

**No. 15730**

---

**AUSTRIA  
and  
SWEDEN**

**Agreement on social security (with final protocol). Signed at  
Stockholm on 11 November 1975**

*Authentic texts: German and Swedish.*

*Registered by Austria on 10 June 1977.*

---

**AUTRICHE  
et  
SUÈDE**

**Accord sur la sécurité sociale (avec protocole final). Signé à  
Stockholm le 11 novembre 1975**

*Textes authentiques : allemand et suédois.*

*Enregistré par l'Autriche le 10 juin 1977.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF SWEDEN ON SOCIAL SECURITY

The Republic of Austria and the Kingdom of Sweden, desiring to regulate mutual relations between the two States in the matter of social security, have agreed to conclude the following Agreement:

## TITLE I

## GENERAL PROVISIONS

*Article 1.* 1. For the purposes of this Agreement:

(1) "Austria" means the Republic of Austria; "Sweden" means the Kingdom of Sweden;

(2) "Territory" means:  
in the case of Austria, the federal territory of Austria;  
in the case of Sweden, the territory of Sweden;

(3) "National" means:  
in the case of Austria, an Austrian national or a person belonging to the German linguistic community (*Volksdeutscher*) who is stateless or of indeterminate nationality and who was in the territory of Austria, otherwise than purely temporarily, on 11 July 1953, 1 January 1961 or 27 November 1961;  
in the case of Sweden, a person of Swedish nationality;

(4) "Legislation" means the laws, ordinances and regulations relating to the branches of social security specified in article 2, paragraph 1;

(5) "Competent authority" means:  
in the case of Austria, the Federal Minister of Social Affairs or, in respect of family allowances, the Federal Minister of Finance;  
in the case of Sweden, the Government or the authority designated by the Government;

(6) "Insurance authority" means the institute or authority responsible for the application of the legislation, or any part thereof, specified in article 2;

(7) "Competent insurance authority" means the insurance authority which is competent under the relevant legislation;

(8) "Family member" means a member of a family under the relevant legislation;

(9) "Insurance periods" means contribution periods, periods of employment, periods of other gainful activity or periods of normal residence defined or recognized as insurance periods by the legislation under which they were completed, and other periods recognized by such legislation as equivalent to insurance periods, including calendar years for which pension points under the Swedish supplementary pension insurance scheme have been earned on the basis of employment or other gainful activity during the year in question or part of that year;

<sup>1</sup> Came into force on 1 November 1976, i.e., the first day of the second month that followed the month in which the exchange of the instruments of ratification took place (Vienna, 9 September 1976), in accordance with article 42 (2).

(10) “Cash benefit”, “annuity” or “pension” means a cash benefit, annuity or pension including any part thereof paid out of public funds, increases, adjustments or supplement any allowances, as well as any lump-sum payments and payments representing a refund of contributions;

(11) “Family allowance” means:

in the case of Austria, the family allowance;

in the case of Sweden, the general family allowance.

2. For the purposes of this Agreement, other expressions shall have the meaning which they have under the relevant legislation.

*Article 2.* 1. This Agreement shall apply to:

(1) Austrian legislation concerning:

- (a) sickness insurance;
- (b) accident insurance;
- (c) pensions insurance;
- (d) unemployment insurance;
- (e) family allowances;

(2) Swedish legislation concerning:

- (a) sickness insurance including parents' insurance;
- (b) accident insurance;
- (c) national basic pension;
- (d) supplementary pension insurance;
- (e) unemployment insurance and cash labour-market allowances (*kontant arbetsmarknadsstöd*);
- (f) general family allowance.

2. This Agreement shall not apply to any legislation concerning a new scheme or new branch of social security, or to schemes for war victims or victims of the consequences of war.

3. Legislation which arises out of agreements with third States shall not be taken into account in the application of this Agreement.

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

*Article 4.* For the purpose of applying the legislation of one of the Contracting States, except as otherwise provided in this Agreement, nationals of the other Contracting State shall be assimilated to nationals of that State.

*Article 5.* Pensions, annuities and other cash benefits, with the exception of unemployment benefits, shall be paid, except as otherwise provided in this Agreement, even if the person entitled to the benefit is resident in the territory of the other Contracting States.

*Article 6.* Where, under the legislation of one of the Contracting States, gainful activity or compulsory social insurance coverage has legal effects on social insurance benefits, the same effect shall be produced by a similar gainful activity or similar compulsory insurance coverage in the other Contracting State.

## TITLE II

## PROVISIONS CONCERNING THE APPLICABILITY OF LEGISLATION

*Article 7.* Without prejudice to the provisions of articles 8 and 9, persons who are gainfully employed shall be subject to the legislation of the Contracting State in whose territory the gainful activity is performed. In the case of a person gainfully employed by another person, the foregoing shall apply even where the place of residence of the employee or the principal place of business of his employer is in the territory of the other Contracting State.

*Article 8.* 1. A person normally employed by an enterprise in the territory of one of the Contracting States who is sent by that enterprise to work on its behalf in the territory of the other Contracting State shall, until the end of the twenty-fourth calendar month after being sent there, continue to be subject to the legislation of the first-mentioned Contracting State as if he were still employed in its territory.

2. A person employed by an airline having its principal place of business in the territory of one of the Contracting States who is sent from that territory to the territory of the other Contracting State shall continue to be subject to the legislation of the first-mentioned Contracting State as if he were still employed in its territory. If a Swedish airline has a branch or permanent agency in Austria, the persons employed thereby shall be subject to Austrian legislation.

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

*Article 9.* In the case of diplomats and career consuls and the administrative and technical staff of posts headed by diplomats and career consuls, and in the case of members of the service staff of such posts and private servants in the exclusive employ of diplomats, career consuls and members of posts headed by career consuls—in so far as this category of persons is covered by the Vienna Convention on Diplomatic Relations<sup>1</sup> or the Vienna Convention on Consular Relations<sup>2</sup>—the provisions of those Conventions shall apply.

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

<sup>1</sup> United Nations, *Treaty Series*, vol. 500, p. 95.

<sup>2</sup> *Ibid.*, vol. 596, p. 261.

## TITLE III

## SPECIAL PROVISIONS

## CHAPTER 1. SICKNESS AND MATERNITY

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

*Article 12.* A person who is normally resident in the territory of one Contracting State and is entitled to sickness benefits in kind under the legislation of that State shall receive such benefits during a temporary stay in the territory of the other Contracting State in accordance with the legislation of that State and at the expense of the competent insurance authority of that State if, on account of his condition, he is in immediate need of such benefits.

*Article 13.* Family members of a person who is normally resident in one Contracting State and is ensured under the legislation of that State shall, if they are resident in the other Contracting State, receive sickness benefits in kind in accordance with the legislation to be applied by the insurance authority of their place of residence.

*Article 14.* 1. A person receiving a pension under the pension insurance schemes of the Contracting States shall be subject to the legislation concerning sickness insurance for pensioners in the Contracting State in whose territory such person is normally resident. Where a pension is granted only in accordance with the legislation of the other Contracting State, such pension shall be considered as a pension from the first-mentioned Contracting State.

2. Paragraph 1 shall apply *mutatis mutandis* to persons applying for pensions.

*Article 15.* The benefits provided for in articles 12 to 14 shall be granted:  
in Austria, by the Regional Sickness Fund for Manual and Salaried Workers (*Gebietskrankenkasse für Arbeiter und Angestellte*) competent for the place of stay or place of residence of the person concerned;  
in Sweden, by the insurance fund competent for the place of stay or place of residence of the person concerned.

*Article 16.* Questions relating to reimbursement for sickness benefits in kind granted in accordance with article 12 shall be governed by an agreement between the competent authorities of the two Contracting States.

## CHAPTER 2. OLD AGE, INVALIDITY AND DEATH (PENSIONS)

*Part I.* Granting of pensions under Austrian legislation

*Article 17.* Where a person has completed insurance periods in accordance with the legislation of both Contracting States, such periods shall be aggregated for the establishment of entitlement to benefits under Austrian legislation, in so far as they do not overlap.

*Article 18.* 1. Where a person who has completed insurance periods under the legislation of both Contracting States, or his survivors, claim a pension, the competent Austrian insurance authority shall determine the pension benefits in the following manner:

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

2. Where the insurance periods to be taken into account under Austrian legislation do not amount to a total of 12 months for the calculation of the benefit, no benefit shall be paid under such legislation, unless under Austrian legislation entitlement to a pension exists even without the application of article 17.

*Article 19.* The competent Austrian insurance authorities shall apply articles 17 and 18 according to the following rules:

- (1) For the purpose of determining the insurance authority competent to provide a benefit under the pension insurance scheme (*Leistungszugehörigkeit und Leistungszuständigkeit*), only Austrian insurance periods shall be taken into account.
- (2) Insurance periods completed under the Swedish supplementary pension insurance scheme and years of residence prior to 1960 for which assessed income for national income tax has been calculated in respect of the person concerned shall count as insurance periods completed in accordance with Swedish legislation.
- (3) Articles 17 and 18 shall not apply to the prerequisites for entitlement to and to the granting of the long-service bonus for miners (*Bergmannstreuegeld*) under the Austrian pension insurance scheme for miners.
- (4) For the purpose of applying article 18, paragraph 1, the following shall apply:
  - (a) Swedish insurance periods shall be taken into account without application of Austrian legislation concerning the taking into account of insurance periods;
  - (b) overlapping insurance periods shall be taken into account to the extent of their actual duration;
  - (c) the pension basis shall be calculated solely according to the insurance periods completed under the Austrian pension insurance scheme;
  - (d) contributions under the supplementary insurance scheme, the supplementary benefits scheme or the equalization allowance scheme shall not be taken into account.
- (5) For the purpose of applying article 18, paragraph 1 (c), the following shall apply:
  - (a) if the total duration of the insurance periods to be taken into account under the legislation of both Contracting States exceeds the maximum duration

prescribed under Austrian legislation for the purpose of calculating increments, the partial pension for which the insurance authority is liable shall be calculated according to the proportion which the duration of the insurance periods to be taken into account under Austrian legislation bears to the said duration of insurance months;

- (b) the supplementary allowance to disabled persons (*Hilflosenzuschuß*) shall be calculated, in accordance with Austrian legislation, on the basis of the Austrian partial pension, the benefit limits being proportionately reduced. However, if entitlement to a pension exists solely on the basis of the insurance periods to be taken into account under Austrian legislation, the supplementary allowance to disabled persons shall be payable in the amount corresponding to such pension, unless an increased benefit on the ground of disability is granted under Swedish legislation.
- (6) The amount calculated in accordance with article 18, paragraph 1 (c), shall where appropriate be increased by increments for contributions paid under the supplementary insurance scheme, by the supplementary benefits for miners, by the supplementary allowance for disabled persons and by the equalization allowance under Austrian legislation.
- (7) Where, under Austrian legislation, the granting of benefits under the pension insurance scheme for miners depends on the performance in specific industries of an activity which is essentially mining activity within the meaning of Austrian legislation, only such of the Swedish insurance periods as are based on employment in a similar industry involving the performance of a similar activity shall be taken into account.
- (8) Special payments under the Austrian pension insurance scheme shall be payable on the same scale as the Austrian partial pension; article 21 shall apply *mutatis mutandis*.

*Article 20.* 1. Where entitlement to a pension exists under Austrian legislation even without the application of article 17, the competent Austrian insurance authority shall grant the pension which is payable solely on the basis of the insurance periods to be taken into account under the legislation to be applied by that insurance authority, so long as no entitlement to a corresponding benefit exists under the Swedish supplementary pension insurance scheme.

2. Any pension granted in accordance with paragraph 1 shall be revised in accordance with article 18 if entitlement to a corresponding benefit arises under Swedish legislation. The revision shall take effect as from the date of commencement of the benefit payable under Swedish legislation. The validity of earlier decisions shall not preclude such revisions.

*Article 21.* Where a person is entitled to a benefit under Austrian legislation even without the application of article 17, and that benefit would be greater than the aggregate of the Austrian benefit calculated in accordance with article 18, paragraph 1 (c), and the Swedish supplementary pension, the Austrian insurance authority shall increase its partial benefit, thus calculated, by the amount of the difference between the aforesaid aggregate and the benefit which would be payable solely under the legislation to be applied by that insurance authority.

## Part II. Granting of pensions under Swedish legislation

*Article 22.* For the purposes of applying this Agreement, national basic pensions under Swedish legislation shall be granted exclusively in accordance with articles 23 and 24.

*Article 23.* 1. An Austrian national who is normally resident in Sweden shall be entitled, subject to the same conditions, in the same amount and with the same supplementary benefits as Swedish nationals to a national basic pension.

- (a) in the form of an old age pension, if he has been normally resident in Sweden for at least the past five years and, after attaining the age of 16 years, has been resident there for a total of at least 10 years;
- (b) in the form of an invalidity pension (*förtidspension*), if he
  - (aa) has been normally resident in Sweden for at least five years; or
  - (bb) is normally resident in Sweden and has during his period of residence been fit for normal work for a continuous period of at least one year;
- (c) in the form of a widow's or orphan's pension,
  - (aa) if the deceased immediately before his death had been normally resident in Sweden for at least five years and the survivor was at the time of death normally resident in Sweden; or
  - (bb) if the survivor has been normally resident in Sweden for at least five years and the survivor or the deceased was normally resident in Sweden at the time of the death.

2. An invalidity pension or a widow's pension to which entitlement exists under paragraph 1 shall be automatically replaced by an old age pension when the widow attains the general pension age.

3. Paragraph 1 (b) shall apply *mutatis mutandis* to entitlements to benefits for the handicapped.

4. The father or mother of a handicapped child shall be entitled to an allowance for the care of such child if the father or mother has been normally resident in Sweden for at least one year.

*Article 24.* 1. An Austrian national who does not fulfil the requirements laid down in article 23 but is entitled to a supplementary pension shall, except as otherwise provided in paragraph 3, be entitled, whether normally resident in or outside Sweden, to a national basic pension with supplementary benefits corresponding to the number of calendar years for which he or, in the case of a widow's or orphan's pension, the deceased has earned pension points under the supplementary pension insurance scheme. If the entitlement is for a full supplementary pension, a full national basic pension shall be paid. Otherwise the national basic pension shall be granted in an amount reduced accordingly.

2. A widow's pension to which entitlement exists under paragraph 1 shall be replaced automatically by an old age pension when the widow attains the general pension age. Should the old age pension be higher, on the basis of the insurance periods completed by the widow herself, the old age pension shall be paid in the higher amount.

3. Benefits for the handicapped which are not paid as a supplement to the national basic pension and allowances for the care of a handicapped child, pension supplements and pensions benefits based on a means test shall be granted only for the period during which the person entitled to such benefits is resident in Sweden.

*Article 25.* For the purpose of granting supplementary pensions under Swedish legislation, the following provisions shall apply:

- (1) A person who is not a Swedish national may earn pension points only on the basis of a gainful activity performed while normally resident in Sweden.
- (2) Where a person has completed insurance periods under both the Swedish supplementary pension insurance scheme and the Austrian pension insurance scheme, such periods shall be aggregated to the extent necessary for the establishment of entitlement to a supplementary pension, in so far as they do not overlap. In such cases, 12 insurance months completed under the Austrian pension insurance scheme shall be equivalent to one calendar year for which pension points have been earned.
- (3) For the purpose of calculating the supplementary pension, only insurance periods coming under Swedish legislation shall be taken into account.
- (4) The provisions of Swedish legislation concerning the calculation of the supplementary pension for persons born before 1924 shall apply only to Swedish nationals.

#### CHAPTER 3. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

*Article 26.* 1. A person who is entitled, as the result of an industrial accident or occupational disease, to sickness benefits in kind under the legislation of one Contracting State shall, while residing in the other Contracting State, receive sickness benefits in kind, at the expense of the competent insurance authority, from the insurance authority of his place of residence in accordance with the laws applicable to such insurance authority.

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

in Austria, by the Regional Sickness Fund for Manual and Salaried Workers in the place of residence;

in Sweden, by the insurance fund competent for the place of residence.

3. For the reimbursement of costs incurred in the cases provided for in paragraph 1, article 16 shall apply *mutatis mutandis*.

*Article 27.* If an occupational disease is compensable under the legislation of both Contracting States, benefits shall be granted only under the legislation of the Contracting State in whose territory an occupation liable to cause such an occupational disease was last engaged in.

#### CHAPTER 4. UNEMPLOYMENT

*Article 28.* 1. Where a national of one of the Contracting States was subject to the legislation of both Contracting States, his entitlement to unemployment benefits shall be calculated by aggregating the employment periods to be taken into account under the legislation of both Contracting States, in so far as they do not overlap.

2. Paragraph 1 shall apply only if such national has been employed in the Contracting State under whose legislation the benefit is claimed for a total of at least four weeks during the 12 months prior to the assertion of the claim. Paragraph 1 shall apply even if the employment which was expected to last for a longer period is terminated, before the completion of the four-week period, through no fault of the employee.

*Article 29.* The period of entitlement under Swedish legislation shall be reduced by the period for which the unemployed person received benefits from an insurance authority in Austria during the 12 months immediately preceding the date of the claim for benefits.

#### CHAPTER 5. FAMILY ALLOWANCES

*Article 30.* 1. A person who normally resides with his children in one Contracting State and is gainfully employed in the other Contracting State shall, as regards entitlements to family allowances, be subject to the legislation of the first-mentioned State.

2. A person who is employed in one Contracting State and who, under the provisions of article 8, is subject to the legislation of the other Contracting State, shall be treated, as regards entitlements to family allowances, as if he and his children were in the Contracting State whose legislation is applicable under the aforesaid provisions.

*Article 31.* Where, account being taken of the provisions of this Agreement, a child who is resident in one Contracting State is entitled to a family allowance under the legislation of both Contracting States, only the legislation of the Contracting State in which the child is normally resident shall apply.

#### TITLE IV

#### MISCELLANEOUS PROVISIONS

*Article 32.* 1. The competent public authorities may prescribe in an agreement the administrative measures necessary for the implementation of this Agreement. Such agreement may be concluded before the entry into force of this Agreement but may not enter into force earlier than simultaneously with this Agreement.

2. The competent public authorities of the Contracting States shall inform each other concerning:

(a) all measures taken in implementing this Agreement;

(b) all changes in their legislation which affect the implementation of this Agreement.

3. In the implementation of this Agreement, the public authorities and insurance authorities of the Contracting States shall assist each other and shall act as if applying their own legislation. Such official assistance shall be free of charge.

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

5. The insurance authorities, public authorities and courts of one of the Contracting States shall not reject claims or other papers submitted to them on the ground that they are drawn up in the official language of the other Contracting State.

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

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

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

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

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

*Article 35.* 1. Claims, declarations or appeals which, in implementation of this Agreement or the legislation of one of the Contracting States, are submitted to a public authority, insurance authority or other competent agency of one of the Contracting States shall be considered as claims, declarations or appeals submitted to a public authority, insurance authority or other competent agency of the other Contracting State.

2. A claim to a benefit submitted under the legislation of one of the Contracting States shall also be deemed to be a claim to a corresponding benefit covered by this Agreement under the legislation of the other Contracting State. This shall not apply where the claimant expressly requests that the determination of an old-age benefit acquired under the legislation of one of the Contracting States should be deferred.

3. Claims, declarations or appeals which, in implementation of the legislation of one of the Contracting States, must be submitted within a prescribed time-limit to a public authority, insurance authority or other competent agency of that Contracting State may be submitted within the same time-limit to the corresponding office of the other Contracting State.

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

*Article 36.* 1. The insurance authorities liable for benefits under this Agreement shall be held to discharge their liability validly by making payment in the currency of their State.

2. Reimbursements provided for in this Agreement shall be made in the currency of the Contracting State in which the insurance authority which provided the benefits has its seat.

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

*Article 37.* 1. Enforceable court orders and enforceable decisions and statements of arrears (instruments) issued by the insurance authorities or public authorities of one of the Contracting States in matters concerning contributions and other social insurance requirements, or concerning the recovery of family allowances which were wrongfully obtained, shall be recognized in the other Contracting State.

2. Recognition may be refused only where it would be contrary to the public policy of the Contracting State in which recognition of the order or instrument is sought.

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

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

*Article 38.* 1. Where an insurance authority of one of the Contracting States has made an advance payment on a benefit, the insurance authority of the other Contracting State shall, at the request of the first-mentioned insurance authority, withhold subsequent payment of any corresponding benefit in respect of the same period to which entitlement exists under the legislation of the last-mentioned State. Where the insurance authority of one of the Contracting States has paid an amount in excess of the correct benefit for a period in respect of which the insurance authority of the other Contracting State is subsequently liable for a corresponding benefit, the overpayment, up to the amount subsequently payable, shall be deemed to be an advance payment within the meaning of the first sentence of this paragraph.

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

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

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

- (a) Each party shall, within one month from the date of receipt of the request for an arbitral decision, appoint one arbitrator. The two arbitrators so appointed shall, within two months from the date on which the last party to appoint its arbitrator has given notice thereof, select a national of a third State as the third arbitrator.
- (b) If one of the Contracting States has not appointed an arbitrator within the specified time-limit, the other Contracting State may request the President of the European Court of Human Rights to make the appointment. The same procedure may be followed, at the request of one of the Contracting States, if the two arbitrators are unable to agree on the choice of the third arbitrator.
- (c) If the President of the European Court of Human Rights is a national of one of the Contracting States, the functions conferred on him by this article shall be

performed by the Vice-President of the Court. If the Vice-President is also a national of one of the Contracting States, they shall be performed by the next most senior member of the Court who is not a national of one of the Contracting States.

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

#### T I T L E V

### TRANSITIONAL AND FINAL PROVISIONS

*Article 40.* 1. This Agreement shall not confer any entitlement to benefits for periods prior to the date of its entry into force.

2. Insurance periods completed under the legislation of one of the Contracting States prior to the date of entry into force of this Agreement shall also be taken into account for the purpose of determining entitlement to benefits under this Agreement.

3. Without prejudice to the provisions of paragraph 1, this Agreement shall also apply to insurance contingencies which occurred prior to its entry into force, provided that any entitlements previously determined have not been settled by a lump-sum payment. In such cases, in accordance with the provisions of this Agreement:

- (a) pensions to which entitlement first arises under this Agreement shall, upon the application of the beneficiary, be determined as from the date of entry into force of this Agreement;
- (b) pensions which were determined prior to the entry into force of this Agreement shall, upon the application of the beneficiary, be revised; they may also be revised *ex officio*, and in that event the date on which the insurance authority dispatches to the beneficiary the required notice of initiation of the revision process shall be deemed to be the date of the application.

If the application for determination or revision is submitted within two years from the entry into force of this Agreement, or the revision *ex officio* is initiated within that time-limit, benefits shall be payable as from the date of entry into force of this Agreement. In other cases, they shall be payable as from the date determined in accordance with the legislation of each of the Contracting States.

4. With regard to entitlements arising out of the application of paragraph 3, the legislation of the Contracting States concerning the lapse and extension of rights shall not apply to the beneficiary if the application referred to in paragraph 3 is submitted within two years from the date of entry into force of this Agreement. If the application is submitted after the expiry of that period, such entitlement to benefits as has not lapsed or been extinguished shall be acquired as from the date of submission of the application, unless more favourable provisions of the legislation of one of the Contracting States are applicable.

5. In the cases specified in paragraph 3 (b), the provisions of article 38, paragraph 1, shall apply *mutatis mutandis*.

*Article 41.* The rights accorded under Austrian legislation to any person who has suffered impairment of his social security entitlements on political, religious or racial grounds shall not be affected by this Agreement.

*Article 42.* 1. This Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Vienna.

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

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

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

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

DONE at Stockholm, on 11 November 1975, in duplicate in the German and Swedish languages, both texts being equally authentic.

For the Republic of Austria:

FISCHER

For the Kingdom of Sweden:

SVEN ASPLING

## FINAL PROTOCOL

### TO THE AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF SWEDEN ON SOCIAL SECURITY

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

#### I. *Ad* article 2 of the Agreement:

1. Paragraph 1, subparagraph 1, does not refer to Austrian legislation on notary insurance.

2. Paragraph 3 shall not apply to agreements concluded by Austria in so far as they contain regulations concerning the transfer of insurance liability from one country to another.

#### II. *Ad* article 4 of the Agreement:

1. Regulations concerning the transfer of insurance liability from one country to another, laid down in agreements concluded by Austria, shall not be affected.

2. The 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.

3. The provisions of the Austrian Federal Act of 22 November 1961 concerning entitlements to benefits and rights in course of acquisition under the pensions in-

surance and accident insurance schemes by reason of employment abroad, and the provisions relating to the taking into account of periods of self-employment completed in the territory of the former Austro-Hungarian monarchy outside Austria, shall not be affected.

4. Swedish nationals who have attained the age of 55 years shall be entitled, under the same conditions and to the same extent as Austrian nationals, to unemployment relief (*Notstandshilfe*) if, at the time of applying for such relief, they have been covered for at least three of the preceding five years by the compulsory unemployment insurance scheme while employed in Austria.

5. The legislation of the two Contracting States concerning insurance for persons employed at a diplomatic post, or at a consular post headed by a career consul, of one of the Contracting States in a third State, or by members of such a diplomatic or consular post, shall not be affected.

III. *Ad* article 5 of the Agreement:

This provision does not refer to the equalization allowance (*Ausgleichszulage*) under Austrian legislation.

IV. *Ad* article 6 of the Agreement:

1. As regards the acquisition of entitlement to a pension under the Austrian pension insurance scheme for self-employed persons in commerce, the termination of the corresponding self-employment in Sweden shall be assimilated to the expiration of a business licence or the winding-up of a company in Austria.

2. In calculating the Swedish national basic pension with supplementary benefits, an Austrian pension shall be assimilated to a Swedish supplementary pension.

V. *Ad* articles 8 and 10 of the Agreement:

Where Swedish legislation is to be applied under one of these articles, the person in question shall be treated as if he were also normally resident in Sweden.

VI. *Ad* article 9 of the Agreement:

The Austrian Trade Delegate and the technical staff assigned to him by the Federal Chamber of Commerce shall be assimilated to diplomatic representatives on administrative and technical personnel respectively, on the understanding that the employment of the persons in question in Swedish territory is subject to Austrian legislation.

VII. *Ad* article 12 of the Agreement:

This provision shall, as regards treatment by self-employed physicians, dentists and dental technicians, apply in Austria only in respect of the following persons:

- (a) persons who are in Austria in exercise of their employment, and family members accompanying them;
- (b) persons visiting family normally resident in Austria;
- (c) persons who are in Austria for other reasons, if they are provided with ambulatory treatment at the expense of the regional sickness fund competent for the place of stay.

VIII. *Ad* article 24 of the Agreement:

1. If, in cases where both spouses are entitled to a national basic pension (*folkpension*), the total amount of the pensions is smaller than the pension that one spouse would receive if only that spouse were entitled to the pension, the pensions

shall be increased by the amount of the difference. The difference shall be divided proportionally between the two pensions.

2. The requirement concerning entitlement to a supplementary pension under paragraph 1 shall be deemed to have been fulfilled if, in respect of the insured person or, in the case of a widow's or orphan's pension of the deceased, assessed income for national income tax has been calculated for years prior to 1960, provided that the total number of such years, added if necessary to the years for which pension points were earned under supplementary pension insurance and to insurance periods under the Austrian pension insurance scheme, amounts to at least three. Twelve insurance months completed under the Austrian pension insurance scheme shall be assimilated to one year for which assessed income for national income tax has been calculated in respect of the person concerned.

3. For the purpose of applying the provisions of paragraph 1 concerning the calculation of the national basic pension, years prior to 1960 for which assessed income for national income tax has been calculated shall be assimilated to years for which pension points have been earned under the supplementary pension insurance scheme.

IX. *Ad* article 28 of the Agreement:

This article shall not apply for the purpose of the acquisition of entitlement to maternity leave benefits (*Karenzurlaubsgeld*) under Austrian legislation.

X. *Ad* article 30 of the Agreement:

The provisions concerning the qualifying period for entitlements to a general family allowance under Swedish legislation shall not be affected by this Agreement.

XI. *Ad* article 40 of the Agreement:

Title III, chapter 2, shall not apply in cases where, under the Austrian legislation concerning pensions insurance for self-employed persons in agriculture and forestry, the legislation concerning subsidized annuities insurance for farmers (*Landwirtschaftliche Zuschußrentenversicherung*) are to continue to apply.

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

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

DONE at Stockholm, on 11 November 1975, in duplicate in the German and Swedish languages, both texts being equally authentic.

For the Republic of Austria:  
FISCHER

For the Kingdom of Sweden:  
SVEN ASPLING