

No. 30410

**AUSTRIA
and
SLOVENIA**

**Agreement on social security (with final protocol). Signed at
Vienna on 30 November 1992**

Authentic texts: German and Slovene.

Registered by Austria on 26 October 1993.

**AUTRICHE
et
SLOVÉNIE**

**Accord relatif à la sécurité sociale (avec protocole final).
Signé à Vienne le 30 novembre 1992**

Textes authentiques : allemand et slovène.

Enregistré par l'Autriche le 26 octobre 1993.

[TRANSLATION — TRADUCTION]

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

The Republic of Austria and the Republic of Slovenia,

Desiring to regulate the mutual relations between the two States in the field of social security,

Have agreed to conclude the following Agreement

PART I. GENERAL PROVISIONS

Article 1

(1) For the purposes of this Agreement,

1. “Austria” means the Republic of Austria, and “Slovenia” means the Republic of Slovenia;
2. “National” means, in the case of Austria, a citizen of Austria, and in the case of Slovenia, a citizen of Slovenia;
3. “Legislation” means the laws, regulations and statutory instruments that relate to the branches of social security specified in subparagraph (1) (1) of article 2;
4. “Competent authority” means, in the case of Austria, the federal ministers responsible for the application of the laws specified in subparagraph (1) (1) of article 2, and in the case of Slovenia, the ministers responsible for the application of the laws specified in subparagraph (1) (2) of article 2;
5. “Insurance authority” means the institute or authority responsible for the application of the legislation or part thereof specified in article 2, paragraph 1;
6. “Competent insurance authority” means the insurance authority with which the person concerned is insured at the time of the benefit application, or from which that person is entitled to claim benefits or would still be so entitled if he were resident in the territory of the Contracting State in which he was last insured;
7. “Family member” means a family member under the legislation of the Contracting State in which the insurance authority to whose charge the benefits are to be granted is situated;
8. “Periods of coverage” means contribution periods or equivalent periods that are regarded as such under the legislation of both Contracting States;
9. “Cash benefit”, “annuity” or “pension” means a cash benefit, annuity or pension including any part thereof from public funds, and any supplement, adjustment payment, additional allowance and lump-sum compensation;
10. “Family allowance” means, in the case of Austria, a family allowance, and in the case of Slovenia, a children’s allowance.

¹ Came into force on 1 October 1993, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Ljubljana on 2 July 1993, in accordance with article 42 (2).

(2) Other terms used in this Agreement shall have the meaning which they have under the relevant legislation.

Article 2

(1) This Agreement shall apply:

1. In Austria, to the legislation concerning:

(a) Sickness insurance;

(b) Accident insurance;

(c) Pensions insurance, with the exception of the special insurance for notaries;

(d) Unemployment benefits;

(e) Family allowances;

2. In Slovenia, to the legislation concerning:

(a) Sickness insurance;

(b) Pensions and invalidity insurance;

(c) Unemployment benefits;

(d) Children's allowances and maternity insurance.

(2) Except as otherwise provided in paragraphs 3 and 4, this Agreement shall also apply to all legislation that consolidates, amends or supplements the legislation specified in paragraph (1).

(3) This Agreement shall not apply to legislation concerning a new scheme or a new branch of social security or to schemes for war victims and their dependants.

(4) Legislation which arises out of agreements with third States or which pertains to their application shall not be taken into account in the application of this Agreement, except insofar as it contains provisions relating to the apportionment of insurance burdens.

Article 3

This Agreement shall apply to:

(a) Persons who are or have been subject to the legislation of one or both Contracting States;

(b) Other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

Article 4

For the purposes of the application of the legislation of one Contracting State, except as otherwise provided in this Agreement, nationals of the other Contracting State shall be treated as nationals of that State.

Article 5

Except as otherwise provided in this Agreement, pensions, annuities and other cash benefits, with the exception of unemployment benefits, to which entitlement exists under the legislation of one Contracting State shall not be reduced, modified,

suspended, cancelled or seized because the claimant is resident in the territory of the other Contracting State.

PART II. PROVISIONS CONCERNING APPLICABLE LEGISLATION

Article 6

Except as otherwise provided in articles 7 and 8, the compulsory insurability of a person shall be determined by the legislation of the Contracting State in whose territory the person is gainfully employed. This shall apply in the case of salaried employment even if the place of residence of the employee or the principal place of business of his employer is situated in the territory of the other Contracting State.

Article 7

(1) If a person in the service of an employer having a principal place of business in the territory of one Contracting State is sent to the territory of the other Contracting State, he shall continue to be subject to the legislation of the first-mentioned Contracting State during the first 24 months of his employment in the territory of the other Contracting State as if he were still employed in the territory of the first-mentioned Contracting State.

(2) If a person employed by an airline having its principal place of business in the territory of one Contracting State is sent from the territory of that State to the territory of the other Contracting State, the legislation of the first-mentioned Contracting State shall continue to apply as if he were still employed in the territory of that State.

(3) The crew of an ocean-going vessel and other persons employed, temporarily or otherwise, on board an ocean-going vessel shall be subject to the legislation of the Contracting State whose flag is flown by the vessel.

(4) Civil servants who are sent from one Contracting State to the other Contracting State shall be subject to the legislation of the sending State.

Article 8

(1) Diplomats and members of the staff of diplomatic missions shall, subject to the provisions of paragraph (4), be exempt in respect of their work on behalf of the sending State from the legislation applicable in the receiving State.

(2) (a) The exemption provided for in paragraph (1) shall also apply to members of the administrative and technical staff of a mission and to members of the domestic staff of a mission who are neither nationals of the receiving State nor permanently resident therein.

(b) Notwithstanding the provisions of subparagraph (a), members of the administrative and technical staff of a mission who are nationals of the sending State and permanently resident in the receiving State may, within the first three months of their employment, elect to be subject to the legislation of the receiving State.

(3) The exemption provided for in paragraph (1) shall further apply to private domestic employees who are employed solely by a diplomat or a member of the staff of a diplomatic mission, insofar as they:

(a) Are neither nationals of the receiving State nor permanently resident therein, and

(b) Are subject to the legislation applicable in the sending State or in a third State.

(4) Where a diplomat or a member of the staff of a diplomatic mission employs persons to whom the exemption provided for in paragraph (3) is not applicable, he shall comply with the legislation applicable to employers in the receiving State.

(5) The provisions of paragraphs 1 to 4 shall apply, *mutatis mutandis*, to members of consular missions and members of the domestic staff of such missions who are employed solely by them.

Article 9

(1) At the joint request of an employed person and his employer, the competent public authorities of the two Contracting States may provide, by mutual agreement, for exceptions to the provisions of articles 6 to 8, taking into account the nature and circumstances of the employment.

(2) Where the legislation of one Contracting State is applicable to an employee under paragraph 1 of this article, even if he is gainfully employed in the territory of the other Contracting State, the legislation shall be applied as if the person concerned were employed in the territory of the first-mentioned Contracting State.

PART III. SPECIAL PROVISIONS

CHAPTER 1. SICKNESS AND MATERNITY

Article 10

If a person has completed periods of coverage under the legislation of the two Contracting States, these periods, insofar as they do not coincide, shall be aggregated for the purpose of establishing entitlement to benefits and the period during which benefits are to be provided.

Article 11

(1) A person who satisfies the eligibility requirements for a benefit under the legislation of one Contracting State, or who would satisfy these requirements if he were in the territory of that State, shall receive:

(a) In the case of habitual residence in the territory of the other Contracting State, benefits in kind from the insurance authority of his place of residence under the legislation applicable to that authority, at the expense of the competent insurance authority;

(b) In the case of temporary residence in the territory of the other Contracting State, benefits in kind from the insurance authority of his place of residence under the legislation applicable to that authority, at the expense of the competent insurance authority, insofar as the circumstances of the person concerned make it necessary to provide such benefits immediately.

(2) In the application of paragraph 1 of this article, the provision of prosthetic devices, larger allowances and other major benefits in kind shall be contingent upon the consent of the competent insurance authority, unless the provision of the benefit cannot be postponed without seriously endangering the life or health of the person concerned.

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

(4) The preceding paragraph shall apply, *mutatis mutandis*, to the family members of a person to whom paragraph 1 applies.

(5) Where, under the legislation of one Contracting State, cash benefit amounts are contingent upon the number of family members, the competent insurance authority shall also take into consideration family members who are habitually resident in the territory of the other Contracting State.

(6) Where, under Slovenian legislation, maternity cash benefits are calculated on the basis of previous income, the Slovenian insurance authority shall take into consideration only that income which the person concerned earned during her last period of employment in Slovenia, so that the average income earned in Slovenia shall be treated as average income for the entire period in question.

Article 12

(1) Persons in receipt of a pension under the pension insurance of the Contracting States shall be subject to the legislation concerning sickness insurance for pensioners of the Contracting State in whose territory they habitually reside. In any such cases where a pension is granted under the legislation of the other Contracting State only, such pension shall be deemed to be a pension under the legislation of the first-mentioned Contracting State.

(2) Paragraph 1 of this article shall apply *mutatis mutandis* to applicants for pensions.

Article 13

Benefits in the cases referred to in article 11, paragraph 1, and the second sentence of article 12, paragraph 1, shall be provided:

In Austria: By the Regional Health Insurance Fund (*Gebietskrankenkasse*) competent for the place of residence of the person concerned;

In Slovenia: By the district office of the Slovenian Health Insurance Institute competent for the place of residence of the person concerned.

Article 14

(1) The competent insurance authority shall reimburse the insurance authority of the place of residence for amounts disbursed in application of article 11 and the second sentence of article 12, paragraph 1, with the exception of administrative costs.

(2) The competent authorities may, in order to simplify administrative procedures, agree that lump-sum payments should replace payments on a case-by-case basis for all cases or for specific categories of cases.

CHAPTER 2. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 15

(1) A person who is eligible for benefits in kind under the legislation of one Contracting State by reason of an industrial accident or occupational disease shall, during any period of residence in the territory of the other Contracting State, receive

benefits in kind from the competent insurance authority of his place of residence under the legislation applicable to that insurance authority. Article 11, paragraph 2, shall apply *mutatis mutandis*.

(2) In the cases referred to in paragraph 1 of this article, benefits in kind shall be provided:

In Austria: By the Regional Health Insurance Fund (*Gebietskrankenkasse*) competent for the place of residence of the beneficiary or by an accident insurance authority;

In Slovenia: By the district office of the Slovenian Health Insurance Institute competent for the place of residence of the person concerned.

(3) For the reimbursement of the costs arising under paragraph 1, article 14 shall apply *mutatis mutandis*.

Article 16

If a person who is habitually resident in the territory of one Contracting State, and who is recruited to work in the other Contracting State on the basis of a lawful contract of employment, suffers an accident while travelling without interruption and via the shortest possible route to his place of employment, the insurance authority of the second Contracting State shall pay compensation for this accident in accordance with the legislation concerning accident insurance; this provision shall also apply in the case of an employee who suffers an accident while returning to his State of residence immediately following the termination of a contract of employment on the basis of which he travelled to the other Contracting State.

Article 17

(1) If the award of benefits for an occupational disease under the legislation of one Contracting State depends on the disease having been medically established for the first time in the territory of that Contracting State, then this requirement shall be deemed to have been satisfied if the disease concerned has been established for the first time in the territory of the other Contracting State.

(2) If the legislation of one Contracting State provides that benefits for an occupational disease shall be provided only if a person has been engaged for a minimum period in the employment to which the disease can be traced, the competent insurance authority of that Contracting State shall, where necessary, take into consideration the periods of such employment to which the legislation of the other Contracting State applied.

Article 18

(1) Where an occupational disease is compensable under the legislation of the two Contracting States, benefits shall be provided only under the legislation of the Contracting State in whose territory an occupation liable to cause such an occupational disease was last engaged in, insofar as the person concerned fulfils the requirements laid down in the said legislation.

(2) If a person who has contracted an occupational disease received or receives benefits at the expense of an insurance authority of one Contracting State and, after having also engaged in an occupation under the legislation of the other Contracting State to which an occupational disease can be traced, claims benefits from an insurance authority of the other Contracting State owing to a deterioration

in his condition, the insurance authority of the first Contracting State shall continue to bear the costs of the benefits under the legislation applicable to it, irrespective of such deterioration; the competent insurance authority of the second Contracting State shall provide a benefit equal to the difference between the benefit due following the deterioration and the benefit that would have been due prior to the deterioration under the legislation applicable to that authority, if the disease was contracted following the adoption of the said legislation.

CHAPTER 3. OLD AGE, INVALIDITY AND DEATH (PENSIONS)

Article 19

(1) If a person has completed periods of coverage under the legislation of the two Contracting States, these periods, insofar as they do not coincide, shall be aggregated for the purpose of establishing, maintaining or restoring entitlement to benefits. The extent to which and the manner in which periods of coverage shall be taken into consideration shall be determined by the legislation of the Contracting State under whose insurance these periods are covered.

(2) Where under the legislation of one Contracting State the provision of certain benefits is contingent upon the completion of periods of coverage in an occupation that is subject to a special scheme, or in a certain occupation or place of employment, only those periods of coverage completed under the legislation of the other Contracting State which were completed under the scheme concerned, or, where such a scheme does not exist, in the same occupation or place of employment, shall be taken into consideration for the purpose of providing benefits.

Article 20

(1) When a person who has completed periods of coverage under the legislation of both Contracting States, or the survivor of such a person, claims a benefit, the amount of the benefit shall be determined in the following manner:

(a) The insurance authority of each Contracting State shall determine, in accordance with the applicable legislation, whether the claimant meets the eligibility requirements for the benefits provided for in this legislation by aggregating the periods of coverage, as provided in article 19.

(b) If the claimant is entitled to a benefit, each insurance authority shall first calculate the theoretical amount of the benefit which would be payable if all the periods of coverage completed under the legislation of both Contracting States had been completed exclusively under the legislation to be applied by that authority; in cases where the amount of the benefit is independent of the duration of the periods of coverage, this amount shall be taken to be the theoretical amount.

(c) On the basis of this amount, the insurance authority shall calculate the partial benefit to be paid in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under the legislation to be applied by that authority and the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States.

(d) For purposes of the application of subparagraphs (b) and (c), overlapping periods of coverage shall be taken into consideration as if they did not overlap.

(e) Where a person is entitled to a benefit under the legislation of one Contracting State irrespective of the provisions of article 19, the insurance authority of

that Contracting State shall provide the benefit due solely on the basis of the periods of coverage to be taken into consideration under the legislation to be applied by that authority.

(2) If the total duration of the periods of coverage to be taken into consideration under the legislation of one Contracting State does not amount to 12 months for calculating the benefit, no benefit shall be paid under this legislation. However, the preceding sentence shall not apply if under this legislation entitlement to that benefit exists solely on the basis of these periods of coverage.

(3) The periods of coverage referred to in the first sentence of paragraph (2) shall, for the purpose of establishing, maintaining or restoring entitlement to benefits and determining the extent of entitlement, be taken into consideration by the insurance authority of the other Contracting State as if they were periods of coverage completed under the legislation to be applied by that authority.

Article 21

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

1. For the purpose of determining affiliation and liability for benefits, only periods of coverage under Austrian legislation shall be taken into consideration.

2. Articles 19 and 20 shall not apply to the long-service bonus for miners (*Bergmannstreuegeld*) under the pensions insurance scheme for miners.

3. For purposes of the application of articles 19 and 20, the Slovenian periods of coverage expressed in days shall be recalculated in months, such that 30 days equals one month; any remaining days shall be treated as a full month.

4. For purposes of the application of article 20, paragraph 1 (*a*), periods during which the insured person was entitled to a pension on the basis of the insurance contingency of old age or invalidity under Slovenian legislation shall also be treated as if they were neutral periods.

5. For purposes of the application of article 20, paragraph 1 (*b*), the basis of assessment shall be determined by taking into account only periods of coverage under Austrian legislation.

6. For purposes of the application of article 20, paragraph 1 (*b*), contributions for supplementary insurance, the miners' supplementary benefit, the disabled persons' supplementary allowance and the compensatory allowance shall be disregarded.

7. Where, for purposes of the application of article 20, paragraph 1 (*c*), the total duration of the periods of coverage to be taken into consideration under the legislation of the two Contracting States exceeds the maximum specified under Austrian legislation for the calculation of pension increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian legislation and the maximum number of months of coverage referred to above.

8. For the purpose of calculating the disabled persons' supplementary allowance, article 20, paragraph 1 (*b*) and (*c*), shall apply.

9. The amount calculated in accordance with article 20, paragraph 1 (*c*), shall be increased, where appropriate, by increments for contributions for supplementary

insurance, the miners' supplementary benefit, the disabled persons' supplementary allowance and the compensatory allowance.

10. Special payments shall be made on the same scale as the Austrian partial benefit.

Article 22

The Slovenian insurance authorities shall apply articles 19 and 20 in accordance with the following rules:

1. For the purpose of determining affiliation and liability for benefits, only periods of coverage under Slovenian legislation shall be taken into consideration.

2. Insofar as the availability of certain material evidence is a requirement under Slovenian legislation for the establishment, maintenance or restoration of entitlement to benefits, similar material evidence shall also have the same effect in Austria.

3. For purposes of the application of article 20, paragraph 1 (*b*), the basis of assessment shall be determined by taking into account only periods of coverage under Slovenian legislation.

4. Where, for purposes of the application of article 20, paragraph 1 (*c*), the total duration of the periods of coverage to be taken into consideration under the legislation of the two Contracting States exceeds the maximum specified under Slovenian legislation for the calculation of pension increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Slovenian legislation and the maximum number of months of coverage referred to above.

5. For the purpose of calculating the disabled persons' supplementary allowance, article 20, paragraph 1 (*b*) and (*c*), shall apply.

CHAPTER 4. UNEMPLOYMENT

Article 23

(1) Periods of employment with compulsory insurance completed under the legislation of one Contracting State shall be taken into consideration in determining entitlement to unemployment benefits under the legislation of the other Contracting State, provided that the unemployed person was an employee with compulsory unemployment insurance in the Contracting State in which he submitted the claim for such a benefit for a total of at least 13 weeks during the last 12 months before applying for the benefit and was not in breach of the regulations concerning the employment of foreign workers.

(2) The requirement of a minimum employment period of 13 weeks laid down in paragraph 1 of this article shall not apply to unemployed persons whose employment was intended to be for a longer period, but was terminated before the end of 13 weeks through no fault of their own.

Article 24

The period in which the unemployed person received unemployment benefits in the other Contracting State during the 12 months prior to the date of submitting the application shall be deducted from the period for which he is entitled to benefits.

CHAPTER 5. FAMILY ALLOWANCES

Article 25

(1) A person who works as an employed person in one Contracting State shall be entitled under the legislation of that Contracting State to family allowances; this entitlement shall extend also to children who are permanently resident in the other Contracting State.

(2) For the purposes of entitlement to family allowances, employed persons shall be treated as if they were resident solely in the Contracting State in which they are employed.

(3) Children aged 15 and over who are permanently resident in Slovenia shall be entitled to Austrian family allowances only if they are attending school.

Article 26

(1) Family allowance granted under Austrian legislation in respect of children who are permanently resident in Slovenia shall be 955 schillings per month for each child. This amount shall be increased or reduced by the same percentage by which family allowance for a child in Austria is increased or reduced after 1 January 1992.

(2) For children aged 10 and over who are permanently resident in Slovenia, the family allowance shall be increased by 120 schillings per month beginning with the calendar year in which the child turns 10. This amount shall be increased or reduced by the same percentage by which supplemental family allowance for a child aged 10 and over in Austria is increased or reduced after 1 January 1992.

Article 27

(1) If, under the legislation of one Contracting State, entitlement to family allowances is subject to certain qualifying periods, any similar periods completed in the other Contracting State shall be credited.

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

Article 28

If, by virtue of this Agreement, a person in the course of one calendar month satisfies the eligibility requirements under the legislation first of one and then of the other Contracting State in respect of any child, family allowances for that month shall be granted only by the Contracting State under whose legislation they were payable at the commencement of the month.

Article 29

If, by virtue of this Agreement, the eligibility requirements for family allowances under the legislation of both Contracting States in respect of any child are satisfied in both Contracting States, the family allowances for such child shall be granted solely under the legislation of the Contracting State in which the child is permanently resident.

Article 30

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

PART IV. MISCELLANEOUS PROVISIONS

Article 31

(1) The competent authorities shall determine by agreement the necessary administrative measures for the application of this Agreement.

(2) The competent authorities of the two Contracting States shall inform each other of:

(a) All measures taken to implement this Agreement;

(b) All changes in their legislation that affect the application of this Agreement.

(3) In the application of this Agreement, the public authorities and insurance authorities of the Contracting States shall assist each other and act in the same manner as in applying their own legislation. Such official assistance shall be free of charge.

(4) The insurance authorities and competent authorities of the Contracting States may correspond directly with each other and with any person or his representative for purposes of the application of this Agreement.

(5) The insurance authorities and competent authorities of one Contracting State may not reject applications and other documents submitted to them because they are drafted in the official language of the other Contracting State.

(6) Medical examinations conducted in application of the legislation of one Contracting State and involving persons resident in the territory of the other Contracting State shall be arranged at the request of the competent agency of the insurance authority of the place of residence and at its expense. Costs shall not be refunded if the medical examination was in the interests of the insurance authorities of the two Contracting States.

(7) The respective provisions governing legal aid in civil matters shall apply to legal aid in judicial proceedings.

Article 32

The competent authorities shall set up liaison offices to facilitate the application of this Agreement, and, in particular, to establish simple and speedy contact between the insurance authorities concerned of the two Contracting Parties.

Article 33

(1) Any exemption from or reduction of charges, stamp duties or court or registration fees provided for under the regulations of one Contracting State for documents and records required to be submitted under the legislation of that Contracting State shall apply to such documents and records required to be submitted under this Agreement or the legislation of the other Contracting State.

(2) Certificates and documents of any kind that are to be submitted under this Agreement shall not require authentication.

Article 34

(1) Claims, declarations or appeals which, in application of this Agreement or the legislation of a Contracting State, are submitted to a public authority, insurance authority or other competent institution of a Contracting State shall be deemed to be claims, declarations or appeals submitted to a public authority, insurance authority or other competent institution of the other Contracting State.

(2) A claim for a benefit submitted under the legislation of one Contracting State shall also be deemed to be a claim for a corresponding benefit under the legislation of the other Contracting State which is taken into consideration pursuant to this Agreement; this shall not apply if the claimant specifically requests that the determination of a benefit acquired by reason of age under the legislation of a Contracting State should be postponed.

(3) Claims, declarations or appeals which, in application of the legislation of one Contracting State, are required to be submitted within a certain time limit to a public authority, insurance authority or other competent institution of that Contracting State may be submitted to the corresponding agency of the other Contracting State within the time limit.

(4) In the cases referred to in paragraphs 1 to 3 of this article, the office to which the claims, declarations or appeals have been submitted shall transmit them without delay to the corresponding competent office of the other Contracting State, either directly or through the liaison offices of the Contracting States.

Article 35

(1) The agencies liable for benefits under this Agreement shall discharge their liability by providing benefits in their national currency.

(2) The reimbursements provided for under this Agreement shall be made in the currency of the Contracting State in which the insurance authority granting the benefits has its principal place of business.

(3) Transfers made pursuant to this Agreement shall be carried out in accordance with the relevant agreements in effect in the two Contracting States at the time of the transfer.

Article 36

(1) Enforceable decisions of the courts and enforceable decisions and supporting documents (records) of the insurance authorities or the public authorities of one Contracting State concerning contributions and other claims stemming from social security, as well as claims for the recovery of family allowances acquired illegally, shall be recognized in the other Contracting State.

(2) Such recognition shall be denied only if it contravenes public order in the Contracting State in which the decision or record is to be recognized.

(3) The enforceable decisions and records recognized in accordance with paragraph (1) shall be enforced in the other Contracting State. The enforcement process shall be governed by the legislation applicable in the Contracting State in whose territory they are to be enforced to the enforcement of the corresponding decisions and records issued in that Contracting State. The executed copy of the decision or record must be accompanied by confirmation of its enforceability (enforcement clause).

Article 37

(1) Where an insurance authority of one Contracting State has made an advance payment, the payment of arrears due for the same period of a corresponding benefit for which entitlement exists under the legislation of the second-mentioned Contracting State may be withheld. Where the insurance authority of one Contracting State has paid an amount in excess of the correct benefit for a period for which the insurance authority of the other Contracting State has to pay arrears in respect of a corresponding benefit, the overpayment up to the amount of the arrears due shall be regarded as an advance payment within the meaning of the first sentence of this paragraph.

(2) Where a public assistance agency of one Contracting State has provided a public assistance benefit during a period for which entitlement to cash benefits arises subsequently under the legislation of the other Contracting State, the competent insurance authority of the second-mentioned Contracting State shall, at the request of the public assistance agency, withhold for the account of that agency the payment of arrears due for the same period of time up to the amount of the public assistance benefit paid, as if it were a public assistance benefit paid by a public assistance agency of the second-mentioned Contracting State.

Article 38

(1) If a person who is to receive benefits under the legislation of one Contracting State in respect of a loss sustained in the territory of the other Contracting State is entitled, in accordance with the regulations of that State, to claim damages for such loss from a third party, the insurance authority of the first-mentioned Contracting State shall be subrogated in respect of the claim for damages in accordance with the legislation to which that insurance authority is subject.

(2) If claims for damages in respect of similar benefits arising out of the same loss occurrence are due both to an insurance authority in the territory of one Contracting State and to an insurance authority in the territory of the other Contracting State, the third party may validly discharge the claims to which have been subrogated to both insurance authorities in accordance with paragraph (1) by making payment to either insurance authority. The insurance authorities shall make the necessary internal arrangements to divide the payment between them in proportion to the benefits payable by each of them.

Article 39

(1) Any disputes between the Contracting States concerning the interpretation or application of this Agreement shall be settled, as far as possible, by the competent public authorities.

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

(a) Each Contracting State shall appoint an arbitrator within one month following receipt of the request for submission of the dispute to arbitration. The two arbitrators thus appointed shall, within two months after the Contracting State which appoints its arbitrator last notifies the latter of his appointment, choose a national of a third State as the third arbitrator;

(b) If a Contracting State does not appoint an arbitrator within the stipulated time limit, the other Contracting State may request the President of the European Court of Human Rights to make such an appointment. At the request of either Contracting State, the same procedure shall be applied if the two arbitrators are unable to agree on the choice of a third arbitrator;

(c) If the President of the European Court of Human Rights holds the nationality of either of the two Contracting States, the duties imposed by this article shall be transferred to the Vice-President of the Court or to the highest-ranking judge of the Court to whom this situation does not apply.

(3) The arbitral tribunal shall take its decisions by majority vote. Its decisions shall be binding on the two Contracting States. Each Contracting State shall bear the expenses of the arbitrator whom it appoints. Other costs shall be borne equally by the Contracting States. The arbitral tribunal shall establish its own rules of procedure.

PART V. TRANSITIONAL AND FINAL PROVISIONS

Article 40

(1) This Agreement shall not confer any entitlement to the payment of benefits for the period prior to its entry into force.

(2) For the purpose of determining entitlement to benefits under this Agreement, periods of coverage completed under the legislation of one of the Contracting States before its entry into force shall also be taken into consideration.

(3) Notwithstanding the provisions of paragraph 1 of this article, this Agreement shall also apply to contingencies which occurred before its entry into force, unless claims determined earlier were settled through cash payments.

(4) Benefits which are payable solely under this Agreement shall be determined at the request of the persons concerned from the entry into force of this Agreement. If the request is submitted within a period of two years after the entry into force of this Agreement, the benefits shall be provided from the entry into force of this Agreement or from a date determined in accordance with the legislation of each of the two Contracting States.

(5) Notwithstanding the provisions of paragraph 3, benefits which were determined prior to the entry into force of this Agreement shall not be revised.

(6) Where the legislation of the Contracting States provides for the preclusion or statute-barring of entitlements, the relevant legislation shall not be applicable to persons entitled to a pension with regard to claims based on paragraph 3 of this article, if the request referred to in paragraph 4 is submitted within a period of two years after the entry into force of this Agreement. If the request is submitted after the expiry of this period, entitlement to benefits shall exist, provided that it is not precluded or statute-barred, as of the date of submission of the request, unless more favourable legislation of a Contracting State is applicable.

Article 41

(1) The insurance authorities in Austria shall be responsible for all entitlements and claims of Austrian nationals and of persons recognized under Austrian law as ethnic Germans for social security purposes, provided that on 1 January 1956,

the persons concerned were not only temporarily resident in the territory of Austria, and on condition that such entitlements and claims existed on the basis of periods of coverage (contribution and compensatory periods) completed under the former Yugoslav social insurance system (pensions and invalidity insurance).

(2) The insurance authorities in Slovenia shall be responsible for all entitlements and claims of Slovenian nationals who, as Yugoslav nationals, had their residence in the territory of the former Yugoslavia on 1 January 1956, provided that such entitlements and claims existed on the basis of periods of coverage (contribution periods and periods treated as such) completed under the Austrian social insurance system (pensions and invalidity insurance).

Article 42

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

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

(3) This Agreement is concluded for an indefinite period. Either Contracting State may denounce it, upon three months' notice, in writing through the diplomatic channel.

(4) In case of denunciation, the provisions of this Agreement shall continue to apply to acquired entitlements, irrespective of restrictive provisions relating to schemes applicable to cases involving the residence of insured persons abroad.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Agreement and have affixed their seals hereto.

DONE at Vienna, on 30 November 1992, in duplicate in the German and Slovenian languages, both texts being equally authentic.

For the Republic
of Austria:

JOSEF HESOUN

For the Republic
of Slovenia:

JOŽICA PUHAR

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

At the time of signing the Agreement on social security concluded this day between the Republic of Austria and the Republic of Slovenia, the plenipotentiaries of the two Contracting States declare that agreement has been reached on the following:

I. *Ad* article 4 of the Agreement:

1. Legislation of the two Contracting States concerning the participation of insured persons and employers in the organs of insurance authorities and associations and in establishing the *usus fori* in social security matters shall not be affected.

2. Regulations concerning insurance liability contained in bilateral agreements of the Contracting States with other States shall not be affected.

3. Legislation of the two Contracting States concerning the insurance of persons employed in an official mission of either of the two Contracting States in a third State or by members of such a mission shall not be affected.

4. This provision shall apply to the Austrian legislation concerning the crediting of periods of war service or periods that are treated as such only in respect of Slovenian nationals who held Austrian nationality immediately prior to 13 March 1938.

II. *Ad* article 5 of the Agreement:

This provision shall not apply:

(a) To the compensatory allowance under Austrian legislation;

(b) To the supplementary insurance under Slovenian legislation.

III. *Ad* article 7, paragraph 4, of the Agreement:

This provision shall apply, *mutatis mutandis*, to employees of Österreich Werbung.

IV. *Ad* article 11 of the Agreement:

These provisions shall, with regard to treatment by medical doctors, dental surgeons and dentists, apply in Austria, provided that a temporary stay is involved, in respect of the following persons only:

(a) Persons staying in Austria for the pursuit of their occupation and family members accompanying them;

(b) Persons visiting their family if the latter is habitually resident in Austria;

(c) Persons staying in Austria for other reasons, if outpatient treatment has been provided to them for account of the local health insurance fund that is competent for their place of stay.

V. *Ad* article 14 of the Agreement:

Amounts disbursed in respect of claimants under the Austrian pension insurance scheme pursuant to the second sentence of article 12, paragraph 1, shall be refunded from the contributions received in respect of health insurance for pensioners by the Federation of Austrian Social Security Institutions [*Hauptverband der österreichischen Sozialversicherungsträger*].

VI. *Ad* article 23, paragraph 2, of the Agreement:

If a claim for unemployment compensation is submitted by an Austrian national in Austria, completion of a minimum period of employment shall not be required.

VII. *Ad* articles 25 to 30 of the Agreement:

1. With regard to family allowances, article 4 shall apply solely in accordance with the provisions of articles 25 to 30.

2. Entitlement to family allowance shall exist only if the occupation is not in breach of the existing regulations concerning the employment of foreign workers.

3. Entitlement to family allowance under Austrian legislation shall exist only if the employment in Austria extends over a period of at least one calendar month; with respect to this qualifying period, there shall be no crediting of similar periods in accordance with article 27, paragraph 1.

4. Entitlement to the increased family allowance in respect of severely disabled children under Austrian legislation shall exist only in respect of children who are permanently resident in Austria.

VIII. *Ad* article 41 of the Agreement:

1. The requirements under civil law for the assumption of responsibility set out in paragraph 1 must have been met as at 1 January 1956.

2. The provisions of the Austrian Federal Act of 22 November 1961 concerning benefit entitlements and qualifying periods in pensions (annuities) insurance and accident insurance on the basis of employment abroad shall be applied for the purpose of taking into consideration qualifying periods and benefit entitlements in Austrian pensions insurance and accident insurance.

3. Where entitlement to benefits is accepted, the general requirements for the provision of the corresponding benefits from Austrian or Slovenian pensions insurance (accident insurance) shall be deemed to have been met. In this connection, the periods of coverage on which such entitlement to benefits is based shall be taken into consideration for the calculation of the benefits.

If these periods in aggregate do not amount to the qualifying period required for the provision of the respective benefits, periods amounting to such a qualifying period shall serve as the basis for calculation of the benefits.

This Final Protocol forms an integral part of the Agreement between the Republic of Austria and the Republic of Slovenia on social security. It shall enter into force on the same day as the Agreement and shall remain in force for as long as the Agreement remains in force.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Final Protocol and have affixed their seals hereto.

DONE at Vienna, on 30 November 1992, in duplicate in the German and Slovenian languages, both texts being equally authentic.

For the Republic
of Austria:

JOSEF HESOUN

For the Republic
of Slovenia:

JOŽICA PUHAR