

Agreement

between

the Federal Minister of Transport, Innovation and Technology
of the Republic of Austria

and

the Civil Aviation Authority of the Kingdom of Spain

on

the implementation of Article 83 *bis* of the Convention on International Civil Aviation

The Federal Minister of Transport, Innovation and Technology
of the Republic of Austria

and

the Civil Aviation Authority of the Kingdom of Spain

Whereas the Protocol of 6 October 1980 to amend Article 83 *bis* of the Convention on International Civil Aviation,

Desiring, with a view to enhance the safety in civil aviation, to transfer to the State of the Operator of aircraft all or part of the State of Registry's functions and duties pertaining to Articles 12, 30, 31 and 32 (a) of the Convention on International Civil Aviation, as provided by Article 83 *bis* of the Convention on International Civil Aviation which was included with the Protocol of 6 October 1980,

Convinced that, in line with ICAO Doc 9760, Part IV, Chapter 6, (Airworthiness Manual), and ICAO Doc 8335, Part V, (Manual of Procedures for Operations Inspection, Certification and Continued Surveillance), it is necessary to precisely establish the international obligations and responsibilities of Contracting States in compliance with the Convention on International Civil Aviation, when an aircraft registered in one Contracting State is operated by the holder of an operating licence issued by the other Contracting State, including an air operator certificate (AOC) under a dry-lease arrangement or any other agreement in the spirit of Article 83 *bis* of the Convention on International Civil Aviation,

Whereas the fact that the Kingdom of Spain and the Republic of Austria are both Member States of the European Union, and therefore apply numerous harmonized European regulations in the field of aviation legislation ensuring a standardized approach -

have agreed, on the basis of Articles 33 and 83 *bis* of the Convention on International Civil Aviation, as follows:

Article 1 Definitions

For the purposes of this Agreement, unless the text otherwise requires:

1. the term "Convention on International Civil Aviation" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including 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 in so far as those Annexes and amendments have become effective for or have been ratified by both Contracting Parties,
2. the term "ICAO" means the International Civil Aviation Organization,
3. the term "EASA" means the European Aviation Safety Agency,
4. the term "dry-lease arrangement" means an arrangement between lessor and lessee for the lease of an aircraft for use against payment, without crew and with the aircraft being operated under the air operator certificate of the lessee.
5. the term "lessor" means the registered owner or the person transferring the use of an aircraft against payment to the lessee.
6. the term "lessee" means the operator to whom an aircraft is leased for use against payment and in whose operating licence, including an air operator's certificate, the aircraft is registered.

7. the term “civil aviation authority” means in the case of the Kingdom of Spain the Agencia Estatal de Seguridad Aérea (AESA), having its headquarters in Av. del General Perón 40, E-28020 Madrid, and in the case of the Republic of Austria the aviation authority Austro Control GmbH, Wagramer Straße 19, A-1220 Wien, responsible for the implementation of this Agreement, or any other person or agency authorized to perform the functions incumbent upon the said authority.
8. the term “State of Registry” means the State on whose register the aircraft is entered.
9. the term “State of the Operator” means the State from which the lessee has received his operating licence.

Article 2

Scope of application

This Agreement shall be applicable to aircraft registered in the State of one Contracting Party and which are operated by an operator from the State of the other Contracting Party for commercial air transport under a dry-lease arrangement or any other agreement in the spirit of Article 83 *bis* of the Convention on International Civil Aviation. This Agreement is limited to aircraft listed on a separate list of concerned aircraft to this Agreement, which is subject to amendment from time to time as agreed upon and signed by the Agencia Estatal de Seguridad Aérea (AESA) and Austro Control GmbH.

Article 3

Transferred responsibilities

- (1) The civil aviation authority of the State of Registry, in accordance with the provisions of this Agreement, hereby transfers the following responsibilities including oversight and control of the duties set out in the respective Annexes to the Convention on International Civil Aviation to the civil aviation authority of the State of the Operator.

1. Annex 2 – *Rules of the Air*, enforcement of compliance with applicable rules and regulations relating to the flight and manoeuvre of aircraft.
2. Annex 6 – *Operation of Aircraft* – all responsibilities which are normally incumbent upon the State of Registry for the oversight and control of operations of aircraft entered on its aircraft register.
3. Annex 8 – *Airworthiness of aircraft* – all responsibilities which are normally incumbent upon the State of Registry, and have not been assumed by EASA, for the oversight and control of aircraft entered on its aircraft register. Under this Agreement, the responsibility for the surveillance of maintenance and continuing airworthiness of leased aircraft operated under the air operator's certificate (AOC) of the lessee is hereby transferred to the civil aviation authority of the State of the Operator.

(2) The civil aviation authority of the State of the Operator shall inform the civil aviation authority of the State of Registry about any intended sublease of an aircraft for which the responsibilities were transferred in accordance with paragraph 1.

(3) Duties and functions in accordance with paragraph 1 must not be transferred upon a third State.

Article 4

Procedure for the transfer of responsibilities

(1) Details concerning the transfer of responsibilities in accordance with Article 3, including the provisions and procedures to be applied, are laid down in Annex 1 to this Agreement. Updates of Annex 1 shall be mutually agreed by the Contracting Parties.

Applications for the transfer of responsibilities by the civil aviation authority of the State of Registry shall require the written acceptance by the civil aviation authority of the State of the Operator. Such an acceptance shall be achieved by means of an amendment of the list of concerned aircraft.

(2) Each civil aviation authority shall ensure that leasing contracts are in compliance with the terms and conditions laid down in the present Agreement.

(3) In case of prolongation of a lease arrangement, paragraph 1 shall apply accordingly. It also applies in case of prolongation of any other agreement in the spirit of Article 83 *bis* of the Convention on International Civil Aviation.

(4) The civil aviation authorities shall be entitled to revoke the transfer of responsibilities at any time. The revocation must be performed in writing. It shall become effective 7 days upon receipt.

(5) An aircraft for which the responsibility for oversight and control was transferred by virtue of Article 3 (1) shall be subject to the requirements of the in each case applicable laws, as well as other regulations and procedures of the State of the Operator.

Article 5

Meetings between the civil aviation authorities

If required, meetings shall be convened between the civil aviation authorities of the Contracting States to discuss both operations and airworthiness matters found as a result of the inspections of the aircraft. In this connection, the following subjects shall be especially discussed:

1. Air operations,
2. Control of continued airworthiness and maintenance of aircraft,
3. Procedures for the management of the Continuing Airworthiness Management Exposition (CAME) or the Operator Maintenance Control Manual (MCM), if applicable,
4. Flight and cabin crew training and checking,
5. Any other significant matters arising from inspections or occurrences.

Article 6

Obligation to carry Documents

The civil aviation authorities of the Contracting States shall make available a certified true copy of this Agreement as well as of the correspondence in accordance with Article 4 (1) to the lessee. Copies of this Agreement, of the correspondence as well as of the air operator's certificate in which the aircraft concerned is registered shall be carried on board the aircraft for which the responsibility was transferred by virtue of this Agreement. If the lessee has obtained, from his authority, approval for a system to list the registration marks for aircraft operated and authorized under his air operator's certificate, this list and the relevant section of the Operator's Manual must be kept on board.

Article 7

Registration

(1) The Contracting States shall submit this Agreement as well as amendments, including Annex 1, thereto in accordance with Article 83 of the Convention on International Civil Aviation and in compliance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements for registration to ICAO for registration (Doc 6685)*.

(2) Upon update of the list of concerned aircraft, each civil aviation authority shall submit a copy to ICAO for registration in accordance with Article 83 of the Convention on International Civil Aviation and in compliance with the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements for registration to ICAO for registration (Doc 6685)*. The lists registered with the ICAO shall be updated by the depositor authority every time the validity of the present Agreement is extended by a new aircraft or by a new lease period.

Article 8

Charges

Each civil aviation authority shall invoice charges and expenses according to its own provisions.

Article 9

Entry into Force, Period of Validity, Dispute Resolution

- (1) This Agreement shall enter into force on the first day of the second month after the date of its signature. Until the entry into force, the Agreement shall be applied on a provisional basis, subject to the respective legal provisions of the Contracting Parties.
- (2) Any modification to this Agreement shall be made in writing.
- (3) The present Agreement shall be concluded for an indefinite period of time.
- (4) Any disagreement concerning the interpretation or application of this Agreement shall be resolved by consultation between the parties and shall not be referred to any international tribunal, arbitration, or third party settlement.

Article 10

Termination and notification

- (1) This Agreement shall for individual aircraft come to an end:
 1. At the termination of the respective aircraft leasing arrangements, or any other arrangement under which they are operated, or
 2. On the date of termination of this Agreement.
- (2) After consultation between the Contracting Parties, this Agreement shall also terminate 60 days after the date of receipt of written notice of the termination of this Agreement by one of the two Contracting Parties.
- (3) Upon termination of this Agreement ICAO shall be notified of it by each Contracting Party.

(4) In the case where this Agreement was terminated for reasons other than the termination of the underlying lease or any other arrangement, the owners and the operator shall be notified by each civil aviation authority.

(5) Bearing in mind all previous agreements between the Federal Minister of Transport, Innovation and Technology of the Republic of Austria and the Civil Aviation Authority of the Kingdom of Spain on the implementation of Article 83 bis of the Convention on International Civil Aviation, the two signatory parties with the intended purpose of marking a new stage in their relationship with each other and to regulate the matter from now onwards under the present Agreement, establish a new permanent regulatory framework upon terms of reciprocity, once again in compliance with the provisions of Article 83 bis of the Convention on International Civil Aviation.

Done at Vienna on 30 November 2017 and at Madrid on 1 December 2017, both in English.

For the
Austrian Federal Minister of Transport,
Innovation and Technology
Department of Civil Aviation
Radetzkystraße 2
A-1030 Vienna

For the
Agencia Estatal de Seguridad Aérea
Av. del General Perón 40
E-28020 Madrid

Mag. Elisabeth Landrichter
Director General Civil Aviation

Isabel Maestre Moreno
Agency Director

Annex 1: Transfer of responsibilities and working procedures in relation to the bilateral agreement between Spain and Austria on the implementation of Article 83 bis of the Convention on International Civil Aviation

1 Function, Duties and responsibilities

1.1 The State of the Operator¹ assumes, concerning the aircraft, all the responsibilities otherwise falling on the State of Registry as far as defined in the Convention of Chicago Article 12 (Rules of the Air) and its Annex 6 and 8, and Commission Regulations (EU) No 965/2012 and No 1321/2014.

This includes the issuance of exemptions from these applicable regulations. In the case of exemptions the State of Registry has to be notified.

For the sake of clarity, the responsibility of the MEL (Minimum Equipment List) of the aircraft is included in the responsibilities transferred to State of the Operator.

1.2 The State of Registry assumes, concerning the aircraft, all the rest of the responsibilities falling on the State of Registry defined as such in the Convention of Chicago Articles 30 (Aircraft Radio Licence), 31 (Certificate of Airworthiness), 32 (a) (Licences of Personnel) and its Annex 6 and 8.

More specifically:

1.2.1 Pursuant to Article 30 of the Convention of Chicago the Aircraft Radio Station License is delivered by the State of Registry.

1.2.2 Pursuant to article 31 of the Convention of Chicago and in accordance with the provisions of Regulation (EU) 1321/2014² and paragraphs M.1.1 and M.1.4 of Part M and in accordance with the Commission Regulation (EU) No 965/2012 and all amendments thereto, the State of Registry retains the following functions, duties and responsibilities, concerning the aircraft:

(a) Technical inspections of the aircraft within the framework of the survey programme of the State of Registry to monitor the status of the fleet (M.B.303);

(b) Issuance and review of the Airworthiness Review Certificate of the Aircraft, except if the aircraft has been in a controlled environment for the last 12 months, which could then be issued by the CAMO as established in Part M (M.A. 901 c).

¹ State of the Operator as defined in Annex 6 Chapter 1 of the Convention of Chicago.

² Commission Regulation (EU) 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of the organisations and personnel involved in these tasks.

- (c) Reception of occurrence reports envisaged in Regulation (EU) No 376/2014 and Regulation (EU) No 996/2012 or Annex 13 to the Convention of Chicago, if applicable;
- (d) The issuance of Permits to Fly, unless Permits to Fly are issued by the Continuing Airworthiness Management Organisation according to its privileges under M.A.711(c);
- (e) Coding the ELT with the country code of the State of Registry.

The State of the Operator retains the following functions, duties and responsibilities, concerning the aircraft:

- (a) The MEL (Minimum Equipment List) of the aircraft;
- (b) Ensuring the oversight of the continuing airworthiness management system of the Continuing Airworthiness Management Organisation approved in accordance with Part M, Subpart G of Regulation (EU) No 1321/2014, including modifications and repairs, interior installation and emergency and safety equipment;
- (c) The approval of the maintenance programme of the aircraft, as well as all revisions and deviations thereto;
- (d) Reception of occurrence reports envisaged in Regulation (EU) No 376/2014 and Regulation (EU) No 996/2012 or Annex 13 to the Chicago Convention, if applicable, and relevant follow up actions;
- (e) Ensuring compliance with all requirements of the Commission Regulation (EU) No 965/2012 prescribed in Annex IV [Part-CAT] Subpart D;

The State of the Operator grants the State of Registry the right to carry out any inspections on the aircraft on its territory or at the premises of the operator, its Continuing Airworthiness Management Organisation or its Part-145 organisation. The State of Registry will inform the State of Operator at least 48 hours in advance of planned inspections (except in cases of urgent safety concerns).

- 1.2.3 Pursuant to Commission Regulation (EU) No 1178/2011 (as amended), the pilot licence of the crew members must be issued or rendered valid by an EASA member State.

2 Notification, coordination and control

The civil aviation authorities will notify each other in case of level 1 findings regarding:

- (a) the Monitoring of the Continuous Airworthiness,
- (b) the Maintenance of the Aircraft and
- (c) any exemption issued with regards to the relevant regulations within 72 hours after first notice.

3 Responsibilities of the Republic of Austria and the Kingdom of Spain regarding airworthiness (According to Regulation (EU) No 1321/2014, PART M)

| Part M requirement | Subject | Responsible State |
|--|--|-----------------------|
| M.1.1 | Oversight of the continuing airworthiness of individual aircraft | State of the Operator |
| | Issue of Airworthiness Review Certificates | State of Registry |
| M.1.4 | Approval of maintenance programmes, | State of the Operator |
| SUBPART C CONTINUING AIRWORTHINESS | | |
| M.B.301 | Maintenance Programme | State of the Operator |
| M.B.302 | Exemptions | State of Registry |
| M.B.303 | Aircraft Continuing Airworthiness monitoring | State of Registry |
| M.B.304 | Revocation and suspension of ARC | State of Registry |
| SUBPART I AIRWORTHINESS REVIEW CERTIFICATE | | |
| M.B.901 | Assessment of recommendations | State of Registry |
| M.B.902 | Airworthiness review by the competent authority | State of Registry |
| M.B.903 | Findings | State of Registry |