

Contract as a Precondition

Austrian Contractual Spatial Planning after the 2024 Constitutional Amendment

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Abstract

In 1999 the Constitutional Court struck down Salzburg’s contractual spatial planning because it made building-land zoning mandatorily dependent on a private-law contract. In 2024 the constitutional legislator permitted exactly this link in Art 15 para 5 B-VG: Land legislation may make the conclusion of a contract one precondition for the municipality’s sovereign action in local spatial planning. This paper reads the new provision as an answer to the question the work asks of the zoning system: how does part of the publicly created value return to the public purse? The amendment’s answer is contractual, not sovereign, and it remains to be negotiated municipality by municipality. By October 2026 only two of the nine Länder had demonstrably used the new authorisation: Tyrol and Salzburg. Using these two and a comparison with the other seven, the paper shows which contract contents Land law names, which limits the constitution itself draws, and where the amendment closes the asymmetry between the one who disposes and the one who bears the consequences — and where it does not.

1. Question

The work describes zoning as a disposition whose value effect reaches the owner while its cost effect remains with the public (ρ/δ asymmetry). Contractual spatial planning (Vertragsraumordnung) is the instrument by which municipalities have tried to close this gap under private law since the 1990s. The questions are:

1. What does Art 15 para 5 B-VG allow that was prohibited in 1999?
2. What limits does the provision itself draw?
3. Which contract contents does a Land that has implemented it name?
4. Which of the work’s six contract types are strengthened?

2. The 1999 limit

In VfSlg 15.625/1999 the Constitutional Court struck down the Salzburg rules. They had made building-land zoning mandatorily dependent on an agreement being concluded: no contract, no zoning, even where building was required on planning grounds. The Court objected to the entanglement of private-law and sovereign action; in addition, it regarded parts of the rules as outside the Land’s competence. Voluntary contractual spatial planning remained permissible.

What matters for the work is the conflict of objectives: the most effective mobilisation instrument available at the time was struck down on rule-of-law grounds. For the city of

Salzburg, the municipal land policy department reports the following average prices per m² for plot sales of 150 m² or more, based on data from the Salzburg Institute for Spatial Planning and Housing (SIR):

Year	Average price per m ²	Change
1984	ATS 3,176	—
1994	ATS 5,802	+83 % on 1984
1997	ATS 4,265	–26 % on 1994

Two caveats belong to this figure. The source is the body that applied the instrument itself. And it attributes the decline to an intervening building boom without ascribing it causally to contractual spatial planning. What is established is a coincidence in time, not proof of effect.

3. The 2024 amendment

BGBI I 89/2024 recast Art 15 para 5 B-VG. It originated in a private members' motion (4013/A); the report of the Constitutional Committee of 2 July 2024 (2701 d.B., XXVII. GP) expressly placed the provision in a new para 5 instead of a para 9. This explains why parts of the literature cite it as Art 15 para 9: they refer to the version of the motion. The core:

Element	Content
Who regulates	the Land legislator
What it may provide	the conclusion of a private-law contract as one precondition for the municipality's sovereign action
Where	in local spatial planning
Constraints	public interests; municipal autonomy under Art 118 para 3 no 9 B-VG; requirement of objectivity
Measure of performance	"appropriate" performances
Legal protection	contract disputes before the ordinary courts; the legal bases before the Constitutional Court under Art 139 and 140 B-VG

Three observations.

The amendment lifts the link, not the balancing. The contract may be a precondition, but only one. Zoning remains bound to the public interests of spatial planning. A contract cannot support zoning that is unjustifiable on planning grounds, and a missing contract does not automatically make planning-required zoning impermissible — how far Land law may go here is the amendment's open question.

Performance is tied to appropriateness, not to costs. The constitution does not require the agreed performance to match the municipality's costs. It only requires it to be appropriate. Whether the contract supports cost recovery (type B2) or value capture (type B3) thus remains open.

Legal protection is split. Whoever considers the contract inappropriate litigates before the civil court. Whoever considers the zoning unlawful must take the route via Art 139 B-VG, which Paper U3 described as highly subsidiary. The amendment thus adds a second legal route to zoning without opening the first.

4. One implementation: Tyrol

Tyrol implemented the authorisation by the Act of 5 February 2025, LGBI 6/2025, amending the Tyrolean Spatial Planning Act 2022 and the Land Transfer Act 1996; § 33 has applied in its new version since 1 March 2025. The explanatory notes expressly base the revision on the B-VG amendment and aim to “significantly extend” the catalogue of contract contents. § 33 para 5 TROG lists possible contract contents:

lit	Content	Work type
a	ceiling on permissible sale prices	B5
b	allocation and consent rights of the municipality	B5
c	pre-emption rights and options for the municipality, the Tyrolean land fund or non-profit developers	B4
d	minimum job density for commercial use — new	B6
e	ceiling on rents	B5
f	obligation to establish main residences — new	B5

Three provisions secure these contents:

Provision	Effect
§ 65 para 2 lit h (new)	the supervisory authority may refuse approval if no planning contracts were concluded despite an obligation
§ 37a para 1 lit c	time-limited building land is exempt only for contracts with a building deadline of at most five years
§ 879 ABGB	protection of contracting parties against immoral terms

Finding. The Tyrolean catalogue targets price, access and use — that is, housing and land mobilisation. It does not expressly name a contribution to infrastructure and follow-up costs (B2) or the transfer of a share of the zoning gain (B3). In the Tyrolean version, the amendment thus mainly opens the binding of use, not the return of value.

5. The other eight Länder

Apart from Tyrol, only Salzburg had demonstrably based its spatial planning act on the new authorisation by October 2026. Under LGBl 78/2025 (in force since 1 August 2025), an agreement is mandatory there for new building-land designations above 2,000 m² in so-called supra-local residential-function municipalities; it must include a price agreement for subsidised housing (§ 18 para 3 ROG 2009). The Land materials expressly refer to BGBl I 89/2024. Salzburg — the same Land whose mandatory model the Constitutional Court struck down in 1999 — is thus the first case of mandatory contractual planning on the new basis.

Land	New under Art 15(5)	Contract as precondition	Costs in contract	Gain
Burgenland	not shown	indirect: new zoning only with mobilisation — time limit or contract (§ 24 RPG 2019)	yes, development costs	no
Carinthia	not shown	optional in principle; special cases	yes, development, site-preparation and planning costs (§ 53 K-ROG 2021)	no
Lower Austria	not shown	indirect: time limit or contract (§ 17 para 1 NÖ ROG 2014)	yes, broadest: “all infrastructure measures” over ten years, including social infrastructure (§ 17 para 3 no 3)	no
Upper Austria	not shown	optional	yes, capped at expected actual costs (§ 16 para 1 no 1 Oö ROG 1994)	no
Salzburg	yes , LGBl 78/2025	mandatory in certain municipalities from 2,000 m ² (§ 18 para 3)	yes, permitted, not mandatory content (§ 18 para 1)	no; price agreement
Styria	not shown	optional	separately via development-	no; resale within 20 years only

Land	New under Art 15(5)	Contract as precondition	Costs in contract	Gain
			cost contracts	without profit (§ 35 para 2 StROG)
Tyrol	yes , LGBI 6/2025	optional, with ground for refusal (§ 65 para 2 lit h)	not expressly named	no
Vorarlberg	not shown	optional; without agreement, seven-year time limit	yes, infrastructure for development (§ 38a para 2 lit c RPG)	no
Vienna	not shown; prohibition kept in the version LGBI 39/2025	expressly excluded (§ 1a para 3 BO)	yes, infrastructure costs arising from designation as building land (§ 1a para 1)	no

Finding. The comparison shifts the picture suggested by the Tyrolean version alone. Recovery of infrastructure costs (B2) is statutory contract content in seven Länder — but has been since before 2024, and everywhere as an option, nowhere as an obligation. The constitutional amendment changed nothing here. What it made possible, the two implementing Länder use for price and use binding, not for costs. No Land statute expressly provides for gain sharing (B3). Styria's obligation to resell without profit is a block on speculation, not a capture in favour of the municipality.

Whether the new rules are constitutional is open. In 1 Ob 57/24z (19 November 2024) the Supreme Court expressly left open whether the amendment made planning contracts permissible to a wider extent; no Constitutional Court decision on the Salzburg rules is known.

6. The six contract types after 2024

#	Contract type	before 2024	after Art 15 para 5 B-VG
B1	Building-land security (building obligation, penalty)	voluntary	possible as precondition; in Tyrol linked with § 37a
B2	Infrastructure and follow-up costs	voluntary, named by statute in seven Länder	still optional; not expressly named in Tyrol
B3	Gain sharing	rarely used	constitutionally open; demarcation

#	Contract type	before 2024	after Art 15 para 5 B-VG
			from the federal levy since 2025
B4	Pre-emption, option	voluntary	expressly named (Tyrol lit c)
B5	Price and use binding	sensitive on competence grounds since 1999	expressly named (Tyrol lit a, b, e, f); mandatory content in Salzburg
B6	Mixed forms	—	depending on Land law

The strongest gain concerns the type that was most sensitive in 1999: price and use binding. The type that would directly close the ρ/δ asymmetry — the return of the costs that zoning causes the municipality — is possible by contract almost everywhere, but no Land has made it a precondition.

7. Relation to the rezoning surcharge

Since 1 July 2025 the federal level has levied an income tax surcharge on the sale of rezoned land, capturing around nine per cent of the gain. It accrues to the federal level and is not earmarked. Contractual spatial planning starts from the other side: with the zoning municipality, before zoning, and not as a levy. Both routes exist side by side without being coordinated. Whether a contractual gain-sharing arrangement (B3) would be permissible and appropriate alongside the federal surcharge is an open question the work does not answer.

8. The debate in the literature

The amendment is assessed differently in the literature and in the parliamentary process. The Association of Municipalities, the municipalities' interest group, welcomed it and called on the Länder to implement it quickly; at the same time, in the consultation it rejected any statutory obligation on municipalities to make the link. In the National Council, the opposition criticised the absence of exemptions for small plots and of contractual caps. The word “one” is also disputed: the prevailing view reads it as meaning that the contract may not be the sole precondition for zoning. Some see it as a necessary clarification of competences; others discuss whether a constitutional provision that permits a link the Constitutional Court objected to on rule-of-law grounds must itself be measured against the basic principles of the constitution. Contributions on this question include work from TU Wien and an expert opinion commissioned by the Austrian Economic Chamber; the latter is an interest group, which must be taken into account when weighing it. This paper takes no position in this debate.

9. Link to the ρ/δ asymmetry

The amendment does not shift disposition. The municipality continues to zone by sovereign act; what is new is that it may negotiate beforehand. The asymmetry is thus addressed case by

case rather than structurally — each municipality, each plot, each contract on its own. This has two consequences:

1. The effect depends on the municipality's bargaining strength. Small municipalities with few specialist staff face professional developers.
2. The contracts are private-law and therefore not public in the same way as the ordinance. What a municipality obtained for a zoning decision cannot be read from the zoning plan. This is a new form of information asymmetry A5. Two Länder show countermovements: Carinthia keeps an electronic register of agreements (§ 53 para 11 K-ROG 2021), and Vienna has published its urban development contracts since the decision VwGH 24.10.2024, Ra 2023/05/0006.

10. Limits

The wording of Art 15 para 5 B-VG, the main points of the report of the Constitutional Committee (2701 d.B.) and the Tyrolean implementation were reviewed in their wording. The other eight Länder are covered by a review report (review section 23); some wordings (Vienna § 1a, Upper Austria § 16, Styria § 35, Carinthia § 53) come from secondary reproductions and must be checked against the RIS before typesetting. Ongoing consultations in the Länder were not systematically surveyed. The explanatory notes to the TROG were available in the consultation version. That lit d and f are new rests on the explanatory notes; for the other letters they do not say whether they are new. No Constitutional Court decision on the new provision is known. No actual contracts were examined; the paper describes the framework, not practice.

This paper names no private persons and makes no statements about individual municipalities, owners, developers or companies.

Sources

B-VG Art 15 para 5 as amended by BGBl I 89/2024 · Report of the Constitutional Committee 2701 d.B. XXVII. GP (2 July 2024) · B-VG Art 118 para 3 no 9, Art 139, Art 140 · VfSlg 15.625/1999 · Motion 4013/A XXVII. GP · Salzburg ROG 2009 as amended by LGBl 78/2025, § 18; Salzburg Landtag no 480 of the annexes, 17th GP · Bgld RPG 2019 § 24 · K-ROG 2021 § 53 · NÖ ROG 2014 § 17 · Oö ROG 1994 § 16 · StROG 2010 § 35 · Vbg RPG § 38a · BO für Wien § 1a · OGH 19.11.2024, 1 Ob 57/24z · VwGH 24.10.2024, Ra 2023/05/0006 · Andessner et al., Vertragsraumordnung als Instrument der Klima- und Mobilitätswende, TU Wien 2025 · Tyrolean Spatial Planning Act 2022 as amended by LGBl 6/2025, §§ 33 para 5, 37a para 1 lit c, 65 para 2 lit h; explanatory notes to the TROG amendment 2024 (consultation version) · Schweichhart, K., Vertragsraumordnung in der Stadt Salzburg — Eine Bilanz, Raum und Ordnung 1999/1 (SIR data) · ABGB § 879 · EStG 1988 § 30 para 6a as amended by BGBl I 25/2025 · Work “gewidmeter-boden”, review sections 01, 02, 04, 06; Papers U3, U9, W1.