

No. 6872

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

Exchange of notes constituting an agreement relating to the settlement of certain claims against members of the United States Forces (including dependents) insured by the Brandaris Insurance Company in Germany. Bonn/Bad Godesberg and Bonn, 28 February and 14 March 1963

Official texts: English and German.

Registered by the United States of America on 12 August 1963.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Échange de notes constituant un accord relatif au règlement de certaines réclamations à l'encontre de membres des Forces armées des États-Unis en Allemagne (y compris les personnes à leur charge) assurés par la Compagnie d'assurances Brandaris. Bonn/Bad Godesberg et Bonn, 28 février et 14 mars 1963

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 12 août 1963.

No. 6872. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO THE SETTLEMENT OF CERTAIN CLAIMS AGAINST MEMBERS OF THE UNITED STATES FORCES (INCLUDING DEPENDENTS) INSURED BY THE BRANDARIS INSURANCE COMPANY IN GERMANY. BONN/BAD GODESBERG AND BONN, 28 FEBRUARY AND 14 MARCH 1963

I

The American Chargé d'Affaires ad interim to the Federal Minister of Finance

EMBASSY OF THE UNITED STATES OF AMERICA
BONN/BAD GODESBERG, GERMANY

February 28, 1963

Excellency :

To permit the payment of claims which have arisen through the non-duty use of private motor vehicles of members of the United States Forces (including dependents) insured by the Brandaris insurance company, I propose the following agreement :

1. Persons who, as a result of an act or omission in the Federal territory, done outside the performance of official duty and involving private motor vehicles of members of the United States Forces (as defined in Article 1 of the Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany),² have a claim for damages against members of the United States Forces and whose claim cannot be paid or be fully paid in view of the suspension of payments of the Brandaris insurance company will, upon application, be granted compensation (*ex gratia* payment) by the United States Forces in accordance with the following provisions, where such claim is cognizable under the Foreign Claims Act and implementing regulations :

- (a) As far as the Foreign Claims Act permits, the compensation will be measured by the amount payable by the person liable for the damage.
- (b) Amounts received by the injured person from Brandaris or from a third party in payment of the obligation of Brandaris will be deducted from the compensation to be granted by the United States Forces. The United States will fully settle these claims and will require from the claimant the release of the United States, the Federal Republic, the Brandaris insurance company and the insured from present or future

¹ Came into force on 14 March 1963 by the exchange of the said notes.

² United Nations, *Treaty Series*, Vol. 332, p. 3.

liability with respect to the incident from which the claim arose. The insured will, upon request by the United States Forces, assign his claim against the Brandaris insurance company to the United States.

- (c) The application is to be filed on or before September 26, 1963 with the Defense Cost Office, provided that no application is required if the claim is pending with Brandaris and prior to the said date is transferred by Brandaris to the United States Forces. This agency will examine whether and to what extent the claim is justified under German law and will thereupon transmit to the appropriate United States agency a recommendation for its decision together with an explanatory statement. If a difference of opinion arises between the German agency and the agency of the Forces regarding the question of liability or regarding the amount of compensation and if these two agencies cannot agree, the matter shall be discussed between representatives of the USAREUR¹ Claims Branch (or if appropriate the Embassy) and of the Federal Ministry of Finance.
- (d) The agency of the Forces will notify the applicant of its decision and remit to him the compensation granted. It will also inform the German agency of its decision. The decision is not subject to appeal.
- (e) In determining the compensation, interest accrued on the claim shall be disregarded.

2. As far as claims described in section 1 are not cognizable under the Foreign Claims Act, the provisions of section 1 shall apply, subject to the following modifications :

- (a) If the person liable for the damage has made payment from his own funds, he may apply for compensation hereunder. In this case, the compensation payable to him shall not exceed the amount paid by him.
- (b) If a difference of opinion arises between the German agency and the agency of the United States Forces regarding the question of liability or regarding the amount of compensation and if these two agencies cannot agree, the matter shall be resolved by discussions between the appropriate authorities of both Governments.
- (c) Towards the expenditures resulting from the awards made pursuant to this section 2, a contribution will be made from the general budget of the German Federal Republic in the amount of such awards, but not exceeding twenty-five percent of the total of all awards made pursuant to sections 1 and 2.
- (d) The Federal Ministry of Finance will cause an amount of DM 100,000 to be paid into an account designated by the United States Forces. It will replenish this amount as far as necessary. If after settlement of the claims it appears that the amount or amounts thus made available to the Forces exceed the contribution to be made under this section, the United States Forces will repay the excess amount to the Federal Republic of Germany.

3. Any sums received by the United States Government as the distributee of the Brandaris assets with respect to claims satisfied pursuant to sections 1 and 2 will be divided between the United States and the Federal Republic in the proportion of their participation in the total compensation awarded under sections 1 and 2.

4. The further details of the procedure shall be established by mutual agreement.

¹ United States Army Europe.

5. It is agreed that this agreement will be applied also in respect of incidents which occurred in West Berlin.

I should be grateful if you would confirm the above agreement.

Accept, Excellency, the assurances of my highest consideration.

Brewster H. MORRIS
Chargé d'Affaires ad interim

His Excellency Dr. Rolf Dahlgrün
Federal Minister of Finance
Bonn

II

The American Chargé d'Affaires ad interim to the Federal Minister of Finance

EMBASSY OF THE UNITED STATES OF AMERICA
BONN/BAD GODESBERG, GERMANY

February 28, 1963

Excellency :

By a letter to you of today's date I am proposing the conclusion of an agreement regarding the so-called Brandaris claims. I wish to confirm that section 2 of the agreement is intended to cover, in addition to the claims mentioned in section 2 (a), those claims described in section 1 which fall into one or more of the following categories :

(1) Claims of inhabitants of the United States (e.g., members of the United States Forces, American tourists) ;

(2) claims involving damage caused by a person who is neither a member of the armed forces of the United States nor a civilian employee of a military department of the United States (e.g., dependents) ;

(3) claims which arose prior to September 26, 1959 unless they were presented within the time and in the manner provided in the Foreign Claims Act and implementing regulations ;

(4) claims or parts of claims which represent the statutory fees and disbursements of attorneys or courts ;

(5) interest actually paid by the applicant as a result of the incident giving rise to the claim.

I should be grateful if you would confirm the above understanding.

Accept, Excellency, the assurances of my highest consideration.

Brewster H. MORRIS
Chargé d'Affaires ad interim

His Excellency Dr. Rolf Dahlgrün
Federal Minister of Finance
Bonn

III

The Federal Minister of Finance to the American Chargé d'Affaires ad interim

[GERMAN TEXT — TEXTE ALLEMAND]

[TRANSLATION¹ — TRADUCTION²]

DER BUNDESMINISTER DER FINANZEN

THE FEDERAL MINISTER OF FINANCE

Bonn, den 14. März 1963

Bonn, March 14, 1963

VI B/1-BL 1111-89/63

VI B/1-BL 1111-89/63

An den Geschäftsträger der Botschaft
der Vereinigten Staaten von Amerika
Mr. Brewster H. Morris
532 Bad Godesberg
Mehlemer Aue

Mr. Brewster H. Morris
Chargé d'Affaires of the United States
of America
Mehlemer Aue
532 Bad Godesberg

Herr Geschäftsträger !

Mr. Chargé d'Affaires :

Ich beehre mich, den Eingang Ihrer Schreiben vom 28. Februar 1963 betreffend die Regelung von Ansprüchen, die aus nicht-dienstlicher Benutzung privater Kraftfahrzeuge der bei der Versicherungsgesellschaft „Brandaris“ versicherten Mitglieder der amerikanischen Streitkräfte (einschließlich der Angehörigen) entstanden sind, zu bestätigen und Ihnen mitzuteilen, daß ich mit dem Inhalt Ihrer Schreiben einverstanden bin.

I have the honor to acknowledge the receipt of your letters of February 28, 1963 concerning the settlement of claims which have arisen through the non-duty use of private motor vehicles of members of the United States Forces (including dependents) insured by the Brandaris insurance company, and to inform you that I am in agreement with the contents of your letters.

Genehmigen Sie, Herr Geschäftsträger, den Ausdruck meiner vorzüglichen Hochachtung.

Accept, Mr. Chargé d'Affaires, the expression of my high consideration.

DAHLGRÜN

DAHLGRÜN

¹ Translation by the Government of the United States of America.² Traduction du Gouvernement des États-Unis d'Amérique.