

No. 13374

**FRANCE
and
ITALY**

Convention concerning the Frejus road tunnel (with protocol concerning fiscal and customs questions). Signed at Paris on 23 February 1972

Authentic texts: French and Italian.

Registered by France on 31 May 1974.

**FRANCE
et
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Convention concernant le tunnel routier du Fréjus (avec protocole relatif aux questions fiscales et douanières). Signée à Paris le 23 février 1972

Textes authentiques : français et italien.

Enregistrée par la France le 31 mai 1974.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE ITALIAN REPUBLIC CONCERNING THE FREJUS ROAD TUNNEL

The President of the French Republic and the President of the Italian Republic, desiring to improve, by means of a tunnel connecting the Maurienne Valley in the department of Savoie and the Susa Valley in the province of Turin, the road links between the Rhone Valley and the Po Valley along route E 13 described in the Declaration on the construction of main international traffic arteries signed at Geneva on 16 September 1950,² have decided to conclude a convention and to that end have appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Maurice Schumann, Minister for Foreign Affairs;

The President of the Italian Republic:

Mr. Francesco Malfatti di Montetretto, Ambassador Extraordinary and Plenipotentiary,

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

Article 1. THE TUNNEL

The Contracting Parties undertake to share the work of constructing and operating a road tunnel between Modane and Bardonecchia.

This structure, to be known as the "Fréjus road tunnel", shall be referred to as "the tunnel" in this Convention.

Article 2. GENERAL CHARACTERISTICS OF THE STRUCTURE

1. The tunnel shall be about 12.8 kilometres long. The French entrance shall be at about 1,230 metres above sea level, the Italian entrance at about 1,300 metres. The longitudinal gradient shall not exceed 0.7 per cent in any section.

The width between piers at the level of the carriage way shall be at least 10 metres and there shall be at least 4.50 metres headroom.

The above characteristics can be modified only with the agreement of both Contracting Parties, following a decision of the Commission provided for in article 5.

2. At each end of the tunnel an external apron shall be built with the excavated waste intended primarily for construction plant and machinery for emergency equipment for use in case of accident or fire, and for the sites and

¹ Came into force on 8 March 1973 by the exchange of the instruments of ratification, which took place at Rome, in accordance with article 22.

² United Nations, *Treaty Series*, vol. 92, p. 91.

installations required for such frontier inspections as, in accordance with the arrangements concluded by the competent administrations of the two States, are to be carried out in the immediate vicinity of the frontier.

If the aprons built of the excavated waste are inadequate for the satisfactory conduct of these inspections, the Governments shall reach agreement on the construction of the additional facilities required.

3. Each Government shall take appropriate measures for the conduct of frontier inspections other than those referred to in paragraph 2.

Article 3. CONCESSION OF THE CONSTRUCTION WORK

1. The French and Italian Governments shall respectively assign to a French concessionary company and to an Italian concessionary company, chosen by mutual agreement, the construction and operation of the tunnel, and of any ancillary structures and installations, at the expense and risk of these companies.

2. The deeds of concession shall provide for the joint construction, operation and maintenance of the tunnel and for the equal sharing between the two concessionaries of the cost including all taxes, of any construction work undertaken by mutual agreement, the cost, including all taxes, of the construction work provided for in article 2, paragraph 2, revenue from the concessions and the expenses, including all taxes, of operating and maintaining the tunnel.

This equal sharing shall also apply to the expenditure incurred for repairing damages to third parties.

3. The work of constructing the gallery, if carried out by the concessionary of one of the States in the territory of the other State, shall be subject to the legislation of the State of which the concessionary company is a national.

4. The deeds of concession shall require:

- during the period of construction, the transmission each year to the Commission provided for in article 5 by the joint committee provided for in article 9 of the statement of expenditure incurred and of projected expenditure until the completion of construction;
- during operation, the transmission each year to the said Commission by the joint agency provided for in article 13 of the statement of receipts and expenditure for the previous year and of projected receipts and expenditure for the coming year.

5. If in the future a single company can be formed under European law, the Contracting Parties shall agree to take all necessary measures to facilitate the formation of such a company, which shall be the concessionary of the two Governments.

6. If the Contracting Parties should decide before the expiry of the concessions to construct and bring into operation a second tunnel on the same road link, new concessions shall be granted for the two tunnels together and the concessionaries for the first tunnel shall have the right to first refusal of the new concessions.

Article 4. APPROVAL OF THE DESIGN

The blueprint and plans of the tunnel shall be drawn up by the concessionaries. They shall be submitted, with all necessary documentation, to the Commission provided for in article 5 and shall not be executed until that Commission has rendered its opinion and they have been approved by the Governments. An estimate of expenditure shall be annexed to these documents.

Any substantial amendment of the blueprint and plans shall be subject to the same approval procedure.

Authorization to bring the tunnel into operation shall be granted jointly by the Governments on the advice of the aforementioned Commission.

Article 5. INTERGOVERNMENTAL COMMISSION

An Intergovernmental Commission for the Fréjus road tunnel, hereinafter referred to as "the Commission", shall be set up.

Each Contracting Party shall be represented on the Commission by a delegation of not more than eight members. Each delegation may arrange to be assisted by experts.

The Commission shall be presided over for periods of one year by the head of each delegation alternately.

The Commission shall establish its rules of procedure, which shall be communicated to the Governments.

The opinions and decisions rendered by the Commission shall be recorded in minutes, which shall be communicated to the competent authorities of the two States.

Article 6. FUNCTIONS OF THE COMMISSION

Apart from the functions described elsewhere in this Convention, the Commission:

1. For the purpose of implementing this Convention:

- May issue any opinions and recommendations addressed to the Governments;
- May constitute the framework for the conclusion of arrangements or agreements between the Governments within the limits of the powers granted to each delegation.

2. For the purpose of implementing the deeds of concession:

- (a) Shall ensure that the work conforms to the concessionary contracts and to the approved blueprint and plans;
Shall examine any adjustments to such blueprint and plans proposed or agreed to by the concessionaries and decide whether they call for financial commitments by the Governments;
- (b) During the operational period ensure that the provisions of the deeds of concession are observed;

- (c) Shall take any decisions under such powers as are delegated to it by mutual agreement between the two Governments and, if necessary, any measures to facilitate the construction and operation of the tunnel;
- (d) In case of emergency, shall take any decision required for reasons of safety, subject to reporting such decision to the Governments, the President being empowered to act on behalf of the Commission in cases extremely urgent.

The Commission may request the collaboration of the administrations of each Government responsible for supervising the concession.

Article 7. DEEDS OF CONCESSION

1. The Governments shall work together to ensure that the deeds of concession are and, if amended, remain concordant, subject to any special requirements imposed by national legislation.

2. The deeds of concession shall lay down conditions for the construction and operation of the tunnel. The operating procedures, including road traffic rules, shall be laid down in a single set of regulations governing the entire tunnel, the draft of which shall be drawn up by the concessionary companies and submitted to the Commission for approval. The traffic regulations shall be brought into force by the competent authorities of each State in accordance with its national legislation.

3. Each deed of concession shall state that arrangements for the implementation of the provisions of article 2, paragraph 2, shall be established by agreement between the administrations concerned and the concessionaries.

4. The deeds of concession shall enter into force on the date established by agreement between the two Governments. The same shall apply to any amendments to these documents other than those necessitated by a change in national legislation.

Article 8. DURATION AND EXPIRY OF CONCESSIONS

The two concessions shall expire on 31 December of the seventieth year following the year in which the tunnel came into operation.

On the expiry of the two concessions, either on the date established above or earlier for another reason, the tunnel shall become the joint property of the French and Italian States and shall be operated jointly on the basis of equal rights and obligations. Procedures for joint management shall be the subject of a prior agreement between the Governments.

Article 9. JOINT COMMITTEE FOR THE CONSTRUCTION PERIOD

The concessionaries shall institute a joint committee made up of equal numbers of representatives appointed by their respective boards of directors and duly authorized to represent their respective companies.

The joint committee shall be empowered by the concessionaries, *inter alia*:
—to draw up the list of firms to be consulted;
—to consider tenders and decide on the assignment of lots;

- to co-ordinate all the construction work and ensure that it is satisfactorily carried out;
- to ensure the proper administration of contracts and to state its opinion on any commitment leading to a change in their financial value;
- to check expenditure incurred by mutual agreement and distribute it equally between the concessionaries;
- to represent the concessionaries *vis-à-vis* the Commission in any matters concerning the construction of the tunnel.

The joint committee shall not be dissolved until all transactions connected with the construction of the tunnel have been completed.

The functions and powers of the joint committee shall be set out in an agreement to be drawn up between the concessionaries and communicated to the Commission, which shall ensure that it conforms to the provisions of this Convention.

Article 10. ACCESS ROUTES

Each Contracting Party shall undertake to arrange in due time for the construction of the section of road linking the apron at the tunnel terminals to the national highway system so that traffic movement may be satisfactory as soon as the tunnel comes into operation.

The Contracting Parties shall also undertake to improve in due time the road links between the tunnel and the valleys of the Rhone and the Po in order to accommodate traffic to or from the tunnel.

Article 11. DISCOVERIES

Any water, useful minerals, fossils and palaeontological remains found in the course of building the tunnel shall be disposed of according to the legislation of the State in whose territory the discovery is made, irrespective of who makes the discovery.

Article 12. TOLLS

The concessionaries shall levy tolls on users of the tunnel, the maximum rates of toll being fixed by mutual agreement between the Governments after consultation with the Commission and the scales of charges shall be approved by the Commission.

The maximum rates and the scales of charges shall take into account the expenses to be met by the concessionaries.

Article 13. JOINT OPERATING AGENCY

The concessionaries shall establish a joint body which they shall authorize to operate on their behalf the works and installations to which the concessions apply. Such authorization shall cover all matters associated with the operation, maintenance and upkeep of the tunnel, with the exception of new structural

work, replacement of heavy equipment and of plant, unforeseen maintenance costs and the level of tariffs. The concessionaries shall also be empowered to delegate to the joint agency special powers to settle questions which are not covered by the said authorization.

The content and terms of the authorization shall be established by agreement between the concessionaries which shall remain jointly liable *vis-à-vis* each of the Contracting Parties and third parties for obligations arising from their concessions for the joint operation of the tunnel. Within the limits of its authorization and any powers delegated to it, the joint agency shall be empowered to represent the concessionaries *vis-à-vis* the Commission. The text of the authorization shall be submitted to the Governments for their approval after consultation with the Commission.

The joint agency may be a company having its head office in France or Italy whose capital shall be subscribed equally by the two concessionaries and shall remain shared equally between them and whose board of directors shall include an equal number of representatives of each concessionary. Subject to the application of the provisions arising from the Treaty of Rome establishing the European Economic Community,¹ amendments to company law which may be made in the country of the head office after the incorporation of the company shall be applicable only with the agreement of the Governments.

The joint agency may take the form of a company under European law if, during the period of validity of the concessions, it appears possible to establish such a company.

The chairmanship of the joint agency shall alternate between a French and an Italian national, each serving for a period of not more than two years.

The instruments constituting the joint agency, setting out, *inter alia*, its articles of association and operational procedures, shall be communicated to the Commission, which shall ensure that they conform to the provisions of this Convention.

Article 14. FRONTIER

The Franco-Italian frontier inside the tunnel shall lie on a line vertically underneath the frontier in the open air.

Each Government shall bear the cost of its own customs, police and medical services.

Frontier inspection procedures shall, when necessary, be the subject of arrangements between the two Governments within the framework of the Conventions on the subject.

The French and Italian officers responsible for frontier inspections shall have the right to move freely throughout the area covered by the two concessions in connexion with the needs of the service.

The personnel employed in the construction and operation of the tunnel shall have the right to move freely in the area covered by the two concessions, but shall remain subject to any necessary police and customs measures.

¹ United Nations, *Treaty Series*, vol. 298, p. 3.

Article 15. TRAFFIC CONTROL

The traffic control officers of each State shall have the right to move freely throughout the area of the two concessions in connexion with the needs of the service.

Traffic control in the tunnel may be carried out by joint patrols composed of officers from each State.

The reporting and punishment of offences shall be carried out in the circumstances and according to the procedures laid down by the legislation of the State in whose territory they were committed.

Article 16. PROTECTION OF STATE OFFICERS

The authorities of each State shall grant to the officers of the other State, for the performance of their functions under the terms of this Convention, the same protection and assistance as to their own officers.

In the case of an offence committed against the officers of one State while performing their functions in the territory of the other State under the terms of this Convention, the provisions of criminal legislation governing a similar act committed against the officers of the latter State assigned to a corresponding service shall be applied.

Article 17. TAX, CUSTOMS AND MONETARY REGULATIONS

Tax and customs questions arising from the construction and operation of the tunnel shall be the subject of a protocol annexed to this Convention as an integral part thereof.

The Governments shall in no way impede and shall levy no dues or taxes on the transfer of funds and financial settlement arising out of the application of this Convention between the territories of the Contracting Parties.

Article 18. AWARD OF CONTRACTS

The deeds of concession shall require the concessionaries to call for tenders from firms of the States of the European Economic Community for the execution of their structural work and for supplies.

For the purpose of awarding contracts concerning the tunnel, each Contracting Party shall require its concessionary to observe the rules it has established in application of the directive of the Council of the European Communities dated 26 July 1971 on the co-ordination of procedures for public bidding for construction work and to submit the list of firms to be consulted to the Commission for its opinion.

A single invitation to tender may cover all construction work and facilities situated in the two States but a separate contract shall always be concluded by each concessionary.

Article 19. GENERAL MEASURES

Questions of any kind arising out of the construction and operation of the tunnel, including measures required for traffic safety and accident and fire prevention, shall be the subject of special agreements between the Governments, in so far as they are not governed by this Convention, including its annexed protocol.

The Governments shall reach agreement regarding the application of any measure of a general nature taken by one of the States which would significantly alter the status of one of the concessionaries or of the joint agency referred to in article 13, and regarding the intention on the part of one of them to invoke the forfeiture or repurchase clauses of the deed of concession or to authorize a change of concessionary.

Article 20. DISPUTES BETWEEN THE CONCESSIONARIES

The deed of concession shall require the concessionaries, as a last resort, to submit their dispute to an arbitrator appointed by agreement by the Governments. The order for the enforcement of the judgement rendered by the arbitrator shall be made by the competent court of each State.

Article 21. DISPUTES CONCERNING THE CONVENTION

If a dispute concerning the interpretation or application of this Convention arises between the Contracting Parties and is not settled within three months of its being brought to the notice of the Commission, it shall be submitted to an arbitral tribunal at the request of one of the Governments.

The arbitral tribunal shall in each case be composed as follows: each of the Parties to the dispute shall appoint an arbitrator and the two arbitrators shall agree on the appointment of a third arbitrator from a third State; the third arbitrator shall preside over the arbitral tribunal. If the arbitrators have not been appointed within a period of three months after one of the Contracting States has announced its intention to refer the matter to the arbitral tribunal, each Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of one of the Parties to the dispute or if he is prevented from doing so for any reason, the appointments in question shall be made by the Vice-President or by the most senior judge who is not a national of either of the parties to the dispute.

The arbitral tribunal shall decide by a majority of votes. The decisions of the tribunal shall be binding upon the Parties. The latter shall defray the cost of the arbitrator whom they have appointed and shall share the other costs equally. The arbitral tribunal itself shall decide on its procedure with regard to other matters.

Article 22. ENTRY INTO FORCE

This Convention shall enter into force on the date on which the instruments of ratification are exchanged.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Paris on 23 February 1972, in duplicate in the French and Italian languages, both texts being equally authentic.

For the President
of the French Republic:

[Signed]

MAURICE SCHUMANN

For the Italian Republic:

[Signed]

F. MALFATTI

PROTOCOL

CONCERNING FISCAL AND CUSTOMS QUESTIONS

Upon signing the Convention dated this day between the French Republic and the Italian Republic concerning the Fréjus road tunnel, the undersigned plenipotentiaries have agreed to the following provisions:

I. TAXES AND DUES

Article 1. Each State shall apply its fiscal legislation and regulations to the construction, maintenance and operation of the part of the tunnel for which it grants a concession in application of article 3 of the Convention.

To this end, each concessionary company shall be deemed to construct and operate alone and for its own account the part of the tunnel corresponding to its concession, subject to the provisions of article 3, paragraph 3, of the Convention.

Article 2. For the purpose of paying turnover taxes, the taxable base in each State shall consist of all receipts from operations conducted in the concession granted by that State.

When, however, the receipts from operations, in particular tolls, conducted in each of the two States cannot be separated, the taxable base in each State shall be deemed to be one half of the total receipts, irrespective of where they have been collected.

During the period of operation, the electric power consumed shall be subject to turnover taxes, each State paying one half.

Article 3. To the extent required by fiscal legislations and regulations, each concessionary company shall arrange to accredit to the administration responsible for collecting taxes and dues a representative domiciled in the State in which such taxes and dues are payable who shall undertake to comply with the formalities applicable to taxpayers and to pay the taxes and dues owed by it.

Article 4. For the purpose of taxes on profits derived from the operation of the tunnel, the taxable base for each concessionary company shall be determined by the competent fiscal administration of the State in which the company has its

fiscal domicile, in accordance with the domestic law of the State and bearing in mind that:

- (a) the receipts from the management of the tunnel shall be shared equally between the two concessionary companies;
- (b) the expenditure required for the construction, operation, maintenance and upkeep of the tunnel shall also be shared equally between the two concessionary companies.

Article 5. Notwithstanding the provisions of the Franco-Italian fiscal Convention for the avoidance of double taxation and to settle certain other questions with respect to direct taxes on income and fortune, concluded at Paris on 29 October 1958 and amended by the Additional Agreement of 6 December 1965,¹ the salaries and emoluments of the persons responsible for the construction and operation of the tunnel shall be taxable only in the State in which the persons concerned have their fiscal domicile.

Article 6. For the purposes of the provisions of the Convention of 29 October 1958 referred to in article 5 hereof, any fees, allowances or other remuneration paid jointly to the members of the joint committee established under article 9 of this Convention and the joint operating agency provided for in article 13 of the same Convention for services rendered in their capacity as members thereof shall be deemed to be paid by the concessionary company of which such members are representatives or agents.

Article 7. The competent fiscal Administrations of the two States shall reach agreement concerning procedures for exercising their respective rights of transmission and audit in respect of the operational accounts of the tunnel maintained at the headquarters of the joint operating agency.

II. CUSTOMS

Article 8. For the purposes of the construction, maintenance, upkeep and operation of the tunnel, each State:

- (a) Shall levy no customs or equivalent duty on the import or export of construction materials, raw materials or equipment intended to be incorporated into them, provided that they originate in and come from the other State or are freely used on the territory of that State;
- (b) Subject to the same proviso, shall admit materials and equipment without prohibition or economic import restriction.

Article 9. The competent administrations shall reach agreement on granting equipment temporarily admitted free of customs duty or other import charges for the execution of work within the tunnel area all facilities compatible with their legislation and regulations.

III. GENERAL PROVISIONS

Article 10. Any problems arising from the application of this Protocol shall be settled by agreement between the competent fiscal and customs administrations.

¹ United Nations, *Treaty Series*, vol. 659, p. 86.

Article 11. This Protocol forms an integral part of the Convention dated this day.

DONE at Paris, on 23 February 1972, in duplicate in the French and Italian languages, both texts being equally authentic.

[Signed]

MAURICE SCHUMANN

[Signed]

F. Malfatti