

No. 29506

---

**FEDERAL REPUBLIC OF GERMANY  
and  
AUSTRIA**

**Treaty concerning administrative and legal assistance in administrative matters. Signed at Bonn on 31 May 1988**

*Authentic text: German.*

*Registered by Germany on 28 January 1993.*

---

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE  
et  
AUTRICHE**

**Accord relatif à l'entraide administrative et juridique en matière administrative. Signé à Bonn le 31 mai 1988**

*Texte authentique : allemand.*

*Enregistré par l'Allemagne le 28 janvier 1993.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE FEDERAL REPUBLIC OF GERMANY  
AND THE REPUBLIC OF AUSTRIA CONCERNING ADMIN-  
ISTRATIVE AND LEGAL ASSISTANCE IN ADMINISTRATIVE  
MATTERS

The Federal Republic of Germany and the Republic of Austria,

Guided by the desire to improve and simplify mutual administrative and legal assistance in administrative matters,

Have agreed as follows:

## PART I. GENERAL PROVISIONS

*Article 1*

(1) The Contracting States shall render one another administrative and legal assistance, in accordance with the provisions of this Treaty, in public law proceedings of their administrative authorities, in Austrian administrative criminal proceedings and German proceedings for the imposition of administrative fines, provided that such proceedings are not pending before a judicial authority, and in proceedings before Austrian courts of administrative jurisdiction and German courts of general administrative jurisdiction.

(2) Administrative and legal assistance in accordance with paragraph 1 shall not be rendered in:

1. Matters relating to taxes, customs, excise duties and monopolies, in so far as they are regulated by special treaties;
2. Foreign trade matters, including those relating to foreign exchange regulations and to prohibitions and restrictions on goods traffic across boundaries;
3. Tax consultancy matters and matters treated as such.

(3) Existing agreements of the Contracting States on the provision of administrative and legal assistance shall not be affected.

*Article 2*

(1) In respect of administrative and legal assistance between the Contracting States pursuant to article 1, paragraph 1, administrative authorities and administrative courts may deal with each other directly. Where requests for administrative and legal assistance under this Treaty are to be carried out by criminal courts, direct dealings with such courts shall also be permissible. Where direct dealings are possible only under particularly difficult circumstances, recourse shall be had to the administrative authorities designated by the requested State for the purposes

<sup>1</sup> Came into force on 1 October 1990, i.e., the first day of the third month following the date of the exchange of the instruments of ratification, which took place at Vienna on 18 July 1990, in accordance with article 20 (2).

whereof. The Contracting States shall notify each other concerning such administrative authorities.

(2) Requests for administrative and legal assistance which the requested entity (administrative authority of court) is not competent, under the law of the requested State, to handle shall be transmitted to the competent entity. The requesting entity shall be notified to that effect.

### *Article 3*

Administrative and legal assistance shall be rendered in accordance with the legislative on the requested State.

### *Article 4*

(1) Administrative and legal assistance shall not be rendered if it is inadmissible under the legislation of the requested State or if execution of the request is likely to prejudice the sovereignty, security, public policy or other essential interests of the requested State.

(2) The requested entity shall without delay notify the requesting entity of such refusal, indicating the grounds.

## PART II. HEARINGS, INFORMATION AND EVIDENCE

### *Article 5*

(1) The Contracting States shall render each other administrative and legal assistance through:

1. Investigation, including the taking of evidence;
2. The hearing of the parties and the examination of persons concerned or charged with an offence;
3. The furnishing of information, including information from judicial records;
4. The transmission of documents.

(2) The Contracting States shall further render each other administrative and legal assistance through the furnishing of information and the transmission of documents relating to criminal proceedings and proceedings for the imposition of administrative fines before the courts.

### *Article 6*

Requests in accordance with article 5 must indicate the object and purpose of the procedure in which administrative and legal assistance is to be rendered and include the particulars necessary for their execution.

### *Article 7*

Only expenditures for experts and interpreters who have participated in the execution of the request may be charged to the requesting entity.

*Article 8*

(1) Information and documents transmitted by the requested entity shall be subject in the other Contracting State to that State's domestic regulations governing official secrecy.

(2) If the requested entity indicates that information or documents transmitted by it are not to be passed on to others or are to be used only for specified purposes or for a specific period, the requesting entity must observe such restrictions.

## PART III. ASSISTANCE IN RESPECT OF ENFORCEMENT

*Article 9*

(1) The Contracting Parties shall render one another administrative assistance through the enforcement of monetary claims under public law — including non-appealable fines of at least 350 schillings imposed in Austrian administrative penal decisions or penal orders and non-appealable fines of at least 50 deutsche mark determined by German administrative authorities as well as incidental consequences in respect of property rights — and in the collection of documents issued by the requested State. The law of the requesting State shall apply in respect of enforcement. Deprivation of liberty as a means of punishment is excluded.

(2) The Contracting States shall communicate to each other which entities are competent to execute requests for enforcement. The Contracting States may also designate administrative authorities to receive requests for enforcement, in order to forward them to the entities competent for their execution; in such cases, the Contracting States shall indicate those administrative authorities to each other instead of effecting the communication specified in the first sentence of this paragraph.

(3) A request for enforcement (paragraph 1) shall be accompanied by an official copy of the enforceable instrument or of the notice to be enforced, bearing a certification by the requesting authority that it is unappealable and final. Such notices shall be treated, with regard to enforcement, in the same way as notices of the authority of the requested State.

(4) The enforcement of monetary claims shall be effected in the currency of the requested State. The requesting entity shall convert into that currency the money amount in respect of which enforcement is to be effected on its behalf and shall note the amount on the instrument to be enforced. For the purposes of conversion, the foreign-exchange buying rate for payment in Frankfurt most recently quoted on the Vienna Stock Exchange shall apply in the Republic of Austria and the official foreign-exchange buying rate for payment in Vienna most recently fixed in Frankfurt am Main shall apply in the Federal Republic of Germany.

(5) In the event of objections as to admissibility or manner of enforcement, the competent entity of the requested State shall decide.

(6) Objections as to the existence, amount or enforceability of the claim to be enforced shall be handled by the competent entity of the requesting State in accordance with the law of that State. Should such objections be lodged with the requested entity, they shall be communicated to the requesting entity, whose decision must be awaited.

(7) If the cash amount of the claim to be enforced is disproportionate with respect to the costs which enforcement entails, the requested entity may refrain from enforcement, in which case it must notify the requesting entity to that effect. The requesting entity may nevertheless demand enforcement if, for special reasons, it so deems it necessary, in which case it shall bear the costs in the event of unsuccessful enforcement.

(8) The requested entity shall remit the sums of money collected by it to the requesting authority. Excepted therefrom are costs which were collectible under the law of the requested States.

#### PART IV. SERVICE

##### *Article 10*

(1) Documents in the proceedings referred to in article 1, paragraph 1, shall be transmitted directly by post in accordance with the regulations in force for postal service between the Contracting States. If proof of service is required, the document shall be sent as a registered letter with the special “personal delivery” and “acknowledgment of receipt” forms. If service directly by post is not possible or, owing to the nature and content of the document, not appropriate, the competent entity in the other Contracting State shall be requested to arrange for service by way of administrative and legal assistance. The Contracting States shall notify each other regarding such entities.

(2) Direct service by post shall not be permissible in the case of notices which relate to the fitness for military service of persons subject to such service, notices which call a person to military service or permanently or temporarily requisition, for military purposes, property situated in the requesting State and belonging to a national of the other Contracting State or notices under the Convention relating to the Status of Refugees, of 28 July 1951.<sup>1</sup>

(3) Service of notices, in administrative criminal proceedings, on nationals of the State in which the service is to be effected shall, in respect of a pronouncement of deprivation of liberty, be deemed not to have been effected.

##### *Article 11*

Requests for the effectuation of service in accordance with article 10, paragraph 1, third sentence, shall, in cases where the law of the requested State provide for a choice among more than one type of service, specify the type of service desired; in the absence of such specification, the choice shall be left to the discretion of the requested entity.

##### *Article 12*

An entity which has, either itself or by post, effected service on the basis of request in accordance with article 10, paragraph 1, third sentence, shall transmit to the requesting entity an attestation of service issued by the first-mentioned entity or an acknowledgment signed personally by the recipient, each of which shall indicate the place and date of receipt.

<sup>1</sup> United Nations, *Treaty Series*, vol. 189, p. 137.

*Article 13*

If the recipient cannot be reached at the address indicated by the requesting entity and his address can be ascertained only at excessive expense, the requested entity shall return the request.

PART V. SPECIAL RULES GOVERNING MATTERS RELATING  
TO MOTOR VEHICLES

*Article 14*

(1) A driving licence issued in the other Contracting State shall be revoked, against an acknowledgment of receipt, if:

1. The other Contracting State requests the enforcement of a decision to revoke a driving authorization;
2. The other Contracting State requests the transmittal of the driving licence for the purpose of recording official entries;
3. On the basis of the driving licence, a driving authorization is granted on request; the driving licence issued in the other Contracting State shall be returned only upon the surrender of that issued on its basis;
4. The right to use the driving licence is denied.

(2) Driving licences which have been revoked shall be turned over, in the cases in paragraph 1, subparagraphs 1 and 2, to the requesting authority and otherwise to the issuing authority; in the cases in paragraph 1, subparagraphs 3 and 4, however, the person whose driving licence is in question shall have the right to apply for its safekeeping with another authority.

*Article 15*

(1) The vehicle registration document and the official number plates of a motor vehicle registered in the other Contracting State shall be revoked against an acknowledgment of receipt and transmitted to the authority which issued the vehicle registration document if:

1. The other Contracting State requests the enforcement of a decision for the prohibition of the operation or revocation of the registration of the motor vehicle;
2. It is found, in the case of registration with a fixed period of validity, that that period has expired;
3. It is found that further use of the vehicle would jeopardize its operating safety or traffic safety owing to serious technical defects of the vehicle and such defects are not eliminated within a reasonable period established by the intervening authority;
4. The vehicle becomes registered; in that case the registration of the vehicle in the other Contracting State shall be treated as cancelled.

(2) In the cases in paragraph 1, subparagraphs 2 and 3, a brief statement of the facts, and in the cases in paragraph 1, subparagraph 4, the name and address of the

new holder of the registration and the new registration number, shall be communicated to the other Contracting State.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* in respect of motor vehicles with registration numbers for trial runs/test drives and delivery/ transfer drives and for vehicles with customs registration numbers.

#### PART VI. FINAL PROVISIONS

##### *Article 16*

(1) Disputes concerning the interpretation or application of this Treaty shall be settled by the Governments of the Contracting States.

(2) Should a dispute fail to be settled in this manner within six months, it shall, at the request of a Contracting State, be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be constituted *ad hoc*, with each Contracting State appointing one member and the two members agreeing on a national of a third State to serve as president, who shall be appointed by the Governments of the Contracting States. The members shall be appointed within two months, and the president, within three months, after one Contracting State has notified the other of its wish to submit the dispute to an arbitration tribunal.

(4) If the time-limits specified in paragraph (3) are not adhered to, either Contracting State may, in the absence of any other agreement, request the President of the European Court of Human Rights to make the necessary appointments. If the President of the European Court of Human Rights has Austrian or German nationality, the functions assigned to him under the present article shall devolve upon the Vice-President or, after him, the highest-ranking judge of that Court to whom that condition does not apply.

(5) The arbitration tribunal shall take its decisions by majority vote, on the basis of treaties existing between the Contracting States and of general international law. Its decisions shall be binding. Each Contracting State shall defray the expenses of the arbitrator that it has appointed and the cost of its representation in the arbitration proceedings; the expenses of the president and other costs shall be borne equally by the Contracting States. In all other respects, the arbitral tribunal shall establish its own rules of procedure.

(6) The courts of both Contracting States shall render to the arbitration tribunal, on request, legal assistance in connection with the summoning and examination of witnesses and experts in accordance with the agreements concerning legal assistance in civil and commercial matters in force at the time between the two Contracting States.

##### *Article 17*

Article 9 shall not apply to fines imposed or determined before the entry into force of this Treaty.

##### *Article 18*

Whether a person is a national of a Contracting State within the meaning of this Treaty shall be determined in accordance with the law of that State.

*Article 19*

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

*Article 20*

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged in Vienna as soon as possible.

(2) This Treaty shall enter into force on the first day of the third calendar month following the exchange of the instruments of ratification.

(3) This Treaty may be denounced in writing at any time, through the diplomatic channel; it shall expire six months from the date of receipt of such denunciation. Requests in existence at the time of expiry of this Treaty shall be carried out in accordance with its provisions.

DONE at Bonn on 31 May 1988 in two original copies.

For the Federal Republic of Germany:

Dr. LAUTENSCHLAGER

For the Republic of Austria:

Dr. BAUER

---