

AMENDING PROTOCOL
TO THE AGREEMENT
BETWEEN THE SWISS CONFEDERATION
AND THE EUROPEAN COMMUNITY
ON AIR TRANSPORT

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland",

and

THE EUROPEAN UNION, hereinafter referred to as the "Union",

hereinafter referred to as the "Contracting Parties",

HAVING REGARD to the Agreement between the European Community and the Swiss Confederation on air transport, done at Luxembourg on 21 June 1999, which entered into force on 1 June 2002 (hereinafter referred to as the "Agreement");

RECOGNISING the crucial importance of civil aviation in creating connectivity for passengers, freight and airmail;

WHEREAS a broad bilateral package, including the Institutional Protocol to this Agreement, has been agreed between the Contracting Parties in order to stabilise and develop mutual relations in the fields related to the internal market in which Switzerland participates;

REITERATING, in the context of the broad bilateral package between the Contracting Parties, the joint commitment of the Contracting Parties towards safe, secure, competitive, sustainable and innovative civil aviation,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendments to the Agreement

The Agreement is amended as follows:

- (1) in Article 2, the words "as mentioned in the Annex to this Agreement" are deleted;
- (2) in Article 15, paragraph 3 is replaced by the following:

"3. Traffic rights between points within Switzerland and traffic rights between points within the Member States of the Union shall be granted starting from the first scheduling season after the entry into force of the Amending Protocol to this Agreement.";

- (3) in Article 18, paragraph 3 is replaced by the following:

"3. Any enforcement action under this Article shall be carried out in accordance with Article 19.";

- (4) Article 21 is replaced by the following:

"ARTICLE 21

1. A Joint Committee is hereby established.

The Joint Committee shall be composed of representatives of the Contracting Parties.

2. The Joint Committee shall be co-chaired by a representative of the Union and a representative of Switzerland.

3. The Joint Committee shall:
 - (a) ensure the proper functioning and the effective administration and application of this Agreement;

 - (b) provide a forum for mutual consultation and a continuous exchange of information between the Contracting Parties, in particular with a view to finding a solution to any difficulty of interpretation or application of this Agreement or of a legal act of the Union to which reference is made in this Agreement in accordance with Article 10 of the Institutional Protocol to this Agreement;

 - (c) make recommendations to the Contracting Parties in matters pertaining to this Agreement;

 - (d) adopt decisions where provided for in this Agreement; and

 - (e) exercise any other competence granted to it in this Agreement.

4. In the event of an amendment to Articles 1 to 6, Articles 10 to 15, Article 17 or 18 of the Protocol (No 7) on the privileges and immunities of the European Union, annexed to the Treaty on the Functioning of the European Union (hereinafter referred to as 'Protocol (No 7)'), the Joint Committee shall amend Annex A to the Annex accordingly.

5. The Joint Committee shall act by consensus.

Decisions shall be binding on the Contracting Parties, which shall take all necessary measures to implement them.

6. The Joint Committee shall meet at least once a year, in Brussels and Bern alternately, unless the co-chairs decide otherwise. It shall also meet at the request of either Contracting Party.

The co-chairs may agree that a meeting of the Joint Committee be held by videoconference or teleconference.

7. The Joint Committee shall adopt its rules of procedure and update them as necessary.

8. The Joint Committee may decide to set up any working party or group of experts that can assist it in carrying out its duties.";

(5) the following article is inserted:

"ARTICLE 28a

1. Nothing in this Agreement shall be construed as requiring a Contracting Party to make available classified information, except where this is provided for in a legal act of the Union integrated into the Annex to this Agreement.

2. Classified information or material provided by, or exchanged between, the Contracting Parties under this Agreement shall be handled and protected in compliance with the Agreement between the European Union and the Swiss Confederation on the security procedures for the exchange of classified information, done at Brussels on 28 April 2008, and any security arrangement implementing it.

3. The Joint Committee shall adopt, by means of a decision, handling instructions to ensure the protection of sensitive non-classified information exchanged between the Contracting Parties.";

(6) Article 34 is replaced by the following:

"ARTICLE 34

This Agreement shall apply, of the one part, to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU') apply and under the conditions laid down in those Treaties, and, of the other part, to the territory of Switzerland.";

(7) the Annex to the Agreement is amended as follows:

- (a) the text between the heading "ANNEX" and the subheading "1. Aviation liberalisation and other civil aviation rules" is replaced by the following:

"SECTION A

- Unless otherwise provided for in technical adaptations, rights and obligations provided for in the legal acts of the Union integrated into this Annex for Member States of the Union shall be understood to be provided for for Switzerland. This shall be applied in full compliance with the Institutional Protocol to this Agreement.
- Without prejudice to Article 15 of this Agreement, the term 'Community air carrier' as referred to in the legal acts of the Union integrated into this Annex shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office, in Switzerland in accordance with Regulation (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood to be a reference to Regulation (EC) No 1008/2008.
- Any reference in legal acts of the Union integrated into this Annex to Articles 81 and 82 of the Treaty or to Articles 101 and 102 TFEU shall be understood as a reference to Articles 8 and 9 of this Agreement.

SECTION B";

- (b) in subsection 2 "Competition rules", in the entry concerning Council Regulation (EC) No 139/2004, the introductory wording "With respect to Article 4(5) of the Merger Regulation the following shall apply between the European Community and Switzerland:" is replaced by the words "With respect to Article 4(5) of the EC Merger Regulation, the following shall apply:";
- (c) subsection 3 "Aviation safety" is amended as follows:
 - (i) the entry concerning Regulation (EU) 2018/1139 is amended as follows:
 - (A) the following paragraph is deleted:

"Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in the provisions of Regulation (EU) No 182/2011 mentioned in Article 127 of Regulation (EU) 2018/1139 shall not be understood to apply to Switzerland.";

(B) point (c) is replaced by the following:

"(c) In Article 96, the following paragraph is added:

'Switzerland shall grant to the Agency and its staff, within the framework of their official functions for the Agency, the privileges and immunities provided for in Annex A, which are based on Articles 1 to 6, Articles 10 to 15, Articles 17 and 18 of Protocol (No 7). References to the corresponding articles of that Protocol are indicated between brackets for information.'";

(ii) in the entry concerning Commission Delegated Regulation (EU) 2019/945, first paragraph, the words "the second indent of the Annex" are replaced by the words "the first indent of Section A of the Annex";

(iii) in the entry concerning Commission Implementing Regulation (EU) 2019/947, first paragraph, the words "the second indent of the Annex" are replaced by the words "the first indent of Section A of the Annex";

(d) in subsection 5 "Air traffic management", in the entry concerning Regulation (EC) No 549/2004, the following paragraph is deleted:

"Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.";

(e) in subsection 9 "Annexes", point A is replaced by the following:

"A: Privileges and immunities";

(f) Annex A to the Annex and the Appendix to Annex A are replaced by the text set out in the Appendix to this Protocol.

ARTICLE 2

Entry into force

1. This Protocol shall be ratified or approved by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of the internal procedures necessary to the entry into force of this Protocol.

2. This Protocol shall enter into force on the first day of the second month following the last notification regarding the following instruments:

- (a) Institutional Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;
- (b) Amending Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;

- (c) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (d) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (e) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (f) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (g) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (h) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products;
- (i) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (j) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (k) Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union;

- (l) Agreement between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, on the participation of the Swiss Confederation in Union programmes;

- (m) Agreement between the European Union and the Swiss Confederation on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space Programme.

This Protocol is drawn up in duplicate in the German, French, Italian, Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

"ANNEX A

Privileges and immunities

ARTICLE 1

(corresponding to Article 1 of Protocol (No 7))

The premises and buildings of the Agency shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Agency shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice of the European Union.

ARTICLE 2

(corresponding to Article 2 of Protocol (No 7))

The archives of the Agency shall be inviolable.

ARTICLE 3

(corresponding to Articles 3 and 4 of Protocol (No 7))

1. The Agency, its assets, revenues and other property shall be exempt from all direct taxes.
2. Goods and services exported to the Agency for its official use from Switzerland or provided to the Agency in Switzerland shall not be subject to any indirect duties and taxes.
3. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or corresponding document totals at least one hundred Swiss francs (inclusive of tax). The Agency shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use; articles so imported shall not be disposed of, whether or not in return for payment, in Switzerland, except under conditions approved by the government of Switzerland.
4. The exemption from VAT, excise duty and any other indirect taxes shall be granted by way of remit on presentation to the goods or services supplier of the Swiss forms provided for the purpose.
5. No exemption shall be granted in respect of taxes and dues, which amount merely to charges for public utility services.

ARTICLE 4

(corresponding to Article 5 of Protocol (No 7))

For its official communications and the transmission of all its documents, the Agency shall enjoy in Switzerland the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the Agency shall not be subject to censorship.

ARTICLE 5

(corresponding to Article 6 of Protocol (No 7))

The *laissez-passer* of the Union issued to members and servants of the Agency shall be recognised as valid travel documents within the territory of Switzerland. Those *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union (Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385), including any subsequent amendments).

ARTICLE 6

(corresponding to Article 10 of Protocol (No 7))

Representatives of Member States of the Union taking part in the work of the Agency, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting in Switzerland, enjoy the customary privileges, immunities and facilities.

ARTICLE 7

(corresponding to Article 11 of Protocol (No 7))

In the territory of Switzerland and whatever their nationality, officials and other servants of the Agency shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;

- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in Switzerland, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of Switzerland;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of Switzerland.

ARTICLE 8

(corresponding to Article 12 of Protocol (No 7))

Officials and other servants of the Agency shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Agency, in accordance with the conditions and procedure laid down by Union law.

They shall be exempt from Swiss federal, cantonal and communal taxes on salaries, wages and emoluments paid by the Agency.

ARTICLE 9

(corresponding to Article 13 of Protocol (No 7))

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Switzerland and Member States of the Union, officials and other servants of the Agency whose domicile for tax purposes is not in Switzerland and who, solely by reason of the performance of their duties in the service of the Agency, establish their residence in the territory of Switzerland, shall be considered, both in Switzerland and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a Member State of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the first paragraph and situated in Switzerland shall be exempt from death duties in Switzerland; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

ARTICLE 10

(corresponding to Article 14 of Protocol (No 7))

Union law shall lay down the scheme of social security benefits for officials and other servants of the Union.

Officials and other servants of the Agency shall therefore not be obliged to be members of the Swiss social security system provided they are already covered by the scheme of social security benefits for officials and other servants of the Union. Members of the family of staff members of the Agency forming part of their household shall be covered by the scheme of social security benefits for officials and other servants of the Union provided that they are not employed by another employer than the Agency and provided that they do not receive social security benefits from a Member State of the Union or from Switzerland.

ARTICLE 11

(corresponding to Article 15 of Protocol (No 7))

Union law shall determine the categories of officials and other servants of the Agency to whom the provisions of Articles 7, 8, and 9 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to Switzerland.

ARTICLE 12

(corresponding to Article 17 of Protocol (No 7))

Privileges, immunities and facilities shall be accorded to officials and other servants of the Agency solely in the interests of the Agency.

The Agency shall be required to waive the immunity accorded to an official or other servants wherever that Agency considers that the waiver of such immunity is not contrary to the interests of the Agency.

ARTICLE 13

(corresponding to Article 18 of Protocol (No 7))

The Agency shall, for the purpose of applying this Annex A, cooperate with the responsible authorities of Switzerland or of the Member States of the Union concerned."
