

No. 8876

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

Treaty concerning transit traffic on the roads along the Walchen Ache and the Pittenbach and to the Bächental and the Risstal in the Austrian and German frontier areas (with Final Protocol). Signed at Vienna, on 17 February 1966

Official text: German.

Registered by Austria on 28 December 1967.

**AUTRICHE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Traité relatif au trafic de transit sur les routes situées le long du Walchen Ache et du Pittenbach, et sur les routes menant au Bächental et au Risstal dans les zones frontalières austro-allemandes (avec Protocole final). Signé à Vienne, le 17 février 1966

Texte officiel: allemand.

Enregistré par l'Autriche le 28 décembre 1967.

[TRANSLATION — TRADUCTION]

No. 8876. TREATY¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING TRANSIT TRAFFIC ON THE ROADS ALONG THE WALCHEN ACHE AND THE PITTENBACH AND TO THE BÄCHENTAL AND THE RISSTAL IN THE AUSTRIAN AND GERMAN FRONTIER AREAS. SIGNED AT VIENNA, ON 17 FEBRUARY 1966

The Federal President of the Republic of Austria and

The President of the Federal Republic of Germany,

Desiring to facilitate transit traffic on certain roads in their States, have agreed to conclude a Treaty.

For this purpose they have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Hans Reichmann, Envoy Extraordinary and Minister Plenipotentiary ;

The President of the Federal Republic of Germany :

Dr. Josef Löns, Ambassador Extraordinary and plenipotentiary ;

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions :

PART I

TRANSIT TRAFFIC ON THE ROADS ALONG THE WALCHEN ACHE AND THE PITTENBACH

Article 1

For the purposes of this Treaty :

- (a) The Walchen Road is Tyrol Major *Land* Road No. 28 between the frontier on the Rauchstuben bridge and the frontier on the Geissalm bridge ;

¹ Came into force on 1 November 1967, the first day of the second month following the exchange of the instruments of ratification which took place at Bonn on 20 September 1967, in accordance with article 38.

- (b) The Alpine Road is German Federal Highway 307 between the frontier on the Geissalm bridge and the frontier on the south Pittenbach bridge ;
- (c) The Achensee Road is Tyrol Major *Land* Road No. 28 from the frontier on the south Pittenbach bridge to the junction with Austrian Federal Highway No. 181 and, from that point, the said Federal Highway to the frontier on the north Pittenbach bridge.

Article 2

(1) The Republic of Austria shall permit the Federal Republic of Germany to construct, maintain and operate the Walchen Road (including winter service) and to import and employ such construction and operating materials, equipment and traffic-safety installations as are necessary for that purpose. The same shall apply to the planting of the roadside. The Federal Republic of Germany shall be deemed to be the maintainer of the road within the meaning of the Austrian Road Traffic Order.

(2) The Federal Republic of Germany shall bear the costs of the acquisition of land by *Land* Tyrol and the costs of road construction in respect of the Walchen Road.

Article 3

(1) Save as otherwise provided in this Treaty, the provisions of the Act of 28 September 1950 concerning public road other than federal highways (Tyrol Roads Act), *Landesgesetz- und Verordnungsblatt für Tirol*, No. 1/1951, or such statutory provisions as may replace them, shall apply to the Walchen Road.

(2) The Federal Republic of Germany shall fulfil at its own expense all responsibilities arising out of the construction, maintenance and operation (including winter service) of the Walchen Road. In this respect the offices acting on behalf of the Federal Republic of Germany shall be deemed to be authorities of *Land* Tyrol within the meaning of section 12 of the Tyrol Roads Act. The Federal Republic of Germany shall hold *Land* Tyrol harmless in respect of all obligations arising out of liability under section 12 of the Tyrol Roads Act in so far as the said obligations are not covered by liability insurance held by *Land* Tyrol. The competent Austrian authority shall inform the competent German authority in writing without delay of any claim for damages brought, before the courts or otherwise, against *Land* Tyrol which may involve an obligation of the Federal Republic of Germany to hold *Land* Tyrol harmless in accordance with the preceding sentence. *Land* Tyrol shall

recognize such claims and conclude settlements concerning them only after obtaining the consent of the competent German authority. The Contracting States shall inform each other which authorities are the competent authorities.

(3) Claims for damages against *Land Tyrol* under section 12 of the Tyrol Roads Act shall be brought only before Austrian courts.

(4) Claims of *Land Tyrol* against third parties which arise out of the construction, maintenance or operation (including winter service) of the Walchen Road shall pass to the Federal Republic of Germany. The foregoing shall not apply to claims of *Land Tyrol* which arise out of liability insurance within the meaning of the third sentence of paragraph (2).

Article 4

The Contracting States shall exempt each other from import and export duties, including the trade statistics tax, in respect of construction and operating materials and traffic-safety installations used in the construction of the Walchen Road and the Alpine Road or necessary for the maintenance and operation (including winter service) of the said roads, in so far as such materials and installations originate from trade on the open market in either of the Contracting States. The same shall apply to goods for the planting of the roadside.

Article 5

(1) The Contracting States shall permit transit traffic, in accordance with the provisions of parts I and IV of this Treaty, on the Walchen Road, the Alpine Road and the Achensee Road.

(2) No frontier clearance shall take place. Customs clearance shall, however, be permissible if sales establishments are operated along the roads specified in paragraph (1). In addition, each Contracting State shall retain the right to carry out such control measures as may be necessary to prevent violations of its frontier and veterinary regulations or of its customs and plant-protection regulations.

(3) Military personnel in uniform and persons having military equipment in their possession shall, irrespective of their nationality, be barred from transit traffic.

Article 6

No transit permit shall be required in transit traffic. Persons over the age of sixteen years must be in possession of an official identity document bearing a photograph.

Article 7

(1) Transit traffic shall be non-stop. Vehicles carrying only travel necessities but no other goods may, however, be parked for a short time at the places provided for that purpose.

(2) No persons or goods may be taken up or set down during transit.

(3) Deviations from the roads specified in article 1 shall not be permitted in transit traffic.

Article 8

(1) Where motor vehicles, motor cycles or bicycles with auxiliary motors, or trailers are used in transit traffic, the official documents required for driving or operating such a vehicle under the law of one of the Contracting States shall be sufficient.

(2) The foregoing shall be without prejudice to the regulations of the Contracting States imposing an obligation to have, and to carry proof of, motor vehicle liability insurance. In local traffic, however, it shall be sufficient to have, and to carry proof of, motor vehicle liability insurance in accordance with the regulations of the Contracting State in which the vehicle is licensed.

Article 9

(1) It shall be sufficient for vehicles in transit traffic to conform to the regulations of one of the Contracting States.

(2) The transit of vehicles which might endanger traffic or cause damage to the road may be prohibited.

(3) The commercial carriage of persons and goods by motor vehicle in transit traffic shall be governed by the regulations of the Contracting State in which the vehicle is licensed. The same shall apply to travel for work purposes.

Article 10

Media of exchange the import, export or transit of which is otherwise prohibited under the regulations of one of the Contracting States may be carried in transit traffic.

Article 11

Either Contracting State may restrict or prohibit transit traffic for the duration of repair work or for the duration of a public emergency or danger to public safety, including the safety of road traffic. The competent authority of the other Contracting State shall be contacted before transit traffic is prohibited or restricted for the reason of repair work ; in the other cases, the said authority shall be notified. The Contracting States shall inform each other which authorities are the competent authorities.

Article 12

(1) Transit traffic of the Austrian Post Office and of the German Federal Post Office shall not be subject to any restrictions or any transit charges of the other Contracting State. Postal items carried in postal vehicles may not be searched.

(2) Letter-boxes on postal vehicles shall be kept closed during transit. No mails shall be exchanged and no postal items shall be accepted or delivered during transit.

Article 13

Law-enforcement officers (police, *gendarmerie* and customs), veterinary officers and game and forest protection officers of the Contracting States shall be entitled to use the roads specified in article 1 free of charge while on duty. They may, when so doing, wear their uniform and take with them their official equipment (in particular, service weapons, ammunition, official vehicles, communications apparatus and police dogs). Save as otherwise provided in any arrangement made under the Agreement of 14 September 1955 between the Republic of Austria and the Federal Republic of Germany concerning frontier clearance concessions in rail, road and water traffic, they may not perform any official acts in the territory of the other Contracting State ; they may therefore use their weapons only in self-defence.

PART II

TRANSIT TRAFFIC ON THE RISSTAL ROAD

Article 14

For the purposes of this Treaty, the Risstal Road is :

(a) Tyrol Minor *Land* Road No. 282 from the frontier on the first (north)

Rissbach bridge (at 0.008 km) to the frontier on the second Rissbach bridge (at 0.874 km) and

- (b) The private road of the Bavarian State Forest Administration from the frontier on the second Rissbach bridge (at 0.874 km) to the frontier on the Markgraben bridge (at 1.140 km).

Article 15

(1) The Federal Republic of Germany shall permit *Land Tyrol*, subject to the consent of the owner, to improve, maintain and operate the section of road specified in article 14 (b) (including winter service). It shall also permit *Land Tyrol* to import and employ such construction and operating materials, equipment and traffic-safety installations as are necessary for that purpose ; the same shall apply to the planting of the roadside.

(2) After the consent of the owner as specified in paragraph (1) has been signified, *Land Tyrol* shall be obliged, if the owner so requests, to maintain and operate the section of road specified in article 14 (b) (including winter service). Claims arising out of a breach of the duty to ensure the safety of traffic shall be brought against the owner. In such cases *Land Tyrol* shall hold the owner harmless in respect of all obligations arising out of breaches of the duty to ensure the safety of traffic. Article 3, paragraph (2), fourth, fifth and sixth sentences, shall apply *mutatis mutandis*.

Article 16

The Contracting States shall exempt each other from import and export duties, including the trade statistics tax, in respect of construction and operating materials and traffic-safety installations used in the improvement of the Risstal Road or necessary for the maintenance and operation (including winter service) of the said road, in so far as such materials and installations originate from trade on the open market in either of the Contracting States. The same shall apply to goods for the planting of the roadside.

Article 17

The Contracting States shall permit transit traffic on the Risstal Road, to which the provisions of articles 5 to 13 shall apply *mutatis mutandis*.

PART III

TRANSIT TRAFFIC BY VEHICLES TO AND FROM THE BÄCHENTAL AND THE RISSTAL

Article 18

The Federal Republic of Germany shall permit transit traffic by vehicles, in accordance with the provisions of parts III and IV of this Treaty, on German Federal Highway 307 from the frontier on the Rauchstuben bridge to Fall, and thence :

- (a) On the private road of the Bavarian State Forest Administration through the Dürrachtal to the frontier in the Bächental ;
- (b) On German Federal Highway 307 to Lahner-Gaster, thence on the private road of the Bavarian State Forest Administration to Vorderriss, and thence on the south-bound private road of the Bavarian State Forest Administration to the frontier on the first (north) Rissbach bridge (at 0.008 km) of the Risstal Road.

Article 19

(1) Transit must be completed within four hours ; vehicles incapable of meeting this time-limit shall be barred from transit traffic. Lorries, tractors, and other motor vehicles carrying goods other than travel necessities may not halt except for compelling reasons ; their transit time may be limited in individual cases by the customs post of entry.

(2) With the exception of necessary transfers from one public conveyance to another, persons may not be taken up or set down during transit. The loading and unloading of goods during transit, with the exception of travel necessities upon the transfer of persons from one public conveyance to another, shall not be permissible.

(3) If because of circumstances arising during transit the driver of a vehicle is unable to meet the prescribed time-limit, he shall report the delay and the reason therefor immediately to the next customs or police station. The latter shall confirm the report upon request.

Article 20

(1) Individuals may be barred from transit traffic for reasons of public safety. The same shall apply to persons who have violated the provisions of

this Treaty, passport or customs regulations or prohibitions and restrictions in respect of goods traffic.

(2) Transit traffic may be restricted or prohibited for the duration of a public emergency or danger to public safety, including the safety of road traffic. The competent Austrian authority shall be notified; the Republic of Austria shall inform the Federal Republic of Germany which authority is the competent authority.

Article 21

(1) Transit traffic of the Austrian Post Office shall not be subject to any restrictions or any transit charges of the Federal Republic of Germany. Postal items carried in postal vehicles may not be searched.

(2) Letter-boxes on postal vehicles shall be kept closed during transit. No mails shall be exchanged and no postal items shall be accepted or delivered during transit.

Article 22

(1) During the period from 20 June to 15 September of each year and on Saturdays, Sundays and days which are legally recognized or protected holidays in the Federal Republic of Germany, the carriage of explosives shall not be permitted unless an exceptional permit is issued by the competent authority.

(2) No permits or certificates required under German regulations shall be necessary for the carriage of explosives by official vehicles of Austrian federal or *Land* offices.

Article 23

(1) The provisions of article 5, paragraph (3), article 7, paragraph (3), article 8, paragraph (1) and paragraph (2), first sentence, article 9 and article 10 of this Treaty shall apply *mutatis mutandis* to the transit traffic permitted under the terms of article 18 and article 24, paragraph (1). In addition, the provisions of article 6 shall apply to Austrian nationals.

(2) Article 9, paragraph (1), shall not apply to the cartage of timber during the period from 20 June to 15 September of each year or on Saturdays, Sundays and days which are legally recognized or protected holidays in the Federal Republic of Germany unless an exceptional permit is issued by the competent authority.

Article 24

(1) The Federal Republic of Germany shall grant to the Republic of Austria the right of transit traffic for Austrian law-enforcement officers (police, *gendarmerie* and customs), Austrian veterinary officers and Austrian game and forest protection officers on the roads specified in article 18 and also on German Federal Highway 2 from the frontier near Scharnitz by way of Mittenwald to Krün, thence on German Federal Highway 11 to Wallgau, and thence on the private road of the Bavarian State Forest Administration to Vorderriss.

(2) Articles 2 to 5 of the Agreement of 14 September 1955 between the Republic of Austria and the Federal Republic of Germany concerning the carriage of law-enforcement officers in road and rail transit traffic shall apply *mutatis mutandis* to the aforementioned transit traffic. The Federal Republic of Germany shall inform the Republic of Austria which authorities are the competent authorities for the purposes of the arrangement referred to in article 2, paragraph 3, of the said Agreement.

PART IV

GENERAL PROVISIONS WITH RESPECT TO PARTS I TO III

Article 25

Save as otherwise agreed in this Treaty, transit traffic shall be subject to the law of the Contracting State in whose territory it takes place.

Article 26

Motor vehicles and trailers in transit traffic which are licensed in the territory of one of the Contracting States shall not be subject to motor vehicle tax in the territory of the other Contracting State. The carriage of persons, baggage and goods in transit traffic by such vehicles shall not be subject to the transport tax of the State of transit, but shall be subject to the transport tax of the State of exit. The foregoing concessions shall be granted only if the provisions applicable to transit traffic are complied with.

Article 27

Each Contracting State shall be required to accept all persons who entered the territory of the other Contracting State in transit traffic, irrespective of the duration of their stay in the last-mentioned State.

Article 28

(1) Officers and offices of the Contracting States shall assist each other as far as possible in the performance of their duties, and in particular in the supervision and direction of transit traffic. They shall report violations which come to their attention, assist in securing clues and evidence and furnish such information as may be needed. They shall provide each other with protection.

(2) Punishable offences committed by an officer, as specified in articles 13 and 24, of one of the Contracting States in the territory of the other Contracting State shall be reported to the office responsible for the officer in question by the corresponding office of the last-mentioned Contracting State.

Article 29

If punishable offences are committed against officers, as specified in articles 13 and 24, of one of the Contracting States in the territory of the other Contracting State while they are on duty or in connexion with their duties, prosecution and punishment in the last-mentioned Contracting State shall be governed by the penal laws of the State for the protection of public officials.

Article 30

Official liability shall be governed, *mutatis mutandis*, by the provisions of the Agreement of 14 September 1955 between the Republic of Austria and the Federal Republic of Germany regulating official liability arising out of acts performed by officers of either State in areas of the other State adjacent to the frontier.

Article 31

(1) Claims for damages arising out of accidents which occur in transit traffic may be brought only before the courts of the State of transit. If no jurisdiction exists in the State of transit according to its law, the court having competence shall be the one in whose area of jurisdiction the accident occurred. The foregoing shall be without prejudice to the right of the parties to agree on the competence of the courts of the State of exit or of a third State. If neither the person entitled to damages nor the person liable for the payment of damages has his domicile, head office or habitual residence in the State of transit, the provisions of the first and second sentences above shall not apply.

(2) Where the accident involves a vehicle whose owner is the State of exit or a special fund of the State of exit and where, under the terms of

paragraph (1), a court of the State of transit has competence, the State of exit shall accept the judicial competence, including competence to levy execution, of the State of transit in respect of claims arising out of the said accident. The same shall apply to the *Länder* of the Contracting States and to the special funds thereof.

(3) The provisions of paragraphs (1) and (2) shall be without prejudice to the rule laid down in article 3, paragraph (3).

PART V

FINAL PROVISIONS

Article 32

The provisions of this Treaty shall be without prejudice, in particular, to the Treaty of 6 September 1962 between the Republic of Austria and the Federal Republic of Germany relating to customs concessions in minor frontier traffic and transit traffic, except where the provisions of the two Treaties conflict.

Article 33

If serious difficulties arise in the implementation of the Treaty or if the circumstances existing at the time of its conclusion change substantially, the Contracting States shall, at the request of either Contracting State, enter into negotiations with a view to an appropriate new arrangement.

Article 34

(1) Disputes concerning the interpretation or application of this Treaty shall be settled by the competent authorities of the Contracting States.

(2) If a dispute cannot be settled in such manner, it shall, at the request of either Contracting State, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted on an *ad hoc* basis ; each Contracting State shall appoint one member, and the two members shall, by agreement, select as chairman a national of a third State, who shall be appointed by the Governments of the Contracting States. The members must be appointed within two months and the chairman within three months after one of the Contracting States has notified the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time-limits specified in paragraph (3) are not met, either Contracting State may, unless otherwise agreed, request the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of one of the Contracting States or is unable to act for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the Contracting States or is also unable to act, the next most senior member of the Court who is not a national of either of the Contracting States shall make the appointments.

(5) The arbitral tribunal shall take decisions by majority vote. Its decisions shall be binding. Each Contracting State shall bear the expenses of the arbitrator appointed by it and the costs of its representation in the proceedings before the arbitral tribunal; the expenses of the chairman and other costs shall be shared equally by the Contracting States. In all other respects the arbitral tribunal shall regulate its own proceedings.

(6) The courts of the two Contracting States shall furnish the arbitral tribunal, at its request, with legal assistance in connexion with the summoning and interrogation of witnesses and experts, in application, *mutatis mutandis*, of the agreements concerning legal assistance in civil and commercial matters for the time being in force between the two Contracting States.

Article 35

The Final Protocol annexed hereto shall form an integral part of this Treaty.

Article 36

This Treaty shall also apply to *Land* Berlin unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Federal Government of the Republic of Austria within three months after the entry into force of the Treaty.

Article 37

(1) This Treaty is concluded for an indefinite time. It shall not be subject to denunciation for a period of ten years after its entry into force and may thereafter be denounced upon two years' notice.

(2) In the event of denunciation the Contracting States shall enter into negotiations regarding a satisfactory new regulation of transit traffic.

Article 38

(1) This Treaty shall be ratified as soon as possible. The instruments of ratification shall be exchanged at Bonn.

(2) This Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification.

IN WITNESS WHEREOF the plenipotentiaries have signed and sealed this Treaty.

DONE at Vienna, on 17 February 1966, in two original copies.

For the Republic of Austria :

Dr. REICHMANN

For the Federal Republic of Germany :

Dr. LÖNS

FINAL PROTOCOL

Upon signing the Treaty between the Republic of Austria and the Federal Republic of Germany concerning transit traffic on the roads along the Walchen Ache and the Pittenbach and to the Bächental and the Risstal in the Austrian and German frontier areas, the plenipotentiaries of the two Contracting States declare the following :

1. The Republic of Austria shall endeavour to ensure that *Land* Tyrol will furnish all possible assistance to the Federal Republic of Germany in bringing and obtaining settlement of the claims referred to in article 3, paragraph (4), first sentence.

2. The provisions of the third sentence of article 13 shall be without prejudice to the authority of officers, as specified therein, to detain persons temporarily, within the territory of the other Contracting State, in accordance with the law in force in that Contracting State. If any damage occurs during the exercise of the said authority, the Agreement of 14 September 1955 between the Republic of Austria and the Federal Republic of Germany regulating official liability arising out of acts performed by officers of either State in areas of the other State adjacent to the frontier shall apply *mutatis mutandis*.

3. It is agreed that motor vehicles driven by officials while on duty, including motor vehicles owned by officials and recognized privately-owned

motor vehicles, shall be deemed to be official vehicles within the meaning of articles 13 and 22.

4. The Federal Republic of Germany shall endeavour to ensure that the consent of the owner required under the terms of article 15, paragraph (1), is signified by the owner for the period of validity of this Treaty or that the section in question is made part of the public road.

5. The Contracting States agree that in transit traffic on the Hinterriss – Vorderriss – Walchental – Achenwald section and on the Bächental – Neu Fall – Walchental – Achenwald section no fees for overtime work by the customs administrations will be charged when clearance is effected outside the normal working hours of the customs clearance station but during the hours when the station is manned. This arrangement shall, however, apply only for such time as no connecting road exists in Austrian territory between Hinterriss or Bächental, as the case may be, and the nearest larger Austrian township.

6. The Contracting States shall endeavour to ensure that private-law agreements between municipal corporations of the Contracting States regulating matters dealt with in this Treaty are, where necessary, brought into conformity with the legal situation created by this Treaty.

DONE at Vienna, on 17 February 1966, in two original copies.

For the Republic of Austria :

Dr. REICHMANN

For the Federal Republic of Germany :

Dr. LÖNS