

AGREEMENT BETWEEN
THE REPUBLIC OF AUSTRIA
AND
THE INTERNATIONAL ORGANIZATION FOR MIGRATION
REGARDING THE LEGAL STATUS OF THE ORGANIZATION IN AUSTRIA AND THE
HEADQUARTERS OF ITS OFFICES IN VIENNA

Preamble

The Republic of Austria, on the one hand, and the International Organization for Migration (IOM), on the other hand,

HAVING REGARD to the Resolution to establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), adopted on 5 December 1951 and to the Constitution of the International Organization for Migration of 19 October 1953, as amended on 20 May 1987 (hereinafter referred to as the "Constitution");

RECALLING that the Republic of Austria is a founding member of IOM;

NOTING that IOM has been operating a Country Office in Austria since 1954 and, in addition, is now establishing a Regional Office for Eastern and South-Eastern Europe and Central Asia;

HAVING REGARD to the decree of the Federal Government of the Republic of Austria of 11 November 1980 on the Granting of Privileges and Immunities to the Intergovernmental Committee for Migration, Federal Law Gazette No. 530/1980 as amended;

DESIROUS to define the status, privileges and immunities of IOM, the Country Office and the Regional Office of IOM in the Republic of Austria and to enable IOM to fulfil its purposes and functions;

HAVE AGREED as follows:

Article 1

DEFINITIONS

For the purpose of this Agreement:

- (a) "Austrian authorities" means such federal, state, municipal or other authorities in the Republic of Austria as may be appropriate in the context, and in accordance with the laws and customs applicable in the Republic of Austria;
- (b) "Organization" or "IOM" means the International Organization for Migration;
- (c) "Country Office" means the office of the Organization in Vienna, which implements projects for Austria;
- (d) "Regional Office" means the office of the Organization in Vienna, which provides support to IOM country offices in Eastern and South-Eastern Europe and Central Asia;
- (e) "Offices" means the Regional Office and the Country Office of the Organization in Vienna;
- (f) "Heads of the Offices" refers to Head of the Regional Office and Head of the Country Office;
- (g) "Staff Members" means persons employed by IOM, including persons seconded by a Government or international organization to IOM;
- (h) "Staff Members of the Offices" means Staff Members of one of the Offices, including persons seconded by a Government or international organization to work at one of the Offices, except those who are locally recruited and assigned to hourly rates;
- (i) "Official activities" means any activities necessary for carrying out the purpose of the Organization as set forth in the Constitution and resolutions of its Governing Bodies; and
- (j) "Official Visitors" means representatives of Governments, international organizations and other entities co-operating with the Organization who are invited by IOM or its offices to its Seat in Austria on official business.

Article 2

LEGAL PERSONALITY

The Republic of Austria recognizes the international juridical personality of the Organization, deriving from the Constitution, and its legal capacity within Austria, in particular its capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute and respond to legal proceedings; and
- (d) to take such other action as may be necessary or useful for its purpose and activities.

Article 3

SEAT PREMISES

(1) The Seat premises shall comprise the land, installations and office premises that the Offices occupy for their activities. The Seat area shall be defined by common understanding between the Organization and the Government of the Republic of Austria.

(2) Any building in or outside Vienna used with the agreement of the Government for official meetings convened by the Organization shall be deemed temporarily to form part of the Seat premises.

Article 4

INVIOLABILITY OF THE SEAT PREMISES

(1) The Seat premises shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, may enter the Seat premises to perform any duties except with the consent of, and under conditions approved by, the respective Head of the Offices. However, in the event of fire or other such emergency, such consent shall be deemed to have been given if immediate protective measures are required.

(2) Subject to the power of the Organization to make regulations and except as otherwise provided in this Agreement, the laws of the Republic of Austria shall apply within the Seat premises.

Article 5

IMMUNITY FROM LEGAL PROCESS

(1) The Organization, its property and assets, wherever located and by whomsoever held, shall have immunity from jurisdiction and every other form of legal process, except:

- (a) to the extent that the Director General of the Organization shall have expressly waived such immunity in a particular case;
- (b) in the case of civil action brought by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organization, or due to any infringement of regulations governing the keeping, operation and use of motor vehicles;
- (c) in the case of attachment, pursuant to a decision by the judicial or administrative authorities, of the salary or emoluments owed by the Organization to a Staff Member, unless the Organization informs the Austrian authorities within 45 days of the date on which it is notified of said decision that it does not waive its immunity.

Notwithstanding paragraph 1 (c) above, it is however understood that no waiver of immunity shall extend to any measure of execution.

(2) The property and assets of the Organisation, wherever situated, shall be immune from any form of seizure, search, requisition, confiscation, expropriation, sequestration and any other form of interference, whether by executive, administrative, judicial or legislative action.

Article 6

INVIOABILITY OF ARCHIVES

The archives of the Organization, and in general all documents belonging to it or held by it, shall be inviolable.

Article 7

PROTECTION OF THE SEAT PREMISES

The Austrian authorities shall exercise due diligence to ensure that the tranquillity of the Seat premises is not disturbed by any person or group of persons attempting unauthorized entry into the Seat premises.

Article 8

PUBLIC SERVICES IN THE SEAT PREMISES

The Republic of Austria shall take all appropriate measures to ensure that the Seat premises are supplied with the necessary public services on equitable terms. The Heads of the Offices shall, upon request, make suitable arrangements to enable duly authorised representatives of the appropriate public service bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the premises in such a manner as not to disrupt the official activities unduly.

Article 9

COMMUNICATIONS

- (1) The Republic of Austria shall ensure that the Organization is able to send and receive communications in connection with its official activities without censorship or other interference.
- (2) The Organization shall enjoy in the Republic of Austria, for its official communications and the transfer of all its documents, treatment not less advantageous to the Organization than the most favourable treatment accorded by the Republic of Austria to any international organization, in the matter of priorities, rates and surcharges on mail, cables, radiogrammes, telefax, telephone and other forms of communication.

Article 10

FREEDOM FROM TAXATION AND CUSTOMS DUTIES

- (1) The Organization and its property shall be exempt from all forms of taxation.
- (2) Indirect taxes included in the price of goods or services supplied to the Organization, including leasing and rental charges, shall be refunded to the Organization insofar as Austrian law makes provision to that effect for foreign diplomatic missions.
- (3) All transactions to which the Organization is a party and all documents recording such transactions shall be exempt from all taxes, recording charges and court fees.
- (4) Goods, including motor vehicles and spare parts thereof, imported or exported by the Organization, required for its official activities, shall be exempt from customs duties and other charges provided these are not simply charges for public utility services, and from economic prohibitions and restrictions on imports and exports. The Republic of Austria shall issue for each vehicle of the Offices a diplomatic license plate by which it can be identified as an official vehicle of an international organization.
- (5) Goods imported in accordance with paragraph (4) shall not be ceded or transferred by the Organization to third parties in the European Union within two years of their importation or acquisition.
- (6) The Organization shall be exempt from the obligation to pay employer's contributions to the Family Burden Equalization Fund or an instrument with equivalent objectives.

Article 11

FINANCIAL FACILITIES

The Republic of Austria shall take all measures to ensure that the Organization may:

- (a) purchase and receive through authorized channels, hold and dispose of any currencies or securities;
- (b) open and operate bank accounts in any currency; and
- (c) transfer its funds, securities and currencies to, from or within the Republic of Austria.

Article 12

SOCIAL SECURITY

- (1) The Organization and the Staff Members of the Offices shall be exempt from all compulsory contributions to any social security scheme of the Republic of Austria.
- (2) The Staff Members of the Offices shall have the right to participate in any branch of the social insurance of the Republic of Austria (health, accident and pension insurance) as well as in the unemployment insurance. This insurance shall have the same legal effect as a compulsory insurance.
- (3) The Staff Members of the Offices may avail themselves of the right under paragraph (2) by submitting a written declaration within three months after entry into force of this Agreement or within three months after taking up their appointment with one of the Offices.
- (4) The declarations required to be made by the Staff Member under paragraph (3) shall be transmitted by the Regional Office or Country Office, as appropriate, on behalf of the Staff Member of the Offices to the Wiener Gebietskrankenkasse. The Offices shall upon request provide the Wiener Gebietskrankenkasse with the information necessary for the implementation of the insurance.
- (5) Insurance under paragraph (2) in the selected branch shall take effect with the date of taking up the appointment with one of the Offices, provided the declaration is submitted within seven days after entry into force of this Agreement or after the date of taking up the appointment, otherwise on the day following the day of submission of the declaration.
- (6) Insurance under paragraph (2) shall cease on the date on which the appointment with the Offices terminates.
- (7) Throughout the duration of the insurance under paragraph (2), Staff Members of the Offices shall be responsible for the payment of the entire contributions to the Wiener Gebietskrankenkasse. In order to simplify the implementation of social insurance in respect of their Staff Members, the Offices shall take steps to ensure that the necessary notifications are made and the entire contributions to be paid by the Staff Members are transferred to the Wiener Gebietskrankenkasse.

(8) The Parties will consider the advisability of a separate Agreement on social security that regulates the effects of participating in or separating from the United Nations Joint Staff Pension Fund or the Austrian Social Security System, including the respective transfer of pension rights.

Article 13

TRANSIT AND RESIDENCE

(1) The Republic of Austria shall take all necessary measures to facilitate the entry into, and sojourn in the Republic of Austria of the persons listed below, shall allow them to leave the Republic of Austria without interference and shall ensure that they can travel unimpeded to or from the Seat premises, affording them any necessary protection when so travelling:

- (a) Heads of the Offices, as well as members of their families forming part of their household;
- (b) Staff Members of the Offices, as well as members of their families forming part of their household;
- (c) other Staff Members of the Organization; and
- (d) official visitors.

(2) Visas which may be required by persons referred to in paragraph (1) shall be granted free of charge and as promptly as possible.

(3) No activity performed by any person referred to in paragraph (1) in his/her official capacity with respect to the Organization shall constitute a reason for preventing his entry into, or his/her departure from, the Republic of Austria.

(4) The Republic of Austria shall be entitled to require reasonable evidence to establish that persons claiming the rights granted by this Article fall within the categories described in paragraph (1), and to require compliance in a reasonable manner with quarantine and health regulations.

Article 14

STAFF MEMBERS OF THE ORGANIZATION

Staff members of the Organization who do not come within the scope of Article 15 shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities:

- (a) immunity from jurisdiction and any other kind of legal process in respect of words spoken or written and all acts performed by them in their official capacity; this immunity shall continue to apply even after the persons concerned have ceased to be Staff Members of the Organization;
- (b) immunity from the seizure of their personal and official baggage and immunity from inspection of official baggage;
- (c) inviolability of all official documents, data and other material; and
- (d) exemption from taxation in respect of the salaries, emoluments including allowances and remunerations paid to them by the Organization in connection with their service with the Organization. This exemption shall extend also to assistance given to the families of Staff Members of the Organization.
- (e) All former Staff Members of the Organization shall be exempt from national income tax on pensions and similar payments paid to them by the Organization. However, the Republic of Austria shall retain the right to take these pensions and payments into account for the purpose of assessing taxation to be applied to income from other sources.

Article 15

STAFF MEMBERS OF THE OFFICES

(1) Staff Members of the Offices shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities:

- (a) immunity from jurisdiction and any other kind of legal process in respect of words spoken or written and all acts performed by them in their official capacity; this immunity shall continue to apply even after the persons concerned have ceased to be Staff Members of the Organization;

- (b) immunity from the seizure of their personal and official baggage and immunity from inspection of official baggage, and, if the persons come within the scope of Article 16 and are neither Austrian citizens nor have their permanent residence in the Republic of Austria, immunity from inspection of personal baggage;
- (c) inviolability of all official documents, data and other material;
- (d) exemption from taxation in respect of the salaries, emoluments including allowances, remunerations and pensions paid to them by the Organization in connection with their service with the Organization. This exemption shall extend also to assistance given to the families of Staff Members of the Offices;
- (e) exemption from any form of taxation on income derived by them and by members of their families forming part of their household from sources outside the Republic of Austria;
- (f) exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as such arise solely from the fact that Staff Members of the Offices or members of their families forming part of their household reside or maintain their usual domicile in the Republic of Austria;
- (g) exemption from immigration restrictions and from alien registration formalities for themselves and members of their families forming part of their household;
- (h) freedom to acquire or maintain within the Republic of Austria foreign securities, foreign currency accounts, other movable property and, under the same conditions as Austrian nationals, immovable property; and upon termination of their employment with the Offices, the right to transfer out of the Republic of Austria, without interference, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria;
- (i) the right to import for personal use, free of duty and other charges, provided these are not simply charges for public utility services:
 - (i) their furniture and effects in one or more separate consignments; and
 - (ii) one motor vehicle every four years;
- (j) the same protection and repatriation facilities with respect to themselves and members of their families forming part of their household as are accorded in time of international crises to officials, having comparable rank, of diplomatic missions accredited to the Republic of Austria;

- (k) the opportunity for members of their families living in the same household to have access to the labour market in accordance with the Austrian law on a preferential basis, provided that, insofar as they engage in gainful occupation, privileges and immunities under this Agreement shall not apply with regard to such occupation. This privilege shall be granted according to the Annex.

(2) Staff members of the Organization, including Staff Members of the Offices, and the members of their families living in the same household, to whom this Agreement applies, shall not be entitled to payments out of the Family Burden Equalization Fund or an instrument with equivalent objectives. This shall not apply if these persons are Austrian nationals, persons of other nationality granted equivalent status by European Union legislation, or stateless persons with permanent residence in Austria.

Article 16

HEADS OF THE OFFICES

In addition to the privileges and immunities specified in Article 15, the Heads of the Offices, shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions or members of such missions having comparable rank, provided they are not Austrian nationals or permanent residents of the Republic of Austria.

Article 17

OFFICIAL VISITORS

- (1) Official visitors shall enjoy the following privileges and immunities:
 - (a) immunity from jurisdiction and every other form of legal process in respect of all words spoken or written, and all acts performed by them in the exercise of their duties. Official visitors shall continue to enjoy this immunity even after they have ceased to be official visitors;
 - (b) inviolability of all their official documents, data and other material;
 - (c) immunity from seizure of their personal and official baggage;
 - (d) the exchange facilities necessary for the transfer of their emoluments and expenses.

- (2) Where the incidence of any form of taxation depends upon residence, periods during which the persons referred to in paragraph 1 may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their emoluments and expenses paid by the Organization during such periods of duty.

Article 18

NOTIFICATION OF APPOINTMENTS, IDENTITY CARDS

- (1) The Offices shall communicate to the Austrian authorities a list of their Staff Members and shall revise such list from time to time as may be necessary.
- (2) The Republic of Austria shall issue to such Staff Members of the Offices and members of their families forming part of their household in accordance with the Austrian law an identity card bearing the photograph of the holder. This card shall serve to identify the holder vis-à-vis the Austrian authorities.

Article 19

AUSTRIAN NATIONALS AND PERMANENT RESIDENTS OF

THE REPUBLIC OF AUSTRIA

Austrian nationals and persons who are permanent residents of the Republic of Austria, shall enjoy only the privileges and immunities specified in Article 12, Article 14 (1)(a), (b), (c), (d), and (e), Article 15 (1)(a), (b) with the reservations provided for therein, (c), (d) and (i) (i) as well as Article 17 (1)(a), (b) and (c).

Article 20

PURPOSE OF PRIVILEGES AND IMMUNITIES

- (1) The privileges and immunities provided for in this Agreement are not designed to give to Staff Members or official visitors of the Offices personal advantage. They are granted solely to ensure that the Organization is able to perform its official activities unimpeded at all times and that the persons to whom they are accorded have complete independence.
- (2) The Organization shall waive immunity where it considers that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the Organization.
- (3) In all cases, the Organization engages to encourage its Staff Members to comply with their legal obligations.

Article 21

SETTLEMENT OF DISPUTES

Any dispute between the Republic of Austria and the Organization concerning the interpretation or application of this Agreement or any question affecting the Seat of the Offices, the status of the Organization or relations between the Organization and the Republic of Austria, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators; one to be chosen by the Organization, one to be chosen by the Federal Minister for European and International Affairs of the Republic of Austria, and the third, who shall be chairperson of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six (6) months of their appointment, he shall be chosen by the President of the International Court of Justice at the request of the Republic of Austria or the Organization. The place of arbitration shall be in Vienna.

Article 22

MOST-FAVOURED ORGANIZATION

If and to the extent that the Government of the Republic of Austria shall enter into any agreement with a comparable intergovernmental organization having its office in Austria containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to the Organization, by means of a supplemental agreement.

Article 23

ENTRY INTO FORCE AND DURATION OF THE AGREEMENT

- (1) This Agreement shall enter into force on the first day of the second month after the Republic of Austria and the Organization have informed each other of the completion of the procedures required, for each of them, to be bound by it.
- (2) The provisions of the present Agreement shall take effect as of 1 July 2011.
- (3) This Agreement shall cease to be in force
 - (a) by mutual consent of the Republic of Austria and the Organization in writing; or
 - (b) upon the expiration of six (6) months following written notice of termination from either party to the other.

Done in Vienna on 27 December 2013 in the German and English languages, each text being equally authentic.

For the Republic of Austria:

Sebastian Kurz m.p.

For the International Organization for Migration:

William Lacy Swing m.p.

ANNEX

Access to the labour market

1. Spouses of Staff Members of the Offices, as well as their children under age of 21, provided they came to Austria for the purpose of family reunion and forming part of the same household with the principal holder of the identity card issued according to Article 18, shall have preferential access to the labour market. For the purpose of access to the labour market, the definition "Staff Members of the Offices" contained in Article 1 (h) takes account of the specific structure of the Offices. The above mentioned family members are hereinafter called beneficiaries.

2. Upon application, the above mentioned beneficiaries will be issued, by the Federal Ministry for European and International Affairs, a certificate confirming their preferential status under this Agreement. The issuing of such certificate shall not be conditional on a specific offer of employment. It shall be valid for the entire Austrian territory and its validity shall expire upon expiration of the identity card.

3. The prospective employer of the beneficiary will be granted an employment permit ("*Beschäftigungsbewilligung*") upon application, provided that the employment is not sought in a sector of the labour market or a region with grave employment problems, as determined by the Austrian Public Employment Service ("*Arbeitsmarktservice*"). The employment permit may be granted even if the legally fixed maximum number for employment of foreign labour ("*Bundeshöchstzahl*") has been exceeded.

4. The employment permit shall be issued by the regional office of the Austrian Public Employment Service ("*Arbeitsmarktservice*") competent for the area in which employment is taken up; in the case of employment which is not confined to a specific location, the competence of the regional office shall be determined by the business seat of the employer.

5. Children who came to Austria before the age of 21 for the purpose of family reunion and who wish to take up employment after the completion of their 21st year of age shall be considered as beneficiaries if the principal holder of the identity card provided for their livelihood before they reached the age of 21 up to the moment in which they took up employment. For all other dependent relatives the normal regulations for access of foreigners to employment in Austria shall apply.

6. The above rules concerning employment shall not apply to self-employed activities. In such cases, the beneficiaries shall comply with the necessary legal requirements for the exercise of such business activities.