

No. 8875

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

**Treaty concerning transit traffic on the Rossfeld Road (with
Final Protocol and map). 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 la route de Rossfeld
(avec Protocole final et carte). Signé à Vienne, le 17 février
1966**

Texte officiel allemand.

Enregistré par l'Autriche le 28 décembre 1967.

[TRANSLATION — TRADUCTION]

No. 8875. TREATY¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING TRANSIT TRAFFIC ON THE ROSSFELD ROAD. 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 the Rossfeld Road, 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 :

Article 1

(1) The Rossfeld Road is the road leading from the Obersalzberg near Berchtesgaden by way of the Rossfeld to Oberau, which is owned by the Federal Republic of Germany.

(2) The summit section within the meaning of this Treaty consists of the section of the Rossfeld Road and the adjacent area which are shown on the map (sheets 1 and 2) annexed hereto² on a scale of 1:2,000 and which include, in the territory of the Federal Republic of Germany, parcels (*Flurstücke*) No. 55 and No. 14 in the District of Eck Forest (*Gemarkung Forstbezirk Eck*) and, in the territory of the Republic of Austria, parcels (*Grundstücke*) No. 519/4 and No. 523/2 in the Cadastral District of Weissenbach (*Katastralgemeinde Weissenbach*).

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 27.

² See inserts between p. 294 and p. 295 of this volume.

Article 2

(1) The Republic of Austria shall permit the Federal Republic of Germany, in so far as the summit section lies in Austrian territory, to construct, maintain and operate the said section (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, at its own expense, maintain that part of the summit section which lies in Austrian territory in a condition safe for operation during such time as traffic on the section is permitted.

(3) Claims for damages against the Federal Republic of Germany which relate to the responsibilities of the Federal Republic of Germany specified in paragraphs (1) and (2) shall be brought only before the German courts having jurisdiction for that part of the summit section which lies in German territory.

Article 3

The Contracting States shall exempt each other, with effect from 1 January 1960, 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 Rossfeld Road or necessary for its maintenance and operation (including winter service), 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 4

(1) The Contracting States shall permit transit traffic, in accordance with the provisions of this Treaty, on the summit section; in tourist traffic, round trips shall also be deemed to be transit traffic.

(2) No frontier clearance shall take place. Customs clearance shall, however, be permissible if sales establishments are operated along the summit section. 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 5

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 6

(1) Transit traffic shall be non-stop. This provision shall not preclude a temporary stop on the summit section or in adjacent rest areas north of the summit section or not more than fifty metres south of it by persons having only travel necessities in their possession. Camping and the parking of caravans shall not be permitted.

(2) Persons may be set down or taken up in transit traffic. The loading and unloading of goods in transit traffic, with the exception of travel necessities during a temporary stop as specified in the second sentence of paragraph (1), shall not be permissible.

(3) Deviations from the summit section shall not be permitted in transit traffic. This provision shall be without prejudice to the second sentence of paragraph (1).

Article 7

(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.

Article 8

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

(2) 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 9

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 10

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 11

(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 12

The Contracting States shall endeavour to ensure that the Rossfeld Road area remains subject to regulations for the protection of nature or scenic beauty.

Article 13

(1) Claims for damages arising out of accidents which occur on the summit section may, without prejudice to the jurisdiction of another court, be brought also before the Austrian or German court through whose area of jurisdiction the summit section passes. The plaintiff may opt between the said courts, irrespective of whether the place where the accident occurred is in Austrian or in German territory. If, however, the person entitled to damages and the person liable for the payment of damages have their domicile, head office or habitual residence in the same Contracting State or if both are nationals of the same Contracting State, the court of the other Contracting State through whose area of jurisdiction the summit section passes shall not have competence.

(2) The foregoing shall be without prejudice to the right of the parties to agree on the competence of a court of either Contracting State or of a third State.

(3) Where the accident occurring on the summit section involves a vehicle whose owner is a Contracting State or a special fund of the said State and where, under the terms of paragraph (1), a court of the other Contracting State has competence, the first-mentioned Contracting State shall accept the judicial competence, including competence to levy execution, of the other Contracting State 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.

(4) Claims arising out of accidents which occur on the summit section shall be adjudged in accordance with the law of the Contracting State in which the court sits.

(5) The provisions of paragraphs (1) to (4) shall be without prejudice to the rule laid down in article 2, paragraph (3).

Article 14

(1) 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 summit section 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). They may not perform any official acts in the territory of the other Contracting State. They may use their weapons only in self-defence.

(2) Austrian law-enforcement officers (police, *gendarmerie* and customs), Austrian veterinary officers and Austrian game and forest protection officers may likewise use free of charge, while *en route* to the summit section, German Federal Highway No. 305 from Hangendenstein to Laroswacht, German Federal Highway No. 319 from Laroswacht to the southern junction of the Rossfeld Road, and the Rossfeld Road in German territory.

(3) 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 transit traffic under the terms of paragraph (2). The Federal Republic of Germany shall inform the Republic of Austria which German authority is the competent authority for the purposes of the arrangement referred to in article 2, paragraph 3, of the said Agreement.

Article 15

If punishable offences are committed against officers, as specified in article 14, 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 that State for the protection of public officials.

Article 16

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 17

(1) Officers and offices of the Contracting States shall assist each other as far as possible, even in the territory of the other Contracting State, in the performance of their duties, and in particular in the supervision and direction of transit traffic. They shall provide each other with protection, report violations which come to their attention, assist in securing clues and evidence and furnish such information as may be needed. The terms of article 14, paragraph (1), penultimate sentence, shall not preclude such action. Coercive measures shall not, however, be permissible.

(2) Punishable offences committed by an officer, as specified in article 14, 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 18

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. For the reason of repair work transit traffic may be restricted or prohibited even in the territory of the other Contracting State. In the event of any restriction or prohibition, the competent authority of the other Contracting State shall be notified. The Contracting States shall inform each other which authorities are the competent authorities.

Article 19

Save as otherwise agreed in this Treaty, the law of each Contracting State shall apply in its own territory.

Article 20

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 21

- The provisions of this Treaty shall be without prejudice, in particular, to :
- (a) 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;
 - (b) The Treaty of 6 September 1962 between the Republic of Austria and the Federal Republic of Germany concerning customs concessions in minor frontier traffic and transit traffic, but only where the provisions of the said Treaty do not conflict with those of the present Treaty.

Article 22

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 23

(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 24

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

Article 25

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 26

(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 the possibility of some other satisfactory regulation of transit traffic.

Article 27

(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 m.p.

For the Federal Republic of Germany :
Dr. LÖNS m.p.

FINAL PROTOCOL

TO THE TREATY OF 17 FEBRUARY 1966 BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING TRANSIT TRAFFIC ON THE ROSSFELD ROAD

Upon signing the Treaty between the Republic of Austria and the Federal Republic of Germany concerning transit traffic on the Rossfeld Road, the plenipotentiaries of the two Contracting States declare the following :

1. The Republic of Austria declares that the municipality of Kuchl, *Land* Salzburg, intends to construct a branch road connecting it with that part of the Rossfeld Road which lies in Austrian territory. Should that intention be carried out, the Federal Republic of Germany undertakes that it will, in a spirit of friendship and good-neighbourly relations, enter into negotiations with the Republic of Austria with the aim of adapting the Treaty to the changed circumstances.

2. The Republic of Austria promises that it will, in a spirit of friendship and good-neighbourly relations, give favourable consideration to, and make possible the fulfilment of, the wishes of the Federal Republic of Germany in connexion with operations to widen the summit section in Austrian territory.

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 article 14.

4. The provisions of article 14, paragraph (1), 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*.

5. No liability shall attach to the Federal Republic of Germany in respect of damages arising in connexion with the use of the roads referred to in article 14 by the officers specified therein when the summit section has been closed by a Contracting State by reason of a public emergency or danger to public safety; this provision shall not apply when the closing is for the safety of road traffic or for repair work.

6. The Republic of Austria shall endeavour to ensure that no permits are issued for the Rossfeld Road area by way of exception to the ban on building under section 2 of the Rossfeld Road Scenic Beauty Protection Ordinance of 10 August 1960, *Landesgesetzblatt für Land Salzburg*, No. 54.

7. It is agreed that article 17, paragraph (1), last sentence, shall not preclude measures which serve only to keep the road open and involve neither a punishment nor a fine.

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

For the Republic of Austria :

Dr. REICHMANN m.p.

For the Federal Republic of Germany :

Dr. LÖNS m.p.