

No. 18955

FRANCE
and
FEDERAL REPUBLIC OF GERMANY

**Agreement concerning the construction of a motorway
bridge over the Rhine between Ottmarsheim and
Steinenstadt (with annexes). Signed at Paris on
17 November 1977**

Authentic texts: French and German.
Registered by France on 27 June 1980.

FRANCE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

**Accord relatif à la construction d'un pont autoroutier sur le
Rhin entre Ottmarsheim et Steinenstadt (avec annexes).
Signé à Paris le 17 novembre 1977**

Textes authentiques : français et allemand.
Enregistré par la France le 27 juin 1980.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FRENCH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE CONSTRUCTION OF A MOTORWAY BRIDGE OVER THE RHINE BETWEEN OTTMARSHEIM AND STEINENSTADT

The President of the French Republic and the President of the Federal Republic of Germany,

Desiring to improve the road links between the two States,

In view of the Agreement of 30 January 1953 concerning fixed bridges over and ferries crossing the Rhine at the Franco-German frontier,

Have agreed to conclude an agreement and have appointed for this purpose as their plenipotentiaries:

The President of the French Republic: Mr. Jean-Marie Soutou, Ambassador of France, Secretary-General of the Ministry of Foreign Affairs,

The President of the Federal Republic of Germany: Mr. Axel Herbst, Ambassador of the Federal Republic of Germany at Paris,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. PURPOSE OF THE AGREEMENT

A bridge shall be built over the Rhine between Ottmarsheim and Steinensadt on both French and German territory, with a view to linking motorway A 36 Beaune-Mulhouse/Rhin with federal motorway A 5 Hamburg-Frankfurt-Basel.

Article 2. DESCRIPTION OF THE STRUCTURE

The structure, which shall be situated at kilometre 194.3 of the Rhine by French reckoning, shall be constructed for a flood discharge of 6,000 m³/second. It shall have three spans, which shall be an approximate total of 250 metres long, and shall carry two carriageways, each 13.50 metres wide.

Article 3. CONSTRUCTION

(1) The French Republic shall construct the structure.

(2) The construction of the structure shall cover all the operations required for its completion, including abutments, the transitional roadway and equipment, except for the German telephone network and the service loops situated on the right bank of the Rhine. The French Republic shall be responsible for studies, invitations to tender and the allocation and supervision of the work. It shall act in its own name when dealing with contractors and other contracting parties. Calculations relating to the structure shall be made and the construction work shall be carried out in accordance with the applicable French rules and regulations.

(3) The invitations to tender shall be made in accordance with the European Community directives of 26 July 1971.

¹ Came into force on 1 December 1979, i.e., the first day of the second month following the exchange of the instruments of ratification, which took place at Paris on 5 October 1979, in accordance with article 13 (1) and (2).

(4) It shall be incumbent on each Contracting State to build the structure and approaches to the bridge on its own territory, as the work progresses.

Article 4. APPORTIONMENT OF COSTS

(1) Each Contracting State shall bear the cost of the studies, of the construction of the structure and of the supervision of the work provided for in article 3, as well as maintenance costs in the 10-year period referred to in article 7.

(2) In the apportionment of costs referred to in paragraph 1 of this article, account shall also be taken of the French value-added tax. The two Contracting States shall pay the same proportion of such tax as that applying in the case of the overall cost of the structure. The French Republic shall, in accordance with the conditions laid down in article 6, pay the Federal Republic of Germany as compensation an amount equal to the amount of the French value-added tax paid by the Federal Republic of Germany in connection with the costs referred to in paragraph 1 of this article.

Article 5. RELEASE OF THE LAND REQUIRED FOR THE STRUCTURE AND FOR THE CONSTRUCTION WORK

Each Contracting State shall see to it in due time that in its own territory any land needed for the construction of the bridge either temporarily or permanently is made available and shall bear the corresponding cost.

Article 6. PAYMENT OF COSTS

(1) The French Republic shall be responsible for prefinancing. As the work is executed, it shall draw up for the German authorities statements of the costs incurred by it that are to be borne by the Federal Republic of Germany under article 4. In principle, payment of such costs shall take place within three months of the date on which the statements are received.

(2) The French Republic shall pay the Federal Republic of Germany as compensation the amount referred to in article 4, paragraph 2, in the following manner:

- (a) Within three months of the acceptance of the structure referred to in article 7, in the case of the French value-added tax that will have been paid by that date by the Federal Republic of Germany within the framework of the costs referred to in article 4, paragraph 1;
 - (b) Within a maximum of six months, in accordance with the requirements laid down by the Joint Commission referred to in article 10, in the case of the French value-added tax that will have been paid by the Federal Republic of Germany following the acceptance of the structure.
- (3) All payments shall be made in French currency.

Article 7. ACCEPTANCE AND MAINTENANCE

(1) Upon completion of the work, the authorities of each Contracting State shall accept the structure in the presence of the contractors.

(2) The French Republic shall be responsible for the maintenance of the structure, including winter maintenance and regular cleaning for a period of ten years, starting on the date of acceptance.

(3) Once such period has elapsed, the portion of the structure situated in German territory shall be handed over to the German authorities. Each Contracting

State shall then be responsible for maintenance in its own territory and shall determine, in agreement with the other Contracting State, what work is necessary. The competent authorities may agree that one of them shall be responsible for winter maintenance, regular cleaning and various other types of maintenance work and that such authorities shall be reimbursed for the corresponding costs.

Article 8. RIGHT TO ACCESS

(1) Officials of each Contracting State and other persons employed in the construction and maintenance of the structure, including winter maintenance and regular cleaning, may, for the purpose of performing their duties, cross the border and remain in the portion of the construction site or on the portion of the bridge situated in the territory of the other State without being obliged to obtain any certificate of registration that may be required under the laws of such State.

(2) The officials of the Contracting States referred to in paragraph 1 must carry an official pass. The other persons referred to in the above-mentioned paragraph must be in possession of an identification card bearing a photograph.

(3) In accordance with the conventions that they have concluded, the Contracting States shall accept once again without any formalities and at any time any persons who have entered the territory of the other State in violation of this Agreement.

Article 9. TAX AND CUSTOMS PROVISIONS

(1) Throughout the construction work and until the 10-year period provided for in article 7 has elapsed, the construction site and the structure shall be regarded, for the purposes of the customs regulations, indirect taxes — including import duties and taxes — and import and export regulations as French territory to the extent that it is a question of goods deliveries, various services and imported products for the construction and maintenance of the structure.

(2) The French Republic shall admit temporarily free of import duties such equipment and tools and corresponding spare parts that have either originated in the Federal Republic of Germany or are in free circulation there and that are required for the construction of the structure and its maintenance in the course of the 10-year period.

(3) The tax régime for direct taxes applicable to enterprises and their employees for the duration of the construction work and until the 10-year period provided for in article 7 has elapsed is laid down in annex I to this Agreement. Annex I shall constitute an integral part of this Agreement.

(4) The competent tax and customs authorities shall keep one another informed and give one another any assistance required in order to implement their laws and regulations within the framework of the provisions of paragraphs 1 to 3 of this article. The French officials of such authorities shall be authorized to park on the construction site and on the structure and to adopt the measures provided for in the French law and regulations. However, the French authorities shall not be authorized to arrest nationals of the other State on the territory of the latter.

Article 10. JOINT COMMISSION

(1) A Franco-German Joint Commission shall be established. The Commission shall be chaired alternately by the heads of delegation for a period of six months each. The decisions of the Commission shall be adopted by mutual consent.

(2) The Commission shall be responsible for:

- (a) Determining the site, dimensions and specifications of the bridge;
- (b) Determining the volume of the joint work;
- (c) Examining the plan and the allocation proposal;
- (d) Approving payments on account and methods of payment;
- (e) Accepting the structure;
- (f) Approving the methods of payment of the amount of the compensation referred to in article 6;
- (g) Determining the amount of the costs to be apportioned in accordance with the provisions of article 4;
- (h) Determining the terms for the transfer provided for in article 7, which is to take place once the 10-year period has elapsed;
- (i) Co-ordinating maintenance measures;
- (j) Studying such technical alterations as may prove necessary;
- (k) Examining various questions that arise in the course of the implementation of this Agreement.

(3) Each delegation may request from the competent authorities of the other Contracting State any documents it deems necessary for preparing the decisions of the Commission.

Article 11. DISPUTES

Any dispute that it has been impossible to settle by means of negotiations between the two Contracting States shall be submitted for arbitration at the request of one of the Contracting States, in accordance with the procedure laid down in annex II; annex II shall constitute an integral part of this Agreement.

Article 12. BERLIN CLAUSE

This Agreement shall be extended to *Land Berlin* provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the French Republic within three months of the date of entry into force of this Agreement.

Article 13. ENTRY INTO FORCE

(1) The instruments of ratification shall be exchanged as soon as possible at Paris.

(2) The Agreement shall enter into force on the first day of the second month following the exchange of the instruments of ratification.

IN WITNESS WHEREOF the plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE at Paris, on 17 November 1977, in duplicate, in the French and German languages, both texts being equally authentic.

For the French Republic:

[Signed]

JEAN-MARIE SOUTOU

For the Federal Republic
of Germany:

[Signed]

AXEL HERBST

ANNEX I

TAX RÉGIME FOR DIRECT TAXES

1. The tax régime for direct taxes applicable to enterprises domiciled either in France or in the Federal Republic of Germany and to their employees was laid down in the Convention signed on 21 July 1959 by the two States for the avoidance of double taxation and the establishment of principles for reciprocal administrative and legal assistance with respect to taxes on income and fortune, business taxes and land taxes.¹

2. However, during the construction work on the structure and until the 10-year period referred to in article 7 of the Agreement has elapsed, the following special provisions shall also apply, notwithstanding the provisions of the Convention of 21 July 1959.

3. The following provisions shall not apply to enterprises that, for the purpose of constructing or maintaining the structure, maintain a construction site for a period of time not exceeding the 12-month period referred to in article 2, paragraph (1) 7 (gg), of the Convention of 21 July 1959. The provisions of the Convention shall be applicable to such enterprises without any restrictions.

4. Where the enterprises participating in the construction or maintenance of the structure have, for all their construction or maintenance work on the above-mentioned structure, a permanent establishment within the meaning of article 2, paragraph (1) 7, of the aforementioned Convention, such permanent establishment shall be regarded as being situated both on French territory and on the territory of the Federal Republic of Germany. Half of any profits attributable to such permanent establishment shall be regarded as having been made in each of the two States and shall be taxable in the same proportion in each State, in accordance with the laws of that State.

5. Where, in implementation of the above provision, a permanent establishment is regarded as being situated in both French and German territory, half of the working assets of such permanent establishment shall be taxable in each State, in accordance with the laws of that State.

6. Each State may take into account, for the purpose of determining the trade tax of *Gewerbesteuer*, only half of the value of the elements on which the above-mentioned taxes are normally based.

Each State may take into account, for the purpose of determining taxes based on the payroll, only half of the amount of the payroll on which the above-mentioned taxes are normally based. This provision shall apply:

- In the case of the French Republic, to:
 - Payroll tax (*la taxe sur les salaires*);
 - The apprenticeship tax (*la taxe d'apprentissage*);
 - The employers' contribution to continuing vocational training (*la participation des employeurs à la formation professionnelle continue*);
 - Compulsory investment in construction (*l'investissement obligatoire dans la construction*);
- In the case of the Federal Republic of Germany, to:
 - Payroll tax (*Lohnsummensteuer*).

7. For the purposes of the implementation of the provisions of article 13 of the Convention of 21 July 1959, the personal activity from which income from employment is derived shall be regarded as being carried out entirely in French territory.

¹ United Nations, *Treaty Series*, vol. 770, p. 325.

For the purposes of the implementation of the provisions of paragraph 5 of the above-mentioned article 13, the personal activity from which income from employment is derived shall be regarded as being carried out in the French "frontier zone" referred to in the above-mentioned paragraph 5.

8. The competent authorities of the two States shall co-operate with one another with a view to finding a joint solution, where necessary, to all problems arising in the implementation of the above provisions. In particular, they shall decide by mutual consent whether the above provisions should be applied to enterprises domiciled in a third State. The term "competent authorities" means the authorities referred to in article 2, paragraph (1) 8, of the Convention of 21 July 1959.

ANNEX II

ARBITRATION

1. Unless otherwise provided by the Contracting States, the arbitration procedure shall be conducted in accordance with the provisions of this annex.

2. At the request of one Contracting State to the other Contracting State, in implementation of article 11 of this Agreement, an arbitral tribunal shall be established.

3. The arbitral tribunal shall be composed of three members; each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed shall nominate the third arbitrator, who shall chair the tribunal. The latter may not be of either French or German nationality, may not have his normal residence in the territory of one of the Contracting States or be in the service of one of them and may not have dealt with the matter in some other connection.

If, once two months have elapsed following the appointment of the second arbitrator, the chairman of the tribunal has not been nominated, the President of the Court of Justice of the European Communities shall appoint the chairman at the request of one of the parties within a further period of two months.

4. If, within two months following receipt of the original request, one of the parties to the dispute has not made the appointment of a member of the tribunal that is incumbent on it, the other party may refer the matter to the President of the Court of Justice of the European Communities, who shall appoint the chairman of the arbitral tribunal within a further period of two months. Once he has been appointed, the chairman of the arbitral tribunal shall request the party that has not appointed an arbitrator to do so within two months. Once the period of two months has elapsed, he shall refer the matter to the President of the Court of Justice of the European Communities, who shall make the appointment within a further period of two months.

5. If, in the cases referred to in paragraphs 3 and 4, the President of the Court of Justice of the European Communities is prevented from carrying out the functions in question or if he is a national of one of the parties, the appointment of the chairman of the arbitral tribunal or the appointment of the arbitrator shall be incumbent on the next senior Court chamber president who is not prevented from carrying out the functions in question and is of neither French nor German nationality.

6. The above provisions shall apply, where appropriate, to the filling of vacancies on the tribunal.

7. The arbitral tribunal shall reach its decisions in accordance with the rules of international law, particularly the provisions of this Agreement.

8. Where both procedural and substantive matters are concerned, the arbitral tribunal shall reach its decision by a majority of votes of its members, and the absence of or an abstention by a member whose appointment was incumbent on one of the parties shall not prevent the tribunal from giving a ruling.

In the event of a tie, the vote of the chairman shall be decisive. The decisions reached by the tribunal shall be binding on the parties. Each party shall bear the costs relating to the arbitrator appointed by it, and the two parties shall bear an equal share of all other costs. Where all other matters are concerned, the arbitral tribunal shall determine its own procedure.
