

No. 7973

**AUSTRIA
and
SWITZERLAND**

Convention (with Final Protocol) concerning the establishment of adjoining frontier clearance offices and frontier clearance on board moving transport. Signed at Berne, on 2 September 1963

Official text: German.

Registered by Austria on 16 November 1965.

**AUTRICHE
et
SUISSE**

Convention (avec Protocole final) relative à la création de bureaux à contrôles nationaux juxtaposés et aux contrôles dans les véhicules en cours de route. Signée à Berne, le 2 septembre 1963

Texte officiel allemand.

Enregistré par l'Autriche le 16 novembre 1965.

[TRANSLATION — TRADUCTION]

No. 7973. CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE SWISS CONFEDERATION CONCERNING THE ESTABLISHMENT OF ADJOINING FRONTIER CLEARANCE OFFICES AND FRONTIER CLEARANCE ON BOARD MOVING TRANSPORT. SIGNED AT BERNE, ON 2 SEPTEMBER 1963

The Federal President of the Republic of Austria and the Swiss Federal Council, desiring to facilitate the crossing of the common frontier, have agreed to conclude a Convention and have for that purpose appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Johann Georg Tursky, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria ;

The Swiss Federal Council :

Mr. F. T. Wahlen, Federal Councillor, Director of the Federal Political Department,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions :

PART I

GENERAL PROVISIONS

Article 1

(1) The two States shall, within the scope of this Convention, facilitate and expedite the frontier clearance of railway, road and water-borne traffic.

(2) To this end they shall :

- (a) Establish adjoining frontier clearance offices ;
- (b) Permit frontier clearance on board moving transport on designated routes ;

¹ Came into force on 14 January 1965, one month after the exchange of the instruments of ratification, which took place at Vienna on 14 December 1964, in accordance with article 25.

(c) Allow the competent officials of either State to perform their duties within the scope of this Convention in the territory of the other State.

(3) The Governments of the two States shall be empowered to designate, relocate, modify or discontinue, by agreement :

- (a) The adjoining frontier clearance offices, including their official precincts ;
- (b) The routes on which officials of the neighbouring State may effect frontier clearance on board moving transport ;
- (c) The routes by which officials of the neighbouring State may convey to their own State persons in custody and goods or material evidence detained ;
- (d) The routes by which officials of the neighbouring State may escort goods to another frontier clearance office of the same State.

Article 2

For the purposes of this Convention :

1. "Frontier clearance" means compliance with all regulations of the Contracting States which are applicable in respect of passenger traffic across the frontier and the import, export and transit of goods and other property ;
2. "Territorial State" means the State in whose territory the frontier clearance of the other State is carried out ;
"Neighbouring State" means the other State ;
3. "Zone" means the area of the territorial State in which officials of the neighbouring State are entitled to effect frontier clearance ;
4. "Officials" means persons who, as agents of the authorities competent for frontier clearance, perform their duties at one of the adjoining frontier clearance offices or on board moving transport.

Article 3

(1) The zone may comprise :

1. In the case of railway traffic :
 - (a) Parts of the railway station and other railway installations, the line between the frontier and the frontier clearance office, and parts of the railway stations situated on the said line ;
 - (b) Where frontier clearance is effected *en route*, the train on the prescribed line and parts of the railway stations at which the said line begins or ends and through which the train passes.

2. In the case of road traffic :
 - (a) Parts of the service buildings, of the road and of the other installations, and the road between the frontier and the frontier clearance office ;
 - (b) Where frontier clearance is effected *en route*, the vehicle on the prescribed route and parts of the buildings and installations at which the said route begins or ends.
3. In the case of water-borne traffic :
 - (a) Parts of the service buildings, of the waterway and of the riparian and harbour installations, and the waterway between the frontier and the frontier clearance office ;
 - (b) Where frontier clearance is effected *en route*, the vessel and the escorting examination boat on the prescribed route, and parts of the buildings and installations at which the said route begins or ends.

(2) For any portion of territory which is covered by sub-paragraphs 1 to 3 above but which, under the agreements referred to in article 1, paragraph (3), is not included in the zone, the said agreements may provide for the application of individual provisions of this Convention or for the exercise of specific rights and obligations arising therefrom.

(3) The routes referred to in article 1, paragraph (3), sub-paragraphs (c) and (d), shall be accorded, for the purposes of the official acts mentioned therein, the same legal status as the zone.

PART II

FRONTIER CLEARANCE

Article 4

(1) All regulations of the neighbouring State which are applicable in respect of passenger traffic across the frontier and the import, export and transit of goods and other property shall have effect in the zone as in the commune of the neighbouring State to which the frontier clearance office is assigned ; subject to the provisions of article 5, the said regulations shall be applied by the officials of the neighbouring State to the same extent and with all the same consequences as in the territory of their own State. The commune to which the frontier clearance Office of the neighbouring State is assigned shall be designated by the Government of that State.

(2) Any breach, committed in the zone, of the regulations of the neighbouring State which govern passenger traffic across the frontier and the import, export and transit of goods and other property shall be deemed to have been committed in the commune of the neighbouring State to which the frontier clearance office of that State is assigned.

(3) The foregoing shall not affect the authority of the territorial State in the zone.

Article 5

(1) The officials of the neighbouring State shall not be entitled to detain any person for the purpose of extradition and convey him to the neighbouring State.

(2) The officials of the neighbouring State shall not be entitled to detain and convey to the neighbouring State any person who enters the zone from the territorial State for purposes other than crossing the frontier, unless such person contravenes in the zone the regulations of the neighbouring State concerning customs clearance.

(3) The officials of the neighbouring State shall in no case be entitled to detain any national of the territorial State in the zone and convey him to the neighbouring State. They may, however, take such a person to their frontier clearance office in the territorial State or, if there is no such office, to the frontier clearance office of the territorial State for interrogation. In the former case an official of the territorial State shall attend the interrogation if the person concerned, who must be informed of his rights in this respect, so requests.

Article 6

(1) Where frontier clearance is effected in the zone, the official operations of the State of exit shall, save as otherwise provided hereinafter, be performed before the official operations of the State of entry. In order to expedite traffic, the official operations of the two States shall so far as possible be conducted in direct sequence.

(2) The officials of the State of entry shall not be entitled to begin frontier clearance operations until exit clearance has been completed ; a waiver of exit clearance shall be deemed to constitute completion thereof.

(3) The officials of the State of exit shall not be entitled to conduct any further frontier clearance operations after entry clearance has begun. By way of exception, exit clearance operations may be resumed if the person concerned so requests and the clearing official of the State of entry consents thereto.

(4) The clearing officials of the two States may, by agreement, depart from the sequence prescribed in paragraph (1) if this appears necessary in the interest of rapid frontier clearance. In such exceptional cases, the officials of the State of entry shall not make any arrest or seizure until the frontier clearance of the State of exit has been completed. If they wish to apply any such measure, they shall take the persons or goods or other property whose exit clearance has not yet been completed to the officials of the State of exit. If the last-named officials wish to make any arrest or seizure they shall have priority.

Article 7

The officials of the neighbouring State may transfer to the territory of the neighbouring State any sums of money collected and goods and other property detain-

ed or seized in the zone or on board transport crossing the frontier or may realize the same in the territorial State, subject to the legal provisions in force there, and transfer the proceeds to the neighbouring State.

Article 8

(1) Goods which are refused exit clearance by the officials of the neighbouring State or which are returned to the neighbouring State on the instructions of the person concerned before the start of the entry clearance of the territorial State shall be subject neither to the export regulations nor to the exit clearance of the territorial State.

(2) A person who is denied admittance by the officials of the State of entry shall not be denied re-admittance to the State of exit. Similarly, goods whose importation is disallowed by the officials of the State of entry shall not be denied reimportation into the State of exit.

Article 9

In proceedings against a breach of the customs regulations concerning passenger or goods traffic across the frontier which was committed in the zone and detected during or immediately after its commission, the competent authorities of the territorial State shall, at the request of the competent authorities of the neighbouring State, interrogate accused persons, witnesses and experts, conduct other inquiries and effect service of documents. The legal provisions of the territorial State concerning the procedure to be followed in the prosecution of similar offences shall be applicable *mutatis mutandis*.

PART III

OFFICIALS

Article 10

(1) The authorities of the territorial State shall extend to officials of the neighbouring State, in the performance of their duties in the zone, the same protection and assistance as to the corresponding officials in their own service. In particular, the provisions of the criminal law in force in the territorial State for the protection of public employees and of officials acts shall apply also to punishable offences committed against officials of the neighbouring State.

(2) Claims of official liability for damage caused in the zone by officials of the neighbouring State shall be subject to the law and jurisdiction of the neighbouring State as though the act causing the damage had been done in the commune of the neighbouring State to which the frontier clearance office is assigned. Nationals of the territorial State shall, however, be accorded equal treatment with nationals of the neighbouring State.

Article 11

(1) Officials of the neighbouring State who are required under this Convention to perform their duties in the zone shall be exempt from passport and visa requirements. They shall be entitled, upon production of an official certificate showing their identity and service rank, to cross the frontier and proceed to their place of work. The foregoing shall not affect any order made prohibiting the entry of an individual official of the neighbouring State.

(2) Any punishable offence committed in the territorial State by an official of the neighbouring State shall be reported to the authority responsible for such official by the corresponding authority of the territorial State.

(3) Upon a request, accompanied by a statement of reasons, from the competent authorities of the territorial State, the competent authorities of the neighbouring State shall exclude or recall their officials from duty in the territory of the former State.

Article 12

Officials of the neighbouring State who are required under this Convention to perform their duties in the zone may wear their uniform and service badges and carry their service weapons in the zone, on the way from and to their place of residence and, if the performance of their duties so requires, on the way from and to another frontier clearance office. They may, however, use their weapons only in self-defence.

Article 13

(1) Officials of the neighbouring State who are required under this Convention to perform their duties in the zone and who reside in the territorial State shall be subject in the latter State to the regulations concerning the residence of aliens. If a residence permit is required under the said regulations, it shall be issued to them free of charge.

(2) A residence permit shall likewise be issued free of charge to members of the family of such an official who live in his household and who are not gainfully employed. Such a permit may be refused only where an order has been made prohibiting the entry of the individual in question. The issue of a permit to take up a gainful occupation shall rest with the discretion of the competent authorities. If such a permit is issued, the regular fees may be charged therefor.

(3) Time spent on duty or in residence in the territorial State by officials of the neighbouring State shall not count towards the qualifying periods for preferential treatment under existing agreements concerning establishment. The same shall apply to family members who hold a residence permit by virtue of the presence of the head of the family in the territorial State.

Article 14

(1) Officials of the neighbouring State who are required under this Convention to perform their duties in the zone and who reside in the territorial State shall enjoy, for themselves and for the members of their families living in their households, on moving into or setting up a separate household in the territorial State and on their return, exemption from all import and export duties on furniture, personal requisites including motor vehicles, and normal household effects, provided that such goods derive from the open commerce of the neighbouring State or of the State from which the official or family member moves into the territorial State. The foregoing shall not affect the regulations of the territorial State concerning disposal of property of persons entering the State which is admitted free of customs duty.

(2) Such officials and the members of their families living in their households shall be exempt in the territorial State from all forms of personal and material service under public law. For the purposes of military service and other service obligations under public law, they shall be deemed to be resident in the neighbouring State. The same shall apply with regard to nationality, provided that they are not nationals of the territorial State. They shall not be liable in the territorial State to any taxes or duties which are not payable by nationals of the territorial State residing in the same commune.

(3) Officials of the neighbouring State who are required under this Convention to perform their duties in the zone but who do not reside in the territorial State shall be exempt in the latter State from all forms of personal and material service under public law.

(4) The agreements concerning double taxation for the time being in force between the Contracting States shall apply in respect of the official remuneration of officials of the neighbouring State who are required under this Convention to perform their duties in the zone.

(5) The salaries of officials of the neighbouring State who are required under this Convention to perform their duties in the zone shall not be subject to foreign exchange restrictions of any kind. Such officials may freely transfer amounts saved out of their salaries to the neighbouring State.

PART IV

FRONTIER CLEARANCE OFFICES

Article 15

The powers of clearance and hours of business of the frontier offices of the two sides shall be so determined as to correspond so far as possible.

Article 16

The competent authorities of the two States shall determine by agreement :

- (a) What installations are needed for the offices of the neighbouring State and what charges, if any, are to be made for their use ;
- (b) What compartments and facilities are to be reserved free of charge for the officials who effect frontier clearance on board moving transport.

Article 17

The premises allotted to the frontier clearance offices of the neighbouring State shall be identified by national emblems or official coats of arms.

Article 18

Articles intended for the official use of the frontier clearance offices or to supply the needs of officials of the neighbouring State while on duty in the territorial State shall be exempt from customs duties and other import and export charges. No deposit of security shall be required. Unless otherwise determined by agreement between the competent authorities, economic import and export prohibitions and import and export restrictions shall not apply to such articles. The same shall apply to official or private motor vehicles used by such officials in the performance of their duties in the territorial State or on journeys from and to their place of residence or between the two frontier clearance offices of the same frontier crossing point.

Article 19

(1) The territorial State shall permit such telephone and telegraph systems (including teleprinters) as are necessary for the operation of the frontier clearance offices of the neighbouring State in the territorial State to be installed and connected to the corresponding systems of the neighbouring State free of charge, subject, however, to the payment of any costs incurred in the installation and rental of the systems. These direct connexions between the offices of the neighbouring State shall be used only for official purposes. Such transmissions shall be deemed to constitute internal traffic of the neighbouring State.

(2) The Governments of the two States undertake to grant, for the same purpose, all possible facilities for the use of other media of telecommunication.

(3) In all other respects, the regulations of the two States concerning the installation, maintenance and operation of telecommunication systems shall apply.

Article 20

Official dispatches sent from the frontier clearance offices of the neighbouring State to offices in the neighbouring State or vice versa may be carried by officials of that State without intervention by the postal or railway administration of the territorial State and free of charges.

PART V

PERSONS MAKING CUSTOMS DECLARATIONS

Article 21

(1) Persons who have their domicile or principal place of business in one of the two States may, without a special permit, perform all activities relating to frontier clearance at the adjoining frontier clearance offices of the two States. They shall be accorded by the authorities of the other State equal treatment with its nationals.

(2) Paragraph (1) shall also apply to persons who perform such activities in the course of their gainful occupation. They may employ either Austrian or Swiss personnel, at their equal choice, for this purpose.

(3) The crossing of the frontier by the persons referred to in the preceding paragraphs and their sojourn in the territorial State shall be subject to the general provisions of that State. Such facilities as are possible under those provisions shall be granted. If any permit is required for the activity relating to frontier clearance which such persons perform in the zone as aliens from the neighbouring State, a permit shall be issued free of charge.

PART VI

FINAL PROVISIONS

Article 22

The competent administrative authorities of the two States shall determine by agreement the measures necessary for the application of this Convention.

Article 23

(1) A Mixed Austrian-Swiss Commission, which shall be established immediately after the entry into force of this Convention, shall have the following functions:

(a) To prepare the agreements provided for in article 1 and to formulate any proposals for the amendment of this Convention;

(b) To endeavour to resolve any difficulties which may arise out of the application of this Convention.

(2) The Commission shall be composed of eight members, four of whom shall be appointed by each Contracting State. The Commission shall elect its Chairman alternately from among the Austrian and the Swiss members. The members of the Commission may arrange to be accompanied by experts.

Article 24

Either Contracting State may, in the interests of its security or for any other reason of compelling public interest, declare provisions of this Convention or of the agreements provided for in article 1 temporarily or locally inapplicable. The Government of the other State shall be so notified forthwith.

Article 25

(1) This Convention is subject to ratification. The instruments of ratification shall be exchanged at Vienna as soon as possible.

(2) This Convention shall enter into force one month after the exchange of the instruments of ratification.

(3) This Convention may be denounced at any time ; it shall cease to have effect two years after denunciation.

IN WITNESS WHEREOF the plenipotentiaries of the two sides have signed this Convention and have thereto affixed their seals.

DONE at Berne, on 2 September 1963, in two original copies in the German language.

For the Republic of Austria :

Dr. J. G. TURSKY

For the Swiss Confederation :

F. T. WAHLEN

FINAL PROTOCOL

Upon signing the Convention concluded this day¹ between the Republic of Austria and the Swiss Confederation concerning the establishment of adjoining frontier clearance offices and frontier clearance on board moving transport, the undersigned plenipotentiaries have agreed on the following provisions, which form an integral part of the Convention :

1. Having regard to article 4, paragraph (3), of the Convention, the provisions of article 6, paragraph (3), thereof shall not apply to any arrest or seizure made by officials of the territorial State for the purpose of criminal proceedings or execution of the sentence of a court for an offence against regulations other than those governing passenger traffic across the frontier and the import, export and transit of goods and other property.

Where officials of the neighbouring State have made or wish to make any arrest or seizure on the basis of this Convention, the territorial State shall have priority. The territorial State shall, after completing the criminal proceedings or the execution of the sentence, surrender to the neighbouring State the person in custody and, unless an order has been made concerning them in the territorial State, the articles seized.

2. The foregoing shall not affect the law of the territorial State concerning asylum. Any person who relies on the said law may, however, be taken by the officials of the neighbouring State to their frontier clearance office in the territorial State or, if there is no such office, to the frontier clearance office of the territorial State for interrogation. In the former case an official of the territorial State shall attend the interrogation and the person concerned shall, after interrogation, be surrendered to the officials of the territorial State.

3. The interested railways in each of the two States shall be given an opportunity to state their views before agreements are concluded under articles 16 and 22 and before the powers of clearance and hours of business of the frontier offices of the two sides are determined.

4. Articles 4 to 15 and 17 to 24 of this Convention shall apply *mutatis mutandis* to the existing Austrian frontier clearance offices at St. Margrethen and Buchs. Persons detained by Austrian officials at the St. Margrethen railway station may be conveyed to Austria by train via the St. Margrethen-Bregenz line ; the conveyance to Austria of persons detained by Austrian officials at the Buchs railway station shall, where it is effected via a line passing through Liechtenstein territory, be regulated in an agreement between the Governments of the Principality of Liechtenstein, the Republic of Austria and the Swiss Confederation.

¹ See p. 104 of this volume.

Upon the entry into force of this Convention, articles 5 to 13 and article 18 of the Agreement concluded on 30 April 1947 between Austria and Switzerland concerning the Austrian Customs Service at the St. Margrethen and Buchs railway stations and the movement of customs officers in transit over short foreign connecting lines shall be abrogated, while the remaining provisions concerning the Austrian frontier clearance offices at St. Margrethen and Buchs shall remain in force until such time as they are amended or superseded by an agreement under article 1, paragraph (3), of this Convention.

DONE at Berne, on 2 September 1963, in two original copies in the German language.

For the Republic of Austria :

Dr. J. G. TURSKY

For the Swiss Confederation :

F. T. WAHLEN