

N° 1654.

FRANCE ET SUISSE

Convention pour le règlement des rapports au sujet de certaines clauses du régime juridique de la future dérivation de Kembs, avec protocole additionnel. Signés à Berne, le 27 août 1926.

FRANCE AND SWITZERLAND

Convention regulating the Relations with regard to certain Clauses of the Legal Régime of the future Kembs Derivation, with Additional Protocol. Signed at Berne, August 27, 1926.

¹ TRADUCTION. — TRANSLATION.

No. 1654. — CONVENTION² REGULATING THE RELATIONS BETWEEN FRANCE AND SWITZERLAND WITH REGARD TO CERTAIN CLAUSES OF THE LEGAL RÉGIME OF THE FUTURE KEMBS DERIVATION. SIGNED AT BERNE, AUGUST 27, 1926.

French official text communicated by the Swiss Federal Council. The registration of this Convention took place March 1, 1928.

THE SWISS FEDERAL COUNCIL and THE PRESIDENT OF THE FRENCH REPUBLIC, in view of the Resolution adopted by the Central Rhine Navigation Commission on May 10, 1922, concerning the Rhine derivation scheme at Kembs, submitted by the Government of the French Republic, in application of Article 358 of the Treaty of Versailles,

And of the Agreement concluded on the same date between the German, French and Swiss representatives on the said Commission, in pursuance of the recommendations proposed to that Commission,

Being desirous of regulating the relations between Switzerland and France accordingly, Have resolved to conclude a Convention for this purpose, and have appointed as their Plenipotentiaries, namely :

THE SWISS FEDERAL COUNCIL :

M. Giuseppe MOTTA, Federal Councillor, Head of the Federal Political Department ;

THE PRESIDENT OF THE FRENCH REPUBLIC,

M. Jean HENESSY, Ambassador of the French Republic to the Swiss Confederation,

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

Whereas the chief object of the Agreement³ concluded at Strasburg on May 10, 1922, between the German, French and Swiss representatives on the Central Rhine Navigation Commission, was to stipulate that the rise in the water-level (*remous*) produced by the Kembs weir should extend upstream as far as the Birse, and that the concession of the fall produced on Swiss territory by this rise in the water-level should be granted to the concessionaire nominated by the French Government, subject to the formalities and conditions laid down by Swiss legislation, the necessary conformity between the deeds of concession granted by each of the two Contracting States shall be provided for as stipulated in the present Convention.

¹ Traduit par le Secrétariat de la Société des Nations.

¹ Translated by the Secretariat of the League of Nations.

² The exchange of ratifications took place at Berne, December 29, 1927.

³ Vol. XXVI, page 265, of this Series.

Article 2.

The proportion of the electric power produced by the Kembs station due to the Swiss Confederation is fixed by mutual agreement at twenty per cent (20 %) of that power, representing the power from the fall produced on Swiss territory by this rise in the water-level.

During the period of the concession, the electric power due to Switzerland shall be exempted by France from all public duties, charges or restrictions whatsoever, being freely conveyed to Switzerland under exactly the same conditions as if it were produced in Swiss territory.

Article 3.

The French Government shall communicate to the Swiss Government the principal plans and calculations concerning the proposed scheme for the Kembs power station as a whole. The Swiss Government may submit its observations before the work is carried out, and the French Government, after consulting the Committee provided for in Article 4 below, shall take these duly into consideration.

The dimensions of the outlet, the conditions governing the upkeep and safety of the weir, and also the regulations for the weir and power station service for the control of the water on Swiss territory, shall, however, be jointly agreed upon by the two Governments.

The same provisions shall apply in the event of any modifications of or additions to the installations or the regulations.

Article 4.

The two Contracting States shall appoint a Committee of four members, consisting of two engineers nominated by the Swiss Government and two engineers nominated by the French Government.

During the period of construction, this Committee shall supervise the execution of the work at the Kembs power station and shall submit its observations to the competent French and Swiss authorities in the form of a report.

During the period of operation, it shall be competent to examine and settle any questions which concern both the French and Swiss concessions, and shall take steps to see that its decisions are duly carried out.

The two Governments undertake to apply, in their respective territories, the decisions taken by the Committee, within the scope of the deeds of concession in regard to the concessionaire company.

Article 5.

The concessions shall come into force as soon as the present Convention takes full effect, and the two Governments have ascertained, by reciprocal declarations that there is conformity between the clauses and conditions of these concessions on all points where this is required.

Article 6.

The two Governments have agreed to fix the following time-limits in their deeds of concession :

(a) The plans for construction must be presented within six months of the entry into force of the deeds of concession ;

(d) The concessionaire company shall begin work within six months of the approval of the said plans ;

- (c) The work shall be completed within five years of the approval of the plans ;
- (d) The concessions shall expire on December 31st of the seventy-fifth year, reckoned from the date fixed in the present Convention for the completion of the work.

Article 7.

Should the French concession be transferred to another company, the Swiss Government shall transfer the Swiss concession to the new concessionaire appointed by the French Government.

Article 8.

Fifteen years before the expiry of the concessions, the following points shall be decided jointly by the two Governments :

- (a) Whether the concessions are to be renewed and, if so, on what terms ;
- (b) Whether, and on what terms, the two States either jointly or severally, are to use their right to take back the concession ;
- (c) Whether the power station service is to be suspended.

The French Government's rights of reversion are laid down in Article 37 of the specification of the French concession and apply to the whole of the installations in French territory.

In the cases contemplated under (a) and (b) of paragraph 1 of this Article, the proportions of the power from the fall due to France and Switzerland shall be maintained at eighty per cent (80 %) and twenty per cent (20 %), respectively, and the conditions of the new régime shall be such as to secure advantages for the two States in these same proportions.

Article 9.

The two Governments may also agree upon redemption under the conditions laid down in the French specification.

If, by agreement with the Swiss Government, the right of redemption is exercised by the French Government alone, the latter agrees to take over and respect all the conditions of the Swiss concession until it expires. After the expiry of this concession, the questions concerning the right of reversion and the continuance of the service shall be governed in accordance with the stipulations of Article 8 of the present Convention.

Article 10.

In the event of non-completion of the power station, interruption in its working, or any other cause of forfeiture of the concession, as provided in the respective deeds, the two Governments shall jointly decide upon the measures which they consider most appropriate to the situation and, if necessary, to the granting of a new concession.

Article 11.

In the case of the termination of the concessions owing to the expiry of the period for which they were granted or for any other reason, the conditions created on Swiss territory by the rise in the water-level shall not be modified without the consent of both Governments.

Article 12.

Should any dispute arise between the two Contracting States as to the application or interpretation of the present Convention or of either of the concessions covered by this Convention, which it has not been possible to settle within a reasonable period of time through the diplomatic channel, such dispute shall be submitted to the Chamber of the Permanent Court of International Justice which, in accordance with the terms of Article 29 of the Statute of the Court¹, shall determine the question by summary procedure. Nevertheless, at the request of one of the Parties, the dispute shall be submitted to the Court of Justice at a plenary session.

The Parties may also agree to submit the dispute to an arbitral tribunal appointed in conformity with Article 45 of the Hague Convention² of October 18, 1907, for the Pacific Settlement of International Disputes.

Article 13.

The stipulations of the present Convention shall remain in force in time of war.

Article 14.

The present Convention shall be ratified and shall come into force upon the exchange of ratifications, which shall take place at Berne.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done in duplicate at Berne, August the twenty-seventh, One thousand nine hundred and twenty-six (August 27, 1926).

(Signed) MOTTA.

(Signed) Jean HENNESSY.

ADDITIONAL PROTOCOL.

TO THE CONVENTION REGULATING THE RELATIONS BETWEEN FRANCE AND SWITZERLAND WITH REGARD TO CERTAIN CLAUSES OF THE LEGAL RÉGIME OF THE FUTURE KEMBS DERIVATION SCHEME.

In signing the Convention concluded this day, regulating the relations between Switzerland and France with regard to certain clauses of the juridical régime for the future Kembs derivation, the undersigned, duly authorised for this purpose, declare that it is understood that the decisions of the Committee provided for in Article 4 of the Convention shall require unanimity. Should the French and Swiss members be unable to agree upon any one of the questions which, by virtue of the said Article 4, are within their competence and which do not concern either the application or the interpretation of the Convention or either of the concessions covered by this Convention,

¹ Vol. VI, page 379; Vol. XI, page 404; Vol. XV, page 304; Vol. XXIV, page 152; Vol. XXVII, page 416; Vol. XXXIX, page 165; Vol. XLV, page 96; Vol. L, page 159; Vol. LIV, page 387; and Vol. LXIX, page 70, of this Series.

² *British and Foreign State Papers*, Vol. 100, page 298.

the dispute, if it has not been settled within a reasonable period through the diplomatic channel, shall be decided by an arbitrator appointed jointly by the two Governments.

It is understood, further, that Article 12 of the Convention shall apply to any dispute which, in the opinion of either Party, concerns the application or interpretation of the Convention or either of the concessions covered by this Convention.

BERNE, *August the twenty-seventh, one thousand nine hundred and twenty-six* (August 27, 1926).

(Signed) MOTTA.

(Signed) Jean HENNESSY.