

**AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF AUSTRIA AND THE
INTERNATIONAL CRIMINAL COURT ON THE ENFORCEMENT OF SENTENCES OF THE
INTERNATIONAL CRIMINAL COURT**

The Federal Government of Austria (hereinafter referred to as "Austria") and
The International Criminal Court (hereinafter referred to as "the Court"),

PREAMBLE

RECALLING Article 103 of the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries (hereinafter referred to as "the Rome Statute"), according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons;

RECALLING Rule 200 of the Rules of Procedure and Evidence of the Court (hereinafter referred to as the "Rule(s)"), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework for the acceptance of persons sentenced by the Court, consistent with the Rome Statute;

RECALLING the widely accepted international treaty standards governing the treatment of prisoners including the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

NOTING the willingness of Austria to accept persons sentenced by the Court;

IN ORDER to establish a framework for the acceptance of persons sentenced by the Court and to provide for conditions under which the sentences will be enforced in the territory of Austria;

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

This Agreement shall regulate matters relating to or arising out of the enforcement of sentences imposed by the Court in prison facilities made available by Austria

Article 2

Procedure

1. The Presidency of the Court (hereinafter referred to as "the Presidency"), when notifying Austria of its designation to enforce a sentence in a particular case, shall transmit to Austria the following information and documents:

- a) the name, nationality, date and place of birth of the sentenced person;

- b) a copy of the final judgment of conviction and the sentence imposed;
- c) the length and commencement date of the sentence, including information on any pre-trial detention, and the time remaining to be served;
- d) after having heard the views of the sentenced person, any necessary information concerning the state of his or her health (medical or psychological), including any medical treatment that he or she is receiving.

2. Austria shall submit the notification of the designation to the competent national authorities.

3. The competent national authorities of Austria shall promptly decide upon the Court's designation, in accordance with its national law, and inform the Presidency accordingly.

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Article 3

Delivery

The Registrar of the Court, in consultation with the competent national authorities of Austria, shall make appropriate arrangements for the proper conduct of delivery of the sentenced person from the Court to the territory of Austria.

Article 4

Enforcement

1. Subject to the conditions contained in this Agreement, the sentence of imprisonment shall be binding on Austria, which shall in no case modify it.

2. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

3. If, after delivery of the sentenced person to the territory of Austria, the Court, in accordance with the Rome Statute and the Rules, orders that the sentenced person appear for a hearing before the Court, the sentenced person shall be transferred temporarily to the Court, conditional on his/her return to the territory of Austria within the period decided by the Court. The time spent at the Court shall be deducted from the overall sentence to be served in Austria.

Article 5

Supervision of enforcement

In order to supervise the enforcement of sentences of imprisonment, the Presidency may, *inter alia*:

- a) when necessary, request any information, report or expert opinion from Austria;

b) where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying Austria, for meeting the sentenced person and hearing his or her views, without the presence of national authorities of Austria;

c) where appropriate, give Austria an opportunity to comment on the views expressed by the sentenced person under paragraph (b) of this article.

Article 6

Conditions of imprisonment

1. The conditions of imprisonment shall be governed by the law of Austria and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favorable than those available to prisoners convicted of similar offences in Austria.

2. Austria shall notify the Presidency of any circumstances, including the exercise of any conditions agreed when declaring its willingness to be included in the List of States of enforcement, which could materially affect the terms or extent of the imprisonment. The Presidency shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, Austria shall take no action that might prejudice its obligations. Where the Presidency can not agree to the aforementioned circumstances, it shall inform Austria and transfer the sentenced person to a prison of another State.

3. When a sentenced person is eligible for a prison programme or benefit available under the national law of Austria which may entail some activity outside the prison facilities, Austria shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Article 7

Inspection

1. The competent national authorities of Austria shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person(s) by the Court, or an entity designated by it, at any time and on a periodic basis, the frequency of visits to be determined by the Court. A confidential report based on the findings of these inspections shall be submitted to Austria and to the Presidency.

2. Austria and the Presidency shall consult each other on the findings of the reports referred to in paragraph 1 of this article. The Presidency may thereafter request Austria to report to it any changes in the conditions of imprisonment suggested in the report.

Article 8

Communication

Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 9
Ne bis in idem

The sentenced person shall not be tried before a court of Austria with respect to conduct which formed the basis of crimes for which the person has already been convicted or acquitted by the Court.

Article 10
Rule of speciality

1. The sentenced person transferred to Austria pursuant to this Agreement shall not be subject to prosecution, punishment or to extradition to a third State for any conduct engaged in prior to that person's transfer to the territory of Austria, unless such prosecution, punishment or extradition has been approved by the Presidency at the request of Austria.

2. A request for approval shall be accompanied by the following documents:

- a) A statement of the facts of the case and their legal characterization;
- b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
- c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
- d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

3. In the event of a request for extradition made by a third State, Austria shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

4. The Presidency may, in relation to paragraphs 2 and 3 of this article, request any document or additional information from Austria or the third State requesting the extradition.

5. The Presidency shall make a determination as soon as possible and shall inform the requesting State accordingly. If the request submitted under paragraphs 2 and 3 of this article concerns the enforcement of a sentence, the sentenced person may serve that sentence in Austria or be extradited to a third State only after having served the full sentence pronounced by the Court.

6. Paragraph 1 of this article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of Austria after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

7. The Presidency may authorise the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to Austria, after the prosecution.

Article 11***Appeal, revision and reduction of sentence***

1. The Court alone shall have the right to decide on any application for appeal and revision in accordance with Articles 105 of the Statute.
2. The Court alone shall have the right to decide any reduction of sentence in accordance with Article 110 of the Statute and Rule 223. It shall rule on the matter after having heard the sentenced person and after having received any relevant information from Austria.

Article 12***Escape***

1. If the sentenced person has escaped, Austria shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.
2. If the sentenced person escapes from custody and flees the territory of Austria, Austria may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute.
3. If the State in which the sentenced person is located, agrees to surrender him or her to Austria, pursuant to either international agreements or its national legislation, Austria shall so advise to the Registrar in writing. The person shall be surrendered to Austria as soon as possible if necessary in consultation with the Registrar, pursuant to Rule 225.
4. If the sentenced person is surrendered to the Court, then the Court shall transfer him or her to Austria. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of Austria, designate another State, including the State to the territory of which the sentenced person has fled.
5. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his/her escape and, where paragraph 4 of this article is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he/she was located shall be deducted from the sentence remaining to be served.

Article 13***Change in designation of State of enforcement***

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may, at any time, decide to transfer a sentenced person to a prison of another State. In such a case, the Presidency shall notify the sentenced person, the Prosecutor, the Registrar and Austria.
2. A sentenced person shall be entitled, at any time, to apply to the Presidency to be transferred from Austria.

3. If the Presidency decides not to change Austria as State of enforcement, it shall notify the sentenced person, the Prosecutor, the Registrar and Austria.

Article 14 *Termination of enforcement*

1. The enforcement of the sentence shall cease:

- (a) when the Court's sentence has been completed;
- (b) upon the demise of the sentenced person;
- (c) following a decision of the Court to transfer the sentenced person to another State in accordance with the Rome Statute and the Rules;
- (d) upon release following proceedings under Article 11.

2. The competent national authorities of Austria shall terminate the enforcement of the sentence as soon as they are informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 15 *Transfer of the sentenced person upon completion of the sentence*

1. Following completion of the sentence, the sentenced person who is not a national of Austria may, in accordance with the law of Austria, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless Austria authorizes the person to remain in its territory.
2. Subject to the provisions of Article 10, Austria may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 16 *Impossibility to enforce sentences*

1. If, at any time after the decision has been taken to enforce a sentence, further enforcement has, for any legal or practical reasons and beyond the control of the competent national authorities, become impossible, Austria shall promptly inform the Presidency.
2. The Court shall make appropriate arrangements for the transfer of the sentenced person.
3. The competent national authorities of Austria shall allow at least sixty days following the notification of transfer by the Presidency before taking other measures on the matter.

Article 17 ***Information***

1. Austria shall immediately notify the Presidency of the following:
 - (a) the completion of the sentence by the sentenced person, two months prior to the completion of the sentence;
 - (b) if the sentenced person has escaped;
 - (c) if the sentenced person has deceased; and
 - (d) a request of extradition of the sentenced person, including the documents and information referred to in Article 10, paragraph 2.
2. Austria shall notify the Presidency, 30 days before the scheduled completion of sentence served by the sentenced person, the relevant information concerning the intention of Austria to authorize the person to remain in its territory or the location where it intends to transfer the person.
3. Austria shall notify the Presidency of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his/her transfer.
4. For purposes of extension of the term of imprisonment in accordance with Rule 146 sub-rule 5 of the Rules, the Presidency may ask for observations from Austria.

Article 18 ***Costs***

1. The ordinary costs for the enforcement of the sentence in the territory of Austria shall be borne by Austria.
2. Other costs, including those for the transport of the sentenced person to and from the seat of the Court and those of any expert opinion or report requested by the Court, shall be borne by the Court.
3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

Article 19 ***General cooperation***

1. The competent national authorities of Austria shall take all necessary measures to ensure the efficient execution of this Agreement and to ensure the appropriate security, safety and protection of the sentenced persons.
2. The Court and Austria shall designate a focal point to facilitate the implementation of this Agreement.

Article 20

Entry into force

This Agreement shall enter into force 30 days after signature.

Article 21
Amendments

This Agreement may be amended in writing, after consultation, by mutual consent of the parties.

Article 22
Termination of the Agreement

Upon consultation, either party may terminate this Agreement, with two months prior written notice. Such termination shall not affect sentences in force at the time of the termination, and the provisions of this Agreement shall continue to apply until such sentences have been completed, terminated or, if applicable, the sentenced person has been transferred in accordance with Article 13 of this Agreement."

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

Done at The Hague this 27 day of October , 2005 , in duplicate, in the English language.

**FOR THE FEDERAL GOVERNMENT OF
AUSTRIA:**

Karin GASTINGER m.p.

FOR THE COURT:

Philippe KIRSCH m.p.
