

No. 14720

**AUSTRIA, FEDERAL REPUBLIC
OF GERMANY and SWITZERLAND**

**Convention concerning navigation on Lake Constance (with
annex and additional protocol). Signed on Lake
Constance on 1 June 1973**

Authentic text: German.

Registered by Austria on 21 April 1976.

**AUTRICHE, RÉPUBLIQUE FÉDÉRALE
D'ALLEMAGNE et SUISSE**

**Convention relative à la navigation sur le lac de Constance
(avec annexe et protocole additionnel). Signée sur le
lac de Constance le 1^{er} juin 1973**

Texte authentique : allemand.

Enregistrée par l'Autriche le 21 avril 1976.

[TRANSLATION — TRADUCTION]

CONVENTION¹ CONCERNING NAVIGATION ON LAKE
CONSTANCE

The Federal Republic of Germany, the Republic of Austria and the Swiss Confederation,

Desiring to adapt the regulation of navigation on Lake Constance to changed circumstances and to the state of technology, and for this purpose to replace the Agreement of 22 September 1867 between the riparian States of Lake Constance concerning international shipping and harbour regulations for Lake Constance by a new Convention and uniform shipping regulations,

Have agreed as follows:

SECTION I. GENERAL PROVISIONS

Article 1. (1) This Convention shall regulate navigation on Lake Constance as regards the area of the upper lake, including the Überlinger See.

(2) Other territorial relationships on Lake Constance, particularly the course of State frontiers, shall not be affected by this Convention.

(3) Navigation on the lower lake and the two stretches of the Rhine between Constance and Schaffhausen shall be regulated in a separate agreement between the Federal Republic of Germany and the Swiss Confederation, and navigation on the stretch of the Old Rhine from its mouth to Rheineck-Gaissau shall be regulated in a separate agreement between the Republic of Austria and the Swiss Confederation,² in accordance with the principles of this Convention, except in so far as special local conditions necessitate exceptions, vessels of the three Contracting States being reciprocally accorded equal treatment. The same shall apply *mutatis mutandis* to the regulations to be issued pursuant to article 5 (hereinafter referred to as "the shipping regulations"). In particular, licences for vessels, navigation authorizations or permits and other licences granted pursuant to this Convention and to the separate agreements referred to in the first sentence of this paragraph shall be accorded reciprocal recognition.

Article 2. (1) Subject to the provisions of this Convention and of the shipping regulations, navigation shall be open to all persons.

(2) The Contracting States shall reciprocally accord equal treatment to vessels licensed under the terms of this Convention and of the shipping regulations.

¹ Came into force on 1 January 1976, i.e., the first day of the second month following the month in which the last instrument of ratification was deposited with the Government of Austria, in accordance with article 26(1). The instruments were deposited as follows:

Austria	16 July	1974
Germany, Federal Republic of	28 November	1975
Switzerland	28 November	1975

² See "Agreement concerning Navigation on the Old Rhine", p. 83 in this volume.

Article 3. At harbours and landing-stages open to general traffic, the simple docking of a vessel shall be free of charge. However, charges may, subject to the provisions of article 2, paragraph 2, be imposed for special services rendered at such harbours and landing-stages.

Article 4. The Contracting States shall ensure that navigation is not impeded by buildings and other artificial structures, or in any other way, to a greater extent than is unavoidable for the protection of other public interests.

SECTION II. UNIFORM SHIPPING REGULATIONS

Article 5. (1) The Contracting States shall issue uniform regulations for shipping (shipping regulations) concerning safety and facility of traffic and the prevention of hazards and nuisances which might be caused by shipping.

(2) The shipping regulations shall cover, in particular:

- (a) requirements as to the construction, fitting-out, making and licensing of vessels;
- (b) requirements as to the number of persons needed for the navigation and operation of vessels and their skill and aptitude;
- (c) traffic and conduct while operating vessels;
- (d) navigational marks and signals;
- (e) protection of the environment against damage by shipping.

(3) If necessary for the safety and facility of traffic or the protection of the environment, the shipping regulations shall also include rules concerning floating installation.

(4) Rules adopted under paragraph 2 (e) may also provide for measures to restrict navigation; in particular, they may prohibit the use of the Lake by certain types of vessels and navigation on parts of the Lake or at certain times.

(5) Each Contracting State may issue provisions which deviate from the uniform shipping regulations, if this is necessary, in order to regulate special local conditions or traffic and operation in harbours. The foregoing shall be subject to observance of the principles of this Convention and of the shipping regulations.

Article 6. (1) Where the shipping regulations so require, vessels shall be licensed by the Contracting State which is competent in accordance with paragraph 2.

(2) The Contracting State in which a vessel is normally kept shall be competent to license it. If the vessel is not normally kept in a Contracting State, the Contracting State in which the owner is normally resident shall be competent. If neither of these conditions is fulfilled, any Contracting State shall be competent. The Contracting State which issued the licence shall also be competent to amend or revoke it.

(3) Each Contracting State may make the possession of third-party insurance a condition for the licensing of a vessel.

Article 7. (1) Where the shipping regulations so require, an authorization or permit to navigate a vessel shall be issued by the Contracting State which is competent in accordance with paragraph 2.

(2) The Contracting State in which the applicant is normally resident shall be competent to issue the navigation authorization or permit. If the applicant is not normally resident in a Contracting State, any Contracting State shall be competent to issue authorization or permit. The Contracting State which issued the authorization or permit shall also be competent to amend or revoke it.

Article 8. Each Contracting State may, in addition to the provisions of this section, issue special regulations for commercial shipping.

SECTION III. IMPLEMENTATION OF THE CONVENTION

Article 9. (1) For the purposes of the implementation of this Convention and of the shipping regulations, the upper lake shall be divided into three enforcement areas, which are defined in the annex.

(2) Unless otherwise provided in this Convention, each Contracting State shall be competent with respect to the implementation of this Convention and of the shipping regulations in the enforcement area situated off its shore.

Article 10. (1) The competent agents of a Contracting State shall be entitled to take action under this Convention and the shipping regulations even in the enforcement areas of the other Contracting States:

- (a) if, particularly in connexion with an accident, they observe occurrences which occasion strong suspicion of an infraction of the shipping regulations;
- (b) in hot pursuit of a vessel, provided that the requirements of subparagraph (a) are fulfilled;
- (c) for the purpose of regulating traffic by special arrangement in response to a request by the Contracting State which is competent in accordance with article 9, paragraph 2.

(2) Agents acting in the cases referred to in paragraph 1 shall be entitled to ascertain the facts and to take other urgent action. They may, in particular:

- (a) stop and board vessels;
- (b) inspect identity cards and official papers required to be carried under the shipping regulations;
- (c) question persons who are present on board;
- (d) take notes;
- (e) collect sums of money, if the person concerned consents;
- (f) impound the vessels involved and items of evidence;
- (g) detain persons strongly suspected of an infraction of the shipping regulations.

(3) Action under paragraph 2, subparagraphs (e), (f) and (g), shall be permissible only if it is in conformity with the legal order of the Contracting State to which the agents belong and is not fundamentally incompatible with the legal order of the Contracting State which is competent with respect to the enforcement.

Article 11. (1) The provisions of article 10 shall not apply:

- (a) to the Überlinger See or to an inshore strip of the enforcement area, defined in the annex to this Convention, within which the agents of the Contracting State to which the enforcement area is allocated shall have exclusive competence (exclusive zone);
- (b) to routine inspection of any kind;
- (c) as against official vessels of another Contracting State.

(2) Action under article 10, paragraph 2, subparagraphs (a) to (d), shall be permissible even in the exclusive zones in response to a request under article 10, paragraph 1, subparagraph (c).

Article 12. (1) In the cases referred to in article 10, paragraph 1, the Contracting State which is competent with respect to the enforcement area shall be informed without delay of any action under article 10, paragraph 2, subparagraphs (f) and (g).

(2) Nationals of the Contracting State competent with respect to the enforcement area who are detained in accordance with article 10, paragraphs 2 and 3, shall be handed over without delay to that Contracting State. The same shall apply to persons who are normally resident in the Contracting State competent with respect to the enforcement area, provided that they are not nationals of the Contracting State whose agents have detained them. Persons who are not, under this provision, to be handed over to the Contracting State competent with respect to the enforcement area may be taken to the Contracting State whose agents have detained them.

(3) Vessels and items of evidence impounded in accordance with article 10, paragraphs 2 and 3, may be taken temporarily to the Contracting State whose agents have impounded them. If another Contracting State is competent to prosecute in respect of the infraction which occasioned the impoundment, such vessels and items of evidence shall be handed over to it without delay.

Article 13. (1) Any Contracting State shall be competent to prosecute in respect of infractions of the shipping regulations, irrespective of the enforcement area in which the infraction was committed.

(2) Competence under paragraph 1 shall be exercised by the Contracting State in which the person suspected of an infraction of the shipping regulations is normally resident. Where a person is not normally resident in a Contracting State, competence shall be exercised by the Contracting State whose agents acted first.

(3) The law of the Contracting State in which, in accordance with paragraphs 1 and 2, prosecution is to take place shall be applicable to prosecution in respect of infractions of the shipping regulations. The same shall apply with respect to procedure and statutory limitations. However, interruption of the period of limitation in a Contracting State shall be deemed to have occurred also in the other Contracting States.

Article 14. In accordance with the domestic law of the Contracting States, decisions rendered and orders made in a Contracting State in respect of infractions of the shipping regulations which are final and enforceable under the legal

order of that State shall, at the request of that State, be enforced in another Contracting State.

Article 15. (1) The competent judicial and administrative authorities of the Contracting States shall render to each other legal and official assistance of every kind implementing this Convention and the shipping regulations and shall, at the request of a Contracting State, undertake prosecution in respect of infractions of the shipping regulations, provided that such prosecution is not impermissible under domestic law. In so doing, they shall, unless otherwise provided in this Convention, apply their own law.

(2) All documents and other objects connected with proceedings in respect of an infraction of the shipping regulations shall be handed over to the Contracting State which is competent to prosecute under article 13, paragraph 2.

(3) The Contracting States shall inform each other of the revocation or warning of revocation of a licence or a navigation authorization or permit, and of any facts that might be relevant thereto.

Article 16. Sums of money collected in implementation of this Convention shall not be reimbursed between the Contracting States. The same shall apply to expenses incurred by the Contracting States.

Article 17. Unless otherwise provided in this Convention, the authorities of the Contracting States which are competent with respect to the implementation of this Convention and of the shipping regulations may communicate with each other directly. Requests or communications addressed to an agency which is not competent shall be forwarded to the competent agency.

Article 18. The Contracting States shall inform each other, through the diplomatic channel, which authorities are competent with respect to the implementation of this Convention and of the shipping regulations.

SECTION IV. INTERNATIONAL SHIPPING COMMISSION FOR LAKE CONSTANCE

Article 19. (1) There shall be established an International Shipping Commission for Lake Constance (hereinafter referred to as "the Commission").

(2) The Commission, taking into account the needs of traffic on the lake, the requirements of environmental protection and scientific and technological knowledge, shall:

- (a) determine the matters to be regulated uniformly in the shipping regulations and prepare proposals to that end;
- (b) work towards the uniform implementation of the regulations applicable to shipping;
- (c) consider all questions relating to navigation on Lake Constance, particularly those of a technical and nautical nature, and exchange information thereon;
- (d) make recommendations to the Contracting States concerning navigation on Lake Constance and propose amendments to existing regulations.

(3) The Commission shall also ensure that information concerning legislation directly affecting navigation on the lake is furnished on a reciprocal basis.

(4) Each Contracting State shall delegate three members to the Commission and shall appoint one member to be chairman of its delegation. Delegation may be accompanied by experts. The chairmen of the delegations shall communicate with each other directly.

(5) Decisions of the Commission shall be unanimous, each delegation having one vote. Upon request by the chairman of a delegation, the Commission shall meet within two months. The Commission shall establish its own rules of procedure, which may provide for the appointment of committees and expert groups.

SECTION V. SETTLEMENT OF DISPUTES

Article 20. (1) In case of disputes between the Contracting States concerning the interpretation or implementation of this Convention or of the shipping regulations, a settlement shall be sought in the first instance within the framework of the Commission provided for in article 19 and subsequently through the diplomatic channel.

(2) If no agreement is reached even through the diplomatic channel, any Contracting State concerned may request that the case should be submitted to an arbitration commission.

Article 21. (1) The arbitration commission shall have three members. The members shall not be nationals of any of the Contracting States; they shall not have been concerned with the case previously in a different connexion.

(2) Each of the parties to the arbitration proceedings shall appoint one member of the arbitration commission. If a party consists of two Contracting States, the latter shall appoint a member by mutual agreement. The two members appointed by the parties shall choose a chairman.

(3) If either party has not appointed its member within two months after being notified of the request for the initiation of arbitration proceedings, the member shall, at the request of the other party, be designated by the President of the European Court of Human Rights.

(4) If the two members are unable to agree on the choice of a chairman within two months after their appointment, he shall, at the request of either party, be designated by the President of the European Court of Human Rights.

(5) If, in either of the cases referred to in paragraphs 3 and 4, the President of the European Court of Human Rights is unable to act or is a national of a Contracting State, the designation shall be made by the Vice-President. If the Vice-President is also unable to act or is a national of a Contracting State, the designation shall be made by the most senior member of the Court who is not a national of a Contracting State.

Article 22. (1) The arbitration commission shall endeavour, at every stage of the proceedings, to bring about an amicable settlement of the case. If it does not prove possible to achieve such a settlement, the commission shall adopt a

decision by majority vote. The said decision shall be final and binding on all the Contracting States.

(2) The arbitration commission shall base its proposals for a settlement and its decisions on:

- (a) the provisions of this Convention, regard being had in particular to article 1, paragraph 2;
- (b) any relevant agreements of a general or special nature in force between the Contracting States;
- (c) international customary law;
- (d) the general principles of law.

Article 23. (1) Unless otherwise agreed by the parties, the arbitration commission shall establish its own rules of procedure.

(2) The Contracting State which is not a party to the arbitration proceedings may at any time enter the proceedings as an intervenor.

(3) Each party shall defray the expenses of the member of the arbitration commission whom it appointed; the expenses of the chairman and other costs shall be shared equally by the parties.

SECTION VI. FINAL PROVISIONS

Article 24. This convention shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Governments of the Republic of Austria and the Swiss Confederation within three months from the date of entry into force of this Convention.

Article 25. This Convention shall be ratified. The instruments of ratification shall be deposited with the Austrian Federal Government.

Article 26. This Convention is concluded for an indefinite period. It shall enter into force on the first day of the second month following the month in which the last instrument of ratification is deposited.

(2) Any Contracting State may denounce this Convention as against the other two Contracting States by giving notice in writing through the diplomatic channel. The denunciation shall take effect simultaneously as between all the Contracting States at the end of the following calendar year.

(3) In the event of a denunciation of this Convention, the Contracting States shall immediately enter into negotiations with a view to a new arrangement for regulating navigation on Lake Constance. Pending the entry into force of a new arrangement, this Convention shall continue to be applied.

Article 27. (1) Upon the entry into force of this Convention, all earlier conventions, protocols and other agreements concerning the regulation of navigation on Lake Constance, particularly the Agreement of 22 September 1867 between the riparian States of Lake Constance concerning international shipping and harbour regulations for Lake Constance, the Bregenz Protocol of 6 May 1892, the Bregenz Protocol of Revision of 30 June 1894, the Constance

Protocol of 8 April 1899 and the subsequent Agreements of 1909, 1915, 1927 and 1933, shall cease to have effect.

(2) Pending the entry into force of the shipping regulations but for not more than three years after the entry into force of this Convention, the Contracting States shall continue to apply such regulations concerning navigation on the lake, issued pursuant to the conventions, protocols and agreements referred to in paragraph 1, as are currently in force and also the said conventions, protocols and agreements themselves, in so far as they contain regulations concerning navigation.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE on Lake Constance on 1 June 1973, in three original copies in the German language.

For the Federal Republic of Germany:

FRANK

For the Republic of Austria:

Dr. KARL FISHER
Dr. ELMAR GRABHERR

For the Swiss Confederation:

DIEZ

A N N E X

TO ARTICLE 9 AND ARTICLE 11

Delimitation of enforcement areas and exclusive zones

I. ENFORCEMENT AREAS

1. The boundary between the enforcement areas of the Federal Republic of Germany and the Republic of Austria shall run from the centre of the mouth of the Leiblach in a straight line towards the Rheinspitz (Weisses Haus), to the intersection with a straight line between the television tower on the Pfänder and Romanshorn (new Catholic church) (point 1). From point 1 it shall run towards Romanshorn (new Catholic church), to the intersection with a straight line between the last State frontier point on the Old Rhine and the centre of the mouth of the Argen (point 2).

2. The boundary between the enforcement areas of the Republic of Austria and the Swiss Confederation shall run from point 2 in a straight line to the last state frontier point on the Old Rhine.

3. The boundary between the enforcement areas of the Federal Republic of Germany and the Swiss Confederation shall start at point 2 and follow a straight line towards Romanshorn (new Catholic church), to its intersection with a straight line between the last State frontier point on the Old Rhine and Hagnau (church) (point 3). From point 3 it shall run in a straight line to the intersection of straight lines between Romanshorn (new Catholic church) and Fischbach (St. Magnus church) and between the Rheinspitz (Weisses Haus) and Hagnau (church) (point 4). From point 4 it shall follow

a straight line towards Constance (Bismarck Tower), to the intersection with a straight line between Scherzingen (church) and Haltnau (house) (point 5). From point 5 it shall follow a straight line to the centre of a straight line between the points Bottighofen (Schlössli) and Constance (Hintereis Eichhorn) (point 6). From point 6 it shall follow a straight line to the last State frontier point in the Constance channel (*Konstanzer Trichter*) and thereafter the State frontier as determined by treaty.

II. EXCLUSIVE ZONES

1. The boundary of the exclusive zones shall run, west of a straight line between the last State frontier point on the Old Rhine and the centre of the mouth of the Argen, at a distance of 3 km from the shore at mean water level. In the area east of that line, the boundary of the exclusive zones shall be 2 km from the shore at mean water level.

2. The boundary between the exclusive zones of the Federal Republic of Germany and the Republic of Austria shall be the straight line running from the centre of the mouth of the Leiblach to point 1.

3. The boundary between the exclusive zones of the Republic of Austria and the Swiss Confederation shall be the straight line between the last State frontier point on the Old Rhine and point 2.

4. The boundary between the exclusive zones of the Federal Republic of Germany and the Swiss Confederation shall be a line from point 5 to point 6 to the last State frontier point in the Constance channel, and the State frontier as determined by treaty.

III. After a redetermination by treaty of the course of the frontier between the Federal Republic of Germany and the Republic of Austria, references in sections I and II to the centre of the mouth of the Leiblach shall be replaced by references to the last State frontier point in that area.

ADDITIONAL PROTOCOL TO THE CONVENTION OF 1 JUNE 1973 CONCERNING NAVIGATION ON LAKE CONSTANCE

I

With a view to supplementing the agreements concerning navigation on the lower lake and the two stretches of the Rhine between Constance and Schaffhausen and on the stretch of the Old Rhine from its mouth to Rheineck-Gaissau, respectively (hereinafter referred to as "the Additional agreements") provided for in article 1, paragraph 3, of the Convention concerning navigation on Lake Constance (hereinafter referred to as "the Convention"), and with a view to the implementation of the regulations in force pursuant to those agreements, the Contracting States have agreed as follows:

1. Any Contracting State shall be competent to prosecute in respect of infractions of shipping regulations committed in the waters referred to in article 1, paragraph 3, of the Convention, irrespective of the Contracting State in which the infractions were committed. In the case of infractions committed in one of the other Contracting States, competence may be exercised only if that Contracting State submits a request that prosecution should be undertaken.

2. The provisions of article 13, paragraph 3, and articles 14 to 18 of the Convention shall be applied to navigation in the waters referred to in article 1, paragraph 3, of the Convention, provided that:

(a) references to the Convention shall be replaced by references to the additional agreements;

- (b) references to the shipping regulations shall be replaced by references to the regulations in force pursuant to the additional agreements;
- (c) as regards prosecution in respect of infractions, references to the Contracting State which is competent under the Convention shall be replaced by references to the Contracting State which is competent under this Additional Protocol.

3. The powers of the International Shipping Commission for Lake Constance provided for in article 19 of the Convention shall extend to matters relating in whole or in part, to the area of application of an additional agreement, provided that the Contracting State which is not a party to the additional agreement in question shall not participate in the votes.

4. Articles 20 to 23 of the Convention shall apply to the settlement of disputes concerning the interpretation or implementation of the additional agreements or of the regulations in force pursuant to those agreements, provided that references to the Contracting States as parties to the Convention shall be replaced by references to the Contracting States which are parties to the additional agreement in question.

II

This Additional Protocol shall form an integral part of the Convention; it shall be applied as soon as, and for so long as, the additional agreement in question is applicable.

DONE on Lake Constance on 1 June 1973, in three original copies in the German language.

For the Federal Republic of Germany:

FRANK

For the Republic of Austria:

Dr. KARL FISCHER
Dr. ELMAR GRABHERR

For the Swiss Confederation:

DIEZ
