

No. 7397

**NETHERLANDS
and
AUSTRIA**

Agreement (with annex) concerning the settlement of matters relating to property rights. Signed at Vienna, on 30 September 1959

Official texts: Dutch and German.

Registered by the Netherlands on 26 August 1964.

**PAYS-BAS
et
AUTRICHE**

Accord (avec annexe) relatif au règlement de questions concernant les droits patrimoniaux. Signé à Vienne, le 30 septembre 1959

Textes officiels néerlandais et allemand.

Enregistré par les Pays-Bas le 26 août 1964.

[TRANSLATION — TRADUCTION]

No. 7397. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF AUSTRIA CONCERNING THE SETTLEMENT OF MATTERS RELATING TO PROPERTY RIGHTS. SIGNED AT VIENNA, ON 30 SEPTEMBER 1959

The Government of the Kingdom of the Netherlands and the Federal Government of the Republic of Austria, with a view to the final settlement of pending matters relating to property, have agreed as follows :

I

1. In connexion with the return of Austrian property in the Netherlands pursuant to the 1951 Declaration by the Netherlands Government, the text of which is annexed² hereto, the Government of the Kingdom of the Netherlands undertakes to place at the disposal of the Austrian Federal Government a total of 1,750,000 gulden for the final settlement of property matters pending between the two States.

2. The Austrian Federal Government declares that it will use this amount for the settlement of the claims upheld by it, and that it will neither advance nor support through the diplomatic channel any further claims against the Netherlands Government for the return of assets sequestered in the Kingdom of the Netherlands under the legislation concerning enemy property which belonged at the time of sequestration to persons who possessed or who have since acquired Austrian nationality.

This declaration does not apply to the claims enumerated in 3 (a), (b), (c) and (d).

3. In addition to the above-mentioned payment, the Government of the Kingdom of the Netherlands hereby agrees as follows :

(a) Assets of Austrian nationals which could not actually be taken over by the Netherlands Control Institute for administrative purposes shall be placed at the free disposal of the parties entitled thereto and no charge shall be payable to the Institute in respect of administrative costs or taxes.

¹ Came into force on 18 May 1960, by an exchange of notes confirming that the constitutional requirements for the entry into force of the Agreement had been fulfilled, in accordance with article III.

² See p. 128 of this volume.

(b) Claims of Austrian nationals in respect of securities issued in the Netherlands which were not registered at the proper time with the Netherlands securities office shall be accorded the same treatment as similar claims of allied nationals in the Netherlands.

(c) Applications for the release of assets pursuant to the Netherlands Government Declaration of 1951 which are submitted by Austrian nationals between the date on which this Agreement enters into force and 31 December 1959 shall be processed as soon as possible.

(d) Applications for release made by Austrian Collecting Offices established under the Collecting Organizations Act of 13 March 1957, *Bundesgesetzblatt* (BGBl) No. 73, as set forth in the first and second Supplementary Acts on Collecting Organizations, BGBl Nos. 285/58 and 62/59, may be submitted up to 31 December 1959 in respect of unclaimed assets situated in the Kingdom of the Netherlands of which Austrian nationals to be specified who were victims of National Socialist persecution were deprived. This property, minus administrative expenses, shall be transferred as soon as possible to the above-mentioned Offices by the Netherlands authorities, in accordance with the Netherlands Government Declaration of 1951.

4. The Austrian Federal Government recognizes that Austrian property in the territory of the Netherlands is not subject to any confiscatory measures.

II

1. The claims of Unilever N.V. Rotterdam and N.V. Beleggingsmaatschappij "Industriebank" in respect of their holdings in corporations with head offices in Germany shall be settled through the transfer to Unilever and the Industriebank by the Republic of Austria of a part, equivalent to the amount of such holdings, of the assets situated in Austria which have been assigned to Austria under article 22 of the State Treaty for the Re-establishment of an Independent and Democratic Austria, dated 15 May 1955.¹ For such transfers, the necessary supporting evidence shall be produced and the surety bond usual in such cases shall be posted.

In similar future cases, where claims are presented by Netherlands natural and legal persons, the Austrian Federal Government shall give sympathetic consideration to the possibility of making similar settlements.

2. The Austrian Federal Government is prepared to process as quickly as possible the applications of Netherlands nationals for compensation in respect of damage to property as a result of war and persecution, under the relevant Austrian legislation.

¹ United Nations, *Treaty Series*, Vol. 217, p. 223 ; Vol. 221, p. 439 ; Vol. 266, p. 382 ; Vol. 259, p. 445 ; Vol. 263, p. 424 ; Vol. 316, p. 350, and Vol. 420, p. 345.

3. The settlement of the claims of Netherlands nationals submitted by the Netherlands Government in respect of securities issued in Austria, shall remain subject to the relevant Austrian legislation.

If legal provisions for the settlement of such claims have not become effective within two years from the date on which this Agreement enters into force, the Netherlands reserves the right to make further representations to the Austrian Federal Government in this connexion.

III

This Agreement shall enter into force by an exchange of notes, as soon as the necessary constitutional requirements for such entry into force are complied with.

IN WITNESS WHEREOF the plenipotentiaries of both Parties, having exchanged their full powers found in good and due form, have signed this Agreement.

DONE at Vienna on 30 September 1959 in two original copies in the Dutch and German languages, both texts being equally authentic.

For the Government
of the Kingdom of the Netherlands :
(Signed) H. F. ESCHAUZIER

For the Federal Government
of the Republic of Austria :
(Signed) KREISKY

A N N E X

The Hague, 31 August 1951

I. The Netherlands Government is prepared to return to Austrians thereto entitled, against an acknowledgement of receipt constituting full discharge,¹ the assets of Austrian natural and legal persons at present administered by the Netherlands Control Office by virtue of the Decree on Enemy Property (*Staatsblad* E. 133), or, in the event that liquidation has taken place, to deliver to the Austrian parties entitled thereto the proceeds of the liquidation, in accordance with Netherlands legislative and administrative provisions and in fulfilment of the duty of careful management incumbent on the custodians.

II. If the Austrian entitled parties claim that there has been maladministration, a careful check shall be carried out and, where necessary, remedial action shall be taken.

III. The following deductions shall be made under the head of administrative expenses :

¹ To the Netherlands Control Institute.

I acknowledge receipt of my assets hitherto sequestered in the Netherlands under the Netherlands Decree on Enemy Property (*Staatsblad* E 133), or of the proceeds obtained from the liquidation of those assets (for details see annex) and I hereby discharge the Netherlands Control Institute from any further liability for their administration.

Date

Signed

For assets up to and including the amount of 1,000 gulden, the minimum fee shall not be 20 gulden per annum but an annual fee of 2 per cent of the assets.

If this charge of 2 per cent on the value of assets up to 1,000 gulden entails hardship, a lower percentage shall be established by the Netherlands Control Office. The following rates shall apply for the calculation of fees in respect of assets in excess of 1,000 gulden.

For assets of 1,000 to 100,000 gulden the fee shall be 2 per cent per annum ; for assets of 100,000 to 500,000 gulden 1 1/2 per cent but not less than 2,000 gulden ; from 500,000 to 1 million gulden 1 per cent but not less than 7,500 gulden ; and from 1 million gulden upwards 1/2 per cent but not less than 10,000 gulden. For enterprises showing a debit balance, the annual fee shall be 1/2 per cent of the assets but not less than 20 gulden. No fee shall be charged in respect of private assets which show a deficit. In the case of more substantial assets and in special cases, the Netherlands Control Office may, on request, prescribe a lower fee if charging the full fee would impose too heavy a burden. Such requests from Austrian nationals shall have the sympathetic consideration of the Netherlands Control Office.

IV. The nationality of claimants shall be established in the following manner :

- (a) In the case of individuals, by the production of a valid certificate of nationality ;
- (b) In the case of corporations, by a certificate from the Austrian Federal Ministry of Finance showing that they were established according to Austrian law and are resident in Austria.

V. Claims lodged by persons who on 27 April 1945 were of German or Japanese nationality, or by their legal successors, shall not be accepted. Austrian natural persons, whose assets have been forfeited by the formal decision of an independent Netherlands court convicting them of a punishable offence committed in the Netherlands, shall not be entitled to repossess their assets. Austrian nationals who, during the period from 10 May 1940 to 5 May 1945, were active in the Netherlands either in German military service, or as officials, employees, agents, representatives or assignees of the German Reich, shall have the right to repossess their assets in the Netherlands, since it is generally assumed in such cases that they acted under compulsion. If, in exceptional cases, the Netherlands Government has serious objections to the release of the assets of such persons in the Netherlands, it shall reserve the right to reach agreement with the Austrian Government beforehand as regards whether the conditions for release have been satisfied in whole or in part.

VI. Austrian corporations in which on 27 April 1945 25 per cent or more of the capital was owned by Japanese or Germans shall have the right to repossess only that percentage of their assets in the Netherlands which corresponds to the percentage of non-German or non-Japanese ownership. Where German or Japanese ownership is less than 25 per cent, the assets in the Netherlands shall be released in full. Where German or Japanese ownership was a result of the coercive measures imposed by the National

Socialist seizure of power in Austria, such ownership shall not be regarded as German or Japanese for the purpose of the release of the assets in the Netherlands.

As proof of their ownership status on 27 April 1945, Austrian corporations shall submit a certificate from the Austrian Federal Ministry of Finance, which shall also indicate, as appropriate, whether there has been any change in ownership status since 27 April 1945 resulting from the reversal of a coercive measure connected with the National Socialist seizure of power.

In implementing these provisions, the special position of patents and trade marks of Austrian corporations registered in the Netherlands shall receive consideration in such a way as to give satisfaction to both parties.

VII. In determining ownership, fictitious transactions designed to disguise German or Japanese assets shall be deemed to be null and void.

Trusts shall be treated in the same way.

VIII. The Royal Netherlands Government reserves the right not to release those assets which were acquired by Austrian nationals resident in the then Reichsmark area during the period 1 April 1941-5 May 1945 by the transfer of Reichsmarks in compliance with the Netherlands Act concerning Asset Transfers—Reichsmark Area (*Staatsblad* H 251).

As regards such assets, compensation to the value of the original purchase in Reichsmarks, converted to Austrian schillings at one for one, plus 5 per cent interest per annum commencing from the date of sequestration in accordance with the Netherlands Decree on Enemy Property (*Staatsblad* E 133), shall be paid in gulden at the current rate of exchange.

In cases of hardship, the procedure provided for in article 5 of the Netherlands Act H 251 shall be followed.

Should acquisition have taken place by some means other than the transfer of Reichsmarks, compensation for the total assets at their present value shall be paid in full in Netherlands currency.

The procedure laid down in this paragraph shall be followed in like manner in cases where acquisition took place by the transfer of Czechoslovak crowns. In such cases, the Czechoslovak crown shall be converted to Reichsmarks at the rate of exchange applicable at the time (1 RM = 10 crowns).

IX. In cases where the Netherlands Control Institute, in the exercise of its powers, has disposed of patents and trade marks registered in the Netherlands in favour of Austrian individuals and corporations by granting free licences or by allowing trade marks to lapse, and in which the Austrian rights cannot therefore be restored automatically, the Netherlands Government is prepared, on its own initiative and so far as possible, to co-operate in restoring those Austrian rights or to co-operate in promoting satisfactory arrangements between the parties holding such rights and the Austrian claimants.