

N° 1762.

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## ALLEMAGNE ET FRANCE

Déclaration relative à la transmission des actes judiciaires et extra-judiciaires et à l'exécution des commissions rogatoires en matières civiles et commerciales, et déclaration y annexée. Signées à Paris, le 5 octobre 1927

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## GERMANY AND FRANCE

Declaration regarding the Transfer of Judicial and Extra-Judicial Documents and the Execution of "Commissions rogatoires" in Civil and Commercial Matters, with Declaration annexed thereto. Signed at Paris, October 5, 1927.

TEXTE ALLEMAND. --- GERMAN TEXT.

N<sup>o</sup> 1762. — ERKLÄRUNG<sup>1</sup> DES DEUTSCHEN REICHS UND FRANKREICHS WEGEN MITTEILUNG GERICHTLICHER UND AUSSERGERICHTLICHER URKUNDEN UND ERLEDIGUNG VON RECHTSHILFEERSUCHEN IN ZIVIL- UND HANDELSsACHEN, GEZEICHNET IN PARIS, AM 5. OKTOBER 1927.

N<sup>o</sup> 1762. — DÉCLARATION<sup>1</sup> ENTRE L'ALLEMAGNE ET LA FRANCE, RELATIVE A LA TRANSMISSION DES ACTES JUDICIAIRES ET EXTRA-JUDICIAIRES ET A L'EXÉCUTION DES COMMISSIONS ROGATOIRES EN MATIÈRES CIVILES ET COMMERCIALES. SIGNÉE A PARIS, LE 5 OCTOBRE 1927.

*Textes officiels allemand et français communiqués par le consul général d'Allemagne à Genève. L'enregistrement de cette Déclaration a eu lieu le 28 juin 1928.*

*German and French official texts communicated by the German Consul-General at Geneva. The registration of this Declaration took place June 28, 1928.*

Nachdem DIE DEUTSCHE und FRANZÖSISCHE REGIERUNG über-*ingekommen* sind, wegen der Übermittlung gerichtlicher und aussergerichtlicher Urkunden und der Erledigung von Rechtshilfeersuchen in Zivil- und Handelssachen eine Vereinbarung zu treffen, haben die ordnungsmässig bevollmächtigten Unterzeichneten folgende Bestimmungen vereinbart :

LE GOUVERNEMENT DU REICH ALLEMAND et LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ayant résolu de conclure un accord au sujet de la transmission des actes judiciaires et extra-judiciaires et de l'exécution des commissions rogatoires en matières civiles et commerciales, les soussignés, dûment autorisés à cet effet, sont convenus des dispositions suivantes :

*Artikel 1.*

*Article premier.*

In Zivil- und Handelssachen sollen die gerichtlichen und aussergerichtlichen Urkunden, die für Personen bestimmt sind, die in dem Gebiete eines der vertragschliessenden Staaten wohnen, sowie die auf diesem Gebiete zu erledigenden Rechtshilfeersuchen, die von der Behörde des anderen Teils ausgehen, durch die diplomatischen oder konsularischen Vertreter übermittelt werden, und zwar

Les actes judiciaires et extra-judiciaires en matières civiles et commerciales destinés à des personnes résidant sur le territoire de l'une des Parties contractantes ainsi que les commissions rogatoires en matières civiles et commerciales à exécuter sur ce territoire, émanant des autorités de l'autre partie, seront transmis par les agents diplomatiques ou consulaires respectifs

<sup>1</sup> L'échange des ratifications a eu lieu à Paris, le 15 novembre 1927.

<sup>1</sup> The exchange of ratifications took place at Paris, November 15, 1927.

<sup>1</sup> TRADUCTION. — TRANSLATION.

No. 1762. — FRANCO-GERMAN DECLARATION REGARDING THE TRANSFER OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS AND THE EXECUTION OF " COMMISSIONS ROGATOIRES " IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT PARIS, OCTOBER 5, 1927.

THE GOVERNMENT OF THE GERMAN REICH and THE GOVERNMENT OF THE FRENCH REPUBLIC having resolved to conclude an agreement regarding the transmission of judicial and extra-judicial documents and the execution of " commissions rogatoires " in civil and commercial matters, the undersigned, being duly authorised for that purpose, have agreed as follows :

*Article 1.*

Judicial and extra-judicial documents relating to civil and commercial matters intended for persons residing in the territories of one of the Contracting Parties and " commissions rogatoires " in civil and commercial matters to be executed in such territories, emanating from the authorities of the other Party, shall be forwarded by the respective diplomatic or consular agents :

- (a) In Germany, to the President of the " Landgericht ",
- (b) In France, to the " Procureur de la République ", within whose jurisdiction the recipient of the document is situated or the " commission rogatoire " is to be executed.

The letters of transmission shall be drawn up in the language of the authority applied to and must indicate the authority from whom the document emanates, the names and status of the parties, the names and addresses of the recipients or of the witnesses whose evidence is to be taken, and the nature of the document in question.

*Article 2.*

In case the authority to whom a document or a *commission rogatoire* has been addressed is without jurisdiction the said authority shall immediately inform the diplomatic or consular agent making the request and shall of his own motion transmit the document or the " commission rogatoire " to the competent authority of the same State. In every instance in which a document cannot be delivered to the addressees, or a " commission rogatoire " cannot be executed, the authority applied to shall immediately so inform the diplomatic or consular agent making the request, stating the grounds which have prevented the delivery or execution.

*Article 3.*

The delivery of documents may be refused if the State in whose territories it is to be effected considers it such as to compromise its sovereignty or safety.

<sup>1</sup> Traduit par le Secrétariat de la Société des Nations, à titre d'information.

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

As a general rule the authority applied to will only effect the delivery of the document to the recipient if the latter is willing to accept it. Evidence of delivery shall be provided in the form of a receipt, dated and signed by the recipient or else by a certificate from the authority of the State applied to establishing the fact and manner of delivery. One or other of these documents shall be forwarded immediately to the authority making the request. If the document to be served has been forwarded in duplicate, the receipt or certificate may be entered on one of the copies which will be returned.

If the addressee refuses to take delivery of the document the authority applied to shall immediately return it to the diplomatic or consular agent, stating the grounds which have made it impossible to effect delivery. At the express desire of the diplomatic or consular agents the authority applied to may cause the document to be served by a local public officer of the Court, either according to the procedure of the State applied to or according to a special procedure, provided that such procedure be not contrary to the laws of the State applied to. In the latter case the document to be served must be accompanied by a translation, done in the language of the State applied to, and certified correct by the diplomatic or consular agent of the State making the request or by a sworn translator of either State

#### Article 4.

The authority applied to may refuse to execute a *commission rogatoire* :

- (1) If the State within whose territory the execution was to have taken place considers it such as to compromise its sovereignty or safety ;
- (2) If the execution requested is not within the powers of the judicial authorities in the State applied to.

The persons whose evidence is required will be summoned to attend by a simple administrative notice. Should they refuse to comply with such a notice the authority applied to shall use such compulsory measures as are authorised by the law of the State applied to in order to obtain their attendance.

At the express desire of the authority making the request the authority applied to shall be bound :

- (1) To execute the *commission rogatoire* according to a special procedure provided that such procedure be not contrary to the laws of the State applied to ;
- (2) To inform the authority making the request, in sufficient time, as to the date and place fixed for the execution of the " *commission rogatoire* " in order that the parties interested may be present.

" *Commissions rogatoires* " must always be accompanied by a translation in the language of the State applied to. This translation must be certified correct by the diplomatic or consular agent of the State making the request or by a sworn translator of either State.

#### Article 5.

No claim for the recovery of expenses may be made in connection with the delivery of judicial and extra-judicial documents or the execution of *commissions rogatoires*, excepting as follows :

- (1) Expenses incurred for the service of a document by a public officer of the Courts of the State applied to, either according to the procedure established by the local law, or according to a special procedure, where the document is not simply delivered by the method laid down in paragraph 2 of Article 3 ;
- (2) Supplementary expenses occasioned by the execution of a *commission rogatoire* according to a special procedure ;

- (3) Costs of obtaining, through the employment of a public officer of the court, the attendance of persons whose evidence is required and who have failed to appear in response to an administrative notice ;
- (4) The expenses of experts ;
- (5) The cost of forwarding parcels which cannot be sent through the post.

*Article 6.*

The repayment of expenses shall be claimed by the authority applied to from the diplomatic or consular agent making the request when transmitting to it the documents establishing the execution of the request addressed to it. These charges shall be calculated in accordance with the rates in force in the State applied to.

*Article 7.*

Any difficulties which may arise from the present Declaration shall be settled through the diplomatic channel.

*Article 8.*

The present Declaration shall be ratified and the exchange of ratifications shall take place at Paris. It shall come into force fifteen days after the exchange of ratifications. It shall cease to have effect on the expiry of a period of six months reckoned from the date on which it is denounced by either of the Contracting Parties.

In faith whereof the undersigned Plenipotentiaries have signed the present Declaration and have thereto affixed their seals.

Done at Paris in duplicate in the German and French languages this fifth day of October, one thousand nine hundred and twenty-seven.

HOESCH.

A. BRIAND.

DECLARATION.

Adverting to the Declaration signed on this day concerning the transmission of judicial and extra-judicial documents and the execution of *commissions rogatoires* and being desirous of preventing any misapprehension which may arise owing to the wording of the first paragraph of the Addendum to Article 25 of the Commercial Agreement concluded on August 17, 1927, between Germany and France, and inserted in the Protocol of Signature of that Agreement, the undersigned duly authorised Plenipotentiaries of the German Reich and of the French Republic have to-day agreed as follows :

*Article 1.*

No security or deposit of any description whatever may be required from nationals of either contracting State who appear as plaintiffs or interveners before the Courts of the other State, whether on the ground that they are of foreign nationality or that they possess no domicile or residence within the country.

The same rule shall be applicable to sums which plaintiffs or interveners may be required to pay into court as security to meet the costs of the action.

*Article 2.*

The provisions of the preceding Article shall be applicable to the companies referred to in Article 26 of the Commercial Agreement concluded between Germany and France on August 17, 1927.

*Article 3.*

The first paragraph of the Addendum to Article 25 of the Protocol of Signature of the Commercial Agreement concluded between Germany and France on August 17, 1927, is annulled.

*Article 4.*

The present Declaration, being made in connection with the Declaration of the same date concerning the transmission of judicial and extra-judicial documents and the execution of "commissions rogatoires" in civil and commercial matters, shall be ratified, put in force and denounced under the same conditions and simultaneously with the latter Declaration.

Done at Paris in duplicate in the German and French languages this fifth day of October, one thousand nine hundred and twenty-seven.

HOESCH.

A. BRIAND.