

Title: State treaty between the Grand Duchy of Luxembourg and the Land Rhineland-Palatinate in the Federal Republic of Germany concerning the construction of hydroelectric power-installations on the Our (with annexes)

Parties: Germany (FRG), Luxembourg

Basin: Our

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Germany-Netherlands

202. STATE TREATY BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE LAND RHINELAND-PALATINATE IN THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE CONSTRUCTION OF HYDROELECTRIC POWER-INSTALLATIONS ON THE OUR (WITH ANNEXES), SIGNED AT TRIER, JULY 10, 1958¹

The following Treaty is hereby concluded between the Grand Duchy of Luxembourg and the Land Rhineland-Palatinate in the Federal Republic of Germany:

Article I

With a view to continuing the process of regulating the water resources in the German-Luxembourg frontier area, which was initiated with the State Treaty of 25 April 1950 concerning the power-plant on the Sauer (Sûre) at Rosport/Ralingen, the two countries hereby agree to authorize the Société Electrique de l'Our of Luxembourg (*Memorial, Recueil Spécial, des Grossherzogtums- Luxemburg*, No. 57, 11 July 1951)-hereinafter referred to as the SEO - to construct and operate hydroelectric power-installations for the purpose of utilizing the water of the Our in the vicinity of Vianden. The installations shall, as specified in annex 1, consist of a storage lake in the Our, a power-plant on the Our utilizing the water head of the storage lake, all elevated storage basin on the Nikolausberg, and a storage power-plant.

The SEO shall be further entitled to install and use collecting tanks in the Our and/or the Irsen for the purpose of collecting additional water for the undertaking referred to in the first paragraph. It shall for this purpose require the approval of the competent administrative authorities. Any compensation of third parties shall be made in accordance with annex II.

In the event that it is subsequently found advisable to construct additional installations the matter shall be the subject of new negotiations. The two countries agree to strive for the most effective possible utilization of the power resources available in the frontier area.

Article 2

The Concession granted to the SEO, setting forth its rights and obligations, is attached as annex I. It constitutes an integral part of this Treaty.

Under the terms of the Concession, the SEO shall acquire a vested right which shall also be exercisable with respect to third parties and may not be infringed; it shall be required to fulfil the conditions of the Concession but may not be subjected to any encumbering conditions. Installations built on the river under the terms of the Concession shall remain the property of the concessionaire even though the river and its banks are not its property.

Nothing shall be done to interfere with the water resources of the Our in such a way as to impair the operation, in accordance with article 1, of the power-plants covered by the Concession. Thus, water may

not be taken from watercourses in the catchment area of the Our above the installations in such a way as to cause such impairment, nor may the water above the installations be polluted or chemically contaminated in a manner detrimental to the operation of the plants. No claims arising out of offences committed by third parties may be made against the Contracting Countries.

As confirmation of the vested right accorded to it by this Treaty and by the laws enacted for the purpose of ratifying the same, and of the obligations connected with the said right, the SEO shall receive a concession deed consisting of a copy of annex I and the plans attached thereto.

Article 3

The two countries take note of the fact that the installations described in article 1 and the lines carrying power to and from them affect the public interest and general welfare of both countries. They therefore undertake to carry out the measures required to ensure the completion, operation and maintenance of the project.

Article 4

If the use of the river by the SEO under the terms of the Concession causes the rights of other to be impaired, the SEO shall take practical measures to reduce the damage to a minimum, in so far as such measures are economically feasible, and shall, if necessary, make appropriate compensation to the injured parties.

Detailed provisions concerning this matter and the procedure to be followed are contained in annex II.

Compensation proceedings shall not affect the construction and operation of the power-plants.

Article 5

In view of the fact that the installations as a whole are in the nature of a frontier power-plant which, moreover, is not used for primary generation but solely for the storage of power, the pump current fed in from Germany to operate the installations shall not be regarded in Luxembourg as constituting an import and shall therefore be exempt from duties and levies of all kinds. Similarly, the Land Rhineland-Palatinate shall, within the limits of its jurisdiction, endeavour to ensure that peak current supplied to Germany is not regarded as an import.

Article 6

Luxembourg, in whose territory the generating installations are to be constructed, shall not hinder or prohibit the export of current but shall, under the terms of the contracts to be concluded by the SEO, facilitate such export and exempt it from duties of all kinds.

Article 7

In view of the recognized beneficial character of the undertaking, the SEO shall in Luxembourg be granted a 50 per cent reduction in all taxes levied on income or assets of any kind. For the same reason, the SEO shall not be subject in Luxembourg to any taxes which are not of general application or are otherwise exceptional.

The lines used to transmit power to and from the installations shall benefit from the same preferential treatment in Luxembourg. In Germany, the Land Rhineland-Palatinate shall endeavour to ensure that the said lines benefit from all forms of fiscal and economic relief which are available to power-plants and transmission lines duly recognized as beneficial.

The supplying of pump current to the installations and the supplying, in return, of storage Current shall not be regarded in Luxembourg as constituting a commercial transaction.

Article 8

In letting contracts for the construction of the installations covered by the Concession, reasonable consideration shall be given to the Luxembourg and German economics. Nothing shall be done to prevent the SEO from letting its contracts on the basis of commercial and technological considerations or from giving preference to those concerns which are best able to guarantee completely satisfactory set-vice at competitive prices.

Article 9

The German interested parties shall be given an appropriate voice in the SEO and its organs, particularly as regards the management, security and economic efficiency of the installations covered by the Concession. Further provisions in this regard are contained in annex III, which constitutes an integral part of this Treaty.

Article 10

This Treaty, being a special arrangement regulating the matters in question, shall take precedence over all other legislation of the Contracting Countries and over any articles of association of companies.

Article 11

Any disputes arising out of this Treaty shall be settled by an arbitral tribunal. The said tribunal shall consist of two arbitrators, of whom each of the two countries shall appoint one.

Where the arbitrators are unable to agree, they shall be entitled to choose an umpire, whose decision shall be final. If no agreement can be reached on the choice of the umpire, the two countries shall consult on the matter.

The costs occasioned by the proceedings of the aforementioned arbitral tribunal shall be shared equally by the two countries.

ANNEX I

Concession

The Société Electrique de l'Our-hereinafter referred to as the SEO - whose address is Boulevard Roosevelt 4, Luxembourg, shall have the right, in accordance with the attached plans and explanatory material:

(a) To bank up the Our above Vianden at Lohmühle by means of a masonry dam up to a height of 226.00 metres above mean sea level;

(b) To remove water at a rate not exceeding approximately 170 cubic metres per second from the reservoir created in the Our valley in accordance with paragraph (a), to pump such water into the elevated storage basin situated on the Nikolausberg - the capacity of which is approximately 5.5 million cubic metres - and as a result to lower the level or the backwater in the valley to a height of not less than 219.75 metres above mean sea level;

(c) To remove water at a rate not exceeding approximately 320 cubic metres per second from the elevated storage basin, to feed such water back into the reservoir in the Our valley for the purpose of generating electric power, and as a result to raise the level of the backwater in the valley at Lohmühle once more to a height not exceeding 226.00 metres above mean sea level;

(d) To utilize in a hydroelectric power-plant below the masonry dam, for the purpose of generating electric power, a quantity not exceeding approximately sixteen cubic metres per second of the water banked up in the Our valley, and to feed such water back into the Our immediately

This Concession shall become effective upon the ratification of the State Treaty. It shall terminate ninety-nine years after the date on which the storage power-plant enters into full operation. The SEO shall inform the supervisory authorities of such date. Article 2 of the State Treaty shall be deemed to be an integral part of this Concession.

Conditions

The aforementioned rights shall be granted subject to the following conditions:

1. The maximum permissible level of the backwater in the Our valley shall be 226.00 metres above mean sea level at the dam and shall be indicated by a water-level marker before the installations enter into operation.
2. The natural movement of water and the bed-load hitherto prevailing in the Our below the dam shall undergo no adverse change by reason of the reservoir (lower basin) being filled and emptied or of water being removed to and led back from, the elevated storage basin (upper basin).

Self-recording water-gauges shall be installed and maintained by the SEO above Stolzembourg and below the masonry dam for the purpose of observing the movement of water in the Our. A clearly visible staff gauge shall be installed at each cross-section as a control on the self-recording gauges.

3. A water-level marker indicating the maximum permissible water-level shall be affixed in the elevated storage basin before the installations enter into operation. Water-levels shall be continuously indicated by a self-recording water-gauge; as a control on the self-recording gauge, a staff gauge shall be installed at a place where it can be readily examined.
4. In filling and, where necessary, emptying the reservoir in the Our valley, the movement of water in the Our shall be taken into account. The supervisory authorities shall be notified in good time of the measures contemplated in this regard.
5. The shut-off devices at the lower dam site shall be so designed as to ensure that water is discharged at the rate of 400 cubic metres per second at high water without rising above the water-level marker.
6. The intake structures of the elevated storage basin shall be equipped with automatic devices to

prevent the basin from running dry where there is danger of its doing so.

7. The outlet opening of the tail-water conduit in the valley shall be so constructed as to prevent erosion of any kind or damage to the river-banks in the Our valley.

8. After the installations enter into operation, the river-banks shall be maintained by the SEO in proper condition in the area of the reservoir and for a distance of fifty metres below the dam.

9. Floating matter which collects in front of the various screening devices shall be removed from the banked-up area.

10. The SEO shall maintain in good condition as prescribed herein all installations which it constructs for the purposes of the Concession.

11. The SEO shall be accorded fishery rights in the reservoir area and shall safeguard all fishery interests in a uniform manner. Any impairment of such rights shall be compensated for as much as possible by annually stocking the river with fry; the same shall apply where the construction of the dam interferes with the migration of fish and this impairs the fishery rights of persons having such rights on the Our above or below the reservoir.

To the extent that the proper operation of the installations so permits, the SEO shall allow persons having fishery rights to engage in regular fishing.

The foregoing provisions shall be without prejudice to State supervision of fisheries.

12. Where public roads are closed to traffic as a result of the construction or operation of the installations covered by the Concession, the SEO shall relocate the said roads or construct equivalent replacement roads.

13. The SEO shall, in accordance with annex II of the State Treaty of 10 July 1958, make compensation to third parties whose rights are impaired by reason of the company's installations.

14. The supervisory authorities shall be empowered to authorize any changes in the installations covered by the Concession which in the course of subsequent planning or during construction appear advisable but are not such as to alter the fundamental character of the entire project.

15. Within the general framework of the foregoing conditions the construction and management of the storage power-plant shall be left to the SEO. The supervisory authorities shall ensure that the conditions of the Concession are complied with. For the purpose of performing this function, they shall have access to the dam installations and the storage basin at all times. The readings of the self-recording water-gauges at any given time and the results of the discharge measurements in the drains above and below the reservoir shall be transmitted to the supervisory authorities on request, and in any event at monthly intervals. The supervisory authorities may carry out their own measurements.

16. The rights established by this Concession may not be transferred separately by the undertaking; the Concession and the installations may be transferred only in their entirety.

17. The SEO shall be required to begin construction of the installations not later than two years after the Concession becomes effective and to begin operation of the first generator-unit not later than four additional years thereafter. A reasonable extension of these time-limits may be granted by the

supervisory authorities if there appear to be valid reasons for doing so. The right to construct and operate the installations shall lapse if the time-limits are not met.

The SEO shall have the right to undertake the construction in two stages. If the SEO exercises this right, it shall so notify the supervisory authorities in writing when construction is begun.

The second stage of construction shall be initiated not later than ten years after the beginning of the first stage and a generator unit comprising part of the second stage shall be put into operation within the following four years. As in the case of the first stage, these time-limits may be extended. The right to carry out the second stage of construction shall lapse in the event that the specified time-limits are not met.

Without regard to the foregoing conditions, the term of the Concession shall commence not later than 1 January of the twentieth year following the entry into force of this Treaty.

18. Five years before the expiry of the Concession, the SEO may apply for a reasonable extension of its rights. Such application shall be granted unless there are overriding reasons of public interest or overriding economic reasons for not doing so.

If an extension of the rights conferred by the Concession is not granted and a change of ownership takes place, the SEO shall be entitled to claim compensation in respect of its installations from the new owner. The following plans and explanatory material shall constitute an integral part of annex I of the State Treaty of 10 July 1958:

Scale

Plan 1.	General plan of site	1:25,000
Plan 2.	Plan of site (general view).....	1:5,000
Plan 3.	Lower basin -- longitudinal section.....	1:200/20,000
Plan 4.	Pressure conduits and distribution piping- longitudinal section and cross-sections of the grounds.....	1:2,000
Plan 5.	Underground power-plant -ground plan	1:400
Plan 6.	Cross-section of underground power-plant through generator axis	1:200
Plan 7.	Cross-section of underground power-plant through turbine axis	1:200
Plan 8.	Cross-section of underground power-plant through pump axis	1:200
Plan 9.	Dam and power-plant of lower basin at Loh- mühle	1:500
Plan 10.	Cross-sections of upper-basin embankments .	1:250

Appendix 11. Explanatory report with technical data
(Plans 1-10 in separate folder)

APPENDIX II

Explanatory report with technical data

General data (see Plan 1)

The site of the Vianden pump-fed power installations, which are to be constructed in the Our valley between Vianden and Stolzembourg, is in the heart of the major western European industrial areas. They will consist of a reservoir in the Our valley, an underground power-plant, an artificial elevated storage basin, and connecting pipes between the upper and lower basins, and they will serve to improve the supply of current; water will be pumped into the upper basin during periods of low power consumption to permit the production of peak current. This daily rotation process will not adversely affect the natural movement of water in the Our below the masonry dam.

Description of the installations

(a) Lower basin (see plans 2, 3, 7 and 9)

A masonry dam at Lohmühle, above Vianden, will bank up the river for a distance of approximately eight kilometres and permit an effective water withdrawal of approximately five million cubic metres. The natural flow of the Our will be utilized in a small power-plant at the base of the dam. The dam will be equipped with a number of locking devices so as to ensure that water is discharged without hindrance at the rate of 400 cubic metres per second at high water without rising above the maximum water-level fixed by the Concession.

The flooding of residential and other-useful areas will be held to a minimum and will necessitate reconstruction only at Bivels. Submerged roads will be replaced by roads situated on higher ground.

(b) Upper basin and Pressure shaft (see plans 2, 4, 8 and 10)

The elevated storage basin will be constructed approximately 2.6 kilometres south of Stolzembourg on the Nikolausberg, which rises nearly 300 metres above the river valley, and will be formed by an embankment made will amount to approximately three million cubic metres in the first stage of construction and approximately 5.5 million in the final stage. Two short pressure shafts will lead from the elevated basin to the power-plant.

(c) Power-plant (see plans 4, 5 and 6)

In the first and second stages the power-plant will be constructed under-ground with a view to obtaining the shortest possible connexion between the upper and lower basins. The required excavation will be carried out diagonally across the geological strata of the rock in order to achieve a high degree of stability. The geological reports show the bed-rock schist to be of unusually good quality. The exploration tunnel, approximately 350 metres in length, which opened up the area of the excavation and of the distribution piping was successfully driven without the use of timbering. The power-plant will be equipped with four horizontal generator-units in the first stage of construction and eight in the final stage, each unit consisting of a turbine, a motor generator, a starting turbine with gear-clutch, and a pump. The power-plant and the lower basin will be linked by pressure conduits.

The current generated will be transformed to a higher potential. It will be carried from the plant by overhead lines.

Technical data

The most important data relating to the pump-fed power plant (first and second stages of construction) are as follows:

Output in operation of turbine	approx. 640,000 kw	
Input for operation of pump	approx. 520,000 kw	
Number of generator-units (each consisting of a turbine, a motor-generator and a pump)	8 (4 in first stage of construction)	
Hours in use:	<i>Per day</i>	<i>Per year</i>
Turbine	4.25	1,450
Pump	8	2,720
Effective capacity of lower basin	approx. 5 million cubic metres	
Effective capacity of upper basin		
in first stage	approx. 3 million cubic metres	
in final stage	approx. 5.5 million cubic metres	
Useful head of water (average)	approx. 278 metres	

Construction (see plan 2)

The construction of the complete installations will be carried out in two stages.

It will be possible to enlarge the power-plant after the first stage of construction without curtailing its operation.

ANNEX II

Provisions concerning proceedings in respect of water rights and expropriation

1. After the Concession granted to the SEO becomes effective, the forthcoming construction of the project shall be made known in the manner prescribed by local custom, the plans shall be made available for inspection at the offices of the municipalities concerned, and all persons who will suffer injury as a result of the contemplated utilization of the river shall be called upon to come forward and submit claims in respect of such injury within six weeks. It shall, at the same time, be announced that any person failing to submit a valid claim within the specified time limit shall subsequently be entitled to present only such claims as he was unable to anticipate within the said time-limit.

Any person who is prevented by compelling circumstances from observing the time-limit shall be entitled to submit his claims subsequently if he does so as soon as the circumstances in question have ceased to apply.

2. The parcels of land or portions thereof required for the construction of the reservoirs and power-plants shall be acquired by the SEO so far as possibly by private contract. If this cannot be accomplished on suitable terms within a reasonable period of time, the property shall be acquired and its ownership transferred in accordance with article 3 of the State Treaty. In any proceedings that may arise, the documents comprising the Concession governing water rights shall be decisive. Any rights of third parties to the aforementioned parcels of land, as well as other rights of usufruct, shall lapse when the property is transferred, and compensation to be determined in accordance with paragraph 5 of this annex shall be made therefor. The amount of such compensation shall, where necessary, be held in deposit.

3. In the event that rights relating to the utilization of water-power are extinguished or impaired as a result of the construction or operation of the SEO installations, compensation may be made by supplying electric power to the person concerned if he agrees to such arrangement. The amount of power to be supplied shall be determined on the basis of the water rights lawfully held by the injured party.

4. Where any parcel of land, even though not directly affected, suffers impairment - e.g., through all adverse change in the groundwater level - the impairment shall be prevented or so far as possible limited by such measures as are possible. Where the cost of such measures is greater than the damage incurred or where the measures are otherwise economically unsound, suitable monetary compensation shall be made.

5. Questions relating to the validity of claims, the amount of compensation to be made and its distribution among various claimants shall be decided, with due regard to the provisions of this annex, by the competent courts.

ANNEX III

Provisions relating to company law

In view of the fact that the installations as a whole constitute a frontier power-plant, the following provisions are hereby laid down:

1. Each of the two contracting countries shall be entitled to designate one or two representatives, one of whom in the case of Luxembourg shall be the Government Commissioner, to attend general shareholders' meetings and meetings of the Board of Directors and the Management Committee of the SEO. If these representatives consider a decision to be prejudicial to the interests of their country, they may enter an objection accompanied by a statement of grounds, and the contested decision shall then be reviewed at a second meeting. In such cases, the SEO shall confer with the Government of the complainant country concerning the matters at issue and shall thereupon take a new decision. The representatives of the two countries shall not be entitled to enter an objection to the second decision.

The aforementioned proceedings shall be completed as expeditiously as possible within a period of two months.

2. (a) The Luxembourg and German members of the Board of Directors of the SEO shall form an absolute majority irrespective of the extent of Luxembourg or German participation in the company's capital

(b) The chairman of the Board of Directors shall be a Luxembourg national and the vice-chairman a German national.

(c) The Board of Directors shall have not more than twenty-one members, who shall be appointed in accordance with the articles of association of the SEO. The Luxembourg shareholders shall be guaranteed not less than eleven seats on the Board - including not less than seven for the Grand Duchy of Luxembourg - and the German shareholders not less than seven.

3. The shares issued by the SEO shall be registered shares and shall be transferable only with the prior approval of the Board of Directors of the SEO. Such approval shall require a two-thirds majority of the votes, the said majority to include the votes of the Board members appointed by the Grand Duchy Of Luxembourg as a holder of registered shares as well as the vote of at least one of the members appointed by the German shareholders.

Such financial arrangements as are made by the interested parties shall be recognized by the parties to the State Treaty as proper and correct under the terms of that Treaty.

Ten per cent of the share capital outstanding at any given time may be in the form of bearer shares, to which the foregoing limitation on transfers shall not apply. The said shares shall not apply. The said shares shall be made available primarily to Luxembourg nationals for subscription or else shall so far as possible be offered for the first time on the Luxembourg market.

4. Agreements concluded between shareholders with a view to promoting the management and business operations of the SEO in accordance with this State Treaty and with such contracts as the SEO may conclude in pursuance thereof, and with a view to exercising voting rights for that purpose, shall be recognized in Luxembourg as proper and be accorded legal protection.

5. The articles of association of the SEO shall be brought into conformity with the provisions of this Treaty and its annexes. Any subsequent amendments to the said articles, including any limitation of the authority of the Board of Directors, shall, in addition to meeting the requirements laid down in the articles, require the approval of the Grand Duchy of Luxembourg as a holder of registered shares and the approval of the German share-holders.

6. During the term of the Concession, the German interested parties (the supplier of pump current, the users of current, etc.) shall also be entitled to acquire shares in the SEO as the concessionaire.

7. The SEO may not go into liquidation, nor may it be terminated, dissolved or wound up, during the term of the Concession governing water rights. Furthermore, no individual shareholder shall have the right to terminate the company before the expiry of the Concession.

8. For the purpose of this annex, the term "Luxembourg shareholders" means only Luxembourg nationals holding registered shares, and the term German shareholders "means only the parties mentioned in paragraph 6 hereof.

¹ *Mémorial du Grand Duché de Luxembourg*, No. 25, 11 June 1959. (Translated from German by the Secretariat of the United Nations.)