

No. 19027

**AUSTRIA
and
SWITZERLAND**

**Agreement concerning unemployment insurance (with final
protocol). Signed at Vienna on 14 December 1978**

Authentic text: German.

Registered by Austria on 15 August 1980.

**AUTRICHE
et
SUISSE**

**Accord relatif à l'assurance chômage (avec protocole final).
Signé à Vienne le 14 décembre 1978**

Texte authentique : allemand.

Enregistré par l'Autriche le 15 août 1980.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE SWISS CONFEDERATION CONCERNING UNEMPLOYMENT INSURANCE

The Federal President of the Republic of Austria and the Swiss Federal Council,

Desiring to regulate the mutual relations between the two States in the matter of unemployment insurance, have agreed to conclude an Agreement and for this purpose have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Willibald Pahr, Federal Minister for Foreign Affairs,

The Swiss Federal Council: Dr. René Keller, Ambassador Extraordinary and Plenipotentiary.

The plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. For the purposes of this Agreement:

1. "Austria" means the Republic of Austria, "Switzerland" means the Swiss Confederation;

2. "Nationals" means:

—In relation to Austria, the nationals of that State,

—In relation to Switzerland, Swiss nationals;

3. "Legislation" means the laws and ordinances, relating to the areas of law specified in article 2, paragraph 1, which are in force in one of the Contracting States;

4. "Competent public authority" means,

—In relation to Austria, the Federal Minister for Social Affairs,

—In relation to Switzerland, the Federal Office for Industry, Trade and Labour;

5. "Frontier commuters" means persons who are resident in the territory of one of the Contracting States and in regular and normal gainful employment in the territory of the other Contracting State.

Article 2. (1) This Convention shall apply:

1. In Austria, to the legislation concerning:

(a) Unemployment benefits,

(b) Part-time employment assistance;

¹ Came into force on 1 January 1980, i.e., the first day of the second month following the month in which the exchange of the instruments of ratification took place (effected at Berne on 30 November 1979), in accordance with article 17 (2).

2. In Switzerland, to the federal legislation concerning unemployment compensation, including partial unemployment (part-time employment) benefits.

(2) Legislation which arises out of international treaties concluded with third States or out of supranational law, or which serves for their implementation, shall not be taken into consideration in relations between the two Contracting States.

Article 3. This Convention shall apply to nationals of the Contracting States and to all frontier commuters within the meaning of article 1, paragraph 5.

Article 4. The obligation to participate in or contribute to an insurance scheme shall be governed by the Convention between the Republic of Austria and the Swiss Confederation on social security, concluded on 15 November 1967,¹ as worded at the time.

PART II. SPECIAL PROVISIONS

Article 5. Claims to benefits and the procedure for claims shall be governed by the legislation of the Contracting State in whose territory the claim is made, save as otherwise provided below.

Article 6. In cases where nationals of one State return to their own State, insurance periods completed in the other Contracting State shall be taken into account for the purpose of assessing whether the qualifying period has been completed and for determining the contributory period.

Article 7. (1) Frontier commuters, when fully unemployed, shall receive unemployment benefits or unemployment compensation in the Contracting State in whose territory they reside. In assessing whether the qualifying period has been completed and in determining the contributory period, insurance periods completed in the other Contracting State shall be taken into account in the State of residence.

(2) Unemployment insurance contributions collected for frontier commuters in the country of employment shall be transferred to the commuters' country of residence as a lump sum calculated on the basis of the following criteria: the annual average number of commuters, the percentage of the unemployment insurance contribution (employee's and employer's part), the total payroll of the employees in the country of employment, and the ratio of the outlay for full and partial unemployment in the canton of St. Gallen to that in the province of Vorarlberg. The competent authorities shall transmit the relevant documentation to each other annually.

(3) Frontier commuters shall be granted part-time employment assistance or partial unemployment benefits, as the case may be, in accordance with the legislation of the Contracting State in which they are in part-time employment.

Article 8. Periods for which benefits have been paid in the other Contracting State shall be counted as if these benefits had been granted in the State where the claim is lodged. Days for which benefits were not awarded because of the culpable behaviour of the unemployed person shall be counted in the same way as days for which the person received benefits.

¹ United Nations, *Treaty Series*, vol. 658, p. 243.

Article 9. Social security benefits of the other Contracting State shall be taken into account in the same manner as comparable social security benefits of the Contracting State in whose territory the claim is lodged.

PART III. MISCELLANEOUS PROVISIONS

Article 10. The public authorities of the Contracting States shall assist one another in the implementation of this Agreement as if they were applying their own legislation. Such assistance shall be free of charge, save for out-of-pocket expenses.

Article 11. (1) Exemptions from taxes and charges under the unemployment insurance and social insurance legislation of one of the Contracting States shall apply to persons and agencies of the other Contracting State.

(2) Instruments and documents of any kind required to be submitted in implementation of this Agreement shall not require legalization.

Article 12. Agencies in both Contracting States concerned with the implementation of unemployment insurance shall, when implementing this Agreement, communicate directly with one another and with the persons insured or their representatives.

Article 13. (1) The competent authorities of both Contracting States shall jointly and directly establish the details of the action required for implementing this Agreement, in so far as mutual consent is required. They shall inform each other of the action taken to implement the Agreement and of any changes in, and additions to, their legislation which affect its implementation.

(2) In order to facilitate the implementation of this Agreement, liaison offices shall be set up. The following shall be liaison offices:

—In Austria: the Vorarlberg provincial employment office (Landesarbeitsamt Vorarlberg);

—In Switzerland: the St. Gallen Cantonal Office for Industry, Trade and Labour (Kantonales Amt für Industrie, Gewerbe und Arbeit).

Article 14. (1) Where the unemployment insurance authority of one Contracting State has erroneously paid benefits to a person, the unemployment insurance authority of the other Contracting State shall, at the former authority's request and for its account, withhold the amount paid in error from a later payment or from current payments to the beneficiary in accordance with the national legislation to which it is subject.

(2) Where a person has received unemployment compensation or unemployment benefits under the legislation of one Contracting State, in respect of a period for which he was granted cash benefits by the disability insurance authority of the other Contracting State, then such payment shall be withheld at the request and on behalf of the unemployment insurance authority, irrespective of any regulations in force between the States. The unemployment insurance authority shall, if need be, come to an understanding with the disability insurance authority of the other Contracting State before granting the aforesaid benefits.

PART IV. TRANSITIONAL AND FINAL PROVISIONS

Article 15. The reciprocal transfer of frontier commuters' contributions as between the two Contracting States in accordance with article 7, paragraph 2,

shall commence as from 1 April 1977. This Agreement shall not give rise to any other entitlement to benefits in respect of periods prior to the date of its entry into force.

Article 16. The final protocol annexed hereto shall form an integral part of this Agreement.

Article 17. (1) This Agreement is subject to ratification. The instruments of ratification shall be exchanged as soon as possible at Berne.

(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.

Article 18. (1) This Agreement is concluded for an indefinite period. Either Contracting State may denounce it on three months' notice.

(2) If, as a result of denunciation, the Agreement ceases to have effect, its provisions shall continue to apply to entitlements to benefits acquired up to that time but for a period of no longer than one year after it ceases to have effect.

IN WITNESS WHEREOF the plenipotentiaries have signed this Agreement.

DONE at Vienna on 14 December 1978, in two original copies in the German language.

For the Republic of Austria:
WILLIBALD P. PAHR

For the Swiss Confederation:
KELLER

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE SWISS CONFEDERATION CONCERNING UNEMPLOYMENT INSURANCE

At the time of signing the Agreement between the Republic of Austria and the Swiss Confederation concerning unemployment insurance, concluded this day, the plenipotentiaries of the two Contracting States jointly declared that agreement had been reached on the following:

1. *Ad article 3:*

“All frontier commuters” shall mean:

- (a) Persons irrespective of their nationality,
- (b) Refugees within the meaning of article 1 of the Convention relating to the Status of Refugees of 28 July 1951¹ and of the Protocol of 31 January 1967² thereto,
- (c) Stateless persons within the meaning of article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954.³

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

2. *Ad article 5:*

For the purposes of article 5, a claim to benefits shall indicate, in particular, the relevant grounds, amount and duration of the claim, the circumstances that may extinguish or limit the claim, and any restitutory claims.

3. *Ad article 6:*

In cases where Austrian nationals return to their own State after exhausting their entitlement to unemployment compensation (*Arbeitslosenentschädigung*) in Switzerland, exhaustion of the entitlement to unemployment compensation shall be considered equivalent to exhaustion of the entitlement to unemployment benefits (*Arbeitslosengeld*) for the purposes of emergency relief.

4. *Ad article 7:*

Periods for which a frontier commuter has paid contributions in the country of his employment, and which are therefore transferable pursuant to paragraph 2, shall count towards the qualifying period for maternity leave payments (*Karenzurlaubsgeld*) in Austria. Maternity benefits (*Krankengeld bei Mutterschaft*) received from the Swiss health insurance scheme shall be considered equivalent to maternity relief (*Wochengeld*) for the purpose of entitlement to maternity leave payments.

5. *Ad article 7:*

Austrian nationals who are employed, within the meaning of the international Agreement concerning the social security of Rhine boatmen¹ as worded at the time, as Rhine boatmen on Rhine boats of enterprises which have their principal place of business in Switzerland shall, so far as the Swiss unemployment insurance authorities are concerned, be deemed to be employed in Switzerland, provided that they are resident in Austria; they shall have the same entitlement to benefits as frontier commuters.

6. *Ad article 14:*

The benefits paid by the disability insurance authority, within the meaning of article 14, paragraph 2, are in Switzerland: the *Invalidenrente*; and in Austria: the *Invaliditätspension*, the *Berufsunfähigkeitspension* and the *Erwerbsunfähigkeitspension*.

IN WITNESS WHEREOF the plenipotentiaries have signed this final protocol.

DONE at Vienna on 14 December 1978, in two original copies in the German language.

For the Republic of Austria:

WILLIBALD P. PAHR

For the Swiss Confederation:

KELLER

¹ United Nations, *Treaty Series*, vol. 166, p. 73.