

AIR TRANSPORT
A G R E E M E N T
BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT
AND THE GOVERNMENT OF THE REPUBLIC OF CROATIA

L U F T V E R K E H R S A B K O M M E N
ZWISCHEN DER ÖSTERREICHISCHEN BUNDESREGIERUNG
UND DER REGIERUNG DER REPUBLIK KROATIEN

U potvrdu navedenog, dolje potpisani punomoćnici, uredno ovlašteni od svojih vlada, potpisali su ovaj Sporazum.

Sastavljeno u dva primjerka u Wien dana 23. Juni 1994 na njemačkom, hrvatskom i engleskom jeziku, svaki primjerak je jednako autentičan. U slučaju spora primjenit će se primjerak na engleskom.

Za saveznu vladu Austrije:

Victor Klima

Za vladu Republike Hrvatske:

Ivica Mudrinic

DODATAK

A) Određeni zračni prijevoznik (prijevoznici) Savezne vlade Austrije imat će pravo obavljati redoviti zračni promet u oba smjera na utvrđenim linijama kako slijedi:

Mjesta polaska:

Mjesta odredišta:

Točke u Austriji

Točke u Hrvatskoj

B) Određeni zračni prijevoznik (prijevoznici) Vlade Republike Hrvatske imat će pravo obavljati redoviti zračni promet u oba smjera na utvrđenim linijama kako slijedi:

Mjesta polaska:

Mjesta odredišta:

Točke u Hrvatskoj

Točke u Austriji

C) Zračni prijevoznik (prijevoznici) svake stranke Sporazuma može slijetati u mjestima prije i poslije, bez prava izvršavanja pete slobode.

Eventualno izvršavanje prava pete slobode, stranke Sporazuma mogu dogovoriti preko svojih zrakoplovnih vlasti.

AIR TRANSPORT AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF CROATIA

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

Hereinafter referred to as Contracting Parties,

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

Desiring to conclude an Agreement for the purpose of establishing scheduled air services between their respective territories,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement, terms given below have the following meaning, unless the context otherwise requires:

Aeronautical authorities – in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport, and in the case of the Government of the Republic of Croatia, the Ministry of Maritime Affairs, Transport and Communications, or any other authority legally empowered to perform the functions exercised now by the said authorities

Agreed services – any scheduled air service operated on a specified route.

Airline – any air transport enterprise offering or operating an international air service.

Air services – any scheduled air services performed by aircraft for the public transportation of passengers, cargo or mail.

Capacity – (a) in relation to an aircraft, the payload of that aircraft available on the whole or a section of a specified route:

(b) in relation to an air service, the capacity of the aircraft used on such air service, multiplied by the frequency operated by such aircraft during a given period on a whole or a section of a specified route.

Convention – 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 to the Annexes or to the Convention under articles 90 or 94 thereof, insofar as those Annexes and amendments have been adopted by both Contracting Parties.

Designated airline – an airline designated in writing by one Contracting Party to the other as authorised to operate the agreed services according to the Agreement.

International air service – an air service passing through the airspace over the territory of more than one state.

Specified route – a route specified in the Annex to the Agreement. %

Stop for non-traffic purposes – a landing for any purpose other than taking on or discharging passengers, cargo or Mail.

Tariffs – the prices to be paid for the carriage of passengers, baggage or cargo and conditions under which those prices apply, including prices and conditions for agency and auxiliary services, but excluding remuneration and conditions for the carriage of mail.

Territory – in relation to a State the land areas and territorial waters adjacent thereto under the sovereignty of that State.

Article 2

Grant of rights

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex. Such services and routes are hereafter called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route, the airline(s) designated by each Contracting Party shall enjoy, in addition to the rights specified in paragraph 1 of this Article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule for the purpose of taking on board and discharging passengers and cargo including mail.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward 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 airline or several 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 a designated airline 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 any such airline and to designate another one.

4. An airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfill the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services in conformity with the provisions of the Convention.

5. Each Contracting Party shall have the right to refuse to grant the operating authorizations 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 10 of the present Agreement, is in force and an agreement in accordance with the provisions of Article 9 of the present Agreement has been reached in respect of that service.

Article 4

Suspension and revocation

1. Each Contracting Party shall have the right to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline(s) designated by the other Contracting Party, or to revoke the operating authorization, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of said airline(s) are vested in the Contracting Party designating the airline(s) or in its nationals, or
- (b) in the case of failure by said airline(s) to comply with the laws or regulations of the Contracting Party granting these rights, or
- (c) in case the airline(s) otherwise fail(s) to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate suspension, revocation 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 consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date of request made by either Contracting Party for consultations.

Article 5

Recognition of certificates and licences

1. 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.

2. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals or rendered valid by another State.

Article 6

Airport and similar charges

Charges imposed by each Contracting Party for the use of airports and air navigation facilities by the designated airlines of one Contracting Party, shall not be higher than those paid by the designated airlines of the other Contracting Party for the same category of aircraft engaged in the same air services.

Article 7

Exemption from customs and other duties

i. Aircraft operated on international services by the airlines designated by each Contracting Party, as well as their regular equipment, supplies of fuel 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 remain on board the aircraft up to such time as they are re-exported.

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

- (a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;
- (b) spare parts entered into the territory of either Contracting Party for the Maintenance or repair of aircraft used on a specified route by the designated airline(s) of the other Contracting Party;
- (c) fuel and lubricants desuned to supply aircraft operated on a specified route by the designated airline(s) of the other Contracting Party, even if 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 Contracting Party. In each 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.

4. There shall also be exempt from all customs duties and/or taxes on a reciprocal basis items and goods imported into the territory of either Contracting Party for the exclusive use by the designated airline(s) of the other Contracting Party as follows:

- (a) goods to be used for the establishment, equipment and operation of an office, e.g. furniture, typewriters etc.;
- (b) all types of telecommunications equipment, as teletype-apparatus and walkie talkies or other wireless equipment for use within the airport;
- (c) airline computer systems for reservation and operational purposes, various official documents bearing the emblem of the airline such as luggage tags, air tickets, airway bills, timetables, boarding cards etc.

Article 8

Direct transit traffic

1. Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy and smuggling of narcotic drugs, be subject to no more than a simplified control.

2. Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

Article 9

Capacity regulations

The capacity to be operated on the agreed scheduled air services shall be subject to the following conditions:

1. There shall be fair and equal opportunity for the designated airline(s) of both Contracting Parties to operate the agreed services on the specified routes.

2. In operating the agreed services, the airline(s) of each Contracting Party shall take into account the interests of the airline(s) of the other Contracting Party so as not to affect unduly the services which the latter provide(s) on the whole or part of the same routes.

3. The agreed services provided by the designated airline(s) 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 of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Contracting Party designating the airline(s) and the countries of ultimate destination of the traffic.

4. Provisions 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(s), shall be made in accordance with the general principle that capacity shall be related to:

- (a) traffic requirements between the country of origin and the countries of destination;
- (b) traffic requirements of the area through which the airline(s) pass(es), after taking account of local and regional services established by airlines of the States comprising the area; and
- (c) the requirements of through-airline operations.

5. The schedules of the agreed services shall be submitted for approval to the aeronautical authorities of both 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.

6. The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

Article 10

Transport tariffs

1. The tariffs on any agreed services shall be established at a reasonable level, due regard being paid to all relevant factors including cost of operation, reasonable profit, competitive market situation and the tariffs of other airlines for any part of the agreed services. The tariffs shall be agreed upon by the designated airlines of both Contracting Parties.

2. The agreement on the tariffs shall, whenever possible, be reached by the designated airlines through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs with respect to each specified route, shall be agreed upon between the designated airlines. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties, and the demand for it is to be submitted not less than 30 days prior to proposed application. The above time limit may be reduced subject to the consent of the said authorities.

3. If the designated airlines cannot agree in reasonable time on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them according to the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to agree on those tariffs.

4. If the agreement under paragraph 3 of this Article cannot be reached, the controversy shall be settled according to the rules governing the disputes arising from this Agreement.

5. No new or amended tariffs shall be valid unless they are approved by the aeronautical authorities of both Parties or are awarded by arbitration according to the rules governing the disputes. Until final award on the tariffs is issued, according to this Article, the tariffs already in force shall apply.

Article 11

Transfer of airline earnings and taxation

1. Each Contracting Party shall grant the designated airline of the other Contracting Party the right to transfer the excess of receipts over expenditure earned by that airline in the territory of the first Contracting Party. The transfer of earnings in connection with the carriage of passengers, cargo and mail shall be made freely in any convertible currency according to the foreign exchange regulations in force. Transfers shall be effected immediately, at the latest within sixty (60) days after the date of request.

2. Where a special payment agreement exists between the Contracting Parties, payments shall be effected in accordance with the provisions of that agreement.

3. Profits from the operation of the agreed services shall be taxable only in the territory of the Contracting Party where the principal place of business of the concerned designated airline is situated.

4. Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party where the principal place of business of the concerned designated airline is situated.

5. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

Article 12

Airline representation, ticketing and sales promotion

The designated airlines of each Contracting Party shall have the same opportunity as that given to the airlines of the other Contracting Party in the territory of the other Contracting Party to establish and to operate offices and to employ, subject to the laws, commercial and technical personnel for the performance of the agreed services on the specified routes. It is also entitled to sell all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

Artikel 13

Aviation security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm their obligation to each other to protect the security of civil aviation against acts of unlawful interference. Without limiting the generality of their rights and obligations under international law the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 and its amendment in the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 or of any other Aviation Security Conventions to which the two parties may adhere.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Should a Contracting Party depart from the aviation security provisions of this Article, the aeronautical authorities of the other Contracting Party may request immediate consultations with the aeronautical authorities of that Party.

Article 14

Statistics

The aeronautical authorities of both Contracting Parties shall supply each other upon request with such periodic or other statistics as may reasonably be required, for the purpose of reviewing the capacity provided for on the agreed services. Those statistics shall include data relating to the capacity of traffic carried by designated airlines on the agreed services, including the origin and destination of the traffic.

Article 15

Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 16

Consultation and amendment

1. The aeronautical authorities shall hold consultations on request of either of them, to ensure close collaboration and efficient performance of the Agreement.

2. If either Contracting Party deems it necessary to amend any provision of the present Agreement, it may request consultations with the other Contracting Party. Such consultations (which may be prepared by discussions between the aeronautical authorities) shall begin within a period of sixty (60) days after the receipt of the request, unless both Contracting Parties agree to an extension of this period. Any amendment so stipulated and agreed upon by the Contracting Parties shall come into force when confirmed by an exchange of Diplomatic Notes.

3. If a multilateral convention concerning air transport comes into force in respect of both Contracting Parties, the Agreement shall be amended so as to conform with the provisions of that convention.

4. Any amendment to the Annex may be stipulated directly between the competent authorities of the Contracting Parties.

Article 17

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 negotiations, 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 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 may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In any case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

3. The Contracting Parties undertake to comply with any decisions given under paragraph 2 of this Article.

4. If and for so long as either Contracting Party fails to comply with a decision taken under paragraph 2 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

5. Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator; the fee for the third arbitrator and the expenses necessary for this one as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties.

Article 18

Termination

1. Either Contracting Party may at any time give to the other Party written notice through diplomatic channels of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. The Agreement shall terminate one year after receipt of the notice.

2. If the other Contracting Party does not acknowledge receipt of the notice, it shall be deemed to have been received 14 days after the receipt of the notice by the International Civil Aviation Organization.

Article 19

Entry into force

This Agreement shall enter into force on the first day of the second month, following the date on which the two Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE in duplicate at Vienna this 23 day of June 1994 in the German, Croatian and English languages, each version being equally authentic.

In case of dispute the English version shall prevail.

For the Austrian Federal Government:

Viktor Klima

For the Government of the Republic of Croatia:

Ivica Mudrinic

ANNEX

A. The airline(s) designated by the Government of the Republic of Croatia shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:

Points of arrival:

Points in Croatia

Points in Austria

B. The airline(s) designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:

Points of arrival:

Points in Austria

Points in Croatia

C. Any intermediate points and points beyond may be served by the designated airline(s) of each Contracting Party without exercising Fifth Freedom traffic rights.

The eventual exercise of Fifth Freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.

REPUBLIC OF AUSTRIA
FEDERAL MINISTRY FOR
FOREIGN AFFAIRS

I herewith certify that the foregoing text is a true copy of the Air Transport Agreement between the Austrian Federal Government and the Government of the Republic of Croatia, which was signed at Vienna on 23 June 1994.

The Agreement entered into force on 1 October 1995 i. e. on the first day of the second month following the exchange of notes according to its article 19. This exchange of notes took place on 11 and 21 August 1995 respectively.

The foregoing text contains the complete substance of the Agreement. No reservations or declarations have been made thereto by the parties.

Vienna, 2 November 1995

For the Federal Minister
for Foreign Affairs:



Franz CEDE
Ambassador
The Legal Adviser