

No. 6720

**FEDERAL REPUBLIC OF GERMANY
and
SPAIN**

**Air Transport Agreement (with exchange of notes). Signed
at Madrid, on 28 April 1960**

Official texts: German and Spanish.

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

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
ESPAGNE**

**Accord relatif aux transports aériens (avec échange de
notes). Signé à Madrid, le 28 avril 1960**

Textes officiels allemand et espagnol.

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

[TRANSLATION — TRADUCTION]

No. 6720. AIR TRANSPORT AGREEMENT¹ BETWEEN THE
FEDERAL REPUBLIC OF GERMANY AND SPAIN. SIGN-
ED AT MADRID, ON 28 APRIL 1960

The Federal Republic of Germany and Spain,
Desiring to regulate civil air transport between their respective territories,
Have agreed as follows :

Article 1

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

- (a) The term "aeronautical authorities" shall mean, in the case of the Federal Republic of Germany, the Federal Minister for Transport ; in the case of Spain, the Minister for Air Transport ; or in both cases, any other person or agency competent to perform the functions exercised by the said authorities ;
- (b) The term "designated airline " shall mean an airline which one Contracting State has designated in writing to the other Contracting State, in accordance with article 3, as being the airline which is to operate the international air service on the routes specified in accordance with article 2, paragraph (2) ;
- (c) The terms "territory", "air service", "international air service" and "stop for non-traffic purposes" shall have the meaning laid down in articles 2 and 96 of the Convention on International Civil Aviation of 7 December 1944.²

Article 2

(1) For the purpose of the operation of international air services by the designated airlines in accordance with the provisions of this Agreement, each Contracting State shall grant to the other Contracting State :

the right of transit ;
the right to make stops for non-traffic purposes ; and
the right to make flights for the commercial carriage of international traffic in passengers, mail and/or cargo to and from the points in its territory which are listed for each route specified in accordance with paragraph (2).

¹ Came into force on 2 September 1961, thirty days after the exchange of the instruments of ratification which took place at Bonn on 2 August 1961, in accordance with the provisions of article 18.

² United Nations, *Treaty Series*, Vol. 15, p. 295 ; Vol. 26, p. 420 ; Vol. 32, p. 402 ; Vol. 33, p. 352 ; Vol. 44, p. 346 ; Vol. 51, p. 336 ; Vol. 139, p. 469 ; Vol. 178, p. 420 ; Vol. 199, p. 362 ; Vol. 252, p. 410 ; Vol. 324, p. 340 ; Vol. 355, p. 418, and Vol. 409, p. 370.

(2) The routes over which the designated airlines of the two Contracting States will be authorized to operate international air services shall be specified in a route schedule to be agreed upon in an exchange of notes.

Article 3

(1) The international air services on the routes specified in accordance with article 2, paragraph (2), may be inaugurated at any time, provided that :

- (a) the Contracting State to which the rights specified in article 2, paragraph (1), are granted has designated in writing an airline or airlines, and
- (b) the Contracting State granting these rights has authorized the designated airline or airlines to inaugurate the air services.

(2) The Contracting State granting the rights shall, subject to the provisions of paragraphs (3) and (4) and subject to agreement being reached in accordance with article 9, authorize without delay the operation of the international air services.

(3) Each Contracting State may require an airline designated by the other Contracting State to satisfy if that it is qualified to meet the requirements prescribed under the laws and administrative regulations of the State granting the rights for the operation of international air traffic, including the regulations concerning compensation for damage.

(4) Each Contracting State reserves the right to withhold the exercise of the rights granted in article 2 from an airline designated by the other Contracting State if such airline is unable on request to furnish proof that substantial ownership and effective control of the airline are vested in nationals or bodies corporate of the Contracting State of the airline or in that Contracting State itself.

Article 4

(1) Each Contracting State may revoke, or limit by the imposition of conditions, the authorization granted in accordance with article 3, paragraph (2), if a designated airline fails to comply with the laws and regulations of the Contracting State granting the rights, or to comply with the provisions of this Agreement, or to fulfil the obligations arising therefrom. The same shall apply if the proof referred to in article 3, paragraph (4), is not furnished. Each Contracting State shall exercise this right only after an exchange of views, in accordance with article 12, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

(2) Each Contracting State may, by giving notice in writing to the other Contracting State, withdraw the designation of an airline and replace it by another airline. The newly-designated airline shall have the same rights and obligations as the airline which it replaces.

Article 5

The charges imposed by either Contracting State for the use of airports and other aviation facilities by the aircraft of a designated airline of the other Contracting State shall not be higher than those payable by its national aircraft.

Article 6

Each Contracting State shall grant the following fiscal privileges in respect of aircraft employed exclusively in international air services by a designated airline of the other Contracting State and in respect of the materials required for the operation of the said aircraft :

1. Aircraft employed by a designated airline of one Contracting State entering and thereafter departing from, or flying in transit over, the territory of the other Contracting State, as well as fuel, lubricating oils, spare parts, equipment and provisions on board such aircraft, shall, under customs supervision, be exempt from customs duties and other charges levied in connexion with the importation, exportation or transit of such goods.
2. Fuel, lubricating oils, spare parts and standard equipment which, under customs supervision, are taken on board aircraft of a designated airline of one Contracting State in the territory of the other Contracting State and are used in international air services shall be exempt, on the basis of reciprocity, from customs duties and other charges levied in connexion with the importation, exportation or transit of such goods and from special consumption charges.

Article 7

(1) There shall be fair and equal opportunity for the airlines of each Contracting State to operate on each of the routes specified in accordance with article 2, paragraph (2).

(2) The development of air services between their respective territories shall be a fundamental concern of both Contracting States.

(3) In operating international air services on the routes specified in accordance with article 2, paragraph (2), a designated airline of one Contracting State shall take into account the interests of a designated airline of the other Contracting State, so as not to affect unduly the air services operated by the latter airline on the same routes or on portions thereof.

(4) The international air services operated on the routes specified in accordance with article 2, paragraph (2), shall have as their primary objective the provision of capacity adequate to meet the foreseeable requirements of traffic to and from the territory of the Contracting State designating the airline. The right of the said airline to operate flights between points on a route specified in accordance with article 2, paragraph (2), which are situated in the other Contracting State and points in third

States shall be exercised, in the interest of the orderly development of international air traffic additional to the traffic between the territories of the two Contracting States, in such a manner that capacity shall be adapted to :

- (a) the requirements of traffic from and to the territory of the Contracting State designating the airline ;
- (b) the requirements of traffic in the areas crossed, account being taken of local and regional services ;
- (c) the requirements of economic through-airline operation.

Article 8

(1) The designated airlines shall communicate to the aeronautical authorities of both Contracting States not later than thirty days prior to the inauguration of service on the routes specified in accordance with article 2, paragraph (2), particulars of the type of service, the types of aircraft to be used, and the flight schedules. The same shall apply to later changes.

(2) The aeronautical authorities of either Contracting State shall furnish to the aeronautical authorities of the other Contracting State at their request such periodic or other statistical data of the designated airlines as are required for the purpose of reviewing the capacity provided by a designated airline of the first Contracting State on the routes specified in accordance with article 2, paragraph (2). Such data shall include all information required to determine the amount of traffic carried and its origin and destination.

(3) The aeronautical authorities shall, by mutual agreement and in the light of the statistical data, ensure that the capacity to be provided by each service conforms to the principles of article 7.

Article 9

(1) Tariffs to be charged for passengers and freight on the routes specified in accordance with article 2, paragraph (2), shall be fixed by taking into account all factors, such as cost of operation, reasonable profit, the characteristics of the various routes and the tariffs charged by other airlines which operate over the same routes or portions thereof. In fixing such tariffs, the provisions of the following paragraphs shall be observed.

(2) The tariffs shall, if possible, be fixed for each route by agreement between the designated airlines concerned. For this purpose the designated airlines shall abide by such decisions as are applicable under the tariff-fixing procedures of the International Air Transport Association (IATA), or shall, if possible, agree directly between themselves after consultation with the airlines of third States which operate over the same routes or portions thereof.

(3) The tariffs so fixed shall be submitted for approval to the aeronautical authorities of both Contracting States not later than thirty days before the proposed date of their entry into force. This period may be reduced in special cases, if the aeronautical authorities so agree.

(4) If no agreement is reached between the designated airlines in accordance with paragraph (2), or if one of the Contracting States does not agree to the tariffs submitted for its approval in accordance with paragraph (3), the aeronautical authorities of the two Contracting States shall by agreement fix the tariffs for those routes or portions thereof on which agreement has not been reached.

(5) If no agreement is reached between the aeronautical authorities of the two Contracting States in accordance with paragraph (4), the provisions of article 14 shall apply. Until such time as an arbitral award is rendered, the Contracting State which has expressed disagreement with a tariff shall have the right to require the other Contracting State to maintain the tariffs previously in effect.

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. Any discussions with a view to determining the extent to which this Agreement is superseded, amended or supplemented by the provisions of the multilateral convention shall take place in accordance with article 13 of this Agreement.

Article 11

Each designated airline may maintain in the territory of the other Contracting State such staff as is essential to the technical and administrative maintenance of its services.

Article 12

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

Article 13

(1) One of the Contracting States may at any time request a consultation for the purpose of discussing amendments to this Agreement or to the route schedule. The same shall apply to discussions concerning the interpretation and application of the Agreement if an exchange of views in accordance with article 12 has proved unsuccessful. Such consultation shall begin within a period of sixty days from the date of receipt of the request.

(2) Amendments to this Agreement on which agreement has been reached shall enter into force in accordance with the procedure provided for in article 18.

(3) Changes in the route schedule shall enter into force as soon as they have been agreed upon in an exchange of notes in accordance with article 2, paragraph (2).

Article 14

1. Any dispute relating to the application or interpretation of this Agreement which cannot be settled in accordance with article 12 or article 13 shall, at the request of either Contracting State, be referred to an arbitral tribunal.

2. The arbitral tribunal shall, in each case, be established in such a manner that each Contracting State shall appoint one arbitrator and these arbitrators shall agree upon a national of a third State as chairman. If the arbitrators have not been appointed within sixty days after the date on which a Contracting State has given notice of its intention to have recourse to an arbitral tribunal, or if the arbitrators cannot agree upon a chairman within thirty days after the date of their appointment, the President of the Council of the International Civil Aviation Organization shall be requested to make the necessary appointments. His decision shall be binding upon the Contracting States.

3. If the arbitral tribunal cannot arrive at an amicable settlement of the dispute, it shall take a decision by majority vote. Unless the Contracting States agree otherwise, the arbitral tribunal shall establish its own rules of procedure and select its place of meeting.

4. Each Contracting State shall bear the cost of the services of its own arbitrator and one half of the remaining costs.

5. The Contracting States undertake to comply with any provisional measures ordered in the course of the proceedings and with the arbitral award, which shall be final.

Article 15

Either Contracting State may denounce this Agreement at any time. The Agreement shall cease to have effect 270 days after the date on which notice of denunciation is received by the other Contracting State, unless such notice is withdrawn by agreement between the Contracting States before the expiry of the said period.

Article 16

This Agreement, any amendments hereto and any exchange of notes in accordance with article 2, paragraph (2), and article 13, paragraph (3), shall be transmitted to the International Civil Aviation Organization for registration.

Article 17

This Agreement supersedes any previous agreements which may be in force between the Contracting States with respect to international air services.

Article 18

This Agreement shall be ratified. The instruments of ratification shall be exchanged at Bonn as soon as possible. It shall enter into force thirty days after the date of the exchange of instruments of ratification.

IN WITNESS WHEREOF the plenipotentiaries of the two Parties have signed this Agreement.

DONE at Madrid, on 28 April 1960, in duplicate in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany :

L. WERZ

For Spain :

CASTIELLA

EXCHANGE OF NOTES

I

THE GERMAN CHARGÉ D'AFFAIRES

Madrid, 28 April 1960

Sir,

I have the honour to refer to article 2, paragraph (2), of the Air Transport Agreement between the Federal Republic of Germany and Spain, signed today¹ at Madrid. It has been agreed that air services may be operated in accordance with the following route schedule.

A. SERVICES BETWEEN THE TWO COUNTRIES

I. From the Federal Republic of Germany to Spain

- (a) From points in the Federal Republic to Madrid ;
- (b) From points in the Federal Republic to Barcelona ;
- (c) From points in the Federal Republic to Palma (Majorca).

¹ See p. 22 of this volume.

II. From Spain to the Federal Republic of Germany

- (a) From points in Spain to Frankfurt-am-Main ;
- (b) From points in Spain to Stuttgart.

B. SERVICES ON OTHER ROUTES

I. German routes

- (a) From points in the Federal Republic of Germany *via* Nice or Bordeaux to Barcelona or Madrid and thence to Lisbon ;
- (b) From points in the Federal Republic of Germany *via* Paris or Nice to Madrid and thence to Lisbon, Casablanca, Dakar, Recife, Rio de Janeiro, São Paulo, Pôrto Alegre, Montevideo, Buenos Aires, Santiago (Chile).

II. Spanish routes

- (a) From points in Spain *via* Lyons to Munich and points beyond in Austria and south-eastern Europe ;
- (b) From points in Spain *via* Paris and/or Brussels and/or Amsterdam to Hamburg and thence to Copenhagen, Stockholm, Helsinki.

C

In accordance with the air transport agreement of 31 March 1947 between Spain and Portugal, air traffic originating between the two metropolitan countries shall be reserved exclusively for the designated airlines of those countries.

D

Points on the specified routes may be omitted temporarily or permanently if the designated airlines so desire.

E

The destinations of and intermediate landing points on the route specified under B II (a) beyond the Federal Republic of Germany shall be agreed upon by the aeronautical authorities of the two Contracting States before service on that route is inaugurated. The same shall apply to the intermediate landing points on the routes specified under B I (a) and (b).

F

If so requested by the Government of one Contracting State, the Government of the other Contracting State shall give sympathetic consideration to extensions of the route schedule, as follows :

German routes

From points in the Federal Republic of Germany *via* Paris or Nice to Madrid and thence to Lisbon, Santa Maria, points in the Caribbean and thence to points in Central and South America.

Spanish routes

From points in Spain *via* a point in the Federal Republic of Germany and thence *via* points in south-eastern Europe to points in the Near East.

I have the honour to inform you that the Government of the Federal Republic of Germany agrees to the foregoing arrangements. I should be grateful if you would inform me whether the Spanish Government also approves them. If so, this note and your reply shall be regarded as constituting an agreement between the two Governments.

I have the honour to be, etc.

L. WERZ

His Excellency Mr. Fernando Maria Castiella
Minister for Foreign Affairs
Madrid

II

Madrid, 28 April 1960

Sir,

I have the honour to acknowledge receipt of your note of today's date which, being translated, reads as follows :

[See note I]

I have the honour to inform you that the Spanish Government agrees with the foregoing.

I have the honour to be, etc.

Fernando CASTIELLA

Dr. Luitpold Werz
Counsellor
Acting Chargé d'Affaires
Embassy of the Federal Republic of Germany
Madrid