

**Documents tabled on 9 May 2007:**

**National Interest Analysis [2007] ATNIA 10**

**with attachment on consultation**

**Agreement between Australia and the Federal Republic of Germany  
on Social Security to govern persons temporarily employed in the territory of the other  
State (“Supplementary Agreement”),  
Concluding Protocol and Implementation Arrangement  
(Berlin, 9 February 2007)**

**[2007] ATNIF 6**

**Background information:**

**German political brief and country fact sheet**

**List of other treaties with Germany**

**List of Social Security Agreements with other countries**



# NATIONAL INTEREST ANALYSIS – CATEGORY 1 TREATY

## SUMMARY PAGE

**Agreement between Australia and the Federal Republic of Germany  
on Social Security to govern persons temporarily employed in the territory of the other  
State (“Supplementary Agreement”),  
Concluding Protocol and Implementation Arrangement  
(Berlin, 9 February 2007)  
[2007] ATNIF 6**

### **Nature and timing of proposed treaty action**

1. It is proposed that Australia enter into a Supplementary Agreement on Social Security with the Federal Republic of Germany (Supplementary Agreement). The Supplementary Agreement complements the Agreement on Social Security between Australia and the Federal Republic of Germany of 13 December 2000 [2003] ATS 7 (the existing Social Security Agreement). The Supplementary Agreement, and an implementing arrangement, both of treaty status, were signed in Berlin on 9 February 2007. A Concluding Protocol to the Supplementary Agreement was also agreed. That Protocol forms part of the Supplementary Agreement and gives authoritative guidance on interpreting some of its provisions. The implementing arrangement provides further guidance on the operation of the Supplementary Agreement.

2. In accordance with Article 16, the Supplementary Agreement shall enter into force on the first day of the second month following an exchange of instruments of ratification between Australia and Germany. It is proposed, pending action by the Joint Standing Committee on Treaties (JSCOT) and all necessary domestic steps having been taken, this exchange of instruments of ratification will take place, as soon as possible, to enable the Supplementary Agreement to enter into force on 1 July 2008. It is proposed that the implementing arrangement will take effect from the same date.

### **Overview and national interest summary**

3. The Supplementary Agreement complements Australia’s existing Social Security Agreement with Germany, under which both countries share responsibility for providing social security coverage for people who move between these countries. The Supplementary Agreement does not affect the operation or effect of the existing Social Security Agreement.

4. The Supplementary Agreement deals with ‘double coverage’ of compulsory superannuation, exempting employers in one country, who send employees to work temporarily in the other country, from paying superannuation contributions in the other country, provided they continue to make contributions in their home country. In the Australian context the Agreement will exempt relevant employers and employees from making compulsory social security contributions in Germany if Superannuation Guarantee contributions continue to be made in Australia. Similarly, relevant German employers will be exempted from making Superannuation Guarantee contributions for employees sent to work temporarily in Australia provided relevant social security contribution continue to be made in Germany. Accordingly, the Supplementary Agreement will benefit Australian and German employees and employers working in the other country by harmonising the social security and superannuation systems, and bring economic and political benefits to Australia.

## **Reasons for Australia to take the proposed treaty action**

5. Under current arrangements, Australian or German employers who send an employee to work temporarily in the other country are required to make contributions under both Australian and German legislation. The new provisions will ensure that employers, and employees where compulsory employee contributions are required, need to contribute only to the relevant superannuation scheme in their home country.

6. The Supplementary Agreement incorporates the same principles as previous Agreements that include 'double coverage' provisions, such as the Social Security Agreements with Belgium, Chile, Croatia, Ireland, the Netherlands, Norway, Portugal and the United States. The recently signed Agreements with the Republic of Korea, Japan and Switzerland (not yet in force) also contain equivalent provisions and are the subject of separate National Interest Analyses.

## **Obligations**

7. Article 4 is a general rule which stipulates that, unless otherwise provided, employees will be subject to the legislation of the country in which they are working. The same rule applies to self-employed persons. This Article further provides that the competent authority in each country shall issue a certificate upon request stating the applicability of the relevant legislation.

8. Article 5 provides that employees who are sent temporarily from one country to the other to work will remain subject only to the legislation of the sending country. This rule applies for a maximum of four years from the time the employee takes up employment in the territory of the other country. As provided in paragraph 3 of the Concluding Protocol, the rule also applies to German self-employed persons working temporarily in Australia (if they were considered an 'employee' for the purposes of Australian legislation). Article 4 of the implementing arrangement further provides that the competent authority in each country shall issue a certificate upon request stating the applicability of the relevant legislation.

9. Article 8 provides that exceptions regarding the applicable legislation can be made at the request of the self-employed person or the joint request of the employer and employee. Paragraph 4 of the Concluding Protocol provides where German legislation applies to a person, the person will be deemed to be employed at their last place of work, unless Article 5 of the Supplementary Agreement has been previously applied to that person.

10. Article 9 provides that the competent authorities and institutions of Australia and Germany will provide mutual assistance free of charge. For Australia, this relates to the Commissioner of Taxation or an authorised representative of the Commissioner.

11. Article 10 provides that the competent authorities and institutions may communicate in their respective official languages with each other and with persons to whom the Supplementary Agreement applies.

12. Article 11 protects the privacy of personal information. Subject to national laws, personal data may be transmitted to and used by competent bodies in the other country, for the purpose of administering the agreement and the applicable legislation. This restriction does not prevent transmission of personal data if necessary to comply with the laws of either country (such as under criminal law or taxation law). The body transmitting personal data must ensure that the data is correct, and must immediately notify the receiving body if it becomes evident that the incorrect data was transmitted or if data was transmitted contrary to national laws. In such cases, the receiving body must correct or delete the data. Transmitting and receiving bodies must protect transmitted data from unauthorised access, modification or disclosure and destroy it when it is no longer required for its intended purpose. Persons must be informed if personal data about them is transmitted. Paragraph 5 of the Concluding Protocol is relevant to interpreting Article 11.

13. Article 12 provides that the Governments or competent authorities may conclude arrangements to implement the Supplementary Agreement. As noted, implementing arrangements were concluded and signed on the same date as the Supplementary Agreement, and are attached. Article 12 further provides that the Australian Taxation Office, for Australia and the German Liaison Agency Health Insurance – International (*Deutsche Verbindungsstelle Krankenversicherung – Ausland*) (*DVKA*) are to act as liaison agencies for implementing the Supplementary Agreement. Article 3 of the implementing arrangement further provides that the two agencies are responsible for generally informing the persons concerned about the Supplementary Agreement.

14. Article 13 provides for the settlement of disputes, as far as possible, by the competent authorities, or if they cannot reach agreement then by a joint ad hoc commission set up by mutual agreement.

15. Article 15 provides that the Concluding Protocol forms an integral part of the Supplementary Agreement, which has the effect that its provisions are binding.

16. Article 16 provides that the Agreement shall be ratified as soon as possible, by exchange of ratification instruments in Canberra and shall enter into force at the beginning of the second month after the month in which instruments of ratification are exchanged.

## **Implementation**

17. The *Social Security (International Agreements) Act 1999* gives effect in domestic law to relevant provisions of social security agreements that are scheduled to the Act. A new Schedule containing the full text of the Supplementary Agreement will be added to the *Social Security (International Agreements) Act* pursuant to sections 8 and 25 of that Act.

18. Relevant provisions of social security agreements relating to double superannuation coverage are automatically given effect, in domestic law, once the agreement is scheduled to the *Social Security (International Agreements) Act*. This is pursuant to the *Superannuation Guarantee (Administration) Act 1993* (paragraph 27(1)(e)) and the *Superannuation Guarantee (Administration) Regulations 1993* (regulation 7AC), which have the effect that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a scheduled social security agreement is in place.

## **Costs**

19. The financial implications of the Supplementary Agreement have been agreed with the Department of Finance and Administration at a cost of \$0.1 million for the period 2008-2011.

## **Regulation Impact Statement**

20. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

21. The Supplementary Agreement does not provide for the negotiation of any related treaties, or deal with possible amendments to it. The Agreement may be amended at any time by agreement between the Parties in accordance with Article 33 of the *Vienna Convention on the Law of Treaties*. Any future treaty action would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

## **Withdrawal or denunciation**

22. Article 17 provides that the Supplementary Agreement remains in force indefinitely, unless terminated by either party through giving three months' written notice, or unless the existing Social Security Agreement is terminated. Article 17 also provides that, in the event of termination, the Supplementary Agreement (including the Concluding Protocol and implementing arrangement) shall continue to apply to all persons who were subject to it immediately before termination, as long as those persons otherwise meet the requirements. Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty process.

## **Contact Details**

International Agreements  
International Branch  
Department of Families, Community Services and Indigenous Affairs.

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## CONSULTATION

1. Four separate groups (listed below) were consulted by the Department of Families, Community Services and Indigenous Affairs (FaCSIA) and the Department of The Treasury as part of the treaty process. These were German community groups, welfare organisations, State/Territory Governments and employer groups.
2. Letters and an information sheet outlining the Agreement were sent to each group on 28 February 2007 seeking their views and asking for a response by 23 March 2007.
3. Three responses were received from the New South Wales and Queensland Governments and the Sunshine Coast German Club. No concerns were raised.
4. The German community groups FaCSIA consulted were:

Harmonie German Club (Narrabundah, ACT )	German-Austrian Association (Bayldon, NSW)
Hubertus Country Club (Luddenham, NSW)	German Club Briersfield (Breirsfield, NSW)
Germania Club Newcastle Ltd (Warners Bay, NSW)	Central Coast Australian-German Friendship & Welfare Society Inc (Phegans Bay, NSW)
Blue Mountains Australian German Friends (Emu Heights, NSW)	Brisbane German Club (East Brisbane, QLD)
German Club Gold Coast (Mermaid Beach, QLD)	German Club Sunshine Coast Inc (Caloundra, QLD)
German-Australia Club Townsville Ltd (Hermit Park, QLD)	Germania Club Cairns (Cairns, QLD)
Deutsche Schule Melbourne (Melbourne, VIC)	German International School Sydney (Ryde, NSW)
The German Saturday School Inc (Clifton Hill, Victoria)	ACT German Language School (Manuka, ACT)
Deutsche Bonifatius Gemeinde (Braddon, ACT)	Brisbane German Language School (Indooroopilly, QLD)
St Raphael's Gemeinde Blacktown (Cath.) (Blacktown, NSW)	St Christopherus Gemeinde Sydney (Croyden, NSW)
Martin-Luther-Kirche (German Lutheran Church) (Sydney, NSW)	St Hedwig Homes for the Aged (Cath.) (Blacktown, NSW)
Homes for the Aged (Allambie Heights, NSW)	Gnadenfrei-Kirche (Chester Hill, NSW)
German-Austrian Society of Australia (Cabramatta, NSW)	German Lutheran Trinity Church (East Melbourne, VIC)
German-Austrian Oktoberfest Society (Melbourne, VIC)	Australian-German Welfare Society (South Melbourne, VIC)

Rhein-Donau-Hastings Verein Inc (Port Macquarie, NSW)	Die WOCHE in Australien (Bankstown, NSW)
Deutsch-Osterreichische (Cabramatta, NSW)	German-Austrian Club (Wodonga, VIC)
Australian German Austrian Club (Berkeley, NSW)	

The welfare organisations FaCSIA consulted were:

Ethnic Communities' Council of QLD	ACT Multicultural Community Council
Ethnic Communities' Council of WA	Australian Council of Social Services
Multicultural Council of NT Inc	Southern Cross Group
Welfare Rights Centre	Ethnic Communities' Council of NSW
Multicultural Communities' Council of SA	Ethnic Communities' Council of Victoria
Multicultural Council of Tasmania	FECCA

The State/Territory Governments FaCSIA consulted were:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Federal Affairs
NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch

The employer groups The Treasury consulted were:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
Industry Funds Forum Inc
A.C.T.U.
Council of Small Business Organisations of Australia
Association of Superannuation Funds of Australia
Investment and Financial Services Association
CPA Australia

5. Since negotiations commenced in 2005, this treaty has been included on the schedule of treaties under negotiation, consideration or review by the Australian Government which schedule the Department of Prime Minister and Cabinet distributes twice a year to representatives of the Commonwealth-State/Territory Standing Committee on Treaties.



## **Political Brief on Germany**

1. Australia's relations with Germany have developed greater substance with positive outcomes in key strategic areas, though strong commercial links remain paramount. There is scope to increase German engagement in our region and the strategic relevance of the Asia-Pacific. German interest in Australia's assessments of regional strategic developments was reinforced during Mr Downer's February 2007 visit to Germany. Mr Downer used his visit to capitalise on Germany's increased influence as current European Union (EU) and G8 President and its desire to play a bigger international role including in the Asia Pacific region. He signed three agreements on social security, a working holiday maker arrangement, and development assistance cooperation. We have also previously secured cooperation with Germany on counter-terrorism and education, and negotiations on a double taxation agreement are ongoing.

2. The September 2005 German federal election resulted in a grand coalition of the two major parties, the Christian Democratic Party (CDU)/Christian Social Union (CSU) and the Social Democratic Party (SPD), headed by CDU Chancellor Angela Merkel. Despite policy differences on some issues, Merkel's coalition is expected to last the full term until 2009, and with a large parliamentary majority, has successfully passed reforms on health and corporate taxation, and secured substantial reductions in the budget deficit and unemployment. Merkel remains popular in the electorate with a satisfaction rating in January 2007 of 61 per cent.

3. German foreign and security policy continues to be centred on the EU, NATO, and the United Nations. Merkel is keen to restore NATO as the primary forum for transatlantic dialogue and supports closer NATO cooperation with Australia. Germany's support for military operations, including in Afghanistan and the Balkans, is provided through NATO and the EU's Common Foreign and Security Policy and European Security and Defence Policy. Germany, as one of the EU3 and P5 plus 1, has played a key role in negotiations with Iran and in the United Nations Security Council.

4. France remains a major relationship for Germany but is now managed in a more balanced fashion. Merkel has cultivated strong relations with President Bush, pushing a "transatlantic partnership" to boost trade and investment through regulatory harmonisation. She has realigned relations with Russia, securing a commitment from Putin to stockpile Russian gas in Germany for distribution throughout Europe, and has broadened relations with China to include human rights and intellectual property rights, while pursuing economic interests. Germany has been a strong supporter of EU enlargement in Central/Eastern Europe.

5. Germany has the world's third largest economy, with GDP at US\$2,800 billion, after the United States and Japan. GDP growth is forecast above 2 per cent through to 2009 after peaking at 2.7 per cent in 2006. Business confidence remains robust despite the rise in VAT from 16 to 19 per cent in January 2007. Unemployment is forecast to fall to 9.4 per cent in 2007 and the budget deficit to well below the EU's deficit ceiling of 3 per cent of GDP.

6. Germany is Australia's 8th largest trading partner and 6th largest source of foreign direct investment. German FDI in Australia more than doubled to A\$10 billion in 2005, and Australian FDI in Germany rose to A\$2.9 billion. Two-way merchandise trade in 2005-06 was A\$10 billion with a widening trade deficit. The major import is cars. Our major export, coal, is almost 20 per cent of exports reflecting Germany phasing out its domestic "brown" coal production. Further coal exports will arise following the recent decision on 29 January to phase out coal subsidies, possibly by 2018. Wine and elaborately transformed manufactures exports rose at a much lower level. Two-way services trade, driven by Australian visitors to Germany, was A\$2.2 billion. Australian services exports remained static at A\$0.9 billion. Germany is our leading market source for students in Europe (over 5,200 in 2006, ahead of the United Kingdom) and 6th largest source of foreign visitors (150,400 in 2005-06).



# GERMANY

Fact Sheet

## General information:

Fact sheets are updated biannually, May and September

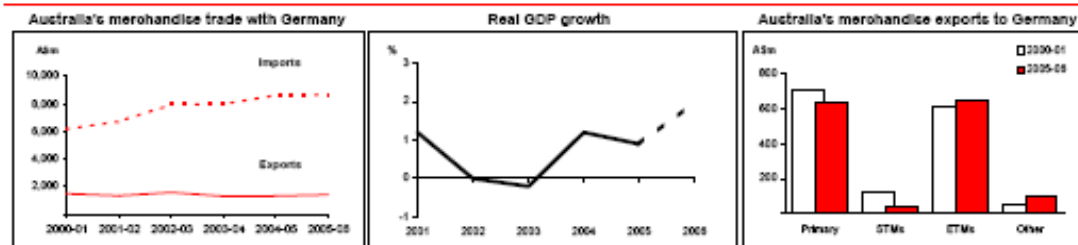
Capital: Berlin  
 Surface area: 357 thousand sq km  
 Official language: German  
 Population: 82.5 million (2005)  
 Exchange rate: A\$1 = 0.5920 Euros (July 2006)

Head of State:  
 H.E. Federal President Prof Dr Horst Koehler

Head of Government:  
 H.E. Federal Chancellor Dr Angela Merkel MdB

## Recent economic indicators:

	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	1,892.6	2,024.1	2,444.3	2,744.2	2,791.7	2,890.1
GDP PPP (US\$bn) (c):	2,257.8	2,298.8	2,339.9	2,440.4	2,521.7	2,605.4
GDP per capita (US\$):	22,957	24,523	29,621	33,263	33,854	35,022
GDP per capita PPP (US\$) (c):	27,387	27,851	28,356	29,581	30,579	31,571
Real GDP growth (% change YOY):	1.2	0.0	-0.2	1.2	0.9	2.0
Current account balance (US\$m):	380	40,965	45,562	101,858	114,896	120,579
Current account balance (% GDP):	0.0	2.0	1.9	3.7	4.1	4.2
Goods & services exports (% GDP):	34.5	35.2	35.5	38.1	40.4	47.4
Inflation (% change YOY):	2.0	1.4	1.0	1.7	2.0	2.0



## Australia's trade relationship with Germany (d):

Australian merchandise trade with Germany, 2005-06:		Total share:	Rank:	Growth (yoy):
Exports to Germany (A\$m):	1,416	0.8%	20th	7.8%
Imports from Germany (A\$m):	8,680	5.2%	5th	0.4%
Total trade (exports + imports) (A\$m):	10,096	3.2%	8th	1.4%

Major Australian merch. exports, 2005-06 (A\$m):	Value	Major Australian merch. imports, 2005-06 (A\$m):	Value
Coal	293	Passenger motor vehicles	1,173
Measuring and controlling instruments	142	Medicaments (incl. veterinary)	565
Non-ferrous base metal waste	85	Specialised machinery	319
Electrical equipment for circuits	74	Measuring and controlling instruments	314

Australia's trade in services with Germany, 2005-06:		Total share:
Exports of services to Germany (A\$m):	893	2.1%
Imports of services from Germany (A\$m):	1,282	3.1%

Major Australian service exports, 2005-06 (A\$m):	Value	Major Australian service imports, 2005-06 (A\$m):	Value
Personal travel excl. education	465	Transportation	664
Transportation	176	Personal travel excl. education	228

## Germany's global merchandise trade relationships:

Germany's principal export destinations, 2005:			Germany's principal import sources, 2005:		
1	France	10.0%	1	France	8.7%
2	United States	8.7%	2	Netherlands	7.9%
3	United Kingdom	7.6%	3	United States	6.3%
30	Australia	0.6%	46	Australia	0.2%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) All recent data subject to revision; (b) IMF/EU forecast; (c) PPP is purchasing power parity; (d) Total may not add due to rounding.



## Other Treaties with Germany

1. Treaty [between United Kingdom and Germany] extending to Certain British Protectorates the Treaty for the Mutual Surrender of Fugitive Criminals of 14 May 1872  
**[1912] ATS 8**
2. Exchange of Notes [between United Kingdom and on behalf of Australia, New Zealand and South Africa, and Germany] constituting an Agreement extending to certain Mandated Territories the Treaty for the Mutual Surrender of Fugitive Criminals of 14 May 1872  
**[1930] ATS 4**
3. Convention [between United Kingdom and Germany] regarding Legal Proceedings in Civil and Commercial Matters  
**[1933] ATS 4**
4. Agreement between Australia, Canada, India, New Zealand, Pakistan, South Africa and the United Kingdom, and Germany regarding the War Graves, Cemeteries and Memorials of the British Commonwealth in the Territory of the Republic of Germany, and Exchange of Notes between Australia and Germany concerning the Graves of Former Members of the German Armed Forces Interred in Australia  
**[1958] ATS 18**
5. Agreement between the Government of Australia and the Government of the Federal Republic of Germany relating to Air Transport and Exchanges of Notes  
**[1959] ATS 2**
6. Agreement between the Government of the Commonwealth of Australia and the Government of the Federal Republic of Germany on Assisted Migration  
**[1965] ATS 9**
7. Treaty between the Commonwealth of Australia and the Federal Republic of Germany regarding the Division between Australia and Germany of Compensation Paid by the Government of the State of Israel for German Secular Property in Israel. [Templar Agreement], and Three Exchanges of Notes  
**[1966] ATS 3**
8. Exchange of Notes between Australia and Germany constituting an Agreement concerning the Launching of a Skylark Vehicle and Payload at Woomera for Scientific Purposes  
**[1975] ATS 6**
9. Agreement and Protocol between the Commonwealth of Australia and the Federal Republic of Germany for the Avoidance of Double Taxation of Income and the Prevention of Fiscal Evasion with respect to Taxes on Income and Certain Other Taxes  
**[1975] ATS 8**

10. Agreement between the Government of Australia and the Government of the Federal Republic of Germany on Scientific and Technological Cooperation  
**[1976] ATS 28**
11. Exchange of Notes constituting an Agreement between Australia and the Federal Republic of Germany concerning the Reciprocal Safeguarding of Classified Material  
**[1979] ATS 20**
12. Exchange of Notes constituting an Agreement between Australia and Germany concerning the Launching of Two Scientific Payloads from Woomera for Scientific Purposes  
**[1979] ATS 3**
13. Treaty between Australia and the Federal Republic of Germany concerning Extradition  
**[1990] ATS 21**
14. Exchange of Notes between Australia and Germany constituting an Agreement to further amend the Route Schedule to the agreement relating to Air Transport and Exchange of Notes of 22 May 1957  
**[1996] ATS 23**
15. Agreement between the Government of Australia and the Government of the Federal Republic of Germany on Cultural Cooperation  
**[2000] ATS 22**
16. Film Co-Production Agreement between the Government of Australia and the Government of the Federal Republic of Germany  
**[2001] ATS 12**
17. Agreement on Social Security with the Federal Republic of Germany, and Concluding Protocol  
**[2003] ATS 7**

## **Social Security Agreements with Other Countries**

1. Agreement with the Republic of Austria on Social Security **[1992] ATS 35**
2. Protocol to the Agreement with the Republic of Austria on Social Security of 10 April 1992 **[2002] ATS 20**
3. Agreement on Social Security with the Kingdom of Belgium **[2005] ATS 14**
4. Agreement on Social Security with Canada **[2003] ATS 4**
5. Agreement on Social Security with the Republic of Chile **[2004] ATS 18**
6. Agreement with the Republic of Croatia on Social Security **[2004] ATS 19**
7. Agreement on Social Security with the Republic of Cyprus **[1993] ATS 5**
8. Agreement with the Kingdom of Denmark on Social Security **[2001] ATS 2**
9. Agreement on Social Security with the Federal Republic of Germany **[2003] ATS 7**
10. Agreement on Social Security with the Republic of Ireland **[2005] ATS 26**
11. Agreement on Social Security with the Republic of Italy **[2000] ATS 29**
12. Exchange of Notes constituting an Agreement with the Republic of Italy amending and clarifying the Agreement on Social Security of 13 September 1992 **[2000] ATS 29**
13. Agreement on Social Security with Japan **[2007] ATNIF 4**
14. Agreement on Social Security with the Republic of Korea **[2006] ATNIF 27**
15. Agreement with Malta on Social Security **[2005] ATS 16**
16. Agreement with the Kingdom of the Netherlands on Social Security **[2003] ATS 12**
17. Agreement on Social Security with New Zealand **[2002] ATS 12**
18. Exchange of Notes amending the Agreement on Social Security with New Zealand of 28 March 2001 **[2002] ATS 12**
19. Agreement on Social Security with the Kingdom of Norway **[2007] ATS 1**
20. Agreement with Portugal on Social Security **[2002] ATS 21**
21. Agreement on Social Security with Slovenia **[2004] ATS 2**
22. Agreement between Australia and Spain on Social Security **[2003] ATS 3**
23. Agreement with the Swiss Confederation on Social Security **[2006] ATNIF 23**
24. Agreement with the United States of America on Social Security **[2002] ATS 18**