

No. 23739

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

Agreement concerning simplified procedures for transit traffic by rail on the Mittenwald (frontier)-Griesen (frontier) and Ehrwald (frontier)-Vils (frontier) sections. Signed at Bonn on 14 September 1955

Authentic text: German.

Registered by Austria on 13 February 1986.

**AUTRICHE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Accord en vue de faciliter le transit ferroviaire sur les itinéraires Mittenwald (frontière)-Griesen (frontière) et Ehrwald (frontière)-Vils (frontière). Signé à Bonn le 14 septembre 1955

Texte authentique : allemand.

Enregistré par l'Autriche le 13 février 1986.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING SIMPLIFIED PROCEDURES FOR TRANSIT TRAFFIC BY RAIL ON THE MITTENWALD (FRONTIER)-GRIESEN (FRONTIER) AND EHRWALD (FRONTIER)-VILS (FRONTIER) SECTIONS

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

Desiring to establish simplified procedures for transit traffic on certain sections of their national rail networks, have agreed to conclude an Agreement.

For that purpose they have appointed as their Plenipotentiaries:

The Federal President of the Republic of Austria:

Mr. Adrian Rotter, Ambassador Extraordinary and Plenipotentiary;

The President of the Federal Republic of Germany:

Dr. Hans Berger, Under-Secretary and Chief of the Legal Department in the Ministry of Foreign Affairs, and

Dr. Wilhelm Ter-Nedden, Assistant Secretary and Chief of the Department of General Transport Policy and Transport Economics in the Federal Ministry of Transport,

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

Article 1. Transit traffic by rail under the simplified procedures shall be permitted:

- (a) Between railway stations of the Austrian railways over the German Mittenwald (frontier)-Griesen (frontier) section (German-owned section open to Austrian transit traffic);
- (b) Between railway stations of the German railways over the Austrian Ehrwald (frontier)-Vils (frontier) section (Austrian-owned section open to German transit traffic).

Article 2. (1) The provisions of this Agreement shall apply to persons of whatsoever nationality, to hand luggage, heavy luggage, express freight, goods (including carcasses and livestock) and mail.

(2) The Governments of the Contracting Parties shall, upon more detailed agreement, extend the simplified procedures provided for in this Agreement also to law enforcement officials to the extent required for the performance of their duties. They may permit such officials to carry service arms and ammunition.

Article 3. (1) Save as otherwise provided by this Agreement transit traffic by rail under the simplified procedures shall be subject to the law of the State of transit.

¹ Came into force on 31 October 1957, i.e., 14 days after the exchange of the instruments of ratification, which took place at Bonn on 17 October 1957, in accordance with article 20 (2).

(2) Passengers in transit shall require no transit visa and no passport. Passengers over 16 years of age must be in possession of an official identification document bearing their photograph, which they must produce on request to frontier control personnel assigned to inspection duties.

(3) Currency control shall not take place.

(4) Save as otherwise provided by this Agreement, goods conveyed in transit shall be exempt from customs and other duties as well as from economic import, export and transit prohibitions.

Article 4. (1) The State of transit shall reserve the right to suspend transit traffic temporarily if security in the transit zone so requires.

(2) Transport prohibitions imposed in the State of transit for the protection of human beings, animals or plants shall also apply to transit traffic.

(3) 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, unprocessed matter or products. No veterinary inspection of transit traffic shall take place at the frontier.

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

Article 5. (1) Mail carried by rail in transit shall not be subject to any restrictions or duties of the State of transit. Freedom from duties shall not extend to foreign mail carried through the State of transit from and to a foreign destination.

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

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

Article 6. (1) Passengers in transit shall be carried in whole trains or in parts of trains which must be kept locked by the railways (locked trains or locked carriages).

(2) During transit, passengers shall be forbidden to board or alight from the train, to take objects into the train or to hand or throw objects out of the train, to load or unload goods or to open customs or railway seals in the State of transit. If it becomes necessary to make an exception to these prohibitions or if the prohibition is infringed, the frontier control personnel escorting the train or, accessorially, the train conductor shall, where possible, in collaboration with officials of the State of transit, prepare a report on the matter, copies of which shall be transmitted forthwith to the competent authorities of the State of origin and the State of transit.

(3) During stops at railway stations in the State of transit, the section of platform adjacent to the locked train (locked carriages) shall, at the request of the customs authority of the State of origin, be closed to public traffic and to the sale of goods and printed matter.

(4) A passenger who, as a result of an accident or for other reasons, cannot continue to be carried in the locked train (locked carriage) shall be taken as soon as circumstances permit, to the State of origin, which shall be obliged to accept the passenger.

(5) Where locked trains (locked carriages) make an unexpected stop for an extended period, the frontier control personnel escorting the train or, accessorially, the train conductor, shall ensure that the nearest customs post of the State of transit is notified forthwith.

(6) Save where the following admissible exceptions apply, goods may be carried only in freight cars, luggage vans or mail coaches. Only hand luggage 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 tenders, in the driver's cabin and the engine compartment of rail cars.

Article 7. (1) The locked trains (locked carriages) may be escorted by the frontier control personnel of each of the two States. The frontier control personnel of the State of transit may begin and end their escort duties in the State of origin. Frontier control personnel shall be carried free of charge.

(2) The customs authorities of both States shall be empowered, to the extent that this is justified in order to prevent abuses, to conduct in accordance with the regulations of their State, inspections of hand luggage carried in the passenger carriages, as well as of the passengers. In such cases, they may, under customs supervision, place goods which experience shows, are liable to be smuggled.

(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 for the transit journey by the customs authorities of the State of origin. In the case of open freight cars, the integrity of the goods shall be protected in the manner which the customs authorities deem fit. The customs authorities of the State of transit shall recognize the customs seal affixed. They shall, however, be at liberty also to affix their own seals.

(4) The supervision of cars intended for transit and loaded with goods shall be subject to special arrangement between the administrations concerned.

(5) In cases of failure to deliver, or failure to deliver in the proper form, goods carried in transit for which the railways bear responsibility, the transiting railway administration shall be liable to the customs administration of the State of transit for any charges due in respect of those goods. Its liability shall become null and void if it provides proof that the goods were lost in transit.

Article 8. (1) Personnel of the State of origin employed in transit traffic and personnel of the State of transit shall be required during transit 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.

(2) While supervising transit traffic, frontier control personnel of both States shall reciprocally support one another and shall inform one another of any offences that are noted.

Article 9. (1) The carriage on the transit section of persons, luggage, express freight and goods within the meaning of article 2, paragraph 1, shall be effected in accordance with the tariff rates and transport destinations of the transiting administration. It shall not constitute international carriage within the meaning of the International Convention concerning the Carriage of Goods by Rail and the International Convention concerning the Carriage of Passengers and Luggage by Rail. The transit-

ing administration shall in all cases issue the tickets and shall retain the proceeds from such traffic.

(2) Payment for services rendered by the owner administration shall be subject to agreement between the railway administrations.

(3) Carriage in transit shall not be subject to transport tax in the State of transit; it shall be subject to transport tax in the State of origin.

Article 10. (1) The owner administrations shall maintain the transit sections in the proper condition.

(2) Major construction projects on the sections which are likely to entail an interruption or restriction of transit traffic shall be notified to the other administration in good time.

(3) Restoration of disrupted service and assistance in the event of accidents shall be regulated by agreement between the railway administrations.

(4) In the event of a disrupted service, the authorities of the State of transit shall be entitled to take appropriate police or customs measures as they deem fit.

Article 11. (1) Transit traffic shall, in general, be governed by the operating regulations of the State of transit.

(2) The personnel of the transiting administration shall be familiarized with the relevant operating regulations of the State of transit.

(3) For operational purposes, the personnel of the transiting administration shall be required to follow the instructions of personnel of the owner administration.

(4) More detailed regulations shall be agreed between the railway administrations.

Article 12. Personnel of the transiting administration shall conduct the official railway control of passengers in the locked trains (locked carriages). It shall also be authorized to perform railway police functions in respect of the passengers.

Article 13. The provisions of criminal law in force in the State of transit for the protection of official acts and of officials shall also apply to criminal offences committed in the State of transit against personnel of the State of origin employed in transit traffic if such personnel are engaged in the performance of their duties or if the offence is committed in connection with those duties.

Article 14. (1) Personnel of the State of origin employed in transit traffic may wear uniforms. Frontier control personnel and railway police personnel may carry service weapons. Service weapons may be used only in self-defence.

(2) Members of the personnel of the State of origin employed in transit traffic shall not require any identification document other than a service identity card bearing their photograph.

(3) In matters of disciplinary law, such personnel shall be answerable exclusively to the administration to which they belong.

(4) Agencies of the State of origin shall cease to employ staff employed in transit traffic in that service if the authorities of the State of transit so request in the interest of the service.

(5) Where an employee of the State of origin employed in transit traffic suffers an accident in connection with the performance of his duties in the State of transit or is taken ill, the administrations of the latter State shall provide medical assistance, medicine and nursing care to the same extent as for their own employees if, for health reasons, it is not feasible to transfer the employee to the State of origin. Any expenses thus incurred shall be reimbursed by the administration to which the employee who is taken ill belongs; claims for compensation and rights of recourse by the said administration against third parties shall remain unaffected.

Article 15. (1) Where, in transit traffic, a passenger is killed or injured or an article which a passenger has on his person or is carrying with him is damaged, the transiting administration shall bear liability in accordance with the law of the State of transit; it shall, moreover, be answerable for the owner administration. The owner administration shall also bear liability jointly and severally with the transiting administration.

(2) Where luggage, express freight or goods within the meaning of article 2, paragraph 1, are carried in transit traffic, the transiting administration shall bear liability according to the law of its State for damage arising as a result of total or partial loss, damage or late delivery; in so doing, it shall represent the owner administration. No liability shall be borne by the owner administration.

(3) Where an employee of the transiting administration employed in transit traffic suffers, during transit, an injury to his person or damage to an article which he has on his person or is carrying with him, the owner administration shall be liable only in so far as its liability arises from a deliberate illicit act of one of its employees. The same applies *mutatis mutandis* to employees of other administrations of the State of origin officially employed in the State of transit in connection with transit traffic.

(4) In cases of damage to operating or loading equipment, the relevant agreements shall apply.

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

(6) Unless a special arrangement is provided for in the foregoing paragraphs or in another agreement, liability for damage occurring during rail transit operations shall be determined in accordance with the law of the State of transit. Where, in accordance with that law, only the owner administration or only the transiting administration is held liable, such liability shall also be borne jointly by the other administration.

(7) Where both administrations are liable, the injured party may bring a suit against one of them, at his choice. The option shall expire with the bringing of the action.

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

(9) Rights of recourse and claims for compensation as between the administrations shall be settled by agreement between them.

(10) International carriage within the meaning of the agreements referred to in article 9, paragraph 1, shall be governed by the provisions of paragraphs 1, 2 and 7 to 9 above only if those agreements do not provide different arrangements.

Article 16. In the event of serious difficulties in the implementation of specific provisions of the Agreement or of a substantial change in the circumstances existing at the time of the conclusion of the Agreement, the two Contracting Parties shall, at the request of either Party, enter into negotiations with the object of arriving at an appropriate settlement.

Article 17. (1) Differences of opinion regarding the interpretation or application of this Agreement shall in principle be settled by the competent authorities on both sides. This provision shall not preclude settlement through the diplomatic channel.

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

(3) The Arbitral Tribunal shall be formed in each individual case in such a way that each Party appoints a representative and the two representatives agree on a national of a third State as umpire. If the representatives and the umpire are not appointed within three months after one Party has given notice of its intention to convene the Arbitral Tribunal, then, in the absence of any agreement to the contrary, either Party may request the President of the International Court of Justice at The Hague to make the necessary appointments. If the President is a national of one of the two Parties or is otherwise disqualified, a deputy of the President shall make the necessary appointments.

(4) In reaching its decision, the Arbitral Tribunal shall be guided by this Agreement and shall also apply international customary law and universally recognized principles of law.

(5) The Arbitral Tribunal shall adopt its decisions by majority vote. Its decisions shall be binding. Each Party shall bear the costs of its arbitrator, the other costs being divided equally between the two Parties. In other respects, the Arbitral Tribunal shall determine its own procedure.

(6) The authorities of the two Parties shall, upon request by the Arbitral Tribunal addressed to the Government concerned, provide legal assistance in connection with the summoning and interrogation of witnesses and experts in the same manner as they would do at the request of their domestic civil courts.

Article 18. The administrations on either side concerned with transit traffic shall agree between themselves as necessary upon measures for the implementation of this Agreement.

Article 19. This Agreement shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Austrian Federal Government within three months after the entry into force of the Agreement.

Article 20. (1) This Agreement shall be ratified as soon as possible. The instruments of ratification shall be exchanged at Bonn.

(2) The Agreement shall enter into force 14 days after the exchange of the instruments of ratification.

Article 21. (1) The Agreement is concluded for an indefinite period. It shall not be subject to denunciation for a period of 10 years after its entry into force; thereafter, it may be terminated at two years' notice.

(2) In the event of denunciation, the Contracting Parties shall enter into negotiations concerning the possibility of another satisfactory arrangement in respect of simplified procedures for transit traffic.

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

DONE at Bonn on 14 September 1955 in two copies.

For the Republic of Austria:

ROTTER

For the Federal Republic of Germany:

BERGER

TER-NEDDEN
