

## MODERN BILATERAL AGREEMENT FOR BORDER POLICE / CUSTOMS

prepared by:

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## Introduction, sources of information, meetings held

- Objective: to propose the harmonized border crossing agreements for border police and customs in SEETO Participants according to border crossing legal bases of EU
- The Consultant prepared draft border crossing agreements and discussed them in meetings with officials in Ministries and railway companies during the missions carried out in October - December 2008 and February - March 2009
- The Consultant has prepared a border police/customs agreement for rail border crossing between Participants as well as between SEETO Participant and EU country taking into account the legal bases of the EU of the border crossings agreement

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## Proposal of the Border Police agreement SEETO/EU

### AGREEMENT

between

the Government of the Republic  
the Government of the Republic  
On

The mutual acceptance of border police and customs  
authorities fulfilling their functions on the  
neighbouring country's territory

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## General Provisions, Objectives and Principles

### Preamble

- The present agreement is a subsequent agreement to the AGREEMENT between the Government of the Republic..... and the Government of the Republic..... on Border Dispatching for Rail Transport, hereinafter the **Border Agreement**

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## General Provisions, Objectives and Principles

### Article 1

- Members of the border police of the contracting parties are allowed to execute their national functions in the Zone, indicated in Article 3

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## General Provisions, Objectives and Principles

### Article 2

- The border police of the contracting parties are allowed, to transport in the Zone, defined in Article 3 persons that are under their custody as long as such persons are not:
  - nationals of the neighbouring country or there is a likelihood that they could be nationals of the neighbouring country or there might be the likelihood that they might become nationals of the neighbouring country

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## General Provisions, Objectives and Principles

### Article 2 - continuation

- persons that have committed a crime under the penal code of the country but their action is considered a political action or could be seen in this context as such a political action and are therefore persecuted whereby attempted crimes or executed crimes against humanity, murder, or the participation at such actions are not considered as such penal actions.



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## The Zone

### Article 3

- The Zone within which the border police of the contracting parties can carry out their functions is defined in the Border Agreement.
- For the purpose of this Agreement, the zone comprises
  - the border stations ..... and .....,
  - the border sections between the two border stations,
  - the sections between.....and.....for passenger control on moving trains
  - the sections between.....and.....for moving freight trains



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## Possessions of the persons under custody

### Article 4

- In carrying out the functions according to Articles 1 and 2, the member of the border police is allowed to carry with him the possessions of the person that has been put under the custody.
- The possessions taken into custody by the respective border police shall not have to undergo the formal customs procedures.



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## Persecution on the territory of the other country

### Article 5

- Whenever the border police of one country takes into custody or persecutes one person on the territory of the other country, they have to immediately inform the border police of the other country indicating, if possible, the data of the person, in particular the nationality and the reason for the persecution or for taking person into custody.



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## Persecution on the territory of the other country

### Article 5 - continuation

- The border police on the territory of which the action is taken by the neighbouring border police will immediately inform border police of the neighbouring country if Article 2 applies.
- Contracting parties will officially inform each other about the competent authorities to be contacted.



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## Persecution on the territory of the other country

### Article 5 - continuation

- For reasons of danger or medical emergency, the border police of both countries are allowed to leave the Zone.
  - The border police in action will try to immediately inform the competent authority of such a situation.
  - If the number of border police acting in the neighbouring countries territory is more than one person, the competent authority of the territory will be informed immediately according to Article 5.2



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## Uniforms, Identity Cards, Use of Arms

### Article 6

- The border police of the respective countries are allowed to wear their uniforms while carrying out their duties on the other countries territory.
- The members of the border police have to carry the respective identity documents with them.
  - The members of the border police are also allowed to use their own vehicles, arms, munitions, communication material and dogs.



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## Uniforms, Identity Cards, Use of Arms

### Article 6

- The members of the border police acting on the neighbouring countries territories are not allowed to carry out any other action that is not directly linked with the persecution of and the taking into custody of the person.
- The members of the border police are only allowed to use their weapons in case of self defence. They can also use the weapon if the person under persecution or under custody is armed or tries to flee.



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## Transport of persons under custody

### Article 7

- The transport of persons under custody by rail and by bus is only allowed if the respective rail and bus operator agrees to it.
- In case of danger, it is not allowed to transport the person under custody in public transport means.



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## Escape of persons under custody

### Article 8

- Whenever the person under custody succeeds in escaping, the respective border police is allowed to persecute him.
- The border police must immediately inform the competent authority of the respective country.



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## Escape of persons under custody

### Article 8 - continuation

- The persecution by the member of the border police on the other territory ends at the moment when the border police of the country where the persecution is taking place, takes over the persecution.
- If the person has succeeded in evading it is only possible for the respective country to officially ask the neighbouring country to continue the search for the person and eventually bring him back according to the respective bilateral agreements on mutual assistance in criminal matters in force.
  - The contracting parties agree to deliver the person under custody that has succeeded in evading to the competent authorities of the neighbouring country.



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## Limits of actions

### Article 9

- Each of the contracting parties is entitled to limit the actions of the border police of the other country for reasons of emergency, danger of the public security and in cases of important international tensions. In this case, the neighbouring country has to be informed immediately.
- If the situation described in previous paragraph only takes place in the Zone, such limitations can be carried out in the Zone. The respective authority has to immediately inform the neighbouring country.



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## Penal action

### Article 10

- Penal action undertaken against the border police of the other country on the territory of the respective country shall be persecuted according to the force of the respective country.
- In case of any penal action happening in the respective national territory of the two countries, the law of the respective country shall be applied.



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## Arbitration

### Article 11

- Any differences in the interpretation of the present agreement shall be settled by the governments of the contracting parties.
- If the two governments cannot reach such a settlement, they can select a bilateral or international arbitration committee to settle the differences.
  - The decision of such a committee shall be binding.
  - In case of an application of a bilateral arbitration the contracting parties agree to nominate as chairman a trusted member of a third state.
  - The arbitration committee has to be nominated within two months as soon as the two governments have formally agreed that they cannot settle the difference and shall ask for arbitration.



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## Arbitration

### Article 11 - continuation

- If the contracting parties do not agree to appoint an arbitration committee, each state has the right to appeal to the competent European Court for the settlement of the difference
- If the president of the European Court is a citizen of the contracting parties, the vice president shall be the person to decide.
- The decision of the European Court shall be binding.
- The costs of the arbitration shall be borne by each contracting party at the same proposition.



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## Border Police Commission

### Article 12

- The Contracting Parties agree to establish an independent commission – Border Police Commission - the objectives of which are to ensure:
- the solution of problems arising from the cooperation of the border authorities in the Zone
  - the improvement of border police cooperation and border police services
  - the solution of any other differences between the Contracting Parties resulting from the present Agreement.



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## Validity

### Article 13

- This Agreement is concluded for an indefinite period. Any Contracting Party has the right to terminate it.
  - This Agreement shall be terminated 6 (six) months after the receipt of the diplomatic note by which the other Contracting Party notifies its intention to terminate the Agreement.
  - With the Agreement entering into force, the following Agreement(s)
    - .....
- shall cease its (their) validity.



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Thank you for your attention!



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