

No. 23743

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

Agreement concerning simplified procedures for frontier clearance in railway, road and ship traffic. 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 contrôle frontalier de la circulation par chemin de fer, route et bateau. 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 SIM-
PLIFIED PROCEDURES FOR FRONTIER CLEARANCE IN
RAILWAY, ROAD AND SHIP TRAFFIC

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

Have, in order to facilitate frontier clearance in railway, road and ship traffic between their two States, decided 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 head of the Legal Department of the Ministry of Foreign Affairs, and

Dr. Erich Neuhaus, Department Head at the Ministry of Finance,

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

I. GENERAL PROVISIONS

Article 1

(1) The Contracting Parties shall take all the necessary measures to simplify frontier clearance procedures for railway, road and ship traffic between the two countries.

(2) For this purpose, they shall allow frontier clearance posts of one of the Contracting Parties or officials of such posts to carry out frontier clearance operations on the territory of the other Contracting Party.

(3) The competent highest federal authorities of the Contracting Parties shall agree on the circumstances and extent to which the frontier clearance operations of one of the Contracting Parties may be carried out on the territory of the other Contracting Party. They may agree on frontier clearance during railway journeys and aboard ship on designated sections of routes and to the establishment of forward frontier clearance posts of one of the Contracting Parties on the territory of the other Contracting Party.

Article 2

For the purposes of this Agreement:

(a) The term "frontier clearance operations" means the implementation of the measures concerning the crossing of the frontier by individuals and the entry,

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 29 (2).

exit and transit of goods or assets subject to currency controls laid down in the regulations of the Contracting Parties.

(b) The term “territorial State” means the State in whose territory or customs territory forward frontier clearance posts of the other Contracting Party have been established or in which frontier clearance by its officials has been authorized.

(c) The term “adjoining State” means the other Contracting State.

Article 3

(1) Frontier clearance in a territorial State by the adjoining State shall be subject to the regulations of the adjoining State in accordance with this Agreement. In all other cases the law of the territorial State shall be applicable.

(2) The regulations of the exit State concerning frontier clearance shall be applicable up to the point at which the frontier clearance posts of the entry State have begun to carry out their official duties after the final completion of the procedures by the exit State; the corresponding regulations of the entry State shall be applicable from that time forward.

Article 4

(1) Frontier clearance operations in the territorial State shall be carried out first by the officials of the exit State and subsequently by the officials of the entry State. In principle the operations shall be carried out in the following order:

- (a) The police operations of the exit State;
- (b) The customs and other operations of the exit State;
- (c) The police operations of the entry State;
- (d) The customs and other operations of the entry State.

(2) The officials of the adjoining State may, unless otherwise provided in this Agreement, implement all the frontier clearance provisions of their State in the territorial State in the same manner, to the same extent and with the same consequences as in their own State.

(3) The zone in which the officials of the adjoining State may carry out their activities in the territorial State shall be established by agreement between the competent administrations of the two Parties or the offices designated by them to do so.

(4) Officials of the exit State may no longer carry out their official frontier clearance duties with respect to persons and goods already cleared by them or with respect to assets subject to currency controls once the officials of the entry State have begun to carry out the corresponding official duties.

(5) Sums of money officially collected by the officials of the adjoining State in the territorial State during frontier clearance operations or officially brought into that State by them and goods seized or confiscated by them, including assets subject to currency controls, may be transferred to the adjoining State. If, during the frontier clearance operations, such goods or assets, which have been brought from the adjoining State, are converted into currency in the territorial State, all import prohibitions, import restrictions and currency regulations in force shall be observed and the corresponding import duties shall be paid. The proceeds from the conversion may also be transferred to the adjoining State.

Article 5

(1) The powers referred to in article 4, paragraph 2, also include the right of arrest and forcible return. Officials of the adjoining State shall, however, not be authorized to arrest, hold in detention or forcibly return nationals of the territorial State on the territory of that State. They may, however, forcibly conduct such persons to their own forward frontier clearance post or, in the absence of such a post, to the frontier clearance post of the territorial State for the purpose of preparing a written statement of the circumstances.

(2) If actions in accordance with paragraph 1 are taken, an official of the territorial State shall be summoned immediately.

(3) The right of asylum in the territorial State shall not be affected.

Article 6

(1) On the routes specified for transfrontier movements by individuals and goods from the frontier to the forward frontier clearance posts of the adjoining State in the territorial State, the frontier clearance regulations of the two States shall apply in accordance with the principle that the provisions of the exit State shall be applicable before those of the entry State.

(2) Observance of the provisions of the two States shall be ensured by the competent frontier clearance posts of the territorial State. In the case of an infringement of these regulations, arrested individuals and confiscated goods or assets subject to currency controls, irrespective of the provisions of article 5, shall immediately be transferred to the frontier clearance posts of the exit State for completion of the frontier clearance operations.

Article 7

Individuals who have not received permission from the officials of the entry State to cross the frontier shall not be denied readmittance to the exit State; where necessary, they shall be forcibly brought back by the officials of the exit State.

Article 8

The criminal provisions of the territorial State for the protection of official acts shall also apply to punishable acts committed in respect of officials of the adjoining State in the territorial State.

Article 9

The competent frontier clearance posts of the Contracting Parties shall assist one another in the discharge of the duties connected with frontier clearance in accordance with the foregoing provisions; they shall, in particular, examine accused persons, witnesses and experts on request, carry out official inspections and certify their reports, and shall make available the documents relating to the criminal proceedings.

II. LEGAL STATUS OF OFFICIALS OF THE ADJOINING STATE RESPONSIBLE FOR FRONTIER CLEARANCE IN THE TERRITORIAL STATE

Article 10

(1) Officials and supervisory staff of the adjoining State responsible for frontier clearance shall in the performance of their duties be exempt from passport

and visa formalities. They may travel to the place in which they are to carry out their official activities in the territorial State on the basis of an official pass containing a photograph together with a special certificate issued by the forward frontier clearance post. If they reside in the territorial State, they may also remain there without special permission.

(2) In the case of those officials referred to in paragraph 1 who reside in the territorial State, the individuals living in their permanent household (members of the household) shall also be exempt from passport and visa formalities. They may cross the frontier in transit to their own State and for stays in the territorial State simply on the basis of only a certificate containing a photograph issued by the official's forward frontier post.

Article 11

When, in the territorial State, officials of the adjoining State may, pursuant to the second sentence of article 10, paragraph 1, wear their uniform and also carry their service weapons in the performance of their duties. They may only use their weapons in the territorial State in self-defence.

Article 12

(1) The frontier clearance posts and officials of each of the Contracting Parties shall be required to extend to the frontier clearance posts and officials of the other Contracting Party the necessary assistance in the performance of their official duties and to comply with their official requests in the manner in which they comply with the corresponding requests from their own posts or officials.

(2) The criminal provisions of the territorial State for the protection of public officials shall also apply to punishable acts committed in respect of officials of the adjoining State in the performance of their duties in the territorial State or in connection with those duties.

Article 13

(1) Officials of the adjoining State performing their duties in the territorial State shall be subject to the law of the territorial State, except as provided in the following paragraphs and without prejudice to the provisions of international civil law.

(2) They shall be exempt from all personal service and material obligations under public law. This shall also apply to the members of their household in so far as they are of the same nationality as the official. The status for the purposes of taxation of such individuals shall be subject to the provisions of article 16 of the Treaty of 23 May 1922 between the Republic of Austria and the German Reich for the equal distribution of taxes at home and abroad, and, in particular, for the prevention of double taxation in the field of direct taxation¹ or any agreements replacing that Treaty which are concluded in the future.

(3) The official status under public law of the officials referred to in paragraph 1 shall be determined exclusively by the laws and provisions of the adjoining State. In particular, those officials shall be subject only to the disciplinary regulations of the adjoining State.

¹ League of Nations, *Treaty Series*, vol. XXVI, p. 405.

(4) The forward frontier post of the officials referred to in paragraph 1 shall be informed immediately, through the corresponding frontier post of the territorial State, of any punishable acts committed by such officials in the territorial State.

Article 14

(1) All articles intended for official use in the territorial State by frontier clearance officials of the adjoining State may be imported and exported free of duties and other charges. The same exemption shall also apply to used and unused household goods of the officials referred to whose official residence is in the territorial State. Articles belonging to such officials and the members of their household which are taken into the adjoining State for repair, cleaning and similar purposes and brought back from it shall, subject to the relevant control measures, be exempt from duties and other charges; no security deposit shall be required.

(2) Articles for personal use, including foodstuffs, brought with them by officials not living in the territorial State on the way to or from work and needed during their period of official duty shall also be exempt from duties and other charges.

(3) Import and export prohibitions and restrictions shall not be applicable to the articles referred to in paragraphs 1 and 2.

Article 15

(1) Official and private vehicles used by officials of the adjoining State for travel to the territorial State for the performance of their duties and to return to the adjoining State shall, subject to the appropriate control measures, be free of duties and other charges on entry and exit. No security deposit shall be required. The same exemption shall also apply to vehicles of the supervisory offices and officials of the adjoining State.

(2) Import and export prohibitions and restrictions shall not be applicable to the vehicles referred to in paragraph 1.

Article 16

(1) The corresponding frontier posts of the territorial State shall be informed in writing of the names, dates of birth and service grades of the officials of the adjoining State who, pursuant to this Agreement, regularly perform their duties in the territorial State. This information shall be transmitted if possible before but in any case no later than the dispatch of the official. Information on members of the household (article 10, paragraph 2), including their last address, shall be transmitted in the same way before they take up residence in the territorial State.

(2) Each Contracting Party shall at the request of the other Contracting Party exclude or recall its officials from service on the territory of the requesting State.

III. LEGAL STATUS IN THE TERRITORIAL STATE OF THE FORWARD FRONTIER CLEARANCE POSTS OF THE ADJOINING STATE

Article 17

(1) Each Contracting Party shall grant its forward frontier clearance post all the necessary frontier clearance powers to meet traffic requirements.

(2) The functions and working hours of the frontier clearance posts of both Parties shall so far as possible be established by agreement.

Article 18

The premises of the forward frontier clearance posts may display the shields and national emblems of the adjoining State.

Article 19

The forward frontier clearance posts shall be entitled to maintain order on the premises placed solely at their disposal and to remove therefrom any persons causing a disturbance. The competent posts and officials of the territorial State shall on request assist them in doing so.

Article 20

Articles for official use by frontier clearance posts may be imported and re-exported free of duties and other charges. Such articles shall not be subject to import or export prohibitions or restrictions.

Article 21

(1) Official correspondence, official parcels and official funds addressed to the forward frontier clearance posts or sent by them to the adjoining State may be carried by the officials of the adjoining State free of charge and without intervention by the postal administration.

(2) Such letters, parcels and funds shall be subject to customs and currency controls only in the case of suspicion of a criminal act; in order to avoid any misuse they shall bear the seal of the frontier clearance post sending them.

Article 22

The Contracting Parties shall, subject to the provisions of article 4, paragraph 5, take the necessary measures to permit official payment transfers between the forward frontier clearance posts and the adjoining State, including the payment of the wages and salaries of officials and the pensions and social insurance payments of former officials and their survivors.

Article 23

(1) Persons from the adjoining State engaged in commercial activities and their staff may carry out at the forward frontier clearance posts all the activities relating to frontier clearance operations that they are entitled to carry out at the corresponding posts in the adjoining State.

(2) The general provisions of the territorial State shall be applicable with regard to the crossing of the frontier by such persons and their stay in the territorial State. Exemptions allowed under those provisions shall be granted.

IV. ASSIGNMENT OF OFFICIAL PREMISES AND ACCOMMODATION

Article 24

(1) Decisions concerning official premises and accommodation for the forward frontier clearance posts and their officials and for officials required to carry out frontier clearance operations in moving trains, as well as the compensation

to be paid for them, shall be reached by agreement between the competent administrations of the two Parties.

(2) Where the railway administration of the adjoining State is required under its legal provisions to assign official premises and accommodation to officials of railway customs posts and to render other services, the railway administration of the territorial State shall, in return for compensation, be obligated to comply with a request to that effect from the railway administration of the adjoining State.

(3) The service compartments required in order to carry out frontier clearance operations on moving trains shall be assigned by the competent railway administration without compensation.

V. FINAL PROVISIONS

Article 25

(1) Disagreements concerning the interpretation or application of this Agreement shall be settled by the competent administrations on each side. This provision shall not preclude settlement through the diplomatic channel.

(2) Where a disagreement cannot be settled in the foregoing manner, it shall, at the request of a Contracting Party, be submitted 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) The arbitral tribunal shall take its decision on the basis of this Agreement and the application of customary international law and universally recognized legal principles.

(5) The arbitral tribunal shall take its decisions by majority vote. Its decisions shall be binding. Each Party shall bear the costs of its own arbitrator. Other costs shall be shared equally by the two Parties. In other respects the arbitral tribunal shall establish its own rules of procedure.

(6) With respect to the summoning and hearing of witnesses and experts, the authorities of the Parties shall provide legal assistance in the same manner in response to requests made by the arbitral tribunal to the Government concerned as in response to requests made by domestic civil courts.

Article 26

The competent highest federal authorities of the Contracting Parties may by direct agreement determine within the framework of this Agreement the administrative measures necessary for its application. This provision shall not preclude settlement through the diplomatic channel.

Article 27

This Agreement shall remain in force for a period of one year from the day of its entry into force. If it is not denounced six months before the end of its period of validity, it shall remain in force for an additional year.

Article 28

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

Article 29

(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.

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

DONE in duplicate at Bonn on 14 September 1955.

For the Republic of Austria:

ROTTER

For the Federal Republic of Germany:

BERGER

NEUHAUS