

No. 13138

**AUSTRIA
and
MALTA**

**Air Services Agreement (with schedule). Signed at Valletta
on 6 June 1973**

Authentic texts: German and English.

*Registered by the International Civil Aviation Organization on 1 March
1974.*

**AUTRICHE
et
MALTE**

**Accord relatif aux services aériens (avec tableau). Signé à
La Valette le 6 juin 1973**

Textes authentiques : allemand et anglais.

*Enregistré par l'Organisation de l'aviation civile internationale le 1^{er} mars
1974.*

AIR SERVICES AGREEMENT¹ BETWEEN THE FEDERAL GOVERNMENT OF AUSTRIA AND THE GOVERNMENT OF MALTA

The Federal Government of Austria and the Government of Malta,

Keeping in mind that the Republic of Austria and Malta are 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 Republic of Austria, the Federal Minister of Communications and, in the case of Malta, the Minister responsible for Civil Aviation and/or 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;

(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 non-traffic purposes” have the meanings respectively assigned to them in article 96 of the Convention;

(f) “Capacity” in relation to an aircraft means the pay load of that aircraft available on a route or section of a route; and

(g) “Capacity” in relation to “agreed service” means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route.

¹ Came into force on 5 August 1973, i.e. 60 days from the date of signature, in accordance with article 18.

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; vol. 514, p. 209; vol. 740, p. 21; and vol. 893, No. I-12777.

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 schedule 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 or airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of the 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 aeronautical authorities of 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 or airlines and to designate another one.

4. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil 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 provisions of the Convention.

5. The aeronautical authorities of 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 aeronautical authorities are 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 10 of the present Agreement is in force in respect of that service.

Article 4. SUSPENSION AND REVOCATION

1. The aeronautical authorities of each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in article 2 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as they may deem necessary on the exercise of these rights:

- (a) In any case where they are not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this article is essential to prevent further infringements of laws or regulations, such right 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 5. CAPACITY REGULATIONS

1. There shall be 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. In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

3. The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which had designated the airline. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) Traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and

(c) The requirements of through airline operation.

4. Both Contracting Parties agree to recognize that the fifth freedom is complementary to the traffic requirements on the routes between the territories of the Contracting Parties and at the same time is subsidiary in relation to the traffic requirements of the third and fourth freedoms between the territory of the other Contracting Party and a country on the route.

5. The capacity to be provided on the agreed services on the specified routes shall be determined by agreement between the designated airlines of the two Contracting Parties subject to the approval of the aeronautical authorities.

Article 6. RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted or rendered valid to its own nationals by another State.

Article 7. APPROVAL OF TIME-TABLES

A 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 time-tables including 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 consent of the said authorities.

Article 8. EXEMPTION FROM CUSTOMS AND OTHER DUTIES

1. Aircraft operated on international services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants and the 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 are 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 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 entered into the territory of either Contracting Party for the maintenance or repair of aircraft engaged in an international service by a designated airline of the other Contracting Party;

(c) Fuel and lubricants destined to supply aircraft operated on an international service 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 such 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 9. DIRECT TRANSIT TRAFFIC

Passengers in transit across the territory of either Contracting Party shall not be subject to control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 10. TRANSPORT TARIFFS

1. The tariffs to be charged by the airlines 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 cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines as applied on the specified routes or sections thereof.

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, where it is deemed suitable, with other airlines operating over the whole or part of the route, and such 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 thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the consent 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 paragraph (2) of this article, or if during the first fifteen (15) days of the thirty (30) 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 endeavour to agree upon the tariffs.

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 16 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.

Article 11. TRANSFER OF NET REVENUES

Each Contracting Party grants to the designated airline(s) of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by those airlines in its territory in connection with the carriage of passengers, mail and cargo.

Article 12. STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the Contracting Party referred to first in this article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services.

Article 13. REPRESENTATION

The designated airlines of the Contracting Parties are entitled to maintain the technical and commercial personnel required for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

Article 14. CONSULTATIONS AND MODIFICATIONS

1. In a spirit of close co-operation, 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 thereto.

2. If either of the Contracting Parties considers it desirable to modify any provisions 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 of the date of the request. Any modifications so agreed shall come into force sixty (60) days after they have been confirmed by an exchange of diplomatic notes.

3. Modifications to the schedule shall be agreed between the aeronautical authorities of the Contracting Parties and shall come into force sixty (60) days after the date of an exchange of diplomatic notes.

Article 15. ADAPTATION TO MULTILATERAL AGREEMENTS

The present Agreement and its schedule shall be amended to conform with any multilateral Convention or Agreement which may become binding on both Contracting Parties.

Article 16. SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization at the request of either Contracting Party may appoint any arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph (2) of this article.

Article 17. 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, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 18. COMING INTO FORCE

This Agreement shall enter into force sixty (60) days from the date of signature.

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

DONE in two originals in Valetta this 6 day of June, 1973, in the German and English languages, both texts being equally authentic.

For the Federal Government of Austria:

KREISKY

For the Government of Malta:

DOM MINTOFF

SCHEDULE

TO THE AIR SERVICES AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF AUSTRIA AND THE GOVERNMENT OF MALTA

Part I. The airline(s) designated by the Federal Government of Austria shall be authorized to embark and disembark, in international traffic, passengers, cargo and mail on the following routes:

Points in Austria – Malta and v.v.

Part II. The airline(s) designated by the Government of Malta shall be authorized to embark and disembark, in international traffic, passengers, cargo and mail on the following routes:

Malta – Points in Austria and v.v.

Part III. 1. Possible intermediate points and points beyond will be specified later in accordance with paragraph 3 of article 14 of the present Agreement.

2. The designated airline(s) of one Contracting Party may make stops at points outside the territory of the other Contracting Party which have not been included in parts I and II of this schedule, such stops not being regarded as constituting a modification of this schedule. However, no commercial rights can be enjoyed by the said airline(s) between such stops and the territory of the other Contracting Party.
