

No. 25445

**FRANCE
and
AUSTRIA**

**Convention on mutual assistance and judicial co-operation
supplementary to The Hague Convention of 1 March
1954 relating to civil procedure (with annex). Signed at
Vienna on 27 February 1979**

Authentic texts: French and German.

Registered by France on 6 November 1987.

**FRANCE
et
AUTRICHE**

**Convention d'entraide et de coopération judiciaire, addi-
tionnelle à la Convention de La Haye du 1^{er} mars 1954
relative à la procédure civile (avec annexe). Signée à
Vienne le 27 février 1979**

Textes authentiques : français et allemand.

Enregistrée par la France le 6 novembre 1987.

[TRANSLATION — TRADUCTION]

CONVENTION¹ ON MUTUAL ASSISTANCE AND JUDICIAL CO-OPERATION BETWEEN THE FRENCH REPUBLIC AND THE REPUBLIC OF AUSTRIA SUPPLEMENTARY TO THE HAGUE CONVENTION OF 1 MARCH 1954 RELATING TO CIVIL PROCEDURE²

The President of the French Republic and the Federal President of the Republic of Austria, desiring to enhance mutual assistance between their two countries and to promote judicial co-operation, have decided to conclude a Convention for this purpose.

They have appointed as their Plenipotentiaries:

The President of the French Republic: Mr. Alain Peyrefitte, Keeper of the Seals, Minister of Justice,

The Federal President of the Austrian Republic: Mr. Christian Broda, Federal Minister of Justice,

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

CHAPTER I. ACCESS TO THE COURTS

Article 1. 1. In civil and commercial matters, the nationals of one of the two States shall, in the territory of the other, have free and unrestricted access to the courts, whether as plaintiffs or defendants of their rights and interests. Questions relating to security for costs and penalties by foreign plaintiffs and free legal aid shall be governed by the provisions of The Hague Convention of 1 March 1954² and by articles 14, 15 and 16 of the present Convention.

2. Nationals of one of the two States shall be entitled, in the territory of the other, to the same legal protection with regard to their person and their property as that which is accorded to the nationals of the latter State.

Article 2. The provisions of this Convention concerning natural persons and those of articles 17, 18 and 19 of The Hague Convention of 1 March 1954 shall also apply to judicial persons as well as to entities which, while not having legal personality, have the right to appear as a party to judicial proceedings, provided that such judicial persons or entities have their statutory or actual headquarters in the territory of one of the two States.

CHAPTER II. SERVICE OF WRITS AND EXTRA-JUDICIAL DOCUMENTS

Article 3. 1. In civil and commercial matters, writs and extrajudicial documents related to proceedings brought or to be brought in a court of one of the two Contracting States and to be served on a person residing in the other State shall be

¹ Came into force on 23 June 1980, i.e., the sixtieth day following the exchange of the instruments of ratification, which took place at Paris on 23 April 1980, in accordance with article 19 (2).

² United Nations, *Treaty Series*, vol. 286, p. 265.

transmitted, in a single copy, by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State by means of form A annexed to this Convention. The blank spaces alongside the printed text on the form shall be filled in the language of the requesting State.

2. The Ministry of Justice of the requested State shall transmit the documents to the service authority of its country.

3. For service purposes, documents transmitted pursuant to this Convention shall be exempt from authentication, apostille or any other similar formality.

Article 4. 1. Where a document is served by simple delivery or delivery to the person concerned, a translation shall not be required. In case of refusal by the addressee, the requested authority shall have the translation made at its own expense.

2. Where a document is to be served in a special manner, it shall be accompanied by a copy translated in the language of the requested State and certified true by an official translator of one of the two States.

Article 5. 1. Every service confirmation shall be given on form B annexed to this Convention. The blank spaces alongside the printed texts shall be filled in the language of the requested State.

2. Confirmation shall be sent directly by the requested authority to the requesting authority. These authorities shall correspond direct with one another in their respective languages in all further communications relating to the service of documents.

CHAPTER III. LETTERS ROGATORY

Article 6. 1. In civil and commercial matters, letters rogatory, including requests for investigation, shall be executed by the judicial authorities.

2. Letters rogatory shall be accompanied by a translated version in the language of the requested State certified true by an official translator of either State.

3. Letters rogatory shall be transmitted through the Ministries of Justice of the two States by means of form C annexed to this Convention. The blank spaces alongside the printed text shall be filled in the language of the requesting State.

Article 7. 1. Letters rogatory shall be executed gratis for the services rendered by the requested State.

2. Amounts due to experts and interpreters and costs resulting from the use of a special form shall be defrayed by the requesting State. However, where one of the Parties has been granted free legal aid, the costs incurred in executing the letters rogatory, except for consultancy costs, shall be defrayed by the requested State.

Article 8. Certificates of execution issued in connection with letters rogatory shall be transmitted direct by the requested authority to the requesting authority. These authorities shall correspond with one another direct and in their respective languages in all further communications relating to the execution of letters rogatory.

CHAPTER IV. PROVISIONS COMMON TO SERVICE AND LETTERS ROGATORY

Article 9. Where the address of the recipient of a document, or of the person whose presence is requested, is incomplete or inaccurate, the requested authority shall nevertheless endeavour to satisfy the request. For that purpose it may ask the

requesting authority to provide such additional information as may enable it to find the person concerned.

Article 10. 1. No provision of this Convention shall be interpreted in such a way as to constitute one of the exceptions authorized under article 6, subparagraph 2, or article 15 of The Hague Convention of 1 March 1954.

2. The option referred to in article 6, subparagraph 2, of The Hague Convention of 1 March 1954 shall not be exercised in relations between the two States.

Article 11. 1. The Ministries of Justice and the judicial authorities of the two States shall provide each other with information on civil and commercial procedures and transmit to each other copies of the judgement on request.

2. Such requests shall be prepared in the language of the requested State and transmitted by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State.

3. Documents so requested shall be addressed direct by the requested authority to the requesting authority.

4. Such services provided by the requested State shall be free of cost or charge.

Article 12. Compliance with a request for mutual assistance submitted under this Convention cannot be refused on the ground that the law of the requested State stipulates exclusive jurisdiction in the case concerned or does not have legal procedures suitable for the purpose of the request submitted to the requesting State.

CHAPTER V. MISCELLANEOUS PROVISIONS

Article 13. Requests for assistance made by the judicial authorities of one of the two States for the voluntary enforcement of judgements made concerning the custody of minors shall be complied with in the other State in accordance with the provisions of chapters III and IV, *mutatis mutandis*.

Article 14. The authorities of the two States may correspond direct and in their own language for the purpose of transmitting requests for judicial assistance pursuant to article 23 of The Hague Convention of 1 March 1954 and any further information relating to the financial position of the applicant. Related translation costs shall not be reimbursed.

Article 15. Requests for enforcement of judgements concerning the costs and expenses of the case, provided for in article 18 of The Hague Convention of 1 March 1954, may be addressed by the concerned Party direct to the competent judicial authority.

Article 16. 1. In applying the provisions of the second and third paragraphs of article 19 of The Hague Convention of 1 March 1954, the following documents shall be produced:

(a) If the judgement has been given in France, a document establishing that it has been served, a statement by the Registrar certifying that there has been no application to reopen the judgement, if it has been given by default, and that there has been no appeal against it, and also a statement certifying that there has been no application for revision of the judgement, in cases where such an application would result in a stay of execution;

(b) If the judgement has been given in Austria, a statement issued by the court which pronounced judgement in the first instance and certifying that the judgement has acquired the force of *res judicata*;

2. The competence of the authorities issuing the document and statements mentioned in paragraph 1 need not be certified by another authority.

3. The translation of the enacting terms of the judgement, and of the document and statements mentioned in paragraph 1, into the language of the authority to which the request is made may be certified as accurate by a sworn translator of the State making the request or in the manner provided for in article 19, second paragraph, subparagraph 3, of The Hague Convention of 1 March 1954.

Article 17. 1. The authenticity of public documents drawn up in one of the two States by a judicial or administrative authority and bearing the official seal, shall be recognized by the other State exempt from authentication, apostille or any other similar formality.

2. Private agreements drawn up in one of the two States and certified authentic by a judicial or administrative authority or by a notary public may be produced in the other State exempt from authentication, apostille or any other similar formality.

Article 18. The Ministries of Justice of the two States shall provide each other on a basis of reciprocity and by direct correspondence, with all information concerning the implementation of this Convention in their respective States.

CHAPTER VI. FINAL PROVISIONS

Article 19. 1. This Convention shall be ratified and the instruments of ratification shall be exchanged in Paris.

2. It shall enter into force on the sixtieth day following the date of the exchange of the instruments of ratification.

3. Upon its entry into force, this Convention shall apply equally to the departments and territories to which the French Republic has extended application of The Hague Convention of 1 March 1954 under its article 30.

Article 20. Upon its entry into force, this Convention shall replace and abrogate the Convention of 15 July 1966¹ between the French Republic and the Republic of Austria supplementary to The Hague Convention of 1 March 1954 relating to civil procedure.

Article 21. 1. Either High Contracting Party may denounce this Convention by giving notice in writing to the other High Contracting Party through the diplomatic channel. Such denunciation shall take effect six months after the date of such notice.

2. Denunciation may be limited to the departments and territories specified in article 19, paragraph 3, of this Convention or to some of them.

Article 22. Any disputes which may arise between the High Contracting Parties concerning the interpretation or application of this Convention shall be settled through the diplomatic channel.

¹ United Nations, *Treaty Series*, vol. 634, p. 3.

IN WITNESS WHEREOF the Plenipotentiaries have affixed their signatures to the present Convention.

DONE at Vienna, on 27 February 1979, in duplicate, in the French and German languages, both texts being equally authentic.

For the President
of the French Republic:

[ALAIN PEYREFITTE]

For the Federal President
of the Republic of Austria:

[CHRISTIAN BRODA]

ANNEX

FORM A

To the Federal Ministry of Justice/Ministry of Justice

Vienna

REQUEST FOR SERVICE
Convention between France and Austria
of

DONE at on

1. Requesting authority
Address:(+)
2. Receiving authority
Address:(++)
3. Reference of the requesting authority:
.....
4. Purpose: Service of one or more writs or extrajudicial documents in a civil or commercial case (... documents annexed hereto)
5. Brief description of the document(s): (docket annexed hereto)
6. Addressee:
 - A. Name (in block capitals) and forenames:
 - B. Where appropriate, other details for identifying the addressee:
 - C. Address:
 - (1) No.: street-square-etc.
 - (2) Town:(+)
 - (3) Province:
7. Service requested::
 - A by simple delivery;
 - B by delivery to the person concerned;
 - C using the following special form (translation of the document(s) annexed)
.....

(+) Please indicate the postal code.

(++) To be completed by the receiving authority.

The requested authority is asked to return the AFFIDAVIT (on the reverse side of form B) direct to the requesting authority.

Ministry of Justice/Federal Ministry of Justice
For the Minister/For the Federal Minister
Signature or Seal

DOCKET
DESCRIBING THE MAIN ELEMENTS OF THE DOCUMENT

- I. Identity of the parties or person desiring to transmit the document:
- II. Writ:
 - A. document initiating the proceedings and/or summons
 - (1) subject of the proceedings:
 - (2) place of appearance:
 - (3) date of appearance or period of grace:
 - B. decision:
 - (1) court which gave the decision:
 - (2) date of the decision:
 - (3) basic content of the decision:
 - C. other writ:
- III. Extrajudicial document:
 - (1) description:
 - (2) period of grace:

Reverse side of the request form

FORM B

Affidavit⁽⁺⁾

The undersigned authority has the honour to confirm

- 8. That the request was fulfilled
 - A. On (date)
In (town, street, number)
 - B. As follows:
 - (1) by simple delivery;
 - (2) by delivery to the person concerned;
 using the following special form (stating the costs incurred, where appropriate)
.....
 - C. The documents referred to in the request were delivered to:
 - Name of the person;
 - Relationships with the addressee of the document (relative, employer, etc.)

9. That the request was not fulfilled, for the following reasons:

10. Annexes:

11. Requested authority:

DONE at _____, on _____

Signature and/or seal

(+) This affidavit is issued in the language of the requested authority.

FORM C

To the Federal Ministry of Justice/Ministry of Justice

Vienna

LETTER ROGATORY
Convention between France and Austria
of _____

DONE at _____ on _____

1. Requesting authority
Address:(+)

2. Receiving authority
Address:(++)

3. Reference of the requesting authority:
.....

4. Purpose: Execution of a letter rogatory in a civil or commercial case

5. Contents of the letter rogatory:

- A. Case in process:
 - Identity of the parties:
 - Subject:
- B. Investigation to be conducted:
- C. Comments, if any, on the legal aid provided:

The requested authority is asked to return direct to the requesting authority the certificates of execution issued in connection with this letter rogatory.

Ministry of Justice/Federal Ministry of Justice
For the Minister/For the Federal Minister
Signature or seal

(+) Please indicate the postal code.
(++) To be filled by the receiving authority.