Austrian national procedure for the granting of restricted traffic rights
(2009/C 183/10)

Pursuant to Article 6 of Regulation (EC) No 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries, the European Commission publishes the following national procedure for the distribution of traffic rights among eligible Community air carriers, where the use of these traffic rights is limited by air service agreements with third countries.

FEDERAL LAW GAZETTE
FOR THE REPUBLIC OF AUSTRIA

Vol. 2008
Issued 2 July 2008
Part I

96th Federal Act: International Air Services 2008 (BGzLV 2008)

96th Federal Act on International Air Services 2008 (BGzLV 2008)

The National Council has resolved:

SECTION 1
General Provisions, Air service agreement

Scope
§ 1. This Act governs the provision and exercise of air traffic rights:

1. to and from third countries; and

2. within Austria by air carriers from third countries.

Definitions of terms
§ 2. The following meanings apply for the purposes of this Act:

1. air traffic rights: the right to provide commercial air services to and from third countries;

2. scheduled air services: regular scheduled air services on specific routes for public transport purposes;

3. non-scheduled air services: any other form of commercial transport;

4. flight schedule: air services offered by an air carrier during a given transport period;

5. summer scheduling period: the period within a calendar year starting on the last Sunday in March and ending on the last Saturday in October;
6. winter scheduling period: the period starting on the last Sunday in October of a calendar year and ending on the last Saturday in March of the following calendar year;

7. scheduling period: summer scheduling period or winter scheduling period;

8. third country: a country which is not a Member State of the European Union or not treated as equivalent thereto under an international agreement;

9. capacity: the available number of seats and payload offered on a commercial transport route during a given period;

10. Community air carrier: an air carrier whose operating licence was issued under Council Regulation (EEC) No 2407/92 on licensing of air carriers (OJ L 240, 24.8.1992, pp. 1-7) by a Member State of the European Union or a country treated as equivalent thereto under an international agreement, and

11. Community air carrier with a branch in Austria: an air carrier whose operating licence was issued under Regulation (EEC) No 2407/92 and which exercises an effective and de facto air services activity under standing agreements in Austria, irrespective of the legal status of the branch.

Negotiation and conclusion of air service agreements

§ 3. (1) Notwithstanding any other relevant statutory provisions, the Federal Government must observe the provisions of this Act when it concludes international agreements with third countries governing air services to and from third countries (air service agreements) which are covered by the scope of this Act.

(2) Preparation and negotiation of air service agreements with third countries shall be the responsibility of the Federal Minister for European and International Affairs in consultation with the Federal Minister for Transport, Innovation and Technology. Insofar as the sphere of activity of another Federal Minister is affected in this respect, the latter shall also be consulted. The Federal Minister for European and International Affairs may assign his/her responsibility to the Federal Minister for Transport, Innovation and Technology, in application of § 15 of the current version of the Federal Ministries Act 1986 (Federal Law Gazette No 76/1986).

(3) Within his/her sphere of activity, the Federal Minister for Transport, Innovation and Technology may prepare, negotiate and conclude administrative agreements and implementing regulations under an air service agreement concluded in accordance with paragraphs 1 and 2.

(4) Community air carriers with a branch in Austria and other carriers and institutions affected by the content of the air services negotiations in accordance with paragraph 2 or paragraph 3 may be given the opportunity to participate in those air services negotiations, subject to compliance with the requirements of appropriate conduct of negotiations. The manner of proceeding in this respect shall be non-discriminatory.

Granting of air traffic rights

§ 4. (1) Air service agreements may, in accordance with public interests, establish an obligation to provide the air carriers to be designated by the other State party to the Agreement with the following rights (air traffic rights) in particular in respect of given routes (§ 7):

1. the right to overfly the territory of the Federal Republic of Austria without landing;

2. the right to land in the territory of the Federal Republic of Austria for non-commercial purposes (technical landings);
3. the right to convey passengers, mail and cargo from the other State party to the Agreement to Austria, including points before, between and after, and back; and

4. the right to convey passengers, mail and cargo from third countries to Austria, including points before, between and after, and back.

(2) When taking into account public interests on granting air traffic rights in accordance with paragraph 1, particular efforts shall be made to ensure that equivalent air traffic rights are granted by the other State party to the Agreement to air carriers to be designated by the Republic of Austria.

(3) An air carrier from a third country may be granted the right in an air service agreement to provide commercial conveyance of passengers, mail and cargo within the Federal Republic of Austria (cabotage), provided that such action is not in conflict with public interests and Community air carriers with a branch in Austria are granted equivalent rights in the State in question.

Matching air traffic supply and demand

§ 5. Air service agreements may include provisions to the effect that in the exercise of air traffic rights, the air traffic supply is to be adjusted to:

1. the demand for air traffic between Austria and the other State party to the Agreement;

2. the demand for air traffic between the States party to the Agreement and third countries affected by the route in question; and

3. the conditions for cost-effective operation of the air carrier in question.

Refusal, revocation and restriction of air traffic rights

§ 6. Air service agreements may include provisions to the effect that the right to exercise air traffic rights must be refused, revoked or restricted, if:

1. the air carrier has violated legal provisions applicable in Austria; or

2. the air carrier has violated obligations arising from the air service agreement; or

3. it is not proven that the priority title and the de facto power of disposal over an air carrier designated by the other State party to the Agreement accrue to said third country or to a State treated as equivalent thereto under an international agreement, the natural and legal persons of said third country being treated as equivalent to said third country; or

4. it is not proven that the conditions pursuant to § 11(2) are met in the case of an air carrier designated by Austria.

Route plans

§ 7. The routes upon which air traffic rights are to be exercised must be set down in the air service agreement with due consideration for public interests (air route plans). § 4(2) shall apply.

Fee for the use of airports and their facilities and for the provision of air traffic control equipment and services

§ 8. The air service agreement may provide for payment of a fee in accordance with the principles set down in § 15 of the Convention on International Civil Aviation (Federal Law Gazette No 97/1949) in respect of the use of airports and their facilities and of the provision of air traffic control equipment and services.
Other provisions in the air service agreement

§ 9. (1) In the absence of exclusive competence of the European Community to regulate the matter, the air service agreement may include those other provisions, over and above the content shown in §§ 3 to 8, required for air carriers to exercise their air traffic rights, and for the air service agreement to be applied, appropriately.

(2) Provisions within the meaning of paragraph 1 shall be considered to be those relating in particular to:

1. the marketing of air services;
2. the transfer of income;
3. exemption from tax and social security contributions; and
4. consultation and dispute settlement arrangements.

SECTION 2
Exercising air traffic rights

Register of air traffic rights

§ 10. (1) The Federal Minister for Transport, Innovation and Technology must maintain a register of air traffic rights. This register must include:

1. a description of the procedure as per this Act as a basis for the exercise of air traffic rights;
2. a register of air traffic rights granted by third countries, inclusive of any restrictions;
3. a register of planned air service negotiations (§ 3);
4. a register of allocations of restricted air traffic rights as per §§ 15, 16 and 23(4);
5. a register of revocations of allocations of restricted and not yet reallocated air traffic rights as per § 16;
6. any announcements which are to be included in the register on the basis of the procedure for allocating restricted air traffic rights (§§ 15, 16);
7. a register of current licences as per § 12; and
8. other information of importance for exercising air traffic rights.

(2) The register of air traffic rights shall be available for inspection by all Community air carriers and all air carriers and institutions which establish a legitimate interest in obtaining the information contained in the register.

Designation of air carriers

§ 11. (1) If an air service agreement grants the Republic of Austria the right to designate those air carriers which the other State party to the Agreement must permit to exercise air traffic rights, it shall be the responsibility of the Federal Minister for Transport, Innovation and Technology to designate said air carriers.
(2) Only Community air carriers may be designated, where appropriate following allocation of restricted air traffic rights as per §§ 15 or 16. Said air carriers must:

1. have a branch in Austria,

2. have at their disposal the necessary technical and financial resources to provide the intended air services; and

3. also be suited in other respects to performing the functions entailed in providing the intended air services, in particular with regard to marketing the services.

(3) Designation must be effective, at the latest, as from issue of a licence to a Community air carrier with a branch in Austria in accordance with §§ 12, 13 or 14.

(4) Designation shall be revoked if:

1. the air carrier designated does not fulfil the conditions set down in paragraph 2, or

2. the air carrier does not commence exercising those air traffic rights for which it has been designated within a period of six months or if it ceases to exercise them for a similar period, unless the air carrier is able to provide prima facie evidence to the effect that force majeure militated or is militating against it starting or carrying out operations, or

3. on the basis of provisions of an air services agreement, such action is necessary for a Community air carrier with a branch in Austria to exercise restricted air traffic rights, where appropriate after a procedure as per §§ 15 or 16 has been conducted.

Commercial air services to and from States with which no air service agreement exists

§ 12. (1) In the absence of a provision to the contrary in international agreements, the Federal Minister for Transport, Innovation and Technology may, on application, license commercial transport of passengers or cargo by scheduled air carrier traffic or non-scheduled traffic to and from States with which no air service agreement exists, if such action is not in conflict with public interests, such as in particular aviation safety interests or interests of the economy at large.

(2) For a licence as per paragraph 1 issued to a Community air carrier, evidence must in any case be provided of compliance with the designation requirements as per § 11(2). In cases where, when granting air traffic rights to Community air carriers with a branch in Austria, the third country concerned applies restrictions, allocation of the restricted air traffic rights concerned must be effected as per §§ 15, 16 or 23(4) to the air carrier concerned.

(3) For a licence as per paragraph 1 issued to an air carrier from a third country, evidence must in any case be provided that:

1. the air carrier concerned is licensed to operate in its home State; and

2. Community air carriers with a branch in Austria are licensed in the home State of the air carrier concerned under comparable conditions.

(4) The application for a licence as per paragraph 1 must be submitted at least 30 days, and in the case of an application by a Community air carrier to exercise restricted air traffic rights which currently have not been allocated at least 60 days, prior to the intended date of operation and must include the information set down in § 13(1). If the carrier intends to amend the licensed operation during the period covered by the licence, such amendments must be submitted in writing to the Federal Minister for Transport, Innovation and Technology for approval as per paragraph 1 at least five working days before the date planned for the amendment to the operation.
(5) Licences as per paragraph 1 shall be issued with provisos, for a fixed term or subject to conditions if such action is in the public interest, in particular in the interests of aviation safety and the economy at large. The licence must however in any case be issued for a fixed term, ending at the end of the respective flight schedule period.

(6) Licences as per paragraph 1 shall be revoked:

1. if one of the conditions on which they were issued is no longer satisfied or was not satisfied as at the date upon which the licence was issued and this defect still prevails; or

2. if the air carrier infringes a condition in a licence issued as per paragraph 1.

(7) If required by the third country concerned, prior to the issue of a licence as per paragraph 1 to a Community air carrier, a designation shall be made under the conditions of § 11 and if necessary the designation of another Community air carrier shall be revoked as per § 11(4)(3).

Commercial transport on scheduled air services

§ 13. (1) Air carriers may provide commercial transport to or from third countries on scheduled air services for passengers or cargo (§ 2(2)) only if a licence (flight schedule licence) has been issued by Austro Control GmbH for the flight schedules planned. The application for the flight schedule licence must be submitted in writing at least 30 days, but in the case of an application by a Community air carrier to exercise restricted air traffic rights which currently have not been allocated at least 60 days, prior to the intended date of operation and must include, in addition to the flight schedules to which the application relates:

1. details of the aircraft types to be used, showing the seating or freight capacities;

2. if the air carrier originates from a third country, the documentary evidence of insurance polices consistent with Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 30.4.2004, p. 1); and

3. in the case of Community air carriers, information proving that the designation requirements have been fulfilled (§ 11(2)).

(2) If the carrier intends to amend those details shown in paragraph 1 during the period covered by the licence, such amendments must be submitted to Austro Control GmbH for approval at least five working days before the date planned for the amendment to the operation.

(3) Flight schedule licences may be issued only if, in accordance with the terms and conditions of the applicable air service agreement and the provisions of this Act, the requisite air traffic rights have been obtained and there are no public interests, in particular as regards aviation safety or the economy at large, in conflict therewith. Flight schedule licences shall be issued with provisos, for a fixed term or subject to conditions, if such action is in the public interest, in particular as regards aviation safety or the economy at large. The flight schedule licence must however in any case be issued for a fixed term, ending at the end of the respective flight schedule period. The flight schedule licence must also in any case be issued on condition that operations commence within four weeks of the date on which the licence becomes valid and that, within the period covered by the licence, operation must not cease for longer than two weeks; otherwise, the licence shall lapse unless the air carrier is able to furnish prima facie evidence to the effect that force majeure has militated or is militating against the commencement or continuation of operations.

(4) Notwithstanding paragraph 3, flight schedule licences may be issued to Community air carriers only if the latter meet the designation requirements as per § 11(2) and, where appropriate, corresponding restricted air traffic rights as per §§ 15, 16 or 23 have been allocated.
Flight schedule licences shall be revoked if:

1. one of the conditions upon which the licence was issued is no longer satisfied or was not satisfied as at the date upon which the licence was issued and this defect still prevails; or

2. the air carrier infringes a condition in the flight schedule licence.

Air carriers from third countries may provide commercial transport on scheduled air services for passengers or cargo (§ 2(2)) within Austrian Federal territory only if a licence has been issued for this purpose by Austro Control GmbH. Paragraphs 1 to 5 shall apply.

Commercial transport on non-scheduled air services

§ 14. (1) Air carriers may provide commercial transport to or from third countries on non-scheduled air services for passengers or cargo only if a licence has been issued for this purpose by Austro Control GmbH. The provisions of § 13 shall apply mutatis mutandis.

(2) Air carriers from third countries may provide commercial transport within the territory of the Federal Republic of Austria on non-scheduled air services (§ 2(3)) only if a licence has been issued for this purpose by Austro Control GmbH. The provisions of § 13 shall apply mutatis mutandis.

Licences as per paragraph 1 or paragraph 2 shall be revoked if:

1. one of the conditions upon which they were issued is no longer satisfied or was not satisfied as at the date upon which the licence was issued and this defect still prevails; or

2. the air carrier infringes a condition in a licence issued as per paragraph 1 or paragraph 2.

A licence as per paragraph 1 is not required for:

1. flights made in order to fulfil humanitarian obligations or to provide assistance in emergencies;

2. flights by Community air carriers using aircraft with a maximum permissible take-off weight of up to 14 000 kg; and

3. flights as per § 2 of the Multilateral Agreement on commercial rights in non-scheduled air services in Europe (Multilaterales Abkommen über die kommerziellen Rechte im nichtplanmäßigen Luftverkehr in Europa) (Federal Law Gazette (BGBl.) No 163/1957).

Allocation of restricted air traffic rights

§ 15. (1) Where a Community air carrier submits an application as per §§ 12, 13 or 14 which relates to exercising restricted air traffic rights that have currently not been allocated, this application must be forwarded without delay to the Federal Minister for Transport, Innovation and Technology. The Federal Minister for Transport, Innovation and Technology must announce said application by entry in the register of air traffic rights (§ 10). The application of another Community air carrier as per §§ 12, 13 or 14 to exercise the air traffic rights in question, even if it is made after the period stated in § 12(4) or § 13(1) respectively, shall be considered to have been submitted in time provided that it is made within 30 days of the announcement of the first application.

(2) If, following the announcement as per paragraph 1, no further Community air carrier submits an application in time as per §§ 12, 13 or 14 to exercise the air traffic rights in question, and provided that the requirements for the licence as per §§ 12, 13 or 14 have been satisfied, the Federal Minister for Transport, Innovation and Technology shall declare by written decision that the air traffic rights in question have been allocated to the Community air carrier which has submitted the application as per paragraph 1.
(3) If, following an announcement as per paragraph 1, one or more Community air carriers submit an application in time as per §§ 12, 13 or 14 to exercise the restricted air traffic rights in question, the Federal Minister for Transport, Innovation and Technology must make a choice from the applicants. This selection shall be made upon the basis of a comparison of the applicants in terms of the quality of the air services planned and in respect of the contribution to the promotion of other public interests. The selection procedure as a rule shall result in the granting of all the air traffic rights available on the route concerned to one of the applicants. However, the traffic rights may be allocated between a number of applicants if this promotes the interests referred to in paragraphs 4 and 5 and is justified in commercial terms.

(4) Consideration must be given to the following in particular in the assessment of the quality of the planned air services as per paragraph 3:

1. the technical and financial resources of the air carrier to provide the services;
2. the frequency and date on which the air services are provided;
3. the seating configuration of the aircraft;
4. the routes (direct or indirect connection);
5. the cost-benefit ratio offered to customers for the services;
6. the availability of other transport links at the point of departure and destination;
7. the anticipated sustainability of the air services;
8. the date on which the provision of air services is to commence; and
9. the approach adopted to the different requirements of customers for air services.

(5) Consideration must be given to the following in particular in the assessment of the contribution made by the planned air services to promoting other public interests as per paragraph 3:

1. the contribution to the promotion of the business location, including tourism;
2. the promotion of competition between air service suppliers; and
3. aspects of noise protection (comparison of the noise generated by the aircraft used).

(6) All air carriers which have submitted an application as per paragraph 1 or paragraph 3 in time are parties to the procedure for the allocation of traffic rights. The Federal Minister must issue a notice in writing specifying the allocation of the restricted air traffic rights. Thereafter, where appropriate, designation or revocation of designation as per § 11(4)(3) respectively must be carried out and a licence issued for the exercise of the air traffic rights as per §§ 12, 13 or 14.
The Federal Minister for Transport, Innovation and Technology shall allocate certain currently unallocated restricted air traffic rights in accordance with the provisions below to a Community air carrier even without submission of an application as per §§ 12, 13 or 14, provided that a corresponding application for allocation of these air traffic rights is made at least six months, but no more than 24 months before it intends to commence the exercise thereof. Such an application shall be announced by the Federal Minister for Transport, Innovation and Technology by entry in the register of air traffic rights (§ 10). If, within a period of 30 days from the announcement, no further Community air carrier submits an application for the allocation of the air traffic rights in question, the Federal Minister for Transport, Innovation and Technology shall declare by written decision that the air traffic rights applied for are allocated to the applicant Community air carrier.

If, within a period of 30 days from an announcement as per paragraph 7, one or more Community air carriers apply for allocation of the restricted air traffic rights in question, the Federal Minister for Transport, Innovation and Technology shall conduct a selection procedure to which paragraphs 3 to 6 shall apply mutatis mutandis.

If the air carrier to which air traffic rights have been allocated as per paragraph 7 or 8 does not yet fulfil all the designation requirements (§ 11(2)) at the time of allocation, evidence that these requirements are satisfied must be provided at the latest by the time of the first licence as per §§ 12, 13 or 14 required to exercise the allocated air traffic rights, failing which the allocation shall be revoked by written decision.

With due consideration for the interests referred to in paragraphs 3 to 5, the restricted air traffic rights as per paragraphs 2, 3, 7 and 8 may be allocated with provisos, subject to conditions, without fixed term or for a fixed term of up to five years. Provisos and conditions may in particular entail the requirement to make efficient use of the allocated air traffic rights. The Federal Minister for Transport, Innovation and Technology shall supervise the air carrier concerned for compliance with the provisos and conditions imposed.

Unless expressly stated otherwise, the allocation shall apply in each case only for the type of scheduling period applied for (summer or winter scheduling period).

Revocation of allocation and reallocation of restricted air traffic rights

§ 16. (1) The allocation of restricted air traffic rights as per § 15 shall be revoked if the air carrier:

1. infringes provisions of this Act or air services agreements concluded on the basis of this Act; or

2. fails to comply with conditions imposed in an allocation decision as per § 15(10); or

3. does not commence exercising the allocated air traffic rights within a period of six months of the allocation becoming effective or ceases to exercise those rights for an uninterrupted period of six months, unless the air carrier is able to provide prima facie evidence to the effect that force majeure militated or is militating against it starting operations or continuing to exercise its rights; or

4. no longer satisfies the designation requirements as per § 11(2); or

5. advises that no further exercising of the allocated air traffic rights is intended.

(2) If the allocation of restricted air traffic rights is revoked as per paragraph 1, on the revocation becoming effective, said rights shall be considered as currently non-allocated restricted air traffic rights. The air traffic rights in question shall be reallocated in accordance with the provisions of § 15.
(3) If restricted air traffic rights are allocated with no fixed term to a Community air carrier by decision as per § 15, the Federal Minister for Transport, Innovation and Technology, after a period of five years from the allocation taking effect, on application by another Community air carrier in accordance with the provisions below, shall reallocate the air traffic rights concerned. An application in this respect for reallocation of restricted air traffic rights shall be submitted at least six months prior to the intended commencement of exercising the air traffic rights in question and shall be announced by the Federal Minister for Transport, Innovation and Technology by entry in the register of air traffic rights (§ 10). The Federal Minister for Transport, Innovation and Technology shall conduct a selection procedure as per § 15(3) to (6) and § 15(10) and (11) and declare a reallocation of the air traffic rights concerned.

(4) The following shall be parties to the procedure as per paragraph 3:

1. the air carrier to which the air traffic rights in question were originally allocated;

2. the air carrier which submitted the application for reallocation; and

3. any other Community air carrier which has also submitted an application for reallocation of the air traffic rights in question within 30 days of the announcement as per paragraph 3.

(5) If the air carrier to which the air traffic rights as per paragraphs 3 and 4 are reallocated does not yet fulfills all the designation requirements as per § 11(2) at the time of allocation, evidence that these requirements are satisfied must be provided at the latest on issue of the licence as per §§ 12, 13 or 14 required to exercise the allocated air traffic rights, failing which the allocation shall be revoked by decision.

Rates for transport services

§ 17. (1) If necessary to protect public interests, the Federal Minister for Transport, Innovation and Technology shall be entitled to stipulate that the rates for transport services applied by an air carrier which operates air services to or from Austria or within Austria must be submitted for approval.

(2) The rates for transport services must be drawn up in accordance with those international principles generally applied for the purpose, including, where appropriate, Regulation (EEC) No 2409/92 (OJ L 240, 24.8.1992, pp. 15-17).

(3) Approval as per paragraph 1 shall be deemed to have been issued unless it is refused within three weeks of the application being received.

Sales organisation

§ 18. (1) If carriers with a branch in Austria require a similar licence in the third country in question, the Federal Minister for Transport, Innovation and Technology shall be entitled to stipulate that those air carriers designated by third countries shall require a licence before they can exercise a commercial activity, such as in particular offering and selling air tickets in their own city office or by means of agents. No such measure may be implemented until the dispute settlement arrangements in the current version of the Agreement on the establishment of the World Trade Organisation (WTO Agreement) (Federal Law Gazette (BGBl.) No 1/1995) or in the air service agreement have been exhausted.

(2) The licence as per paragraph 1 must be issued upon application, if:

1. the air carrier has an operating licence in its home State;

2. there are no public interests, in particular the interests of the economy at large, militating against it;

3. those air carriers designated by Austria are permitted to perform de facto those activities specified in para. 1 without impediment in the relevant other State; and
4. Austria does not have any obligations under international law militating against it.

(3) Licences as per paragraph 1 shall be issued with provisos, for a fixed term or subject to conditions, if and to the extent that such action is necessary in the public interest, in particular in the interest of the economy at large, and in any case only to the extent and on the conditions under which air carriers designated by Austria are actually enabled to perform those activities in the relevant other State.

(4) The licence as per paragraph 1 shall be revoked:

1. if one of the conditions on which it was issued is no longer satisfied or was not satisfied as at the date upon which the licence was issued and this defect still prevails; or

2. if the air carrier infringes a condition in a licence issued as per paragraph 1.

SECTION 3

Procedural and concluding provisions

Regulation

§19. The Federal Minister for Transport, Innovation and Technology shall be entitled, in the interests of aviation safety or, where it is in the interests of air services policy or of the economy at large, with due consideration for developments in international air services, to issue regulations specifying the detailed conditions for:

1. installation and operation of the register of air traffic rights (§ 10);
2. licences for air carriers from third countries with which no air service agreement exists (§ 12);
3. issue of flight schedule licences (§ 13);
4. issue of licences for commercial transport to and from third countries in non-scheduled air services (§ 14);
5. the procedure for the allocation of restricted air traffic rights (§§ 15, 16);
6. the rates for transport services (§ 16); and
7. the issue of licences to sales organisations (§ 17).

Supreme authority and review

§ 20. If, during the implementation of this Act, competence is accorded to Austro Control GmbH, the Federal Minister for Transport, Innovation and Technology shall in such cases be the supreme authority to be taken into consideration and shall be the immediately superior level of review.

Penalties

§ 21. (1) Any party which:

1. operates commercial flights without the licences required under this Act; or
2. draws up rates for transport services contrary to a stipulation as per § 17; or
3. offers or sells air tickets contrary to a stipulation as per § 18,

shall be deemed to have committed an administrative offence and shall be subject to a penalty in the form of a fine from the regional administrative authority of up to EUR 5 000 and of up to EUR 10 000 in the event of recurrence.

(2) By way of derogation from § 27(2) of the Property Tax Act (VStG), local competence shall rest:

1. for carriers with a branch in Austria at the location of the branch or for carriers with several branches at the location of the principal branch in Austria;
2. for carriers without a branch in Austria which operate commercial flights without the licences required under this Act, at the departure or destination points in Austria for these flights.

Agent for the purpose of accepting service

§ 22. Decisions taken on the basis of this Act can be validly served on a representative of the air carrier concerned. Representatives of the air carrier shall include in particular employees of a branch of the carrier in Austria or responsible pilots of aircraft used by the carrier concerned.

Entry into force and transitional provisions

§ 23. (1) This Act shall enter into force on 1 November 2008.

(2) When this Act enters into force, the Act on international air services (BGzLV 1997) (Federal Law Gazette (BGBl.) I, No 101/1997) shall cease to apply.

(3) Air service agreements and administrative agreements valid and licences issued on the basis of the 1997 Act on international air services at 31 October 2008 shall remain unaffected.

(4) Restricted air traffic rights which were exercised in accordance with the provisions of the 1997 Federal Act on international air services during the period between 1 November 2003 and 31 October 2008 by a Community air carrier with a branch in Austria shall be considered as of 1 November 2008 to have been allocated without fixed term to the air carrier in question as per § 15 subject to a possible revocation or to a possible reallocation as per § 16.

Implementation

§ 24. (1) Unless otherwise provided in paragraph 2, the Federal Minister for Transport, Innovation and Technology shall be entrusted with the implementation of this Act.

(2) The Federal Government shall be entrusted with the implementation of § 3 to 9.