continue to be entitled to claim on the insurance authority of this State for that part of the time period which had not yet elapsed at the time of the transfer of residence to the territory of the

other State. The remaining part of the time period shall commence from the date on which the border was crossed.

Article 14

Pensioners shall have sickness insurance coverage on the basis of their pension entitlement only in the Contracting State in whose territory they are resident, in accordance with the legislation of that State. The sickness insurance authority competent under such legislation shall, in accordance with the legislation applying to it, receive the contribution from the insurance authority liable to pay the pension. If pension insurance authorities of both Contracting States are liable to pay the pension, the contribution shall be paid by the insurance authority of the State under whose insurance the pension was calculated on the basis of the longer period of coverage. The Austrian pension insurance authority liable to pay the contribution shall be entitled to withhold from the pension the amount which it is entitled to withhold under the applicable legislation.

SECTION III. ACCIDENT INSURANCE

Article 15

The provisions of articles 8 to 10 and of article 12, paragraph (1), shall apply *mutatis mutandis* in respect of accident insurance benefits, with the exception of pensions and death benefits.

Article 16

(1) Where a pension is to be provided by an insurance authority of one Contracting State and a further pension entitlement is to be determined by an insurance authority of the other State on the ground of a new industrial accident or occupational disease, the insurance authority of the latter State shall take the earlier pension into account as if it were liable to provide it also.

(2) Benefits payable under the legislation of a Contracting State by reason of an occupational disease shall also be payable if the insurance contingency occurred at a time when the claimant was insured under an accident insurance scheme of that State but the occupational disease had already been caused by an occupation pursued in the territory of the other State without the insurance contingency being considered under the latter's legislation as having occurred.

SECTION IV. PENSION INSURANCE

(Pension insurance for manual workers, pension insurance for salaried workers and pension insurance for miners)

Article 17

(1) In the case of persons issued under one or more pension insurance schemes in both Contracting States, the periods of coverage to be taken into account in the schemes of both States and the equivalent periods of employment shall be aggregated for the purpose of establishing eligibility in respect of the qualifying period or other minimum contribution periods and maintenance of the pension entitlement. Periods of coverage under a pension insurance scheme of the other State shall be treated for this purpose in the same way as periods of coverage under a similar pension insurance scheme of the person's own State. The same shall apply to the

substitute periods treated as equivalent to the contribution periods under both the legislation of the former and that of the latter State. Other substitute periods shall be taken into account only in the insurance of that State under whose legislation such periods are treated as equivalent to the contribution periods. Periods of coverage (contribution periods, equivalent periods of employment or substitute periods) which overlap shall be taken into account once only.

(2) Where entitlement to miners' pension insurance depends on whether, during a given period, the nature of the work performed was essentially that of mining or hewing during daytime, such periods of employment of the type in question shall be aggregated.

Article 18

(1) In cases in which periods of coverage are aggregated in accordance with article 17, benefits shall be determined by the insurance authorities of the two Contracting States in accordance with the following provisions:

1. Each insurance authority shall determine whether the requirements for eligibility to benefits have been fulfilled in accordance with the legislation to which it is subject and taking account of the provisions of this Convention.

2. Benefits shall be calculated in accordance with the domestic legislation applicable to the insurance authority making such assessment on the basis of the periods of coverage to be taken into account under such legislation. The following special conditions shall, however, apply:

(a) Substitute periods which would be taken into account under the legislation of both Contracting States for the purpose of calculation of benefits shall be taken into account only in the State under whose insurance scheme the last contribution prior to the substitute period was made.

(b) In the case of benefits or partial benefits whose amount depends on the length of the periods of coverage completed, only that portion shall be paid which corresponds to the ratio that the periods of coverage taken into account by the assessing insurance authority bear to the sum of the periods of coverage taken into account for the calculation of the benefits payable under the insurance schemes of both States.

(2) If, under the insurance of one Contracting State, not more than 52 contribution weeks (12 contribution months) are to be taken into account for the calculation of the pension, there shall be no entitlement to claim on such insurance unless under the domestic legislation of that State the qualifying period is considered as having been completed or its completion is not required. Where no benefit entitlement arises thereby, the pension from the other insurance shall not be reduced in accordance with paragraph (1), subparagraph (2) (b).

Article 19

(1) Benefits or partial benefits within the meaning of article 18, paragraph (1), subparagraph 2 (b) shall comprise in the insurance schemes.

(a) Of both Contracting States the basic benefit, the children's supplement and the miners' security bonus,

(b) In the Republic of Austria the maintenance allowance, the allowances granted in conjunction with the old-age and disability pension insurance, the supple-

mentary allowance in respect of salaried workers' and miners' pension insurance, and the disability benefits and the life insurance benefits for widows and orphans under the miners' insurance fund (*Bruderglückversicherungsversicherung*),

(c) In the Federal Republic of Germany fixed pension supplements, even where their purpose is to bring the pension up to a minimum amount.

(2) In the calculation of the amount of the benefit supplement for daytime employment as a hewer underground under the miners' insurance of one Contracting State, the corresponding periods of employment completed in the territory of the other Contracting State shall also be taken into account.

(3) If, under national legislation, a minimum amount is fixed for a benefit and if the benefit includes no fixed partial benefits of the kind defined in paragraph (1) or the fixed partial benefits do not amount to the minimum amount, the benefit shall be deemed a fixed partial benefit up to the level of the minimum amount.

Article 20

If, under the legislation of one of the Contracting States, entitlement to a pension exists, whether or not article 17 is taken into account, but no entitlement to a pension exists in the territory of the other Contracting State even when article 17 is taken into account, the insurance authority in the first-mentioned State shall determine the benefit according to legislation to which it is subject without reference to article 18. If, by virtue of article 17, entitlement to claim on an insurance authority of the other Contracting State arises subsequently, article 18 shall be applicable.

Article 21

If the sum of the pensions calculated in accordance with the provisions of this Convention is less than the pension to which a claimant in one of the two Contracting States would be entitled under the legislation of that State alone without reference to article 17, the insurance authority of that State shall increase the amount of the pension payable by it by the difference between the two amounts. The recalculation shall, under article 26, be effected for the date on which the new pension, as increased by the aforementioned difference, is determined. Any further recalculation shall be effected only if the rate of exchange changes by more than ten per cent.

Article 22

(1) The provisions of this section shall not apply to the miners' long-service allowance under the miners' pension insurance scheme.

(2) Where pension insurance authorities in the Federal Republic of Germany are required to take into account periods of coverage already completed or being completed in the German pension insurance schemes outside the territory of the Federal Republic of Germany after 30 April 1945, such periods shall be taken into account in the application of the provisions of this section only in cases in which the insured person had insurance coverage predominantly in the territory of the Federal Republic of Germany during the period of his participation in a German insurance scheme.

SECTION V. COMMON AND SEPARATE PROVISIONS

CHAPTER 1. DISTRIBUTION OF ACQUIRED ENTITLEMENTS AND RIGHTS ACCRUING

Article 23

Of those acquired entitlements and rights accruing prior to 1 May 1945 under the German accident insurance scheme or German pension insurance schemes or taken over by such schemes from their insurance schemes of other States prior to that date, the insurance authorities of the Federal Republic of Germany shall take over:

1. Under the accident insurance scheme, entitlements arising from industrial accidents or occupational diseases sustained or contracted in the territory of the Federal Republic of Germany or on sea vessels whose home port was located in such territory and which were sailed under the German flag. For this purpose, a contingency which arose in connection with an occupation pursued in the territory of the Federal Republic of Germany but which occurred outside that territory shall also be deemed an industrial accident (occupational disease).

2. Under pension insurance schemes, acquired entitlements and rights accruing

(a) From periods of coverage completed in the territory of the Federal Republic of Germany,

(b) From periods of coverage completed under German pension insurance schemes outside the territory of the Federal Republic of Germany, where such periods are to be taken into account in respect of insured persons resident in the Federal Republic of Germany, with the exception of periods of coverage to be taken over by pension insurance authorities of the Republic of Austria under article 24, with the proviso that:

(aa) During his participation in the German pension insurance scheme, the insured person was last insured under a compulsory insurance scheme in the territory of the Federal Republic of Germany or was mainly insured in that territory under a compulsory or voluntary insurance scheme, or

(bb) The periods of coverage have already been taken into account in a benefit which has been determined non-reversibly prior to the entry into force of this Convention by an insurance authority having its principal place of business in the territory of the Federal Republic of Germany.

Article 24

(1) Of those entitlements acquired and rights accruing prior to 10 April 1945 under the German accident insurance scheme or German pension insurance schemes or taken over by such schemes from the insurance schemes of other States prior to that date, the insurance authorities of the Republic of Austria shall take over:

1. Under the accident insurance scheme, entitlements arising from industrial accidents or occupational diseases sustained or contracted in the territory of the Republic of Austria. For this purpose, a contingency which arose in connection with an occupation pursued in the territory of the Republic of Austria but which

occurred outside that territory shall also be deemed an industrial accident (occupational disease).

2. Under pension insurance schemes, acquired entitlements and rights accruing which

(a) Derive from the Austrian insurance burden taken over by German pension insurance schemes on their introduction into Austria, or

(b) Relate to periods of coverage completed in the Republic of Austria after the introduction into Austria of German pension insurance schemes.

(2) In addition to the provisions of paragraph (1), pension insurance authorities of the Republic of Austria shall take over in respect of insured persons of Austrian nationality satisfying the personal requirements stipulated in §56, paragraph (3), of the Austrian Social Security Transition Act (Federal Law Gazette No. 142/1947) and also insured persons who, as at 13 March 1938 or 10 April 1945, possessed German nationality and who, immediately prior to 13 March 1938, had been resident for a minimum of five years in the territory of the Republic of Austria, as well as the survivors of the aforesaid persons

(a) Acquired entitlements arising from industrial accidents and occupational diseases sustained or contracted outside the territory of the Republic of Austria or of the Federal Republic of Germany within the sphere of territorial application of the German accident insurance scheme between 13 March 1938 and 9 April 1945,

(b) Acquired entitlements and rights accruing from periods of coverage completed under German pension insurance schemes outside the territory of the Republic of Austria or of the Federal Republic of Germany during a period specified in subparagraph (a).

CHAPTER 2. PAYMENT TRANSACTIONS — CURRENCY CONVERSION

Article 25

(1) Insurance authorities liable to pay benefits under this Convention shall grant cash benefits in their national currency, thereby discharging their payment obligations.

(2) Transfers required in pursuance of this Convention shall be effected in accordance with the payment agreement drawn up for that purpose between the two Contracting States which is applicable at the time of the transfer. This shall apply *mutatis mutandis* to transfers to a third State where there exists a payment agreement with such a State.

(3) Where, under the legislation of one of the Contracting States, payments to countries abroad are subject to the completion of certain formalities, the provisions applicable to nationals of that State shall apply in the same manner to persons and authorities eligible to receive or liable to make payments by virtue of this Convention.

(4) Cash benefits under pension insurance schemes or pensions or death benefits under accident insurance schemes which insurance authorities of one of the Contracting States are liable to pay to a claimant in the territory of the other State shall be paid to the insurance authority competent for the claimant's place of residence to the charge of the liable insurance authority in accordance with the legislation to which the latter is subject. More detailed arrangements, in particular re-

garding the reciprocal reimbursement of costs and the orders to pay to be issued, shall be agreed between the supreme administrative authorities of the two Contracting States.

Article 26

If, in the calculation of a claim under the social insurance of one of the Contracting States, the amount of a social insurance benefit or of other allowances from the other State expressed in the currency of that State is to be taken into account, that amount shall be recalculated in accordance with the appropriate provisions applicable to social insurance transfers under the current payment agreement between the two Contracting States, taking account of the settlement conditions currently applicable in each State.

CHAPTER 3. MUTUAL ADMINISTRATIVE ASSISTANCE

Article 27

(1) Insurance authorities, federations and public authorities responsible for social insurance in the two Contracting States shall, in implementing this Convention, offer each other assistance on a reciprocal basis and to an equal extent as though it were their own social insurance being implemented. Reciprocal assistance shall be offered free of charge. Medical examinations required under the social insurance of one Contracting State in respect of persons in the territory of the other State shall be instigated at the request of the liable insurance authority and to its charge by the insurance authority of the State in which the persons to be examined are staying. More detailed arrangements regarding the reimbursement of costs may be agreed between the supreme administrative authorities of the two Contracting States.

(2) With regard to mutual legal assistance, the Treaty regarding Legal Protection and Assistance of 21 June 1923 (Austrian Federal Law Gazette No. 138/1924, German Reich Law Gazette 1924 II, p. 55) shall apply *mutatis mutandis*.

(3) Claims on the part of insurance authorities of one Contracting State arising in respect of arrears in contributions shall be accorded the same preferential treatment in their execution or in bankruptcy or composition (equalization) proceedings in the other State as equivalent claims on the part of insurance authorities of that State.

(4) Where a benefit is to be calculated on the basis of periods of coverage completed in both States, the insurance authorities concerned shall give each other the opportunity to express their opinion before such calculation is made, specifying their grounds in cases where it is intended to deny such benefit.

Article 28

(1) The provisions for exemption from tax and duties laid down in the legislation of one of the Contracting States in respect of the implementation of social insurance shall also apply to insured persons and their employers, applicants, claimants, insurance authorities and their federations and the public authorities of the other State responsible for social insurance.

(2) All files, certificates and documents of whatsoever kind whose submission is required for the implementation of this Convention shall be exempt from the requirement of attestation or legalization by diplomatic or consular authorities.

Article 29

Insurance authorities, federations and public authorities responsible for social insurance in the two Contracting States shall deal directly with each other and with insured persons and their representatives when implementing this Convention.

Article 30

(Omitted)

Article 31

(1) Applications filed with insurance authorities or other competent offices of one Contracting State shall be regarded as applications filed with insurance authorities of the other State.

(2) Appeals to be lodged within a prescribed time-limit with an authority of one of the Contracting States competent to receive appeals shall be regarded as having been lodged within the requisite time-limit if they are lodged within such time-limit with an appropriate authority of the other State. In such cases, the latter authority shall transmit the appellant brief without delay to the competent authority. If the competent authority is not known to the authority with which the appeal was lodged, the transmittal may take place through the supreme administrative authorities of the two Contracting States.

CHAPTER 4. IMPLEMENTATION AND INTERPRETATION OF THE CONVENTION

Article 32

(1) The supreme administrative authorities of the two Contracting States shall prescribe by mutual agreement the detailed measures necessary for implementation of this Convention wherever mutual agreement is required. They may, in particular, reach agreements on the following matters:

1. The establishment in each State of liaison offices to facilitate the implementation of this Convention and to deal with each other directly;
2. Medical and administrative supervision of claimants.

They shall, in addition, keep each other informed of any changes in their national legislation in the area of social insurance.

(2) Insurance authorities, federations and public authorities responsible for social insurance in the two Contracting States shall inform each other of any measures which they take in their sphere of competence to implement this Convention.

Article 33

(1) Any difficulties arising in the interpretation or implementation of this Convention shall be settled by mutual agreement between the supreme administrative authorities of the two Contracting States.

(2) Where a solution cannot be reached in this manner, the matter shall be settled by an arbitral tribunal according to the principles and the spirit of this Con-

vention. The arbitral tribunal shall be composed of three members, one from each of the two Contracting States and a third from a third State. The arbitrators from the two Contracting States shall be appointed by their respective Governments. These two arbitrators shall together appoint the third arbitrator. The decisions of the arbitral tribunal shall be by majority vote. Its decisions shall be final, binding and non-appealable. Each Contracting State shall defray the expenses of its arbitrator and other expenses shall be shared equally by the two Contracting States.

Article 34

Where contributions should have been paid to an insurance authority of one of the Contracting States but have instead been paid to an insurance authority of the other State, the latter insurance authority shall have competence until such time as competence has been determined by mutual agreement or a dispute regarding competence has been decided with final force and effect in accordance with article 33. Such determination or decision shall be valid only for insurance contributions due in the future or insurance contingencies arising in the future.

Article 35

The supreme administrative authorities of the two Contracting States may agree upon the granting of provisional benefits for which no legal claim exists in cases where there is a dispute as to which country's legislation is applicable.

Article 36

For the purposes of this Convention, the supreme administrative authorities shall be

In the Republic of Austria: the Federal Ministry of Social Administration;

In the Federal Republic of Germany: the Ministry of Labour.

CHAPTER 5. MISCELLANEOUS PROVISIONS

Article 37

(1) For the purposes of this Convention, "frontier commuters" shall mean person who, while maintaining their residence in the frontier region of one of the two Contracting States and normally returning to such residence on a daily or weekly basis, are employed in the frontier region of the other State.

(2) For the purposes of this Convention, the areas situated on either side of the frontier up to a distance therefrom of, in principle, ten kilometres shall be deemed the frontier region. The list of Austrian and German communes situated in this region shall be drawn up jointly by the supreme administrative authorities of the two Contracting States.

Article 38

Legislation of the Contracting States regarding the right to vote or eligibility to stand for election of insured persons or their employers in elections for membership in the organs of insurance authorities or federations thereof or of public authorities responsible for social insurance shall not be affected by article 2.

SECTION VI. TRANSITIONAL AND FINAL PROVISIONS

Article 39

(1) The provisions of this Convention shall apply also to insurance contingencies which occurred prior to its entry into force. In the application of the Convention periods of coverage completed prior to its entry into force shall also be taken into account.

(2) Benefits payable under this Convention which were not granted or were suspended prior to its entry into force on the ground that the claimant was not resident in the territory of the Contracting State in which the liable insurance authority had its principal place of business shall be granted upon the application of the claimant. Benefit entitlements calculated prior to the entry into force of this Convention and subsequently accruing shall be recalculated upon application of the claimant in accordance with the provisions of this Convention, without prejudice to the binding force of previous decisions. Where an application is made within two years from the entry into force of the Convention, the benefits shall be granted or recalculated as from such entry into force; applications made after this period shall be granted or recalculated as from the first day of the month following the date of application. In the event of an *ex officio* recalculation, the recalculation shall have effect from the first day of the following month.

(3) Benefits shall not be granted by virtue of the provisions contained in this Convention in respect of periods completed prior to its entry into force.

(4) The provisions of paragraph (1), first sentence, and paragraph (2) shall not apply to sickness insurance benefits or, with the exception of pensions, to accident insurance benefits.

Article 40

(1) In the application of this Convention the expiry of time-barring or preclusion limits may not be invoked if the necessary applications are filed within one year from the entry into force of the Convention. The provision of article 39, paragraph (2), third sentence, shall not be affected thereby.

(2) The time-limit of six weeks prescribed in article 5, paragraph (1), subparagraph 8, shall, in respect of persons already employed in personal service at the time of the entry into force of this Convention, commence at such time.

Article 41

(1) This Convention shall be concluded for a period of one year following the date of its entry into force. It shall be extended from year to year, unless the Government of one or other Contracting State gives written notice of termination at least three months prior to expiry of the one-year period.

(2) In the event of such termination the provisions of this Convention shall continue to apply to benefits for which entitlement has already been established; legislation setting limitations on the granting of insurance benefits in the event of temporary stay abroad not be taken into account in respect of such entitlements.

(3) The provisions of this Convention shall continue after its expiration to apply, in accordance with an Additional Agreement, to entitlements acquired prior to such expiration.

Article 42

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

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

DONE at Salzburg, on 21 April 1951, in two original copies.

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

For the Republic of Austria:

Dr. RUDOLPH

For the Federal Republic of Germany:

J. ECKERT

Dr. DOBBERNACK

FINAL PROTOCOL

At the time of signing the Convention concerning Social Insurance concluded this day between the Republic of Austria and the Federal Republic of Germany, the Plenipotentiaries of the two Contracting States declare unanimously on behalf of the High Contracting Parties that agreement has been reached on the following:

1. Where in this Convention or Final Protocol reference is made to Austrian or German nationality:

(a) Persons of German mother tongue (*Volksdeutsche*) who are stateless or of indeterminate nationality and who are resident in the territory of the Republic of Austria or were resident there, otherwise than purely temporarily, after 26 August 1939 shall have equal status with Austrian nationals;

(b) Refugees and displaced persons of German ethnic origin or their spouses or offspring who were given refuge in the territory of the German Reich after 31 December 1937 (*Volksdeutsche*) shall have equal status with German nationals.

Such equality of status shall be maintained if the aforesaid persons leave the territory in which they were given refuge (subparagraph (a)) or in which they are or were resident (subparagraph (b)).

2. The Federal Republic of Germany within the meaning of the Convention shall be deemed to comprise the German *Länder* whose residents are entitled to elect deputies with voting rights to the German Parliament (*Bundestag*).

3. Persons employed in a travelling capacity by a Danube navigation enterprise (article 5, paragraph (1), subparagraphs 3, 4 (a) and 5 of the Convention) who do not possess Austrian or German nationality shall, for the purposes of applying the Convention, be assimilated to Austrian and German nationals. For the purpose of applying article 3, paragraph (1) of the Convention, this provision shall apply provided that such persons have been employed in a travelling capacity by a Danube navigation enterprise for a total period of at least five years.

4. For the purpose of applying article 19 of the Convention, supplements to fixed partial benefits granted under the Austrian adjustment legislation shall also be deemed partial benefits of this kind.

5. *Ad* article 19 of the Convention, the supreme administrative authorities of the two Contracting States may agree, where necessary, in the event of changes in national legislation, whether and to what extent new benefits or partial benefits shall be deemed to be such within the meaning of article 18, paragraph (1), subparagraph 2 (b) of the Convention.

6. Where, under the provisions of articles 23 and 24 of the Convention entitlements acquired and rights accruing prior to 1 May 1945 under German accident insurance or German pension insurance schemes or taken over prior to this date by such schemes from the insurance schemes of other States fall neither under the payment obligation of insurance authorities in the Republic of Austria (article 24 of the Convention) nor under that of insurance authorities in the Federal Republic of Germany (article 23 of the Convention), the Governments of the two Contracting States shall consider regulating, in an additional agreement.

Whether, to what extent and in what manner nationals of either Contracting State and ethnic Germans (subparagraph 1 of this Final Protocol) may receive benefits and assistance while such persons are staying in the territory of one of the two Contracting States.

7. *Ad* article 27, paragraph (2), of the Convention, the supreme administrative authorities of the two Contracting States shall, upon the conclusion of a new convention between the Republic of Austria and the Federal Republic on legal protection and assistance, agree whether and to what extent such a convention should also apply to legal assistance in the area of social insurance.

8. The time-limits specified in article 40, paragraph (1), of the Convention shall also include the time-limit of six months within the meaning of §58 of the Austrian Insurance Transition Act (Federal Law Gazette No. 142/1947), in respect of applications for the determination of acquired entitlements or rights accruing of persons not deemed to be beneficiaries under §56, paragraph (3) or §57, paragraph (2) of the aforesaid Act (non-nationals).

9. Public authorities responsible for social insurance within the meaning of the Convention shall also include arbitral tribunals under the Austrian social insurance system.

10. Advance payments made by the Republic of Austria from federal funds in respect of pensions under foreign social security schemes shall not be deemed benefits within the meaning of the Convention.

11. The Austrian Government shall prevail upon the Austrian insurance authorities to adopt an accommodating approach, in the case of German nationals staying outside the territory of both Contracting States, when applying the provision stipulating that benefits should be granted only with the consent of the Austrian insurance authorities in the event of a stay abroad.

12. The Governments of both Contracting States shall ascertain whether and in what manner the principles of the Convention could and should apply in relation to a third State with which both Contracting States have concluded a convention on social insurance.

13. The two Governments shall consider initiating joint talks with the Government of the Italian Republic as soon as possible in order to reach an agreement among the Governments of the three States on all questions connected with the relationship between, on the one hand, the Convention signed today between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance and, on the other hand, the German-Italian Treaty on Social Security of 20 June 1939 and the German-Italian "Convention of 26 February 1941 concerning the regulation of social security for persons who come under the German-Italian agreement of 21 October 1939 on the economic implications of the resettlement of ethnic Germans and of nationals of the German Reich from Italy to the German Reich".

14. The Austrian insurance authorities shall, as from 1 January 1952, take over responsibility for implementing the entire social insurance scheme in the Austrian communes of Jungholz (administrative district of Reutte) and Mittelberg (administrative district of Bregenz) in accordance with Austrian legislation. The full particulars of the implementation of social insurance in these communes shall be established by the supreme administrative authorities of the Republic of Austria by

ordinance. The responsible insurance authorities of the two Contracting States may agree on the details of the transfer and their official assistance to each other in connection with the granting of benefits in kind under the sickness insurance scheme and accident insurance scheme subject to the consent of the supreme administrative authorities of the two Contracting States. The obligation to pay compensation in respect of industrial accidents and occupational diseases which occurred during the period from 1 May 1945 to 31 December 1947 and the obligation to pay compensation arising from periods of coverage completed under pension insurance schemes during the period from 1 May 1945 to 31 December 1951 shall lie with the competent insurance authorities of the Federal Republic of Germany; the provisions of the Convention shall be applicable in such cases.

15. The extension of the Convention to social security in *Land Berlin* (West) shall be subject to an additional agreement between the two Contracting States in agreement with the Senate of *Land Berlin*.

16. Where, in one of the Contracting States, a pension insurance designated for a particular category of persons is implemented by a social insurance authority, whereas such insurance in the other State is implemented for the same category of persons by a different type of institution, the supreme supervisory authorities of the two Contracting States may, in agreement with their supreme administrative authorities (article 36 of the Convention), reach agreements regarding the implementation of such insurance proportionately between the two States in accordance with the principles of the Convention and this Final Protocol.

17. Implementation of the Convention shall be without prejudice to the apportionment of the assets of German insurance authorities which were also competent for the territory of the Republic of Austria.

18. The two Governments reserve the right, upon the conclusion of a State Treaty on Austria and a Treaty on Peace with Germany, to ascertain the extent to which the Convention would be affected by the provisions of those Treaties and to settle questions arising therefrom by mutual consent.

This Final Protocol, which forms an integral part of the Convention of today's date between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance, shall have effect under the same conditions and for the same period as the Convention itself.

DONE at Salzburg, on 21 April 1951, in two original copies.

For the Republic of Austria:

Dr. RUDOLPH

For the Federal Republic of Germany:

J. ECKERT

Dr. DOBBERNACK

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING SOCIAL INSURANCE

With regard to the Convention concerning Social Insurance between the Republic of Austria and the Federal Republic of Germany signed on 21 April 1951 and the Final Protocol, the Plenipotentiaries of the two Contracting States have agreed, on their behalf, as follows:

1. Article 30 of the Convention shall be omitted.
2. Paragraph 14 of the Final Protocol shall read as follows:

“The Austrian insurance authorities shall, as from the first day of the fourth month following the entry into force of the Convention, take over responsibility for implementing the entire social insurance scheme in the Austrian communes of Jungholz (administrative district of Reutte) and Mittelberg (administrative district of Bregenz) in accordance with Austrian legislation. The full particulars of the implementation of social security in these communes shall be established by the supreme administrative authorities by ordinance. The responsible insurance authorities of the two Contracting States may agree on the details of the transfer and their official assistance to each other in connection with the granting of benefits in kind under the sickness insurance scheme and accident insurance scheme subject to the consent of the supreme administrative authorities of the two Contracting States. The obligation to pay compensation in respect of industrial accidents and occupational diseases which occurred during the period 1 May 1945 to 31 December 1947 and the obligation to pay compensation arising from periods of coverage completed under pension insurance schemes during the period from 1 May 1945 to the end of the third month following the entry into force of the Convention shall lie with the competent insurance authorities of the Federal Republic of Germany; the provisions of the Convention shall be applicable in such cases.”

This Additional Protocol, which forms an integral part of the Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951 and is done in two copies, shall have effect under the same conditions and for the same period as the Convention itself. This Protocol shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Bonn.

Vienna, 25 January 1952

Bonn, 1 March 1952

For the Republic of Austria:

Dr. RUDOLPH

For the Federal Republic of Germany:

J. ECKERT

Dr. DOBBERNACK

SECOND CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING SOCIAL INSURANCE

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

Desiring to amend and supplement the Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951² (First Convention concerning Social Insurance), have agreed for this purpose to conclude a Second Convention and have appointed as their Plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Arthur Rudolph, *Sektionschef* (retired) and Chief of the Social Insurance Department at the Federal Ministry of Social Administration,

The President of the Federal Republic of Germany: Mr. Josef Eckert, *Ministerialdirektor* at the Federal Ministry of Labour,

who have agreed to the following provisions:

PART I. AMENDMENT OF ARTICLES 11, 19 AND 32 OF THE FIRST CONVENTION CONCERNING SOCIAL INSURANCE

Article 1

The First Convention concerning Social Insurance shall be amended as follows:

1. Article 11 shall read as follows:

“Article 11

For the purposes of the sickness insurance legislation covering persons in receipt of unemployment benefits, the provisions of articles 2, 7 and 8, article 9, paragraphs (1) and (2), and articles 10, 12 and 13 shall apply only.”

2. In article 19, paragraph (1) shall read as follows:

“(a) Of both Contracting States the basic benefit, the children’s supplement, the orphans’ benefit under the miners’ pension insurance scheme and the miners’ seniority bonus,”

3. In article 32, the following paragraph shall be added as the new paragraph (2):

“(2) The liaison offices competent for pension insurance in the Federal Republic of Germany shall also determine eligibility for benefits arising by virtue of section IV of the Convention, unless the German Federal Railway Insurance Institute (*Bundesbahn-Versicherungsanstalt*) or the Seamen’s Fund (*Seekasse*) has competence to do so.”

The former paragraph (2) shall become paragraph (3).

¹ Came into force with retroactive effect from 1 January 1953, with the exception of article 1 (1), which came into force on 1 November 1954, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Bonn on 29 September 1954, in accordance with article 22 (2).

² See p. 149 of this volume.

PART II. INCLUSION OF *LAND BERLIN**Article 2*

(1) The First Convention concerning Social Insurance and this Convention, as well as the agreements included for the purpose of implementing these Conventions, shall also apply in *Land Berlin*, unless the Government of the Federal Republic of Germany submits to the Government of the Republic of Austria a statement to the contrary within three months of the date of the exchange of the instruments of ratification for this Convention.

(2) In the application of the Convention and of the agreements concluded for the purpose of its implementation, references to the Federal Republic of Germany shall also be deemed to be references to *Land Berlin*.

Article 3

(1) For the purpose of applying the Convention in *Land Berlin*, the insurance authorities competent for accident insurance and pension insurance in *Land Berlin* shall take the place of the insurance authorities in the Federal Republic of Germany referred to in article 23, first sentence, of the First Convention concerning Social Insurance.

(2) The following shall be deemed insurance authorities within the meaning of the provisions of article 23, subparagraph 2 (*bb*) of the First Convention concerning Social Insurance:

For the period from 1 July 1945 to 31 January 1949 the Berlin Insurance Institute (*Versicherungsanstalt Berlin*),

For the period from 1 February 1949 to 31 March 1952 the Berlin (West) Insurance Institute (*Versicherungsanstalt Berlin*) (*West*),

From 1 April 1952 the Berlin Provincial Insurance Institute *Landesversicherungsanstalt Berlin*.

PART III. ACQUIRED ENTITLEMENTS AND RIGHTS ACCRUING OF NATIONALS OF BOTH STATES AND OF ETHNIC GERMANS (“*VOLKSDEUTSCHE*”) WHICH ARE NOT COVERED BY THE FIRST CONVENTION CONCERNING SOCIAL INSURANCE

SECTION I. GENERAL PROVISIONS

Article 4

(1) The subject-matter of the provisions of part III shall be the following:

1. Acquired entitlements to benefits in respect of industrial accidents (occupational diseases) from the period prior to 1 May 1945 which were indemnifiable under the German accident insurance scheme or were taken over prior to 1 May 1945 from the social security schemes of other States into the German insurance scheme as part of its liability to pay compensation, where such entitlements are not to be taken over by insurance authorities of the Federal Republic of Germany or the Republic of Austria under articles 23 or 24 of the First Convention concerning Social Insurance,

2. Entitlements acquired and rights accruing prior to 1 May 1945 under German pension insurance schemes or taken over by such schemes from the social insurance schemes of other States, where such entitlements and rights are not to be taken over by insurance authorities of the Federal Republic of Germany and the

Republic of Austria under articles 23 or 24 of the First Convention concerning Social Insurance,

3. Acquired entitlements not taken over by German insurance schemes in respect of industrial accidents (occupational diseases) from the period prior to 1 May 1945 which are indemnifiable under a social insurance scheme covering industrial accidents (occupational disease) existing in a region belonging as at 31 December 1947 to the territory of one of the following States:

Bulgaria,
Czechoslovakia,
Estonia,
Hungary,
Latvia,
Lithuania,
Poland,
Romania,
Yugoslavia,

4. Entitlements acquired and rights accruing prior to 1 May 1945 under social security schemes covering the contingencies of disability (incapacity for work), old age or death, which existed in one of the regions enumerated in subparagraph 3,

where such entitlements and rights exist in respect of persons who, at the time of the signing of this Convention, are resident, otherwise than purely temporarily, in the territory of the Republic of Austria and, at such time, either possess Austrian or German nationality or are to be deemed ethnic Germans (persons of German mother tongue who are stateless or of indeterminate nationality).

(2) This Convention shall not cover benefit entitlements acquired or rights accruing in accordance with paragraph (1), subparagraphs 1 and 2, which came under the Agreement of 21 October 1939 between the German Reich and Italy on the Economic Implications of the Resettlement of Ethnic Germans and of Nationals of the German Reich from Italy to the German Reich.

Article 5

(1) On the basis of acquired entitlements and rights accruing which, in accordance with article 4, form the subject-matter of this Convention benefits shall be granted solely under the corresponding Austrian insurance scheme in accordance with the provisions below. For these purposes:

(a) The Austrian accident insurance scheme shall correspond to the German accident insurance scheme and other social insurance schemes covering industrial accidents and occupational diseases,

(b) The Austrian insurance scheme for salaried workers shall correspond to the German pension insurance scheme for salaried workers (salaried workers' insurance) and other social insurance schemes covering incapacity for work (disability), old age or death which essentially provided coverage for salaried workers only,

(c) The Austrian miners' pension insurance scheme shall correspond to the German miners' pension insurance scheme and other social insurance schemes covering disability (incapacity for work), old age or death which essentially provided coverage only for persons employed in mining or in iron and steel works, and

(d) The Austrian disability insurance scheme shall correspond to the German pension insurance schemes for manual workers (disability insurance) and other social insurance schemes covering disability (incapacity for work), old age or death which do not fall under (b) or (c).

(2) Benefits shall be payable under the Austrian insurance scheme for salaried workers on the basis of entitlements acquired and rights accruing which were acquired under a common social insurance scheme for manual workers and salaried workers covering disability (incapacity for work), old age or death, but in an insurance category reserved for salaried workers.

Article 6

(1) Except as otherwise provided below, the Austrian insurance legislation which is applicable in accordance with the provisions of article 5 shall govern the determination and granting of benefits on the basis of the entitlements acquired and rights accruing which form the subject-matter of this Convention; the legislation on migrants shall apply in such cases *mutatis mutandis*.

(2) Where an application has been made for the determination of a benefit, the insurance authority may, as soon as its liability to pay has been established on that ground, grant a provisional benefit pending final determination of the benefit.

SECTION II. SPECIAL PROVISIONS

CHAPTER 1. ACCIDENT INSURANCE

Article 7

(1) A benefit shall be granted under the Austrian accident insurance scheme on the basis of an entitlement acquired under social insurance covering industrial accidents and occupational diseases (article 4, paragraph (1), subparagraphs 1 and 3) only if the application for determination of the benefit is filed with the competent Austrian insurance authorities (paragraph 2) within one year from the first day of the month following publication of this Convention in the Federal Law Gazette for the Republic of Austria. If the conditions establishing liability to pay compensation are not fulfilled until after publication of this Convention, the application for determination of the benefit must be filed within six months from such time as those conditions are fulfilled, failing which it shall be excluded. The time-limits shall be extended by any periods which the applicant can prove to have been periods during which he was hindered, through no fault of his own, from filing the application.

(2) With respect to the contingencies referred to in paragraph (1), the determination and granting of benefits shall fall within the competence of the Austrian accident insurance authority which would have substantive competence for the type of activity in the course of which the industrial accident occurred or which gave rise to the occupational disease, in accordance with the Austrian legislation prevailing at the time of filing of the application for determination of the benefit. In the event, however, of an industrial accident occurring at a later date which, in accordance with national legislation or the provisions of an inter-State treaty, is indemnifiable under the Austrian accident insurance scheme and gives rise to entitlement solely on the basis of the liability to pay compensation taken over under this Convention, the competent accident insurance authority shall be that bearing liability in respect of the later accident.

(3) The time-limits stipulated in paragraph (1) shall be deemed to have been observed even where the application is filed with an Austrian insurance authority lacking appropriate competence or with an Austrian public authority; in such cases, application shall be transmitted to the competent insurance authority without delay.

Article 8

(1) For the purpose of calculating benefits pursuant to article 7, the following shall be deemed annual wages provided that, according to the type of occupation pursued at the time of the accident, under the Austrian legislation prevailing at the time of filing of applications for determination of benefit

(a) The insured person belonged to the disability insurance scheme for men: 2,000 schillings and for women 1,300 schillings; for men employed as unskilled agricultural workers 1,200 schillings or for women in such employment 900 schillings,

(b) The insured person belonged to the salaried workers' insurance scheme: for men 3,000 schillings or for women 2,000 schillings, or

(c) The insured person belonged to the miners' pension insurance scheme: for men 2,500 schillings or for women 1,700 schillings.

(2) In the case of persons self-employed in agriculture or forestry at the time of an accident, the annual wage shall be deemed to be 1,200 schillings; for other types of self-employment at such time it shall be deemed to be 2,400 schillings.

(3) Section 4 and section 5, paragraph (2), of the Ordinance of 9 November 1944 (German Reich Law Gazette I, p. 324) and legislation passed in order to implement and supplement it shall not be applicable.

(4) Supplements, maintenance allowances and accommodation grants payable in conjunction with benefits shall be granted in accordance with the relevant legislation.

CHAPTER 2. PENSION INSURANCE

Article 9

(1) Entitlement to a pension within the meaning of article 4, paragraph 1, subparagraph 2 or 4, shall exist if, prior to 1 May 1945, a pension was granted:

(a) On the basis of the insurance contingency of old age or death,

(b) On the basis of the insurance contingency of disability (incapacity for work), but in this case only if the disability (incapacity for work) has lasted until the time of filing of the application for determination of the benefit payable on the basis of such entitlement under the Austrian insurance scheme or until the death of the insured person prior to such filing.

(2) A right accruing within the meaning of article 4, paragraph (1), subparagraph 2 or 4, shall exist if, prior to 1 May 1945, a pension was granted on the basis of the insurance contingency of disability (incapacity for work) which does not, however, satisfy the stipulation of paragraph (1) (b) or if periods of coverage were completed prior to 1 May 1945 but no pension was granted prior to that time.

Article 10

(1) An acquired entitlement or right accruing within the meaning of article 9 shall be taken into account for a benefit under an Austrian pension insurance

scheme only if the claimant files the application for pre-registration of the entitlement or right with the Austrian insurance authority competent under paragraph (2) to pre-register such application within one year from the first day of the month following publication of this Convention in the Federal Law Gazette for the Republic of Austria. This time-limit shall be extended by any period which the applicant can prove to have been a period during which he was, through no fault of his own, prevented from filing the application. The application for determination of the benefit may be filed at the same time as that for pre-registration of an entitlement or right. Article 7, paragraph (3), shall be applicable in such cases.

(2) The Austrian pension insurance authority competent to pre-register he benefit entitlement or right accruing shall be that which is liable to pay a pension on the basis of the entitlement (right) provided that the relevant conditions are satisfied. Where a benefit would thereby be payable under the disability insurance scheme, the competent authority shall be that which, under national legislation, would be qualified to determine and grant the benefit if the periods of coverage on which the entitlement (right) was based were completed with the place of employment, or in the case of voluntary insurance the place of residence, being in the territory of the Republic of Austria. If more than one Austrian pension insurance scheme comes into consideration for the granting of the benefit, the Austrian pension insurance authority competent to effect pre-registration shall be that which, under the national legislation on migrants' insurance, would be responsible for determining and granting the total benefit.

(3) Where the application for pre-registration is also based on periods of coverage completed in Austria, such periods shall be taken into account in determining competence.

(4) The competent Austrian pension authority shall issue a decision on the pre-registration giving instructions on the applicant's right of appeal. An appeal may be lodged against such decision in arbitral proceedings in the same way as against a decision concerning a benefit.

Article 11

The Austrian insurance authority competent to determine and grant a benefit for which an acquired entitlement or right accruing within the meaning of article 9 is to be taken into account shall be that which would be responsible for determining and granting the benefit on the basis of the periods of coverage completed at the time of filing of the application for determination of the benefit in pursuance, *mutatis mutandis*, of article 10, paragraphs (2) and (3).

Article 12

(1) Where, on the basis of an entitlement within the meaning of article 9, paragraph (1), a benefit corresponding thereto (paragraph (2)) is to be determined under an Austrian pension insurance scheme, the qualifying period shall be deemed to have been completed. Entitlement to a pension increment shall exist in respect of periods of coverage which were taken into account in the assessment of the pension benefit awarded prior to 1 May 1945. Where it is not possible to determine the periods of coverage taken into account in the assessment of this benefit, it shall be assumed that the periods of coverage on which the assessment is based are sufficient for completion of the necessary qualifying period for the benefit under the Austrian insurance scheme.

(2) The benefit to be determined under an Austrian pension insurance scheme shall be deemed to correspond to the entitlement taken into account where:

(a) Such benefit was based on the same insurance contingency for which the pension was awarded prior to 1 May 1945,

(b) Such benefit was based on the insurance contingency of death following the award of a benefit prior to 1 May 1945 on the basis of the insurance contingency of disability (incapacity for work) or old age.

Article 13

(1) Where a benefit is to be determined under an Austrian pension insurance scheme on the basis of a right accruing within the meaning of article 9, paragraph (2), the periods of coverage specified in the pre-registration decision which correspond under article 5 to periods of coverage completed under the Austrian insurance scheme shall be treated as equivalent to periods of coverage under such insurance for the purposes of determination of creditability (maintenance of rights accruing), of completion of the qualifying period and of acquisition of entitlement to pension increments. Periods of coverage which overlap shall be taken into account once only.

(2) Paragraph (1) shall apply *mutatis mutandis* to the right to continued coverage and to retroactive payment of contributions under section 31 of the First Social Insurance Revision Act (Federal Law Gazette for the Republic of Austria No. 86/1952).

(3) For the purpose of determining creditability, in addition to the periods specified in section 5, paragraph (3) of the First Social Insurance Revision Act, the following periods contained between 1 May 1945 and publication of this Convention in the Federal Law Gazette for the Republic of Austria which have not been acquired as periods of coverage shall be left out of account:

(a) Periods subsequent to the completed sixty-fifth year of age of an insured man, or subsequent to the completed sixtieth year of age of an insured woman.

(b) Periods of disability (incapacity work) of an insured person or of entitlement within the meaning of article 4, paragraph (1), subparagraph 1 or 3, based on a reduction of capacity for work of at least 50 per cent.

(c) Periods spent by the insured person outside the territory of the Republic of Austria which he is able to prove to have been periods during which he was prohibited by order of the authorities from taking up an employment relationship.

Article 14

(1) The annual pension increment rates granted in accordance with article 12, paragraph (1) or article 13, paragraph (1) shall be fixed as follows:

(a) In the case of invalidity annuities, for men 40 groschen and for women 25 groschen, for each creditable week; however, for persons in employment as unskilled agricultural workers, for men 22 groschen, and for women 12 groschen;

(b) In the case of retirement pensions, for men 2.70 schillings, and for women 1.90 schillings, for each creditable month;

(c) In the case of miners' full annuities, for men 4.60 schillings, and for women 3 schillings, for each creditable month;

(d) In the case of miners' annuities, for men 2.90 schillings, and for women 1.90 schillings, for each creditable month.

(2) The increment rates shall increase by 50 per cent for creditable weeks over 1,560 weeks and for creditable months over 360 months.

(3) Supplementary annuities, supplements, maintenance allowances and accommodation grants payable in conjunction with benefits under an Austrian pension insurance scheme on the basis of acquired entitlements or rights accruing within the meaning of article 9 shall be granted in accordance with Austrian legislation.

Article 15

(1) Contribution refunds, benefit supplements for daytime work as a hewer and the miners' long-service allowance shall not be granted on the basis of acquired entitlements or rights accruing within the meaning of article 9.

(2) Increments to the invalidity annuity granted for the period prior to 1 January 1939 in accordance with article 14, paragraph (1) (a) shall, with regard to application of section 14, paragraph (4), of the First Social Insurance Revision Act (Federal Law Gazette for the Republic of Austria No. 86/1952), be treated as equivalent to increments to the retirement pension acquired in respect of the aforesaid period and taken into account in the determination of a benefit.

Article 16

Where, in addition to an acquired entitlement or right accruing within the meaning of article 9, there also exists an acquired entitlement or right accruing on the basis of Austrian periods of coverage, a single benefit shall be determined on the basis of all these entitlements or rights.

CHAPTER 3. FINANCIAL PROVISIONS

Article 17

Additional amounts disbursed by Austrian insurance authorities as a result of application of articles 4 to 16 and article 21 shall be refunded to these authorities by the Republic of Austria on the basis of a regulation by federal law.

Article 18

(1) The Federal Republic of Germany shall, in order to cover part of the amounts disbursed by the Republic of Austria under article 17, assume in accordance with paragraph (2) the disbursements by Austrian insurance authorities by reason of articles 4 to 16 and article 21 in respect of persons who, at the time of entry into force of the Convention, do not possess Austrian nationality.

(a) Under accident insurance, as a result of industrial accidents (occupational diseases) which occurred in a region belonging to the territory of one of the following States:

German Reich, except for the Saar region,
Czechoslovakia, except for the South Bohemian, South Moravian and
Slovakian regions incorporated in the former regions of the German
Reich Niederdonau and Oberdonau,
The free City of Danzig,
Estonia,
Latvia,
Lithuania,
Poland.

(b) Under pension insurance, from periods of coverage completed in one of the regions specified under (a).

(2) Of the disbursements referred to in paragraph (1), the Federal Republic of Germany shall assume the following:

(a) Benefits under accident insurance; in addition, benefits under a pension insurance scheme in whose assessment periods of coverage as referred to in paragraph (1) (b) only are taken into account; such benefits shall also include the accommodation grant and child allowance, as well as the contribution to the pensioners' sickness insurance to be borne by the insurance authority;

(b) Of benefits under a pension insurance scheme in whose assessment, in addition to the specified periods of coverage, Austrian periods of coverage were also taken into account,

(aa) The pension increments based on the periods of coverage referred to in paragraph 1 (b),

(bb) With the proviso that the entitlement has not already arisen solely on the basis of Austrian periods of coverage, of fixed benefits or fixed partial benefits within the meaning of article 19, paragraphs (1) and (3) of the First Convention concerning Social Insurance, of the accommodation grant and child allowance and, additionally, of the contribution borne by the insurance authority towards the pensioners' sickness insurance, that portion corresponding to the ratio of the periods of coverage necessary for completion of the qualifying period within the meaning of (aa) to the qualifying period.

(3) Where the amounts to be refunded by the Federal Republic of Germany in accordance with paragraphs (1) and (2) include disbursements in respect of accidents for whose indemnification the General Accident Insurance (*Allgemeine Unfallversicherung*) would be competent under the law of the Federal Republic of Germany, such disbursements shall be refunded to the Federal Republic of Germany by the insurance authorities of the German General Accident Insurance subject to the detailed directions of the Federal Minister of Labour in agreement with the Federal Minister of Finance.

Article 19

The supreme administrative authorities of the two Contracting States shall agree on the details of the implementation of article 18 in agreement with the competent Federal Minister of Finance.

PART IV. TRANSITIONAL AND FINAL PROVISIONS

Article 20

In the application of this Convention articles 27 to 29, 33 and 36 of the First Convention concerning Social Insurance shall apply *mutatis mutandis*.

Article 21

(1) Benefits under this Convention shall be granted for the period from 1 January 1953 at the earliest.

(2) If the conditions for entitlement to a benefit on the basis of articles 4 to 16 are fulfilled at the time of entry into force of this Convention, the benefit shall,

provided that an application therefor is filed within one year from publication of the Convention in the Federal Law Gazette for the Republic of Austria, be determined with effect from the entry into force of the Convention.

(3) If the conditions for entitlement to a benefit on the basis of articles 4 to 16 are not fulfilled until after the entry into force of the Convention, but are nevertheless fulfilled prior to the date of publication of the Convention in the Federal Law Gazette for the Federal Republic of Austria, the benefit shall, provided that an application therefor is filed within one year from the publication date, be determined with effect from the first day of the month following the date on which the conditions for entitlement are fulfilled.

(4) A pension under an Austrian pension insurance scheme which has already been determined prior to the publication of this Convention in the Federal Law Gazette for the Republic of Austria shall, upon application, be recalculated in accordance with the provisions of this Convention. If the recalculation application is made within one year from the publication date, the pension shall be recalculated with effect from its commencement, but at the earliest from 1 January 1953. The binding force of previous decisions shall not preclude such recalculation.

(5) Advance payments which were made, on the basis of national Austrian legislation, in respect of pensions under the social insurance schemes specified in article 4 for a period for which the benefits were granted in accordance with articles 4 to 16 shall be aggregated with those benefits.

Article 22

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

(2) Article 1, paragraph (1), shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

The remaining provisions shall enter into force with effect from 1 January 1953.

(3) Article 41 of the First Convention concerning Social Insurance shall apply *mutatis mutandis*.

DONE at Salzburg on 11 July 1953, in two original copies.

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

For the Republic of Austria:

Dr. RUDOLPH

For the Federal Republic of Germany:

J. ECKERT

FINAL PROTOCOL

At the time of signing the Second Convention this day between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance (Second Convention concerning Social Insurance), the Plenipotentiaries of the two Contracting States declare unanimously that agreement has been reached on the following:

1. The Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951 shall be entitled "First Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of 21 April 1951".

2. The accommodation grant under the Federal Accommodation Grant Act (Federal Law Gazette for the Republic of Austria No. 229/1951) shall not be deemed a supplement within the meaning of article 3, paragraph (1), of the First Convention concerning Social Insurance.

3. Pension insurance schemes within the meaning of article 4, paragraph (1), of the Second Convention concerning Social Insurance shall not include supplementary insurance, increased insurance or other forms of insurance providing additional benefits.

4. The declaration of renunciation made or still to be made by persons in the category specified in article 4, paragraph (1), of the Second Convention concerning Social Insurance shall, as from 1 January 1953, no longer apply to benefits payable in accordance with part III of the Convention.

5. The Governments of both Contracting States shall consider re-examining article 18 of the Second Convention concerning Social Insurance in the event of an appreciable change in the calculation basis on which this Convention is based.

6. The Governments of the two Contracting States reserve the right upon conclusion of a State Treaty with Austria or a Treaty on Peace with Germany, or upon conclusion of an Agreement with a third State concerning acquired entitlements and rights accruing which form the subject-matter of part III of the Second Convention concerning Social Insurance, to ascertain the extent to which this Convention is affected by the provisions of those Treaties and Agreements and to settle questions arising therefrom by mutual consent.

This Final Protocol, which forms an integral part of the Second Convention between the Republic of Austria and the Federal Republic of Germany concerning Social Insurance of today's date, shall have effect under the same conditions and for the same period as the Convention itself.

DONE at Salzburg, on 11 July 1953, in two original copies.

For the Republic of Austria:

Dr. RUDOLPH

For the Federal Republic of Germany:

J. ECKERT