

No. 20375

FRANCE
and
SWITZERLAND

**Convention concerning the Émosson Hydroelectric Facility
(with exchanges of letters). Signed at Sion on 23 August
1963**

**Exchange of notes constituting an agreement amending
article 18 of the above-mentioned Convention. Berne,
9 May and 11 July 1978**

Authentic text: French.

Registered by France on 1 September 1981.

FRANCE
et
SUISSE

**Convention au sujet de l'aménagement hydroélectrique
d'Émosson (avec échanges de lettres). Signée à Sion le
23 août 1963**

**Échange de notes constituant un accord modifiant l'article 18
de la Convention susmentionnée. Berne, 9 mai et
11 juillet 1978**

Texte authentique : français.

Enregistré par la France le 1^{er} septembre 1981.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE SWISS CONFEDERATION CONCERNING THE ÉMOSSON HYDROELECTRIC FACILITY

The President of the French Republic and
The Swiss Federal Council,

Having simultaneously received an application for a concession for the use, in a single hydroelectric facility, of the waters of various valleys situated in France, in the department of Haute-Savoie, and in Switzerland, in the canton of Valais;

Having recognized that the overall scheme for the proposed facility will ensure the rational use of the hydraulic force of the French and Swiss water-courses concerned and is of the greatest importance for the two States, but that harnessing of the said hydraulic force and its use should be the subject of an international agreement taking account of the differences in the laws of the two States;

Having, accordingly, agreed that there was good reason for France and Switzerland, through a single concessionaire, to erect the necessary structures for harnessing and using such hydraulic force, and subsequently to share the available energy, leaving each State free to use the energy thus made available in accordance with the principles of its own laws;

Have resolved to conclude a Convention for this purpose and have appointed as their plenipotentiaries:

The President of the French Republic: Mr. Augustin Jordan, Minister Plenipotentiary;

The Swiss Federal Council: Mr. Rudolf Bindschedler, Minister Plenipotentiary, Legal Adviser to the Federal Political Department,

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

SECTION A. CONSTRUCTION AND OPERATION OF THE WORKS

Article 1. 1. The purpose of this Convention, subject to *the laws in force* in either country, is to make use of the driving force of:

- Waters collected in France, flowing from the Ruan and Prazon glaciers, the Bérard and Tré les Eaux valleys, and the Pendant, Lognan, Argentière and Tour glaciers;
- Waters collected in Switzerland, in the upper Val Ferret, from the Treutse-Bo, Planereuse and Saleina streams; and in the Val d'Arpette, from the Jure stream and from the Trient, Nant-Noir, Pécheux and Barberine.

¹ Came into force on 15 December 1964 by the exchange of the instruments of ratification, which took place at Paris, in accordance with article 26.

These waters shall be used in two successive power stations: Châtelard, situated in French territory, on the right bank of Eau Noire, immediately adjacent to the Franco-Swiss border; and Batiatz, situated in Switzerland, on the left bank of the Rhône; the level at which they are to be transferred back to the Rhône shall be approximately 453 mètres.

A reservoir situated entirely in Swiss territory for the gravity or pumped storage of both the Swiss and French waters referred to above shall be formed by means of a barrage erected in the Barberine gorge at the Emosson plain outlet. The water level of the reservoir shall be approximately 1,930 metres.

2. This Convention shall not apply to waters that now flow or are channelled into the existing Barberine storage reservoir.

France shall recognize Switzerland's right to store such waters in the Emosson reservoir, as well as other waters intended for the generation of hydroelectric power.

Further, France shall recognize Switzerland's right to use the Emosson reservoir for storing other waters collected in Switzerland, provided that implementation of this Convention is not thereby impeded.

Article 2. The general scheme and planning of the works shall be the responsibility of the concessionaire; they shall be submitted, with all supporting documentation, to the two High Contracting Parties but engineering work shall not begin until they have been approved by both High Contracting Parties.

In matters of safety, the works shall be subject to the laws of the State in whose territory they are to be constructed.

Article 3. The works shall not be put into service without the prior agreement of the two High Contracting Parties; they shall be maintained and operated by the concessionaire.

The flood discharge and drawdown equipment of the dam shall be operated in accordance with regulations approved by the two High Contracting Parties.

Save in the event of danger deemed imminent by the Swiss authorities, the Emosson impoundment shall not be emptied, except when operating conditions are normal, without the consent of the competent authorities of the two States.

The concessionaire shall be bound by the concession contract to release, downstream from the dam and intakes, the discharge deemed necessary for safeguarding the general interest, particularly with respect to public health, supplying riparian populations, irrigation, the conservation and movement of fish and the protection of places of interest and landscapes.

The two High Contracting Parties reserve the right to impose further obligations on the concessionaire with a view to safeguarding the general interest.

Article 4. The two High Contracting Parties reserve the right jointly to supervise the construction and operation of the works and, if need be, jointly to authorize or forbid any changes in previously approved designs and plans.

To this end, the two High Contracting Parties shall establish a Standing Supervisory Commission on which each shall be represented by a delegation comprising officials and experts from the competent authorities of the two States.

The Commission shall, in particular, review the designs and plans for constructing the works for approval by the two High Contracting Parties; inspect,

in the course of construction and operation, the works and structures so as to ensure that they conform to the approved designs and plans and to the concession contract; and, in general, review all matters relating to performance under both concessions granted by the two High Contracting Parties. The Commission's findings shall be recorded in minutes which shall be submitted to the competent authorities of the two States so that they may take the necessary decisions.

The Standing Supervisory Commission shall have free access at all times to the various installations of the concessionaire. Each High Contracting Party shall provide all facilities necessary for the discharge of its duties.

SECTION B. APPORTIONMENT OF ENERGY BETWEEN THE TWO STATES

Article 5. 1. The two High Contracting Parties agree that the volumes of the average theoretical power of the natural driving force of the waters contributed by each of the two States, to which this Convention applies, shall, by virtue of article 1, be deemed to be equal.

2. They agree that the two States shall, at all times, have equal rights to the use of the installations of the facility and of the capacity available in the Emosson reservoir, such available capacity being understood to be total capacity of the reservoir, minus the capacities corresponding to the Swiss rights recognized by France in article 1, paragraph 2, above.

3. With regard to the apportionment between the two States of the electric power generated by the Châtelard and Batiáz stations, the following provisions shall apply:

- (a) Half of the electric power generated solely by the natural driving force of the waters referred to in paragraph 1 above shall be deemed to have been generated at all times in the territory of each State, whether such energy is generated by run of river or by draw-off of the waters stored in the Emosson reservoir, and without it having to be actually transmitted in the same proportion to the territory of each State at the time of generation.
- (b) The supplementary electric power obtained from the Châtelard station by artificially increasing, through prior pumped storage in the Emosson reservoir, the driving force of waters flowing into the facility at a level below that of the reservoir, shall be deemed to have been obtained in the territory of both States in proportion to the amounts of power supplied by each of them for pumping. Each State may require its due share of such supplementary generation to be transmitted to its territory at the time it is generated.

4. The amounts of energy required to meet the concessionaire's own obligations and needs shall be supplied in equal proportions by the two States.

5. At the end of each year, or any other period deemed more appropriate by the two High Contracting Parties, a record of the transfers of energy made between the two States under this Convention shall be provided to the Standing Supervisory Commission referred to in article 4 above, for the purpose of checking whether the record concords with the preceding provisions. In the event of a discrepancy, the Commission shall make appropriate proposals to the two High Contracting Parties with a view to rectifying the situation.

Article 6. Each State may dispose of the energy it receives in the manner and on the conditions it deems appropriate.

Energy generated in the territory of one State and to be used in the other State, in accordance with the provisions of article 5, paragraphs 3 and 4, shall be exempt in the first State from all fiscal taxes, levies and restrictions of whatever kind, so that the said energy may be freely transmitted to the second State and be treated in all respects as though it had been generated in the territory of that State.

Should either State have no need in its territory for all or part of its share of energy, it shall not obstruct the export to the territory of the other State of the energy thus made available, subject to compliance with the relevant legal provisions.

If need be, each State shall, as far as possible, facilitate the installation and use by the other State of the energy transmission equipment required for implementing the above provisions.

SECTION C. PROVISIONS RELATING TO THE CONCESSIONAIRE

Article 7. The concessionaire must be a public company with its registered place of business in Switzerland and having its elected domicile in France.

The said Company shall be subject to Swiss law, except where such law conflicts with the provisions of this Convention and with the concession contract.

Article 8. The authorized capital of the Company shall be distributed equally between a group of shareholders approved by Switzerland and a group of shareholders approved by France.

Article 9. The articles of association and amendments thereto shall be transmitted to the two High Contracting Parties, as also the instruments relating to the rights and obligations of the concessionaire *vis-à-vis* the shareholders.

Article 10. Each group of shareholders shall be entitled to an equal number of votes in and representatives on the organs of the Company. Each of the two High Contracting Parties may appoint an auditor who shall have the right to participate in an advisory capacity in general meetings and in meetings of the organs responsible for the administration of the Company.

SECTION D. PROVISIONS RELATING TO THE CONCESSIONAIRE

Article 11. Rights to the use of the hydraulic force of the waters shall be granted, in the territory of each State, by the competent authorities in accordance with the laws and regulations in force in that State, in so far as they do not conflict with the implementation of the provisions of this Convention.

Article 12. The two concessions shall be based on a single scheme covering the facility as a whole, the purpose of the concession granted by each State being the use of the hydraulic force of the stretches of watercourse situated in its territory.

The terms of the two concessions shall be concorded on all points affecting the interests of the two States, in particular with respect to the periods within which the works are to be completed and the power stations brought into service, and with respect to taxes and levies, repurchase, the return of the installations to each State on the expiry of the concession and the possible renewal of each concession.

The two High Contracting Parties shall notify each other of their decisions concerning the concession contracts, each of which shall enter into effect only when the two High Contracting Parties have agreed on the terms established.

The foregoing shall also apply to any subsequent decision amending the said terms or restricting or withdrawing the rights jointly granted.

The two concessions shall expire on 31 December of the eightieth year following the later of the dates established by the two High Contracting Parties for bringing the two power stations into service, should these dates differ.

Article 13. In the event of non-completion of the work, interruption in the operation of the installations or any other ground for forfeiture provided for under the concession contracts, the two High Contracting Parties shall jointly take whatever action they deem most appropriate to the situation and, if need be, to the granting of new concessions.

Article 14. At least ten years before the date of expiry of the concessions, negotiations shall be initiated between the two High Contracting Parties with a view to reaching agreement on the question as to whether operation of the facility is to be continued; if it is to be continued, the apportionment of energy between the two States shall be maintained in accordance with the provisions of article 5 of this Convention and the terms of the new operational régime shall be determined accordingly. In the event that operation is not to be continued, the two High Contracting Parties shall jointly take the action deemed most appropriate to the situation.

SECTION E. ECONOMIC AND FISCAL PROVISIONS

Article 15. So far as possible, and on essentially equal economic terms, constructional works contracts and orders for materials, raw materials and equipment for the hydroelectric facility which is the subject of this Convention shall be apportioned equally between the two countries.

The two Contracting Parties shall take whatever action may be required for the hiring of their nationals, on a basis of equality, to do work in the territory of either State.

Article 16. For the purpose of carrying out the work and for the maintenance, supervision and operation of the installations, the two Contracting Parties:

- (a) Shall not levy any import or export duty on materials, raw materials or equipment originating in and imported from the other State and intended for use during the work or for incorporation in the installations;
- (b) Shall admit into their territory on a temporary basis, free of customs duties and taxes, the equipment imported from the other State needed for the work; and
- (c) Shall let the said materials, raw materials and equipment pass free from import and export prohibitions or restrictions.

Article 17. The two High Contracting Parties shall not obstruct or levy any tax on transfers of funds between the two States resulting from the implementation of the provisions of this Convention.

Article 18. Fiscal matters relating to implementation of this Convention shall be settled in accordance with the provisions of the Convention of 31 December 1953 between France and Switzerland for the avoidance of double taxation with respect to taxes on income and property,¹ as worded at the time of signature of the present Convention.

¹ United Nations, *Treaty Series*, vol. 772, p. 221.

Denunciation of the 1953 Convention shall not terminate the application of its provisions with respect to fiscal questions relating to the implementation of the present Convention.

Should the 1953 Convention be amended or replaced by a new convention, the two High Contracting Parties may jointly decide, by an exchange of letters, to apply to the concessionaire of the two Governments the resultant new provisions so long as they remain in force.

Article 19. The two High Contracting Parties shall confer together on the implementation of any general measure taken by either State that would result in a change in the situation of either State with respect to implementation of this Convention.

SECTION F. USE BY SWITZERLAND OF FRENCH WATERS DOWNSTREAM FROM THE FACILITY

Article 20. France shall grant Switzerland free use, downstream from the facility which is the subject of this Convention, of the waters collected in France and diverted into the Emosson reservoir, subject to the following provisions:

The waters of the French basin of the Arve, diverted into the Emosson reservoir (North and South header pipes) and used in the Châtelard and Batiаз power stations, shall be stored in Lake Geneva so that they may be discharged to Geneva at the request of the competent French authorities and thus improve the conditions of use in France of the Rhône waters, in particular for navigation.

The volume available in Lake Geneva shall not be greater than that of a stretch of water 150 mm deep.

Accumulations in Lake Geneva and supplementary discharges to Geneva may be subject to certain restrictions designed to maintain the current situation with respect to the low and high levels of Lake Geneva and to facilitate the use of such supplementary discharges by the Coulouvrenière, Verbois and Chancy-Pougny power stations.

The competent authorities of the two States shall jointly establish the necessary operational procedures.

SECTION G. SETTLEMENT OF DISPUTES

Article 21. Any dispute relating to the interpretation or implementation of this Convention, or of either of the concessions referred to in this Convention, shall be submitted, at the request of either of the two High Contracting Parties, to an arbitration tribunal, in the event that it has not been possible to settle the dispute through the diplomatic channel within a reasonable period.

Article 22. The arbitration tribunal shall be constituted, in each case, as follows: each High Contracting Party shall designate an arbitrator selected from among its nationals. The two arbitrators thus designated shall then appoint an umpire who shall be a national of a third State.

If the arbitrators and the umpire have not been designated within a period of two months from the request referred to in article 21, each High Contracting Party may request the President of the International Court of Justice to make the necessary appointments. Should the President be of the nationality of one of the High Contracting Parties, or be unable to participate for any other reason, the Vice-President should be requested to make the necessary appointments.

Should the latter be unable to participate, or be a national of either High Contracting Party, the appointments shall be made by the oldest member of the Court who is not a national of either High Party.

Article 23. The arbitration tribunal shall adopt its decisions by a majority of the votes cast. Its decisions shall be binding on the Parties. Any dispute that may arise between the High Contracting Parties concerning the interpretation of, or compliance with, an arbitral decision shall be submitted for a ruling by the tribunal which made the decision.

The cost of the arbitrators's remuneration and the operating expenses of the tribunal shall be defrayed equally by France and Switzerland.

On all other matters, the tribunal shall determine its own rules of procedure.

SECTION H. EXCHANGE OF TERRITORIES

Article 24. The two High Contracting Parties agree to conclude a convention for revising the course of the Franco-Swiss border between the canton of Valais and the department of Haute-Savoie, in the Barberine and Eau-Noire valleys, so that the Emosson dam and storage reservoir are situated wholly in Swiss territory and the Châtelard power station wholly in French territory. This revision shall involve an exchange of territories equal in area.

The competent hydroelectric development agencies of the two States shall record officially, in jointly-prepared minutes that the concessionaire company has made all necessary arrangements for undertaking the work on the Emosson hydroelectric facility and that it is ready to proceed with the execution thereof. In particular, the minutes shall indicate the date on which work is to be started.

Article 25. In the event that this Convention cannot be fully implemented, the two High Contracting Parties agree that the areas which are the subject of the exchange of territories referred to in article 24 may not be used for purposes other than those provided for under this Convention, save where a new agreement is concluded between the two States.

SECTION I. FINAL PROVISIONS

Article 26. This Convention shall be ratified and the instruments of ratification exchanged at Paris. It shall enter into force on the day on which the instruments of ratification are exchanged.

Save where the rights of the concessionaire are concerned, the Convention may be denounced by either of the High Contracting Parties, with at least six months' notice, if the work on the Emosson facility has not begun within a period of ten years from the entry into effect of this Convention.

IN WITNESS WHEREOF, the plenipotentiaries of the two States have signed this Convention.

DONE at Sion, on 23 August 1963, in two original copies, in the French language.

For the French Republic:
[AUGUSTIN JORDAN]

For the Swiss Confederation:
[RUDOLF BINDSCHIEDLER]

EXCHANGES OF LETTERS

I a

FEDERAL POLITICAL DEPARTMENT

The Chairman of the Swiss Delegation

Sir,

With reference to the Franco-Swiss Convention concerning the Emosson hydroelectric facility concluded today, I have the honour to define as follows the meaning and scope of article 1, paragraph 2:

1. The existing Barberine hydroelectric power station, of which the dam and storage reservoir will be submerged by the Emosson reservoir, and also the Trient and Vernayaz power stations, shall be maintained and shall continue to be used by the Swiss Federal Railways (CFF). CFF shall retain the right to install pumps in the Barberine and Nant de Drance power stations for discharging into the Emosson impoundment or into the Vieux Emosson storage reservoir, the flows available to CFF at Châtelard and the Emosson impoundment. Regulation of the rights of use enjoyed by CFF shall remain the exclusive prerogative of Switzerland at all times.

2. The following shall be reserved for CFF from the Emosson impoundment:

(a) An annual discharge, consisting of:

- The average annual inflows into the existing Barberine storage reservoir from the Barberine, together with the regions of Nant de Drance, Triège and Bel'Oiseau, without any deduction for current discharges from the storage reservoir; together with
- The average annual discharges drawn off by the Emosson facility from the now existing CFF intakes on the Trient, Eau-Noire and Pécheux, reduced in proportion to the increase in the available head.

(b) A storage volume, consisting of:

- The volume of the Barberine impoundment in its present state, including the dead volume, together with
- A supplementary volume of 17 million cubic metres.

3. The Swiss concession shall provide for the restoration of the water intake and delivery structures of the Barberine power station and for the safe operation of the CFF power stations.

4. The above provisions shall also apply to the successors in law to CFF.

I should be grateful if you would confirm your agreement with the foregoing and accept, Sir, the assurances of my highest consideration.

Sion, 23 August 1963

[RUDOLF BINDSCHEDLER]

Mr. Augustin Jordan
Minister Plenipotentiary
Chairman of the French delegation

II a

LIBERTY—EQUALITY—FRATERNITY

FRENCH REPUBLIC

MINISTRY OF FOREIGN AFFAIRS

Office of Economic and Financial Affairs

Sion, 23 August 1963

Sir,

I have the honour to acknowledge receipt of your letter defining as follows the meaning and scope of article 1, paragraph 2, of the Franco-Swiss Convention concluded on today's date:

[See letter I a]

I confirm my agreement with the foregoing and accept, Sir, etc.

[Signed]

A. JORDAN

Mr. Bindschedler
Chairman of the Swiss Delegation

I b

LIBERTY—EQUALITY—FRATERNITY

FRENCH REPUBLIC

MINISTRY OF FOREIGN AFFAIRS

Office of Economic and Financial Affairs

Sion, 23 August 1963

Sir,

The Franco-Swiss Convention relating to the Emosson hydroelectric facility concluded on today's date at Sion contains various fiscal provisions in articles 6 and 17.

I have the honour to inform you of our understanding that the said provisions shall not apply to income and wealth taxes levied in the two Contracting States and that the provisions of article 17 of the Convention shall not preclude the levying in Switzerland of federal stamp duty, including stamp duty on dividend coupons, or of advance tax.

I should be grateful if you would inform me of your agreement with this interpretation.

Accept, Sir, etc.

[Signed]

A. JORDAN

Mr. Bindschedler
Chairman of the Swiss Delegation

II *b*

FEDERAL POLITICAL DEPARTMENT

The Chairman of the Swiss Delegation

Sir,

I have the honour to acknowledge receipt of your letter defining as follows the meaning and scope of articles 6 and 17 of the Franco-Swiss Convention concerning the Emosson hydroelectric facility, concluded on today's date at Sion:

[*See letter I b*]

I confirm my agreement with the foregoing and accept, Sir, etc.

Sion, 23 August 1963

[RUDOLF BINDSCHEDLER]

Augustin Jordan
Minister Plenipotentiary
Chairman of the French Delegation

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
BETWEEN THE FRENCH REPUBLIC AND THE SWISS CONFEDERATION AMENDING ARTICLE 18 OF THE CONVENTION OF 23 AUGUST 1963² CONCERNING THE ÉMOSSON HYDROELECTRIC FACILITY. BERNE, 9 MAY AND 11 JULY 1978

I

FEDERAL POLITICAL DEPARTMENT

Berne, 9 May 1978

No. s. o. 663.2

To the Embassy of France, Berne

The Federal Political Department presents its compliments to the Embassy of France and has the honour to communicate the following:

Switzerland and France concluded, on 9 September 1966,³ a new fiscal Convention, amended by an additional Agreement of 3 December 1969, which replaced that of 31 December 1953.⁴ In order to apply the provisions of the said Convention to the Emosson hydroelectric complex, article 18 of the Convention of 23 August 1963 between the Swiss Confederation and the French Republic concerning the hydroelectric facility at Emosson² is hereby amended as follows:

“Fiscal questions relating to the implementation of this Convention shall be settled in accordance with the provisions of the Franco-Swiss Convention of 9 September 1966, as amended by the additional Agreement of 3 December 1969, for the avoidance of double taxation with respect to taxes on income and wealth, as worded at the time of the Franco-Swiss exchange of letters of 9 May and 11 July 1978.

Denunciation of the 1966 Convention, as amended in 1969, shall not terminate the application of its provisions with respect to fiscal questions relating to the implementation of this Convention.

Should the 1966 Convention and the 1969 additional Agreement be amended or replaced by a new convention, the two High Contracting Parties may jointly decide, by an exchange of letters, to apply to the two Governments' concessionaire the resultant new provisions, so long as those provisions remain in force.”

The Federal Council has approved the above amendments.

If the above provisions are agreeable to the French Government, this note and your note in reply thereto shall constitute an agreement between the two

¹ Came into force on 11 July 1978, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 361 of this volume.

³ United Nations, *Treaty Series*, vol. 772, p. 275.

⁴ *Ibid.*, p. 221.

Governments on amendments to the Convention of 23 August 1963, in accordance with article 18 thereof. The said amendments shall enter into force on the date of the French note.

The Department takes this opportunity, etc.

II

EMBASSY OF FRANCE IN SWITZERLAND

No. 189

Berne, 11 July 1978

To the Federal Political Department, Berne

The Embassy of France presents its compliments to the Federal Political Department and has the honour to acknowledge receipt of its note No. s. o. 663.2 of 9 May 1978, which reads as follows:

[See note I]

The Embassy of France has the honour to inform the Federal Political Department of the agreement of the French Government with the foregoing provisions.

The Embassy takes this opportunity, etc.
