

**No. 32470**

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**BRAZIL  
and  
PORTUGAL**

**Agreement on scheduled air transport (with annex and route  
schedule). Signed at Brasília on 7 May 1991**

*Authentic text: Portuguese.*

*Registered by Brazil on 31 January 1996.*

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**BRÉSIL  
et  
PORTUGAL**

**Accord relatif aux transports aériens réguliers (avec annexe  
et tableau de routes). Signé à Brasília le 7 mai 1991**

*Texte authentique : portugais.*

*Enregistré par le Brésil le 31 janvier 1996.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> ON SCHEDULED AIR TRANSPORT BETWEEN THE  
GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
AND THE GOVERNMENT OF THE REPUBLIC OF PORTUGAL

The Government of the Federative Republic of Brazil and

The Government of the Republic of Portugal

(Hereinafter referred to as the “Contracting Parties”),

Desiring to develop scheduled air services between their two countries in order to reinforce the bonds of friendship and international cooperation between the Brazilian and Portuguese peoples by means of rapid communications,

Aware of the need for such services to be developed in an orderly manner, on a basis of reciprocity and in the most economical manner compatible with operational safety and the public interest,

Considering that the principles and provisions of the Convention on International Civil Aviation, concluded at Chicago on 7 December 1944<sup>2</sup> by duly accredited plenipotentiaries acting within the limits of the powers conferred on them, must be applied to those services, and bearing in mind the international obligations undertaken by the two countries,

Have agreed as follows:

*Article 1*

TERMINOLOGY

For the purposes of this Agreement:

I. “Agreement” means the Agreement proper, its annex and its schedule of routes, and any amendments to the Agreement or to its annex or schedule of routes made as provided for in the Agreement proper.

II. “Territory”, in relation to a State, means the land areas, the territorial waters adjacent thereto, the submarine continental shelf and the airspace within the limits and under the sovereignty of the said State.

III. “Aeronautical authorities” means, in the case of the Federative Republic of Brazil, the Ministry of Aeronautics and, in the case of Portugal, the Directorate-General of Civil Aviation of the Ministry of Public Works, Transport and Communications and, in both cases, the person or body legally authorized to exercise functions currently within the competence of the aforementioned authorities.

<sup>1</sup> Came into force on 20 April 1994, i.e., 30 days after the date of receipt of the last of the notifications by which the Contracting Parties had informed each other of the completion of the constitutional formalities, in accordance with article 23.

<sup>2</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

IV. “Designated airline” means the air transport enterprise which the Government of one Contracting Party has notified the Government of the other Contracting Party as being the company which will operate the air services listed in the schedule of routes specified in this Agreement and which the other Contracting Party has accepted under the terms of article 3.

V. “Air service” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail.

VI. “International air service” means an air service which passes through the airspace over the territory of more than one State.

VII. “Airline” means any air transport enterprise offering or operating an international air service.

VIII. “Stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

IX. “Tariff” means the price for the carriage of passengers, baggage and cargo and, generally, the conditions of carriage which apply, as well as the prices and conditions for agency and other auxiliary services, but excluding payments and conditions for the carriage of mail.

X. “Portuguese-Brazilian traffic” means all traffic carried in the sector between Brazil and Portugal, with the exception of traffic which is limited to changes of service without a voluntary break of journey in either Brazil or Portugal. For the purposes of this definition, any break of journey lasting less than 24 hours shall not be considered voluntary.

## *Article 2*

### GRANTING OF RIGHTS

I. Each Contracting Party shall grant the other Contracting Party the following rights for the operation of international air services by the airline designated by that other Contracting Party:

- (a) The right to overfly the territory of the other Contracting Party;
- (b) The right to land in the said territory for non-traffic purposes;

(c) The right to land in the said territory, in accordance with the terms specified in the annex and the routes set out in the schedule of routes, for the purpose of taking on or discharging international traffic in passengers, cargo or mail, carried separately or in combination.

II. No provision of this Agreement shall confer upon the designated airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

### Article 3

#### DESIGNATION AND PERMITS

I. Each Contracting Party shall inform the other Contracting Party in writing of the designation or substitution of the airline that is to operate the agreed air services on the specified routes.

II. Upon receiving such designation, the other Contracting Party shall, once the conditions of paragraphs III and IV of this article have been met, grant the designated airline without delay the necessary permits to operate the agreed services.

III. The aeronautical authorities of one Contracting Party may demand that the designated airline of the other Contracting Party demonstrate, in accordance with the provisions of the aforementioned Chicago Convention, that it is able to comply with the obligations set forth in the laws and regulations applied by those authorities to the operation of international air services.

IV. Each Contracting Party shall have the right to deny or revoke the permits referred to in paragraph II of this article if it cannot be demonstrated that substantial ownership and effective control of the airline are vested in the Contracting Party which designated the airline or in its nationals.

V. When an airline has been so designated and authorized, it may begin to operate the agreed services at any time, once its timetables have been approved and once tariffs which conform to the provisions of this Agreement are in force on such service.

### Article 4

#### REVOCAION OF PERMITS

I. Each Contracting Party reserves the right to revoke a permit granted to the airline designated by the other Contracting Party or to suspend the exercise by that airline of the rights specified in this Agreement:

1. If it has not been demonstrated that substantial ownership and effective control of that airline are vested in the Contracting Party which designated the airline or in its nationals;

2. If that airline does not comply with the laws and regulations of the Contracting Party granting those rights;

3. If the airline ceases to operate the authorized services according to the terms set forth in this Agreement.

II. Each Contracting Party may impose such conditions as it deems necessary for the exercise of the rights set forth in this Agreement, in the cases envisaged in subparagraphs 2 and 3 of paragraph I.

III. Unless immediate revocation, suspension or imposition of conditions is essential to prevent further breaches of laws or regulations, the measures provided for above shall be taken only after consultation with the other Contracting Party. Such consultation shall begin within 60 days of the corresponding notification.

*Article 5*

## APPLICATION OF LAWS

I. The laws and regulations of a Contracting Party relating to the entry, presence or departure of aircraft used in international air services or to the operation of such aircraft during their presence in its territory shall apply to the aircraft of the airline designated by the other Contracting Party.

II. The laws and regulations of a Contracting Party applicable to the entry, presence or departure of passengers, crews, baggage, mail and cargo, as well as its entry, departure, immigration, customs and quarantine procedures, shall apply also, in that country, to passengers, crews, baggage, mail and cargo transported by the airline designated by the other Contracting Party.

*Article 6*

## DUTIES, TAXES AND FEES

I. In order to prevent discriminatory practices and ensure equality of treatment, it is established that:

1. The fees and other charges which one Contracting Party imposes or allows to be imposed on the airline designated by the other Contracting Party for the use of airports and other facilities shall not be higher than the fees and charges paid for the use of such airports and facilities by aircraft of its own flag engaged in similar international services;

2. Fuel, lubricating oils and spare parts brought into the territory of either Contracting Party by or on behalf of an airline designated by one of the Parties, for the exclusive use of aircraft of that airline, shall enjoy treatment as favourable as that granted to a national airline or a most favoured nation, in respect of customs duties, inspection fees and other national charges; by the Contracting Party into whose territory such goods have been imported;

3. The aircraft of a Contracting Party used in the operation of the agreed services, and such fuel, lubricating oils, spare parts, standard equipment and aircraft stores, including food, drink and tobacco and other products for sale in limited quantities to passengers during the flight, as are on board the aircraft of an airline designated by a Contracting Party, shall on both arrival in and departure from the territory of the other Contracting Party be exempt from customs duties, inspection fees or similar taxes, even if such aircraft use such supplies while flying over that territory.

II. The goods listed in subparagraph I.3 above and exempt thereunder may not be unloaded from the aircraft in the territory of the other Contracting Party without the consent of its customs authorities and shall remain subject to the control of those authorities insofar as they are not used by the airline.

*Article 7*

## TRAFFIC IN DIRECT TRANSIT

I. To the extent permitted by security requirements, passengers, baggage and cargo in direct transit in the territory of a Contracting Party shall be subject to simplified control only.

II. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

*Article 8*

## CAPACITY

I. The designated airlines of the two Contracting Parties shall enjoy fair and equal treatment in operating the agreed services, so that they derive mutual benefit therefrom.

II. The agreed services to be operated by the designated airlines of the Contracting Parties shall have as their primary objective the supply, on the basis of reasonable capacity factors of adequate transport capacity to meet current and foreseeable demand for the transport of passengers, cargo and mail between the territories of the Contracting Parties.

III. Each Contracting Party and its designated airline shall take the interests of the other Contracting Party and its designated airline into account in order not to affect unduly the services provided by the latter airline.

*Article 9*

## TARIFFS

I. The tariffs to be applied by the designated airline of one Contracting Party for transportation to or from the territory of the other Contracting Party shall be set at reasonable levels, having due regard to relevant factors, especially operating costs and reasonable profit, and to the tariffs applied by other airlines operating on equivalent routes.

II. The tariffs referred to in paragraph I above and the applicable rates of agency commission shall, to the extent possible, be set by agreement between the designated airlines of the two Contracting Parties. Such agreement shall be reached, whenever possible, through the tariff-setting procedures established by the international body recognized by both Contracting Parties.

III. The tariffs so agreed shall be submitted to the aeronautical authorities of the two Contracting Parties for approval at least 60 days before the proposed date for their entry into force; in special cases, this period may be reduced if the aeronautical authorities so agree.

IV. Approval of the agreed tariffs may be given explicitly. If neither aeronautical authority has expressed disagreement within 30 days from submission of the tariffs as stipulated in paragraph III above, they shall be deemed approved. If the period for submission of tariffs is reduced under paragraph III above, the aeronau-

tical authorities may agree to give notice of their disagreement with such tariffs within a period of under 30 days.

V. If a tariff cannot be set in accordance with paragraph II above, or if the aeronautical authorities of one Contracting Party inform the aeronautical authorities of the other Contracting Party, within the time-limits set in paragraph III above, that they disagree with any tariff agreed under paragraph II above, the aeronautical authorities of the two Contracting Parties shall make every effort to set the tariff by mutual agreement.

VI. If the aeronautical authorities cannot agree on a tariff that has been submitted to them under paragraph III or cannot set a tariff under paragraph V above, they shall seek to resolve the dispute on the basis of article 18 of this Agreement.

VII. Any tariff set in accordance with this article shall remain in force until a new tariff is set. The validity of a tariff may not, however, be extended by virtue of this paragraph for a period greater than 12 months from the date on which it should have expired.

VIII. The designated airline of one Contracting Party may participate in the marketing of tariffs agreed with third countries by the designated airline of the other Contracting Party and involving sectors of the routes specified in schedules I and II of the schedule of routes.

IX. No tariff shall enter into force before approval has been obtained from the aeronautical authorities of both Contracting Parties.

X. The Contracting Parties shall attempt to ensure that there is an active and effective mechanism within their jurisdiction for investigating breaches committed by any airline, ticket or freight sales agent, tour operator or freight forwarder in respect of the tariffs established under the present article. In addition, breaches of the aforementioned tariffs shall result in the imposition of uniform, non-discriminatory deterrent measures.

### *Article 10*

#### TRANSFER OF OPERATING PROFITS

Each Contracting Party undertakes to ensure that the airline designated by the other Party can transfer, in convertible currency, surpluses between receipts and expenditures arising within the territory of each Contracting Party as a result of the carriage of passengers, cargo and mail. Such transfers shall be effected in accordance with the formalities and rates of exchange in force. When regulated by special agreement, transfers between the Contracting Parties shall be effected in accordance with such agreement.

### *Article 11*

#### STATISTICS

The aeronautical authorities of one Contracting Party shall provide to the aeronautical authorities of the other Party at the latter's request, periodically or at any time, such statistical data as may be needed to assess the capacity offered by the designated airline of the other Contracting Party on the agreed services. Such data

shall include information on the movement of traffic and on the loading and unloading points for that traffic.

### *Article 12*

#### TECHNICAL AND COMMERCIAL REPRESENTATION

The designated airline of each Contracting Party shall have the right, without prejudice to completion of the formalities provided for in the laws and regulations of the other Party, to maintain its own representatives and its own technical and commercial personnel in the territory of that other Party, in keeping with the reasonable needs of the agreed air services.

### *Article 13*

#### RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or revalidated by one Contracting Party shall be accepted as valid by the other Contracting Party in respect of operations on the routes and services defined in this Agreement. Nevertheless, each Contracting Party reserves the right not to recognize the validity, for overflights of and landings in its own territory, of certificates of competency and licences granted to its own nationals by the authorities of another State.

### *Article 14*

#### SAFETY OF AVIATION

I. In keeping with their rights and obligations under international law, the Contracting Parties reaffirm that their mutual obligation to promote the safety of civil aviation by protecting it against acts of unlawful interference is an integral part of the present Agreement. Without limiting the generality of rights and obligations under international law, the Contracting Parties shall act, in particular, in accordance with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,<sup>1</sup> the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,<sup>2</sup> and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.<sup>3</sup>

II. The Contracting Parties shall provide each other, upon request, with all necessary assistance to prevent unlawful acts against the safety of civil aircraft, their passengers and crew and airports and air navigation facilities, and any other threat to the safety of civil aviation.

III. The Contracting Parties shall, in their mutual relations, act in accordance with the aviation safety provisions established by the International Civil Aviation Organization and termed annexes to the Convention on International Civil Aviation, to the extent that such safety provisions are applicable to the Parties; the Parties

<sup>1</sup> United Nations, *Treaty Series*, vol. 704, p. 219.

<sup>2</sup> *Ibid.*, vol. 860, p. 105.

<sup>3</sup> *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to volume 974).



shall require that aircraft operators registered by them and aircraft operators who have their principal place of business or permanent residence in their territory and operators of airports situated in their territory act in conformity with the aforementioned aviation safety provisions.

IV. Each Contracting Party agrees to require aircraft operators to observe the aviation safety provisions mentioned in paragraph III and imposed by the other Contracting Party in respect of entry into, departure from or presence in the latter's territory. Each Contracting Party shall ensure that appropriate measures are effectively taken in its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores before and during loading of the aircraft and while it is in that territory. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for the adoption of special and reasonable safety measures to combat a specific threat.

V. In the event of an incident or threat of an incident of unlawful seizure of civil aircraft or of other unlawful acts against the safety of such aircraft, their passengers and crew or airports and air navigation facilities and services, the Contracting Parties shall assist each other by facilitating communications and taking other appropriate measures designed to put an end to the incident or threat rapidly and safely.

### *Article 15*

#### CONSULTATION

I. Each Contracting Party may at any time request consultations between the competent authorities of the two Contracting Parties concerning the interpretation, implementation or amendment of this Agreement.

II. Such consultations shall begin, at the latest, within 60 days from the date of receipt of notification.

### *Article 16*

#### CONTACT BETWEEN THE PARTIES

In addition to the consultation meetings provided for in article 15 and given the advisability of constant coordination of the common civil aviation interests of the two countries, the aeronautical authorities of the Contracting Parties shall maintain permanent contact in order to ensure close cooperation on all matters dealt with in this Agreement, with a view to its satisfactory implementation.

### *Article 17*

#### AMENDMENT OF THE AGREEMENT

I. If either Contracting Party wishes to amend any provision of this Agreement, it may request the other Contracting Party that consultations be held as provided for in the article on consultations.

II. Amendments to the Agreement proper shall enter into force 30 days from the date on which the Contracting Parties notify each other that their respective constitutional formalities have been completed.

III. Amendments to the annex and schedule of routes attached to this Agreement may be made by direct agreement between the aeronautical authorities of the Contracting Parties and shall enter into force once confirmed by an exchange of diplomatic notes.

### *Article 18*

#### DISPUTES

I. The settlement of any dispute which may arise as to the interpretation or implementation of this Agreement shall be sought through direct negotiations between the aeronautical authorities of the Contracting Parties.

II. Should the aeronautical authorities fail to reach agreement, settlement of the dispute shall be the subject of negotiations through the diplomatic channel.

III. If the dispute cannot be settled either between the aeronautical authorities or between the Governments of the Contracting Parties, the Contracting Parties may agree to submit the dispute to a person or organization; if they fail to reach such agreement, the dispute may, at the request of either Contracting Party, be submitted to an arbitral tribunal.

IV. The arbitral tribunal shall be composed of three members. Each Contracting Party shall appoint an arbitrator and the two arbitrators shall agree on the appointment of a national of a third State as president. If, within two months from the day on which one of the Contracting Parties proposed settlement of the dispute by arbitration, the two arbitrators have not been appointed, or if, during the following month, the two arbitrators have not agreed on the appointment of a president, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

V. If the dispute cannot be settled amicably, the arbitral tribunal shall reach a decision by majority vote. Unless the Contracting Parties agree otherwise, the tribunal shall establish its own procedures and determine where it is to sit.

VI. The Contracting Parties shall endeavour to conform to such temporary measures as may be decreed either during consideration of the dispute or in the arbitral award, which shall in all cases be considered final.

VII. If one Contracting Party does not conform to the terms of the arbitral award, the other Contracting Party may, during the period of non-compliance, limit, suspend or revoke such rights and privileges as it has granted, under this Agreement, to the Contracting Party that is at fault.

VIII. Each Contracting Party shall bear the cost of remuneration for the activities of its arbitrator and half the remuneration of the appointed president.

### *Article 19*

#### HARMONIZATION WITH MULTILATERAL AGREEMENTS

This Agreement, its annex and its schedule of routes shall be deemed amended in conformity with any multilateral air transport agreement that may become binding on both Contracting Parties equally.

*Article 20*

## DENUNCIATION

Either Contracting Party may at any time notify the other Contracting Party that it intends to terminate this Agreement. Such notification shall be given simultaneously to the International Civil Aviation Organization. If such notification is given, the Agreement shall terminate 12 months from the date on which the other Contracting Party received the notification, unless it is withdrawn by mutual consent before that period expires. If the other Contracting Party does not acknowledge receipt of the aforementioned notification, the latter shall be deemed to have been received 14 days after its receipt by the International Civil Aviation Organization.

*Article 21*

## REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

This Agreement and any amendments thereto shall be registered with the International Civil Aviation Organization.

*Article 22*

## REVOCATION OF EXISTING AGREEMENT

This Agreement revokes the Agreement signed by the two Contracting Parties on 10 December 1946,<sup>1</sup> as well as all regulations consequent thereupon.

*Article 23*

## ENTRY INTO FORCE

Each Contracting Party shall notify the other, through the diplomatic channel, of completion of the internal constitutional formalities necessary for the entry into force of this Agreement; such entry into force shall take place 30 days after the date of receipt of the second notification.

DONE at Brasília, on 7 May 1991, in duplicate in the Portuguese language, both texts being equally authentic.

For the Government  
of the Federative Republic  
of Brazil:

FRANCISCO REZEK

For the Government  
of the Republic of Portugal:

JOÃO DE DEUS PINHEIRO

<sup>1</sup>United Nations, *Treaty Series*, vol. 200, p. 67.

## ANNEX

### *Section I. Additional traffic rights*

In addition to their permanent traffic rights under article 2 of this Agreement, the Parties agree as follows:

1. The designated airline of one Contracting Party may exercise traffic rights between the territory of the other Contracting Party and third countries at points specified in the schedule of routes, under conditions to be agreed by the aeronautical authorities of the two Contracting Parties.

2. The designated airlines of both Contracting Parties shall have the right to transport on the agreed services between their territories:

(a) Passenger, cargo and mail traffic in transit between stops outside one Party, and stops in the other Party via the territory of the carrier;

(b) Cargo traffic that does not have its origin or destination in the territory of either of the Parties but is in transit through their territories.

### *Section II. Mode of operation*

In addition to the principles set out in article 8 of this Agreement, the agreed services shall also be operated in conformity with the following provisions:

(a) The total capacity to be offered shall, in principle, be distributed equally between the designated airlines;

(b) The capacity to be offered on the specified routes to meet normal traffic needs and also any seasonal demand shall be approved by the aeronautical authorities of the two Contracting Parties and shall take into consideration the principles stipulated in this section and the interests of the designated airlines;

(c) In order to meet traffic needs that could not be foreseen at the time when the operating timetables were drawn up, the aeronautical authorities of the two Contracting Parties may authorize, at the proposal of the designated airlines, such increases in capacity as may be required to meet the traffic demand;

(d) If the designated airline of one Contracting Party fails to operate, either permanently or temporarily, totally or partially, the capacity to which it is entitled, the aeronautical authorities of the two Contracting Parties may agree that the designated airline of the other Contracting Party may operate the agreed capacity in accordance with the preceding paragraphs. Nevertheless, it shall be a condition of such agreement that if, at any point, the designated airline of the first Contracting Party decides to begin operating or to increase the capacity of its services within the total capacity to which it is entitled and gives the second Contracting Party reasonable notice thereof, the designated airline of the second Contracting Party shall correspondingly withdraw some or all of the surplus capacity which it has been operating.

### *Section III. Operational flexibility*

The designated airlines of both Contracting Parties shall have the right to offer additional capacity, for the purposes of operational flexibility, to be agreed between the aeronautical authorities of the two Parties.

### *Section IV. Timetables*

1. The airline of each Contracting Party shall submit to the aeronautical authorities of the other Contracting Party, at least 45 days before they are due to come into force, the timetables according to which it wishes to operate its services.

2. Such timetables shall indicate the type, model and configuration of the aircraft used, the frequency of the services and the stops made.

3. Such timetables shall be evaluated by the aeronautical authorities of the other Contracting Party and a decision shall be given within 30 days from the date on which the timetables were submitted.

*Section V. Restriction of Portuguese-Brazilian traffic*

1. Portuguese-Brazilian traffic shall be restricted to the airlines designated by the two countries.

2. Any future exceptions to this provision shall be agreed in advance between the Brazilian and Portuguese aeronautical authorities.

*Schedule of routes*

*Schedule I. Routes to be operated in both directions by the airline designated by Brazil*

Points in Brazil to Lisbon and/or Oporto and beyond to London and/or Paris and/or Zurich, with one of those points substitutable by Moscow or another point in Eastern Europe.

*Schedule II. Routes to be operated in both directions by the airline designated by Portugal*

Points in Portugal via one intermediate point in Africa North of the equator to Recife and/or Rio de Janeiro and/or São Paulo and beyond to two points (Argentina, Uruguay, Paraguay, Chile), with one of those points substitutable by another in the South Pacific.

*Notes*

1. The designated airlines of both Contracting Parties may make stops on their respective routes on any or all flights and in any order.

2. In programming their services, the designated airlines of both Contracting Parties may on any or all flights omit stops at one or more points on the routes shown, provided that the services begin or end at a point in the territory of the Contracting Party of the designated airline.

3. The airline of each Contracting Party may add, on the services which it intends to operate, stops in third countries that are not included in this schedule of routes, provided that such stops are operated without traffic rights in relation to the other Party. Operation to those points shall not give rise to an increase in the capacity offered.