

Protocol between the Republic of Austria and the OPEC Fund for International Development amending the Agreement between the Republic of Austria and the OPEC Fund for International Development Regarding the Headquarters of the Fund

The Republic of Austria and the OPEC Fund for International Development, hereinafter referred to as "OFID",

RECALLING the Agreement between the Republic of Austria and the OPEC Fund for International Development Regarding the Headquarters of the Fund of 21 April 1981, including the Exchange of Notes of 21 April 1981, hereinafter referred to as "Headquarters Agreement",

RECALLING also the Agreement between the Austrian Federal Government and the OPEC Fund for International Development of 13 April 1983, as last amended by Exchange of Notes of 4 and 11 March 1998, regarding the definition of the Headquarters of OFID, concluded pursuant to Article 1 (m) of the Headquarters Agreement,

WISHING to amend the Headquarters Agreement,

HAVE AGREED as follows:

Section 1

The following article headings shall be inserted into the Headquarters Agreement:

- Article 1: "Definitions",
- Article 2: "The Headquarters of OFID",
- Article 3: "Control and authority over the Headquarters",
- Article 4: "Internal regulations of OFID",
- Article 5: "Inviolability of the Headquarters",
- Article 6: "Protection of the Headquarters",
- Article 7: "Juridical personality of OFID",
- Article 8: "Right to convene meetings",
- Article 9: "Immunity of OFID",
- Article 10: "Immunity of the property and assets of OFID",
- Article 11: "Inviolability of archives",
- Article 12: "Freedom from taxation",
- Article 13: "Official communications",
- Article 14: "Immunity of official communications – diplomatic bag",
- Article 15: "Financial facilities",
- Article 16: "Pension Fund and any Provident Fund",
- Article 17: "Social security",

- Article 18: "Participation in the Austrian social security system",
- Article 19: "Transit",
- Article 20: "Representatives",
- Article 21: "Limitations of privileges and immunities under Article 20",
- Article 22: "Officials of OFID",
- Article 23: "Additional privileges and immunities",
- Article 24: "Experts on mission and official visitors",
- Article 25: "Limitations of privileges and immunities under Articles 22, 23 and 24",
- Article 26: "Austrian citizens and stateless persons",
- Article 27: "List of persons",
- Article 28: "Abuse of privileges or immunities",
- Article 29: "Settlement of disputes",
- Article 30: "Most favoured party treatment",
- Article 31: "Entry into force".

Section 2

In Articles 1, 2, 3, 4, 6, 7, 8, 11, 12, 13, 14, 15, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, and 31 of the Headquarters Agreement, the term "The Fund" or "the Fund", respectively, shall be replaced by "OFID".

Section 3

Article 1 of the Headquarters Agreement shall be amended as follows:

1. Sub-section (c) shall be amended to read as follows:

"“Director-General” means the Director-General of OFID or any senior officer designated to act on behalf of the Director-General;"
2. At the end of sub-section (l) the word "and" shall be deleted.
3. At the end of sub-section (m) the full stop shall be replaced by a semicolon.
4. The following sub-sections shall be added:

“(n) “Pension Fund” means the pension fund established by OFID under its internal regulations;

“(o) “Provident Fund” means the provident fund established or to be established by OFID under its internal regulations;

“(p) “Competent Austrian Authorities” means such federal, state, municipal or other authorities of the Republic of Austria as may be competent in the context and in accordance with the laws and customs applicable in the Republic of Austria;

“(q) “Vienna Convention” means the Vienna Convention on Diplomatic Relations signed in Vienna on 18 April 1961.”

Section 4

Article 2 of the Headquarters Agreement shall be amended as follows:

An additional paragraph (3) shall be added which reads as follows:

“(3) Where gas, electricity, water or heating is supplied by the Competent Austrian Authorities, or where the prices thereof are under their control, OFID shall be supplied at rates that shall not exceed the lowest comparable rates accorded to Austrian governmental administrations.”

Section 5

In Article 3 of the Headquarters Agreement, the term “extraterritoriality” shall be replaced by “inviolability”.

Section 6

Article 6 of the Headquarters Agreement shall be amended as follows:

1. An additional paragraph (4) shall be added which reads as follows:

“(4) The Competent Austrian Authorities and OFID shall closely cooperate regarding the interrelation of effective security within and in the immediate vicinity outside the Headquarters.”

2. An additional paragraph (5) shall be added which reads as follows:

“(5) OFID, in the preparation of its security regulations and procedures, shall consult with the Government with a view to achieving the most effective and efficient exercise of security functions.”

Section 7

Article 7 of the Headquarters Agreement shall be amended as follows:

1. At the end of sub-section (d) the full stop shall be replaced by a semicolon.
2. An additional sub-section (e) shall be added which reads as follows:

“(e) To take such other action as may be necessary or useful for their purpose and activities, including but not limited to the raising of any kind of funding from the local as well as international markets and the issuing of securities on the local as well as on international markets.”

Section 8

The text of Article 9 of the Headquarters Agreement shall be replaced by the following text:

“(1) OFID shall have immunity from jurisdiction and enforcement, except:

(a) to the extent that, in accordance with Article 25 (1) of this Agreement, OFID 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, OFID, or in respect of any infringement of regulations governing the keeping, operation and use of motor vehicles.

(2) Unless an alternative dispute settlement mechanism has been agreed, any dispute between OFID and a private party shall be finally settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties. Matters concerning solely the interpretation of the Agreement Establishing OFID as well as employment disputes shall not be within the competence of the tribunal. Employment disputes between OFID and its employees shall be settled by an effective dispute resolution mechanism pursuant to OFID's internal regulations which protects the rights of the employees."

Section 9

Article 10 of the Headquarters Agreement shall be amended to read as follows:

"(1) Without prejudice to Article 9, the property and assets of OFID, wherever situated and by whomsoever held, shall be immune from any form of seizure, requisition, confiscation, expropriation and sequestration.

(2) The property and assets of OFID shall also be immune from any form of administrative or provisional judicial restraint."

Section 10

Article 12 of the Headquarters Agreement shall be amended as follows:

1. An additional paragraph (8) shall be added which reads as follows:

"(8) The articles mentioned in paragraph (7) may be disposed of without charge only for the benefit of international organizations possessing comparable privileges or for the benefit of charitable institutions."

2. An additional paragraph (9) shall be added which reads as follows:

"(9) OFID shall be exempt from the obligation to pay employer's contribution to the Family Burden Equalization Fund or an instrument with equivalent objectives."

Section 11

Article 13 of the Headquarters Agreement shall be amended as follows:

1. The current text shall become paragraph (1).
2. An additional paragraph (2) shall be added which reads as follows:

"(2) The Government recognizes the right of OFID to freely publish and communicate within the Republic of Austria in the fulfilment of its purposes. It is, however, understood that OFID shall respect any laws of the Republic of Austria, or international conventions to which the Republic of Austria is a party, relating to copyrights."

Section 12

Article 14 of the Headquarters Agreement shall be amended as follows:

The following sentence shall be added to paragraph (1):

“Such immunity shall extend, without limitation by reason of its enumeration, to publications, still and moving pictures, films, computer based communications, sound and video recordings.”

Section 13

Article 15 of the Headquarters Agreement shall be amended as follows:

1. The current text shall become paragraph (1).
2. The first sentence of paragraph (1) shall be amended to read as follows: “Without being subject to any financial control, regulations or moratoria of any kind, OFID may freely for official purposes.”
3. Sub-section (c) shall be amended to read as follows:
“(c) Purchase through authorized channels, hold and dispose of funds, securities and gold;”
4. Sub-section (d) shall be amended to read as follows:
“(d) Transfer its funds, securities, gold and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria;”
5. Sub-section (e) shall be amended to read as follows:
“(e) Perform all the operations pertaining to its activities as defined by the Agreement Establishing OFID, including, but not limited to: raising funds through the exercise of its borrowing power, private sector operations and trade finance activities.”
6. An additional paragraph (2) shall be added which reads as follows:
“(2) The Government shall assist OFID to obtain the most favourable conditions as regards exchange rates, banking commissions in transactions and the like.”
7. An additional paragraph (3) shall be added which reads as follows:
“(3) OFID shall, in exercising its rights under this Article, pay due regard to any representation made by the Government insofar as effect can be given to such representations without prejudicing the interest of OFID.”

Section 14

Article 16 of the Headquarters Agreement shall be amended to read as follows:

“The Pension Fund and any Provident Fund shall enjoy legal capacity in the Republic of Austria and shall enjoy the same exemptions, privileges and immunities as OFID itself. Benefits received from the Pension Fund or from any Provident Fund shall be exempt from taxation, duties and levies.”

Section 15

Article 19 of the Headquarters Agreement shall be amended as follows:

1. At the end of paragraph (2) "in accordance with the laws of the Republic of Austria" shall be added.
2. An additional paragraph (3) shall be added which reads as follows:

"(3) No person referred to in paragraph (1) shall be required by the Government to leave the territory of the Republic of Austria save in the event of an abuse of the right of residence, in which the following procedures shall apply:

 - (a) No proceeding shall be instituted to require any such person to leave the territory of the Republic of Austria except with the prior approval of the Federal Minister competent for foreign affairs of the Republic of Austria;
 - (b) In the case of a representative of a State, such approval shall be given only after consultation with the Government of the State concerned;
 - (c) In the case of any other person mentioned in paragraph (1), such approval shall be given only after consultation with the Director-General and, if expulsion proceedings are taken against any such person, the Director-General shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted; and
 - (d) Persons who are entitled to diplomatic privileges and immunities under Article 23 shall not be required to leave the territory of the Republic of Austria otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria."

Section 16

Article 22 of the Headquarters Agreement shall read as follows:

- "(1) Officials of OFID shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:
- (a) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity; such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of OFID;
 - (b) Immunity from seizure of their personal and official baggage;
 - (c) Immunity from inspection of official baggage and, if the official comes within the scope of Article 23, immunity from inspection of personal baggage;
 - (d) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by OFID for services past or present or in connection with their service with OFID;
 - (e) Exemption from taxation in respect of benefits received from their participation in the Austrian Social Security Scheme;
 - (f) Exemption from taxation on all income and property of officials and members of their families forming part of their households, insofar as such income derives

from sources, or insofar as such property is located, outside the Republic of Austria;

(g) Exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as the obligations to pay taxes arises solely from the fact that officials and members of their households reside and maintain their usual domicile in Austria;

(h) Exemption from vehicles tax and engine-related insurance tax;

(i) Exemption, with respect to themselves, their spouses, their dependent relatives and other members of their households from immigration restrictions and alien registration;

(j) Spouses and dependant relatives living in the same household shall have access to the labour market in accordance with the Austrian law on a preferential basis. Insofar as they engage in gainful occupation, privileges and immunities shall not apply with respect to such occupation. This privilege shall be granted according to Annex 2;

(k) Exemption from national services obligations, provided that, with respect to Austrian nationals, such exemption shall be confined to officials, whose names have, by reason of their duties, been placed upon a list compiled by the Director-General and transmitted to the Government; provided further that should officials, other than those listed, who are Austrian nationals, be called up for national service, the Government shall, upon request of the Director-General, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of essential work of OFID;

(l) Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts, and other movable and, under the same conditions applicable to Austrian nationals, immovable property; and at the termination of their OFID employment, the right to take out of the Republic of Austria through authorized channels without prohibition or restriction, their funds in the same currency and up to the amounts they had brought into the Republic of Austria and the interest or income accruing thereupon, as well as to transfer all the amounts saved from their salaries earned in an official capacity with OFID and the interest or income accruing thereupon;

(m) Without prejudice to the above provisions freedom to make, over and above the facilities granted by this Agreement, transfers to other countries;

(n) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as the Government accords in time of international crises to members, having comparable rank, of diplomatic missions in the Republic of Austria;

(o) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and effects in one or more separate shipments, and thereafter necessary additions to the same;

- (ii) One automobile every four years;
- (iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; OFID shall enjoy the right to establish a commissary of its own or its officials shall have access to the VIC commissary or one of the existing commissaries in Vienna; a supplemental agreement shall be concluded to regulate the exercise of these rights;
- (p) For themselves and members of their families, on the same terms as Austrian citizens, the right of access to universities and other institutions of higher education for the purpose of obtaining graduate and post-graduate degrees and related training leading to the attainment of the relevant educational and professional qualifications required in Austria.
- (2) Officials of OFID 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 resident in Austria.
- (3) In the case of attachment, pursuant to an enforceable decision by the administrative or judicial authorities, of the salary, emoluments or indemnities owed by OFID to an official of OFID, OFID's immunity from jurisdiction and enforcement shall not apply with respect to such salary, emoluments or indemnities, unless OFID informs the Austrian authorities within 14 days of the date on which it is notified of said decision that it does not waive its immunity."

Section 17

Article 23 of the Headquarters Agreement shall be amended as follows:

1. A new sub-section (b) shall replace the current sub-section (b), which becomes sub-section (c), and shall read as follows:

"(b) A senior official of OFID, when acting on behalf of the Director-General during the latter's absence from duty, shall be accorded the same privileges and immunities, exemptions and facilities as are accorded to the Director-General."
2. Current sub-section (b) shall become new sub-section (c). The full stop at the end of the sub-section shall be replaced by a semicolon.
3. An additional sub-section (d) shall be added which reads as follows:

"(d) In conformity with article 42 of the Vienna Convention on Diplomatic Relations and the practice of the Republic of Austria, officials enjoying the same privileges and immunities accorded to members having comparable rank of diplomatic missions accredited to the Republic of Austria shall not practice for personal profit any professional or commercial activity within the Republic of Austria;"

4. An additional sub-section (e) shall be added which reads as follows:
“(e) The members of the family of an Official referred to in this Article forming part of his or her household shall, if they are not Austrian nationals or permanent residents of the Republic of Austria, enjoy the same privileges and immunities specified for that category of persons by the Vienna Convention on Diplomatic Relations;”
5. An additional sub-section (f) shall be added which reads as follows:
“(f) Officials referred to in this Article shall be granted exemption from value added tax (VAT) in accordance with Annex 1 attached hereto.”

Section 18

Article 26 of the Headquarters Agreement shall be amended to read as follows:

“All persons of Austrian citizenship and all stateless persons resident in Austria and employed by OFID shall enjoy the privileges and immunities, exemptions and facilities accorded by this Agreement to the extent recognized by international law as accepted by the Government, subject to the following provisions:

- (a) Officials of OFID who are Austrian citizens or who are stateless persons resident in Austria shall enjoy only the immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity.
- (b) Article 17 and Article 22 paragraph (1) sub-section (l) shall not apply to officials of OFID who are Austrian citizens or who are stateless persons resident in Austria.
- (c) Article 22 paragraph (1) sub-section (d) and Article 22 paragraph (1) sub-section (o) sub-paragraph (iii) shall, in any event, apply to officials of OFID who are Austrian citizens or who are stateless persons resident in Austria.”

Section 19

The following Annexes shall be added which shall read as follows:

“Annex 1

VAT reimbursement

1. With a view to accelerating the current procedure of reimbursement, the Government shall examine introducing a system of deduction at source of the VAT, including the availability of a suitable, cost-effective method while preserving the annual refund ceiling provided for under Austrian law.
2. The exemption from VAT applies to articles, goods, services (including restaurant and similar services), food and beverages and supplies purchased for personal use.

3. The VAT exemption shall be granted for amounts of not less than the minimum amount provided for under Austrian law per invoice and up to the maximum annual total refund amount provided for under Austrian law.

4. The Government shall provide reimbursement to the individual of all VAT paid on goods and services upon application by the individual accompanied with receipts and other business records that provide a basis for calculation of the amount of the tax paid. These applications can be submitted to the competent Austrian authorities twice annually, i.e. on 1 January and 1 July of each year, and will be dealt with as speedily and expeditiously as possible.

Annex 2

Access to the labour market

1. Spouses of officials of OFID and their children under the age of 21, provided they came to Austria for the purpose of family reunion and are forming part of the same household with the principal holder of the identity card issued according to Article 27, shall have preferential access to the labour market. The definition of "officials of OFID" according to Article 1 sub-section (k) takes account of the specific structure of OFID. The above-mentioned family members are hereinafter called beneficiaries.

2. Upon application, the above-mentioned beneficiaries will be issued, by the Federal Ministry competent for foreign 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").

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.”

Section 20

1. This Protocol shall enter into force on the first day of the second month after the Republic of Austria and OFID have informed each other of the completion of the procedures required, for each of them, to be bound by it.
2. Upon entry into force of this Protocol, the Exchange of Notes of 21 April 1981 shall cease to be in force.

Done in Vienna, on 9 October 2019, in duplicate in the German and English languages, all texts being equally authentic.

For the
Republic of Austria:

Alexander Schallenberg m. p.

For the OPEC Fund for
International Development:

Abdulhamid Alkhalifa m. p.

