

No. 9478

**FEDERAL REPUBLIC OF GERMANY
and
AUSTRIA**

**Air Transport Agreement (with exchange of notes). Signed
at Vienna on 15 March 1965**

Authentic text : German.

Registered by the International Civil Aviation Organization on 24 March 1969.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUTRICHE**

**Accord relatif aux transports aériens (avec échange de notes).
Signé à Vienne le 15 mars 1965**

Texte authentique : allemand.

Enregistré par l'Organisation de l'aviation civile internationale le 24 mars 1969.

[TRANSLATION¹ — TRADUCTION²]

AIR TRANSPORT AGREEMENT³ BETWEEN THE FEDERAL
REPUBLIC OF GERMANY AND THE REPUBLIC OF
AUSTRIA

The Federal Republic of Germany and the Republic of Austria

Desiring to make arrangements for the regulation of air transport between
their respective territories and beyond,

Have agreed as follows :

Article 1

(1) For the purposes of the present Agreement, unless the text otherwise requires :

- a) the term “aeronautical authorities” shall mean in the case of the Federal Republic of Germany, the Federal Minister of Transport ; in the case of the Republic of Austria the Federal Ministry for Transport and Electric-Power Industry ; or in both cases any other person or agency authorized to perform the functions exercised by the said authorities ;
- b) the term “designated (specified) airline” shall mean an airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 3 of the present Agreement as being an airline which is to operate international air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement.

(2) The terms “territory”, “air service”, “international air service” and “stop for non-traffic purposes” shall, for the purpose of the present Agreement, have the meaning laid down in Articles 2 and 96 of the Convention of December 7, 1944,⁴ on International Civil Aviation as amended at present or in future.

¹ Translation by the Government of the Federal Republic of Germany.

² Traduction du Gouvernement de la République fédérale d'Allemagne.

³ Came into force on 30 June 1966, i.e. thirty days after the exchange of the instruments of ratification which took place at Bonn on 31 May 1966, in accordance with article 17.

⁴ United Nations, *Treaty Series*, Vol. 15, p. 295. For the texts of the Protocols amending this Convention, see Vol. 320, pp. 209 and 217 ; Vol. 418, p. 161, and Vol. 514, p. 209.

Article 2

(1) Each Contracting Party shall grant to the other Contracting Party for the purpose of operating international air services by designated airlines over the routes specified in accordance with paragraph (2) of this Article,

the right to fly across its territory without landing ;

the right to land in its territory for non-traffic purposes ; and

the right to land in its territory at the points named on the routes specified in accordance with paragraph (2) of this Article, in order to take on or discharge passengers, mail and /or cargo on a commercial basis.

(2) The routes over which the designated airlines of the Contracting Parties will be authorized to operate international air services shall be specified in a Route Schedule to be agreed upon in an exchange of notes between the Governments of the Contracting Parties.

Article 3

(1) The international air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement may be started at any time, provided

a) the Contracting Party to whom the rights specified in paragraph (1) of Article 2 are granted, has designated one or several airlines in writing, and

b) the Contracting Party granting these rights has authorized the designated airline of airlines to initiate the air services.

(2) The Contracting Party granting these rights shall, subject to the provisions of paragraphs (3) and (4) of this Article and subject to the provisions of Article 9 of the present Agreement, give without delay the said authorization to operate the international air service.

(3) Each Contracting Party may require an airline designated by the other Contracting Party to satisfy it that it is qualified to meet the requirements prescribed under the laws and regulations of the first Contracting Party governing the operation of international air traffic.

(4) Each Contracting Party may withhold the exercise of the rights provided for in Article 2 of the present Agreement from any airline designated by the other Contracting Party if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in nationals or corporations of the other Contracting Party or in that Party itself.

Article 4

(1) Each Contracting Party may revoke, or limit by the imposition of conditions, the authorization granted in accordance with paragraph (2) of Article 3 of the present Agreement in the event of failure by a designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of the present Agreement or to fulfil the obligations arising therefrom. This shall also apply if the proof referred to in paragraph (4) of Article 3 is not furnished. Each Contracting Party shall exercise this right only after consultation as provided for in Article 13 of the present Agreement, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

(2) Each Contracting Party shall have the right by written communication to the other Contracting Party to replace subject to the provisions of Article 3 an airline it has designated by another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaced.

Article 5

The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities on the aircraft of a designated airline of the other Contracting Party shall not be higher than those imposed on aircraft of a national airline engaged in similar international air services.

Article 6

(1) Aircraft operated by a designated airline of either Contracting Party and entering, departing again from, or flying across the territory of the other Contracting Party, as well as fuel, lubricants, spare parts, regular equipment and aircraft stores on board such aircraft, shall be exempt from customs duties and other charges levied on the occasion of importation, exportation or transit of goods. This shall also apply to goods on board the aircraft consumed during the flight across the territory of the latter Contracting Party.

(2) Fuel, lubricants, aircraft stores, spare parts and regular equipment, temporarily imported into the territory of either Contracting Party, there to be immediately or after storage installed in or otherwise taken on board the aircraft of a designated airline of the other Contracting Party, or to be otherwise exported again from the territory of the former Contracting Party, shall be exempt from the customs duties and other charges mentioned in paragraph (1) of this Article.

(3) Fuel and lubricants taken on board the aircraft of a designated airline of either Contracting Party in the territory of the other Contracting Party and used in international air services, shall be exempt from the customs duties and other charges mentioned in paragraph (1) of this Article, as well as from any other special consumption charges.

(4) Each Contracting Party may keep the goods mentioned in paragraphs (1) to (3) of this Article under customs supervision.

(5) To the extent that no duties or other charges are imposed on goods mentioned in paragraphs (1) to (3) of this Article, such goods shall not be subject to any economic prohibitions or restrictions on importation, exportation or transit that may otherwise be applicable.

Article 7

(1) There shall be fair and equal opportunity for the designated airlines of each Contracting Party to operate air services on any route specified in accordance with paragraph (2) of Article 2 of the present Agreement.

(2) In the operation of international air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement, any designated airline of either Contracting Party shall take account of the interests of any designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the same routes or parts thereof.

(3) The international air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement shall have as their primary objective the provision of capacity adequate to the foreseeable traffic demand to and from the territory of the Contracting Party designating the airline. The right of such airline to carry traffic between points of a route specified in accordance with paragraph (2) of Article 2 of the present Agreement which are located in the territory of the other Contracting Party, and points in third countries, shall be exercised, in the interests of an orderly development of international air transport, in such a way that capacity is related to :

- a) the traffic demand to and from the territory of the Contracting Party designating the airline ;
- b) the traffic demand existing in the areas through which the air services pass, taking account of local and regional air services ;
- c) the requirements of an economical operation of through traffic routes.

Article 8

(1) The designated airlines shall communicate to the aeronautical authorities of the Contracting Parties not later than one month/thirty days prior to the initiation of air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

Article 9

The aeronautical authority of either Contracting Party shall furnish to the aeronautical authority of the other Contracting Party at its request such periodic or other statistical data of the designated airlines as may be reasonably required for the purpose of reviewing the capacity provided by any designated airline of the first Contracting Party on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement. Such data shall include all informations required to determine the amount of traffic carried and the origins and destinations of such traffic.

Article 10

(1) The rates to be charged for passengers and cargo on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement, shall be fixed with due regard to all factors, such as cost of operation, a reasonable profit, the characteristics of the various routes and the rates charged by any other airlines which operate over the same routes or parts thereof. The rates shall be fixed according to the provisions of the following paragraphs.

(2) The rates shall, if possible, be agreed for each route between the designated airlines concerned. For this purpose the designated airlines shall be guided by such decisions as are applicable under the traffic conference procedures of the International Air Transport Association (IATA), or shall, if possible, agree on such rates directly between themselves after consulting with airlines of third countries which operate over the same routes or parts thereof.

(3) Any rates so agreed shall be submitted for approval to the aeronautical authorities of both Contracting Parties not later than one month/thirty days prior to the proposed date of their introduction. This period may be reduced in special cases if the aeronautical authorities so agree.

(4) If no agreement has been reached between the designated airlines in accordance with paragraph (2) above, or if one of the Contracting Parties does not consent to the rates submitted for its approval in accordance with

paragraph (3) above, the aeronautical authorities of the two Contracting Parties shall attempt to obtain a satisfactory arrangement.

(5) If no accord as envisaged in paragraph (4) above is reached between the aeronautical authorities of the two Contracting Parties, the provisions of Article 14 of the present Agreement shall apply. Until such time as an arbitral award has been rendered, the Contracting Party which has withheld its consent to a given rate, shall be entitled to require the other Contracting Party to maintain the rate previously in effect.

Article 11

In the event of a general multilateral air transport convention entering into force, the provisions of such convention shall prevail. Discussions under the provisions of Article 13 may be held to determine the extent to which the present Agreement is amended, supplemented or revoked by the provisions of the multilateral convention.

Article 12

Exchanges of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application and interpretation of the present Agreement.

Article 13

Consultation may be requested at any time by either Contracting Party for the purpose of discussing amendments to the present Agreement or to the Route Schedule or questions relating to interpretation. The same applies to discussions concerning the application of the present Agreement if either Contracting Party considers that an exchange of views within the meaning of Article 12 has not produced any satisfactory results. Such consultation shall begin within two months/sixty days from the date of receipt of any such request.

Article 14

(1) To the extent that any disagreement concerning the interpretation or application of the present Agreement cannot be settled in accordance with Article 13 of the present Agreement, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

(2) Such arbitral tribunal shall be constituted *ad hoc* as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by

the Governments of the two Contracting Parties. Such members shall be appointed within sixty days, and such chairman within ninety days, from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the disagreement to an arbitral tribunal.

(3) If the periods specified in paragraph (2) above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the Council of the International Civil Aviation Organization (ICAO) to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging this function, the Vice-president deputizing for him should make the necessary appointments.

(4) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 15

The present Agreement, any amendments to it and any exchange of notes under paragraph (2) of Article 2 of the present Agreement shall be communicated to the International Civil Aviation Organization (ICAO) for registration.

Article 16

The present Agreement shall replace any previous agreements on international air services between the Contracting Parties.

Article 17

(1) The present Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) The present Agreement shall enter into force thirty days after the exchange of the instruments of ratification.

(3) Each Contracting Party may at any time give written notice of termination of the present Agreement. It shall then expire one year from the date of receipt of such notice by the other Contracting Party.

DONE at Vienna on March 15, 1965 in two originals.

For the Federal Republic
of Germany :

Dr. Josef LÖNS

For the Republic
of Austria :

KREISKY

EXCHANGE OF NOTES

I

THE AMBASSADOR OF THE FEDERAL REPUBLIC OF GERMANY

Vienna, 15 March 1965

Mr. Federal Minister,

I have the honour to refer to Article 2, paragraph 2 of the Air Transport Agreement between the Federal Republic of Germany and the Republic of Austria signed at Vienna on March 15, 1965. During the discussions held in connection with the aforementioned Agreement, it was agreed upon that air services may be operated over the routes specified in the following Route Schedule :

ROUTE SCHEDULE

I. *Routes to be operated by airlines designated by the Federal Republic of Germany*

1	2
<i>Points of origin</i>	<i>Points in the territory of the Republic of Austria</i>
Points in the Federal Republic of Germany	<ol style="list-style-type: none"> 1. Graz 2. Innsbruck 3. Klagenfurt 4. Linz 5. Salzburg 6. Vienna

However, not more than one point of each route in the territory of the other Contracting Party.

II. *Routes to be operated by airlines designated by the Republic of Austria*

1	2
<i>Points of origin</i>	<i>Points in the territory of the Republic of Germany</i>
Points in the Republic of Austria	<ol style="list-style-type: none"> 1. Düsseldorf 2. Frankfurt 3. Munich 4. Stuttgart 5. two further points to be agreed upon by the aeronautical authorities of the two Contracting Parties.

However, not more than one point of each route in the territory of the other Contracting Party.

I have the honour to inform you that the Government of the Federal Republic of Germany agrees with the aforementioned Route Schedule. I would appreciate if you would let me know whether the Government of the Republic of Austria approves this Route Schedule, too.

Accept, Mr. Federal Minister, the assurance of my highest consideration.

J. LÖNS

His Excellency Dr. Bruno Kreisky
Minister for Foreign Affairs
Vienna

II

THE FEDERAL MINISTER FOR FOREIGN AFFAIRS

Vienna, 15 March 1965

Mr. Ambassador,

I have the honour to confirm the receipt of your note of today which reads as follows :

[See note I]

I have the honour to inform you that the Federal Government of the Republic of Austria agrees with this proposal and that, thus, your note as well as this note in reply shall constitute an Arrangement between our governments.

Accept, Mr. Ambassador, the assurance of my highest consideration.

KREISKY

His Excellence Dr. Josef Löns
Ambassador of the Federal Republic of Germany
Vienna