

No. 14255

**AUSTRIA
and
SWITZERLAND**

**Agreement to supplement the European Convention on
Extradition of 13 December 1957 and to facilitate its
application. Signed at Bern on 13 June 1972**

Authentic text: German.

Registered by Austria on 2 September 1975.

**AUTRICHE
et
SUISSE**

**Accord en vue de compléter la Convention européenne
d'extradition du 13 décembre 1957 et de faciliter son
application. Signé à Berne le 13 juin 1972**

Texte authentique: allemand.

Enregistré par l'Autriche le 2 septembre 1975.

[TRANSLATION—TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE SWISS CONFEDERATION TO SUPPLEMENT THE EUROPEAN CONVENTION ON EXTRADITION OF 13 DECEMBER 1957² AND TO FACILITATE ITS APPLICATION

The Federal President of the Republic of Austria and the Swiss Federal Council,

Desiring to supplement the European Convention on Extradition² (hereinafter referred to as "The Convention") with respect to the relations between the two States and to facilitate the application of the principles contained therein, have resolved to conclude an agreement and have for that purpose appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Mr. Erich Bielka-Karltru, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria to Switzerland,

The Swiss Federal Council: Mr. Pierre Graber, Federal Councillor, Head of the Swiss Political Department.

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

Article I (ad article 1 of the Convention). If, under the law of the requesting State, decisions ordering the carrying out of a sentence are taken by an administrative authority, such decisions shall, for the purposes of the Convention, be assimilated to decisions of a competent authority (*autorité judiciaire*).

Article II (ad article 2 of the Convention). (1) Extradition shall also be granted where the term of the prison sentence still to be carried out or, if there is more than one prison sentence still to be carried out, the sum of the terms thereof amounts to at least three months.

(2) If extradition is granted in accordance with article 2, paragraph 1, of the Convention, extradition shall be granted also in respect of other offences if those offences are punishable in both States by a penalty which must be imposed by a court.

(3) Extradition for the carrying out of a preventive measure (detention order) which has been ordered also in connexion with offences in respect of which extradition is inadmissible shall be granted if the measure would have been ordered even without regard to those offences.

Article III (ad articles 7 and 8 of the Convention). (1) The requested State shall grant extradition in respect of an offence which, according to its law, is within its jurisdiction if extradition is being granted in respect of another offence and if trial by the judicial authorities of the requesting State for all offences is expedient in the interest of ascertaining the truth, or for reasons of awarding the punishment and carrying out of the sentence, or in the interest of rehabilitating the offender.

¹ Came into force on 14 December 1974, i.e., one month after the date of the exchange of the instruments of ratification, which took place at Vienna on 14 November 1974, in accordance with article XVIII (1) and (2).

² United Nations, *Treaty Series*, vol. 359, p. 273.

(2) As regards decisions concerning consent to re-extradition, paragraph 1 shall apply *mutatis mutandis*.

Article IV (ad article 9 of the Convention). (1) Extradition shall also not be granted if the offences were committed in a third State and if one of the decisions referred to in article 9 of the Convention was issued in that State in respect of those offences, provided that no special grounds exist for objecting to that decision.

(2) Where final judgement has been passed in the requested State, extradition shall none the less be granted under the conditions specified in article III, paragraph 1, of this Agreement if new facts or evidence justify a resumption of the proceedings or if the sentence imposed in the judgement has not been served or has been served only in part.

(3) Extradition shall not be refused if, in the requested State, proceedings were not instituted or proceedings which had been instituted did not lead to a conviction solely by reason of that State's lack of jurisdiction.

Article V (ad article 10 of the Convention). The prevention of any legal effects of lapse of time shall be governed solely by the law of the requesting State.

Article VI. (1) An amnesty proclaimed in the requested State shall not preclude extradition if the offence is not within the jurisdiction of that State.

(2) The obligation to extradite shall not be affected by the absence of any declaration by the injured party (application or authorization) which may be required under the law of the requested State in order to institute proceedings.

Article VII (ad article 12 of the Convention). (1) Without prejudice to the admissibility of the diplomatic channel, requests for extradition or for transit shall be communicated through the Federal Minister of Justice in the case of the Republic of Austria and through the Swiss Police Department in the case of the Swiss Confederation. Except as otherwise provided in the Convention and in this Agreement, other correspondence between the two States shall also be conducted through those channels.

(2) A request for extradition or transit for the carrying out of a sentence shall be accompanied by the documents evidencing the immediate enforceability of the sentence.

(3) In the cases referred to in article II, paragraph 2, of this Agreement, the request may, for the purposes of article 12, paragraph 2 (a), of the Convention, be accompanied by the original or an authenticated copy of a judicial document evidencing the facts of the case in lieu of a warrant of arrest or other order having the same effect. The same shall apply in cases where extradition has already been carried out and a request for consent to further prosecution is subsequently submitted.

Article VIII (ad article 14 of the Convention). (1) Conditional discharge without an order restricting the freedom of movement of the extradited person shall be assimilated to final discharge.

(2) For the purposes of article 14, paragraph 2, of the Convention, the requesting State may also take measures to obtain the documents necessary for the submission of a request for consent in accordance with article 14, paragraph 1 (a), of the Convention. To that end, the extradited person may be questioned and may be brought before a court for questioning. Once a request for consent has

been submitted, the extradited person may be held in custody in the requesting State until the decision concerning the request is received if such custody is in itself admissible under the law of that State.

Article IX (ad article 15 of the Convention). A request for consent to re-extradition to another party to the Convention or to a third State shall be accompanied by the documents mentioned in article 12, paragraph 2, of the Convention which have been communicated to the State submitting the request for consent.

Article X (ad article 16 of the Convention). (1) Requests for provisional arrest may be submitted:

- in the case of Austria, by the courts, by State Counsel's Departments and by the Federal Minister of Justice and the Federal Minister of the Interior;
- in the case of Switzerland, by the courts, by the prosecuting authorities and prison authorities and by the Swiss Police Department.

(2) The statement of the offence in the request shall include a brief account of the facts of the case.

Article XI (ad article 17 of the Convention). When making a decision under article 17 of the Convention, the requested State shall also decide on the admissibility of any re-extradition. It shall inform all States involved of its decision concerning re-extradition.

Article XII (ad article 19 of the Convention). (1) Article 19, paragraph 1, of the Convention shall also apply with respect to the carrying out of a preventive measure (a detention order).

(2) For the purposes of article 19, paragraph 2, of the Convention, temporary surrender may be requested for the performance of urgent procedural acts. The procedural acts shall be described in detail in the request. Surrender shall not be consented if a prosecution in the requested State would thereby be substantially delayed or impeded. The person surrendered shall be returned after the performance of the procedural acts in the requesting State or upon the application of the requested State.

(3) In case of temporary surrender, the person surrendered shall be held in custody throughout in the requesting State. The time spent in custody shall be taken into account in the requested State.

(4) Expenses incurred in the territory of the requested State by reason of temporary surrender shall not be reimbursed.

Article XIII (ad article 20 of the Convention). (1) In the cases referred to in article 20, paragraphs 1 and 2, of the Convention, the requested State shall, when reporting the seizure of property, also indicate whether the person to be extradited agrees to the direct return of the property to the injured party. The requesting State shall inform the requested State as soon as possible whether it waives the handing over of the property on the condition that it is delivered to the injured party or his authorized representative upon production of a certificate issued by its competent judicial authority.

(2) Otherwise, the property referred to in article 20, paragraph 1, of the Convention, or any proceeds from the sale thereof shall be handed over even in the absence of a special request, if possible. However, in the case of property which the requesting State declares that it does not require as evidence, the requested State may refrain from handing over the property:

- (a) where the injured party is habitually resident in the latter State; or
(b) where a person not involved in the offence shows that he has in good faith acquired rights in the property in the requested State, if his claims have been neither satisfied nor secured.

(3) The requesting State shall be entitled to refrain from returning property to the requested State as provided for in article 20, paragraph 4, of the Convention, unless the conditions referred to in paragraph 2 (b) above exist.

(4) When handing over property and waiving the return thereof, the requested State shall not assert any customs lien or other liability *in rem* under the provisions of customs law or taxation law, unless the property-owner injured by the offence is himself liable for the duty or tax in question.

Article XIV (ad article 21 of the Convention). (1) The State requested to grant transit shall hold the person handed over to it in custody throughout transit.

(2) Where a person is to be transported by air over the territory of one of the two States without landing, the requesting State shall also report that, according to the known facts and available documents, the person concerned neither possesses nor claims the nationality of the State over whose territory the flight is to be made. It shall further report that the person is not being extradited for any of the offences referred to in articles 3 to 5 of the Convention or for an offence consisting solely of the contravention of regulations concerning monopolies or concerning the import, export, transit or rationing of goods.

Article XV (ad article 23 of the Convention). No translations of requests submitted under the Convention or under this Agreement, or of accompanying documents, shall be required.

Article XVI. For the purposes of this Agreement, the term “sentence” also includes a preventive measure (detention order).

Article XVII (ad article 31 of the Convention). Should either of the Contracting Parties denounce the Convention, it shall remain in force as between them initially for a period of two years. That period shall begin six months after the date when the Secretary-General of the Council of Europe receives notification. It shall be automatically extended for successive periods of one year, unless either of the Contracting Parties informs the other in writing six months before the expiry of the period that it does not agree to a further extension.

Article XVIII. (1) This Agreement shall be ratified; the instruments of ratification shall be exchanged at Vienna as soon as possible.

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

(3) This Agreement may be denounced in writing at any time; it shall cease to have effect six months after the date of denunciation. Even if it is not denounced, it shall cease to have effect on the date when the European Convention on Extradition ceases to have effect as between the Parties to this Agreement.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Agreement and have thereto affixed their seals.

DONE at Bern, on 13 June 1972, in duplicate in the German language.

For the Republic of Austria:
Dr. BIELKA
For the Swiss Confederation:
GRABER