

**No. 5105**

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**AUSTRALIA  
and  
FEDERAL REPUBLIC OF GERMANY**

**Agreement (with exchange of notes) relating to air transport.  
Signed at Bonn, on 22 May 1957**

*Official texts: English and German.*

*Registered by the International Civil Aviation Organization on 29 April 1960.*

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**AUSTRALIE  
et  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord (avec échange de notes) relatif aux transports  
aériens. Signé à Bonn, le 22 mai 1957**

*Textes officiels anglais et allemand.*

*Enregistré par l'Organisation de l'aviation civile internationale le 29 avril 1960.*

No. 5105. AGREEMENT<sup>1</sup> BETWEEN THE COMMONWEALTH OF AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO AIR TRANSPORT. SIGNED AT BONN, ON 22 MAY 1957

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The Commonwealth of Australia and the Federal Republic of Germany,  
Desiring to conclude an Agreement relating to air transport,

Have agreed as follows :

*Article 1*

For the purpose of the present Agreement, unless the context otherwise requires :

a) The term "aeronautical authorities" shall mean in the case of the Commonwealth of Australia, the Director-General of Civil Aviation and any person or body authorised to perform the functions presently exercised by the said Director-General of Civil Aviation or similar functions; and, in the case of the Federal Republic of Germany, the Federal Minister of Transport and any person or body authorised to perform the functions presently exercised by the said Minister or similar functions;

b) The term "territory" in relation to a State shall mean the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of such State;

c) The term "designated airline" shall mean the airline or airlines which one Contracting State has designated in writing to the other Contracting State in accordance with Article 3 as being the airline or airlines authorised to operate international air services in conformity with Article 2;

d) The term "air service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, mail and/or cargo;

e) The term "international air service" shall mean an air service which passes through the air space over the territory of more than one State; and

f) The term "stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, mail and/or cargo.

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<sup>1</sup> Came into force on 10 January 1959, one month after 10 December 1958, the date on which the Contracting Parties informed each other that their respective constitutional requirements had been fulfilled, in accordance with the provisions of article 16,

### Article 2

(1) Each Contracting State grants to the other Contracting State the rights specified in the present Agreement for the purpose of establishing air services on the routes specified in a Route Schedule<sup>1</sup> agreed in an exchange of diplomatic notes (hereinafter respectively called “ the agreed services ” and “ the specified routes ”).

(2) Subject to the provisions of the present Agreement, an airline designated by each Contracting State shall enjoy, while operating an agreed service on a specified route, the following rights :

- a) the right to fly without landing across the territory of the other Contracting State;
- b) the right to make stops in the said territory for non-traffic purposes; and
- c) the right to make stops in the said territory at the points specified for that route for the purpose of putting down and taking on international traffic in passengers, mail and/or cargo.

### Article 3

(1) The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting State to whom the rights are granted under Article 2 provided that :

- a) the Contracting State to whom the rights have been granted has designated in writing an airline or airlines for that route; and
- b) the Contracting State granting the rights has given the appropriate operating permission to the airline or airlines so designated, which it shall, subject to the provisions of paragraph 2 of this Article and Article 4, be bound to grant without delay.

(2) The aeronautical authorities of one Contracting State may require an airline designated by the other Contracting State to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by them to the operation of international air services.

### Article 4

(1) Each Contracting State reserves the right to withhold or revoke the rights specified in Article 2 in respect of any airline designated by the other Contracting State, or to impose such conditions as it may deem necessary on the exercise of those rights in any case where it is not satisfied that substantial

<sup>1</sup> See p. 63 of this volume.

ownership and effective control of the airline are vested in the Contracting State designating the airline or in nationals of that Contracting State.

(2) Each Contracting State reserves the right to suspend the exercise by a designated airline of the other Contracting State of the rights granted in Article 2, or to impose such conditions as it may deem necessary on the exercise by the airline of those rights, in any case where such airline fails to operate in accordance with the conditions prescribed in the present Agreement.

(3) The rights reserved in paragraphs 1 and 2 of this Article shall be exercised by a Contracting State only after consultation with the other Contracting State unless the immediate suspension of the rights or the imposition of conditions is necessary to prevent further infringements of the laws and regulations of the first-mentioned Contracting State.

#### *Article 5*

The charges which each Contracting State may impose or permit to be imposed on a designated airline of the other Contracting State for the use of airports and other facilities under its control shall not be higher than would be paid for the use of such airports and facilities by any national airline engaged in similar international air services.

#### *Article 6*

Each Contracting State shall grant release from taxes and customs duties and fees in respect of aircraft of a designated airline of the other Contracting State insofar as it is operating an international air service pursuant to this Agreement as follows :

a) The aircraft operated by a designated airline of either Contracting State entering into, departing from, or flying across or between points in the territory of the other Contracting State, as well as the regular equipment and spare parts on board such aircraft, and not unloaded without consent of the customs authorities, shall be exempt from customs duties and other taxes chargeable by reason of importation, exportation or transit of goods, as well as from customs inspection fees.

b) Spare parts and articles of regular equipment for aircraft mentioned in sub-paragraph a) above, which are

(i) removed from the aircraft or otherwise unloaded and stored within the territory of the other Contracting State under customs supervision, or

(ii) imported into and stored in the territory of the other Contracting State under customs supervision

shall be exempt likewise from the duties, taxes and fees mentioned in sub-paragraph *a*) above, if they either are installed or taken on board the said aircraft under customs supervision, or are exported again otherwise than on board the said aircraft. The same exemptions shall be granted in respect of such spare parts and articles of regular equipment taken from appropriate stores of other foreign airlines and installed in the said aircraft or otherwise taken on board under customs supervision.

*c*) Fuel and lubricants on board the aircraft mentioned in sub-paragraph *a*) above and introduced into the territory of the other Contracting State may be used on board the aircraft free of the duties, taxes and fees mentioned in sub-paragraph *a*) above. This also applies to that part of any flight which takes place between points in the territory of that Contracting State.

Fuel and lubricants not mentioned in the first sentence of this sub-paragraph taken on by these aircraft under customs supervision within the territory of the Contracting State and used on the agreed service shall be exempt from or shall be the subject of remission or refund of the duties, taxes and fees mentioned in sub-paragraph *a*) above and any special consumption charges imposed on fuel and lubricants within the territory of that Contracting State.

*d*) Aircraft stores on board the aircraft mentioned in sub-paragraph *a*) above and issued for immediate supply to passengers and crew members may be consumed on board the aircraft free of the duties, taxes and fees mentioned in sub-paragraph *a*) above, provided that the aircraft can be continuously supervised by customs authorities if intermediate landings within the territory of the other Contracting State are made.

#### *Article 7*

(1) There shall be a fair and equal opportunity for the designated airlines of both Contracting States to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services the designated airline of each Contracting State shall take into consideration the interests of the designated airline of the other Contracting State so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting States shall bear close relationship to the requirements of the public for transportation on the specified routes and each shall have as its primary objective

the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, mail and/or cargo originating in or destined for the territory of the Contracting State which has designated the airline. Provision for the carriage of passengers, mail and/or cargo originating in the territory of the other Contracting State and destined for third countries or vice versa shall be made in accordance with the general principles that capacity shall be related to :

- a) the requirements for traffic originating in or destined for the territory of the Contracting State which has designated the airline;
- b) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- c) the requirements of through airline operation.

#### *Article 8*

(1) Each designated airline shall communicate to the aeronautical authorities of the other Contracting State as soon as practicable prior to the beginning of an agreed service on a specified route, the type of service to be provided, the type of aircraft to be used and the relevant timetables. Modifications shall be similarly notified.

(2) The aeronautical authorities of each Contracting State shall supply to the aeronautical authorities of the other Contracting State upon request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines. Such statements shall include information relating to the amount of traffic carried by those airlines on the agreed services to, from and over the territory of the other Contracting State, including the origin and destination of such traffic.

#### *Article 9*

(1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article, together with the rates of agency commission used in conjunction with them shall, if possible, be

agreed to in respect of each of the specified routes between the designated airlines concerned, in consultation with other airlines operating over the whole or part of that route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting States.

(3) If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting States shall try to determine the tariff by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the dispute shall be settled in accordance with the provisions of Article 13.

(5) No tariff shall come into effect if the aeronautical authorities of either Contracting State have not agreed to it except under the terms of Article 13. Pending determination of the tariffs in accordance with this Article, the tariffs already in force shall prevail.

#### *Article 10*

If a general multilateral air transport convention accepted by both Contracting States enters into force, the provisions of the multilateral convention shall prevail. Consultations under the provisions of Article 12 may be held to determine the extent to which the present Agreement is amended, supplemented or revoked by the provisions of the multilateral convention.

#### *Article 11*

There shall be an exchange of views between the aeronautical authorities of the Contracting States as necessary to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

#### *Article 12*

(1) Consultation may be requested at any time by either Contracting State for the purpose of discussing the interpretation, application or amendment of the present Agreement or the Route Schedule. Such consultation shall begin within a period of two months from the date of receipt of the request.

(2) Amendments of the present Agreement on which agreement has been reached shall come into force in accordance with the procedure provided for in Article 16.

(3) Amendments of the Route Schedule shall come into force as soon as they have been agreed upon in an exchange of notes in accordance with paragraph (1) of Article 2.

### *Article 13*

(1) If any disagreement arising out of the interpretation or application of this Agreement cannot be settled in accordance with Articles 11 and 12, such dispute shall be submitted to an arbitral tribunal at the request of either Contracting State.

(2) Such an arbitral tribunal shall be composed in each case of three arbitrators, one to be designated by each Contracting State and a third, who shall be the chairman and a national of a third State, to be appointed by the other two. If either of the Contracting States fails to designate an arbitrator within two months of the date of delivery by either Contracting State of notice requesting arbitration, or if the arbitrators cannot reach agreement on the selection of the chairman within another month, the President of the International Court of Justice shall be requested to make the necessary appointments. His decision shall be binding for both Contracting States.

(3) In the event of failure to reach a settlement by negotiation, the arbitral tribunal shall reach its decisions by majority vote. If not agreed otherwise by the Contracting States, the procedure shall be determined by the arbitral tribunal itself. The tribunal shall also determine its place of meeting.

(4) Each Contracting State shall bear the expenses of its arbitrator as well as one half of the remaining expenses.

(5) The Contracting States undertake to put into effect every interim ruling during the proceedings as well as the decision, such decision to be final in every case.

### *Article 14*

Either of the Contracting States may at any time give notice to the other of its desire to terminate the present Agreement. This Agreement shall terminate one year after the date of receipt of the notice of termination unless by agreement between the Contracting States the notice of termination has been withdrawn before the expiration of that period.

### *Article 15*

This Agreement, any amendments and all diplomatic notes exchanged in accordance with paragraph (1) of Article 2 and paragraph (3) of Article 12 shall be notified for registration with the International Civil Aviation Organization.



*Article 16*

This Agreement shall enter into effect one month after the date on which the Contracting States have informed each other that their respective constitutional requirements have been fulfilled.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto, have signed the present Agreement.

DONE at Bonn this 22nd day of May 1957, in duplicate in the English and German languages, both texts being equally authentic.

For the Commonwealth of Australia :  
Patrick SHAW

For the Federal Republic of Germany :  
v. BRENTANO

[TRANSLATION — TRADUCTION]

THE FEDERAL MINISTER FOR FOREIGN AFFAIRS

Bonn, 22 May 1957

Excellency,

[See note II]

V. BRENTANO

His Excellency Patrick Shaw  
Ambassador of Australia  
Bonn

II

22nd May, 1957

Excellency,

I have the honour of acknowledging receipt of your note dated 22nd May, 1957 which reads as follows :

“ I have the honour to refer to paragraph (1) of Article 2 of the Air Transport Agreement between the Federal Republic of Germany and the Commonwealth of Australia signed on 22nd May, 1957.<sup>1</sup> In the negotiations which have been conducted in connection with the above-mentioned Agreement it has been agreed that air services may be operated in accordance with the following Route Schedule :

“ I. *Route to be operated by an airline designated by the Federal Republic of Germany:*

“ From the Federal Republic of Germany via points in Middle, South and South-East Europe, Egypt and/or Middle East, Pakistan, India, Burma, Thailand, Singapore, Indonesia to Darwin and Sydney, in both directions.

“ II. *Route to be operated by an airline designated by the Commonwealth of Australia:*

“ From Australia, via points in Indonesia, Singapore or Malaya, Thailand, Burma or Ceylon, India, Pakistan, Middle East, South and South-East Europe to Frankfurt/M. and beyond to the Netherlands and/or to the United Kingdom, in both directions.

“ III. Points on the specified routes may, at the option of the designated airline concerned be omitted on any or all flights.

“ I have the honour to inform you that the Government of the Federal Republic of Germany agrees with the above Route Schedule. I shall be glad if you will inform me if the Government of the Commonwealth of

<sup>1</sup> See p. 46 of this volume.

Australia also agrees with the Route Schedule. If this should be the case this note and your reply shall be regarded as constituting an Agreement between our Governments.

“ Accept, Excellency, the renewed assurance of my highest consideration. ”

I have the honour of informing you that the Government of the Commonwealth of Australia agrees with the Route Schedule contained in your note.

Accept, Excellency, the renewed assurance of my highest consideration.

Patrick SHAW  
Ambassador

His Excellency Dr. Heinrich von Brentano  
Minister of Foreign Affairs  
of the Federal Republic of Germany  
Bonn

### III

[GERMAN TEXT — TEXTE ALLEMAND]

DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 22. Mai 1957

Exzellenz !

Anlässlich der Unterzeichnung des Abkommens zwischen der Bundesrepublik Deutschland und dem Australischen Bund über den Luftverkehr vom 22. Mai 1957 beehre ich mich, Ihnen mitzuteilen, dass die Regierung der Bundesrepublik Deutschland davon ausgeht, daß die in Kapitel II des Vertrages vom 27. Oktober 1956 zwischen der Bundesrepublik Deutschland und der Französischen Republik zur Regelung der Saarfrage enthaltenen besonderen Regelungen durch dieses Abkommen nicht berührt werden.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

V. BRENTANO

Seiner Exzellenz dem Botschafter von Australien  
Herrn Patrick Shaw  
Bonn

[TRANSLATION — TRADUCTION]

THE FEDERAL MINISTER FOR FOREIGN AFFAIRS

Bonn, 22 May 1957

Excellency,

[*See note IV*]

V. BRENTANO

His Excellency Patrick Shaw  
Ambassador of Australia  
Bonn

IV

22nd May, 1957

Excellency,

I have the honour to acknowledge the receipt of your note of 22nd May 1957, which reads as follows :

“ On the occasion of the signing of the Air Transport Agreement between the Federal Republic of Germany and the Commonwealth of Australia on 22nd May 1957, I have the honour to inform you that the Government of the Federal Republic of Germany proceed on the assumption that the special arrangements in Chapter 2 of the Treaty of 27 October 1956 between the Federal Republic of Germany and the French Republic on the settlement of the Saar question are not affected by the present Agreement. ”

I have the honour to inform you that the Government of the Commonwealth of Australia have noted the contents of your note.

Accept, Excellency, the renewed assurance of my highest consideration.

Patrick SHAW  
Ambassador

H. E. Dr. Heinrich von Brentano  
Federal Minister of Foreign Affairs  
of the Federal Republic of Germany  
Bonn