

No. 26280

**FEDERAL REPUBLIC OF GERMANY
and
AUSTRIA**

Treaty concerning inland navigation (with annex and additional protocol). Signed at Bonn on 20 November 1985

Authentic text: German.

Registered by the Federal Republic of Germany on 8 November 1988.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUTRICHE**

Traité sur la navigation intérieure (avec annexe et protocole additionnel). Signé à Bonn le 20 novembre 1985

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 8 novembre 1988.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE REPUBLIC OF AUSTRIA CONCERNING INLAND
NAVIGATION

The Federal Republic of Germany and the Republic of Austria,
Desiring to regulate the transport of passengers and freight by inland shipping
and

Seeking also to take mutual interests into account after the opening of the
Main-Danube Canal,

Have agreed as follows:

Article 1

For the purposes of this Treaty

(a) “German ships” means inland vessels officially entered in a German inland shipping register within the area to which this Treaty applies, that may be operated in passenger or freight carrier service without special authorization.

(b) “Austrian ships” means inland vessels officially entered in an Austrian inland shipping register within the area to which this Treaty applies, which, under the provisions of the Inland Shipping Franchise Act (*Voraussetzungen des Binnenschiffahrts-Konzessionsgesetzes*), in the current version thereof, are owned by Austrian citizens and operated in passenger or freight carrier service by private companies or by corporations;

(c) “Competent authorities” means, in the case of the Federal Republic of Germany, the Federal Minister of Transport and, in the case of the Republic of Austria, the Federal Minister of Public Transport, save as otherwise provided by the respective domestic legislation;

(d) “Ports” means ports, loading docks, unloading docks and passenger ports of call.

Article 2

Within the area to which this Treaty applies, German ships may use Austrian inland waterways and Austrian ships may use German inland waterways for transport purposes in accordance with articles 3 to 7.

Article 3

(1) Notwithstanding existing multilateral conventions, German and Austrian ships may carry passengers and freight through the other Contracting State on such stretches of the waterways specified in article 2 (transit traffic) as may be agreed upon by the Contracting States. The Joint Committee may submit proposals for this

¹ Came into force on 1 August 1987, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Vienna on 15 May 1987, in accordance with article 15 (3).

purpose. The Federal Republic of Germany may, after discussion in the Joint Committee, prescribe maximum quotas for transit traffic on its waterways.

(2) If a Contracting State so requests, for certain transit traffic a quota of the runs made by each side may be agreed upon on the basis of a proposal from the Joint Committee.

Article 4

(1) German vessels may carry passengers and freight between a German port within the area to which this Treaty applies and an Austrian port, and vice versa (reciprocal traffic).

(2) Austrian vessels may carry passengers and freight between an Austrian port and one of the following German ports within the area to which this Treaty applies (reciprocal traffic):

(a) A seaport;

(b) One of the ports specified in the annex;

(c) A port situated on the direct line to a seaport or to one of the ports specified in the annex;

(d) Another port on which the Contracting States have agreed pursuant to a proposal from the Joint Committee.

(3) Each Contracting State may, after consulting the Joint Committee, establish maximum quotas of runs in reciprocal traffic on waterways.

(4) In reciprocal traffic, the ships of both sides shall at all times share the traffic equally, each taking on one half of the freight and/or passenger load. Appropriate freight tariffs and related terms shall be established by mutual consent at the request of either State Party on the proposal of the Joint Committee.

(5) Ships of a third State Party to international agreements by virtue of which they seek to participate in the reciprocal traffic between the ports of the Contracting States, one of the Contracting States not being a Party to the aforesaid agreements, shall be permitted to do so only if the other Contracting State consents thereto.

Article 5

German and Austrian ships may carry passengers and goods between a port of the other Contracting State and a port in a third country (third-country traffic) and vice versa only in cases agreed upon by the Contracting States on the proposal of the Joint Committee.

Article 6

The carriage of passengers and freight between ports of the other Contracting State (cabotage) shall be permitted only by special authorization of the respective competent authority.

Article 7

(1) Ships and their crews, passengers and cargoes shall be subject, in the other Contracting State, to the law in force therein. Agreements between the Contracting States concerning the facilitation of frontier clearance for shipping shall not be affected.

(2) Each Contracting State shall, for navigation on the Danube, recognize the documents and certificates issued to that end in respect of ships and their crews and cargoes, provided that they are issued in a Contracting State on terms compatible with the regulations in force in the other Contracting State.

(3) For navigation on the other waterways — with the exception of the Rhine and Mosel — within the meaning of article 2, the competent authorities shall issue the documents and certificates prescribed in their State on presentation of the documents and certificates issued in the other Contracting State for the ship concerned and its crew and cargo, provided that the documents and certificates are issued in one Contracting State on terms compatible with the regulations in force in the other Contracting State.

Article 8

In the application of articles 2 to 6, German and Austrian ships shall be treated on a basis of equality, especially with regard to:

- (a) The use of sluices, port installations and berths;
- (b) The levying of shipping and port charges.

Article 9

German and Austrian shipping lines may, subject to the provisions of the domestic legislation, establish agencies and canvass for business in the other Contracting State but only to the extent, permitted in the other Contracting State on a basis of reciprocity.

Article 10

(1) A Joint Committee shall be established. Each Contracting State shall appoint three members who shall be designated by the respective competent authorities. Each side may call in experts to attend the deliberations of the Joint Committee. The Joint Committee shall establish its own rules of procedure.

(2) The function of the Joint Committee shall be:

(a) To submit to the competent authorities proposals for the agreements referred to in article 3, paragraph 1, first sentence and paragraph 2, and article 4, paragraph 2, subparagraph (d), and article 5; and, in the consultations referred to in article 3, paragraph 1, third sentence, and in article 4, paragraph 3, to take a position on the proposed establishment by a Contracting Party of maximum quotas for runs;

(b) To record the shipping traffic of both sides and to monitor compliance with the agreements mentioned in subparagraph (a) above and the application of articles 8 and 9;

(c) In accordance with article 4, paragraph 4, to submit proposals for allocating freight to the shipping of both sides, to supervise the distribution of cargoes and to reach agreement on appropriate freight tariffs and related terms for both sides.

(3) Freight tariffs and related terms on which the Joint Committee has agreed shall be submitted by the Committee to the competent authorities for approval, if required. The Contracting States shall jointly determine when the freight tariffs and related terms are to enter into force. Their entry into force in accordance with domestic law shall be promptly reported to the other Contracting State.

(4) The Joint Committee shall also submit to the Contracting States proposals for bringing this Treaty into line with inland navigation developments and for tackling all problems that may arise from implementation of this Treaty.

Article 11

(1) The agreements referred to in article 3, article 4, paragraph 2, subparagraph (d) and paragraph 4, second sentence, article 5 and article 10, paragraph 3, second sentence, shall take effect when the competent authorities notify each other in writing of their acceptance of the proposals submitted to them by the Joint Committee.

(2) If full agreement is not reached in the Joint Committee, the representatives of the Contracting States shall, at the request of either Contracting Party, meet within four weeks to hold consultations. Unless otherwise decided by both Parties, such consultation shall be held in the Contracting State which provides the Chairman for the Joint Committee.

Article 12

(1) Disputes arising from the interpretation or application of this Treaty and of the agreements concluded by the Contracting States pursuant to this Treaty shall, so far as possible, be settled by the representatives of the Contracting States.

(2) Should a dispute not be settled in this manner, it shall, at the request of one of the Contracting States, be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be constituted on a case-by-case basis, whereby each Contracting State shall appoint one member, and both members shall agree on a national of a third State to serve as umpire; the umpire shall be appointed by the Governments of the two Contracting States. The members shall be appointed within two months, and the umpire within three months, after one Contracting State has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the time-limits mentioned in paragraph 3 are not adhered to, either of the Contracting States may unless otherwise agreed request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting States or if he is unable to act for some other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the Contracting States or also unable to act, the next most senior member of the Court who is not a national of one of the Contracting States shall make the appointments.

(5) The arbitral tribunal shall take its decisions by majority vote on the basis of the treaties in force between the two Contracting States and of general international law. Its decisions shall be binding. Each Contracting State shall defray the expenses of its members and the costs of its representation in the arbitral proceedings; the expenses of the Chairman and other expenses shall be shared equally by the Contracting States. The arbitral tribunal may make some other ruling concerning costs. In all other respects the arbitral tribunal shall establish its own rules of procedure.

Article 13

The obligations of the Federal Republic of Germany arising from the Mannheim Act of 1868,¹ in its current version, *vis-à-vis* the States Parties to that Act, and the obligations of the Republic of Austria arising from the Belgrade Convention of 1948,² in its current version, *vis-à-vis* the States Parties to that Convention, shall not be affected by this Treaty.

Article 14

This Treaty shall apply also to *Land Berlin*, provided that the Government of the Federal Republic of Germany does not make a declaration to the contrary to the Government of the Republic of Austria within three months after the date of entry into force of this Treaty.

Article 15

(1) This Treaty shall be concluded for an indefinite period.

(2) This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Vienna.

(3) This Treaty shall enter into force on the first day of the third month following the exchange of the instruments of ratification.

(4) With effect from the day on which this Treaty enters into force, the provisional regulations governing navigation on the German and Austrian stretch of the Danube (article VII of the Protocol of 21 January 1963 to the Trade Agreement of 13 May 1954 between the Government of the Federal Republic of Germany and the Federal Government of Austria) shall cease to apply.

(5) This Treaty may be denounced, subject to notification in writing six months prior to the end of a calendar year, through the diplomatic channel, in which case it shall cease to apply at the end of such calendar year.

DONE at Bonn, on 20 November 1985, in two originals.

For the Federal Republic of Germany:

J. RUHFUS

Dr. W. DOLLINGER

For the Republic of Austria:

FERDINAND LACINA

¹ *British and Foreign State Papers*, vol. LIX, p. 470 (French text only).

² United Nations, *Treaty Series*, vol. 33, p. 181.

ANNEX

In accordance with article 4, paragraph 2, subparagraphs (b) and (c), Austrian vessels may call at the following ports on a basis of reciprocity:

- Berlin-Westhafen,
- Berlin-Viktoriaspeicher I,
- Berlin-Viktoriaspeicher II,
- Berlin-Spandau-Südhafen,
- Berlin-Neukölln Hafen,
- Berlin-Humboldthafen,
- Berlin-Ladestrasse Friedr.-Krause-Ufer,
- Berlin-Ladestrasse Ziegrastrasse,
- Berlin-Am Spreebord,
- Berlin-Nonnendammallee,
- Loading and unloading docks administered by the Berlin Port and Storage Depot Services,
- Ports, loading docks and unloading docks administered by Teltowkanal AG.

ADDITIONAL PROTOCOL TO THE TREATY BETWEEN THE FEDERAL
REPUBLIC OF GERMANY AND THE REPUBLIC OF AUSTRIA CON-
CERNING INLAND NAVIGATION

The Federal Republic of Germany and the Republic of Austria,

Considering that the economic systems of the two countries are based on the same principles,

Anticipating also that, to a large extent, the management of inland navigation between the two countries will be based on market criteria,

Seeking to promote utilization of their navigable waterways by the inland shipping of both countries on a basis of reciprocity and to create the best possible conditions for such utilization through the relevant economic sectors of both sides,

Have agreed to add the following provisions to the Treaty between the Federal Republic of Germany and the Republic of Austria concerning Inland Navigation, signed at Bonn on 20 November 1985:

1. (a) The Austrian side declares that the overall economic, navigational and technical factors shall be taken into account in the Agreement concerning stretches in Austrian territory in accordance with article 3, paragraph 1, first sentence, of the Treaty;

(b) The German side shall not exercise its right to prescribe maximum quotas under article 3, paragraph 1, third sentence, for the transit traffic of Austrian ships, to the extent that its Treaty partner does not impede the participation of German shipping in such traffic or exclude it therefrom. The same shall apply *mutatis mutandis* with regard to requests under article 3, paragraph 2.

2. Both sides declare that ports in the sense of article 4, paragraphs 1 and 2, shall include all ports situated on the waterways within the meaning of article 2, and that they see no reason to exclude certain ports in application of article 4, paragraph 2, subparagraph (d).

3. Both sides declare

(a) That they will not allocate loads on the basis of article 4, paragraph 4, first sentence;

(b) That they will refrain from establishing maximum quotas for runs under article 4, paragraph 3; and

(c) That they will make no request under article 4, paragraph 4, second sentence.

4. The Austrian side declares that it will take the overall economic requirements into account in agreements on third-country traffic pursuant to article 5 of the Treaty.

DONE at Bonn, on 20 November 1985, in two originals.

For the Federal Republic of Germany:

J. RUHFUS

Dr. W. DOLLINGER

For the Republic of Austria:

FERDINAND LACINA
