

No. 14692

FEDERAL REPUBLIC OF GERMANY
and
AUSTRIA

Treaty concerning the operation of locked trains (trains in bond) of the Austrian Federal Railways on sections of the German Federal Railways in the Federal Republic of Germany. Signed at Bonn on 15 December 1971

Authentic text: German.

Registered by the Federal Republic of Germany on 1 April 1976.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUTRICHE

Traité relatif au fonctionnement des trains verrouillés des chemins de fer autrichiens circulant sur les lignes des chemins de fer fédéraux allemands en République fédérale d'Allemagne. Signé à Bonn le 15 décembre 1971

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 1^{er} avril 1976.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF AUSTRIA CONCERNING THE OPERATION OF LOCKED TRAINS (TRAINS IN BOND) OF THE AUSTRIAN FEDERAL RAILWAYS ON SECTIONS OF THE GERMAN FEDERAL RAILWAYS IN THE FEDERAL REPUBLIC OF GERMANY

The President of the Federal Republic of Germany and the Federal President of the Republic of Austria,

Desiring to make possible the operation of locked trains (trains in bond) of the Austrian Federal Railways on sections of the German Federal Railways in the Federal Republic of Germany, have agreed to conclude a Treaty for that purpose and have accordingly appointed as their plenipotentiaries:

The President of the Federal Republic of Germany: Dr. Paul Frank, Secretary of State in the Ministry of Foreign Affairs, and Dr. Wolfgang Vaerst, *Ministerialdirektor* in the Federal Ministry of Transport;

The Federal President of the Republic of Austria: Dr. Willfried Gredler, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria to the Federal Republic of Germany, and Dr. Robert Stanfel, *Sektionschef* in the Federal Ministry of Transport.

The plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. (1) In the case of scheduled rail traffic (subparagraph (a)) and of interruption of traffic (subparagraph (b)), the German Federal Railways and the Austrian Federal Railways may agree that locked trains and groups of coaches shall, as through traffic (hereinafter referred to as rail transit traffic) enjoying the facilities authorized under this Treaty, be carried by the German Federal Railways on its sections of track on behalf of the Austrian Federal Railways for the route connexions specified below:

- (a) Passenger trains, passenger coaches, luggage vans and mail coaches between the Salzburg Central and Kufstein railway stations on the Salzburg Central – Rosenheim – Kufstein section;
- (b) For the purpose of restoring a rail connexion broken as a result of an interruption of traffic in the territory of the Republic of Austria, passenger trains, passenger coaches, luggage vans and mail coaches as well as freight trains and freight cars on the following sections:
 - Salzburg Central – Rosenheim – Kufstein;
 - Salzburg Central/Kufstein – Rosenheim – Munich – Mittenwald;
 - Salzburg Central/Kufstein – Rosenheim – Munich – Kempten – Lindau;
 - Salzburg Central/Kufstein – Rosenheim – Munich – Ulm – Friedrichshafen – Lindau.

Where, for operational reasons, diversions to other sections become necessary in exceptional cases, the said sections shall be determined by the Federal Railway Board

¹ Came into force on 1 July 1974, i.e., the first day of the second month that followed the exchange of the instruments of ratification, which took place at Vienna on 8 May 1974, in accordance with article 22 (1) and (2).

in Munich in consultation with the competent frontier police authority and the competent higher financial board of the Federal Republic of Germany.

(2) In the case of the scheduled rail transit traffic referred to in paragraph 1 (a), the German Federal Railways shall take the necessary measures in consultation with the competent frontier police authority and the competent higher financial board; the Austrian Federal Railways shall obtain the views of the competent safety authority, the competent *Land* financial board and the competent railway authority.

(3) Where diversions are made in accordance with paragraph 1(b), the German Federal Railways and the Austrian Federal Railways shall notify in good time the respective authorities referred to in paragraph 2.

(4) The performance of and reimbursement for the transport services provided by the German Federal Railways for the Austrian Federal Railways shall remain subject to agreements to be concluded between the German Federal Railways and the Austrian Federal Railways.

Article 2. Save as otherwise provided by this Treaty, rail transit traffic shall be subject to the law of the Federal Republic of Germany.

Article 3. (1) This Treaty shall apply to persons of whatsoever nationality and to hand luggage, accompanying animals, heavy luggage, express freight, goods (including carcasses and livestock) and mail.

(2) The facilities provided for under this Treaty shall also apply to the conveyance in transit of Austrian executive officials and, in peacetime, of uniformed Austrian military personnel travelling with unloaded service weapons and other equipment while on duty, proceeding to or from their units or military duty stations, on leave or proceeding to their homes; during rail transit, superiors may issue to their accompanying subordinates only such instructions as are necessary for the maintenance of discipline. Articles 3, 4 and 5 of the Agreement of 14 September 1955 between the Federal Republic of Germany and the Republic of Austria concerning the conveyance of executive officials in road and rail transit shall apply as appropriate, information as to the competent frontier police posts shall be given through the diplomatic channel.

(3) No prisoners shall be carried in rail transit.

Article 4. (1) Rail transit traffic shall be subject to frontier control only:

- (a) For the purpose of conducting spot-checks;
- (b) Where there is suspicion of violations by passengers of the provisions of this Treaty;
- (c) For the purpose of preventing or detecting criminal offences.

(2) The facilities provided for in paragraph 1 shall apply:

- (a) On the Salzburg Central – Rosenheim – Kufstein section without restriction as to time;
- (b) On the other transit sections specified in article 1 only for a period of three days after the occurrence of an interruption of rail traffic in Austrian territory (inclusive of the day on which the interruption begins).

(3) In order to ensure compliance with this Treaty, trains on the Salzburg Central – Rosenheim – Kufstein section may be escorted by frontier control personnel of each of the two Contracting States. Frontier control personnel of the Federal Republic of Germany may begin and end their escort duty at joint or transfer

railway stations in the territory of the Republic of Austria. Frontier control personnel shall be carried free of charge.

(4) Where trains are escorted in accordance with paragraph 3, frontier control operations permitted under paragraph 1 may also take place during the journey. The Agreement of 14 September 1955 between the Federal Republic of Germany and the Republic of Austria concerning facilities for the frontier control of rail, road and waterway traffic shall apply to the said frontier control operations and to the escort of trains in accordance with paragraph 3.

Article 5. (1) No transit visa shall be required in rail transit traffic. Persons over 16 years of age must carry an official identity card bearing their photograph.

(2) The facilities provided for in paragraph 1 shall apply:

- (a) To the rail transit traffic specified in article 1, paragraph 1(a), without restriction as to time;
- (b) To the rail transit traffic specified in article 1, paragraph 1(b), only for a period of three days after the occurrence of an interruption of rail traffic in Austrian territory (inclusive of the day on which the interruption begins); during this time, the second sentence of paragraph 1 shall not apply.

Article 6. (1) Subject to compliance with the provisions governing transit traffic, goods carried in rail transit shall be exempt from import and export duties and from economic import, export and transit prohibitions and restrictions; deposit of security shall not be required. Where the said provisions are not complied with, the levying of import and export duties shall be waived if proof is furnished that the goods have been returned to Austria in unaltered condition.

(2) Goods carried in rail transit shall be subject to inspection by the customs authorities. The railway administrations concerned shall make available the documents required for this purpose.

(3) Registered luggage and express freight, goods in locked luggage vans and in containers, and mail—including mail carried in mail coaches—shall be taken in bond by the Austrian Federal Railways unless the competent customs authorities of both Contracting States decide to waive this procedure.

Article 7. (1) Transport prohibitions imposed in the Federal Republic of Germany for the protection of human beings, animals or plants shall also apply to rail transit traffic.

(2) The transit of solipeds, cattle, sheep, goats and pigs shall be permissible if the animals are provided with the necessary documents, such as certificates of origin and health and animal permits, establishing that they are of infection-free origin. Veterinary certificates shall not be required for other animals or animal parts, or unprocessed matter products. No veterinary inspection of rail transit traffic shall take place at the frontier.

(3) No special certificate of origin or health shall be required for living plants or parts of plants carried in rail transit.

(4) Imported meat in rail transit shall not be subject to examination under the provisions of the Meat Inspection Act. In special cases where meat is removed from the train, the legal provisions relating to the inspection of imported meat shall remain unaffected.

Article 8. (1) Trains carrying passengers in transit shall be kept locked while in the Federal Republic of Germany.

(2) During rail transit, passengers shall be forbidden to board or alight from the train, to take goods into or out of the train, or to open customs or railway seals. Employees of the two railway administrations shall supervise compliance with these prohibitions and, in the event of violations, shall take steps to restore the conditions required by this Treaty, where necessary through the use of direct compulsion; in so doing, they shall apply the domestic legal provisions by which they are normally bound. If it becomes necessary to make an exception to these prohibitions or if a prohibition is infringed, the train conductor shall, where frontier control officials are not present, prepare a report on the matter, a copy of which shall be transmitted forthwith to the competent authorities of the two Contracting States.

(3) Where trains make an unexpected stop for an extended period, the train conductor shall see to it that the nearest customs post and the nearest frontier police post in the Federal Republic of Germany are notified forthwith.

Article 9. (1) Passengers who, in contravention of article 8, paragraph 2, leave the train in the territory of the Federal Republic of Germany—with the exception of Germans as defined in article 116, paragraph 1, of the Basic Law—shall, at the request of the competent German authorities, be placed back on the train by the train attendants and conveyed thereon to Austrian territory.

(2) Passengers who, in contravention of article 8, paragraph 2, board the train in the territory of the Federal Republic of Germany shall be ordered off the train by the train attendants.

(3) The Republic of Austria shall, at the request of the competent German authorities, take back any persons not Germans within the meaning of article 116, paragraph 1, of the Basic Law who, while in rail transit, have left the train and remained in the territory of the Federal Republic of Germany.

(4) The Federal Republic of Germany shall, at the request of the competent Austrian authorities, take back any persons not of Austrian nationality who have boarded the train in transit through the territory of the Federal Republic of Germany and thus reached the territory of the Republic of Austria.

(5) The above-mentioned persons shall be taken back in due compliance with the Agreement concluded on 19 July 1961¹ by an exchange of notes between the Government of the Federal Republic of Germany and the Austrian Federal Government concerning the acceptance of persons at the frontier between the Federal Republic of Germany and Austria (German-Austrian Deportation Agreement), departure from the train in the territory of the Federal Republic of Germany in contravention of article 8, paragraph 2, being regarded as unauthorized entry into the territory of the Federal Republic of Germany and entry into the territory of the Republic of Austria being regarded as unauthorized if the train has been boarded in the territory of the Federal Republic of Germany in contravention of article 8, paragraph 2.

Article 10. (1) During stops at railway stations in the Federal Republic of Germany, the section of platform adjacent to the train shall, at the request of the competent German authorities, be closed to public traffic and to the sale of goods.

(2) Save where the following admissible exceptions apply, goods may be carried only in freight cars, luggage vans or mail coaches or in luggage or mail compartments. Only hand luggage and accompanying animals may be carried in passenger coaches. Apart from operational requisites, only articles needed by railway personnel for official or personal use during the journey may be carried in locomotives and

¹ United Nations, *Treaty Series*, vol. 414, p. 211.

tenders, in the engine compartment of rail-cars and in the driver's cabin of rail-cars and rail motor-coach units.

Article 11. (1) Mail carried by rail in transit shall not be subject to any restrictions or duties in the Federal Republic of Germany. The amount of any transit charges payable on mail carried between foreign countries in transit through the Federal Republic of Germany shall be determined in accordance with the Universal Postal Convention¹ and the Universal Postal Union Agreement.²

(2) Mailboxes in luggage vans and mail coaches and in luggage and mail compartments shall be kept locked during the journey in transit.

(3) Mail carried in luggage vans and mail coaches and in luggage and mail compartments shall not be searched.

Article 12. Personnel of the Contracting States employed in rail transit traffic shall be required to accord one another any necessary assistance in the performance of their official duties and to accede to requests for such assistance in the same manner as to similar requests from their own personnel. While supervising transit traffic, frontier control personnel of the Contracting States shall, moreover, inform one another of any offences that are noted.

Article 13. The provisions of criminal law in force in one Contracting State for the protection of official acts and of civil servants shall also apply to criminal offences committed in that State against personnel of the other Contracting State employed in rail transit traffic if such personnel are engaged in the performance of their duties or if the offence is committed in connexion with those duties.

Article 14. (1) Personnel of the Contracting States employed in rail transit traffic may wear uniforms.

(2) Each Contracting State shall, at the request of the other Contracting State, exclude or recall employees from duty in the territory of the latter Contracting State.

(3) Where in the performance of his duties a rail transit employee of one of the Contracting States suffers an accident or is taken ill, the Contracting State in question shall provide medical assistance, medicine and nursing care if, for health reasons, it is not feasible to transfer the employee to the other Contracting State. Any expenses thus incurred shall be reimbursed by the administration to which the employee belongs; claims for compensation and rights of recourse by the said administration against third parties shall remain unaffected.

Article 15. (1) For carriage as specified in articles 1 and 3, the same legal provisions relating to carriage and rates shall apply—in particular, those of the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV)³ and of the International Convention concerning the Carriage of Goods by Rail (CIM)⁴—as would have applied if the carriage had taken place on sections of the Austrian Federal Railways.

(2) Carriage in rail transit traffic shall not be subject to turnover tax in the Federal Republic of Germany; it shall be subject to transport tax in the Republic of Austria.

¹ United Nations, *Treaty Series*, vol. 611, p. 105.

² *Ibid.*, p. 387.

³ Registered with the Secretariat of the United Nations on 8 August 1978 under No. I-16898.

⁴ Registered with the Secretariat of the United Nations on 8 August 1978 under No. I-16897.

Article 16. (1) Employees of the Austrian Federal Railways shall be authorized to inspect tickets on trains and to leave responsibility for the maintenance of order on trains to employees of the German Federal Railways. Where employees of the German Federal Railways are not present, employees of the Austrian Federal Railways shall exercise their railway authority in accordance with the domestic legal provisions by which they are normally bound.

(2) In rail transit traffic pursuant to article 1, paragraph 1(b), passengers, with the exception of German nationals, shall not be prosecuted, tried, taken into custody or otherwise restricted in their personal freedom in the Federal Republic of Germany by reason of acts previously committed which make the perpetrator subject to prosecution by judicial or administrative authorities; this provision shall apply only for a period of three days after the occurrence of an interruption of rail traffic in Austrian territory (inclusive of the day on which the interruption begins).

Article 17. (1) Where, as a result of an accident occurring in the course of rail transit operations, a passenger is killed or injured or an article which a passenger has on his person or is carrying with him is damaged or lost, the Austrian Federal Railways shall bear liability in the same manner as an operator under Austrian law; it shall, moreover, be answerable for the German Federal Railways and the latter's personnel. The persons and groups of persons referred to in article 3, paragraph 2, shall, in this connexion, be regarded as passengers. Claims by an injured party against the German Federal Railways in the latter's capacity as operator shall remain unaffected.

(2) As regards liability for late delivery, failure to meet a delivery schedule and total or partial loss or damage in the case of luggage, express freight and goods (including carcasses and livestock) carried in rail transit, the same legal provisions on liability in respect of carriage and rates shall apply as would have applied if the carriage had taken place on sections of the Austrian Federal Railways in Austria. No liability shall be borne by the German Federal Railways.

(3) Where, as a result of an accident, an Austrian employed in rail transit traffic is killed or injured in the performance of his duties in connexion with railway operations or an article which he has on his person or is carrying with him is damaged or lost, the occurrence giving rise to injury shall, for purposes of determining liability in respect of claims arising out of the said occurrence, be deemed to have been brought about on sections of the Austrian Federal Railways in Austria. Where liability is accordingly incurred by the Austrian Federal Railways, the latter shall be answerable for the German Federal Railways and its personnel. No liability shall be borne by the German Federal Railways in respect of employees to which the first sentence above applies.

(4) In cases of damage to operating equipment, the relevant agreements between the German Federal Railways and the Austrian Federal Railways shall apply.

(5) In cases of damage to postal matter occurring in rail transit traffic, liability shall be borne jointly by the administrations concerned in accordance with existing agreements.

(6) In cases other than those referred to in the preceding paragraphs and in cases governed by other agreements, liability for damage occurring during rail transit operations shall be determined in accordance with German law. Where one or the other railway is accordingly held liable, such liability shall also be borne by the other railway as joint debtor.

(7) Questions of official liability shall be settled in accordance with the Agreement of 14 September 1955 between the Federal Republic of Germany and the Republic of Austria on the regulation of official liability arising out of acts by authority of one State in frontier areas of the other State.

(8) An action may be instituted only in courts of the State against whose railway the claim is made.

(9) Where the Austrian Federal Railways pays compensation pursuant to the preceding provisions, it may have recourse against the German Federal Railways if the accident was brought about deliberately or through gross negligence by the German Federal Railways or the latter's personnel or if it resulted from defects in installations or operating equipment belonging to the German Federal Railways.

Article 18. The respective administrations concerned with rail transit traffic shall jointly determine the measures to be taken for the implementation of this Treaty.

Article 19. The Federal Republic of Germany may totally or partially suspend rail transit traffic if security in the transit zone so requires.

Article 20. (1) Differences of opinion regarding the interpretation or application of this Treaty shall be settled by the competent authorities of the Contracting States.

(2) Where a difference of opinion cannot be settled in that manner, it shall, at the request of either Contracting State, be referred to an arbitral tribunal.

(3) The arbitral tribunal shall be set up in each individual case, each Contracting State appointing one member and the two members reaching agreement on a national of a third State to be appointed as umpire by the Governments of the Contracting States. The members shall be appointed within two months and the umpire within three months of the date on which one Contracting State informs the other that it wishes to refer the difference of opinion to an arbitral tribunal.

(4) If the time-limits specified in paragraph 3 are not met, either Contracting State may, in the absence of some other agreed arrangement, request the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of one of the Contracting States or is for any other reason precluded from making the appointments, the Vice-President shall do so. If the Vice-President is also a national of one of the Contracting States or is also precluded from making the appointments, the next highest-ranking member of the Court not a national of one of the Contracting States shall make the appointments.

(5) The arbitral tribunal shall adopt its decisions by majority vote. Its decisions shall be binding. Each Contracting State shall bear the costs of the arbitrator whom it appoints, together with the costs of his representation in the proceedings before the arbitral tribunal; the costs of the umpire and any other costs shall be borne equally by the Contracting States. In other respects, the arbitral tribunal shall determine its own procedure.

(6) The courts of the two Contracting States shall, at the request of the arbitral tribunal, provide the latter with legal assistance in connexion with the summoning and interrogation of witnesses and experts pursuant to the agreements in force between the two Contracting States concerning legal assistance in civil and commercial matters.

Article 21. This Treaty shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany delivers a declaration to the contrary to the

Austrian Federal Government within three months after the entry into force of the Treaty.

Article 22. (1) This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Vienna.

(2) The Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification.

(3) Either Contracting State may denounce the Treaty; the latter shall cease to have effect one year after the other Contracting State is notified of the denunciation.

IN WITNESS WHEREOF the plenipotentiaries of the Contracting States have signed this Treaty and have thereto affixed their seals.

DONE at Bonn on 15 December 1971 in two original copies.

For the Federal Republic of Germany:

PAUL FRANK

WOLFGANG VAERST

For the Republic of Austria:

Dr. WILLFRIED GREDLER

Dr. ROBERT STANFEL
