

Treaty of Establishment between the Federal Republic of Germany and the Spanish State

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE HEAD OF STATE OF SPAIN

THE HEAD OF THE SPANISH STATE

DESIRING to regulate the situation of their nationals who are in the territory of the other State, in accordance with the friendly relations existing between the two States, to promote economic cooperation and to contribute to the social welfare of both peoples,

HAVE AGREED to conclude a Treaty of Establishment.

To this effect they have designated as plenipotentiaries:

The President of the Federal Republic of Germany

Mr. Walter Scheel,

Minister of Foreign Affairs

The Head of the Spanish State

His Excellency Mr. Gregario López Bravo,

Minister of Foreign Affairs

which, after having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1.

Each Party shall at all times accord to the nationals and companies of the other Party, to their property, to their enterprises and to all other interests of the other Party fair and equitable treatment.

Article 2.

1. Each Party undertakes to facilitate the entry and stay of nationals of the other Party in its territory, as well as the free choice of place of residence and travel.

2. Nationals of one of the Parties who wish to establish themselves, in accordance with the provisions of this Treaty, in the territory of the other Party for the purpose of pursuing gainful employment or self-employment, shall be allowed to enter and remain in the territory of the other Party, as well as to choose freely their place of residence and movement, in accordance with the legal provisions in force in that territory. This rule shall also apply to the members of the family of such nationals who live with them and are financially supported by them, whatever their nationality.

3. The provisions of paragraphs 1 and 2 shall not affect the right of the Parties to refuse entry into their territories to nationals of the other Party, or members of their families, on grounds of public order, public safety, public health or morality.

Article 3

1. The nationals of one of the Parties may, at any time, leave the territory of the other Party, provided that there are no criminal liabilities or public health reasons preventing them from doing so.

2. The nationals of one of the Parties legally residing in the territory of the other Party may only be expelled for reasons of public order, public safety, public health or morality. The expulsion may only be carried out, except for peremptory reasons of state security, which make it advisable to do otherwise, after having given the person concerned the opportunity to present his allegations and to use all the means and remedies provided for in the legislation and to be represented before the competent authorities if he deems it necessary.

3. The provisions of paragraphs 1 and 2 shall also apply to the family members referred to in Article 2, paragraph 2.

Article 4.

Nationals of one Party shall enjoy in the territory of the other Party protection and security under at least the same conditions as the nationals of the latter.

Article 5.

Measures taken by the competent authorities of a Party to restrict the liberty or deprive the nationals of the other Party of their liberty shall be lawful only when taken in accordance with the following provisions:

(a) Only by virtue of a Law may a person be restricted or deprived of his liberty. In any case, the person deprived of liberty shall be treated humanely.

(b) If the deprivation of liberty is for criminal reasons, only the competent judge may decide on its appropriateness and duration. No person may be detained for longer than the time specified in the laws of the Party in whose territory he is without being brought before the competent judge; in no case may this period exceed seventy-two hours. Every detainee shall be brought before the competent Judge, who shall inform him of the reasons for the detention, interrogate him and give him an opportunity to present his arguments. The Judge shall issue as soon as possible a reasoned order of detention, in writing, or shall order immediate release; this judicial decision must in any case be taken within six days of the arrest. The prisoner shall have the right to avail himself for his defense of all the means provided for in the procedure of the Party concerned, in particular the services of a lawyer chosen by him from among those admitted to the competent Court; he shall be brought to trial as soon as the conduct of the proceedings and his defense so permit. The competent court shall decide on the case within an appropriate period of time.

(c) If the deprivation of liberty is for non-criminal reasons and does not require, according to the domestic law of the respective Party, a prior or immediately subsequent order or authorization of a court, the person deprived of liberty shall have the right to have the measure relating to the deprivation of liberty reviewed before a judicial body.

(d) Any deprivation of liberty shall be reported immediately, if so requested by the person deprived of liberty, to the nearest consular representative of the Party whose nationality the person deprived of liberty holds. When the person deprived of liberty is not in a position to make such a request, the consular representative shall be notified in any case. The consular representative shall have the right to visit the prisoner as often as he deems necessary and to correspond with him, unless in a criminal case, the competent judge has forbidden it by a written and reasoned decision.

(e) Judicial proceedings shall be conducted with the assistance of an interpreter if necessary.

Article 6.

1. Nationals of one of the Parties shall not be subject to compulsory military service of the other Party. Nor may they be obliged to join associations of a military or armed nature established by the other Party within or outside its territory.

2. The nationals of one of the Parties shall be exempt from any personal services of a public nature in the territory of the other Party, provided that they are not civilian services of a general nature provided for the protection of the civilian population, including assistance in case of natural disasters and defense against them. The exemption shall also apply to contributions that may exist in redemption of such personal benefits.

3. The nationals of one of the Parties shall, in the territory of the other Party, have the same consideration as the nationals of the latter as regards the obligation of material benefits of a public nature, such as requisitions and other obligations of a similar nature. For these purposes they shall enjoy the same legal guarantees as nationals, as well as the right to compensation. Such compensation shall be in accordance with the conditions set forth in article 14, paragraph 3.

4. Nationals of one of the Parties shall benefit in the territory of the other Party, and under the same conditions as nationals, from all the aid granted to the latter from the funds earmarked for this purpose in the event of natural disasters and other similar disasters.

5. Persons possessing the nationality of both Parties may be called up for compulsory military service only by the Party in whose territory they have their habitual residence at the time of call-up. Habitual residence shall be considered to be that established in the territory in which the person concerned has in fact resided for the longest period of time during the last twelve months preceding the time of his call-up. Paragraph 2 shall not apply to persons who are nationals of both Parties.

6. Paragraphs 2, 3 and 4 shall, where appropriate, be applicable to corporations.

Article 7.

1. Nationals and corporations of a Party may exercise in the territory of the other Party their rights and conduct their defense before any judicial or administrative body, under the same conditions and enjoying the same benefits established for nationals of that Party.

2. Paragraph 1 shall not cover matters relating to "cautio judicatum solvi" and the benefit of poverty, which shall be governed by the provisions of the Hague Convention on Civil Procedure of March 10, 1954.

Article 8.

1. Nationals and companies of one of the Parties in the territory of the other Party shall be granted the same status as its own nationals and companies for the conclusion of legal acts of any kind.

2. The provisions of paragraph 1 include, inter alia, the right to enter into contracts, to assume obligations, as well as to acquire property or rights and interests of all kinds by inter vivos or mortis causa acts by alienating or possessing them or disposing of them in any manner whatsoever.

3. Notwithstanding the provisions of paragraph 1, each Party may, for reasons of state security or national defense, reserve the acquisition, possession or use of land for its own nationals or subject the possibility of its acquisition, possession or use by nationals of the other Party to special requirements established for foreigners.

Article 9.

1. Nationals of one of the Parties may engage in economic and professional activities of any kind in the territory of the other Party under the same conditions as its nationals; if prior administrative authorization is required for this purpose, it shall be granted to them under the same conditions as to nationals. This rule shall also apply to companies.

2. The nationals and companies of one Party shall have the right, in accordance with the legislation applicable to the nationals and companies of the other Party, to establish companies in its territory and to participate in their establishment, as well as to acquire shares in the companies of this Party. Nationals of a Party shall have the right to take part in the management and administration of such companies in accordance with the legislation applicable to nationals of the other Party and without prejudice to the provisions of Article 10. This right may only be limited in accordance with the provisions of paragraphs 4, 5 and 6.

3. Enterprises shall not be accorded less favorable treatment in the territory of a Party because they are owned in whole or in part or are under the influence of nationals and companies of the other Party. This principle shall also apply to participation in tenders or auctions held by one of the Parties.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall not prevent a Party from imposing special conditions for the establishment in its territory of an enterprise controlled by foreigners or for the acquisition of control by foreigners of an existing enterprise. However, such conditions shall not entail limitations which substantially affect the rights recognized in paragraphs 1, 2 and 3 above.

5. The provisions of paragraphs 1, 2 and 3 above shall also not prevent a Party from limiting or prohibiting the participation of foreigners in certain enterprises related to national defense, information and public utility services.

6. Paragraphs 1, 2 and 3 do not apply to those activities related to public services which are not or only to a limited extent accessible to foreigners, nor to the professions and activities listed in the list in number 7 of the Protocol annexed to this Treaty. This list may be reviewed at the initiative of a Party to limit, as far as possible, its scope. The professions and activities mentioned above shall be governed, as regards access to them by nationals of the other Party, by the domestic legislation of the Party in whose territory they are exercised. Any limitations that may be established in the future with respect to foreigners, in connection with these professions and activities, shall not apply to nationals and corporations of the other Party who were entitled to practice such professions and activities prior to the entry into force of the new limitations.

7. Paragraphs 1, 2 and 3 shall in no case imply that companies are exempted from complying with the obligations required of similar domestic companies and in particular those relating to capital, liability and accounting.

Article 10.

1. Notwithstanding the provisions of Article 9, paragraph 1, the taking up and pursuit of gainful employment and employment by nationals of one of the Parties in the territory of the other Party shall be regulated in accordance with the legal and administrative provisions on foreign employees and workers of the latter Party, except as hereinafter provided.

2. Nationals of a Party who are managerial employees of an enterprise operating in the territory of the other Party shall, at their request, be authorized to act as such without any territorial, temporal or professional limitation, except as provided for in Article 9, paragraph 6:

(a) those who legally exercise the representation of the enterprise;

(b) those persons in whose favor a general power of attorney or delegation has been issued;

(c) those employees who have the character of proxies for the management of business in non-independent agencies or branches.

3. Nationals of one of the Parties who are legally resident in the territory of the other Party and who have been engaged for at least five years without interruption in a dependent remunerated activity or who can prove that they have been legally resident without interruption for at least eight years, may obtain, upon application, a work permit of indefinite duration, without territorial or occupational limitation - except as provided for in Article 9, paragraph 6 - authorizing them to engage in an occupation as an employed person. Both Parties shall endeavor to shorten the above-mentioned time limits.

4. The work permit referred to in the preceding paragraph, upon request, may also be granted before the expiry of the time limits established, when the application of the laws and administrative provisions on foreign employees and workers in force in the country of residence and the provisions of paragraph 3, would be excessively strict for the applicants.

5. For spouses and minor children of employees and workers who are in possession of the work permit referred to in paragraph 3, the period of residence for obtaining such work permit may be shortened from eight to five years provided that the work permit has not been extended, by application of paragraph 4, before the expiry of the Term. Both Parties undertake to give special consideration to the application of the provisions of paragraph 4 to applications from members of the family of the person concerned.

6. Residence, in accordance with the above provisions, shall not be considered interrupted when the persons designated in paragraphs 3 and 5 leave the country of residence, due to illness, vacation or other reasons of a temporary nature. The time of absence for compulsory military service shall not be computed for the purposes of the periods of residence indicated in paragraphs 3 and 5, which shall be suspended in the meantime.

7. When nationals or companies of a Party established in the territory of the other Party require nationals of the former Party for the establishment and operation of their business by reason of their technical knowledge, the work permit required for the exercise of this activity shall be issued to such persons. This provision shall also apply to duly established branches and also to companies controlled by nationals or companies of the other Party. Companies of one Party with minority participation of the other Party shall be governed in this respect by the domestic legislation of the former.

8. Nationals of one Party hired by nationals or companies of the other Party on a temporary basis and for a maximum period of six months per year, for the assembly or repair of installations and machinery, in the territory of the other Party, shall be granted work permits for the exercise of this activity.

9. Nationals of one Party employed for wages in the territory of the other Party shall be treated as favorably as its own nationals with respect to the content, origin and termination of the employment relationship, remuneration for work, paid vacations, protection at work, working hours, permitted age for work, as well as with respect to the protection of women and young persons, insofar as such matters are regulated by Laws, Regulations, or by Ordinances or other Provisions of the Administration.

10. The provisions of the preceding paragraph shall not apply to obligations deriving from Agreements or Contracts under private law and from the fulfillment of compulsory Military Service.

Article 11.

Nationals and companies of a Party may employ in the territory of the other Party, at their free choice, technical experts or

experts in business economics. Where such experts do not meet the conditions required for the exercise of such activity in the territory of the other Party, they shall be employed only for investigations, reviews and reports of an internal nature.

Article 12.

Nationals and companies of a Party in the territory of the other Party shall be accorded the same treatment as nationals and the most-favored-nation clause for the exercise of their activity in the fields of religion, science and education. They shall have the right to form associations for these purposes in accordance with the legislation of the other Party. But in no case shall any of the provisions of this Treaty be interpreted as expressly or impliedly justifying any right to political activity.

Article 13.

1. Nationals and companies of one of the Parties and their traveling salesmen may in the territory of the other Party purchase goods or take orders from traders or persons using goods of the type offered in their business. For such purposes, they may carry with them samples of goods but not the goods themselves.

2. For the exercise of the activities designated in paragraph 1, no special legal title shall be required when the interested parties identify themselves by means of a document issued by the Authorities of their country, according to the model of the International Convention signed in Geneva on November 3, 1923 to facilitate customs formalities. For this document it shall not be necessary the Consular or any other Authority's approval.

Article 14.

1. The property and other rights of nationals and companies of one Party shall enjoy in the territory of the other Party protection equal to that accorded by the laws of the other Party to the property and other rights of its nationals. The same rule shall also apply to measures, investigations, inspections and other interventions of an official nature. In other respects, these shall be carried out in such a way as to cause the least possible inconvenience to the persons concerned.

2. Both Parties undertake not to adopt with respect to the nationals and companies of the other Party, measures or special provisions which worsen their treatment with respect to existing participations in companies, whether these come from monetary contributions or of any other nature permitted by law.

3. The property and other rights of nationals and companies of one of the Parties may be expropriated in the territory of the other Party only for reasons of public utility or social interest, and by means of compensation. This compensation must correspond to the value of what is expropriated, be effective and be paid without unnecessary delay. At the latest at the time of the occupation, the necessary measures shall be taken for the fixing and payment of the compensation. The legality of the expropriation and the amount of the compensation may be ascertained in judicial proceedings.

4. Compensation for expropriation shall be freely transferable with respect to that Party which corresponds to the value of the capital imported and of the yields which, in accordance with domestic legislation, could have been transferred up to the time of payment of the compensation.

5. Nationals and companies of a Party shall be accorded in the territory of the other Party national and most-favored-nation treatment in respect of the matters dealt with in paragraphs 1, 3 and 4.

Article 15.

1. The term companies as used in this Treaty refers not only to commercial or other types of companies, but also to all legal persons under private law or associations, even if they do not have legal personality, provided that they have been founded in accordance with the law in force in the territory of one of the Parties.

2. The legal status of the companies of one of the Parties shall be recognized in the territory of the other Party. The latter may refuse such recognition only when the company concerned infringes, by its corporate purpose or activity actually carried on, the principles or provisions which this Party considers as part of the public policy within the meaning of its private international law.

Article 16.

The provisions of this Agreement relating to the granting of the most-favored-nation clause shall not apply:

(a) to facilities granted by one of the Parties to neighboring countries for the purpose of simplifying frontier traffic, or within

the framework of regional conventions relating to the right of establishment,

(b) to facilities granted within the framework of an economic, customs union or free trade area, as well as on the basis of interim conventions, for the purpose of establishing such economic, customs union or free trade area,

(c) to the prerogatives and facilities granted by one of the Parties on the basis of multilateral agreements relating to the common regulation of certain sectors of production, trade and provision of services or in the interest of the security of the participating countries,

(d) to facilities granted by one or both Parties to one or more countries with respect to civil aviation,

(e) tax credits granted by either Party to third States on the basis of agreements for the avoidance of double taxation or on grounds of reciprocity or in avoidance of discrimination.

Article 17.

Each Party shall grant the other Party national treatment in accordance with this Agreement by virtue of the fact that the other Party grants national treatment in the same matters.

Article 18.

Nothing in this Agreement shall prevent a Party from granting nationals and companies of the other Party more favorable treatment than that provided for in this Agreement.

If it results from the laws of one of the Parties, or from obligations of international law existing between the Parties, or which may in the future be established between them, a regulation under which more favorable treatment than that provided for in this Agreement is applicable to nationals and companies of the other Party, the provisions of this Agreement shall not affect that regulation.

Article 19.

In all cases in which this Treaty grants simultaneously equal treatment to its own nationals and the most-favored-nation clause, the more favorable treatment shall apply.

Article 20.

1. If differences of opinion arise in the interpretation or application of this Treaty, both Parties shall undertake to consult with a view to reaching an amicable solution.

2. If a solution cannot be reached and if so requested by one of the Parties, the case shall be submitted to an Arbitral Tribunal.

3. (a) This Arbitral Tribunal shall be constituted for each case and shall consist of three arbitrators. Each Party shall appoint one arbitrator; the two appointed arbitrators shall choose a third arbitrator who shall be a national of a third State and shall be appointed by the Governments of both Parties.

(b) Each Party shall appoint its arbitrator within two months from the date of the request of the other Party; failing this, the arbitrator shall be appointed at the request of the other Party by the President of the International Court of Justice.

(c) If the two arbitrators appointed by each Party fail to agree on the choice of the third arbitrator within one month, the third arbitrator shall, at the request of one of the Parties, be appointed by the President of the International Court of Justice.

(d) The appointment shall be made by the Vice-President of the International Court of Justice if the President of the International Court of Justice, pursuant to subparagraphs b and c of this paragraph, is unable to comply with the request or if he is a national of one of the Parties. If such Vice-President is also unable or is a national of one of the Parties, the appointment shall be made by the most senior and senior member of the Tribunal who is not a national of one of the Parties.

4. The Arbitral Tribunal shall rule in accordance with the provisions of this Treaty, as well as the general rules of international law.

5. The Arbitral Tribunal shall decide by majority vote and its decisions shall be binding on both Parties.

6. Each Party shall bear the expenses of its member as well as those incurred by its representation in the proceedings before the Arbitral Tribunal; the expenses of the third arbitrator as well as the other expenses of the proceedings shall be borne equally by both Parties. The Arbitral Tribunal may otherwise determine the apportionment of expenses.

7. The Arbitral Tribunal shall establish its own procedure.

Article 21.

The present Treaty shall also apply to the Land Berlin, insofar as the Government of the Federal Republic of Germany has not made a declaration to the contrary to the Spanish Government within three months of the entry into force of the present Treaty.

Article 22.

1. This Treaty shall be ratified. The instruments of ratification shall be exchanged in Bonn as soon as possible.

2. This Treaty shall enter into force one month after the date of the exchange of the instruments of ratification.

After the expiration of ten years, this Treaty may be denounced at any time; but it shall remain in force for one year from the date of its denunciation.

DONE at Madrid, this 23rd day of April 1970 in four copies, two in the German language and two in the Spanish language, both texts being authentic.

For the Federal Republic of Germany

Scheel

For the Spanish State

Lopez Bravo

Protocol

Upon signature between the Federal Republic of Germany and the Spanish State of the Treaty of Establishment the undersigned Plenipotentiaries have further agreed upon the following provisions, which are to be considered as an essential integral part of the Treaty:

1. The term "public health" includes the protection of the life and health of persons, animals and plants.

2. The family cohabitation referred to in Article 2, paragraph 2, shall not be deemed to be interrupted by vacations, studies or other absences of a temporary nature.

3. The term "natural disasters and other similar catastrophes" in Article 6 does not include war and other states similar to war.

4. Article 8 does not prevent any Party from prescribing as a precondition for registration in the national registry that vessels and aircraft may not be owned nationally or by companies of a foreign State. Aircraft not registered or admitted in one of the Parties may not fly over the territory of that Party or otherwise be brought into the traffic of that Party, without obtaining the appropriate permit.

5. The treatment of nationals guaranteed in paragraph 1 of Article 9 does not refer to the area of taxation.

6. (a) Within the meaning of paragraph 4 of Article 9, enterprises in which the participation of foreign capital exceeds 50% are foreign-controlled.

(b) The Authorities of one Party shall deal favourably with applications from nationals and companies of the other Party for the establishment of companies, as well as for the acquisition of control of existing companies, refusing such applications only when reasons of public order, security or public health so require.

7. (a) The term "public services" in paragraph 6 of Article 9 shall be interpreted by each Party in accordance with its legal provisions.

(b) The Parties agree under paragraph 6 of Article 9 that the treatment of nationals agreed to in paragraphs 1, 2 and 3 of Article 9 shall not apply to the following professions and activities:

1. physicians, dentists, veterinarians.
2. "Heilpraktiker".
3. Pharmacists.
4. Notaries, lawyers, legal consultants, administrative managers.
5. Patent attorneys, property agents.
6. Economic inspectors, chartered accountants, tax advisors, tax attorneys, economic advisors.
7. Activities in the field of charity and emigration.
8. Commercial transportation of persons or things by means of aircraft, commercial use of aircraft, for other uses.
9. District master chimney sweepers.
10. Public land surveyors.
11. Engineers verifying building statics.
12. "Buchmacher" and lottery collectors.
13. Manufacture for profit of firearms, ammunition and the commerce with these articles.
14. Handling and trafficking of explosive materials, including their transportation.
15. Independent ambulant professions as long as it does not follow something different from the provisions of Article 13.
16. Captains, naval officers and radiotelegraphers of ships flying the German and Spanish flag, and harbor pilots.
17. Cabotage navigation.
18. Private research and information agents.

8. In the event that one of the Parties, after the signature of this Treaty, agrees with a third State on time limits of the type designated in paragraphs 3 and 5 of Article 10, which are shorter than those agreed upon by the Parties, both Parties undertake to enter into negotiations on the reduction of the time limits agreed upon in the aforementioned Article.

9. Article 12 does not refer to the area of taxation.

10. Aircraft registered and admitted in one of the Parties may not be subject in the territory of the other Party to measures provided for in paragraph 3 of Article 14.

11. The term national means:

(a) as regards the Federal Republic of Germany, all Germans within the meaning of Article 116, paragraph 1 of the Basic Law for the Federal Republic of Germany.

(b) As regards Spain, all natural persons who possess Spanish nationality in accordance with the Civil Code.

Each Party shall decide in accordance with the nationality legislation of the other Party, which proof of nationality it shall require, taking into account that for the application of this Treaty, the Passport (Reisepass) or the National Identity Card (Personalausweis) issued by the Authorities of the other Party shall be considered sufficient proof, in principle, and in any case provisional proof of nationality.

DONE at Madrid, this 23rd day of April 1970.

For the Federal Republic of Germany

Scheel

For the Spanish State

López Bravo