



Act on the Compensation of Road Accident Victims (VOEG; *Verkehrsoffer-Entschädigungsgesetz*)

Long title

Act on the Compensation of Road Accident Victims
(VOEG - Verkehrsoffer-Entschädigungsgesetz)

Original version:

Federal Law Gazette I No. 37/2007

Amendments:

Federal Law Gazette I: No. 109/2009; No. 12/2013; No. 34/2015; No. 19/2017

Text

Article X

This Federal Act transposes Directive 2005/14/EC of the European Parliament and the Council of 11 May 2005 amending Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC of the Council as well as Directive 2000/26/EC of the European Parliament and the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 149, 11.06.2005, p. 14).

Section 1 - General provisions

Scope of application

Article 1. This federal act regulates the compensation of road accident victims who are unable or only able under difficult circumstances to assert claims for damages against an insurer providing motor vehicle liability insurance.

Party liable to pay compensation and parties entitled to receive compensation

Article 2. Benefits in accordance with this federal act shall be provided by the Austrian Insurance Association (hereinafter: "the Association").

Article 3. Only persons who have sustained personal injuries or damage to property in a compensation event in accordance with this federal act shall have a claim to benefits in accordance with this federal act, as well as the surviving dependents of persons killed in such a compensation event.

Section 2 - Compensation events

Compensation in the case of the absence of a liability insurance provider

Article 4. (1) The Association shall provide compensation for personal injuries and damage to property, which occurred in Austria caused by vehicle subject to the insurance obligation set out in the provisions under motor vehicle law, if

1. no insurance contract existed despite the existence of the insurance obligation,
2. it was not possible to identify a person liable under civil law,
3. the vehicle was used without the consent of its keeper and the keeper is therefore excluded from liability in accordance with Article 6 of the Railway and Motor Vehicle Liability Act (EKHG; Eisenbahn- und Kraftfahrzeughaftpflichtgesetz),
4. the liability insurer is not obliged to provide coverage, because the injuring party wilfully or illegally caused the claim to occur, for which the liability insurer is obliged to compensate, or
5. insolvency proceedings have been initiated against the assets of the liability insurer, or the initiation of such proceedings have been rejected on the grounds of there being insufficient assets.



(2) The Association shall provide benefits in accordance with para. 1 in such a way, as if they existed on the basis of a claim by the victim of a traffic accident and the existence of a motor vehicle liability insurance policy within the insurance obligation defined under the provisions of motor vehicle law. The Association may not object to a compensation claim, that a liable party shall have to pay compensation, or that a liability insurance company shall have to intervene, if the latter contests its obligation to provide coverage.

(3) The Association shall also provide compensation for the case listed in para. 1 no. 1, if damages were caused by a motor vehicle outside of Austria, but the risk was deemed to be situated in Austria (Article 5 no. 20 lit. a sublit. bb of the 2016 Insurance Supervision Act, published in Federal Law Gazette I No. 34/2015).

(4) The Association shall also provide compensation for the case listed in para. 1 no. 2, it is not possible to identify whether the motor vehicle that caused the damage was subject to the insurance obligation in accordance with the provisions under motor vehicle law.

(5) Persons, who at the point of time at which the damage event occurred were wilfully being transported in a motor vehicle, shall not be compensated, if they knew that the obligations set out in para. 1 no. 1 or no. 3 applied to the motor vehicle.

Article 5. (1) In the cases listed in Article 4 para. 1 nos. 3, 4 and 5 damages shall only be compensated for the amount exceeding EUR 220. In the case listed in Article 4 para. 1 no. 2 damages shall only be compensated for the amount exceeding EUR 220, and only in the case that a person was killed or suffered a serious physical injury as defined in Article 84 para. 1 of the Austrian Criminal Code (StGB; Strafgesetzbuch) during the same claim event.

(2) In the case listed in Article 4 para. 1 no. 5 the compensation shall be limited to 0.5% of the total premium income of all motor vehicle liability insurers each calendar year.

Compensation in relation to vehicles that are exempted from the legal obligation to have liability insurance coverage

Article 6. (1) The Association shall be required to provide compensation for personal injuries and damage to property that was caused in Austria by:

1. A vehicle as defined in Article 1 para. 2 lits. a, b and d as well as para. 2a of the Motor Vehicles Act 1967 (KFG 1967; Kraftfahrzeuggesetz 1967), or
2. a motor vehicle, the territory in which the vehicle is normally based in accordance with Article 1 (4) of Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, OJ L 263, 07.10.2009, p. 11, is in another EEA signatory state, and in accordance with Article 5 (2) of that Directive is not subject to the insurance obligation.

(2) The Association shall provide benefits in accordance with para. 1 in such a way, as if they existed on the basis of a claim by the victim of a traffic accident and the existence of a motor vehicle liability insurance policy within the insurance obligation defined under the provisions of motor vehicle law. The Association may not object to a compensation claim, that a liable party shall have to pay compensation, or that a liability insurance company shall have to intervene, if the latter contests its obligation to provide coverage.

(3) The injured party shall not be compensated in accordance with para. 1, if the vehicle is used as a stationary source of power or for similar purposes.

Compensation arising from compliance with the obligation to wear seatbelts and helmets

Article 7. (1) The Association shall provide compensation for personal injuries that were caused as a result of the proper use of a safety belt or a protective helmet, provided that the injury would probably not occurred or would not have occurred with such severity had a safety belt or protective helmet not been worn.

(2) The injured party shall not however be compensated in accordance with para. 1 if

1. damage claims in accordance with Articles 1293 et seq. of the General Civil Code (ABGB), in accordance with the Railway and Motor Vehicle Liability Act (EKHG) or in accordance with comparable provisions on liability, that are covered by liability insurance or which are fulfilled without delay, at latest following a warning, or
2. claims against a social insurance provider for benefits that are intended to compensate such damage, or similar benefit entitlements.



- (3) Furthermore the injured party shall not be compensated in accordance with para. 1 if they
1. caused the damage as a result of intent or gross negligence, such as by driving the vehicle in a state impaired due to the consumption of alcohol, or
 2. used the vehicle or was transported with the vehicle, although they knew that this was occurring against the will of the keeper.

Compensation for Accidents Abroad (compensation body)

Article 8. (1) The Association shall provide compensation for personal injuries and damage to property in the amount of the extent of the coverage of the liability insurance provider in its place as compensation body, for a person whose place of residence (incorporation) is in Austria who is involved in an accident involving a motor vehicle in another country, the national insurance bureau of which (Article 1 (3) of Directive 2009/103/EC) has joined the green card system, where the territory in which the motor vehicle is normally based is another EEA Signatory State, and the motor vehicle has a liability insurance policy held with a liability insurance provider that is established in another EEA signatory state with its place of incorporation or a branch in another EEA signatory state.

- (2) Compensation shall be paid out in accordance with para. 1, if:
1. the liability insurer or its claims representative does not comply with its obligation to respond within three months following the assertion of the compensation claim to the statements contained in the request for compensation (Article 24 second subparagraph point a of Directive 2009/103/EC, OJ L 263, 07. 10. 2009, p. 11),
 2. the liability insurer has not appointed a claims representative for Austria, and the injured party has not asserted its claim directly towards the insurer.

(3) The injured party shall assert its claim in the case listed in para. 2 no. 1 within four weeks following the expiry of the three month period, or in the case listed in para. 2 no. 2 within four weeks of the point of time, at which the injured party became aware of the fact or would have had to become aware that no claims representative had been appointed.

(4) The injured party shall not be compensated in accordance with para. 1, if he/she has initiated legal steps against the injuring party or the injuring party's liability insurer. The obligation to provide compensation shall lapse if the liability insurer or the claims representative fulfils the obligation listed in para. 2 no. 1.

(5) The injured party may only legally enforce their rights against the Association, that the conditions for compensation in accordance with paras. 1 to 4 exist, and the compensation obligation has not yet lapsed.

Article 9. The Association as the compensation body shall provide compensation to persons with their place of residence (incorporation) in Austria in the cases listed in Article 4 para. 1 nos. 1 and 2 in accordance with and to the extent of this compensation obligation, if the damage occurred in another EEA Signatory State.

Section 3 - Obligations of the involved parties

Obligations of the injured parties

Article 10. (1) Persons entitled to a claim shall be obliged to:

1. report personal injuries to the nearest police station without unnecessary delay,
2. assist where possible towards the establishment of the facts, and
3. take the necessary measures to avoid or mitigate the damage.

(2) In the event that the injured party wilfully infringes the obligations set out in para. 1, then it shall lose its claim to receive compensation. In the case of injury due to gross negligence, the claim shall continue to exist only in the event that the scope of the damage would not have been smaller had these obligations been dutifully observed.

Obligations of the Association

Article 11. (1) The Association as the compensation body shall take the necessary measures to establish its compensation obligation with two months of a claim being asserted in accordance with Article 8.

(2) The Association shall notify the liability insurer or the claims representative without delay following such a claim having been asserted, that has not been complied with the obligation



stated in Article 8 para. 2 no. 1 in a timely manner, the compensation body in the country in which the liability insurer is established (place of incorporation or as a branch), with whom the insurance contract was concluded as well as the injuring party.

(3) The Association shall report to the Financial Market Authority on an annual basis of the claims asserted against the Association, broken down into the compensation events listed in Articles 4 to 9, as well as the compensation provided by the Association.

Obligations to inform

Article 12. The officers of agencies responsible for maintaining public security shall advise the injured party while conducting their investigations about the possibility for asserting claims in accordance with this federal act.

Section 4 - Transferring of claims

Transferring of claims for reimbursement

Article 13. If a claim exists against a third party for an injured party, who has received benefits in accordance with this federal act, then such a claim shall be transferred to the Association only in the case that the Association has provided a service to the injured party. Where the Association has provided compensation in accordance with Article 4 para. 1 no. 5, then claims for reimbursement against the insurance policyholder and co-insured persons, who are deemed to be consumers as defined in Article 1 para. 1 no. 2 of the Consumer Protection Act (KSchG; Konsumentenschutzgesetz) shall be limited to EUR 2 200 for each.

Section 5 - Claims for compensation and reimbursement

Financing of compensation payments

Article 14. The Association shall have a claim for compensation against those companies that insure against the risk of liability for motor vehicles that are authorised for use in Austria, for the services rendered or performed by it in accordance with this federal act, including an appropriate level of administrative expenses. The services provided for the Association on the basis of this federal act shall be deducted when calculating the compensation claim. The liability insurers shall contribute proportionally to such compensation, in accordance with the ratio of their total premiums written from motor vehicle liability insurance for vehicles that have been authorised in Austria to the total of premiums written for all insurers for this kind of insurance.

Reimbursement in relation to vehicles that are exempted from the legal obligation to have liability insurance coverage

Article 15. (1) Where the Association has provided compensation in accordance with Article 6 para. 1 no. 2, it shall have a claim to reimbursement of this compensation provided by the facility liable for compensation in the EEA Signatory State in which the motor vehicle is normally based.

(2) If damage occurred in another EEA Signatory State caused by a motor vehicle as defined in Article 6 para. 1 no. 1, which the facility liable for compensation in that country has compensated, then the Association shall reimburse the facility liable for compensation in accordance with the legal regulations of that signatory state for the compensation provided. With reimbursement having been provided, the claim of the injured party against the injuring party shall be transferred to the Association.

Reimbursement for accidents in foreign countries

Article 16. (1) Where the Association has provided compensation in accordance with Article 8, it shall have a claim for the reimbursement of this compensation by the compensation body in the country of establishment (place of incorporation or branch) of the liability insurer, with which the insurance contract was concluded.

(2) The Association shall reimburse the compensation body of another EEA signatory state, which provided compensation in accordance with Article 24 (1) of Directive 2009/103/EC in accordance with the legal provisions of this EEA signatory state for this compensation, if the insurance contract was concluded with a Austrian liability insurer or with the Austrian branch of a foreign liability insurer. With reimbursement having been provided, the claim of the injured party against the injuring party and the injuring party's liability insurer shall be transferred to the Association.



(3) Where the Association has provided compensation in accordance with Article 9, it shall have a claim to have this compensation provided reimbursed by:

1. the compensation body in the EEA Signatory State in which the motor vehicle, with which the damage was caused, is normally based, in the case of the event set out in Article 4 para. 1 no. 1,
2. the compensation body in the EEA Signatory State in which the claim event occurred, if the damage in the case of the event set out in Article 4 para. 1 no. 2 was caused by a motor vehicle normally based in an EEA Signatory State or in the case of an event set out in Article 4 para. 1 nos. 1 or 2 which was caused by a motor vehicle normally based outside the EEA Signatory States.

(4) The Association shall reimburse the compensation body of another EEA signatory state, which provided compensation in accordance with Article 25 (1) of Directive 2009/103/EC in accordance with the legal provisions of this EEA signatory state for this compensation, if the vehicle that caused the damaged was authorised in Austria or if the claim event occurred in Austria. With reimbursement having been provided, the claim of the injured party against the injuring party and the injuring party's liability insurer shall be transferred to the Association.

(5) Article 14 shall apply to reimbursements made in accordance with paras. 2 and 4.

Section 6 - Final and transitional provisions

References

Article 17. (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions.

(2) Where references are made to other federal acts and regulations to provisions which have been amended by or repealed by this federal act, the reference shall obtain its content from the corresponding provisions in this federal act.

Enforcement

Article 18. With regard to the enforcement of this federal act, the Federal Minister of Finance shall be entrusted with the enforcement of Article 11 para. 3, the Federal Minister for the Interior shall be entrusted with the enforcement of Article 12, and the Federal Minister for Justice in consultation with the Federal Minister of Finance shall be entrusted with the enforcement of the other provisions.

Entry into force

Article 19. (1) This federal act shall enter into force on 01 July 2007. It shall first be applicable for claims that occurred after 30 June 2007.

(2) With the entry into force of this federal act, the Federal Act on Extended Coverage for Road Accident Victims published in Federal Law Gazette No. 322/1977, last amended by the federal act in Federal Law Gazette I No. 33/2003, shall be repealed. That federal act shall continue to apply to claims that occurred prior to 01 July 2007.

(3) Article 4 para. 3 in the version of Federal Law Gazette I No. 109/2009 shall enter into force on 17 December 2009.

(4) Article 6 para. 3 in the version of federal act published in Federal Law Gazette I No. 12/2013 shall enter into force on 1 January 2013.

(5) Art. 4 para. 3 in the version of the federal act in Federal Law Gazette I No. 34/2015 shall enter into force on 1 January 2018.

Article 1

Transposition of European Union Directives

(Note: from Federal Law Gazette I No. 34/2015, re Article 4, Federal Law Gazette I No. 37/2007)

This federal act shall transpose Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), (OJ L 335, 17.12.2009 p. 1), last amended by Directive 2014/51/EU OJ L 153, 22.05.2014 p. 1.

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.