

No. 20213

**FEDERAL REPUBLIC OF GERMANY
and
AUSTRIA**

**Agreement concerning unemployment insurance (with final
protocol). Signed at Vienna on 19 July 1978**

Authentic text: German.

Registered by the Federal Republic of Germany on 31 July 1981.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUTRICHE**

**Accord relatif à l'assurance chômage (avec protocole final).
Signé à Vienne le 19 juillet 1978**

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 31 juillet 1981.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE REPUBLIC OF AUSTRIA CONCERNING UNEMPLOY-
MENT INSURANCE

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

Desiring to promote closer relations between the two States in the matter of social security and to bring them into line with current legislation,

Have decided to conclude an Agreement to supersede the Agreement concerning unemployment insurance of 19 May 1951.

They have appointed for this purpose as their plenipotentiaries,

The President of the Federal Republic of Germany: Mr. Horst Grabert, Ambassador of the Federal Republic of Germany;

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

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

PART I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purposes of this Agreement:

1. "Territory" means, in relation to the Federal Republic of Germany, the area in which the Basic Law for the Federal Republic of Germany is in force and, in relation to the Republic of Austria, the federal territory of that State;

2. "Nationals" means, in relation to the Federal Republic of Germany, a German within the meaning of the Basic Law for the Federal Republic of Germany and, in relation to the Republic of Austria, the nationals of that State;

3. "Legislation" means, in relation to the Federal Republic of Germany, the laws, ordinances, and regulations relating to the benefits specified in article 2, paragraph 1, and in relation to the Republic of Austria, the laws and ordinances relating to the territory specified in article 2, paragraph 1;

4. "Competent public authority" means, in relation to the Federal Republic of Germany, the Federal Minister of Labour and Social Affairs, and in relation to the Republic of Austria, the Federal Minister of Social Affairs;

5. "Frontier commuter" means an employee, who by reason of his employment in the territory of one of the Contracting States, is subject to its legislation and who is normally resident in the territory of the other Contracting State and returns there, as a rule, at least once a week;

¹ Came into force on 1 October 1979, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Bonn on 23 August 1979, in accordance with article 19 (2).

6. "Insurance authority" means in relation to the Federal Republic of Germany, the Federal Labour Institute, and in relation to the Republic of Austria, the authority responsible for implementing the legislation specified in article 2, paragraph 1.

Article 2. BENEFITS

1. This Agreement shall apply:

To the German legislation concerning:

- (a) Unemployment benefits,
- (b) Unemployment relief,
- (c) Part-time employment benefits,
- (d) Bad weather allowance,
- (e) Bankruptcy compensation;

To the Austrian legislation concerning:

- (a) Unemployment benefits,
- (b) Emergency relief,
- (c) Pension insurance advances,
- (d) Part-time employment benefits,
- (e) Bad weather compensation,
- (f) Insolvency compensation,

including legislation on contributions and levies.

2. In the application of this Agreement, legislation which arises for a Contracting State out of another international treaty or out of supranational law or which serves for the application of such a treaty or law shall not be taken into account.

Article 3. ELIGIBILITY

This Agreement shall apply:

- (a) To nationals of either Contracting State,
- (b) To refugees and stateless persons, who are normally resident in the territory of one of the Contracting States.

Article 4. EQUAL TREATMENT

Where a claim to a benefit specified in article 2, paragraph 1, is contingent, under the legislation of the Contracting State in which benefit is claimed, upon being a national of that Contracting State, persons to whom this Agreement applies by virtue of article 3, shall be treated as nationals of that Contracting State.

Article 5. COMPULSORY INSURANCE AND CONTRIBUTIONS

1. Compulsory insurance and contributions shall be governed by the legislation of the Contracting State in whose territory the employed person is employed, even if the employer is in the territory of the other Contracting State.

2. If, however, under the Convention on social security concluded between the Federal Republic of Germany and the Republic of Austria, the applicable legislation is not the legislation in force at the place of employment but the legislation of the other Contracting State, the same shall apply to the obligation to be insured and to pay contributions under the legislation specified in article 2, paragraph 1.

3. Nothing in this Agreement shall affect the provisions relating to the legislation specified in article 2, paragraph 1, contained in the Vienna Convention on Diplomatic Relations¹ and the Vienna Convention on Consular Relations.²

PART II. SPECIAL PROVISIONS. RIGHT TO BENEFITS

Article 6. GENERAL PRINCIPLE

Claims to the benefits specified in article 2, paragraph 1, and the procedure for claims shall be governed by the legislation of the Contracting State in the territory of which the claim is lodged, save as otherwise provided hereunder.

Article 7. CONSIDERATION OF CONTRIBUTORY EMPLOYMENT PERIODS COMPLETED UNDER THE LEGISLATION OF THE OTHER CONTRACTING STATE

1. Contributory employment periods completed under the legislation of the other Contracting State shall be taken into account in assessing whether the qualifying period has been completed and in determining the claim (contributory) period provided that the claimant is a national of the Contracting State in which the claim is lodged and is normally resident in the territory of that Contracting State. The same shall apply where the claimant has moved, for family reunion purposes, to the Contracting State in which the claim is lodged and the spouse, already resident there, is a national of that Contracting State.

2. In the case of other unemployed persons, contributory unemployment periods completed in accordance with the legislation of the other Contracting State shall be taken into account only if the unemployed person, since his last entry into the territory of the Contracting State in which he lodges his claim, has been employed there for at least four weeks without contravening the regulations on the employment of aliens.

Article 8. SPECIAL PROVISION RELATING TO FRONTIER COMMUTERS

1. Frontier commuters shall receive unemployment benefits in the Contracting State in whose territory they are normally resident. In assessing whether the qualifying period has been completed, and in determining the claim (contributory) period, contributory employment periods completed under the legislation of the other Contracting State shall be taken into account.

2. Employed persons who were employed within a fixed period of six years immediately prior to unemployment for at least five years, of which the last year at least was spent as frontier commuters, shall receive unemployment benefits in the Contracting State in whose territory they were employed. Instead, however, they may lodge their claims in the territory of the Contracting State in which they are normally resident.

3. Employed persons who, as frontier commuters, work on a part-time basis in the Federal Republic of Germany shall receive part-time employment assistance in accordance with German legislation, and employed persons who, as frontier commuters, work on a part-time basis in the Republic of Austria shall receive part-time employment assistance in accordance with Austrian legislation.

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

4. Frontier commuters shall receive bad-weather allowances (bad-weather compensation) in accordance with the legislation of the Contracting State in which they lose earnings because of bad weather.

5. Employed persons who, at the commencement of bankruptcy proceedings, have claims for remuneration against their employer's property, or are in a situation which is deemed to be equivalent under the legislation to be applied, shall, if they were in employment as frontier commuters in the Federal Republic of Germany, be awarded compensation on grounds of bankruptcy under German legislation and, if they were in employment as frontier commuters in the Republic of Austria, compensation on grounds of insolvency under Austrian legislation.

Article 9. SHORTENING OF THE CLAIM (CONTRIBUTORY) PERIOD

The claim (contributory) period shall be shortened by the period during which the unemployed person, in the other Contracting State, was already receiving unemployment benefits within the last 12 months before the date on which the claim was lodged. Any period during which an unemployed person's benefits were withheld as a result of his culpable behaviour shall be counted as a period during which he received benefits.

*Article 10. CONSIDERATION OF INCOME RECEIVED
IN THE OTHER CONTRACTING STATE*

Income from social security sources of the other Contracting State shall be considered in the same way as comparable payments received from social security sources of the Contracting State in whose territory the claim is lodged.

PART III. MISCELLANEOUS PROVISIONS

Article 11. OFFICIAL ASSISTANCE

The insurance authorities, social security associations, public authorities and courts of the Contracting States shall assist one another in the implementation of the legislation specified in article 2, paragraph 1, and of this agreement as if they were applying the legislation applicable to themselves. Such assistance shall be free of charge, save for out-of-pocket expenses.

Article 12. EXEMPTION FROM CHARGES AND THE LEGALIZATION REQUIREMENT

1. Exemptions from or reduction of taxes or charges, including consular and administrative charges, provided for by the legislation of one Contracting State in respect of documents or instruments required to be submitted in implementation of that legislation shall be extended to the corresponding documents and instruments required to be submitted in implementation of this Agreement or of the legislation of the other Contracting State specified in article 2, paragraph 1.

2. Instruments and documents of whatever kind required to be submitted in implementation of this Agreement or of the legislation specified in article 2, paragraph 1, of the other Contracting State, shall not require legalization.

Article 13. DIRECT COMMUNICATION

1. The agencies of the Contracting States, referred to in article 11 may, in implementation of the legislation specified in article 2, paragraph 1, and of this Agreement, communicate directly with one another and with employers and employed persons and their representatives.

2. Decisions and other papers may be served on a person resident in the territory of the other Contracting State directly by registered letter with return receipt.

*Article 14. AGREEMENT ON ADMINISTRATIVE MEASURES
AND RECIPROCAL NOTIFICATION*

1. The competent authorities of the Contracting States may agree directly on details of the action necessary for implementing this Agreement, to the extent that it deals with areas of mutual agreement. They shall inform each other of the action taken for implementing the Agreement and of any changes in, and additions to, the legislation relevant to its implementation.

2. Liaison offices shall be established to facilitate the implementation of this Agreement. They are:

In the Federal Republic of Germany: the Munich Regional Labour Office for South Bavaria (Landesarbeitsamt Südbayern in München);

In the Republic of Austria: the Salzburg Provincial Labour Office (Landesarbeitsamt Salzburg).

*Article 15. REIMBURSEMENT OF ADVANCE PAYMENTS
AND OF BENEFITS PAID IN ERROR*

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

2. Where a person is entitled under the legislation of one Contracting State to a cash benefit in respect of a period for which he or his dependants have been granted benefits by a public assistance authority of the other Contracting State, the cash benefit shall, upon request by the public assistance authority entitled to compensation, be withheld for its account as if it were a public assistance authority having its seat in the territory of the first-mentioned Contracting State. Where a person is entitled under the legislation of one Contracting State to a cash benefit in respect of a period for which he or his dependants have been granted benefits by another public assistance authority of the other Contracting State from public funds, such payment shall, at the request and for the account of the public assistance authority entitled to a refund, be withheld irrespective of any regulations between the States.

PART IV. TRANSITIONAL AND FINAL PROVISIONS

Article 16. TRANSITIONAL ARRANGEMENT

This Agreement shall not create any entitlement to benefits in respect of periods prior to the date of its entry into force. Decisions taken before such entry into force shall not be affected by this Agreement.

Article 17. FINAL PROTOCOL

The Final Protocol annexed hereto shall form an integral part of this Agreement.

Article 18. APPLICABILITY TO LAND BERLIN

This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany does not make a declaration to the contrary to

the Federal Government of the Republic of Austria within three months after the date of entry into force of the Agreement.

Article 19. RATIFICATION, ENTRY INTO FORCE

1. This Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible at Bonn.

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 20. PERIOD OF VALIDITY, DENUNCIATION

1. This Agreement is concluded for an indefinite period. Either Contracting State may denounce it, on three months' notice, as at the end of any calendar year.

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 no longer than one year after the denunciation.

Article 21. TERMINATION OF PREVIOUS AGREEMENTS

Upon the entry into force of this Agreement, the following shall cease to have effect:

The Agreement of 19 May 1951 between the Federal Republic of Germany and the Republic of Austria concerning unemployment insurance, with Final Protocol; The Additional Protocol of 23 November 1951 to the Agreement between the Federal Republic of Germany and the Republic of Austria concerning unemployment insurance;

The Second Agreement of 31 October 1953 between the Federal Republic of Germany and the Republic of Austria concerning unemployment insurance.

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

DONE at Vienna on 19 July 1978 in two original copies.

For the Federal Republic of Germany:

[Signed]

HORST GRABERT

For the Republic of Austria:

[Signed]

WILLIBALD PAHR

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE FEDERAL
REPUBLIC OF GERMANY AND THE REPUBLIC OF AUSTRIA CON-
CERNING UNEMPLOYMENT INSURANCE

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

1. *Ad article 2, paragraph 2*

The Agreement shall not affect the Agreement concerning the Social Security of Rhine boatmen, as worked at the time.

2. *Ad article 3*

Members of crews engaged in navigation on the Danube, who were active in that capacity for a total of five years and are neither Austrian nor German nationals, shall be treated, for the purposes of article 6, paragraph 5, of the German-Austrian Convention on social security, as nationals of the Contracting State whose legislation applies.

3. *Ad article 3*

The following are refugees and stateless persons within the meaning of article 3:

- (a) Refugees within the meaning of article 1 of the Convention relating to the status of refugees of 28 July 1951¹ and the Protocol thereto of 31 January 1967;²
- (b) Stateless persons within the meaning of article 1 of the Convention relating to the Status of Stateless persons of 28 September 1954.³

4. *Ad article 5*

Employed persons who, under the German-Austrian agreement on double taxation, are not obliged to pay German taxes on their earnings from paid employment shall have the gross earnings, which would be taxable if a tax obligation existed, used as the basis for collecting contributions under paragraph 186 *a* of the Labour Promotion Act.

5. *Ad article 6*

For the purposes of article 6, a claim to benefits shall indicate, in particular, the relevant grounds, amount and duration of the claim; any circumstances that may extinguish or limit the claim; and any restitutory claims.

6. *Ad article 6*

When calculating benefits under German legislation, the tax bracket under which the employed person would fall if he were obliged to pay taxes shall be used as the basis, if required.

7. *Ad article 6 et seq.*

Unemployment benefits cannot be denied on the ground that authorization to take up new employment is dependent on the issuing of a permit by the relevant authority. Allowances for part-time employment (part-time employment benefits) cannot be denied on the ground that the part-time employment could have been avoided by the dismissal of employed persons who are nationals of the other Contracting State.

8. *Ad article 6*

For the purpose of applying the Austrian unemployment insurance scheme in the municipalities of Jungholz (political district of Reutte) and Mittelberg (political district of Bregenz) the competent Austrian authority may enact further provisions by ordinance.

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

9. *Ad article 7*

When a claim to unemployment benefits is lodged in Austria, the entitlement periods specified in section 14, paragraphs 1 to 3, of the Unemployment Insurance Act shall be extended by those periods in which the unemployed person has, in the Federal Republic of Germany,

- (a) Attended a regular vocational instruction course which took up most of his time;
- (b) Carried out military or civil service, provided he or she was previously covered by an unemployment insurance scheme in Austria;
- (c) Received sickness or maternity benefits;
- (d) Been unable to work as a result of accident or sickness, within the meaning of part 15, section 1, paragraph 1, subparagraphs *k* and *l*.

10. *Ad article 8*

A person shall be entitled to receive unemployment benefits (emergency relief) under article 8, paragraph 2, first sentence, if he or she has received unemployment benefits in the other Contracting State as previous payments.

11. *Ad article 11*

It is agreed that postage does not form part of the out-of-pocket expenses referred to in article 11, second sentence.

12. *Ad article 12*

Paragraph 2 shall apply, *mutatis mutandis*, when, instead of legalization, a similar formality is required.

DONE at Vienna on 19 July 1978, in two original copies.

For the Federal Republic of Germany:

[Signed]

HORST GRABERT

For the Republic of Austria:

[Signed]

WILLIBALD PAHR
