

Agreement between the Federal Republic of Germany and the European Economic Community, on the one hand, and the Republic of Austria, on the other, on cooperation on management of water resources in the Danube Basin - Statute of the Standing Committee on Management of Water Resources - Final Protocol - Declaration

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THE CONTRACTING PARTIES,

DESIROUS of increasing cooperation on management of water resources, in particular the protection of the aquatic environment and the regulation of discharges,

ANXIOUS to take adequate account of the Contracting Parties' mutual interest concerning the management of water resources,

CONCERNED to improve as far as possible the quality of the waters in the Danube Basin forming a common frontier between the Republic of Austria and the Federal Republic of Germany,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Contracting parties shall cooperate on water management, in particular, in carrying out water management tasks and implementing the water laws in the German and Austrian Danube Basin.

2. Such cooperation shall take the form in particular of,

(a) exchange of experience,

(b) exchange of information on water management regulations and measures,

(c) exchange of experts,

(d) exchange of publications, regulations and guidelines,

(e) participation in scientific and specialist meetings,

(f) consideration of projects on the territory of the Federal Republic of Germany or the Republic of Austria which might substantially influence the proper management of water resources on the territory of the other State,

(g) consultations in the Standing Committee on Management of Water Resources (Article 7).

3. The Agreement shall not apply to questions concerning fisheries and shipping; the treatment of questions concerning the protection of the aquatic environment against pollution shall not, however, be thereby excluded. Article 2

1. The Contracting Parties shall notify each other in good time of major projects on the territory of the Federal Republic of Germany or the Republic of Austria or where such projects might substantially influence the proper management of water resources on the territory of the other State.

2. The maintenance and achievement of proper management of water resources within the meaning of this Agreement shall cover projects relating to:

- (a) protection of the aquatic environment including the groundwater, in particular the prevention of pollution, and the discharge of waste water and heat;
- (b) the maintenance and extension of watercourses which might lead to a change in the river flow, in particular the regulation and flow and damming control of watercourses, defence against high water and ice and interference with the water flow through installations in or on watercourses;
- (c) the utilization of the aquatic environment including the groundwaters, in particular the use of water power and the diversion and abstraction of water;
- (d) hydrography.

3. Notification pursuant to paragraph 1 shall be made directly between the relevant authorities and departments insofar as the effects remain restricted to their area of competence, or through the Standing Committee on Management of Water Resources.

4. The Contracting Parties shall inform each other of the bodies responsible for notifying the Standing Committee on Management of Water Resources and of the relevant authorities and departments.

Article 3

1. The Contracting Parties shall take the necessary measures within their respective legal systems to ensure that projects on stretches of water forming the frontier shall not have a substantial adverse effect on the condition of water resources on the territory of the Federal Republic of Germany or the Republic of Austria. They shall hold consultations with the aim of reaching mutual agreement, insofar as one party invokes these effects within a period of three months of notification by adducing serious grounds.

2. In the case of projects on all other waters which might have a substantial adverse effect on the condition of water resources on the territory of the other State, the Contracting Parties shall, at the request of the party concerned, discuss the possibilities of preventing such effects before the projects are carried out.

Article 4

1. In the case of projects on stretches of water forming the frontier which are carried out on the territories of the Federal Republic of Germany and the Republic of Austria, the competent authorities in each case shall decide on that part of the work to be carried out on their territory; in this connection they shall coordinate the timing of the necessary procedures and the substance of the decisions to be adopted.

2. In the case of projects on stretches of water forming the frontier which are to be carried out on the territory of only the Federal Republic of Germany or the Republic of Austria but which could have an adverse effect on the rights and interests of the other State, for example with regard to the water system and condition of the water, the competent authorities of the other State shall be given the opportunity in good time to submit their opinion, in particular on the substance and on the conditions and obligations laid down in the public interest. 3. Where a matter within paragraph 1 or 2 is communicated by one of the Contracting Parties to the Standing Committee on Management of Water Resources, the competent authorities may not take their decision until the matter has been dealt with by that Committee, unless a delay would lead to a dangerous situation.

Article 5

The competent authorities shall carry out control measurements of the quality of the waters, jointly where this is expedient, in areas where the waters form or cross the frontier between the Federal Republic of Germany and the Republic of Austria.

Article 6

The competent authorities shall coordinate their alarm, intervention and notification plans for averting dangers from high water and ice, for measures following accidents with harmful substances and in the event of critical conditions of the aquatic environment and shall, where necessary, draw up harmonized guidelines.

Article 7

1. A Standing Committee on Management of Water Resources shall be set up. Its duty shall be to contribute to the solution of questions arising from the application of this Agreement through joint consultations. For this purpose it may address to the Contracting Parties recommendations drawn up by agreement.

2. The composition, procedures and specific powers of the aforementioned Standing Committee shall be governed by the Statute in Annex 1, which is an integral part of this Agreement.

3. Recommendations pursuant to the third sentence of paragraph 1 may relate in particular to:

(a) minimum requirements in respect of discharges to the aquatic environment,

(b) measures to improve a critical condition of the aquatic environment which is due to influences from the territory of the Federal Republic of Germany or the Republic of Austria, insofar as these influences extend to the territory of the other State,

(c) other appropriate measures to protect the aquatic environment, including water quality objectives,

(d) analyses and methods to establish the type and extent of pollution of the aquatic environment and the evaluation of the analysis results.

Article 8

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the Republic of Austria.

Article 9

1. Disputes between the Federal Republic of Germany and/or the European Economic Community, on the one hand, and the Republic of Austria, on the other hand, concerning the interpretation or application of this Agreement shall be settled by diplomatic means.

2. Where a dispute cannot be settled in this way, it shall be submitted to an arbitral tribunal at the request of either of the Contracting Parties.

3. The arbitral tribunal shall be formed for each individual case, when each Contending Party shall appoint a member. Where both the Federal Republic of Germany and the European Economic Community are in dispute with the Republic of Austria, the Republic of Austria shall appoint two members. The members shall agree on a national of another State not party to the dispute as Chairman, who is to be appointed by the Contending Parties. The members shall be appointed within two months and the Chairman within three months of the date on which one of the Contending Parties notifies the other that it intends to submit the dispute to an arbitral tribunal.

4. If the time limits referred to in paragraph 3 are not observed, either Contending Party may, in the absence of any other agreement, request the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of either of the Contending Parties or if he is prevented from acting on any other grounds, the Vice-President shall make the appointments. If the Vice-President is also a national of either of the Contending Parties or is prevented from acting, the next most senior member of the Court who is not a national of either of the Contending Parties and is not prevented from acting on any other grounds shall make the appointments.

5. The arbitral tribunal shall decide by a majority of its members' votes on the basis of the agreement existing between the Contracting Parties and the rules of international law. Its decisions shall be binding. Each Contending Party shall bear the costs of the arbitrator appointed by it and of its representation in the proceedings before the arbitral tribunal; the costs of the Chairman and other costs shall be shared equally by the Contending Parties. For other matters, the arbitral tribunal shall establish its own rules of procedure. Article 10

1. This Agreement shall not affect existing conventions and agreements.

2. The Standing Committee on Management of Water Resources shall examine immediately to what extent conventions and agreements under paragraph 1 should be amended, supplemented or cancelled in view of their content or on other grounds; it shall draw up recommendation for their modification or cancellation and for the conclusion of new conventions or agreements.

3. The Final Protocol in Annex 2 is an integral part of this Agreement.

Article 11

This Agreement shall also apply to the Land Berlin, insofar as the Government of the Federal Republic of Germany does not make any contrary declaration to the Austrian Federal Government within a period of three months of the entry into force of the Agreement. Article 12

1. This Agreement must be ratified by the Federal Republic of Germany, the European Economic Community and the Republic of Austria; the documents shall be exchanged as soon as possible in Vienna.

2. This Agreement shall enter into force on the first day of the third month following the month in which the documents are exchanged.

3. After a period of five years from the date of entry into force, the Federal Republic of Germany, the European Economic Community or the Republic of Austria may at any time terminate the agreement through diplomatic channels by giving written notice of six months to the end of the year.

4. Termination of the Agreement by one Contracting Party shall mean that the Agreement ceases to be valid.

Done on 1 December 1987 at Regensburg in three originals in the German language.

For the Federal Republic of Germany
For the Republic of Austria
For the European Economic Community

ANNEX I

STATUTE of the Standing Committee on Management of Water Resources

Article 1

The delegation of the Federal Republic of Germany and of the European Economic Community in the Standing Committee on Management of Water Resources (hereinafter called 'the Standing Committee', shall consist of nine members; the delegation of the Republic in Austria in the Standing Committee shall consist of six members. The Federal Republic of Germany and the European Economic Community, on the one hand, and the Republic of Austria, on the other, shall appoint a member of their respective delegations to be its head. At the same time they shall appoint the representatives of the members of the delegation. Each delegation shall have one vote.

Article 2

1. The Standing Committee shall meet at least once a year, and also when necessary or in urgent cases within two months of the request of one of the heads of delegation.
2. Unless there is an agreement to the contrary, the Standing Committee shall meet alternately on the territories of the Federal Republic of Germany and the Republic of Austria.
3. A meeting shall be convened by the head of delegation of the Contracting Party on whose territory the meeting is to take place, in agreement with the other head of delegation.

Article 3

1. Each delegation shall be entitled to call on experts.
2. The Standing Committee may call on the services of experts in carrying out specific tasks.

Article 4

1. Each delegation shall bear its own costs and those of its experts.
2. Where experts are employed on behalf of the Standing Committee, the Federal Republic of Germany and the European Economic Community on the one hand, and the Republic of Austria, on the other, shall each bear half the costs.

Article 5

The Standing Committee shall draw up its own rules of procedure.

Article 6

Where necessary, the Standing Committee may set up subcommittees for specific stretches of water or parts thereof and for specific subjects. Such subcommittees shall be made up on the basis of parity. The subcommittees shall report to the Standing Committee on their activities.

Article 7

The working language of the Standing Committee shall be German.

ANNEX II

FINAL PROTOCOL

1. Article 10 (1) of the Agreement on cooperation on management of water resources in the Danube Basin relates in particular to

(a) the Convention between the State Government of Bavaria and the Austrian Federal Government on discharges from the Risbach, Duerrach und Walchen areas of 16 October 1950,

(b) the Agreement between the Federal Government of the Republic of Austria and the State Government of the Free State of Bavaria on the OEsterreichisch-Bayerische Kraftwerk Aktiengesellschaft of 16 October 1950,

(c) the Agreement between the Governments of the Federal Republic of Germany, the Free State of Bavaria and the Republic of Austria on the Donaukraftwerk Jochenstein Grossaktiengesellschaft of 13 February 1952,

(d) the Agreement between the Federal Government of the Republic of Austria and the Government of the Free State of Bavaria on the use of the Saalach for water power of 14 August 1959 and

(e) the exchange of notes between the Austrian Federal Government and the German Government concerning the piping of water from the Lech into the Main area of 26 January 1923, the reapplication of which was confirmed with effect from 1 May 1952.

2. By a verbal note of 1 February 1971 the Embassy of the Federal Republic of Germany in Vienna communicated to the Austrian Federal Government the study of the supreme building authority in the Bavarian State Ministry of the Interior concerning the piping of Altmuehl und Danube water into the Regnitz-Main area, which is in accordance with the 1923 exchange of notes (see 1 (e) above).

There is in an agreement that Article 3 (2) of the Agreement on cooperation on management of water resources in the Danube Basin shall apply to amendments to the project described in this study which might have a substantial adverse effect on Austrian territory.

DECLARATION

by the Federal Republic of Germany and the European Economic Community on the Agreement on cooperation on management of water resources in the Danube Basin between the Federal Republic of Germany and the European Economic Community on the one hand and the Republic of Austria on the other.

The present areas of competence of the European Economic Community within the scope of the Agreement are specified in the legal instruments of the European Economic Community listed in the Annex to this Declaration. Any changes in these areas of competence shall be communicated to the Republic of Austria in writing through diplomatic channels by the Federal Republic of Germany and the European Economic Community jointly.

Regensburg, 1 December 1987.

For the Federal Republic of Germany
For the European Economic Community

Annex

Measures taken by the Council of the European Communities regarding water management

1. Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ No L 194, 25. 7. 1975, p. 26)
2. Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ No L 31, 5. 2. 1976, p. 1)
3. Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ No L 129, 18. 5. 1976, p. 23)
4. Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community (OJ No L 334, 24. 12. 1977, p. 29)
5. Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (OJ No L 54, 25. 2. 1978, p. 19)
6. Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ No L 222, 14. 8. 1978, p. 1)
7. Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States (OJ No L 271, 29. 10. 1979, p. 44)
8. Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ No L 20, 26. 1. 1980, p. 43)
9. Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ No L 229, 30. 8. 1980, p. 11)
10. Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry (OJ No L 81, 27. 3. 1982, p. 29)
11. Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry (OJ No L 378, 31. 12. 1982, p. 1)
12. Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (OJ No L 291, 24. 10. 1983, p. 1)
13. Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ No L 74, 17. 3. 1984, p. 49)
14. Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane (OJ No L 274, 17. 10. 1984, p. 11)
15. Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in list I of the Annex to Directive 76/464/EEC (OJ No L 181, 4. 7. 1986, p. 16)