

No. 14256

**AUSTRIA
and
SWITZERLAND**

Agreement to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 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'entraide judiciaire en matière pénale du 20 avril 1959 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 MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 20 APRIL 1959² 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 Mutual Assistance in Criminal Matters²—hereinafter referred to as “the Convention”—in relations between the two States and to facilitate the application of the principles contained therein, have decided to conclude an agreement and have for that purpose appointed as their plenipotentiaries:

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

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

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

Article I (ad article 1 of the Convention). (1) The Convention and this Agreement shall apply in respect of offences the punishment of which falls within the jurisdiction of the judicial or administrative authorities of the requested State. Mutual assistance afforded through service of writs shall be admissible without this restriction.

(2) The administrative authorities of the requesting State shall be deemed equivalent to its judicial authorities if their procedures permit appeal to a court competent to hear criminal matters.

(3) The Convention and this Agreement shall also apply:

- (a) to service of a summons requiring the recipient to begin serving a sentence or to pay a fine or legal costs;
- (b) in matters relating to suspended sentences, conditional release, or postponement or interruption of the execution of sentences;
- (c) in matters relating to pardons;
- (d) in proceedings concerning claims for compensation for unjustified detention or other prejudice resulting from criminal proceedings, provided that the provisions of other international agreements are not applicable.

Article II (ad articles 3 and 6 of the Convention). (1) Where it is not possible for a request for search or seizure of property to be accompanied by an original or certified copy of the relevant judicial order, a declaration by the competent judicial authority that the necessary conditions for such action are present under the law in force in the requesting State shall be sufficient.

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 XVII (1) and (2).

² United Nations, *Treaty Series*, vol. 472, p. 185.

(2) The rights of third parties and—without prejudice to paragraph 7—of the requested State to property or documents to be transmitted under article 3 of the Convention or under this Agreement shall not be affected.

(3) In addition to the evidentiary material referred to in article 3 of the Convention, property connected with the offence or the proceeds of its sale shall also be transmitted at the request of a competent authority, for handing over to the injured party, unless

- (a) the property is subject to seizure or forfeiture on the requested State, or
- (b) a person who did not participate in the commission of the offence furnishes satisfactory evidence that he has in good faith acquired rights to the property in the requesting State, such person's claim having been neither satisfied nor secured.

(4) The said request may be submitted at any time before completion of execution of the sentence.

(5) Article 6, paragraph 1, of the Convention shall also apply in respect of the property referred to in paragraph 3 of this article. Other proceedings pending in the requested State shall be deemed equivalent to criminal proceedings within the meaning of article 6, paragraph 1, of the Convention.

(6) In the decision concerning the waiver of return of property referred to in article 6, paragraph 2, of the Convention, account shall be taken of whether a person who did not participate in the commission of the offence furnishes satisfactory evidence that he has in good faith acquired rights to the property in one of the two States and of whether his claim has been satisfied or secured.

(7) Customs liens and other *ad rem* claims under the provisions of customs or tax law shall not be asserted by the requested State when transmitting property whose return has been waived, unless the owner of the property, being the injured party in respect of the offence, is himself liable for payment.

(8) Save as otherwise agreed in individual cases, property to be transmitted shall be sent by post or handed over at the frontier.

Article III (ad article 4 of the Convention). (1) At the request of the authorities participating in the criminal proceedings, representatives of the said authorities as well as the other parties concerned and their counsel shall be permitted to be present when measures of mutual assistance are executed in the requested State. They may raise further questions or propose further measures. The protection afforded under article 12, paragraphs 1 and 3, of the Convention shall apply as appropriate to all such persons.

(2) The performance of functions by representatives of the authorities of the other State shall be subject, in the Republic of Austria, to the consent of the Federal Minister of Justice and, in Switzerland, to that of the Federal Department of Justice and Police and of the Department of Justice of the canton in which mutual assistance is to be provided.

Article IV (ad article 5 of the Convention). Mutual assistance in the form of search or seizure of property shall be provided only in cases where a judicial authority would be competent to persecute the offence in the requested State. Article I, paragraph 2, shall not apply.

Article V (ad article 10 of the Convention). Article 10, paragraph 2, of the Convention shall apply to all cases in which a witness or expert is summoned to

appear. Such persons may themselves request the advance provided for in article 10, paragraph 3, of the Convention.

Article VI (ad articles 11 and 12 of the Convention). (1) If either State applies for a person in custody in its territory

- (a) to be present when letters rogatory are executed in the other State or
- (b) to be transferred to a third State for this purpose through the territory of the other State,

such application shall be granted, provided that no particular reasons exist for not doing so.

(2) The State to which the person in custody is transferred pursuant to paragraph 1 shall keep him in custody for the duration of his stay. It may not prosecute him for any act committed prior to his transfer.

(3) The person in custody shall be returned to the requesting State as soon as the requested State has executed the requested measure of mutual assistance or has taken him back from a third State.

Article VII (ad article 13 of the Convention). A requested State shall communicate information from judicial records, requested from it by the police authorities of the other State and needed in a criminal matter, to the same extent that such information may be made available to its own police authorities in like cases. Information relating to deleted (cancelled) entries shall under no circumstances be communicated.

Article VIII (ad article 14 of the Convention). (1) Requests for service shall, in indicating the object of and the reason for the request, also specify the nature of the document to be served and the status of the recipient in the proceedings.

(2) Requests submitted by telephone or telegraph must be confirmed in writing.

Article IX (ad article 15 of the Convention). (1) Save as otherwise provided by this Agreement, the judicial authorities of the two States may communicate directly with one another. Where, in connexion with letters rogatory, application is made for permission for the representative of an authority to be present when a measure of mutual assistance is executed in the requested State, a copy of the letters rogatory shall in addition be transmitted in the manner prescribed in paragraph 2.

(2) Requests for search or seizure, for the transmittal of property or for the transfer or transit of persons in custody shall be transmitted through the Federal Minister of Justice of the Republic of Austria and the Swiss Federal Department of Police. Direct communication between the judicial authorities shall be permitted in urgent cases, but a copy of the request shall in addition be transmitted in the manner prescribed in the first sentence.

(3) Requests for the communication of information and extracts from judicial records needed in a criminal matter, including the deletion (cancellation) of entries in judicial records, shall be addressed to the Office of Judicial Records of the Federal Department of Police in Vienna or to Swiss Police Headquarters, as the case may be.

(4) The requests referred to in article VII of this Agreement shall be transmitted through the Federal Minister of the Interior of the Republic of Austria

and Swiss Police Headquarters. Where delay would be dangerous, direct communication between the police authorities and the judicial records authorities referred to in paragraph 3 shall be permissible.

(5) Requests for information from judicial records required in other than criminal matters shall be dealt with in written communication between the Federal Minister of Justice of the Republic of Austria and Swiss Police Headquarters.

Article X. (1) In criminal matters dealt with by the police authorities of one State on behalf of the judicial authorities or independently, the police authorities of the other State shall provide assistance within the framework of and pursuant to the Convention and this Agreement by tracing and identifying persons and by obtaining and supplying information, where necessary, conducting interrogations for these purposes. Where delay would be dangerous, such assistance shall include other interrogations, searches and measures to secure property.

(2) Written communication pursuant to this article shall be carried on between the Federal Minister of the Interior of the Republic of Austria and Swiss Police Headquarters.

Article XI (ad article 16 of the Convention). Translations of requests submitted pursuant to the Convention or this Agreement, or of annexed documents, shall not be required.

Article XII (ad article 20 of the Convention). Expenses incurred by the transmittal of property for handing over to the injured party (article II) and by the transfer or transit of persons in custody (article VI) shall be refunded by the requesting State.

Article XIII (ad article 21 of the Convention). (1) On the basis of information laid by one Contracting State pursuant to article 21 of the Convention, the competent authorities of the other Contracting State shall determine whether the latter's legislation calls for proceedings to be initiated. In the case of traffic offences, this determination shall be made in the requested State on the basis of the traffic regulations in force at the place of the offence.

(2) A declaration by the injured party required for the initiation of proceedings (an application or authorization) which has been made in the requesting State shall also be valid in the requested State. A declaration required only under the law of the requested State may be furnished within a period of two months after information is laid to the authority competent to prosecute in that State.

(3) The information shall contain a brief statement of the relevant facts. It shall be accompanied by:

- (a) originals or copies of the records of the case together with the relevant evidentiary material;
- (b) a copy of the penal provisions applicable under the law of the requesting State;
- (c) in the case of traffic offences, in addition, a copy of the traffic regulations on the basis of which a determination must be made.

(4) Property or originals of documents transmitted to the requested State shall be returned, at the latest, upon the completion of the proceedings, unless the requesting State waives their return.

(5) The authorities of the requesting State shall take no further measures of prosecution or execution against the accused in respect of the act to which the information relates

- (a) where the sentence imposed has been served or remitted or has become subject to statutory limitation;
- (b) during such time as the sentence is wholly or partly suspended or sentencing is postponed;
- (c) where the accused has, with final effect, been acquitted or discharged on the evidence.

(6) Expenses incurred by the application of article 21 of the Convention and of this article shall not be refunded.

(7) This article shall also apply in the case governed by article 6, paragraph 2, of the European Convention on Extradition of 13 December 1957.¹

Article XIV (ad article 22 of the Convention). (1) Information from judicial records shall be exchanged at least once each quarter by the Federal Minister of the Interior of the Republic of Austria and Swiss Police Headquarters.

(2) The Federal Minister of Justice of the Republic of Austria and the Swiss Federal Department of Police shall transmit to each other, on request, copies of decisions rendered in particular criminal matters so as to enable the requesting State to determine whether they call for the adoption of domestic measures.

Article XV. For the purposes of this Agreement, the term "sentence" shall also include preventive (security) measures.

Article XVI (ad article 29 of the Convention). If the Convention is denounced by either of the Parties to this Agreement, it shall remain in force between them for an initial period of two years. This period shall commence six months after receipt of notification by the Secretary-General of the Council of Europe. It shall be automatically extended for further periods of one year unless one Contracting Party informs the other in writing six months before the expiry of the period that it does not agree to a further extension.

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

(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 denunciation. It shall also cease to have effect in the absence of denunciation at such time as the European Convention on Mutual Assistance in Criminal Matters ceases to apply 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

¹ United Nations, *Treaty Series*, vol. 359, p. 273.