

Treaty of Establishment and Navigation between the Federal Republic of Germany and the French Republic

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY

and

THE PRESIDENT OF THE FRENCH REPUBLIC,

DESIRING to determine, in a manner consistent with the friendly relations which exist between the two countries, the situation of the nationals of the two States in the territory of the other, as well as the rules relating to maritime navigation, have resolved to conclude a convention on establishment and navigation, and have designated for this purpose as their respective Plenipotentiaries, namely:

The President of the Federal Republic of Germany:

Mr. Heinrich von Brentano,

Minister of Foreign Affairs

The President of the French Republic:

Mr. Christian Pineau,

Minister of Foreign Affairs

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

Article I.

1. The nationals of one of the Contracting Parties have the right to enter the territory of the other Party, to stay there temporarily, to travel there, and to leave it any at any time, subject to the laws and regulations in force.
2. However, nationals of one of the Contracting Parties may be refused entry to the Parties may be refused entry to nationals of the other Party whose presence would threaten public order security, public health, or morality.

Article II.

Subject to the provisions of Article I, each of the Contracting Parties of the Contracting Parties shall facilitate, to the fullest extent permitted by its economic and social situation, to nationals of the other Party, their prolonged or permanent residence in its territory.

Article III.

1. Nationals of one of the Contracting Parties residing lawfully in the territory of the other Party may be expelled only if they threaten the security of the State or have offended against public order or morality.
2. Those of them who have resided lawfully for more than one year in the territory of one of the Contracting Parties may not be expelled unless they have been allowed, unless there are compelling reasons relating to the security of the State, to submit reasons against their expulsion, to lodge an appeal to that effect or to be represented before a competent authority.
3. Nationals of one of the Contracting Parties who have been lawfully resident for more than ten years in the territory of the other Party may be expelled only for reasons of national security or if the other reasons mentioned in paragraph 1 are of a particularly serious nature.

Article IV.

1. With the exception of those rights which the legislative or regulatory provisions which are or may be in force in their territory reserve for nationals, or subject to special regulation, or the enjoyment of which is subject to reciprocity, each Contracting Party recognizes that the nationals and, where appropriate, the companies of the other Party shall enjoy all civil rights, whether of a personal or a property nature.
2. The Contracting Parties may, after the entry into force of this Convention, introduce new restrictions on the enjoyment of the rights mentioned in paragraph 1 only for reasons of national security or defense, or if they find it necessary to do so for imperative reasons of an economic or social character, or to prevent the appropriation of the vital resources of the country.
3. The Contracting Parties undertake to submit, not later than the time of the exchange of instruments of ratification of this Convention, a list of the laws or regulations containing the restrictions referred to in paragraph 1 and which reserve to their own nationals the acquisition, possession, enjoyment, and disposal of certain property or make them subject to special regulations or to reciprocity.
4. Each Contracting Party shall endeavor to reduce its list of restrictions in favor of the nationals of the other Party. It shall also endeavor to allow the nationals of the other Party to benefit from the exceptions permitted by the laws or regulations in favor of foreigners.

Article V.

1. Each Contracting Party shall authorize nationals of the other Party to engage in any occupation, whether salaried or self-employed, in its territory on an equal footing with its own nationals, unless there are serious reasons of economic or social nature for not granting such authorization.
2. The provisions of paragraph 1 shall not apply to activities reserved for nationals or the exercise of which by foreigners is subject to the condition of reciprocity or to special regulations.
3. The salaried workers of one of the two Contracting Parties shall enjoy, in the territory of the other Party, treatment as favourable as that accorded to nationals as regards the terms of the contract of employment, its conclusion, its termination, remuneration, vacations with pay, the health, and safety of workers, the duration of work, the age of admission to work, as well as the protection of the work of women and children, insofar as these matters are governed by legislative or regulatory provisions or by administrative provisions or regulations.
4. This equality of treatment shall also extend to any subsequent legislative or regulatory provisions or administrative provisions or regulations in these matters.

Article VI.

1. Companies lawfully constituted in the territory of the other Party and having their registered office there shall be recognized by each of the Contracting Parties as lawfully existing, provided that nothing in their constitution or object is contrary to the public policy of that Party.
2. Companies of one of the Contracting Parties may carry on business in the territory of the other Party and in particular, may establish and maintain branches, agencies, or offices there subject to the laws and regulations in force.
3. Under the conditions laid down in Article V, paragraphs 1 and 2, nationals and companies of each of the Contracting Parties shall be authorized to establish companies in the territory of the other Party, to participate in the establishment of companies, or to acquire holdings in the companies of the other Party. Under the same conditions, nationals of each Contracting Party shall be authorized to exercise all functions relating to the management, administration, and supervision of such companies.

Article VII.

1. Commercial travelers and commercial agents who are nationals of one of the Contracting Parties and who negotiate or conclude commercial transactions for an enterprise having its principal place of business in the territory of that Party may, without authorization, carry on their activity in the territory of the other Party, provided that they do not stay there for more than two months in any half-year.
2. The exercise of the rights referred to in paragraph 1 may, however, be subject to the production by the person concerned

of a document drawn up by the authorities of the country of origin in accordance with the model provided for in the international agreement signed on 3 November 1923 in Geneva with a view to simplifying customs formalities. This document (legitimation card) does not have to be endorsed with a consular visa or any other visa.

3. The provisions of the Agreement signed on November 7, 1952 in Geneva with a view to facilitating the importation of commercial samples and advertising material shall apply to the nationals of the Contracting Parties referred to in paragraph 1.

Article VIII.

1. The nationals and companies of each of the Contracting Parties shall have free and easy access to the courts of the other Party at all levels of jurisdiction, both to claim and to defend their rights and interests. In this respect, they shall enjoy the same rights and benefits as nationals.

2. Matters relating to security for costs and legal aid shall be settled between the Contracting Parties in accordance with the agreements made or to be made between them.

Article IX.

1. Subject to the provisions contained in the double taxation agreements, the nationals and companies of each of the Contracting Parties shall not be subject in the territory of the other Party to duties, taxes, or contributions, by whatever name called, other than those imposed on the nationals and companies of the other Party in the same situation. They shall benefit, under the same conditions as nationals, from exemptions, basic allowances, deductions, and reductions of taxes granted for family responsibilities.

2. The provisions of paragraph 1 shall not preclude the levying, where appropriate, of taxes relating to the issue of residence permits or permits to engage in professional activities, if such taxes are also levied on other foreigners. The rate of such taxes shall not be higher than the rate of taxes levied on nationals and companies of any other State.

Article X.

1. The nationals and companies of the Contracting Parties shall not be subject to requisitions of any kind whatsoever imposed on nationals and shall be entitled to the allowances granted to the latter by the laws in force. They shall enjoy the same guarantees as nationals as regards the legitimacy of the requisition and the amount of the indemnity.

2. In times of peace, the commercial aircraft and vessels of the Contracting Parties may not be requisitioned by the other Party.

3. Nationals of the Contracting Parties shall, except in special cases to be settled by special agreement, be exempt, in the territory of the other Party, from all military service in the regular armies, guards or militias and from all personal military service, as well as from all contributions in money or in-kind received in lieu of such service or service.

Article XI.

Each of the Contracting Parties undertakes not to take, with respect to the property, rights, and interests lawfully possessed in its territory by the nationals and companies of the other Party, any measure of disposition, limitation, or expropriation in the public interest which would not be applicable, under the same conditions, to its nationals. The same shall apply to the compensation to which such measures give rise. The nationals and companies of the other Party shall enjoy the same guarantees as nationals as regards the legitimacy of the expropriation and the amount of the compensation.

Article XII.

The Contracting Parties, being committed to the principles of free competition and free choice of flag, recognize the freedom of navigation between their two territories within the framework of the provisions of the present Convention which applies only to maritime navigation.

Article XIII.

1. For the purposes of this Convention, the term "ships" includes all classes of seagoing vessels, whether owned or operated by the State or by private persons. The term does not include ships of war.

2. Ships flying the flag of one of the Contracting Parties and carrying the documents required by the legislation of that Party to establish their nationality shall be considered as ships of that Party.
3. The tonnage certificates issued by the competent authorities shall be recognized by both Parties. The calculation and payment of navigation duties and taxes shall be made on the basis of these tonnage certificates without any re-measuring in accordance with the provisions applicable in the territory of the other Party, provided, however, that the said certificates apply to the vessels as presented at the time of customs clearance.
4. Each Contracting Party shall recognize the legal and regulatory provisions of the other Party concerning the manning, fitting out, installation, and maintenance of passenger ships and cargo ships and the protection of human life at sea.

Certificates issued under these provisions shall also be recognized. Any vessel of one of the Contracting Parties possessing the above-mentioned certificates shall be subject in the ports of the other Party to inspection by the official duly authorized by that Party, insofar as the purpose of such inspection is to verify that valid certificates are on board. Such certificates shall be considered sufficient unless, in the opinion of the inspecting officer, the seaworthiness of the vessel does not substantially correspond to the particulars contained therein and the vessel cannot proceed to sea without danger to its passengers or crew. The supervising officer shall, in such a case, take all appropriate measures to prevent the departure of the vessel and shall immediately inform the Consul of the other Party in writing of the decision taken and of the circumstances which gave rise to it.

Article XIV.

1. Each of the Contracting Parties shall ensure in its ports to vessels flying the flag of the other Party the same treatment as to its own vessels as regards customs formalities, the collection of port dues and taxes, as well as freedom of access to ports, their use and all the facilities it grants to navigation and commercial operations for vessels and their crews, passengers, and goods. This includes the allocation of berths and facilities for loading and unloading.
2. The provisions of the preceding paragraph shall not apply to navigation, activities, and transport legally reserved by each of the two Parties and, in particular, to port services, towing, pilotage, national sabotage, and maritime fishing.

Article XV.

1. If a vessel of one of the Contracting Parties runs aground or is shipwrecked near the coast of the other Party, or if it is in distress and has to reach a port of the said Party, the latter shall afford the vessel and the persons and property on board the same protection and assistance as a vessel flying its own flag. It shall also grant permission for the vessel to continue its voyage after repairs.
2. The objects rescued from a stranded or wrecked vessel and its cargo shall be returned to the owner or his representative, provided that he proves his right within the period provided for by law. If the said articles have been sold, the net proceeds of the sale, after deduction, if any, of the customs duties and taxes due, shall, subject to the conditions of justification referred to above, be made available to the owner or his representative. The amount of salvage duties and other expenses incurred in the salvage shall be calculated according to the same rules as those applicable to nationals.
3. Subject to the legislative provisions concerning wrecks and wrecked goods, salvaged vessels and objects shall be exempt from all customs duties and taxes if they are not intended for domestic use or consumption; however, in this case, they may be subject to customs security measures, until re-exportation.

Article XVI.

Subject to the provisions of laws and regulations, and in particular those relating to the nationality of crews, the masters of vessels flying the flag of one of the Contracting Parties whose crew is not complete owing to sickness or any other reason, shall be authorized to engage in the ports of the other Party such seamen as may be necessary for the continuation of the voyage.

The seamen thus engaged shall have the right, after the contract has been fulfilled, to be repatriated at the expense of the shipowner.

Article XVII.

1. This Convention shall apply, on the one hand, to Metropolitan France, Algeria and the Overseas Departments and, on the other hand, to the territory of the Federal Republic of Germany.

2. It may be extended to each of the Overseas Territories of the French Republic by an exchange of letters which may provide for the application of the Convention to such territories.

3. However, Articles XII, XIII, XIV, XV and XVI shall apply to the overseas territories of the French Republic as from the coming into force of the present Convention.

Article XVIII.

1. The Contracting Parties shall set up a Joint Consultative Commission which shall meet alternately in France and in the territory of the Federal Republic of Germany at the request of either Party.

2. Its task shall be to examine any questions which may arise in practice in connection with the application of this Convention and to assist the Parties in resolving any difficulties which may arise.

3. The Commission shall prepare a report after each session, which shall be sent to both Governments.

4. The Commission shall consist of not more than six representatives of each Party.

Article XIX.

1. Any dispute relating to the interpretation or application of the present Convention which cannot be settled by the Joint Consultative Commission or by diplomatic means shall be submitted, at the request of one of the Parties, to a Conciliation Commission charged with seeking a solution of the dispute and composed of a representative of the French Government and a representative of the Government of the Federal Republic of Germany.

Each Government shall appoint its representative within one month.

2. If these two representatives are unable to reach a settlement within three months of the date on which the dispute was submitted to them, they shall appoint, by common agreement, a new member chosen from among the nationals of a third State. If no agreement is reached within two months on the choice of such member, either Party may request the President of the International Court of Justice to appoint a third member of the Commission. If the President of the International Court of Justice is unable to comply with a request for the appointment of a member from a third State or if he is a national of one of the two Contracting Parties, the Vice-President shall appoint the third member of the Commission. If the Vice-President is also unable to act or if he is a national of one of the two Contracting Parties, the appointment shall be made by the oldest member of the Court who is not a national of one of the two Contracting Parties. The Commission shall then assume the role of the Court of Arbitration.

3. The Arbitration Tribunal shall determine its own rules of procedure and shall decide by a majority vote of its members.

Its decision shall be final and binding.

Article XX.

1. The present Convention shall be ratified. It shall enter into force two weeks after the exchange of the instruments of ratification.

2. It shall remain in force for five years and shall continue in force after that period until one of the Contracting Parties has given six months' notice of its intention to terminate it.

IN WITNESS WHEREOF the duly authorized Plenipotentiaries have signed this Convention and have affixed their seals thereto.

DONE in duplicate at Luxembourg, this 27th day of October 1956 in the French and German languages, both texts being equally authentic.

von Brentano

Pineau

Protocol

At the time of signing the Convention of Establishment and Navigation of this day, the undersigned Plenipotentiaries have agreed upon the following provisions which shall form an integral part of the Convention:

1. Ad. Article I, paragraph 1, Article II, Article III, Article V and Article VI

The reference to the laws and regulations in force shall mean in general the laws and regulations which are or may be in force in the territories of the Contracting Parties, including the laws and regulations concerning the conditions of entry, movement, and residence of aliens in those territories, as well as the exercise by them of professional activities.

2. Ad. Article I, paragraph 3

Without prejudice to other methods of determining nationality, any person holding a national passport issued by the competent authorities of his or her country or an official identity document stating that the holder is a national of that country shall be deemed to be a national of one of the Contracting Parties.

3. Ad. Article I, paragraph 2, Article II, Article III, Article IV, Article V, Article VI and Article VII

Each Party shall have the right to assess according to national criteria of which it is the sole judge

- a. the reasons relating to public order, public health, safety or morality which may oppose the entry into its territory of nationals of the other Party or the recognition of the existence of companies of the other Party which are legally constituted there and have their registered office there;
- b. the documented reasons of its economic and social condition that may prevent the granting of a prolonged or permanent residence permit in its territory to nationals of the other Party or the authorization to engage in gainful activity therein
- c. the circumstances that constitute a threat to the security of the State or are contrary to public policy or morality
- d. the reasons for which it has the right to reserve for its nationals the exercise of certain rights and activities or to subject nationals of the other Party to special conditions in these matters
- e. the reasons for which expulsion may be justified and which are of a "particularly serious nature". In this assessment, account shall be taken of the conduct of the person concerned throughout his residence and of his family ties;
- f. without prejudice to the international obligations assumed by the Parties, in particular with regard to arbitration, the reasons why each of them may lawfully reserve for the national flag all navigation, activities, and transport (cf. Article XIV paragraph 2 of the Convention and paragraph 8, letter c, of this Protocol).

4. Ad. Article VI

Under the terms of this Convention, "companies" means all companies whose activity is for profit, in particular:

a - in France:

les sociétés civiles,

les sociétés en nom collectif,

les sociétés en commandite simple,

les sociétés en commandite par actions,

les sociétés anonymes,

les sociétés à responsabilité limitée,

les coopératives,

les sociétés d'assurances à forme mutuelle,

les sociétés mutuelle d'assurances,

les sociétés d'économie mixte,

les établissements publics de caractère industriel et commercial.

b - in Germany:

die Aktiengesellschaften,

Kommanditgesellschaften auf Aktien,

Gesellschaften mit beschränkter Haftung,

die Reedereien,

the offenen Handelsgesellschaften,

die Kommanditgesellschaften,

die Gesellschaften des bürgerlichen Rechts,

die Versicherungsvereine auf Gegenseitigkeit,

die bergrechtlichen Gewerkschaften,

Genossenschaften,

Stiftungen, provided that they are profit-making,

Körperschaften und Anstalten des öffentlichen

Rechts mit Aufgaben gewerblicher Art.

5. Ad. Article VII, paragraph 1

It is understood that Article VII applies only to commercial travelers and commercial agents who are nationals of one of the Parties and who have their habitual residence in the territory of that Party and who, being in the service of an enterprise located outside the host country, are not remunerated by a branch, agency or office having its headquarters in that country.

6. Ad. Article IX

It is expressly declared that the term "duties, taxes and charges" in Article IX of this Convention shall not be understood to mean the duties, taxes, or charges referred to in Articles 1 and 3 of the General Agreement on Tariffs and Trade of October 30, to which the Federal Republic of Germany and the French Republic are Parties.

7. Ad. Article XIV, paragraph 1

It is specified that the amenities referred to in Article XIV of this Convention do not include exemption from customs duties for products or goods which may be on board.

8. Ad. Article XIV, paragraph 2

A. On the French side, the navigation and transport referred to below are reserved for vessels flying the French flag or assimilated to it:

1 - Transport of goods or passengers between:

a - Metropolitan French or Algerian ports;

b - Metropolitan French and Algerian ports;

c - ports of the Overseas Departments: Reunion, Guadeloupe, Martinique and Guyana or between the ports of these last three departments.

2- Towing:

a - Within the ports or territorial waters of France, Algeria or the overseas departments;

b - between ports of each of these territories;

c - between ports in France and Algeria or between ports in Guadeloupe, Martinique and Guyana.

3 - Cabotage and towing reserved by the overseas territories.

B - The following navigations and transports are reserved, on the German side, to vessels flying the national flag:

1 - Transport of goods or passengers between German ports.

2- Towing:

a - Within German ports and territorial waters;

b - between German ports.

C - Each of the Parties may legally reserve to the national flag or assimilated flag any navigation, activity or transport, insofar as this Party considers this reservation compatible with the obligations it has contracted on the international level.

9. Ad. Article XVI

The Contracting Parties have agreed that, in principle, seamen who are nationals of one of them and who have received an order to embark or disembark may be authorized to enter the territory of the other Party under the simple cover of their seaman's registration book, either to join their ship or to return to their country. A special agreement shall regulate the manner in which this provision is to be applied.

10. Ad. Article XVII

The present Convention shall apply to the territory of Berlin, unless the Government of the Federal Republic of Germany, within a period of three months after the entry into force of the Convention, delivers to the Government of the French Republic a declaration to the contrary.

11. Ad. Article XIX

Without prejudice to the international obligations assumed by the Parties, in particular with regard to arbitration, the conciliation and arbitration procedure provided for in Article XIX shall not be applicable to disputes arising from the exercise by the Parties of the right reserved by paragraph 3 above.

12. Each Contracting Party shall grant national treatment under this Convention by virtue of the fact that such treatment is also granted by the other Party in the same fields.

DONE at Luxembourg, this 27th day of October 1956

von Brentano Pineau

Exchange of Letters

1. Ministry of Foreign Affairs

Dear Minister,

Paris, 27 October 1956.

At the time of signing the Treaty on Establishment and Navigation between France and the Federal Republic of Germany, I have the honor to inform you that my Government deems it necessary to specify the following with regard to certain provisions of Articles V and VI of the Treaty.

The nationals and companies of one of the Contracting Parties wishing to carry on their activities in the territory of the other Party must first obtain the authorizations which may be required by the laws and regulations in force in that State.

However, the French Government, animated by the spirit of cooperation which presided over the drawing up of this Convention, intends to facilitate, to the fullest extent compatible with the evolution of the economic situation, the activity of German nationals who wish to carry on in France a commercial or industrial activity subject to the issuance of a merchant's card.

It therefore proposes, subject to effective reciprocity, to make liberal use of its power to control the establishment of such persons or companies, and will grant the required authorizations in all cases where it considers that the French economic and social situation does not prevent this.

Convinced that the Government of the Federal Republic of Germany has the same concern to give new impetus to the

development of trade between the two countries, I would be grateful for your assurance that the activities of French companies and nationals in Germany will be given equal consideration.

Please accept, Mr. Minister, the assurances of my highest consideration.

Pineau

Mr. Heinrich von Brentano

Minister of Foreign Affairs of the Federal Republic of Germany

The Federal Minister of Foreign Affairs

Luxembourg, October 27, 1956

Mr. Minister,

I have the honor to acknowledge receipt of the following letter, of the following letter, which has reached me today. the contents of which my Government has noted with the satisfaction of which my Government has taken note:

(...)

I have the honor to give you the assurance of my Government that the activity of French companies and citizens in Germany will benefit from the same benevolence that is promised in your letter to German citizens active in France.

Please accept, Mr. Minister, the expression of my highest consideration.

Mr. Christian Pineau

Minister of Foreign Affairs of the French Republic

z. Z. Luxembourg

Heinrich von Brentano

2. Ministry of Foreign Affairs

Dear Minister,

French Republic

Paris, 27 October 1956.

Article XVIII of the Treaty on Establishment and Navigation between France and the Federal Republic of Germany, signed today, provides for the constitution of a Joint Consultative Commission which is charged, inter alia, with facilitating to the Parties the solution of any difficulties which may be found in the application of the Convention.

The French Government has no doubt that the work of the Commission will be of such a nature as to assist the two Governments effectively in solving the problems which may arise in all fields in the application of the Convention.

It considers that the mandate of the Commission can be extended to all aspects of the Treaty since this mandate remains strictly advisory in nature and the conclusions reached by the Commission are not binding on the two Governments.

We, therefore, see no difficulty in the Commission being able, within these limits, to exchange views on matters which the Convention reserved for the exclusive competence of the Parties, and in particular, those referred to in paragraph 3 of the Protocol and which related to the exercise by each of them of rights which were to be assessed according to national criteria.

In this view, it is to be welcomed that the Commission, without in any way affecting the rights of the Parties, but in the spirit of cooperation which governed the elaboration of the Convention, is facilitating the reconciliation of their points of view and the solution of certain difficulties, even in cases where the solution ultimately lies with one or other of the Parties.

Please accept, Mr. Minister, the assurances of my highest consideration.

Pineau

Mr. Heinrich von Brentano

Minister of Foreign Affairs of the Federal Republic of Germany

The Federal Minister of Foreign Affairs

Luxembourg, October 27, 1956

Mr. Minister,

I have the honor to acknowledge receipt of the following letter:

(...)

I can assure you that my government shares the view of the position of the French Government that the assumption of the functions provided for in the letter will greatly facilitate the solution of any difficulties that may arise.

Please accept, Mr. Minister, the assurance of my highest consideration.

Mr. Christian Pineau

Minister of Foreign Affairs of the French Republic

z. Z. Luxembourg

Heinrich von Brentano

3.

Ministry of Foreign Affairs

French Republic

Paris, 27 October 1956.

Dear Minister,

In the course of the talks which led to the conclusion of a Convention on Establishment and Navigation between France and the Federal Republic of Germany, the questions concerning the operations relating to the products of the European Coal and Steel Community and steel products were also examined.

Both parties agreed that it was not possible at present to conclude a possible to conclude a bilateral agreement in this matter because of the existence of the European Coal and Steel Community, and that consequently, the provisions of the present Convention are applicable neither to the extraction, processing and distribution of mineral substances nor to the activities concerning the products regulated within the framework of the C.E.C.A.

Please accept, Mr. Minister, the assurances of my highest of my highest consideration.

Pineau

Mr. Heinrich von Brentano

Minister of Foreign Affairs of the Federal Republic of Germany

The Federal Minister of Foreign Affairs

Luxembourg, October 27, 1956

Mr. Minister,

I have the honor to acknowledge the receipt of the letter which of the letter I have received today, the contents of which are as follows:

(...)

Please accept, Sir, the assurance of my highest consideration.

Mr. Christian Pineau

Minister of Foreign Affairs of the French Republic

z. Z. Luxembourg

Heinrich von Brentano