

**No. 25820**

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**FRANCE  
and  
SWITZERLAND**

**Agreement concerning the linkage of expressways between Saint-Julien-en-Genevois (Haute-Savoie) and Bardonnex (Geneva) (with annexed plans). Signed at Paris on 27 September 1984**

*Authentic text: French.*

*Registered by France on 1 April 1988.*

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**FRANCE  
et  
SUISSE**

**Accord relatif au raccordement des autoroutes entre Saint-Julien-en-Genevois (Haute-Savoie) et Bardonnex (Genève) [avec plans annexés]. Signé à Paris le 27 septembre 1984**

*Texte authentique : français.*

*Enregistré par la France le 1<sup>er</sup> avril 1988.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE SWISS FEDERAL COUNCIL CONCERNING THE LINKAGE OF EXPRESSWAYS BETWEEN SAINT-JULIEN-EN-GENEVOIS (HAUTE-SAVOIE) AND BARDONNEX (GENEVA)

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

Desiring to improve expressway linkages between France and Switzerland have decided to conclude the following Agreement:

*Article 1. SUBJECT OF THE AGREEMENT*

1. French Highway A 40 and Swiss National Route N 1 a shall be linked near Saint-Julien-en-Genevois (Haute Savoie) and Bardonnex (Geneva) by the northern section of French highway A 401.

2. To that end, there shall be constructed:

(a) In the French and Swiss territory, a highway bridge hereinafter called "the principal work", approximately 377 metres long, comprised of two carriageways of three lanes each. It shall cross the depression, currently in Swiss territory, and the SNCF railway tracks, French National Route 206, and local route No. 7 at Lathoy in Saint-Julien-en-Genevois in French territory, to join with highway A 40;

(b) In French and Swiss territory, the buildings and installations used to carry out frontier control formalities. These installations shall be the subject of separate agreements.

3. The highway coming from the direction of Switzerland shall cross the border initially at point A, defined by its co-ordinates in the French system:  $X_F=890\ 283.99$ ;  $Y_F=134\ 527.83$ ;  $H_F=460.008$ ; and Swiss system:  $X_{CH}=111\ 664.532$ ;  $Y_{CH}=496\ 237.043$ ;  $H_{CH}=459.960$ . At point A, the course of the highway centre line is an arc of a circle whose centre M has the following co-ordinates: French system:  $X_F=891\ 083.69$ ;  $Y_F=134\ 510.47$ ; Swiss system:  $X_{CH}=111\ 595.238$ ;  $Y_{CH}=497\ 034.037$ . At this same point A, the summit curve includes a ramp of approximately 1.5 per cent in the direction of France.

4. A detailed plan containing a sketch of the planned linkage is annexed to this Agreement.<sup>2</sup>

5. The exchange of territory designed to ensure that the principal work is located entirely in French territory shall be governed by a separate agreement.

*Article 2. CONSTRUCTION OF THE PRINCIPAL WORK*

1. The Government of the French Republic shall be responsible for the construction of the principal work under French regulations and standards applying to the execution of public works of this type. It shall be responsible, *vis-à-vis* the Swiss Federal Council,

<sup>1</sup> Came into force on 1 April 1986, i.e., the first day of the second month following the exchange of the instruments of approval, which took place at Berne on 29 January and 5 February 1986, in accordance with article 14 (2).

<sup>2</sup> See insert in a pocket at the end of this volume.

for the management of the project. It shall be responsible, in particular, for surveys, requests for bids, adjudication, construction, supervision and acceptance of the project.

2. Swiss designers and contractors shall have the right to submit proposals for the entire project. The list of candidates invited to submit bids, the rejection of unacceptable bids and the awarding of contracts shall be decided in agreement with the Commission referred to in article 11.

3. The construction schedule for the principal work shall be established by mutual agreement between the Contracting Parties, taking into consideration their national highway programmes.

### *Article 3. OPERATION AND MAINTENANCE OF THE PRINCIPAL WORK*

1. France shall be responsible for the operation and maintenance of the principal work, including cleaning and winter service, major repairs and possible reconstruction.

2. This obligation shall take effect from the date of acceptance of the principal work, even if that date is prior to the exchange of territory mentioned in article 1, paragraph 5.

### *Article 4. FINANCING OF THE PRINCIPAL WORK*

1. The costs of land acquisition and rights required for the construction of the principal work shall be borne by the Contracting Parties for the sections situated in their respective territory before the adjustment of the frontier. The lands situated in Swiss territory required for construction of the principal work and site installations shall be made available to France without cost, free of any tenancy, lien or easement. The road-bed, in addition to a strip of land six metres wide added to both its sides, shall be ceded free of charge in full ownership, without any lien or easement, to France upon the exchange of territory.

2. France shall pay 37 per cent and Switzerland 63 per cent of the total construction cost of the principal work. It shall include:

(a) Construction costs estimated on the basis of bids from the companies retained and equal to the total sum of those bids, including all taxes, with an additional 15 per cent for contingencies. The amounts of submissions under consideration shall be established in French francs on the date of notification of the principal construction contracts for the project, according to the formula appearing in this contract, i.e., depending on the nature of the construction, on the basis of variations in the French "TP 02" or "TP 13" indices, with a 17.5 per cent fixed portion;

(b) Costs of surveys and supervision comprising a fixed amount of 10 per cent of construction costs as calculated in section (a) above. The Swiss contribution shall be paid to France in two instalments:

- The first, equal to half the total cost of the principal work calculated as indicated above, shall be paid within three months following notification of the principal contract;
- The second shall be paid one year after the date of notification of the principal contract on condition that the project is progressing normally. It shall be equal to half the total cost revised on the date of payment by applying the formula for cost adjustment of the principal contract as mentioned above.

3. The costs of operation and maintenance, including cleaning and winter service, major repairs and possible reconstruction of the principal work shall be capitalized and apportioned in advance according to the provisions of paragraph 2 above. The Contracting

Parties agree to establish the amount in advance as 61 per cent of the total cost of the principal work. The Swiss contribution shall be paid within three months after the date of acceptance of the project: it shall be adjusted on the date of payment under the same conditions as the second payment mentioned in paragraph 2 above.

4. Each of the three payments mentioned in paragraphs 2 and 3 above shall consist of an instalment calculated on the basis of the latest indices available on the established payment date, and a supplementary payment after publication of the index normally applicable.

5. The payments due by Switzerland shall be made in Swiss francs at the exchange rate of the date of payment.

#### *Article 5. FRONTIER CLEARANCE*

Adjoining national frontier clearance offices shall be established at the frontier under the conditions set forth in the Convention of 28 September 1960 between France and Switzerland concerning adjoining national frontier clearance offices and frontier clearance operations in transit.<sup>1</sup>

#### *Article 6. INDIRECT TAXES*

1. Each Contracting Party shall temporarily suspend duties and taxes on the importation of materials, tools and spare parts originating in the territory of the other Party, in so far as they are necessary for the construction or maintenance and operation of the work described in article 1.

2. The competent customs and tax authorities of each Party shall work together and lend each other any assistance necessary for the implementation of this Agreement.

#### *Article 7. DIRECT TAXES*

1. Notwithstanding the provisions of articles 5 and 7 of the Convention between the French Republic and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and fortune of 9 September 1966,<sup>2</sup> amended by the Additional Agreement of 3 December 1969,<sup>2</sup> any part of the construction site established by a contractor resident in one of the two States which is situated in the territory of the other State shall not be considered to be a permanent establishment in the sense of that Convention.

2. The provisions of paragraph 1 shall also apply to professional tax.

3. Furthermore, notwithstanding the provisions of article 17 of the Convention cited in paragraph 1, salaries paid to persons working at the construction site are taxable only in the State of residence of the beneficiary in the sense of article 1 of that Convention.

4. Any difficulties which may arise in the application of paragraphs 1 and 3 of this article shall be resolved in accordance with the Convention referred to in paragraph 1.

5. If that Convention should be amended or replaced, any reference to that Convention shall be considered as a reference to the amended Convention or the new Convention.

<sup>1</sup> United Nations, *Treaty Series*, vol. 747, p. 83.

<sup>2</sup> *Ibid.*, vol. 772, p. 275.

### *Article 8. ACCESS TO THE CONSTRUCTION SITE*

1. Representatives of the Contracting Parties and other persons participating in the construction of the principal work may cross the frontier at any time and remain in any part of the work site in the fulfilment of their duties. However, customs agents and police officers may exercise their duties only in the territory of the State to which they belong.

2. Nationals of the Contracting Parties must carry an official identity document bearing a photograph. Nationals of third States must also carry a residence permit or equivalent document issued by either Contracting Party.

3. In addition, the persons referred to in paragraph 1 must carry an identity card or a document from their employer confirming their participation in the project.

4. The Contracting Parties shall accept the return without formalities at any time of persons who have entered the territory of the other State in violation of this Agreement.

5. These provisions shall not impede the implementation of individual decisions taken by either Party regarding persons denied entry or residence.

### *Article 9. TELECOMMUNICATIONS*

Each Contracting Party shall authorize the installation at the work site of telecommunications equipment connected to the public network of the other Party.

### *Article 10. SPECIAL PROVISIONS*

In the event that the exchange of territories referred to in article 1, paragraph 5, has not yet occurred at the time when the principal work is opened for service, the following provisions shall apply:

(1) The portion of the principal work situated in Swiss territory shall remain an integral part of it until the exchange of territories.

(2) However, French traffic laws and regulations, including those regarding civil responsibility and regarding the entry, exit and transit of persons, goods and capital, shall apply to those persons, vehicles, baggage, goods and capital located in the portion of the principal work mentioned in paragraph 1 above. French officials and agents shall apply the laws and regulations cited. They may note any violations and act upon them as provided under these laws and regulations.

(3) For the application of the provisions of paragraph 2, the portion of the principal work situated in Swiss territory shall be attached to the commune of Saint-Julien-en-Genevois.

(4) As regards prosecution and punishment, the competent French courts shall be those which would have taken cognizance of the violations if they had been committed in the territory of the commune of Saint-Julien-en-Genevois. However, as regards actions considered as violations under both French and Swiss criminal law, the competence of the Swiss courts shall be expressly reserved.

(5) The stipulations of this article shall apply provisionally. They may be revoked at any time by the Swiss Federal Council on three months' notice.

### *Article 11. MIXED COMMISSION*

1. The Contracting Parties shall establish a Mixed Commission whose tasks shall be:

(a) To deal with any questions resulting from the implementation of this Agreement and its modalities of application;

- (b) To formulate recommendations to the two Governments, concerning *inter alia* any possible amendments to this Agreement;
- (c) To recommend to the competent authorities any necessary measures to overcome difficulties arising in the implementation of this Agreement;
- (d) To make decisions on the list of candidates for bids, on the rejection of unacceptable bids and on the awarding of contracts, in application of article 2, paragraph 2.

2. The Commission shall consist of five French members and five Swiss members who may be accompanied by experts. The Government of each Contracting Party shall designate a member of its delegation as chairman. Each delegation chairman may, by a request made to the chairman of the other delegation, convene a meeting of the Commission, which must be held not later than one month after receipt of the request.

#### Article 12. ARBITRATION

1. Where a dispute regarding the interpretation or application of this Agreement cannot be settled otherwise, it shall be submitted to arbitration at the request of a Contracting Party.

2. The arbitral tribunal shall be composed of three arbitrators. Each Contracting Party shall appoint an arbitrator and the two arbitrators thus appointed shall together designate a national of a third State as the referee and chairman. The arbitrators shall be appointed within two months and the chairman within three months after notification by a Contracting Party to the other Party that it intends to submit the dispute to arbitration.

3. If the deadlines referred to in paragraph (2) are not met, in the absence of any other arrangement, either Contracting Party may request the President of the European Court of Human Rights to make the necessary appointments. If the President is a French or Swiss national or otherwise disqualified, the Vice-President shall make the appointments. If the Vice-President also is a French or Swiss national or is also disqualified, the appointments shall be made by the next senior member of the Court who is neither a French nor Swiss national.

4. The arbitral tribunal shall base its decision on the provisions of international law and, in particular, of this Agreement. It shall establish its own procedures.

5. The decisions of the arbitral tribunal, both on procedure and substance, shall be rendered by a majority vote of its members. It shall not be prevented from reaching a decision by the absence or abstention of a member designated by the Contracting Parties.

6. The decisions of the tribunal shall be binding. Each Party shall bear the costs of its designated arbitrator and of its representation in the proceedings before the tribunal. The costs of the referee/chairman and any other costs shall be apportioned equally between the Contracting Parties.

7. If the arbitral tribunal so requests, the courts of the Contracting Parties shall provide it with the legal assistance needed in order to summon witnesses and experts and to hear their testimony, in accordance with the agreements in force between the two Contracting Parties concerning legal assistance in civil and commercial matters.

#### Article 13. DURATION OF THE AGREEMENT

This Agreement is concluded for an indefinite period.

*Article 14.* APPROVAL AND ENTRY INTO FORCE

1. This Agreement shall be approved; the instruments of approval shall be exchanged as soon as possible at Berne.

2. This Agreement shall enter into force on the first day of the second month following the exchange of the instruments of approval.

DONE at Paris, on 27 September 1984, in duplicate in the French language.

For the Government  
of the French Republic:

[*Signed*]

GEORGES-MARIE CHENU

For the Swiss Federal  
Council:

[*Signed*]

FRANÇOIS DE ZIEGLER

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