

No. 25478

**AUSTRIA
and
CANADA**

Agreement on social security. Signed at Vienna on 24 February 1987

*Authentic texts: German, English and French.
Registered by Austria on 24 November 1987.*

**AUTRICHE
et
CANADA**

Accord sur la sécurité sociale. Signé à Vienne le 24 février 1987

*Textes authentiques : allemand, anglais et français.
Enregistré par l'Autriche le 24 novembre 1987.*

AGREEMENT¹ ON SOCIAL SECURITY BETWEEN THE REPUBLIC OF AUSTRIA AND CANADA

The Republic of Austria and Canada,

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

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. (1) For the purposes of this Agreement,

(a) "Legislation" means, in relation to Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph (1) (a) of Article 2; and, in relation to Canada, the laws and regulations specified in subparagraph (1) (b) of Article 2;

(b) "National" means, in relation to Austria, an Austrian citizen; and, in relation to Canada, a Canadian citizen;

(c) "Competent authority" means, in relation to Austria, the Federal Minister for Social Affairs; and, in relation to Canada, the Minister or Ministers responsible for the administration of the legislation of Canada;

(d) "Institution" means, in relation to Austria, the institution responsible for the application of Austrian legislation; and, in relation to Canada, the competent authority;

(e) "Competent institution" means the institution competent under the applicable legislation to deal with the matter in question;

(f) "Period of coverage" means a period of contributions or a period of residence which is defined or recognized as a period of coverage by the legislation under which it has been completed, or any similar period insofar as it is considered equivalent to a period of coverage by that legislation;

(g) "Cash benefit" means a pension or any other cash benefit, including any increases.

(2) In the Title, Preamble and Final Clause of this Agreement, "Canada" refers to Her Majesty the Queen in right of Canada, represented by the Minister of National Health and Welfare.

(3) Any other expression used in this Agreement shall have the meaning respectively assigned to it in the applicable legislation.

Article 2. (1) This Agreement shall apply:

(a) In relation to Austria,

(i) To the legislation concerning pension insurance, with the exception of the insurance for notaries; and

(ii) With regard to Part II only, to the legislation concerning sickness insurance and accident insurance;

¹ Came into force on 1 November 1987, i.e., the first day of the third month following the month of the exchange of the instruments of ratification, which took place at Ottawa on 11 August 1987, in accordance with article 27 (2).

(b) In relation to Canada,

- (i) To the Old Age Security Act and the regulations made thereunder; and
- (ii) To the Canada Pension Plan and the regulations made thereunder.

(2) Except as otherwise provided in paragraphs (3) and (4) of this Article, this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

(3) This Agreement shall not affect any other agreement on social security which either Party has concluded with a third State, except as it contains provisions relating to the apportionment of insurance burdens.

(4) This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties make an agreement to that effect.

Article 3. This Agreement shall apply to:

- (a) Persons who are or have been subject to the legislation of one or both of the Parties;
- (b) Other persons with respect to the rights they derive from the persons described in subparagraph (a).

Article 4. (1) Unless otherwise provided in this Agreement, nationals of one Party shall, in the application of the legislation of the other Party, receive equal treatment with the nationals of the latter Party.

(2) Benefits under the legislation of one Party shall be awarded to nationals of the other Party, ordinarily resident outside the territories of both Parties, under the same conditions and to the same extent as they are awarded to the nationals of the first Party who ordinarily reside outside the territories of the Parties.

(3) Paragraph (1) of this Article shall not apply to the provisions of Austrian legislation concerning:

- (a) The participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
- (b) The apportionment of insurance burdens resulting from agreements with third States;
- (c) The insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.

(4) As regards Austrian legislation, the following periods shall, subject to the other conditions specified in that legislation, be accepted as periods of coverage for Canadian nationals who were Austrian nationals immediately before March 13, 1938:

(a) With regard to the First World War, periods of war service in the armed forces of the Austro-Hungarian Monarchy or in the forces of any state allied to it as well as periods of captivity as a prisoner of war (civil internee) and the return therefrom, which are similarly treated;

(b) With regard to the Second World War, periods of war service in the armed forces of the German Reich or in the forces of any state allied to it, periods of conscription in the forces or the labour service as well as periods of duty in the emergency services and air-raid services, and periods of captivity as a prisoner of war (civil internee) and the return therefrom, which are similarly treated.

(5) As regards the legislation of Canada, paragraphs (1) and (2) of this Article shall apply without regard to nationality.

(6) Paragraphs (1) and (5) of this Article shall not apply to extend the application of paragraph (2) of Article 7 and paragraph (1) of Article 8 to persons who are not nationals of the Party in question.

Article 5. (1) Unless otherwise provided in this Agreement, the legislation of one Party which requires that entitlement to or the payment of cash benefits be dependent on ordinary residence in the territory of that Party shall not be applicable to

(a) Nationals of either Party or

(b) Other persons to the extent that they derive rights from a national of either Party

who ordinarily reside in the territory of the other Party.

(2) As regards the legislation of Canada, paragraph (1) of this Article shall apply without regard to nationality.

(3) As regards Austrian legislation, paragraph (1) of this Article shall not apply to

(a) The compensatory supplement;

(b) The part of the Austrian pension which is based

(i) On periods of coverage under the provisions of the Austrian Federal Act of November 22, 1961 concerning entitlement to benefits and rights in course of acquisition in the field of pension insurance for gainful occupation outside Austria or

(ii) On periods of self-employment completed outside the territory of Austria, but within the territory of the former Austro-Hungarian Monarchy.

PART II. PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE

Article 6. Subject to the provisions of Articles 7 to 9, an employed person who works in the territory of one Party shall, in respect of that work, be subject only to the legislation of that Party. This shall also apply if the employer's place of business is in the territory of the other Party.

Article 7. (1) An employed person who is subject to the legislation of one Party and who is sent to perform services in the territory of the other Party for the same employer shall, in respect of those services, remain subject only to the legislation of the former Party for the first twenty-four calendar months as though those services were performed in its territory.

(2) When an Austrian national is sent to perform services in Canada for an Austrian air transport organization, paragraph (1) of this Article shall be applied without reference to the twenty-four month time limit.

Article 8. (1) A person employed by the government or other public employer of a Party in the territory of the other Party shall, in respect of that employment, be subject to the legislation of the latter Party only if he is a national thereof or if he ordinarily resides in its territory. In the latter case he may, however, within three months of the beginning of the employment, elect to be subject only to the legislation of the former Party if he is a national thereof.

(2) Paragraph (1) of this Article shall apply correspondingly to persons employed by the Austrian National Tourist Office in Canada.

(3) In the application of this Article, the employer in question shall respect all the requirements prescribed for employers by the applicable legislation.

Article 9. (1) At the request of an employed person and his employer, the competent authorities of the two Parties may provide, by agreement with one another, exceptions in the application of Articles 6 to 8 of this Agreement, taking into account the nature and circumstances of the employment.

(2) Where, in accordance with paragraph (1) of this Article, a person is subject to Austrian legislation, that legislation shall apply to him as if he were employed in the territory of Austria.

Article 10. For the purposes of the Old Age Security Act of Canada:

(a) If a person is subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada during any period of residence in the territory of Austria, that period shall be accepted as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with him or her and who are not subject to Austrian legislation by reason of employment;

(b) If a person is subject to Austrian legislation in respect of employment exercised in the territory of Canada, the period during which that employment is exercised shall not be accepted as a period of residence in Canada for that person or for that person's spouse or dependants who reside with him or her and who are not subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada by reason of employment.

PART III. PROVISIONS CONCERNING BENEFITS

Article 11. If a person has completed periods of coverage under the legislation of both Parties, these periods, insofar as they do not overlap, shall be added together for the purpose of acquiring entitlement to a benefit.

Section 1. BENEFITS UNDER THE LEGISLATION OF AUSTRIA

Article 12. (1) If a person who has completed periods of coverage under the legislation of both Parties, or the survivor of such a person, is claiming a benefit, the competent Austrian institution shall determine the amount of the benefit in the following manner:

(a) The institution shall determine, in accordance with Austrian legislation, whether the person concerned has an entitlement to a benefit by adding together the periods of coverage, as provided in Article 11;

(b) If entitlement to a benefit is determined to exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all the periods of coverage completed under the legislation of both Parties had been completed exclusively under Austrian legislation; in cases where the amount of the benefit is independent of the duration of the period of coverage, this amount shall be taken to be the theoretical amount;

(c) The institution shall then calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in

proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian legislation and the total duration of the periods of coverage to be taken into consideration under the legislation of both Parties.

(2) Where the periods of coverage to be taken into consideration under Austrian legislation for the purpose of calculating the amount of a benefit are in aggregate less than twelve months, no benefit under that legislation shall be paid. However, the preceding sentence shall not apply if the entitlement to that benefit has been acquired under Austrian legislation exclusively on the basis of periods of coverage completed under that legislation.

Article 13. The competent Austrian institution shall apply Articles 11 and 12 according to the following rules:

(1) In determining the institution responsible for paying a benefit, only periods of coverage under Austrian legislation shall be taken into consideration.

(2) Articles 11 and 12 shall apply neither to the conditions of entitlement to nor to the payment of the miners' long service allowance under the miners' pension insurance.

(3) For the application of Article 11 and paragraph (1) of Article 12:

(i) A month ending on or before December 31, 1965 which is recognized as a month of residence under the Old Age Security Act of Canada shall be accepted as a month of coverage under Austrian legislation;

(ii) A year commencing on or after January 1, 1966 which is a period of coverage under the Canada Pension Plan shall be accepted as twelve months of contribution under Austrian legislation;

(iii) A month commencing on or after January 1, 1966 which is recognized as a month of residence under the Old Age Security Act of Canada and which is not part of a period of coverage under the Canada Pension Plan shall be accepted as a month of coverage under Austrian legislation.

(4) For the application of paragraph (1) of Article 12, the following shall apply:

(a) Periods during which the insured person has been entitled to an old age, retirement or disability pension under the legislation of Canada shall be treated as if they were neutral periods;

(b) The basis of assessment shall be determined exclusively on periods of coverage under Austrian legislation;

(c) Contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement shall be disregarded.

(5) For the application of subparagraphs (1) (b) and (c) of Article 12, overlapping periods of coverage under the legislation of the two Parties shall be taken into consideration as if they did not overlap.

(6) If, for the application of subparagraph (1) (c) of Article 12, the total duration of the periods of coverage to be taken into consideration under the legislation of both Parties exceeds the maximum number of months of coverage specified under Austrian legislation for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian legislation and the above-mentioned maximum number of months of coverage.

(7) For the calculation of the helpless person's allowance, subparagraphs (1) (b) and (c) of Article 12 shall apply; Article 15 shall apply accordingly.

(8) The amount calculated according to subparagraph (1) (c) of Article 12 shall be increased, where applicable, by increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.

(9) If the award of benefits under the miners' pension insurance depends on the completion of essentially mining activities, within the meaning of Austrian legislation, in specific undertakings, then only those periods of coverage under the legislation of Canada which are based on a similar occupation in similar undertakings shall be taken into consideration.

(10) The special payments shall be payable in the same amount as the Austrian partial benefit; Article 15 shall apply accordingly.

Article 14. (1) Where entitlement to a benefit exists under Austrian legislation without the application of Article 11, the competent Austrian institution shall pay the pension which would be payable exclusively on the basis of the periods of coverage to be taken into consideration under that legislation, provided there is no entitlement to a corresponding benefit under the legislation of Canada.

(2) The pension determined in accordance with paragraph (1) of this Article shall be recalculated in accordance with the provisions of Article 12 as soon as entitlement arises to a corresponding benefit under the legislation of Canada. This recalculation shall have effect from the date on which the benefit under the legislation of Canada becomes payable. The irrevocability of previous decisions shall not prevent this recalculation.

(3) Where, in applying paragraph (2) of this Article, the institution has overpaid a benefit, the overpayment shall be regarded as an advance payment.

Article 15. If a person is entitled to a benefit under Austrian legislation without the application of Article 11, and if such a benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph (1) (c) of Article 12 and the corresponding Canadian benefits, the competent Austrian institution shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if Austrian legislation alone were applied.

Section 2. BENEFITS UNDER THE LEGISLATION OF CANADA

Article 16. The following shall apply as regards benefits under the Old Age Security Act:

(1) For purposes of the application of Article 11, a period of residence in the territory of Austria, after the age at which periods of residence in Canada are creditable for purposes of the Old Age Security Act, shall be deemed to be a period of coverage under Austrian legislation.

(2) (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be payable to that person outside the territory of Canada if the periods of residence in the territories of the two

Parties, when added together as provided in Article 11, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.

(b) The amount of the pension payable shall, in this case, be calculated in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that legislation.

(3) (a) If a person is not entitled to an Old Age Security pension or a spouse's allowance solely on the basis of periods of residence in Canada, a partial pension or a spouse's allowance shall be payable to that person if the periods of residence in the territories of the two Parties, when added together as provided in Article 11, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse's allowance.

(b) The amount of the pension or the spouse's allowance payable shall, in this case, be calculated in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods creditable under that legislation.

(4) (a) Notwithstanding any other provision of this Agreement, the competent institution of Canada shall pay an Old Age Security pension outside the territory of Canada only if the periods of residence in the territories of the two Parties, when added together as provided in Article 11, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for the payment of a pension abroad.

(b) The spouse's allowance and the guaranteed income supplement shall be payable outside the territory of Canada only to the extent permitted by the Old Age Security Act.

Article 17. The following shall apply as regards benefits under the Canada Pension Plan:

(1) For purposes of the application of Article 11, a calendar year including at least three months of coverage under Austrian legislation shall be deemed to be a year of coverage under Austrian legislation.

(2) (a) If a person is not entitled to a disability pension, disabled contributor's child's benefit, survivor's pension, orphan's benefit or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through adding together periods of coverage as provided in Article 11, the competent institution of Canada shall calculate the amount of the earnings-related portion of such benefit in conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings credited under that legislation.

(b) The amount of the flat-rate portion of the benefit payable under the provisions of this Agreement shall, in this case, be determined by multiplying:

- (i) The amount of the flat-rate portion of the benefit determined under the provisions of the Canada Pension Plan by
- (ii) The fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period under the Canada Pension Plan for entitlement to that benefit.

(c) In no case, however, shall the fraction referred to in subparagraph (b) (ii) exceed the value of one.

PART IV. MISCELLANEOUS PROVISIONS

Article 18. (1) The competent authorities of the Parties shall, by means of an arrangement, establish the administrative measures necessary for the application of this Agreement.

(2) The competent authorities of the Parties shall inform each other of

- (a) All measures taken for the application of this Agreement, and
- (b) All changes in legislation which affect the application of this Agreement.

(3) The authorities and institutions of the Parties shall assist each other in applying this Agreement as if they were applying their own legislation. With the exception of cash expenditures relating thereto, such assistance shall be provided free of charge.

(4) The laws of a Party concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party. Such information shall be used only for purposes of applying this Agreement.

(5) The institutions and authorities of one Party may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Party.

(6) If the competent institution of one Party requires an applicant or beneficiary who lives in the territory of the other Party to undergo a medical examination, such examination shall, at the request of that institution and at its expense, be arranged or carried out by the institution of the latter Party.

Article 19. The competent authorities of the Parties shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.

Article 20. (1) Any exemption or reduction provided for in the legislation of one Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Party.

(2) Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication.

Article 21. (1) Any claim, notice or appeal which, for the application of this Agreement or of the legislation of a Party, has been submitted to an authority, institution or other competent body of one Party shall be considered as a claim, notice or appeal submitted to an authority, institution or other competent body of the other Party.

(2) Any claim for a benefit submitted under the legislation of one Party shall be considered to be a claim for the corresponding benefit under the legislation of the other Party insofar as that corresponding benefit is payable in accordance with the provisions of this Agreement; this shall not apply, however, when the claimant expressly requests that the determination of an old age pension under the legislation of the other Party be deferred.

(3) Any claim, notice or appeal which, under the legislation of one Party, must be submitted within a specified time to an authority, institution or other compe-

tent body of that Party may be submitted within the same time to the corresponding body of the other Party.

(4) In the cases to which paragraphs (1) to (3) of this Article apply, the body to which the submission has been made shall forward the claim, notice or appeal without delay to the corresponding competent body of the other Party.

Article 22. (1) The benefit-paying institution of a Party shall discharge its obligations under this Agreement in the national currency of that Party.

(2) Benefits shall be paid to beneficiaries free from deductions for administrative expenses that may be incurred in paying the benefits.

Article 23. (1) Any dispute between the Parties relating to the interpretation or application of this Agreement shall be made the subject of direct negotiations between the competent authorities of the Parties.

(2) If the dispute cannot be resolved in this manner within six months from the beginning of such negotiations, it shall be submitted, at the request of one or both of the Parties, to an arbitration commission, whose composition and rules of procedure shall be determined by agreement between the Parties.

(3) The arbitration commission shall decide the dispute according to the spirit and fundamental principles of this Agreement. Its decisions shall be binding and final.

Article 24. The Republic of Austria and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada insofar as those understandings are not inconsistent with the provisions of this Agreement.

PART V. TRANSITIONAL AND FINAL PROVISIONS

Article 25. (1) This Agreement shall not establish any entitlement for payment or a benefit for a period before its entry into force.

(2) In determining entitlement to a benefit under this Agreement, periods of coverage completed under the legislation of a Party before the entry into force of this Agreement shall also be taken into consideration.

(3) Subject to paragraph (1) of this Article, this Agreement shall also apply to contingencies which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump-sum payments. In cases to which this paragraph applies, in accordance with the provisions of this Agreement:

(a) The amount of a benefit due only by virtue of this Agreement shall be determined, at the request of the beneficiary, from the date of entry into force of this Agreement;

(b) The amount of a benefit which has been determined before the entry into force of this Agreement shall be recalculated only at the request of the beneficiary.

If the claim for determination or recalculation of the amount of a benefit is submitted within two years from the date of entry into force of this Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Party.

(4) In the case of subparagraph (3) (b) of this Article, paragraph (3) of Article 14 shall apply accordingly.

Article 26. This Agreement shall not affect any existing rights under Austrian legislation of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of descent.

Article 27. (1) This Agreement shall be ratified. The instruments of ratification shall be exchanged at Ottawa as soon as possible.

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

(3) This Agreement shall remain in force for an indefinite period. Either Party may denounce it in writing, with twelve months previous notice.

(4) In the event of termination of this Agreement by denunciation, any right acquired under its provisions not later than the effective date of that termination shall be maintained; negotiations shall take place for the settlement of any rights in the course of acquisition by virtue of the provisions of this Agreement.

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Agreement.

DONE in two copies at Vienna, this 24th day of February 1987, in English, French and German, each text being equally authentic.

For the Republic of Austria:

DALLINGER

For Canada:

JAKE EPP
