

No. 6727

FEDERAL REPUBLIC OF GERMANY
and
JAPAN

**Agreement for air services (with exchange of notes). Signed
at Bonn, on 18 January 1961**

Official texts of Agreement: German, Japanese and English.

Official text of the notes: English.

Registered by the International Civil Aviation Organization on 15 May 1963.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
JAPON

**Accord relatif aux services aériens (avec échange de notes).
Signé à Bonn, le 18 janvier 1961**

Textes officiels de l'Accord: allemand, japonais et anglais.

Texte officiel des notes: anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 15 mai 1963.

No. 6727. AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND JAPAN FOR AIR SERVICES.
SIGNED AT BONN, ON 18 JANUARY 1961

The Federal Republic of Germany and Japan,

Desiring to conclude an agreement for the purpose of establishing and operating air services between their respective territories and beyond,

Have accordingly appointed their respective representatives for this purpose, who have agreed as follows :

Article 1

(1) For the purposes of the present Agreement, unless otherwise provided in the text :

- (a) the term "aeronautical authorities" shall mean, in the case of the Federal Republic of Germany, the Federal Minister of Transport ; in the case of Japan, the Minister of Transportation ; or in both cases, any other person or agency authorized to perform the functions in respect of civil aviation exercised by the said authorities ;
- (b) the term "designated airline" shall mean an airline which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the route specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with the provisions of article 3 of the present Agreement ;
- (c) 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 that State.

(2) The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" shall, for the purposes of the present Agreement, have the meaning laid down in Article 96 of the Convention of December 7, 1944,² on International Civil Aviation (hereinafter called "the Convention") in its present term or as amended in respect of both Contracting Parties in accordance with relevant provisions of the Convention.

¹ Came into force on 12 July 1962, the date of the exchange of the instruments of ratification which took place at Tokyo, in accordance with the provisions of article 17.

² See footnote 2, p. 22 of this volume.

Article 2

(1) Each Contracting Party shall grant to the other Contracting Party the following rights to enable its designated airlines to establish and operate international air services on the routes specified in the Route Schedule :

- (a) to fly without landing across the territory of the first Contracting Party ;
- (b) to make stops in the said territory for non-traffic purposes ; and
- (c) to make stops in the said territory at the points specified for that route in the Route Schedule for the purposes of discharging and of taking on passengers, cargo and mail on a commercial basis.

(2) The routes over which the designated airlines of the two Contracting Parties will be authorized to operate international air services shall be specified in a Route Schedule to be agreed upon in an exchange of diplomatic notes (hereinafter called "agreed services" and "specified routes" respectively).

(3) The agreed services provided by the designated airline of either Contracting Party shall begin at a point in the territory of that Contracting Party but other points on the route may at the option of the designated airline be omitted on any or all flights.

(4) Nothing in paragraph (1) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 3

(1) The agreed services on any specified route may be started at any time, but not before :

- (a) the Contracting Party to which the rights specified in paragraph (1) of article 2 are granted, has designated in writing an airline for that route, and
- (b) the Contracting Party granting these rights has authorized the airline designated to inaugurate the agreed services.

(2) The Contracting Party granting these rights shall, subject to the provisions of paragraph (3) and (4) of this article and subject to the provisions of article 11 of the present Agreement, give without delay the said authorization to operate the agreed services.

(3) The aeronautical authorities of either Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified

to meet the requirements prescribed under the laws and regulations of the first Contracting Party governing the operation of international air services.

(4) Each Contracting Party may withhold the authorization provided for in paragraph (2) of this article from any airline designated by the other Contracting Party if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in nationals or corporations of the Contracting Party designating it or in that Party itself.

Article 4

Each Contracting Party may revoke, or impose such conditions as it may deem necessary on, the authorization granted in accordance with paragraph (2) of article 3 of the present Agreement in the event of failure by a designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of the present Agreement or to fulfil the obligations arising therefrom. This shall also apply if the proof referred to in paragraph (4) of article 3 is not furnished. Each Contracting Party shall exercise this right only after consultation with the other Contracting Party, provided that suspension of operations or imposition of conditions may be exercised immediately when it deems necessary to do so to avoid further infringements of such laws or regulations or for reasons of safety of air navigation.

Article 5

The charges imposed or permitted to be imposed in the territory of either Contracting Party for the use of airports and other aviation facilities by the aircraft of a designated airline of the other Contracting Party shall not be higher than those paid for the use of such airports and facilities by aircraft of a national airline of the first Contracting Party engaged in similar international air services or of the most favoured foreign airline.

Article 6

In respect of customs duties, inspection fees and similar national or local duties or charges on fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party or taken on board aircraft in that territory, by or on behalf of the designated airline of the other Contracting Party and intended solely for use by or in the aircraft of that airline, the designated airline of the second Contracting Party shall, subject to compliance with normal customs regulations be accorded, in addition to the treatment prescribed

in article 24 of the Convention, treatment not less favourable than that granted by the first Contracting Party to the airlines of the most favoured nation or to its national airlines engaged in international air services. Neither Contracting Party shall, however, be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duties, inspection fees or similar national or local duties or charges, unless such other Contracting Party grants exemption or remission of the duties or charges in question to the designated airline of the first Contracting Party.

Article 7

There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.

Article 8

In the operation by the designated airline of either Contracting Party of the agreed services, the interests of the designated airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Article 9

The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for such services and shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline ;
- (b) the requirements of through airline operation ; and
- (c) traffic requirements of the area through which the airline passes, after taking account of local and regional services.

Article 10

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data of the designated airlines as may be reasonably required for the purpose of reviewing the capacity provided by any designated airline of the first Contracting Party on the specified routes. Such data shall include all information required to determine the amount of traffic carried and the origin and destination of such traffic.

Article 11

(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 provisions of the following paragraphs.

(2) The tariffs shall, if possible, be agreed for each route between the designated airlines concerned. For this purpose the designated airlines shall be guided by such decisions as are applicable under the traffic conference procedures of the International Air Transport Association (IATA). When this is not possible, the designated airlines shall agree on such tariffs directly between themselves after communication with airlines of third countries which operate over the same routes or parts thereof.

(3) Any tariff so agreed shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty days prior to the proposed date of their introduction. This period may be reduced in special cases if the aeronautical authorities so agree.

(4) If no agreement has been reached between the designated airlines in accordance with paragraph (2) above, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted in accordance with paragraph (3) above, the aeronautical authorities of the two Contracting Parties shall by common accord fix those tariffs for routes or parts thereof on which there is disagreement or lack of approval.

(5) If no accord as envisaged in paragraph (4) of this article is reached between the aeronautical authorities of the two Contracting Parties, the provisions of article 15 of the present Agreement shall apply. Until such time as an arbitral award is rendered the tariffs already in force shall be maintained.

Article 12

Exchanges of views shall take place as needed between the aeronautical authorities of the two Contracting Parties in order to achieve close co-operation and agreement in all matters pertaining to the interpretation and application of the present Agreement or the Route Schedule.

Article 13

(1) Consultation may be requested at any time by either Contracting Party to discuss the interpretation and application of the present Agreement or the Route Schedule if that Contracting Party considers that an exchange of views within the meaning of article 12 has been without success.

(2) Consultation may also be requested at any time by either Contracting Party for the purpose of discussing amendments to the present Agreement or to the Route Schedule.

(3) Consultation shall begin at a date as early as possible which shall be agreed upon by the two Contracting Parties, and in the case of paragraph (2) above, consultation shall begin within sixty days from the date of receipt of any such request.

Article 14

In the event of a general multilateral air transport convention accepted by both Contracting Parties entering into force, the provisions of the multilateral convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with paragraph (2) of article 13 of the present Agreement.

Article 15

(1) To the extent that any disagreement arising out of the interpretation or application of the present Agreement cannot be settled in accordance with paragraph (1) of article 13 of this Agreement, it shall be submitted to an arbitral tribunal of three members at the request of either Contracting Party.

(2) Such arbitral tribunal shall be established in each individual case in such a way as to comprise one member to be appointed by each Contracting Party and the third member to be agreed upon by these two members as their chairman who shall be appointed by both Contracting Parties, provided that the chairman shall be a national of a third State. The members shall be appointed within sixty days and the chairman within one hundred and twenty days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note on its intention of referring the disagreement to arbitration.

(3) If the time-limits provided for in paragraph (2) are not observed, either of the Contracting Parties may, in the absence of any other relevant agreement, invite the President of the Council of the International Civil Aviation Organization (ICAO) to make the necessary appointments.

(4) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each of the Contracting Parties shall bear the expenses of its own member as well as of its representation in the proceedings at the arbitral tribunal; the expenses of the chairman and any other expenses shall be borne in equal parts by both Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 16

The present Agreement, any amendments to it and any exchange of diplomatic notes under paragraph (2) of article 2 of the present Agreement shall be communicated to the International Civil Aviation Organization for registration.

Article 17

(1) The present Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Tokyo.

(2) The present Agreement shall enter into force on the date of the exchange of the instruments of ratification.

Article 18

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments have signed the present Agreement.

DONE at Bonn this 18th day of January 1961, in six originals, two each in the German, Japanese and English languages. In case of difference as to the interpretation the English text shall prevail.

For the Federal Republic of Germany :
CARSTENS

For Japan :
Harumi TAKEUCHI

EXCHANGE OF NOTES

I

DER STAATSSSEKRETÄR DES AUSWÄRTIGEN AMTS¹

Bonn, the 18th of January 1961

Monsieur le Chargé d'Affaires,

I have the honour to refer to paragraph (2) of article 2 of the Agreement between the Federal Republic of Germany and Japan for Air Services signed today.² In the negotiations which have been conducted in connection with the above-mentioned Agreement it has been agreed that air services may be operated on the routes specified in the following Route Schedule :

ROUTE SCHEDULE

Routes to be operated by the designated airline of the Federal Republic of Germany

<i>Points in the Federal Republic of Germany</i>	<i>Intermediate Points</i>	<i>Points in Japan</i>	<i>Points beyond</i>
1. Frankfurt am Main and/or any other point or points if desired	Zurich or Geneva Rome or Athens Two or three points in the Middle and Near East, including Cairo Karachi Bombay and Calcutta or New Delhi and Calcutta Colombo or Rangoon Saigon or Bangkok Hongkong and/or Manila	Tokyo and/or Osaka	Two points in Asia
2. Frankfurt am Main and/or any other point or points if desired	One point in Scandinavia Anchorage	Tokyo	Two points in Asia

Routes to be operated by the designated airline of Japan

<i>Points in Japan</i>	<i>Intermediate Points</i>	<i>Points in the Federal Republic of Germany</i>	<i>Points beyond</i>
1. Tokyo and/or any other point or points if desired	Hongkong and/or Manila Bangkok or Saigon Rangoon or Colombo Calcutta and New Delhi or Cal- cutta and Bombay Karachi Two or three points in the Middle and Near East, including Cairo Athens or Rome Geneva or Zurich	Frankfurt am Main or Düs- seldorf or Köln/Bonn (Wahn)	Paris London
2. Tokyo and/or any other point or points if desired	Anchorage Copenhagen	Hamburg	London Paris

¹ The Secretary of State in the Ministry of Foreign Affairs.² See p. 185 of this volume.

I have the honour to inform you that the Government of the Federal Republic of Germany agrees to the above Route Schedule. I should be grateful if you would inform me whether the Government of Japan also agrees to this Route Schedule. If this should be the case, the present Note and your Note in reply shall be regarded as constituting an agreement between the two Governments.

Accept, Monsieur le Chargé d'Affaires, the renewed assurance of my highest consideration.

CARSTENS

The Chargé d'Affaires of Japan
Bonn

II

Bonn, the 18th of January 1961

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date which reads as follows :

[See note I]

I have the honour to inform Your Excellency that the Government of Japan agrees to the Route Schedule as set forth in Your Excellency's Note and to confirm that Your Excellency's Note and this reply are regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Harumi TAKEUCHI
Chargé d'Affaires ad interim of Japan

His Excellency the State Secretary
in the German Federal Foreign Office