

No. 27005

**FEDERAL REPUBLIC OF GERMANY
and
CANADA**

**Agreement on social security (with Final Protocol). Signed at
Bonn on 14 November 1985**

**Arrangement for the implementation of the above-mentioned
Agreement. Signed at Bonn on 14 November 1985**

Authentic texts: German, English and French.

Registered by the Federal Republic of Germany on 5 January 1990.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
CANADA**

**Accord sur la sécurité sociale (avec Protocole final). Signé à
Bonn le 14 novembre 1985**

**Arrangement pour l'application de l'Accord susmentionné.
Signé à Bonn le 14 novembre 1985**

Textes authentiques : allemand, anglais et français.

Enregistrés par la République fédérale d'Allemagne le 5 janvier 1990.

AGREEMENT¹ ON SOCIAL SECURITY BETWEEN CANADA AND THE FEDERAL REPUBLIC OF GERMANY

Canada
and
the Federal Republic of Germany,

Desiring to further relations between the two States in the field of social security and to take account of changes in their legislation,

Have agreed as follows:

Part I General Provisions

Article 1

(1) For the purposes of this Agreement,

- (a) "territory" means,
as regards the Federal Republic of Germany, the territory in which the legislation specified in Article 2(1)(a) applies; and,
as regards Canada, the territory of Canada;
- (b) "national" means,
as regards the Federal Republic of Germany, a German citizen within the meaning of the Basic Law (Grundgesetz) of the Federal Republic of Germany; and,
as regards Canada, a Canadian citizen;
- (c) "legislation" means,
as regards the Federal Republic of

Germany, the laws, regulations and other general legislative acts related to the branches of social security specified in Article 2(1)(a); and,

as regards Canada, the laws and regulations specified in Article 2(1)(b);

- (d) "competent authority" means,
as regards the Federal Republic of Germany, the Federal Minister of Labour and Social Affairs (Bundesminister für Arbeit und Sozialordnung); and,
as regards Canada, the Minister or Ministers responsible for the application of the legislation specified in Article 2(1)(b);
- (e) "institution" means,
as regards the Federal Republic of Germany, the institution or authority responsible for the application of the legislation specified in Article 2(1)(a); and,
as regards Canada, the competent authority;
- (f) "competent institution" means the institution which is responsible for applying the legislation in a specific case;
- (g) "period of coverage" means a period of contribution 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;

¹ Came into force on 1 April 1988, i.e., the first day of the second month following the final day of the month of exchange of the instruments of ratification, which took place at Ottawa on 25 February 1988, in accordance with article 28 (2).

- (h) "cash benefit" means a pension or any other cash benefit, including any increases.

(2) Any term not defined in paragraph (1) has the meaning assigned to it in the applicable legislation.

Article 2

(1) Unless otherwise provided in this Agreement, it shall apply:

- (a) as regards the Federal Republic of Germany, to the legislation concerning:
 - (i) Wage Earners' Pension Insurance (Rentenversicherung der Arbeiter),
 - (ii) Salaried Employees' Pension Insurance (Rentenversicherung der Angestellten),
 - (iii) Miners' Pension Insurance (Knappschaftliche Rentenversicherung),
 - (iv) Steelworkers' Supplementary Insurance (Hüttenknappschaftliche Zusatzversicherung),
 - (v) Farmers' Old Age Assistance (Altershilfe für Landwirte); and
- (b) as regards Canada, to the following legislation:
 - (i) the Old Age Security Act and the regulations made thereunder,
 - (ii) the Canada Pension Plan and the regulations made thereunder.

(2) The legislation specified in paragraph (1) of this Article shall not include laws resulting for either Contracting State from international treaties or supranational laws

or designed to implement such treaties or laws.

Article 3

Unless otherwise provided in this Agreement, it shall apply to:

- (a) nationals of either Contracting State;
- (b) refugees, within the meaning of Article 1 of the Convention Relating to the Status of Refugees of July 28, 1951¹ and of the Protocol of January 31, 1967² to that Convention;
- (c) stateless persons, within the meaning of Article 1 of the Convention Relating to the Status of Stateless Persons of September 28, 1954;³
- (d) other persons to the extent that they derive rights from a national of either Contracting State, from a refugee or from a stateless person within the meaning of this Article;
- (e) nationals of a state other than a Contracting State, unless they are included in the group of persons specified in subparagraph (d).

Article 4

(1) Unless otherwise provided in this Agreement, persons specified in subparagraphs (a), (b), (c) and (d) of Article 3 who reside in the territory of one Contracting State shall, in the application of the legislation of either Contracting State, receive equal treatment with the nationals of the latter Contracting State.

(2) Benefits under the legislation of one Contracting State shall be awarded to nationals of the other Contracting State, resident outside the territories of both Contracting States, under the same conditions as

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

² *Ibid.*, vol. 606, p. 267.

³ *Ibid.*, vol. 360, p. 117.

they are awarded to the nationals of the first Contracting State who reside outside the territories of the Contracting States.

Article 5

Unless otherwise provided in this Agreement, the legislation of one Contracting State which requires that entitlement to or the payment of cash benefits be dependent on residence in the territory of that Contracting State shall not be applicable to the persons specified in subparagraphs (a), (b), (c) and (d) of Article 3 who reside in the territory of the other Contracting State.

Article 6

(1) Except as otherwise provided in Articles 7 to 10, the coverage of an employee shall be determined only by the legislation of the Contracting State in whose territory he is employed.

(2) In paragraph (1) and in Articles 7 to 10, "legislation" means,

as regards the Federal Republic of Germany, the legislation described in Article 2(1)(a) insofar as it relates to mandatory pension coverage, and,

as regards Canada, the legislation described in Article 2(1)(b)(ii).

Article 7

When an employee who is employed in a Contracting State is sent by his employer to the other Contracting State within the context of that employment to perform services for that employer, only the legislation of the first Contracting State shall apply, in respect of those services, during the first sixty calendar months of the employment in the second Contracting State as though the employee were still employed in the territory of the first Contracting State.

Article 8

When, but for the application of this Article, a person employed as a member of the crew of a seagoing ship would be subject to the legislation of both Contracting States, only the German legislation shall apply in respect of that employment if the ship is entitled to fly the flag of the Federal Republic of Germany, and only the legislation of Canada shall apply in any other case.

Article 9

(1) When a person is employed by the government or other public employer of a Contracting State in the territory of the other Contracting State, the legislation of that other Contracting State shall apply to him in respect of that employment only if he is a national of that Contracting State or if he resided in its territory before the beginning of that employment and continues to reside there.

(2) In the case of the person described in paragraph (1) who resided in the territory of the second Contracting State before the beginning of the employment and who continues to reside there, the legislation of the latter Contracting State shall not apply to him in respect of that employment if he is a national of the first Contracting State and within six months from the beginning of the employment, he elects to have the legislation of that Contracting State apply to him. The election shall be made by giving notice to the employer. The legislation shall apply from the date of the notice.

Article 10

(1) At the request of the employee and his employer, the competent authorities of the Contracting States, or the agencies which they have designated for that purpose, may, by common agreement, permit exceptions in the application of Articles 6 to 9, provided

that the person affected will be subject to the legislation of one or the other of the Contracting States.

(2) Paragraph (1) shall also apply in respect of persons who are not employees but who are nevertheless subject to the legislation described in Article 6(2).

Article 11

For the purposes of the Old Age Security Act of Canada:

- (a) if a person, other than a member of the crew of a seagoing ship, 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 the Federal Republic of Germany, that period shall be considered as a period of residence in Canada for that person as well as for his spouse and dependants who reside with him and who are not subject to the German legislation regarding mandatory pension coverage;
- (b) if a person, other than a member of the crew of a seagoing ship, is subject to the German legislation regarding mandatory pension coverage during any period of residence in the territory of Canada, that period shall not be considered as a period of residence in Canada for that person or for his spouse or dependants who reside with him 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 or self-employment;
- (c) if the person referred to in the preceding subparagraph becomes subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada, by virtue of occupying simultaneously more than one employment or self-employment, that period

shall not be considered as a period of residence in Canada.

Part II

Provisions Concerning Benefits

Article 12

When creditable periods of coverage have been completed under the legislation of both Contracting States, the competent institution of each Contracting State shall, in determining eligibility for benefits under the legislation which it applies, take into account, to the extent necessary, periods which are creditable under the legislation of the other Contracting State, provided that such periods do not overlap with periods creditable under its legislation.

Article 13

The following shall apply as regards the Federal Republic of Germany:

- (a) The periods of coverage to be taken into account under Article 12 shall be assigned to that branch of insurance whose institution is responsible for determining entitlement to a pension if only German legislation is applied. If, according to the foregoing, the Miners' Pension Insurance is the competent institution, periods of coverage completed under the legislation of Canada shall be taken into account for the Miners' Pension Insurance only if they were completed in a mining enterprise in underground operations.
- (b) For purposes of determining eligibility for a benefit payable under German legislation through the application 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