

No. 15734

**FEDERAL REPUBLIC OF GERMANY
and
AUSTRIA**

**Agreement to supplement the European Convention on
Extradition of 13 December 1957 and to facilitate its
application. Signed at Bonn on 31 January 1972**

Authentic text: German.

Registered by the Federal Republic of Germany on 16 June 1977.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUTRICHE**

**Accord visant à compléter la Convention européenne d'extra-
dition du 13 décembre 1957 et à faciliter son application.
Signé à Bonn le 31 janvier 1972**

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 16 juin 1977.

[TRANSLATION — TRADUCTION]

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

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

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 President of the Federal Republic of Germany: Dr. Paul Frank, State Secretary, Ministry of Foreign Affairs, and Dr. Günther Erkel, State Secretary, Federal Ministry of Justice;

The Federal President of the Republic of Austria: Ambassador Wilfried Gredler.

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

*Article I**(Ad article 2 of the Convention)*

(1) Extradition shall also be granted where the term of the prison sentence, alternative sentence or detention and correctional measure still to be carried out or, if there is more than one prison sentence, alternative sentence or detention and correctional measure 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.

*Article II**(Ad articles 7 and 8 of the Convention)*

The requested State shall grant extradition of a person in respect of an offence which, according to its law, is within its jurisdiction if that person is being extradited for another punishable offence and if adjudication by the judicial authorities of the requesting State for all offences is expedient in the interest of ascertaining the truth or for reasons of handing down and carrying out a sentence.

¹ Came into force on 1 February 1977, i.e., one month after the date on which the European Convention of 13 December 1957 became binding as between the two Parties, in accordance with article XVI (2). (The exchange of the instruments of ratification took place at Vienna on 14 May 1976.)

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

Article III

(Ad article 9 of the Convention)

The requested State shall not refuse the extradition of a person if its judicial authorities have acquitted that person solely by reason of lack of jurisdiction or did not institute proceedings against him or suspended proceedings which had been instituted solely for that reason.

Article IV

(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 V

(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 application or authorization which may be required under the law of the requested State.

Article VI

(Ad article 12 of the Convention)

(1) Without prejudice to the admissibility of the diplomatic channel, requests for extradition shall be communicated through the Federal Minister of Justice or the Ministries of Justice of the *Länder* (*Land* judicial authorities) in the case of the Federal Republic of Germany, and through the Federal Minister of Justice in the case of the Republic of Austria. Except as otherwise provided in the Convention and in this Agreement, other correspondence between the Contracting Parties shall also be conducted through those channels.

(2) In cases of suspension of sentence, interruption of sentence and conditional suspension of the enforcement of a sentence or of a detention and correctional measure, the documents evidencing enforceability shall also be attached.

Article VII

(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 purpose 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, notwithstanding the reservations in article 14 of the Convention, until a decision concerning the request is received.

Article VIII

(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, para-

graph 2, of the Convention which have been communicated to the State submitting the request. Consent shall be given if extradition to the other Contracting Party or to the third State by the Contracting Party whose consent is requested would be admissible on account of the offence in respect of which extradition is requested.

Article IX

(*Ad article 16 of the Convention*)

Requests for provisional arrest may be submitted by the courts, by State Counsel's Department and by the higher judicial and police authorities of one Contracting State to the competent judicial or police authorities of the other Contracting State. The statement of the offence in the request shall include a brief account of the facts of the case.

Article X

(*Ad article 17 of the Convention*)

When making a decision under article 17 of the Convention, the requested Contracting Party shall also decide on the admissibility of re-extradition. It shall inform all States involved of its decision concerning re-extradition.

Article XI

(*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 detention or correctional measure.

(2) For the purposes of article 19, paragraph 2, of the Convention, a person shall be handed over to the requesting State unless his presence in the requested State is required for the performance of specific procedural acts in criminal proceedings which have been instituted there. The following provisions shall also apply:

- (a) The nature of the procedural acts for the performance of which the person is to be handed over shall be specified in the request.
- (b) The person surrendered shall be held in custody throughout in the requesting State.
- (c) The person shall be returned after the performance of the procedural acts in the requesting State or if asked for by the requested State, regardless of his nationality.
- (d) The time spent in custody in the requesting State shall be taken into account for the purposes of the treatment of the person in the requested State.

Article XII

(*Ad article 20 of the Convention*)

(1) If the extradition of a person is granted, the property referred to in article 20 of the Convention or obtained as compensation for such property shall, if possible, be handed over simultaneously with the person to be extradited without a special request.

(2) The requested State shall indicate what part of the property referred to in article 20 of the Convention has been seized and 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, upon production of a cer-

tificate issued by the competent judicial authority of the requesting State, to the person named therein as the injured party or his authorized representative.

Article XIII

(*Ad article 21 of the Convention*)

(1) Where a person who is extradited from a third State to one of the Contracting Parties is to be transported by air over the territory of the other Contracting Party without an intermediate landing, the requesting State shall also report

- (a) 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; and
- (b) that the offence for which the person is being extradited is neither a political, purely military or fiscal offence within the meaning of articles 3, 4 and 5 of the Convention nor an offence consisting solely of the contravention of regulations concerning monopolies or concerning the import, export, transit or rationing of goods.

(2) Correspondence in matters relating to transit and transport by air within the meaning of paragraph 1 shall be conducted between the Federal Minister of Justice of the Federal Republic of Germany and the Federal Minister of Justice of the Republic of Austria.

Article XIV

(*Ad article 31 of the Convention*)

Should either of the Contracting Parties denounce the Convention, the denunciation shall take effect as between the Federal Republic of Germany and the Republic of Austria two years after the Secretary-General of the Council of Europe receives notification of the denunciation.

Article XV

This Agreement shall apply also to *Land Berlin*, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Republic of Austria within three months from the date of entry into force of this Agreement.

Article XVI

(1) This Agreement shall be subject to ratification; 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 instruments of ratification, if at that time both Contracting States are bound by the European Convention on Extradition; otherwise, this Agreement shall enter into force one month after the date on which the European Convention on Extradition becomes binding as between the two Contracting States.

(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 Bonn on 31 January 1972, in duplicate.

For the Federal Republic of Germany:

FRANK

ERKEL

For the Republic of Austria:

WILFRIED GREDLER
