

N° 1084.

AUTRICHE ET FRANCE

Déclaration relative à la transmission des actes judiciaires et à l'exécution des commissions rogatoires en matières civile et commerciale, signée à Paris, le 4 mars 1925.

AUSTRIA AND FRANCE

Declaration concerning the Transmission of Legal Documents and the Execution of Rogatory Commissions in Civil and Commercial Matters, signed at Paris, March 4, 1925.

¹ TRADUCTION. — TRANSLATION.No. 1084. — DECLARATION ² BETWEEN FRANCE AND AUSTRIA CONCERNING THE TRANSMISSION OF LEGAL DOCUMENTS AND THE EXECUTION OF ROGATORY COMMISSIONS IN CIVIL AND COMMERCIAL MATTERS, SIGNED AT PARIS, MARCH 4, 1925.

French official text communicated by the Prime Minister, Minister for Foreign Affairs of the French Republic. The registration of this Declaration took place February 6, 1926.

THE GOVERNMENT OF THE FRENCH REPUBLIC and THE GOVERNMENT OF THE AUSTRIAN REPUBLIC, having decided to conclude an agreement concerning the transmission of legal documents and the execution of rogatory commissions in civil and commercial matters, the undersigned, having been duly authorised for the purpose, have agreed on the following provisions :

Article 1.

Legal documents in civil and commercial matters intended for persons resident in the territory of the Austrian Republic and rogatory commissions in civil and commercial matters to be executed in that territory when issued by the French authorities shall be transmitted by the French diplomatic and consular agents to the Court within whose jurisdiction the person who is to receive the document resides or within whose jurisdiction the rogatory commission is to be executed.

Legal documents in civil and commercial matters intended for persons resident in the territory of the French Republic and rogatory commissions in civil and commercial matters to be executed in that territory, when issued by the Austrian authorities shall be transmitted by the Austrian diplomatic and consular agents to the Procureur of the Republic within whose jurisdiction the person who is to receive the document resides or within whose jurisdiction the rogatory commission is to be executed.

The covering letters shall be drawn up in the language of the authority to whom the request is addressed and shall contain mention of the authority issuing the document transmitted, the name and description of the parties, the address of the person to whom the document is to be sent and the nature of the document itself.

Article 2.

Should the authority to whom the document or rogatory commission has been sent not be competent to deal with the matter, the authority in question shall immediately inform the diplomatic or consular agent making the request of the fact and shall *ex officio* transmit the document

¹ Traduit par le Secrétariat de la Société des Nations.

¹ Translated by the Secretariat of the League of Nations.

² Came into force February 4, 1925.

or rogatory commission to the competent authority of the same State. Whenever it is impossible to deliver a document to the addressee, or whenever it is impossible to execute a rogatory commission, the authority to whom the request is addressed shall immediately inform the diplomatic or consular agent making the request, stating the reasons for which it has been impossible to comply with his wishes.

Article 3.

Documents may be refused delivery if the State in whose territory delivery should be made considers that such delivery would be contrary to its sovereign rights or security.

Generally speaking, the authority to whom the request is addressed shall merely deliver the document to the addressee who will accept it voluntarily. Proof of delivery shall be provided either by a receipt dated and signed by the addressee or by an attestation on the part of the authority of the State to which the request is addressed, noting the fact and the manner in which delivery has been made. One of the other copies of this document shall be immediately transmitted to the authority making the request. If the document in question has been transmitted in duplicate copy, the receipt or attestation may be made out on one of the copies, which shall be returned.

Should the addressee refuse to take delivery of the document, the authority to whom the request is addressed shall immediately return the document to the diplomatic or consular agent making the request, mentioning the reasons for which it has been impossible to effect delivery.

At the express request of the diplomatic or consular agent, the authority to whom the request is addressed shall have the document delivered by one of its officials, either in accordance with the laws of the State to which the request is addressed or in some special manner, if the latter is not contrary to the legislation of the State to which the request is addressed. In the latter case, the document to be delivered must be accompanied by a translation in the language of the State to which the request is addressed. This translation shall be certified to be true by the diplomatic or consular agent of the State making the request or by a sworn interpreter of the State to which the request is addressed.

Article 4.

The authority to whom the request is addressed may refuse to execute a rogatory commission :

(1) If the State within whose territory execution is to take place considers such execution to be likely to affect its sovereign rights or security ;

(2) If in the State to which the request is addressed, the execution of the measure requested is not within the competence of the judicial authorities.

Persons required to give evidence shall be invited to appear by ordinary official notice. Should they refuse to comply with this notice, the authority to whom the request is addressed must employ the measures of constraint provided for in the legislation of the State to whom the request is addressed in order to oblige its witnesses to come forward.

At the express request of the authority making the request, the authority to whom the request is addressed :

(1) Must execute the rogatory commission in a special manner if this be not contrary to the legislation of the State to which the request is addressed.

(2) Must in good time inform the authority making the request of the date and place at which the rogatory commission will be executed in order that the parties concerned may be present.

Rogatory commissions must always be accompanied by a translation in the language of the State to which the request is addressed. This translation shall be certified to be true by the diplomatic or consular agent of the State making the request or by a sworn interpreter of the State to which the request is addressed.

Article 5.

The delivery of legal documents and the execution of rogatory commissions shall not involve the repayment of any charges except in the following cases :

- (1) Costs for the service of a document by a public official of the country to which the request is addressed, either in conformity with the laws locally in force, or in some special form ;
- (2) Additional costs for the execution of a rogatory commission in some special form ;
- (3) Costs for proceedings taken by a public official in the case of persons required to give evidence, when these persons have not complied with the official notice.
- (4) Experts' fees ;
- (5) The costs of sending packages when the latter cannot be sent by post.

Article 6.

The repayment of costs shall be demanded by the authority to whom the request has been addressed from the diplomatic or consular agent making the request simultaneously with the transmission to the said diplomatic or consular agent of the documents certifying that his request has been carried out.

These costs shall be calculated on the basis of the scales in force in the State to which the request is addressed.

Article 7.

The two Contracting Parties reciprocally recognise the right :

(1) To have legal documents in civil and commercial matters delivered direct and without constraint by the diplomatic or consular agents in the territory of the other Party ;

(2) To have rogatory commissions in civil and commercial matters carried out direct and also without constraint by the aforesaid agents.

No reservations are made with regard to the case in which the person to whom a document is addressed or the person whose evidence must be taken is a national of one of the two Parties.

Article 8.

Any difficulties which may arise as a result of the present declaration shall be settled through diplomatic channels.

Article 9.

The present declaration shall come into force one month after it is signed. It shall cease to have effect on the expiration of a period of six months as from the date on which it is denounced by either of the Contracting Parties.

In faith whereof the undersigned Plenipotentiaries have signed the present Declaration and have affixed their seals thereto.

Done in Paris on March 4, 1925 in two original copies.

(L. S.) (Signed) EDOUARD HERRIOT.

(L. S.) (Signed) EICHHOFF.