

AGREEMENT ON SOCIAL SECURITY
BETWEEN
THE REPUBLIC OF AUSTRIA
AND
CANADA

The Republic of Austria (“Austria”)

and

Canada

(hereinafter referred to as *the “Parties”*)

resolved to further strengthen the relations between them in the field of social security,

noting the *Agreement on Social Security between the Republic of Austria and Canada* done at Vienna on 24 February 1987 (the “1987 Agreement”) and the *Supplementary Agreement to the Agreement on Social Security Between the Republic of Austria and Canada* done at Vienna on 12 September 1995 (the “1995 Supplementary Agreement”), and

taking into account the changes in their respective legislation since the 1987 Agreement and the 1995 Supplementary Agreement were signed,

have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the purposes of this Agreement:

“benefit” means, for a Party, any cash benefit that is payable under the legislation of that Party and includes any supplements or increases to that cash benefit

“competent agency” means:

for Austria, the agency, the institution, the organization, or the body responsible for all or part of the implementation of the legislation of Austria, and

for Canada, the competent authority;

“competent authority” means:

for Austria, the Federal Minister or Ministers responsible for the implementation of the legislation of Austria, and

for Canada, the Minister or Ministers responsible for the implementation of the legislation of Canada;

“legislation” means, for a Party, the laws referred to in Article 2;

“national” means, for Austria, an Austrian citizen; and, for Canada, a Canadian citizen;

“period of coverage” means:

for Austria, a period of contribution or equivalent period that is defined or recognized as a period of coverage under the legislation referred to in Article 2(1)(a), and

for Canada,

(a) a period of contribution under the Canada Pension Plan, or

(b) a period of residence under the Old Age Security Act;

2. A term that is used in this Agreement that is not defined in this Article has the meaning assigned to it in the Parties’ respective laws.

Article 2

Legislative Scope

1. This Agreement applies to the following legislation:
 - (a) for Austria:
 - (i) to the legislation concerning pension insurance, including regulations and statutory instruments, with the exception of the legislation concerning the insurance for notaries, and
 - (ii) with regard to Part II only, to the legislation concerning sickness insurance and accident insurance, including regulations and statutory instruments;
 - (b) for Canada:
 - (i) the *Old Age Security Act* and its regulations, and
 - (ii) the *Canada Pension Plan* and its regulations.
2. This Agreement applies to any laws, regulations, and statutory instruments that amend, supplement, consolidate, or supersede the legislation referred to in paragraph 1.
3. This Agreement also applies to any laws and regulations that extend the legislation of a Party to include a new category of persons or to include a new benefit unless the Party that implements the changes advises the other Party, within six months of the entry into force of those laws and regulations, that this Agreement does not apply to that new category of persons or to that new benefit.

Article 3

Personal Scope

This Agreement applies to any person who is or who has been subject to the legislation of Austria or Canada, or both Parties, and to any other person who derives eligibility for a benefit from that first person under the legislation of a Party.

Article 4

Equality of Treatment

1. When determining eligibility for and payment of a benefit, a Party shall apply the same conditions to a person who is or who has been subject to the legislation of the other Party, and to any other person who derives eligibility for a benefit from that first person, as the conditions that apply to a national of the first Party.
2. A Party shall apply paragraph 1 even if a person resides in or is present in the territory of a third State.
3. Paragraph 1 does not apply to the legislation of Austria concerning the apportionment of insurance burdens that result from an agreement with a third party.
4. For the legislation of Austria concerning credit for a period of war service or a period considered as equivalent to war service, Austria shall apply equal treatment to an Austrian national and to a Canadian national who was an Austrian national immediately before 13 March 1938.

5. Austria shall apply to a Canadian national that is subject to the legislation of Austria in accordance with Article 9 a treatment equal to the treatment applied to an Austrian national.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, a Party shall not reduce, modify, suspend, or cancel a benefit payable to a person described in Article 3 based only on the fact that the person who is eligible for that benefit resides in or is present in the territory of the other Party. A Party shall pay that benefit when that person resides in or is present in the territory of the other Party.

2. For Canada, an allowance or a guaranteed income supplement is payable to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

3. For Austria, paragraph 1 does not apply to a compensatory supplement or a single payment to maintain purchasing power.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6

General Rules for Employed Persons

Subject to Articles 7 to 10, an employed person who works in the territory of a Party is, in respect of that work, subject only to the legislation of that Party. This applies even if the employer's place of business is in the territory of the other Party.

Article 7

Self-Employed Persons

A person who meets the criteria for compulsory self-employment coverage under the legislation of both Parties and who resides in the territory of one Party is subject only to the legislation of that Party.

Article 8

Detachments

If an employed person who is subject to the legislation of a Party is detached by that person's employer to work in the territory of the other Party, that person is, in respect of that work, subject only to the legislation of the first Party for the first sixty months, as though that work were performed in the first Party's territory.

Article 9

Government Employment

1. Notwithstanding this Agreement, the provisions regarding social security of the *Vienna Convention on Diplomatic Relations* of 18 April 1961 and the *Vienna Convention on Consular Relations* of 24 April 1963 continue to apply to persons covered by those conventions.
2. A person who is employed by the government or another public employer of a Party and who is sent by that Party to perform services in the territory of the other Party is subject only to the legislation of the first Party in respect of those services.
3. Except as provided in paragraphs 1 and 2, a person who resides in the territory of a Party and who is employed in that territory by the government of the other Party is subject only to the legislation of the first Party in respect of that employment.

Article 10

Exceptions

At the request of an employed person and that person's employer or of a self-employed person, the Parties may, through their competent authorities, jointly consent to modify the application of Articles 6 to 9, taking into account the nature and circumstances of the work.

Article 11

Coverage and Residence under the Legislation of Canada

1. For the purposes of calculating a benefit under the *Old Age Security Act*:
 - (a) if, during any period of presence or residence in Austria, a person is subject to the *Canada Pension Plan*, or to a comprehensive pension plan of a province of Canada, Canada shall consider that period to be a period of residence in Canada for that person; Canada shall also consider that period to be a period of residence in Canada for that person's spouse or common-law partner and for dependants who accompany that person during a period of presence or residence in Austria and who are not subject to the legislation of Austria by reason of employment or self-employment;
 - (b) if a person is subject to the legislation of Austria during any period of presence or residence in Canada, Canada shall determine if that period for that person, and for that person's spouse or common-law partner and dependants who accompany that person during a period of presence or residence in Canada, is considered a period of residence in Canada in accordance with the provisions of the *Old Age Security Act* and its regulations.
2. For the purposes of paragraph 1:
 - (a) Canada shall consider that a person is subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in Austria only if, during that period, that person makes a contribution pursuant to that plan by reason of employment or self-employment;
 - (b) Canada shall consider that a person is subject to the legislation of Austria during a period of presence or residence in Canada only if during that period that person or that person's employer makes a compulsory contribution pursuant to that legislation by reason of employment or self-employment.

PART III
PROVISIONS CONCERNING BENEFITS

CHAPTER 1
TOTALIZING

Article 12
Periods under the legislation of Austria and Canada

1. If a person is not eligible for a benefit because that person does not have sufficient periods of coverage under the legislation of a Party, the Party, through its competent agency, shall determine the eligibility of that person for that benefit by totalizing the periods of coverage and the periods specified in paragraphs 2 and 3, provided that those periods do not overlap. That Party, through its competent agency, shall consider the periods specified in paragraphs 2 and 3 as if they were completed under its legislation.
2. To determine eligibility for a benefit under the legislation of Canada, Canada shall consider:
 - (a) a period of coverage under the legislation of Austria as a period of residence in Canada under the *Old Age Security Act*;
 - (b) a period of residence in Austria that occurs when a person has reached the age at which periods of residence in Canada are creditable for the purposes of the *Old Age Security Act* as a period of residence in Canada under the *Old Age Security Act*, provided that this period of residence in Austria does not overlap with a period of coverage under the legislation of Austria;
 - (c) a calendar year that includes at least three months that are periods of coverage under the legislation of Austria as a calendar year that is a period of coverage under the *Canada Pension Plan*.
3. To determine eligibility for a benefit under the legislation of Austria, Austria shall consider:
 - (a) a calendar year that is a period of coverage under the *Canada Pension Plan* during which a person is employed or self-employed as 12 months of contributions of compulsory insurance due to gainful activity under the legislation of Austria;
 - (b) a month that contains at least fifteen days of residence under the *Old Age Security Act* as a month that is a period of coverage under the legislation of Austria provided that the period of coverage under the *Old Age Security Act* does not overlap with a period of coverage under the *Canada Pension Plan*.

Article 13
Periods completed under the System of a third State

If a person is not eligible for a benefit based on the periods of coverage under the respective legislation of both Parties, totalized in accordance with Article 12, a Party, through its competent agency, shall determine the eligibility of that person for that benefit by totalizing these periods and periods of coverage completed under the legislation of a third State to which it is bound by a social security instrument that provides for the totalizing of periods.

Article 14
Minimum Period to be Totalized

If the total of the periods of coverage completed by a person under the legislation of a Party is less than one year and if that person is not eligible for a benefit under the legislation of that Party based only on those periods of coverage, then that Party, through its competent agency, is not required to pay a benefit to that person for those periods. The other Party, through its competent agency, shall, however, take into account those periods of coverage to determine whether that person is eligible for a benefit under its legislation in accordance with Articles 12 and 13.

CHAPTER 2
BENEFITS UNDER THE LEGISLATION OF AUSTRIA

Article 15
Special Rules for Totalization

For the application of Chapter 1, the following applies:

- (a) if the legislation of Austria makes a benefit conditional on the completion of a period of coverage in an occupation that is covered by a special scheme or a period of coverage in a specified occupation or a specified employment, only a period of coverage that is covered by a corresponding special scheme under the legislation of Canada or a period of coverage in the same specified occupation or the same specified employment under the legislation of Canada is taken into account for that benefit;
- (b) if the legislation of Austria provides that a period of payment of a pension prolongs the reference period during which to complete periods of coverage, a period of payment of a benefit under the legislation of Canada corresponding to that pension also prolongs that reference period.

Article 16
Calculation of the Benefits

1. If a person is eligible for a benefit under the legislation of Austria without the application of Chapter 1, Austria, through its competent agency, shall determine the amount of the benefit in accordance with the legislation of Austria based only on the periods of coverage that are completed under that legislation.
2. If a person is eligible for a benefit under the legislation of Austria based only on the totalizing provisions of Chapter 1, Austria, through its competent agency, shall determine the amount of the benefit in accordance with the legislation of Austria concerning the calculation of a benefit under bilateral agreements.

CHAPTER 3
BENEFITS UNDER THE LEGISLATION OF CANADA

Article 17
Benefits without Totalization

If a person is eligible for a benefit under the legislation of Canada without the application of Chapter 1, Canada, through its competent agency, shall determine the benefit in accordance with the legislation that Canada applies, based only on periods of coverage completed under that legislation.

Article 18
Benefits under the Old Age Security Act

1. If a person is eligible for a pension or allowance under the *Old Age Security Act* based only on the totalizing provisions of Chapter 1, Canada shall calculate the pension or allowance payable to that person based only on the periods of residence in Canada that are identified in accordance with that Act.
2. Paragraph 1 also applies to a person outside Canada who is eligible for a full pension in Canada even if that person has not resided in Canada for the minimum period required by the *Old Age Security Act* for the payment of a pension outside Canada.
3. Canada shall pay an Old Age Security pension to a person who is outside Canada only if that person's periods of residence, totalized in accordance with Chapter 1, 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 outside Canada.

Article 19
Benefits under the Canada Pension Plan

If a person is eligible for a benefit based only on the totalizing provisions of Chapter 1, Canada shall calculate the benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit is determined in accordance with the provisions of the *Canada Pension Plan*, based only on the pensionable earnings under that Plan;
- (b) the flat-rate portion of the benefit is pro-rated by multiplying:
the flat-rate portion of the benefit determined in accordance with the *Canada Pension Plan* by the fraction representing the ratio of the periods of contribution to the *Canada Pension Plan* in relation to the minimum qualifying period required under that Plan to establish eligibility for that benefit. That fraction must not exceed the value of one

PART IV
ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article 20
Administrative Arrangement

1. The Parties, through their competent authorities, shall conclude an administrative arrangement that establishes the terms for the implementation of this Agreement.
2. The Parties, through their competent authorities, shall designate their liaison agencies in the administrative arrangement.

Article 21
Communication of Information, Mutual Assistance and Medical Examination

1. A Party, through its competent authority, shall inform the other Party of a change in legislation that affects the implementation of this Agreement.
2. A Party, through its competent agency, shall assist the other Party in implementing this Agreement as if it were implementing its own legislation. This assistance is provided free of charge, subject to any provision for the reimbursement of certain types of expenses in an administrative arrangement concluded pursuant to Article 20.
3. If a Party, through its competent agency, requires a person who resides or is present in the territory of the other Party to undergo a medical examination and makes a request to that other Party, the examination is arranged or carried out by that other Party, through its competent agency. The examination is at the expense of the competent agency of the first Party and takes place in accordance with the procedures of the competent agency of the other Party.

Article 22
Protection of personal information

1. Subject to the Parties' respective laws, personal information means information about an identifiable person that is recorded in any form.
2. For the implementation of this Agreement and the legislation, the Parties, through their competent agencies, shall, in accordance with their domestic laws:
 - (a) collect and disclose to each other personal information;
 - (b) use the personal information received from each other;
 - (c) not disclose the personal information received from each other to any person or body unless:

- (i) the disclosure is for the sole purpose of implementing this Agreement and the legislation, or
- (ii) the disclosure is required or permitted under the Parties' domestic laws;
- (d) maintain and protect the confidentiality of the personal information received from each other;
- (e) protect the personal information received from each other from unauthorized access, use, disclosure, modification, and disposal;
- (f) take reasonable measures to retain and store complete, accurate, and up-to-date personal information in a secure location;
- (g) inform each other without delay when they realize that personal information disclosed to each other is erroneous, has changed, or should not have been disclosed to each other, and carry out the necessary deletion or correction of the personal information received without delay;
- (h) investigate cases where they have reasonable grounds to believe that incidents may compromise the protection of personal information, take necessary measures to address such incidents, and inform each other without delay of such incidents;
- (i) upon request, provide the person to whom the personal information relates, access to their personal information , including details regarding its use and disclosure;
- (j) upon request of a person to whom personal information relates, correct their personal information when there is an error or omission;
- (k) register the date, subject, and purpose of all disclosure of personal information to each other, and
- (l) dispose of the personal information collected from each other.

3. The Parties shall, in accordance with their domestic laws, provide the person to whom the personal information relates a right of review before a court of law if that person is refused access to his or her personal information or if that person's correction of personal information request is refused.

Article 23

Exemption or Reduction of Fees and Authentication

1. If a Party's legislation provides that a person is exempt from all or part of a legal, consular, or administrative fee for a certificate or document that is required to apply that legislation, the exemption applies to any legal, consular, or administrative fee for a certificate or document of the other Party.
2. An official document that is required to apply this Agreement does not have to be authenticated by diplomatic or consular authorities.

Article 24

Language of Communication

1. The Parties may, through their competent agencies, competent authorities and liaison agencies, designated in an administrative arrangement concluded pursuant to Article 20, communicate directly with each other in any official language of either Party.
2. A Party, through its competent agency, shall not reject a claim or other document submitted to it based only on the fact that that claim or other document is written in an official language of the other Party.

Article 25

Submitting a Claim, Notice or Appeal

1. If a claim, notice, or appeal that should be submitted within a prescribed period to the competent agency of a Party is submitted within the same prescribed period to the competent agency of the other Party, that claim, notice, or appeal is considered to be submitted to the competent agency of the first Party within the prescribed period. The date of submission of the claim, notice, or appeal to the competent agency of the other Party is deemed to be the date of submission to the competent agency of the first Party.
2. A Party, through its competent agency, shall consider a claim for a benefit under the legislation of the other Party to be a claim for the corresponding benefit under its own legislation if a person provides information at the time of application that indicates that periods of coverage have been completed under the legislation of that first Party. This does not apply if a person requests that the processing of a claim for a benefit under the legislation of that first Party be deferred.
3. The competent agency of a Party to which a claim, notice, or appeal is submitted in accordance with paragraphs 1 and 2 transmits it without delay to the competent agency of the other Party.

Article 26

Payment of Benefit

1.
 - (a) Austria, through its competent agency, shall pay a benefit in accordance with the legislation that it applies to a person who resides outside its territory or to a representative authorized under its legislation. It shall pay that benefit in its national currency or in another freely convertible currency.
 - (b) Canada shall pay a benefit in a freely convertible currency to any person who resides outside its territory.
2. The competent agency of a Party does not deduct any amount for administrative expenses from any benefit paid.

Article 27
Resolution of Disputes

The Parties shall resolve a dispute that arises in the interpretation or application of this Agreement in accordance with the spirit and fundamental principles of this Agreement.

Article 28
Understandings with a Province of Canada

Austria may conclude an understanding with any province of Canada on any social security matter that is within provincial jurisdiction, provided that the understanding is not contrary with this Agreement.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Article 29
Transitional Provisions

1. Subject to paragraph 2, this Agreement, on entry into force, replaces the 1987 Agreement and the 1995 Supplementary Agreement.
2.
 - (a) A benefit entitlement acquired by a person in accordance with the provisions of the 1987 Agreement and the 1995 Supplementary Agreement is maintained.
 - (b) A claim to a benefit made but not finally adjudicated at the date on which this Agreement comes into force is adjudicated according to the provisions of the 1987 Agreement and the 1995 Supplementary Agreement.
3. A period of coverage that is completed before the date of entry into force of this Agreement is taken into account to determine eligibility for a benefit under this Agreement.
4. Unless otherwise provided by the legislation of a Party, this Agreement does not make a person eligible to receive payment of a benefit for a period before the date of entry into force of this Agreement.
5. A benefit is payable under this Agreement in respect of an event that takes place before the date of entry into force of this Agreement.
6. If, at the date on which this Agreement comes into force, a person is covered under the legislation of Austria or under the *Canada Pension Plan* in accordance with the provisions of the 1987 Agreement and the 1995 Supplementary Agreement, and if that person would not be covered in accordance with the provisions of this Agreement, that person remains covered as long as they would continue to be covered in accordance with the provisions of the 1987 Agreement and the 1995 Supplementary Agreement.
7. For a person who is detached by that person's employer to work in the territory of the other Party on the date of entry into force of this Agreement, the detachment period completed before that date is taken into account when calculating the period of sixty months referred to in Article 8.

Article 30
Protection of Rights

This Agreement does not affect the rights under the legislation of Austria 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 31
Duration and Termination

1. This Agreement remains in force indefinitely. A Party may terminate it at any time with 12 months' notice, in writing, through diplomatic channels to the other Party.
2. If a Party terminates this Agreement, a person is entitled to a benefit that is already acquired in accordance with this Agreement. This Agreement continues to have effect in relation to any person who applies for a benefit before its termination, if that person would have acquired a benefit had this Agreement not been terminated.
3. The Parties shall continue to apply Part II of this Agreement to a detachment that commences prior to the termination of this Agreement.

Article 32
Entry into Force

Each Party shall notify the other by diplomatic note that it has completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement enters into force on the first day of the fourth month following the month in which the second note is received.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at [...], this [...] day of [...], [...], in the English, French and German languages, each version being equally authentic.

For the Republic of Austria:

For Canada: