

No. 24693

FRANCE
and
FEDERAL REPUBLIC OF GERMANY

**Convention on the development of the upper course of the
Rhine between Basel and Strasbourg (with protocol).
Signed at Luxembourg on 27 October 1956**

Authentic texts: French and German.

Registered by France on 27 April 1987.

FRANCE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

**Convention sur l'aménagement du cours supérieur du Rhin
entre Bâle et Strasbourg (avec protocole). Signée à
Luxembourg le 27 octobre 1956**

Textes authentiques : français et allemand.

Enregistrée par la France le 27 avril 1987.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE
FEDERAL REPUBLIC OF GERMANY ON THE DEVELOPMENT OF
THE UPPER COURSE OF THE RHINE BETWEEN BASEL AND
STRASBOURG

The President of the French Republic and the President of the Federal Republic of Germany, for the purpose of concluding a Convention on the development of the upper course of the Rhine between Basel and Strasbourg, have appointed as their plenipotentiaries:

The President of the French Republic: Mr. Christian Pineau, Minister for Foreign Affairs;
The President of the Federal Republic of Germany: Mr. Heinrich von Brentano, Minister for Foreign Affairs,

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

SECTION A. GENERAL DESCRIPTION AND PRINCIPLES

Article 1. 1. The development of the Rhine downstream of the reach of Vogelgrün as far as Strasbourg shall consist of four reaches: Markolsheim, Sundhouse, Gerstheim and Strasbourg; each of these shall include:

- (1) A weir, at an appropriate place on the river, about halfway along the reach,
- (2) A section upstream of the weir, in the bed of the river, bounded by faced embankments,
- (3) A section downstream, on the left bank of the river, constituted by a diversion channel on which shall be established the hydro-electric plant, locks and appurtenant basins (section analogous to the current project for the Grand Canal of Alsace),
- (4) A junction to the Rhine.

2. This development shall leave room, downstream of each weir, for a section of river to which the provisions of article 8 below shall apply.

Article 2. 1. The development shall be executed by France. It shall be conceived and carried out by it in the most rational manner possible and in such a way as to obtain a maximum economic output in the production of electric energy bearing in mind, in particular, the interest, on the one hand, of dredging upstream of the storage areas and, on the other, of increasing the flow in the side-channel; in respect of the navigational installations it shall be executed in accordance with the resolutions of the Central Commission for the Navigation of the Rhine.

2. The development must be undertaken without delay and executed with the greatest diligence.

Article 3. As and when plans are drawn up, they shall be communicated without delay to the Central Commission for the Navigation of the Rhine.

¹ Came into force on 31 December 1956 by the exchange of the instruments of ratification, which took place at Luxembourg, in accordance with article 29.

Article 4. 1. Each Contracting Party shall assume responsibility on its territory for directing the affluents and old arms of the Rhine into the side-channels that shall follow the lateral embankments.

2. Each Contracting Party shall also be responsible, on its own territory, for the measures needed to avoid any damage on its own bank of the river from variations in the level of the water table.

Article 5. The Contracting Parties shall establish a Technical Committee consisting of an equal number of representatives of each Government, assisted by experts (Committee A). This Committee shall be kept informed in due time of the general plans, work schedules and progress reports of construction. It may make any useful suggestions before the start of the work and shall keep it under review as it proceeds.

Article 6. 1. The Federal Republic of Germany shall grant to France the right of support and passage on all lands situated on the right bank which shall be necessary for planning, constructing and operating the river works.

2. The Federal Republic shall make available to France the lands within its territory having to be occupied temporarily or permanently in order to carry out the works.

3. In the case of the Markolsheim reach, such occupation must take place not more than three months after the application to be made by the French Government. This time-limit may be increased for the subsequent reaches, after consideration by Committee A, with due regard for the provisions of German law in respect of temporary occupation and expropriation.

Article 7. 1. Without prejudice to the right of administrative sovereignty of the Federal Republic of Germany, France, as the operator of the weirs, shall be responsible for their upkeep along their whole length.

The maintenance of the lateral embankments on the German side shall be ensured:

- (a) Over a distance of 200 metres both upstream and downstream of each weir, by the French Government;
- (b) Upstream of each weir over the rest of the distance, by the competent German service; such maintenance shall be carried out as rapidly as possible, on behalf of the French Government, in accordance with its instructions to the above-mentioned service.

In case of imminent danger, the Federal Republic may take any emergency measures with a view to guaranteeing public safety.

The discharge side-channels, and works built by the Contracting Parties on these side-channels, shall be maintained at the expense of, and by, each Government within its own territory.

2. The Federal Republic shall be entitled to authorize new installations on the German bank bordering the storage area on each reach. However, the plans for these installations must be submitted to Committee A, which may oppose their execution only if they would result in impediments to the management and operation of the hydro-electric development.

Article 8. 1. After each diversion becomes operational, fixed sills shall be built in the bed of the Rhine downstream of the weir, located in such a way as to maintain the present average water level in the longitudinal section of the river between successive sills; however, subject to agreement between the two Contracting Parties, these fixed sills may be designed, in certain sections, to modify the present water level, on condition that the effects of the modifications are favourable to both river banks. There must be no deterioration of the present situation with regard to flooding.

2. In so far as fixed sills would not answer the above-mentioned purposes, other appropriate constructions, for example, mobile sills, shall be built.

Article 9. 1. Downstream of the Kembs Dam and as far as the outlet from the Vogelgrün plant, the reserved flow shall be 50 m³/sec. However, in the period up to the entry into operation of the Vogelgrün plant, and in the period following the completion of the construction of the agricultural dam or dams of Brisach, the reserved flow shall be reduced to 30 m³/sec. provided that this does not seriously affect the general interests of the riverine zones of either of the Contracting Parties. Committee A shall, furthermore, establish the conditions for a winter régime of 20 m³/sec. in order to take into account electric energy requirements subject to the same reservation.

Over this section and within the limit of a maximum outflow of 6 m³/sec., the Federal Republic may give permission during the growth period for the taking of water for irrigation purposes from the reserved flow.

2. In the part of the development referred to in article 1, the reserved outflow is fixed at 50 m³/sec. until an uninterrupted series of pools has been built up by the works provided for in article 8 downstream of the weir in a particular reach. As soon as this has been done on one reach, the reserved outflow for that reach shall be set at 15 m³/sec., provided that this will not seriously affect the general interests of the riverine zones of either of the Contracting Parties; however, Committee A shall also establish the conditions for a smaller reserved outflow in order to take into account needs for electric energy and subject to the same reservation.

3. Over the whole course of the Rhine, the Federal Republic may authorize the taking of water for industrial use under conditions to be determined by Committee A. Downstream of the weirs and up to the corresponding re-entry point, such taking shall be from the reserved outflow.

Article 10. 1. After the entry into service of the Vogelgrün reach, the Federal Republic shall construct as soon as possible upstream of Brisach one or two agricultural dams. The French Government shall issue an authorization for the construction of these works on its territory and shall make available to the Federal Republic the necessary lands. The said works must not cause any damage to agriculture on the French bank. The plans shall be submitted to Committee A, together with the rules of operation.

2. The Federal Republic shall bear the entire cost of constructing, operating and maintaining these works.

Article 11. 1. France has the exclusive right to the energy produced.

2. The costs of executing the development, as defined in articles 1 and 8, shall be borne in their entirety by France.

3. To offset the additional expenditure resulting from the amendment of the original project, France shall not be required to make any payment to the Federal Republic of Germany for the energy produced by the installations built, or to be built, from Basel to Strasbourg.

SECTION B. PROBLEMS RELATING TO THE FRONTIER

Article 12. 1. On the section from the German-Swiss frontier to the upstream face of the weir built near Kembs at Rhinekilometre 173.974, the frontier between France and the Federal Republic of Germany shall follow the middle of the Rhine. The middle of the Rhine means the continuous median line of the watercourse. To the right of the inlet channel between Rhinekilometres 173.300 and 173.800, the frontier shall be determined by a curve defined in the annex (map and legend) which forms an integral part of this Convention.

2. On the weir, the frontier shall run through the middle of the central span to the outer face of the foundations of the river works on the downstream side, and shall run parallel to this outer face as far as the intersection with the axis of the Thalweg.

3. The continuous median line by ordinary water level and the line of the frontier on the weir are shown on the map in the annex.

Article 13. 1. On the weir, the frontier shall be marked on the service roads and in the control room, by a painted line, the middle of which shall constitute the frontier.

2. On either side of these painted lines, signs shall be affixed on the service roads and in the control room bearing the names of the two States.

Article 14. 1. Each Contracting Party shall exercise its right of sovereignty over the weir and its storage area, within the limits of the territory over which its sovereignty extends.

2. Persons qualified to ensure the exercise of these rights of sovereignty, in particular police and customs officials, may circulate freely at all times on all parts of the weir situated in the territory of their country.

Article 15. Each Contracting Party shall maintain the gate erected at the end of the weir on its territory with a view to permanently prohibiting public access to the weir.

Article 16. 1. Persons responsible for the technical supervision, operation and maintenance of the weir shall be entitled, for the purpose of discharging their duties, to cross the frontier on the weir and to remain on the river works situated in German territory between the frontier and the gate.

2. The persons specified in paragraph 1 of this article must, when engaged in the performance of their duties in German territory, carry with them a document attesting to their status and must produce it whenever requested to do so.

Article 17. 1. Without prejudice to the Federal Republic's right of administrative sovereignty, the operation, maintenance and technical supervision of the weir, the river works and the appurtenant installations on German territory shall be carried out by the agents of the operating company in accordance with the technical regulations established by the French services. These regulations shall be communicated to the German authority.

2. The Federal Republic shall grant the agents of the operating company all the facilities needed for discharging their duties beyond the eastward closing gate; these facilities shall be the subject of a special agreement.

Article 18. The Contracting Parties shall not impose any import or export duty on the construction materials, raw materials and equipment exported from one State to the other for use in the supervision, operation, maintenance or conservation of the weir, the river works and the appurtenant installations situated on both sides of the frontier; they shall allow the said products to pass freely without any economic import or export prohibitions or restrictions.

Article 19. 1. The provisions of articles 12 to 18 relating to Kembs shall apply similarly to the reaches of Markolsheim, Sundhouse, Gerstheim and Strasbourg, in so far as they do not conflict with the provisions of article 7.

2. The provisions of article 18 shall be extended to the construction materials, raw materials and equipment used in the building of the latter reaches.

SECTION C. COMPENSATION

Article 20. Fair compensation shall be paid by the Federal Republic to the owners of land subjected to easements or permanently occupied in any other way by the river works. France shall reimburse the Federal Republic for such payments.

Article 21. The provisions of article 20 shall apply also to the Kembs reach.

Article 22. France shall pay the Federal Republic fair compensation for damage caused by the reaches from Kembs up to and including Vogelgrün, apart from any which may have resulted from river-development works carried out on the Rhine in the last century.

Article 23. In the case of the reaches from Markolsheim to Strasbourg, which shall be constructed in accordance with the provisions of articles 1, 2 and 8 of this Convention, the Federal Republic shall not be entitled to claim from the French Republic any compensation for damage. This provision shall not rule out the possibility of a request for compensation for damage resulting from negligence by personnel or from failures of the installations.

Article 24. The Contracting Parties shall establish a Committee consisting of an equal number of representatives of each Government, assisted by experts (Committee B). This Committee shall be responsible for examining any difficulties that may arise in connection with the application of articles 20 and 21, and for determining the amount of the compensation provided for in articles 22 and 23.

SECTION D. ARBITRAL PROCEDURE

Article 25. Disputes relating to the interpretation or application of this Convention shall, to the fullest extent possible, be settled by the competent authorities of the two Contracting Parties.

Article 26. If a dispute cannot be settled in this way, it shall, at the request of either of the Contracting Parties, be submitted to an arbitral tribunal. In particular, the arbitral tribunal shall deal with cases in which the Committees referred to in articles 5 and 24 are unable to reach agreement.

Article 27. The arbitral tribunal shall be composed, on an *ad hoc* basis, in the following manner: each Contracting Party shall appoint a representative, and the two representatives thus appointed shall name an umpire who shall be a national of a third State. If the representatives and the umpire have not been appointed within three months after one of the Contracting Parties shall have made known its intention of bringing the case to the arbitral tribunal, either Contracting 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 is a national of either Contracting Party, or is unable to act for any other reason, the Vice-President shall be requested to make the necessary appointments.

Article 28. The arbitral tribunal shall take decisions by majority vote. Its decisions shall be binding on the Parties. Each Contracting Party shall bear the costs incurred by its representative. The other costs shall be borne in equal proportions by the Contracting Parties. In all other matters, the tribunal shall determine its own procedure.

Article 29. This Convention and its annexed Protocol shall enter into force on the date of exchange of the instruments of ratification.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention and thereto affixed their seals.

DONE at Luxembourg on 27 October 1956, in two copies, each in French and German, both texts being equally authentic.

For the French Republic:

[CHRISTIAN PINEAU]

For the Federal Republic
of Germany:

[HEINRICH VON BRENTANO]

ANNEXED PROTOCOL TO THE CONVENTION BETWEEN THE FRENCH
REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY ON THE
DEVELOPMENT OF THE UPPER COURSE OF THE RHINE BETWEEN
BASEL AND STRASBOURG

Article 1. For the application of article 22, although the German experts consider, contrary to the French experts, that the construction of the Alsace canal may cause crop damage, it is understood that any such damage shall not give rise either to discussions or to compensation.

Article 2. (1) For the application of article 23, it is understood that the sills provided for in article 8 for the reaches from Markolsheim to Strasbourg shall be constructed, save in the case of *force majeure* verified by Committee A, within a time-limit of two years dating from the diversion of navigation on each reach.

If instead of a sill, another work, for example a mobile construction, should be found necessary, the above time-limit may be extended by Committee A in proportion to the size of the construction.

If these time-limits are not respected, compensation may become due notwithstanding the provisions of article 23. The amount of compensation shall be determined by Committee B.

(2) Article 23 does not rule out compensation for occasional, direct, material and indisputable damage caused while the works are being executed, at the site of and in connection with these works.

Article 3. For the application of article 24, it is understood that Committee B shall comply with the decisions taken on 16 March 1956 by Subcommittee III of the Franco-German Rhine Development Study Commission and the expert report dated 25 May 1956 on fish farming.

DONE at Luxembourg on 27 October 1956 (in two copies in French and German).

For the French Republic:

[CHRISTIAN PINEAU]

For the Federal Republic
of Germany:

[HEINRICH VON BRENTANO]