

No. 13069

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Exchange of letters constituting an agreement relating to air
charter services (with memorandum of understanding).
Bonn and Bonn-Bad Godesberg, 13 April 1973**

Authentic text: English.

Registered by the United States of America 12 February 1974.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Échange de lettres constituant un accord relatif aux vols
affrétés (avec mémorandum d'accord). Bonn et Bonn-Bad
Godesberg, 13 avril 1973**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 12 février 1974.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹
BETWEEN THE UNITED STATES OF AMERICA AND
THE FEDERAL REPUBLIC OF GERMANY RELATING
TO AIR CHARTER SERVICES

I

*The Federal Minister of Transport to the American Minister for Economic
and Commercial Affairs*

DER BUNDESMINISTER FÜR VERKEHR²

L 3/61.10./3016 Vm 73

5300 Bonn 1, den 13. April 1973

Dear Mr. Wootton,

I would like to refer to the discussions which were held between representatives of the Embassy of the United States of America and of my department on questions concerning the operation of advance booking charter flights (ABC/TGC). The results of these discussions are laid down in the attached Memorandum of Understanding which both sides have agreed upon for an interim period until March 31st, 1974. For the German side I wish to convey to you officially my consent to the Memorandum.

May I repeat the statements which were made by the representatives of my department during the discussions:

1. In view of the Ottawa Declaration of Agreed Principles on North Atlantic Charter and Recommendation No. 1 of the Fifth Intermediate Session (Special) of ECAC, the Federal Republic sticks to its concern that the TGC rule posed difficulties of an important nature, noting particularly that the TGC rule allows for substitution until flight departure, commingling with other charter traffic on split charters, commingling of ABC and TGC charters on the same flight, and a year-round 10-day minimum stay requirement.
2. The Federal Republic maintains the principle of uniformity of the North Atlantic market which excludes a different treatment of charter flights and scheduled services. In accepting the understanding on advance charters the Federal Republic relies upon the achievement of an acceptable rate structure for scheduled air services over the North Atlantic.
3. The Federal Republic reaffirms the principle that any rule or regulation issued by one of the respective countries could apply to traffic between their territories only if accepted by the other country.
4. The Federal Republic reiterates the principle of the understanding that each side is free in its decisions on traffic rights for charter flights of all kinds and that the memorandum of understanding only refers to the question of charterworthiness of flights under TGC/ABC rules.

¹ Came into force on 13 April 1973 by the exchange of the said letters.

² The Federal Minister of Transport.

In respect of the control of charter rates and of quantitative controls of advance charter programs for charterflights originating in the USA and in the Federal Republic the latter reserves its rights to disapprove wholly or partly any charter program the rates and/or dimensions of which would appear unreasonable. It also reserves its right to limit the extent to which commingling of ABC/TGC groups with non-advance charter groups could be exercised.

5. The Federal Republic emphasizes the desirability of and necessity for enforcement of the regulations governing advance charters and agreed that there should be exchange of views and other contacts between the respective enforcement officials.

Sincerely,

On behalf of the Federal Minister of Transport:

[Signed]

DR. REHM

Mr. Charles G. Wootton
Minister for Economic and Commercial Affairs
Embassy of the United States of America
Bonn-Bad Godesberg

MEMORANDUM OF UNDERSTANDING

Representatives of the Government of the United States of America and the Government of the Federal Republic of Germany have discussed the conditions governing Travel Group Charter (TGC) flights and Advance Booking Charter (ABC) flights between the United States and Germany, and have concluded that their respective rules are substantially similar, are experimental in character, and are "advance charter" rules in the transatlantic connotation of the term. Nevertheless, at the present time each rule contains dissimilar elements related to the distinctive marketing conditions, internal legal situations, and enforcement structures of each country. They recognized that these dissimilar elements are an obstacle to the carriage of advance charter traffic between their two countries. They recognized that uniformity of rules would have been preferable but has not been achieved; therefore, the solution which will best serve the public interest in present circumstances is that traffic conforming with the advance charter rules of the country of origin of the traffic should be accepted as charterworthy by the other country. This memorandum sets forth the agreed regulatory procedures to give effect to this concept as well as particular actions each party will undertake for the period ending March 31, 1974.

I. AGREED PROCEDURES FOR MUTUAL IMPLEMENTATION AND ENFORCEMENT OF ADVANCE CHARTER REGULATIONS

A. *Charterworthiness.* Each party undertakes to accept as charterworthy traffic (a) originated in the territory of the other party and organized and operated pursuant to the advance charter (TGC or ABC) rule* of that party and (b) originated outside the territory of

*TGC means those rules of the United States embodied in Part 372A of the special regulations of the United States Civil Aeronautics Board, and any amendment thereto. ABC means those rules of the Federal Republic embodied in the Federal Republic's NOTAM N31/73 of February 1, 1973, and any amendments thereto.

either party and operated pursuant to an advance charter rule which has been recognized by the party to whose territory the charter flight is operated. For the purpose of this understanding, the country of the origin of the traffic is to be determined by reference to a point in the territory of either party (or a point outside) from which the group of advance charter passengers departs on the outward portion of a round-trip (including circle and open-jaw) journey under the TGC or ABC rules.

B. *Administration and enforcement.* Each party reserves its right to require the filing of charter programs originating in the territory of the other party.* To minimize the administrative burdens of enforcement procedures on carriers and organizers, and at the same time to coordinate enforcement procedures, each party:

- (1) undertakes not to require the routine filing with it of passenger lists and other documents for charter traffic originated in the territory of the other party and organized and operated pursuant to the advance charter rule of that party and originated outside the territory of either party and operated pursuant to an advance charter rule which has been recognized by the party to whose territory the charter flight is operated.**
- (2) undertakes that its regulatory authorities will transmit, on request, to the regulatory authorities of the other party, passenger lists and other appropriate documents to facilitate the conduct of spot checks of flights, especially if on such flights there is commingling of ABC/TGC groups with groups organized in accordance with other regulations.
- (3) undertakes to transmit to the regulatory authorities of the other party, for appropriate enforcement of its rule, evidence obtained of possible rule violations on flights operated pursuant to the advance charter rule of the other party, rather than interrupt the flight and cause inconvenience to or stranding of the traveling public.
- (4) intends to conduct spot checks and to conduct occasional post flight reviews of advance charter flights operated pursuant to its rule, take appropriate action when violations are observed, and regulate in accordance with its national laws and regulations, the conduct of charter organizers operating on its territory.

C. *Tariffs, rates and fares.* To assure that prices are neither unreasonably high or low taking into account all relevant costs, each party shall require the filing of tariffs or price schedules (as applicable) and enforce conformity to tariff or price schedules on all flights operated.

D. *Other considerations.* To further facilitate the development of the international air transport system, the regulatory authorities of each party shall:

- (1) stand ready to modify their advance charter rules should it become necessary in order to prevent undue diversion from the scheduled air services of each between their territories, or to correct any serious experienced enforcement problem.
- (2) hold an exchange of views at the earliest practical time after a request to do so has been received from the other party, on any matter covered by this Memorandum.

*In this regard, and in order to identify the origin of traffic and to monitor charter prices, each party may require for each flight information relating to the proposed date, time and routing of the flight, the identity of the travel organizer and the number of seats contracted for, as well as the prices proposed to be charged to and ultimately paid by the travel organizer and the passenger.

**By way of exception, all passenger lists and other similar documents required by the regulatory authorities of the country of origin of the traffic shall be filed with the regulatory authorities of both parties on split charter flights of the TGC traffic and ABC traffic.

- (3) work towards ultimately achieving commonality of advance charter rules to the extent possible in order to minimize the necessary yielding by each party of some control over traffic originated in the territory of the other.

II. PARTICULAR UNITED STATES ACTIONS

The United States undertakes that its regulatory authorities will:

- (1) Begin and conclude, as soon as practicable, rulemaking procedures to implement acceptance of the Advance Booking Charter (ABC) rule of the Federal Republic on a continuing basis during the life of this Understanding or any which may supersede it, for the purpose of determining the charterworthiness of traffic which originates in the Federal Republic and conforms to the said ABC rule of the Federal Republic.
- (2) As an interim measure, and until such time as the actions mentioned in (1) above are effectuated, grant individual case waivers of such provisions of its charterworthiness regulations as might preclude the operation of any individual flight or series of ABC (or ABC and TGC split charter) flights, provided the ABC group movements for which waivers are sought originate in the Federal Republic and conform to the ABC rule of the Federal Republic.

III. PARTICULAR ACTIONS OF THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic undertakes that its regulatory authorities will take all appropriate actions to permit them to accept as charterworthy, traffic which originates in the United States and conforms to the TGC rule and so to accept the charterworthiness of such traffic.

II

The American Ambassador to the Federal Minister of Transport

April 13, 1973

Dear Mr. Minister:

I have the honor to refer to discussions which have taken place recently at Bonn between representatives of the Federal Ministry of Transport and the U.S. Embassy with regard to the new rules on advance charter traffic which have been adopted by our two Governments, and to your letter of April 13 officially conveying the agreement of the Federal Republic of Germany to the terms of the Memorandum of Understanding, and repeating certain statements made by the representatives of your ministry during the discussions which it is understood are not intended to detract from the terms of that Understanding. The text of the Memorandum of Understanding is enclosed as an annex to this letter.

I have the honor to inform you that the United States Government agrees to the provisions of the Memorandum of Understanding referred to above, and to confirm that your letter of April 13 and this reply, together with the Memorandum of Understanding, shall constitute an agreement between our two Governments in this matter, which shall enter into force on the date of this reply.

It is also understood that, in the event that either Government terminates or

abandons its advance charter rules, which were the basis for entering into the present agreement, such Government may terminate this Agreement prior to March 31, 1974, upon notice to the other Government.

Sincerely yours,

For the Ambassador:

[*Signed*]

CHARLES G. WOOTTON

Minister-Counselor

for Economic and Commercial Affairs

Enclosure:

Annex

His Excellency Dr. Lauritz Lauritzen
Federal Minister of Transport
Bonn

[*Enclosure (Memorandum of Understanding) as under note I*]
