

N° 699.

AUTRICHE ET ITALIE

Accord sur les sociétés, à savoir les personnes juridiques, commerciales et autres associations, non compris les banques et les sociétés d'assurances, signé à Vienne le 16 juillet 1923.

AUSTRIA AND ITALY

Agreement regarding Companies, namely Legal Persons, incorporated commercial and other Associations, other than Banks and Insurance Companies, signed at Vienna, July 16, 1923.

TEXTE ALLEMAND. --- GERMAN TEXT.

No. 699. — ÜBEREINKOMMEN ¹ ZWISCHEN DER REPUBLIK ÖSTERREICH UND DEM KÖNIGREICHE ITALIEN, BETREFFEND DIE GESELLSCHAFTEN, DAS HEISST KOMMERZIELLE JURISTISCHE PERSONEN UND ANDERE VEREINIGUNGEN, AUSGENOMMEN BANKEN UND VERSICHERUNGSGESELLSCHAFTEN, GEZEICHNET ZU WIEN AM 16. JULI 1923.

Textes officiels allemand et italien communiqués par le représentant du Gouvernement fédéral d'Autriche auprès de la Société des Nations. L'enregistrement de cet accord a eu lieu le 26 août 1924.

DER BUNDESPRÄSIDENT DER REPUBLIK ÖSTERREICH, SEINE MAJESTÄT DER KÖNIG VON ITALIEN von dem Wunsche geleitet die Sitzverlegung der kommerziellen Gesellschaften und anderen Unternehmungen zu regeln, haben als Ihren Bevollmächtigten ernannt:

DER BUNDESPRÄSIDENT DER REPUBLIK ÖSTERREICH:

den Dr. Otto GOTTLIEB-BILLROTH, Sektionschef im Bundesministerium für Finanzen in Wien;

SEINE MAJESTÄT DER KÖNIG VON ITALIEN:

den Comm. Luca ORSINI-BARONI, Ausserordentlichen Gesandten und Bevollmächtigten Minister Seiner Majestät in Wien:

welche nach Austausch ihrer in entsprechender und richtiger Form befundenen Vollmachten folgendes beschlossen haben:

Artikel 1.

Die österreichische Bundesregierung räumt der königlich-italienischen Regierung das Recht ein, Gesellschaften, welche eine Produktions- oder Transportunternehmung im ehemals österreichischen jetzt zum Königreiche Italien gehörigen Gebiete betreiben und die ihren Sitz im Gebiete der Republik Österreich haben, zur Verlegung ihres Sitzes in das Gebiet des Königreiches Italien aufzufordern.

Artikel 2.

1. Die königlich-italienische Regierung wird bei Produktions- und Transportgesellschaften die Sitzverlegung nur dann begehren, wenn sich deren Tätigkeit ausschliesslich in den neuen Gebietsteilen des Königreiches Italien abspielt, ohne dass eine derartige Tätigkeit im Gebiete der Republik Österreich abgewickelt wird; doch herrscht unter den Hohen Vertragschliessenden gegenseitiges Einvernehmen darüber, dass der Bestand von in Österreich gelegenen Nebenbe-

¹ L'échange des ratifications a eu lieu à Vienne le 22 décembre 1923.

TEXTE ITALIEN. — ITALIAN TEXT.

No. 699. — ACCORDO¹ FRA IL REGNO D'ITALIA E LA REPUBBLICA D'AUSTRIA RIGUARDANTE LE SOCIETÀ E CIOÈ LE PERSONE GIURIDICHE COMMERCIALI, ED ALTRE ASSOCIAZIONI, ESCLUSE LE BANCHE E LE SOCIETÀ DI ASSICURAZIONI, FIRMATO A VIENNA LI 16 LUGLIO 1923.

German and Italian official texts communicated by the Representative of the Austrian Federal Government accredited to the League of Nations. The registration of this agreement took place August 26, 1924.

SUA MAESTÀ IL RÈ D'ITALIA, IL PRESIDENTE FEDERALE DELLA REPUBBLICA D'AUSTRIA desiderando di regolare il trasferimento della sede delle Società commerciali e di altre imprese, hanno nominato come Loro Plenipotenziari :

SUA MAESTÀ IL RÈ D'ITALIA : il Comm. Luca ORSINI-BARONI, Inviato Straordinario e Ministro Plenipotenziario di Sua Maestà in Vienna ;

IL PRESIDENTE FEDERALE DELLA REPUBBLICA D'AUSTRIA :

il Dr. Otto GOTTLIEB-BILLROTH, caposezione nel ministero federale delle finanze a Vienna,

i quali dopo aver scambiato i loro pieni poteri e trovati in buona e debita forma, hanno stabilito quanto segue :

Articolo 1º.

Il Governo Federale austriaco accorda al Regio Governo d'Italia il diritto di chiedere che le Società, le quali esercitano imprese di produzione o di trasporto nel territorio ex austriaco ora appartenente al Regno d'Italia, e che hanno la loro sede nel territorio della Repubblica d'Austria, trasferiscano la loro sede nel territorio del Regno d'Italia.

Articolo 2.

1. Il Regio Governo d'Italia chiederà il trasferimento della sede per le Società di produzione o di trasporto soltanto quando esse esplichino la loro attività esclusivamente nelle nuove Province del Regno d'Italia e cioè quando una tale attività non sia svolta nel territorio della Repubblica d'Austria ; tuttavia le Alte Parti contraenti convengono, che se in Austria esistono stabilimenti secondari delle imprese di trasporto e di produzione, che hanno lo stabilimento principale nelle

¹ The exchange of ratifications took place at Vienna, December 22, 1923.

¹ TRANSLATION.

No. 699. — AGREEMENT BETWEEN AUSTRIA AND ITALY REGARDING COMPANIES, NAMELY LEGAL PERSONS INCORPORATED COMMERCIAL AND OTHER ASSOCIATIONS, OTHER THAN BANKS AND INSURANCE COMPANIES, SIGNED AT VIENNA, JULY 16, 1923.

HIS MAJESTY THE KING of ITALY and THE FEDERAL PRESIDENT of THE AUSTRIAN REPUBLIC, being desirous of establishing regulations for the transfer of the headquarters of commercial companies and other enterprises, have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

Commendatore LUCA ORSINI-BARONI, His Majesty's Envoy Extraordinary and Minister Plenipotentiary in Vienna ;

and THE FEDERAL PRESIDENT of THE AUSTRIAN REPUBLIC :

Dr. OTTO GOTTLIEB-BILLROTH, Head of Department in the Federal Ministry of Finance at Vienna,

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

Article 1.

The Austrian Federal Government shall concede to the Royal Italian Government the right to request companies engaged in production or transport in former Austrian territory now belonging to Italy, and having their headquarters in the territory of the Austrian Republic, to transfer their headquarters to the territory of the Kingdom of Italy.

Article 2.

(1) The Royal Italian Government shall not request companies engaged in production or transport to transfer their headquarters unless such companies carry on business exclusively in the new provinces of the Kingdom of Italy, that is to say, unless they do not carry on any business in the territory of the Austrian Republic ; the High Contracting Parties, however, agree that where there exist in Austria subsidiary establishments of enterprises engaged in transport or production which have their main establishment in the new provinces of the Kingdom of Italy, *e.g.*, forwarding offices of a shipping company, the Italian Government may also request the transfer of the whole enterprise to Italy.

(2) The Royal Italian Government declares that it will not request the transfer of headquarters except those of enterprises engaged in production or transport which were in existence prior to November 1, 1918, in the new provinces of the Kingdom and which have their headquarters in the territory of the Austrian Republic. This right may not be exercised later than the end of December 1923.

¹ Translated by the Secretariat of the League of Nations.

Article 3.

(1) In the case of companies engaged in production, the Royal Italian Government may, on a special request being made, ask for the partition of such companies if some of the establishments engaged in production belonging to a company which has its headquarters in the Austrian Republic are situated in the new provinces of Italy. The existence of subsidiary establishments in Italy, *c.g.*, depots of a brewery, *i.e.*, the existence of branches for trading purposes of an enterprise engaged in production or transport and having its main establishment in Austria, shall not afford grounds for such request. The second paragraph of Article 2 shall likewise apply in this case.

(2) When the partition of a company takes place, the capital and reserves shall be allocated between the new companies on the basis of the actual value of the assets on the date of partition, expressed in the currency of the State in which the former headquarters were situated. Pension funds shall be allocated in proportion to the salaries and wages paid out in the two States during the three years preceding partition.

(3) Partition may be effected by the formation of independent Italian companies or by the amalgamation of the detached portion with an existing enterprise of the same nature.

(4) If, for important reasons connected with the nature of the enterprise, partition is held to be undesirable, the headquarters may instead, with the consent of the Austrian Federal Administration, be transferred to the territory of the Kingdom of Italy. In such case, the share of the capital and reserves due to the establishments which remain in Austria shall be determined.

(5) The Contracting Governments undertake to support and facilitate, as far as possible, such operations as may be considered necessary or desirable for effecting partition, and agree to raise no obstacles of an official and particularly a financial nature.

Article 4.

(1) When in accordance with the preceding articles transfer of headquarters or partition takes place, the companies concerned may not be wound up.

(2) Likewise, in such cases no request may be formulated for any change in the proportion of the quotas assigned to each section.

(3) In the cases provided for in Articles 1-3, a company shall, at its request, be entered in the register of the Court within the jurisdiction of which its new headquarters are situated, it may continue to carry on its business as formerly at its new headquarters and shall not be required, on account of the transfer, to comply with any conditions other than those set out in the present Agreement.

(4) Should any complaints be made of the procedure followed by one of the Contracting Parties, on the ground that, in the opinion of the other Party, such procedure is contrary to the principles laid down in this Agreement, these complaints shall be communicated as soon as possible to the other Party with a view to a friendly settlement.

Article 5.

(1) The Royal Italian Government undertakes that, when requests are submitted for the transfer of headquarters or for partition, as provided in Articles 1-3, the Austrian Court in which the commercial register is kept and the Austrian tax-office which is competent to deal with the affair, according to the situation of the company's headquarters, shall be informed. The proposed transfer of headquarters shall be noted in the commercial register. Before the entry in the Austrian

commercial register is cancelled, the creditors shall be notified. Such notification shall take the form of the publication of the request for the transfer of headquarters in the Official Journals designated for the publication of the company's announcements. In this case the company must state that it is prepared, on request, to meet or guarantee the claims of all creditors as existing on the date of publication; that the creditors shall have one month within which to file their claims; and that creditors who have not within one month filed a protest with the company shall be deemed to have given their assent to the transfer demanded. Such notification need not be made when the Federal Chancellery declares that cancellation may take place without these formalities, or when the company sets up an agency in place of the former main establishment in Austria. For this purpose, the company must, where necessary, obtain an assurance that the branch will be allowed to carry on its usual business, and must state that it assigns to the said branch the capital hitherto employed in the Austrian enterprise. In such cases, the company shall be entitled to authorisation to carry on its usual business when such authorisation is necessary under the regulations in force.

(2) When these formalities have been complied with, and when transfer has actually taken place, the name of the company shall be struck off the Austrian commercial register.

Article 6.

When a company which has been requested to conform to the regulations laid down in Articles 1, 2 and 3 shall not have conformed thereto within the period defined, and under the conditions set forth therein, the Government which has requested the transfer of headquarters, or the partition of the company, may withhold from the latter permission to carry on business within its territory.

Article 7.

(1) The provisions of Articles 1-3 shall apply, even when a company engaged in production or transport carries on some business other than its main business, provided the former be intimately connected with the latter.

(2) The provisions of the present Agreement shall also apply to shareholders' companies for establishing and carrying on hotels, nursing-homes and bathing establishments at Porto Rose.

(3) The two Governments may conclude separate agreements to provide that the regulations laid down in Articles 1-3 shall also apply to other companies not being companies engaged in production or transport. They may also do so in the case of enterprises conducted by companies engaged in production or transport which do not serve the purposes of production or transport, and have no direct connection with these branches of business.

Article 8.

(1) All branches and other permanent undertakings of every kind, agencies, etc., of foreign companies, to which the above provisions are not applicable, shall be treated in the same way as national companies, so far as such companies are allowed to carry on business by existing legislation and special treaties.

(2) The two High Contracting Parties agree that these provisions shall apply even when no agreement has been reached under the terms of Article 7, paragraph 3. Whilst proceedings are in progress as laid down in Articles 1-5, no change must be made in the character of the business carried on by the company (or its branches, etc.).

Article 9.

(1) The Government of the Kingdom of Italy notes that the Austrian Government will regard as property of nationals of the Kingdom of Italy war-loan securities which the enterprises to be transferred to the Kingdom of Italy on the basis of the present Agreement shall have declared in connection with the assessment of capital in the Austrian Republic. When part of such securities has been stamped in the Austrian Republic, the regulations contained in this Agreement shall apply to the company only after the latter shall have handed over bonds of the Austrian State Debt Administration equivalent in form and nominal value to the stamped loan securities, in order that the control-mark may be cancelled and that the securities may be entered as property of nationals of the Kingdom of Italy.

(2) In the case of companies to be partitioned in accordance with Article 3, property in war loan shall be partitioned in the same proportion as the capital and reserve capital to be partitioned on the basis of Article 3.

Article 10.

(1) Enterprises which transfer their headquarters under the terms of this Agreement shall not be subjected, on account of such transfer, to any tax, charge or duty, nor, in particular, to the supplementary tax specified in paragraph 96, L. I. P. (Personalsteuergesetz.) This principle shall also apply to partitioned enterprises.

The foregoing, however, shall not, either as regards the State in which the main establishment is situated or as regards the State in which the branch is situated, prejudice the manner in which the reserves which have been divided between the establishments in either territory after partition shall be dealt with from a fiscal point of view.

(2) Profits derived from financial operations arising out of the partition shall not be subjected to taxation in the State in which the company originally had its headquarters, provided such profits are set aside in the form of an extraordinary reserve fund, to be entered as a special item on the debit side of the balance-sheet, and provided the company renounces its right to be excluded from the Regulations concerning supplementary assessment of taxation, in case these reserves are used for a purpose liable to taxation. Neither shall the other State carry out a re-assessment of taxation on the basis of such transactions.

(3) Enterprises engaged in production and transport which, prior to November 1, 1918, had their headquarters in the territory of one of the Contracting Parties and a branch or subsidiary establishment in the territory of the other, shall not be subjected to any taxation levied on account of the fact that they continue to carry on such branches or establishments, or levied on the part of their share-capital or shares assigned to such branches or establishments prior to November 1, 1918.

(4) As from the commencement of the fiscal year following that in which the transfer of a company's headquarters or the partition of a company takes place, the respective enterprises shall be regarded as national companies for the purposes of industrial assessment.

Article 11.

The Austrian Government, in applying its law of July 4, 1919 (Official Bulletin of State Laws, No. 353), concerning the withdrawal of foreign gold and paper currency, shall treat companies which transfer their headquarters in accordance with this Agreement as belonging to the Kingdom of Italy.

Article 12.

The provisions of this Agreement shall likewise hold good in the case of companies which, although they are engaged in production or transport in the Austrian Republic, have their headquarters in the new provinces of the Kingdom of Italy.

Article 13.

In all cases in which it is found impossible to agree as to the application of these provisions, the dispute shall be settled by a Court of Arbitration composed of one delegate of each of the High Contracting Parties and a president to be appointed by common agreement, or, if agreement cannot be reached, by the President of the Swiss Confederation.

Article 14.

This Agreement shall come into force on the day of its ratification. It shall likewise apply to any companies which may have transferred their headquarters or have undergone partition on the lines of this Agreement before the Agreement itself has come into force.

VIENNA, *July 16, 1923.*

GIACINTO AURITI,
Italian Chargé d'Affaires,
for the Italian Minister in Vienna.

Dr. OTTO GOTTLIEB-BILLROTH,
Head of Section in the Federal Ministry of Finance.
