

No. 29485

**FINLAND
and
UNITED STATES OF AMERICA**

**Agreement on social security. Signed at Helsinki on 3 June
1991**

Authentic texts: Finnish and English.

Registered by Finland on 27 January 1993.

**FINLANDE
et
ÉTATS-UNIS D'AMÉRIQUE**

**Accord relatif à la sécurité sociale. Signé à Helsinki le 3 juin
1991**

Textes authentiques : finnois et anglais.

Enregistré par la Finlande le 27 janvier 1993.

AGREEMENT¹ BETWEEN THE REPUBLIC OF FINLAND AND THE UNITED STATES OF AMERICA ON SOCIAL SECURITY

The Government of the Republic of Finland and the Government of the United States of America,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement:

1. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and

as regards Finland, a national of the Republic of Finland;

2. "Laws" means the laws and regulations specified in Article 2;

3. "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards Finland, the Ministry of Social Affairs and Health;

4. "Agency" means, as regards the United States, the Social Security Administration, and as regards Finland, the institution or authority responsible for administering the laws specified in Article 2;

5. "Period of Coverage" means, a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; and

6. "Benefit" means, any benefit provided for in the laws specified in Article 2 of this Agreement.

Article 2

1. For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:

— Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

— Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;

(b) As regards Finland, the laws and regulations governing old-age, disability and survivors' pensions insurance under

— the National Pension Scheme and the general Survivors' Pension Scheme;

— the Employment Pension Scheme, including also the pension schemes for the self-employed and for persons in the employ of the State, the Church and the communes, as well as the Seamen's Pension Scheme;

— the Employer's Social Security Contributions Act; and

with respect to paragraphs 3 through 11 of Article 4 only,

— sickness and maternity insurance;

— child allowances.

2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

3. This Agreement shall also apply to future laws amending the laws specified in paragraph 1 of this Article.

4. This Agreement shall also apply to legislation which extends the existing laws to other categories of beneficiaries unless the Contracting State in which the new legislation has been introduced notifies the other Contracting State in writing within 3 months of the date of the official publication of the new legislation that it is not to be included in the scope of the Agreement.

¹ Came into force on 1 November 1992, i.e., the first day of the third month following the month in which the Parties had informed each other (on 14 August 1992) of the completion of all statutory and constitutional requirements, in accordance with article 22.

Article 3

1. Unless otherwise provided in this Agreement, this Agreement shall apply to any person who is or who has been subject to the laws of the United States or Finland, and to the dependants and survivors of such a person within the meaning of the applicable laws of either Contracting State.

2. Unless otherwise provided in this Agreement, the following persons who are resident in the territory of a Contracting State shall be equated with nationals of that State in the implementation of the laws of that State regarding entitlement to or payment of benefits:

(a) nationals of the other Contracting State;

(b) refugees and stateless persons, as referred to in the Convention relating to the Status of Refugees dated July 28, 1951,¹ and the Protocol to that Convention dated January 31, 1967,² as well as the Convention relating to the Status of Stateless Persons dated September 28, 1954;³

(c) other persons with regard to rights which they derive from a national of a Contracting State or from a refugee or stateless person referred to in this Article.

3. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

PART II

Provisions on Coverage

Article 4

1. Except as otherwise provided in this Article, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. A person shall be subject to the Finnish National and general Survivors' Pension Schemes only if he is resident in Finland.

3. Where a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a period that is not expected to exceed 5 years, or such longer

period as may be agreed to by the Competent Authorities of the two Contracting States in a particular case, the person shall be subject to the laws of only the first Contracting State as if he were employed in the territory of the first Contracting State. For purposes of applying this paragraph, an employer and an affiliated or subsidiary company of the employer, as defined under the laws of the Contracting State from whose territory the person was sent, shall be considered one and the same. The preceding sentence shall apply in the case of an employee who is sent from the territory of the United States to the territory of Finland, provided that the employment would have been covered under United States laws absent this Agreement.

4. Paragraph 3 shall apply where a person who has been sent by his employer from the territory of a Contracting State to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

5. A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to self-employment shall be subject only to the laws of the Contracting State of which he is a resident.

6. (a) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961,⁴ or of the Vienna Convention on Consular Relations of April 24, 1963.⁵

(b) Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in subparagraph (a) shall be subject to the laws of only the first Contracting State. For the purpose of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

7. A person who, but for this Agreement, would be subject to the laws of both Contracting States with respect to employment as an officer or member of a crew on a ship shall, with respect to that employment, be subject only to Finnish laws if the ship flies the flag of Finland and only to United States laws in any other case.

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

⁴ *Ibid.*, vol. 500, p. 95.

⁵ *Ibid.*, vol. 596, p. 261.

8. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of this Article concerning self-employment if the person is a resident of the first Contracting State and according to the provisions of this Article concerning employment in any other case.

9. The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of this Article with respect to particular persons or categories of persons, provided that any affected person shall be subject to the laws of one of the Contracting States.

10. An employed person who is covered under the laws of a Contracting State under the provisions of paragraphs 3, 4 and 9 of this Article, together with the members of his family accompanying him, shall be considered resident only in that State for purposes of Finnish laws.

11. Where a person engaged in employment or self-employment, while subject to the laws of the United States pursuant to this Agreement, is nevertheless deemed to be resident in the territory of Finland in accordance with Finnish laws, no contribution shall be payable under Finnish laws with respect to income from that employment or self-employment.

PART III

Provisions on Benefits

Chapter 1

Provisions Applicable to the United States

Article 5

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under Finnish laws and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every 3 months of coverage certified by the agency of Finland; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total

number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

Chapter 2

Provisions Applicable to Finland

Article 6

The entitlement to and payment of an old-age pension under the National Pensions Act or survivor's pension under the Survivors' Pensions Act for nationals of a Contracting State residing in the territory of a Contracting State shall be determined according to the provisions of this Article.

1. A national of a Contracting State residing in the territory of a Contracting State shall be entitled to an old-age pension under the National Pensions Act if he has been resident in Finland for an unbroken period of at least five years after having reached the age of 16 years.

2. A national of a Contracting State residing in the territory of a Contracting State shall be entitled to a widow's or widower's pension under the Survivors' Pensions Act, if she or he and the deceased had been resident in Finland for an unbroken period of at least five years after having reached the age of 16 years and the deceased was a national of a Contracting State.

3. A national of a Contracting State residing in the territory of a Contracting State shall be entitled to an orphan's pension under the Survivors' Pensions Act, if the deceased was a national of a Contracting State who had been resident in Finland for an unbroken period of at least five years after having reached the age of 16 years.

4. If an old-age, disability or survivor's pension is granted to a national of a Contracting State while residing in Finland, she or he shall be entitled to receive this pension when moving to the United States if she or he has been resident in Finland for an unbroken period of at least five years after having reached the age of 16 years.

Article 7

Unless otherwise provided in Articles 8 and 13 of this Agreement, the competent Agency in Finland shall apply Finnish laws for the purposes of determining entitlement to a Finnish employment pension and the amount of the pension.

Article 8

1. If a person who becomes disabled or does not fulfill the condition relating to residence under Finnish laws concerning the Employment Pension Scheme or the condition of being subject to the above-mentioned laws within 360 days before the occurrence of the contingency, periods of coverage under United States laws based on the person's own work shall be taken into account for these purposes as periods completed in Finland, provided that they do not overlap.

2. Where the conditions relating to periods of coverage are satisfied only by applying paragraph 1, the pension shall be calculated as follows:

The amount of pension based on the actual periods of coverage shall be calculated according to the provisions of the Finnish laws concerning the Employment Pension Scheme. The amount of pension based on the period between the contingency and the pensionable age shall be prorated based on the ratio between the actual period of coverage under the Finnish Employment Pension Scheme and 480 months.

PART IV

Miscellaneous provisions

Article 9

The Competent Authorities of the two Contracting States shall:

(a) Make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 10

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

Article 11

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or an agency of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 12

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official languages of either Contracting State.

2. An application or document may not be rejected by a Competent Authority or agency of a Contracting State because it is in the official language of the other Contracting State.

Article 13

1. A claim for a benefit payable under the laws of the United States shall be deemed to be a claim for the corresponding benefit payable under the laws of Finland provided that the person concerned, within six months of submitting a national application form under the laws of the United States, submits a claim for a corresponding benefit under the laws of Finland.

2. A written application for benefits filed with the agency of Finland shall protect the rights of the claimants under United States laws if the applicant requests that it be considered an application under United States laws. If the applicant has not explicitly requested that the application be restricted to benefits under the laws of Finland, the application shall also protect the rights of the claimants under the laws of the United States if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the United States.

3. When, under the laws of Finland, an additional amount is payable by an agency in Finland because of delay in processing a claim for a pension or other benefit, a claim submitted to the agency of the United States shall, for purposes of applying the provisions of those laws relating to such an additional amount, be deemed to have been presented on the date when that claim, along with all necessary enclosures, is delivered to the competent agency of Finland.

4. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article 14

1. A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting State. The appeal shall be dealt with according to the procedure of the Contracting State whose decision is being appealed.

2. Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same period with the agency of the other Contracting State, shall be considered to have been filed on time.

Article 15

In any case to which the provisions of Article 13 or Article 14 apply, the agency to which the claim, notice or written appeal has been submitted shall indicate the date of receipt on the document and transmit it without delay to the agency of the other Contracting State.

Article 16

1. Payments under this Agreement may be made in the currency of the Contracting State making the payments.

2. In case provisions designed to restrict the exchange or exportation of currencies are

introduced by either Contracting State, the Governments of both Contracting States shall immediately take measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 17

Disagreements between the two Contracting States regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the Competent Authorities.

Article 18

This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

PART V

Transitional and Final Provisions

Article 19

1. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of the Agreement, or to a lump-sum death benefit if the person died before the entry into force of the Agreement.

2. In determining the right to benefits under this Agreement, consideration shall be given to periods of coverage and other events which occurred before the entry into force of this Agreement, except that neither Contracting State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

4. The application of this Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to its entry into force.

5. In applying Article 4, paragraph 3, in the case of persons who were sent to the territory of a Contracting State prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.

Article 20

Nothing in this Agreement shall supersede the exchange of notes between the Ambassador

of the United States of America in Helsinki and the Finnish Minister for Foreign Affairs on May 7 and 17, 1968, concerning oldage and survivors benefits.¹

Article 21

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 22

This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at Helsinki on June 3, 1991 in duplicate in the Finnish and English languages, the two texts being equally authentic.

For the Government
of the Republic of Finland:

EEVA KUUSKOSKI

For the Government
of the United States of America:

JOHN GIFFEN WEINMANN

¹ United Nations, *Treaty Series*, vol. 1762, No. I-30668.