

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT¹⁴⁴

AGREED BY DECISION OF THE COUNCIL AND OF THE COMMISSION OF 4 APRIL 2002 (2002/309/EC, EURATOM)

THE SWISS CONFEDERATION hereinafter referred to as “Switzerland”, and THE EUROPEAN COMMUNITY, hereinafter referred to as “the Community”, hereinafter referred to as “the Contracting Parties”,

RECOGNISING the integrated character of international civil aviation and desiring that regulations for intra-European air transport be harmonised;

DESIRING to set out rules for civil aviation within the area covered by the Community and Switzerland, rules which are without prejudice to those contained in the Treaty establishing the European Community (hereinafter referred to as the “EC Treaty”) and in particular to existing Community competences under Articles 81 and 82 of the EC Treaty and the competition rules derived therefrom;

AGREEING that it is appropriate to base these rules on the legislation which is in force within the Community at the time of signature of this Agreement;

DESIRING to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of this Agreement and the corresponding provisions of Community law which are substantially reproduced in this Agreement,

HAVE AGREED AS FOLLOWS:

CHAPTER 1 OBJECTIVES

Article 1

1. This Agreement sets out rules for the Contracting Parties in the field of civil aviation. These provisions are without prejudice to those contained in the EC Treaty and in particular to existing Community competences under the competition rules and the regulations of application of such rules, as well as under all relevant Community legislation listed in the Annex to this Agreement.

2. For this purpose, the provisions laid down in this Agreement as well as in the regulations and directives specified in the Annex shall apply under the condition set out hereafter. Insofar as they are identical in substance to corresponding rules of the EC Treaty and to acts adopted in application of that Treaty, those provisions shall, in their imple-

mentation and application, be interpreted in conformity with the relevant rulings and decisions of the Court of Justice and the Commission of the European Communities given prior to the date of signature of this Agreement. The rulings and decisions given after the date of signature of this Agreement shall be communicated to Switzerland. At the request of one of the Contracting Parties, the implications of such latter rulings and decisions shall be determined by the Joint Committee in view of ensuring the proper functioning of this Agreement.

Article 2

The provisions of this Agreement and its Annex shall apply to the extent that they concern air transport or matters directly related to air transport as mentioned in the Annex to this Agreement.

CHAPTER 2 GENERAL PROVISIONS

Article 3

Within the scope of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Article 4

Within the scope of this Agreement and without prejudice to the provisions of Council Regulation (EEC) No 2407/92, as included in the Annex to this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or Switzerland in the territory of any of these States. This shall also apply to the setting up of agencies, branches and subsidiaries by nationals of any EC Member State or Switzerland established in the territory of any of these States. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 5, paragraph 2, under the conditions laid down for its own nationals by the law of the country where such establishment is effected.

Article 5

1. Within the scope of this Agreement, companies or firms formed in accordance with the law of an EC Member State or Switzerland and having their registered office, central administration or principal place of business within the Community or Switzerland shall be treated in the same way as natural persons who are nationals of EC Member States or Switzerland.
2. 'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 6

Articles 4 and 5 shall not apply, as far as a Contracting Party is concerned, to activities which in that Contracting Party are connected, even occasionally, with the exercise of official authority.

Article 7

Articles 4 and 5 and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

Article 8

1. The following shall be prohibited as incompatible with this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 9

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with this Agreement insofar as it may affect trade between the Contracting Parties.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 10

All agreements, decisions and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition, as well as abuses of a dominant position, which may only affect trade within Switzerland, shall be subject to Swiss law and remain under the competence of the Swiss authorities.

Article 11

1. The provisions of Articles 8 and 9 shall be applied and concentrations between undertakings shall be controlled by the Community institutions in accordance with Community legislation as set out in the Annex to this Agreement, taking into account the need for close cooperation between the Community institutions and the Swiss authorities.

2. The Swiss authorities shall rule, in accordance with the provisions of Articles 8 and 9, on the admissibility of all agreements, decisions and concerted practices as well as abuses of a dominant position concerning routes between Switzerland and third countries.

Article 12

1. In the case of public undertakings and undertakings to which EC Member States or Switzerland grant special or exclusive rights, the Contracting Parties shall ensure that there is neither enacted nor maintained in force any measure contrary to the rules contained in this Agreement.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, shall be subject to the rules contained in this Agreement, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the

particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.

Article 13

1. Save as otherwise provided in this Agreement, any aid granted by Switzerland or by an EC Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Contracting Parties, be incompatible with this Agreement.
2. The following shall be compatible with this Agreement:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences
3. The following may be considered to be compatible with this Agreement:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Contracting Party;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Article 14

The Commission and the Swiss authorities shall keep under constant review matters to which reference is made in Article 12 and all systems of aid existing respectively in the EC Member States and in Switzerland. Each Contracting Party shall ensure that the other Contracting Party is informed of any procedure initiated to guarantee respect of the rules of Articles 12 and 13 and, if necessary, may submit observations before any final decision is taken. Upon request by one Contracting Party, the Joint Committee shall discuss any appropriate measures required by the purpose and functioning of this Agreement.

CHAPTER 3 TRAFFIC RIGHTS

Article 15

1. Subject to the provisions of Council Regulation (EEC) No 2408/92, as included in the Annex to this Agreement:

- Community and Swiss air carriers shall be granted traffic rights between any point in Switzerland and any point in the Community;
- two years after the entry into force of this Agreement, Swiss air carriers shall be granted traffic rights between points in different EC Member States.

2. For the purpose of paragraph 1:

- Community air carrier shall mean an air carrier which has its principal place of business and, if any, its registered office in the Community and which is licensed according to the provisions of Council Regulation (EEC) No 2407/92, as included in the Annex to this Agreement;
- Swiss air carrier shall mean an air carrier which has its principal place of business and, if any, its registered office in Switzerland and which is licensed according to the provisions of Council Regulation (EEC) No 2407/92, as included in the Annex to this Agreement.

3. The Contracting Parties shall undertake negotiations on the possible extension of the scope of this Article to cover traffic rights between points within Switzerland and between points within the EC Member States five years after the entry into force of this Agreement.

Article 16

The provisions of this Chapter supersede the relevant provisions of existing bilateral arrangements between Switzerland and the EC Member States. However, existing traffic rights which originate from these bilateral arrangements and which are not covered under Article 15 can continue to be exercised, provided that there is no discrimination on the grounds of nationality and competition is not distorted.

CHAPTER 4 ENFORCEMENT OF THE AGREEMENT

Article 17

The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement and shall refrain from any measures which would jeopardise attainment of the objectives of this Agreement.

Article 18

1. Without prejudice to paragraph 2 and the provisions of Chapter 2, each Contracting Party shall be responsible in its own territory for the proper enforcement of this Agreement and, in particular, the regulations and directives listed in the Annex.

2. In cases which may affect air services to be authorised under Chapter 3, the Community institutions shall enjoy the powers granted to them under the provisions of the regulations and directives whose application is explicitly confirmed in the Annex. However, in cases where Switzerland has taken or envisages taking measures of an environmental nature under either Article 8(2) or 9 of Council Regulation (EEC) No 2408/92, the Joint Committee, upon request by one of the Contracting Parties, shall decide whether those measures are in conformity with this Agreement.

3. Any enforcement action under paragraphs 1 and 2 shall be carried out in accordance with Article 19.

Article 19

1. Each Contracting Party shall give the other Contracting Party all necessary information and assistance in the case of investigations on possible infringements which that other Contracting Party carries out under its respective competences as provided in this Agreement.

2. Whenever the Community institutions act under the powers granted to them by this Agreement on matters which are of interest to Switzerland and which concern the Swiss authorities or Swiss undertakings, the Swiss authorities shall probe fully informed and given the opportunity to comment before a final decision is taken.

Article 20

All questions concerning the validity of decisions of the institutions of the Community taken on the basis of their competences under this Agreement, shall be of the exclusive competence of the Court of Justice of the European Communities.

CHAPTER 5 JOINT COMMITTEE

Article 21

1. A committee composed of representatives of the Contracting Parties, to be known as the 'Community/Switzerland Air Transport Committee' (hereinafter referred to as the Joint Committee), is hereby established which shall be responsible for the administration of this Agreement and shall ensure

its proper implementation. For this purpose it shall make recommendations and take decisions in the cases provided for in this Agreement. The decisions of the Joint Committee shall be put into effect by the Contracting Parties in accordance with their own rules. The Joint Committee shall act by mutual agreement.

2. For the purpose of the proper implementation of this Agreement, the Contracting Parties shall exchange information and, at the request of either Contracting Party, shall hold consultations within the Joint Committee.

3. The Joint Committee shall adopt, by a decision, its rules of procedure which shall include, among other provisions, the procedures for convening meetings, appointing the Chairman and laying down the latter's terms of reference.
4. The Joint Committee shall meet as and when necessary, and at least once a year. Either Contracting Party may request the convening of a meeting.
5. The Joint Committee may decide to set up any working party that can assist it in carrying out its duties.

Article 22

1. A decision of the Joint Committee shall be binding upon the Contracting Parties.
2. If, in the view of one of the Contracting Parties, a decision of the Joint Committee is not properly implemented by the other Contracting Party, the former may request that the issue be discussed by the Joint Committee. If the Joint Committee cannot solve the issue within two months of its referral, that Contracting Party may take appropriate temporary safeguard measures under Article 31 for a period not exceeding 6 months.
3. The decisions of the Joint Committee shall be published in the *Official Journal of the European Communities* and the Official Compendium of Swiss Federal Law. Each decision shall state the date of its implementation in the Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted if necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.
4. The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of a period of twelve months after adoption of a decision by the Joint Committee such notification has not taken place, paragraph 5 shall apply *mutatis mutandis*.
5. Without prejudice to paragraph 2, if the Joint Committee does not take a decision on an issue which has been referred to it within six months of the date of referral, the Contracting Parties may take appropriate temporary safeguard measures under Article 31 for a period not exceeding six months.
6. As regards legislation covered by Article 23 which has been adopted between the signature of this Agreement and its entry into force and of which the other Contracting Party has been informed, the date of referral in paragraph 5 shall be taken as the date on which the information was received. The date on which the Joint Committee shall reach a decision may not be earlier than two months after the date of entry into force of this Agreement.

CHAPTER 6 NEW LEGISLATION

Article 23

1. The Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Agreement, to amend unilaterally its legislation on a point regulated by this Agreement.
2. As soon as new legislation is being drawn up by one of the Contracting Parties, it shall informally seek advice from experts of the other Contracting Party. During the period preceding the formal adoption of new legislation, the Contracting Parties shall inform and consult each other as closely as possible. At the request of one of the Contracting Parties, a preliminary exchange of views may take place in the Joint Committee.
3. As soon as a Contracting Party has adopted an amendment of its legislation, it shall inform the other Contracting Party at the latest eight days after the publication in the *Official Journal of the European Communities* or the Official Compendium of Swiss Federal Law. Upon request of one Contracting Party, the Joint Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of this Agreement within six weeks after the request at the latest.
4. The Joint Committee shall:
 - either adopt a decision revising the Annex or, if necessary, propose a revision of the provisions of this Agreement, so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question;
 - or adopt a decision to the effect that the amendments to the legislation in question shall be regarded as being in accordance with the proper functioning of this Agreement;
 - or decide any other measure to safeguard the proper functioning of this Agreement.

CHAPTER 7 THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

Article 24

The Contracting Parties shall consult with each other in due time at the request of either Contracting Party, in accordance with the procedures laid down in Articles 25, 26 and 27:

- (a) on air transport questions dealt with in international organisations; and
- (b) on the various aspects of possible developments in relations between Contracting Parties and third countries in air transport, and on the functioning of the significant elements of bilateral or multilateral agreements concluded in this field.

The consultations shall be held within one month of the request or as soon as possible in urgent cases.

Article 25

1. The main aims of the consultations provided for in Article 24(a) shall be:
 - (a) to determine jointly whether the questions raise problems of common interest; and
 - (b) depending upon the nature of such problems:
 - to consider jointly whether Contracting Parties' action within the international organisations concerned should be coordinated, or
 - to consider jointly any other approach which might be appropriate.
2. The Contracting Parties shall as soon as possible exchange any information of relevance to the aims described in paragraph 1.

Article 26

1. The main aims of the consultations provided for in Article 24(b) shall be to examine the relevant issues and to consider any approach which might be appropriate.
2. For the purpose of the consultations referred to in paragraph 1, each Contracting Party shall inform the other Contracting Party of possible developments in the field of air transport and of the operation of bilateral or multilateral agreements concluded in that field.

Article 27

1. The consultations provided for in Articles 24, 25 and 26 shall take place within the framework of the Joint Committee.
2. If an agreement between one of the Contracting Parties and a third country or an international organisation were to affect negatively the interests of the other Contracting Party, the latter, notwithstanding the provisions of Council Regulation (EEC) No 2408/92, as included in the Annex to this Agreement, may take appropriate temporary safeguard measures in the field of market access in order to maintain the balance of this Agreement. Such measures may, however, be adopted only after consultations on this issue have taken place within the Joint Committee.

CHAPTER 8 FINAL PROVISIONS

Article 28

The representatives, experts and other servants of the Contracting Parties shall be required, even after their duties have ceased, not to disclose information, obtained in the framework of this Agreement, which is covered by the obligation of professional secrecy.

Article 29

Each Contracting Party may bring a matter under dispute which concerns the interpretation or application of this Agreement before the Joint Committee. The latter shall endeavour to settle the dispute. The Joint Committee shall be provided with all information which might be of use in making possible an in-depth examination of the situation, with a view to finding an acceptable solution. To this end, the Joint Committee shall examine all possibilities of maintaining the good functioning of this Agreement. The provisions of this Article shall not apply to questions which are within the exclusive competence of the Court of Justice of the European Communities under Article 20.

Article 30

1. If one of the Contracting Parties wishes to revise the provisions of this Agreement, it shall notify the Joint Committee accordingly. The amendment to this Agreement shall enter into force after completion of the respective internal procedures.
2. The Joint Committee may, upon the proposal of one Contracting Party and in accordance with Article 23, decide to modify the Annex.

Article 31

If one Contracting Party refuses to comply with any obligation under this Agreement, the other Contracting Party may, without prejudice to Article 22 and after having completed any other applicable procedure provided for in this Agreement, take appropriate temporary safeguard measures in order to maintain the balance of this Agreement.

Article 32

The Annex to this Agreement shall form an integral part thereof.

Article 33

Without prejudice to Article 16, this Agreement shall supersede the relevant provisions of bilateral arrangements in force between Switzerland on the one hand and EC Member States on the other hand concerning any matter covered by this Agreement and the Annex thereof.

Article 34

This Agreement shall apply, on the one hand to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of Switzerland.

Article 35

1. In the event of termination of this Agreement, under the provisions of Article 36(4), air services operated at the date of conformist expiry under the provisions of Article 15

may continue until the end of the scheduling season into which that date of expiry falls.

2. The rights and obligations acquired by undertakings by virtue of Articles 4 and 5 of this Agreement and of the rules of Council Regulation (EEC) No 2407/92 as included in the Annex to this Agreement, shall not be affected by the termination of this Agreement under the provisions of Article 36(4).

Article 36

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures. It shall enter into force on the first day of the second month following the final notification of the deposit of the instruments of ratification or approval of all the following seven agreements:

- agreement on air transport,
- agreement on the free movement of persons,
- agreement on the carriage of goods and passengers by rail and road,
- agreement on trade in agricultural products,
- agreement on certain aspects of government procurement,
- agreement on mutual recognition in relation to its assessment,
- agreement on scientific and technological cooperation.

2. This Agreement shall be concluded for an initial period of seven years. It shall be renewed indefinitely unless the Community or Switzerland notifies the other Contracting Party to the contrary before the initial period expires. Where such notification is given, paragraph 4 shall apply.

3. The Community or Switzerland may terminate this Agreement by notifying its decision to the other Contracting Party. Where such notification is given, paragraph 4 shall apply.

4. The seven agreements referred to in paragraph 1 shall cease to be applicable six months after receipt of the notification of non-renewal, as referred to in paragraph 2, or of termination, as referred to in paragraph 3.

ANNEX

For the purposes of this Agreement:

- wherever acts specified in this Annex contain references to Member States of the European Community, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;
- without prejudice to Article 15 of this Agreement, the term ‘Community air carrier’ referred to in the following Community directives and regulations shall include an