

No. 3224

**ITALIE
and
SPAIN**

Agreement relating to civil air services (with exchange of notes). Signed at Rome, on 31 May 1949

Official texts: Italian and Spanish.

Registered by the International Civil Aviation Organization on 11 April 1956.

**ITALIE
et
ESPAGNE**

Accord relatif aux services aériens civils (avec échange de notes). Signé à Rome, le 31 mai 1949

Textes officiels italien et espagnol.

Enregistré par l'Organisation de l'aviation civile internationale le 11 avril 1956.

[TRANSLATION¹ — TRADUCTION²]

No. 3224. AGREEMENT³ BETWEEN ITALY AND SPAIN
RELATING TO CIVIL AIR SERVICES. SIGNED AT ROME,
ON 31 MAY 1949

The Government of Spain and the Italian Government, desiring to facilitate civil air services between their respective territories as a means of strengthening, through rapid communications, the friendly ties and traditional close relationship between the peoples of Italy and Spain, have signed the following Agreement :

PART I

GENERAL

Article 1

For the purposes of the present Agreement :

(a) The term "aeronautical authorities" shall mean, in the case of the Italian Government, the "Ministero della Difesa Aeronautica (Direzione Generale dell'Aviazione Civile e del Traffici Aereo)", and, in the case of Spain, the "Ministerio del Aire", and, in both cases, any person or body authorized to perform the functions at present exercised by them.

(b) The term "territory" shall be deemed to include the land areas and territorial waters under the sovereignty, suzerainty, protection, mandate or trusteeship of each Contracting Party.

Article 2

The civil, commercial or private aircraft of each Contracting Party shall enjoy, in the territory of the other Contracting Party, rights of transit and of stops for non-traffic purposes at the airports open to international traffic, provided that the first and last stops in each country are made at a customs airport.

It is understood that this right shall not extend to zones over which flight is prohibited, and shall in all cases be exercised in accordance with the regulations in force in the country whose territory is crossed.

¹ Translation by the International Civil Aviation Organization.

² Traduction par l'Organisation de l'aviation civile internationale.

³ Came into force provisionally on 31 May 1949 and definitively on 14 April 1953, in accordance with article 35.

Article 3

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party or by another State.

Article 4

(a) The laws and regulations of each Contracting Party relating to the admission to, sojourn within or departure from its territory of aircraft engaged in international air navigation, or to the operation, handling and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other Contracting Party.

(b) The laws and regulations in force in the territory of each Contracting Party as to admission to, sojourn within and departure from its territory of passengers, crew or cargo carried by air, and particularly regulations relating to police formalities, entry, immigration, emigration, passports, clearance, customs, health and currency, shall apply to passengers, crew and cargo carried by air.

Article 5

Aircraft tickets and commercial documents shall be drawn up in accordance with the provisions in force in the Contracting State in which the flight originates. Such provisions shall in no case be discriminatory in regard to either Contracting Party.

Article 6

The carriage of air traffic between the Spanish and Italian territories without intermediate stops (neighbourhood routes or services) constitutes a basic and primary right of both countries.

Article 7

Each Contracting Party reserves the right to operate its own cabotage services.

Article 8

Any violation of the air navigation regulations of either Contracting Party which does not constitute a delict and is committed on the territory of that Party shall be communicated to the competent aeronautical authorities of the other

Party. Should the offence be serious and be committed by an agent of an airline, the competent aeronautical authorities shall have the right to request the dismissal of such agent.

Article 9

In order to prevent discriminatory practices and to ensure equality of treatment :

(a) The taxes or other fiscal charges that either of the Contracting Parties may impose or permit to be imposed upon the airline or airlines designated by the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national airlines operating similar international services.

(b) Fuel, lubricating oils, spare parts, regular equipment and general supplies introduced into or taken on board aircraft into the territory of one Contracting Party and intended solely for use by aircraft operated by the other Contracting Party on an international service shall be accorded with respect to customs duties, inspection fees or other fiscal duties or charges imposed by the former Contracting Party, treatment as favourable as that accorded to their national aircraft.

(c) Aircraft operated by one of the Contracting Parties on an international service and supplies of fuel, lubricating oils, spare parts, regular equipment, general supplies and aircraft stores retained on board the said aircraft shall be exempt in the territory of the other contracting Party from customs duties, inspection fees and all other fiscal duties or charges, even though such supplies be consumed or used by such aircraft on flights in that territory.

(d) The supplies listed in the preceding paragraph and exempted in the manner defined therein may not be unloaded save with the approval of the customs authorities of the other Contracting Party. Where such supplies are to be re-exported, they shall be kept, until re-exportation, under the customs supervision of the other Contracting Party but shall remain at the disposal of the owner or of the operator of the aircraft.

Article 10

In order to facilitate air transport, the aeronautical authorities of the two Contracting Parties shall agree on the necessary minimum facilities which are to be extended reciprocally, in the manner of installations and services on air-fields and routes, particularly with regard to aircraft safety systems, the exchange of information, languages and units of measure to be used, and codes.

The facilities and services shall be provided by each Contracting Party within the limit of its capacity and the means available, the standards in force being adhered to as closely as possible.

Article 11

As long as visas are required for the admission of foreigners to the two countries, the crews entered in the manifests of aircraft of the two countries operating between their respective territories shall be exempt from visa requirements provided they hold valid passports and identification papers issued by the airline to which they belong.

Article 12

Whenever nationals of one of the Contracting Parties are injured or their property is damaged in the course of transport by aircraft of the other Contracting Party, the respective aeronautical authorities shall do their utmost to ensure that due compensation is paid as quickly as possible to the parties concerned or to rightful claimants.

Article 13

Should either of the Contracting Parties wish to modify the routes or conditions set forth in this Agreement, it may request consultation between the competent aeronautical authorities of both Contracting Parties, such consultation to begin within a period of sixty days from the date of the request. Any modification in the Agreement agreed to by said authorities shall come into effect after confirmation by an exchange of diplomatic notes.

Article 14

Should either Contracting Party desire to terminate the present Agreement, it shall request consultation with the other Contracting Party. If no agreement is reached within a period of sixty (60) days from the date of dispatch of such request for consultation, the first Contracting Party may notify the other Contracting Party of its denunciation. Notice shall be given through diplomatic channels and the agreement shall cease to be in force one hundred and twenty (120) days after such notice, unless it is withdrawn by common consent before the expiry of that period.

Article 15

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement which cannot be settled directly by consultation between the airlines concerned, between the aeronautical authorities or between the respective Governments, shall be referred to arbitration in accordance with the usage of international law.

The Contracting Parties undertake to comply with any provisional measures ordered in the course of the proceedings, and with the arbitration award, the latter being in all cases considered as final.

Article 16

The present Agreement shall replace all privileges, concessions or authorizations previously granted, in whatsoever form, by either of the Contracting Parties to airlines of the other Contracting Party.

Article 17

The provisions of Part I shall apply both to transport under Part II (Agreed services) and to transport under Part III (Non-scheduled transport).

PART II

AGREED SERVICES

Article 18

(a) The Government of Italy grants the Spanish Government, and reciprocally the Spanish Government grants the Government of Italy, the right to have one or more airlines designated by their respective Governments make traffic stops within their respective territories on the civil services specified in the attached Route Schedules,¹ subject to the conditions laid down in the present Part II.

(b) Such services shall hereinafter be referred to as the "agreed services".

(c) The term "designated airline" means an airline which the aeronautical authorities of either Contracting Party shall have notified in writing to the aeronautical authorities of the other Contracting Party as the airline designated by it in accordance with Article 19 of the present Agreement for the routes specified in such notification.

Article 19

1. Each of the agreed services may be put into operation immediately or at a later date at the option of the Contracting Party to whom the rights are granted, provided always that :

(a) The Contracting Party to whom the rights have been granted has designated an airline or airlines for the route or routes specified.

(b) The Contracting Party granting the rights has authorized the airline or airlines concerned to open the agreed services, which shall be done without delay subject to paragraph 2 of the present Article and to Article 20.

2. The designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that they are qualified to

¹ See p. 294 of this volume.

fulfil the conditions prescribed under the laws and regulations normally applied by these authorities to the operation of commercial airlines.

Article 20

Each Contracting Party reserves the right to withhold the authorization to operate referred to in Article 19 of the present Agreement from an airline designated by the other Contracting Party, or to revoke such authorization, whenever it has reason to believe that it has no proof that substantial ownership and effective control of such airline are vested in nationals of that Contracting Party.

The same right may be exercised in case of failure of a designated airline to comply with the laws and regulations of the Contracting Party over whose territory it operates, or to perform its obligations under this Agreement.

Article 21

Each Contracting Party shall have the right, after previously informing the other Contracting Party, to replace its national airline or airlines designated to operate the agreed services by another airline or airlines. The newly-designated airline or airlines shall have the same rights and duties as its or their predecessors.

Article 22

1. The airlines designated by each of the Contracting Parties shall have the right to pick up and set down international traffic in passengers, mail and cargo at the points specified in the annexed Schedules of Routes, subject to the conditions laid down in the following Articles.

2. The designated airlines of the Contracting Parties shall be accorded fair and equal opportunity to operate the agreed services.

3. On common routes, the designated airlines of the Contracting Parties shall take into account their reciprocal interests so as not to affect unduly their respective services.

Article 23

In operating the routes listed in paragraphs A of the attached Schedules, the aeronautical authorities of the two countries shall comply with the following regulations :

(a) In recognition of the basic principle of equality of opportunity and of traffic offering, capacity shall, as far as possible, be divided equally between the Italian and Spanish airlines operating the same routes.

(b) The total capacity provided on each route shall be adapted to normal and reasonably anticipated traffic requirements.

Should the designated airlines submit statistics indicating substantial changes in the anticipated traffic requirements between the two countries, the aeronautical authorities shall consult together with a view to adjusting the capacity provided on their services.

(c) Where the aeronautical authorities of one of the Contracting Parties do not wish to operate, on one or more routes, in whole or in part, the transport capacity granted to them, they shall arrange with the aeronautical authorities of the other Party for the transfer to such authorities, for a definite period, of all or part of the transport capacity available to them within the agreed limits, due regard being paid to the formula agreed upon.

With reference to paragraph (c) above, should one of the Contracting Parties wish to transfer, in whole or in part, to a third State its rights to operate any of the routes indicated in paragraph A of the attached Schedules, it shall arrange with the other Party for the transfer of such rights.

The Party which has transferred its rights in whole or in part may recover them at any moment.

Article 24

On each of the routes listed in paragraph B of the attached Schedules, the agreed services shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the normal and reasonably anticipated international air traffic from or to the territory of the Contracting Party which has designated the airline operating the said services.

Each Contracting Party shall have the right to pick up and set down in the territory of the other Party passengers, mail and cargo travelling to or from the stops listed in paragraphs B, including stops in third countries. The exercise of this right shall not prejudice the neighbourhood services indicated in paragraphs A or the facilities offered by the other Contracting Party on the routes linking its territory to the said stops in third countries.

Article 25

The aeronautical authorities shall consult each other periodically and at least once a year with a view to examining the conditions in which the provisions of this Part of the Agreement are applied by designated Italian and Spanish airlines and to ensuring that the interests of the Contracting Parties are not adversely affected on common sections of the routes.

The aeronautical authorities shall take into account statistics relating to the traffic carried and undertake to exchange such statistics regularly.

Where one of the Contracting Parties alleges that its interests are being adversely affected, the competent aeronautical authorities shall consult each other within a period not exceeding sixty (60) days with a view to the specific and practical application of the provisions of the agreement to the matter in dispute.

Article 26

1. Tariffs shall be fixed at reasonable levels, regard being had in particular to economical operation, reasonable profit, tariffs proposed by other airlines operating all or part of the same route, and the characteristics of each service, such as standards of safety, speed and accommodation.

2. Tariffs charged for traffic picked up or set down at any stop on the route may not be lower than the tariffs charged for the same traffic by the airlines of the Contracting Party operating the same route.

3. Tariffs to be charged on the agreed services between the points in Italian territory and the points in Spanish territory listed in the annexed Schedules shall, so far as possible, be agreed between the designated Italian and Spanish airlines.

These airlines shall proceed :

(a) by applying any resolutions adopted under the tariff-fixing procedure of the International Air Transport Association ; or

(b) by direct agreement after consultation, where necessary, with any airlines of a third country operating all or part of the same routes.

4. The tariffs so fixed shall be submitted to the aeronautical authorities of each Contracting Party for approval not less than thirty (30) days before the date laid down for their entry into force ; in special cases this time limit may be reduced subject to the agreement of the said authorities.

5. Should the designated airlines fail to agree on the fixing of a tariff in accordance with paragraph 3 above, or should one of the Contracting Parties make known its dissatisfaction with the tariff submitted to it in accordance with the provisions of paragraph 4 above, the aeronautical authorities of the two Contracting Parties shall endeavour to reach a satisfactory solution.

In the last resort the matter shall be referred to arbitration as provided for in Article 15 of this Agreement. The Contracting Party making known its dissatisfaction shall have the right to require the other Contracting Party to maintain the rates previously in force pending the announcement of the arbitral award or the adoption of provisional measures in accordance with the said Article 15.

6. In case of dissatisfaction with the tariff proposed in connection with the inauguration of a newly agreed service, the dissatisfied Contracting Party shall

not have the right to oppose the inception of said service unless the tariff initially proposed was not fixed in accordance with one of the procedures specified in paragraph 3 of the present Article.

Article 27

Any alterations made by one of the designated airlines in the routes described in the attached Schedules, except those which change the points served by such airlines within the territory of the other Contracting Party, shall not be considered as modifications of the Agreement. The aeronautical authorities of either Contracting Party may therefore effect these changes unilaterally, provided that notice of any such changes is given immediately to the aeronautical authorities of the other Contracting Party.

If the latter authorities consider that, having regard to the principles stated in Article 24 of the present Agreement, the interests of their designated carriers are adversely affected by the carriage of traffic by the designated airlines of the other Contracting Party between their territory and the new point in a third State, the aeronautical authorities of both Contracting States shall consult with a view to arriving at a satisfactory solution.

Article 28

(a) As from the entry into force of the present Agreement, the aeronautical authorities of the two Contracting Parties shall exchange information as quickly as possible concerning the authorizations given to their own designated airlines to operate all or part of the agreed services. Such information shall include in particular copies of the authorizations granted, any amendments thereto, and all annexed documents.

(b) At least one week before their respective services begin to be exploited effectively, the aeronautical authorities of the two Contracting Parties shall notify each other of the time-tables, flight frequencies and types of aircraft to be used. They shall likewise notify each other of any changes in these arrangements.

Article 29

The postal authorities of the two Contracting Parties shall co-operate in making arrangements for airmail facilities within the framework of the international postal unions or in accordance with the bilateral agreements, if any, concluded between one of the Contracting Parties and third States.

Article 30

Subject to authorization by the competent aeronautical authorities, each designated airline may maintain its own technical and administrative staffs at

the airports of the other Party. It is understood that such authorization shall cover the minimum staffs necessary for the normal operation of the services.

ROUTE SCHEDULES

I.—SPANISH SERVICES

- A. In either direction, two services from Spain to Rome or Milan.
- B. To be decided at a future date.

II.—ITALIAN SERVICES

- A. In either direction, two services from Italy to Barcelona or Madrid.¹
- B. To be decided at a future date.

¹ The service "Italy-Madrid" may be extended to Lisbon, in both directions. However, by virtue of Article 3 (a) of the Annex to the Air Transport Agreement between Spain and Portugal signed at Lisbon on 31 May 1947, all air traffic between the metropolitan territories of Spain and Portugal is reserved for Spanish and Portuguese airlines. The Spanish "neighbourhood" services shall be considered as originating from Lisbon.

PART III

NON-SCHEDULED TRANSPORT

Article 31

The Italian and Spanish Governments, desirous of facilitating air communications between their respective countries other than that referred to in Part II, and in particular the carriage by air of goods between the two countries, shall adapt their general regulations in this field with a view to mutual limitation of the number of cases where prior authorization is required, as well as of the time required for granting such authorization.

Article 32

In the case of all flights, the destination of which is the territory of one of the Contracting Parties, prior notification shall be given to the authorities of the other Contracting Party in accordance with the conditions and regulations mutually agreed upon by both Parties. Such notification shall be deemed equivalent to an authorization in all cases where prior authorization is not required in accordance with Article 33 of the present Agreement.

Article 33

Prior authorization shall be obtained from the authorities of the Contracting Party whose territory it is desired to enter :

(a) To pick up or discharge in its territory passengers and cargo for or originating in a third country (Fifth freedom) ;

(b) For flights carrying more than four passengers between stops (or between aerodromes in the close vicinity thereof) on any agreed service which is actually being operated on a scheduled basis (Competition with agreed services) ;

(c) For any flight involving more than one traffic stop in the territory of a Contracting Party (Cabotage).

Article 34

In view of the special nature of the air traffic covered by this Part, the aeronautical authorities of the Contracting Parties shall consult with each other as often as shall be necessary to implement the foregoing provisions.

PART IV

FINAL PROVISIONS

Article 35

The present Agreement shall enter into force provisionally on the date of signature, and definitively as soon as the constitutional requirements of both Contracting Parties have been fulfilled.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed the present Agreement and applied thereto their seals.

DONE at Rome this thirty-first day of May 1949, in duplicate in the Italian and Spanish languages, both texts being equally authentic.

For the Government of Italy :

For the Government of Spain :

Carlo Alberto DE VERA D'ARAGONA

SANGRÓNIZ

EXCHANGE OF NOTES

I

Rome, 31 May 1949

Excellency,

Articles 31 and 32 of the "Agreement relating to civil air services between Spain and Italy", signed in Rome today, state that the Contracting Parties will determine the conditions and regulations governing the filing of flight notifications and the issuance of prior authorizations for non-scheduled flights between the two countries.

Accordingly, the Spanish and Italian delegations have proposed the following provisions :

A) The airline desiring to perform a flight, or a series of flights, into the territory of the other Contracting Party shall send a notification, if possible by cable, to the following authorities :

a) In the case of Italy, to the Direzione Generale dell'Aviazione Civile, Ministero della Difesa Aeronautica, Roma ; telegraphic address : Civilavia, Roma.

b) In the case of Spain, to the Dirección General de Aviación Civil, Calle de la Magdalena, 12, Madrid ; telegraphic address : Avicivil, Madrid.

The modification shall include the following information :

1. Aircraft type and registration
2. Name and address of operator
3. Number of crew
4. Proposed route and stops in the territory it is desired to enter
5. Purpose of flight (Passenger or cargo, including number and tonnage).

B) In the three cases mentioned under Article 33 of the Agreement, the notification shall reach the authorities referred to in Clause A) 72 hours before the flight begins. The reply of said authorities will be sent through the diplomatic representatives of the State whose nationality the aircraft possesses.

C) In all other cases, the notification shall reach the authorities referred to in A) above 24 hours before the flight begins, it being understood that no reply will be made and that the flight may be carried out as soon as the period specified for notification has elapsed.

I have the honour to inform your Excellency that the above provisions have the full agreement of my Government and that they will come into force upon receipt of your reply to the present note.

(Signed) Carlo Alberto DE VERA D'ARAGONA

His Excellency Don José Antonio de Sangroníz y Castro
Marquess of Desio
Ambassador of Spain in Rome

II

Rome, 31 May 1949

Excellency,

[See note I]

(Signed) SANGRÓNIZ

His Excellency Carlo Alberto de Vera d'Aragona
Chief of the Italian Delegation
Rome