

No. 9886

**FINLAND
and
AUSTRIA**

Agreement for |air services between and beyond their respective territories (with schedule). Signed at Vienna on 4 June 1969

Authentic text : English.

Registered by Finland on 16 September 1969.

**FINLANDE
et
AUTRICHE**

Accord relatif aux services aériens entre les territoires des deux pays et au-delà (avec annexe). Signé à Vienne le 4 juin 1969

Texte authentique : anglais.

Enregistré par la Finlande le 16 septembre 1969.

AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL
GOVERNMENT AND THE GOVERNMENT OF THE
REPUBLIC OF FINLAND FOR AIR SERVICES BETWEEN
AND BEYOND THEIR RESPECTIVE TERRITORIES

The Austrian Federal Government and the Government of the Republic of Finland,

Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944,²

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows :

Article 1

DEFINITIONS

For the purpose of the present Agreement, unless the context otherwise requires :

a) the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

b) the term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Ministry of Communications and Nationalized Enterprises and, in the case of the Government of the Republic of Finland, the Ministry of Communications and Public Works and any person or body authorized to perform any functions at present exercised by the said authorities;

c) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement;

¹ Came into force on 4 July 1969, i.e., thirty days from the day of signature, in accordance with article 14.

² 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.

d) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State;

e) the terms "air service", "international air service", "airline" and "stop for nontraffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention.

Article 2

TRAFFIC RIGHTS

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in accordance with the appropriate Section of the Schedule annexed to the present Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airlines designated by the Contracting Parties shall enjoy, while operating an agreed service on a specified route, the following rights :

- a) to fly without landing across the territory of the other Contracting Party;
- b) to make stops in the said territory for non-traffic purposes, and
- c) to make stops in the said territory at the points on the specified routes for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo and mail carrier for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 3

NECESSARY AUTHORIZATIONS

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 of this Article, without delay grant to the airline designated the appropriate operating authorizations.

3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of an airline and to designate an other one.

4. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provision of the Convention.

5. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

6. When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 8 of the present Agreement is in force in respect of that service.

Article 4

CAPACITY REGULATIONS

1. There shall be a fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

2. The capacity offered by the designated airlines of the Contracting Parties shall be in direct relationship to the traffic requirements on the specified routes.

3. In applying the principles established in paragraphs 1 and 2 of this Article :

- a) the air services operated by a designated airline shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to current and reasonably anticipated demand for the transport of international air traffic coming from or destined for the territory of the Contracting Party designating the airline;
- b) the capacity provided under the above sub-paragraph *a* may be increased by complementary capacity for the transport of international air traffic coming from or destined for points on the specified routes situated in States other than that of the Contracting Party designating the airline.

4. Both Contracting Parties agree to recognize that the fifth freedom is complementary to the traffic requirements on the routes between the terri-

tories of the Contracting Parties, and at the same time is subsidiary in relation to the traffic requirements of the third and fourth freedom between the territory of the other Contracting Party and a country on the route.

5. The capacity to be offered and the frequency of the services on the specified routes shall be discussed, agreed upon and reviewed from time to time between the aeronautical authorities of the two Contracting Parties.

6. The designated airline of each Contracting Party shall submit for approval to the aeronautical authorities of the other Contracting Party not later than thirty days prior to the inauguration of services on the specified routes the flight schedules and the types of aircraft to be used. This shall likewise apply to later changes. In special cases, this time limit may be reduced subject to the agreement of the said authorities.

7. In due time before the submission of the flight schedules by the designated airline of either Contracting Party to the aeronautical authorities of the other Contracting Party, the airlines of both Contracting Parties shall use their best efforts to agree on the matters of capacity to be provided and the frequency of the services to be operated as well as the timetables concerned. A summary of the discussions between the airlines, which shall be approved by both airlines concerned, shall be transmitted to the aeronautical authorities of both Contracting Parties.

Article 5

REVOCATION AND SUSPENSION

1. Each Contracting Party reserves the right to withhold, revoke or impose conditions on the permission provided for in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party in the following circumstances :

- a) in the event of the failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally and reasonably applied by these authorities;
- b) in the event of the failure by such airline to comply with the laws and regulations of the Contracting Party granting these rights;
- c) in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party;
- d) in case the airline otherwise fails to operate in accordance with the terms of the present Agreement.

2. Unless immediate action to withhold or revoke the permission granted to the airline designated by the other Contracting Party is essential to prevent further infringement of the laws and regulations of the Contracting Party granting this permission, the right to withhold, revoke or impose conditions on such permission shall be exercised only after consultation with the other Contracting Party. In such a case the consultations shall begin within a period of twenty (20) days from the date of request made by either Contracting Party for consultations.

Article 6

EXEMPTION FROM CUSTOMS AND OTHER DUTIES

1. Aircraft operated on international services by a designated airline of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies shall remain on board the aircraft up to such time as they are re-exported or used on the part of the journey performed over that territory.

2. There shall also be exempt from the same duties and taxes with the exception of charges corresponding to the services performed:

- a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of the said Contracting Party and for use on board the aircraft engaged in an international service of the other Contracting Party;
- b) spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by a designated airline of the other Contracting Party;
- c) fuel and lubricants destined to supply aircraft operated on international services by a designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs *a*, *b* and *c* above may be required to be kept under customs supervision or control.

3. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7

DIRECT TRANSIT TRAFFIC

Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 8

TRANSPORT TARIFFS

1. The tariffs to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including costs of operation, reasonable profit and the tariffs of other airlines on the same routes.

2. The tariffs referred to in paragraph 1 of this Article, together with the rates of agency commission applicable, shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over the whole or part of that route, and agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least ninety (90) days before the proposed date of their introduction, in special cases this time limit may be reduced, subject to the agreement of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if during the first thirty (30) days of the ninety (90) days' period referred to in paragraph 3 of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article, or on the determination of any tariff under paragraph 4 the dispute shall be settled in accordance with the provisions of Article 11 of the present Agreement.

6. Subject to the provisions of paragraphs 3 and 5 of this Article, no tariff shall come into force, if the aeronautical authorities of either Contracting Party have not approved it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

8. The aeronautical authorities of each Contracting Party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no airline rebates any portion of such rates, by any means, directly or indirectly, including the payments of excessive sales commission to agents or the use of unrealistic currency conversion rates.

9. Unless otherwise agreed between the Contracting Parties, each Contracting Party undertakes to use its efforts to insure that any rate specified in terms of the national currency of one of the Contracting Parties will be established in amount which reflects the effective exchange rate (including fees or other charges) at which the airlines of both Contracting Parties can convert and remit the revenues from their transport operations into the national currency of the other Contracting Party.

Article 9

CONSULTATIONS

In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Schedule annexed thereto.

Article 10

MODIFICATIONS

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party. Such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of the request. Modifications so agreed upon shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Modifications to the Schedule of this Agreement may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties and shall come into force upon notification through diplomatic channels.

Article 11

SETTLEMENT OF DISPUTES

1. Any dispute with respect to matters covered by this Agreement or any modification thereto not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedure set forth herein.

2. Arbitration shall be by a tribunal of three arbitrators constituted as follows :

a) One arbitrator shall be named by each Contracting Party within two months from the date of delivery by either Contracting Party to the other of a request for arbitration. Within one month after such period of two months the two arbitrators so designated shall by agreement designate a third arbitrator, provided that such third arbitrator shall not be a national of either Contracting Party.

b) If either Contracting Party fails to designate an arbitrator or if the third arbitrator is not agreed upon in accordance with subparagraph *a*, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

3. Any decision or award of the arbitral tribunal shall have the effect of the decisions referred to in Article 86 of the Convention.

4. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

Article 12

ADAPTATION TO MULTILATERAL AGREEMENTS

The present Agreement and its Schedule shall be modified, if necessary, so as to conform with any multilateral convention which may become binding on both Contracting Parties.

Article 13

TERMINATION

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting

Party, unless the notice to terminate is withdrawn by Agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 14

COMING INTO FORCE

This Agreement shall come into force thirty days from the day of signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Vienna this fourth day of June, 1969 in duplicate in the English language.

For the Austrian Federal Government :

Kurt WALDHEIM

For the Government of the Republic of Finland :

Jussi MÄKINEN

SCHEDULE TO THE AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND CONCERNING AIR SERVICES

Section I

The airline designated by the Austrian Federal Government may operate scheduled air services on the following routes in both directions :

- 1) Austria—one or more intermediate stops—one or more points in Finland and further points beyond.

While operating these services, they shall have the right :

- a) to put down on the territory of the Republic of Finland passengers, cargo and mail taken on in the territory of the Republic of Austria;
- b) to take on in the territory of the Republic of Finland passengers, cargo and mail destined for the territory of the Republic of Austria;
- c) to omit one or more intermediate stops out of the specified routes.

Section II

The airline designated by the Government of the Republic of Finland may operate scheduled air services on the following routes in both directions :

- 1) Finland—one or more intermediate stops—one or more points in Austria and further points beyond.

While operating these services, they shall have the right :

- a)* to put down on the territory of the Republic of Austria passengers, cargo and mail taken on in the territory of the Republic of Finland;
- b)* to take on in the territory of the Republic of Austria passengers, cargo and mail destined for the territory of the Republic of Finland;
- c)* to omit one or more intermediate stops out of the specified routes.

Section III

The aeronautical authorities of the Contracting Parties shall agree on the specification of the routes including the intermediate stops and points beyond as well as on other commercial rights to be exercised than those quoted in Section I and II of this Schedule.
