

No. 23741

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**AUSTRIA  
and  
FEDERAL REPUBLIC OF GERMANY**

**Agreement for the regulation of official liability resulting from actions of agents of one State in areas of the other State which lie near the frontier. Signed at Bonn on 14 September 1955**

*Authentic text: German.*

*Registered by Austria on 13 February 1986.*

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**AUTRICHE  
et  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord relatif à la réglementation de la responsabilité publique résultant d'actions de fonctionnaires d'un Etat dans les zones frontalières de l'autre Etat. Signé à Bonn le 14 septembre 1955**

*Texte authentique : allemand.*

*Enregistré par l'Autriche le 13 février 1986.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE  
FEDERAL REPUBLIC OF GERMANY FOR THE REGULATION  
OF OFFICIAL LIABILITY RESULTING FROM ACTIONS OF  
AGENTS OF ONE STATE IN AREAS OF THE OTHER STATE  
WHICH LIE NEAR THE FRONTIER

The Republic of Austria and the Federal Republic of Germany, in order to regulate matters relating to official liability which arise out of:

- The Agreement concerning Simplified Procedures for Frontier Clearance in Rail-way, Road and Ship Traffic, of 14 September 1955;<sup>2</sup>
- The Agreement concerning Simplified Procedures for Transit Traffic by Rail on the Mittenwald (Frontier)–Griesen (Frontier) and Ehrwald (Frontier)–Vils (Frontier) Sections, of 14 September 1955;<sup>3</sup>
- The Agreement concerning the Travel of Law-enforcement Officials in Transit by Road and by Rail, of 14 September 1955;<sup>4</sup>
- The Agreement concerning the Conveyance in Transit of Prisoners on the Mittenwald (Frontier)–Griesen (Frontier) and Ehrwald (Frontier)–Vils (Frontier) Rail-way Sectors, of 14 September 1955;<sup>5</sup>
- The Agreement concerning the Regulation of Railway Frontier Crossings, of 28 October 1955,<sup>6</sup>

have agreed as follows:

*Article 1.* (1) Where, in pursuance of the Agreements referred to in the preamble, agents of either Contracting State (the neighbouring State) may conduct affairs relating to the exercise of sovereign authority in the other Contracting State (the territorial State) or travel through the latter in their official capacity, the territorial State shall be liable for any damage caused by the agents of the neighbouring State in connection with the conduct of such affairs or in connection with such transit travel through the territorial State, in accordance with the regulations governing the determination of its liability for its own agents.

(2) For the purposes of this Agreement, the term “agents of a Contracting State” means all persons who, within the context of the Agreements referred to in the preamble, are entrusted by that Contracting State or a territorial subdivision thereof with the conduct of affairs relating to the exercise of sovereign authority.

*Article 2.* (1) Article 1, paragraph 1, shall not apply:

1. Where the action or omission causing the damage affects the neighbouring State or one of its agents;

<sup>1</sup> Came into force on 31 October 1957, i.e., 14 days after the exchange of the instruments of ratification, which took place at Bonn on 17 October 1957, in accordance with article 10 (2).

<sup>2</sup> United Nations, *Treaty Series*, vol. 1419, No. I-23743.

<sup>3</sup> See p. 277 of this volume.

<sup>4</sup> See p. 299 of this volume.

<sup>5</sup> See p. 245 of this volume.

<sup>6</sup> See p. 321 of this volume.

2. Where the agents of the neighbouring State are acting on the basis of the Agreement concerning Facilities in connection with Frontier Clearance in Railway, Road and Ship Traffic and the action or omission causing the damage relates to a traveller subject to frontier clearance or a person availing himself of the services of the said agents or a person present in their offices, or where the damage results from harm done to goods or valuables subject to frontier clearance or arises out of errors in connection with their clearance;
3. Where the action or omission causing the damage affects persons or articles being transported in facilitated railway transit traffic;
4. Where the action or omission causing the damage affects a prisoner being conveyed in transit;
5. Where the action or omission causing the damage affects a person having his or its domicile, head office or habitual residence in the neighbouring State.

(2) In the cases specified in paragraph 1, the liability shall be determined in the same manner as if the action or omission causing the damage had taken place in the neighbouring State.

*Article 3.* With respect to official liability claims on the basis of this Agreement and in connection with the assertion of such claims, nationals of the two Contracting States shall be considered equal to each other.

*Article 4.* (1) In respect of claims arising out of article 2, in the Republic of Austria, the court competent to decide on the claim of the person suffering the damage and on the claim for compensation against the agent responsible therefor shall be the provincial court (*Landesgericht*) entrusted with the exercise of jurisdiction in matters of official liability in whose district (*Sprengel*) the authority or department to which the agent on whose behaviour the claim is based is directly subordinate has its head office.

(2) In respect of claims under article 2, in the Federal Republic of Germany, the court having competence shall be the court in whose district (*Bezirk*) the authority entrusted with representing the liable territorial subdivision in litigation has its head office.

*Article 5.* The provisions of article 15 of the Agreement concerning Facilitated Railway Transit Traffic and the provisions of the Agreement concerning the Travel of Law-enforcement Officials in Transit by Road and by Rail, in conjunction with article 15 of the Agreement between the Republic of Austria and the Federal Republic of Germany concerning Simplified Procedures for Transit Traffic by Road between Salzburg and Lofer through German Territory and between Garmisch-Partenkirchen and Pfronten/Füssen through Austrian Territory, of 14 September 1955,<sup>1</sup> shall not apply in so far as is otherwise provided in this Agreement.

*Article 6.* (1) Where a claim is asserted against the territorial State on the basis of article 1, the territorial State shall notify the neighbouring State thereof without delay, and in the event of a legal proceeding to assert a claim, the territorial State shall also notify that fact to the neighbouring State.

(2) The neighbouring State shall have the obligation to place at the disposal of the territorial State without delay such official information and evidence useful for

<sup>1</sup> See p. 257 of this volume.

the processing of the damage claim as is available to the neighbouring State, in so far as such action is permissible under the latter's laws and regulations.

(3) The territorial State shall inform the neighbouring State of the settlement of the claim; copies of the decision, compromise or other disposition leading to the settlement must be attached.

*Article 7.* The neighbouring State shall compensate the territorial State for the expenses incurred by the latter in fulfilment of the obligations arising out of article 1.

*Article 8.* (1) Disagreements concerning the interpretation or application of this Agreement, including in particular those relating to compensation in accordance with article 7, shall be settled by the competent administrations on each side. This provision does not preclude settlement through the diplomatic channel.

(2) Where a disagreement cannot be settled in the foregoing manner, it shall, at the request of a Contracting State, be submitted to an Arbitral Tribunal.

(3) The Arbitral Tribunal shall be constituted in each individual case through the appointment of one representative by each Party and agreement between the said representatives on a national of a third State as the umpire. If the representatives and the umpire are not appointed within three months from the date on which one Party declares its intention to submit the case to the Arbitral Tribunal, either Party may, in the absence of any other agreement, request the President of the International Court of Justice at The Hague to make the required appointments. Where the President is a national of one of the two Parties or is unable for any other reason to take action, a deputy of the President shall make the necessary appointments.

(4) The Arbitral Tribunal shall take its decision on the basis of this Agreement and applying customary international law and universally recognized legal principles.

(5) The Arbitral Tribunal shall take its decisions by majority vote. Its decisions shall be binding. Each Party shall bear the costs of its own arbitrator. Other costs shall be shared equally by the two Parties. In other respects the Arbitral Tribunal shall establish its own rules of procedure.

(6) With respect to the summoning and hearing of witnesses and experts, the authorities of the two Parties shall provide legal assistance in the same manner in response to requests made by the Arbitral Tribunal to the Government concerned in the same manner as in response to requests made by domestic civil courts.

*Article 9.* This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Austrian Federal Government within three months after the entry into force of the Agreement.

*Article 10.* (1) This Agreement shall be ratified as soon as possible. The instruments of ratification shall be exchanged at Bonn.

(2) The Agreement shall enter into force 14 days after the exchange of the instruments of ratification.

*Article 11.* If one of the Agreements referred to in the preamble ceases to have effect, such cessation shall not affect the validity of this Agreement for the sphere of application of the other Agreements referred to in the preamble.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Agreement and have thereto affixed their seals.

DONE in duplicate at Bonn on 14 September 1955.

For the Republic of Austria:

ROTTER

For the Federal Republic of Germany:

BERGER

ROEMER

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