

National Interest Analysis [2017] ATNIA 22

with attachment on consultation

**Agreement between
the Government of Australia and the Government of Hungary relating to Air Services**

(Budapest, 23 September 2016)

[2017] ATNIF 26

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of Hungary relating to Air Services

(Budapest, 23 September 2016)

[2017] ATNIA 22

[2017] ATNIF 26

Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of Hungary relating to Air Services*, done at Budapest on 23 September 2016 (the proposed Agreement).
2. Pursuant to its **Article 19** (Entry into Force), the proposed Agreement will enter into force when the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied. The Australian Government will provide its notification to the Government of Hungary (Hungary) as soon as practicable following receipt of the Joint Standing Committee on Treaties' (JSCOT) report.
3. The proposed Agreement will establish for the first time a treaty-level air services relationship between Australia and Hungary. It will allow the airlines of Australia and Hungary to develop international air services between the two countries.
4. The text of the proposed Agreement also presently forms **Attachment B** to the Memorandum of Understanding (MOU) signed by the aeronautical authorities of Australia and Hungary on 5 December 2006. In accordance with established Australian and international practice, the MOU applies the provisions of the proposed Agreement on an administrative, non-legally binding basis until the proposed Agreement enters into force. This means that the proposed Agreement is observed by the aeronautical authorities of Australia and Hungary pending entry into force so as to allow airlines to operate in accordance with the proposed Agreement as soon as possible.
5. Since the MOU was signed in December 2006, airlines of both countries have already utilised the commercial rights available through the non-binding application of the proposed Agreement to enter into code share arrangements with each other and with airlines of other countries to provide air services on routes between Australia and Hungary.

Overview and national interest summary

6. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Hungary. The proposed Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.

Reasons for Australia to take the treaty action

7. The proposed Agreement grants access for Australian airlines to the Hungarian aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable Australian and Hungarian carriers to provide services between any point in Australia and any point in Hungary, based on capacity levels decided from time to time between the aeronautical authorities of the Contracting Parties.

8. Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

Obligations

9. Australia and Hungary are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)¹. The proposed Agreement was made in accordance with and pursuant to the Chicago Convention, which entered into force for Australia and generally on 4 April 1947.

10. The proposed Agreement is based on Australia's model air services agreement and obliges Australia and Hungary to allow the 'designated airlines' of each country to operate scheduled air services carrying passengers, baggage, cargo and mail between the two countries on specified routes in accordance with the provisions of the proposed Agreement. To facilitate these services, the proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, competition laws, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Contracting Party and to sell fares to the public.

11. **Article 2** (Designation, Authorisation and Revocation) of the proposed Agreement allows each Contracting Party to designate any number of airlines to operate the agreed services. Either Contracting Party may refuse authorisation of an airline's operations or impose conditions as necessary if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement, including with respect to the airline's principal place of business, territory of establishment and regulatory control standards. For the purposes of airline designation, Article 2 recognises that Hungary can designate airlines that are established in the territory of Hungary and have their principal place of business in the territory of the individual Member State of the European Union that is responsible for providing regulatory control of the airline, which reflects Hungary's obligations under the Treaty on European Union and the Treaty on the functioning of the European Union. Article 2 recognises airlines of individual Member States of the European Union (the EU) as air carriers of the EU, for the purposes of airline designation. The inclusion of these provisions

¹ [1957] ATS 5

provides security from legal challenge. Article 2 also allows the aeronautical authorities of Australia to prevent an airline designated by Hungary from exercising traffic rights granted under the proposed Agreement if the airline is already authorised to operate under a different bilateral agreement between Australia and another Member state of the EU and the airline would not have those same traffic rights under that bilateral agreement.

12. **Under Article 3** (Grant of Rights) of the proposed Agreement, each Contracting Party grants the airlines of the other Contracting Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes (such as refuelling). Article 3 also provides the right for designated airlines to operate on the routes specified in the Annex for the purpose of taking on board and discharging passengers, cargo and mail. The Article also precludes designated airlines from carrying purely domestic traffic (cabotage) within the territory of the other Contracting Party.

13. **Article 4** (Application of Laws) of the proposed Agreement confirms that each Contracting Party's domestic laws and regulations relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Contracting Party. Each Contracting Party's laws, regulations and rules relating to entry and exit of passengers, crew, baggage, cargo and aircraft (for example, immigration, aviation security, customs and sanitary measures) must be complied with in the territory of that Contracting Party. In applying their laws, the Contracting Parties are prevented from giving preference to their own or any other airline. It also provides that passengers, baggage and cargo in direct transit may be subject to aviation security, narcotics control and immigration checks. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

14. **Under Article 5** (Safety), each Contracting Party is required to recognise certificates of airworthiness, competency and licences issued by the other Contracting Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Contracting Party may request consultations at any time concerning safety standards maintained by the other Contracting Party. If required, the other Contracting Party shall be informed of the corrective action required to be undertaken to conform to the standards pursuant to the Chicago Convention. The other Contracting Party shall then take appropriate corrective action. Each Contracting Party may, in its territory, arrange inspections of aircraft of the other Contracting Party to verify the validity of the relevant aircraft documents, the licensing of its crew and to ensure that the aircraft equipment and the condition of the aircraft conform to the standards established at the time pursuant to the Convention. Each Contracting Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.

15. **Under Article 6** (Aviation Security), both Contracting Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. Each Contracting Party shall provide to the other Contracting Party upon request all necessary assistance to prevent unlawful acts against civil aircraft and threats to the security of civil aviation. Each Contracting Party shall require that operators of aircraft registered or having principal place of business or permanent residence in their territory, and airport operators in their territory, act in conformity with aviation security provisions established by ICAO. Each Contracting Party must advise the other Contracting Party of any differences between its national regulations

and the standards established by ICAO, and either Contracting Party may request consultations at any time to discuss any differences. A Contracting Party may require the designated airlines of the other Contracting Party to observe the first Contracting Party's aviation security provisions for entry into, departure from or while within the territory of that Contracting Party. Contracting Parties shall ensure adequate measures are applied to protecting aircraft, inspecting passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each Contracting Party shall give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat. The Contracting Parties shall assist each other in the event of an incident or threat of an incident. Each aeronautical authority may request to conduct a security assessment in the other Contracting Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay.

16. **Article 7** (User Charges) requires each Contracting Party to use its best efforts to encourage those responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services to levy charges on the airlines only on the basis that they are reasonable, non-discriminatory and equitably apportioned. Reasonable charges reflect, but do not exceed, the full costs to the competent charging authorities of providing the facilities and services. For charges to be non-discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed on a Contracting Party's own airlines operating similar services. The Article also contains provisions addressing the exchange of information and consultations between charging bodies and airlines in relation to user charges imposed on airlines using affected services and facilities.

17. **Article 8** (Provision of Data) provides that the aeronautical authorities of one Contracting Party may require a designated airline of the other Contracting Party to provide statistics related to the traffic carried on services performed under the proposed Agreement.

18. **Article 9** (Customs Duties and Other Charges) lists the equipment and stores used in the operation of the agreed services that the Contracting Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. Article 9 also provides that the customs laws of each Contracting Party are to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.

19. **Article 10** (Tariffs) allows the designated airlines to set their own fares without government intervention. Article 10 confirms that fares for air transportation wholly within the EU are subject to EU law.

20. Under **Article 11** (Capacity), both Contracting Parties are obliged to ensure that the designated airlines of each Contracting Party receive fair and equal opportunity to operate services in accordance with the proposed Agreement. The passenger and cargo capacity which may be provided by the designated airlines of each Contracting Party will be determined by the aeronautical authorities of the Contracting Parties before the commencement of such services, and from time to time thereafter. That capacity was mutually decided in a non-legally binding MOU with Hungary signed in December 2006. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

21. **Article 12** (Commercial Opportunities) provides a framework for airlines of one Contracting Party to conduct business in the territory of the other Contracting Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ staff, sell air transport services to the public, perform ground handling and use the services and personnel of any organisation, company or airline operating in the territory of the other Contracting Party to conduct its business. Each Contracting Party shall permit airlines of the other Contracting Party to freely convert and move currency. Designated airlines may enter into code share arrangements with any other appropriately authorised airline. The Article also allows airlines to utilise leased aircraft to conduct their services, provided they meet the applicable operating and safety standards and requirements of the Contracting Parties. Each Contracting Party is also required to provide the airlines of the other Contracting Party with access to airports and the allocation of slots (aircraft movements at an airport) on a non-discriminatory basis and in accordance with local laws and regulations, including where relevant, EU law.

22. **Article 13** (Competition) confirms that each Contracting Party's competition laws apply to the operation of airlines within their respective jurisdictions. Either Contracting Party may request consultations with the other Contracting Party in the event of alleged discrimination or unfair practices in the territory of either Contracting Party.

23. Under **Article 14** (Consultations), either Contracting Party may at any time request consultations with the other Contracting Party on the implementation, interpretation, application or amendment of the proposed Agreement.

24. **Article 16** (Settlement of Disputes) provides a process for dispute resolution on matters, other than those relating to tariffs or the application of domestic competition laws, which cannot be settled by consultation or negotiation. If the Contracting Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration. A three-person arbitral tribunal shall make a decision on the dispute, which is final and binding upon both Contracting Parties. Failure to comply with the award is grounds for one Contracting Party to suspend or revoke the rights granted under the proposed Agreement to the other Contracting Party, or its designated airlines, for the duration of the non-compliance.

25. Once the proposed Agreement and any subsequent amendment enters into force, it will be registered with ICAO, under **Article 18** (Registration with ICAO).

26. The **Annex** of the proposed Agreement contains a **Route Schedule** which specifies the routes that may be operated by designated airlines, as well as operational provisions.

Implementation

27. The proposed Agreement will be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the proposed Agreement.

28. The proposed Agreement provides the Civil Aviation Safety Authority with the scope and ability to enforce ICAO safety standards, as well as applying Australia's regulatory

framework for issuing relevant regulatory approvals, such as a Foreign Aircraft Air Operators Certificate, for a Hungarian airline wishing to operate to Australia.

Costs

29. No direct financial costs to the Australian Government are anticipated in the implementation of the proposed Agreement. There are no financial implications for State or Territory Governments.

Regulation Impact Statement

30. The Office of Best Practice Regulation has advised the Department of Infrastructure and Regulation that a Regulation Impact Statement is not required for bilateral international air services agreements.

Future treaty action

31. **Article 15** provides that any amendment to the proposed Agreement, including the Annex, shall enter into force when the two Contracting Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures for entry into force of the amendment. Article 15 also provides that the Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation instrument that may come into force for both Contracting Parties.

32. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

33. **Article 17** (Termination) provides for termination of the proposed Agreement. Either Contracting Party may give notice in writing at any time to the other Contracting Party of its decision to terminate the proposed Agreement and must also simultaneously lodge a notice of termination with ICAO. The proposed Agreement shall terminate one year after the date of receipt of the notice of termination by the other Contracting Party, unless the notice is withdrawn by mutual decision of the Contracting Parties before the end of the termination period.

34. Termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure and Regional Development

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Government of Hungary relating to air services

(Budapest, 23 September 2016)

[2016] ATNIF 26

CONSULTATION

35. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure and Regional Development to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position.

36. Prior to the negotiation of the proposed Agreement, extensive consultations were held with industry and Commonwealth and State and Territory government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an agreement between Australia and Hungary and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

State Government Agencies

- ACT Government Chief Minister's Department
- Queensland Government Department of Employment, Economic Development and Innovation, Aviation Steering Committee
- NSW Government Ministry of Transport and Department of State and Regional Development
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Department of Infrastructure, Energy & Resources
- Victorian Government Department of Innovation, Industry and Regional Development
- Western Australian Government Department of Transport
- NT Government Department of Planning and Infrastructure
- Tourism New South Wales
- Tourism Queensland
- Tourism Tasmania
- Tourism Victoria
- Tourism NT
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Air Freight Council of Western Australia
- Alice Springs Airport
- Australian Airports Association

- Australian and International Pilots Association
- Australian Aviation Council
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd & Essendon Airport Pty Ltd
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd/Wynyard Aerodrome
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Northern Territory Transport
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation
- Queensland Transport
- South Australian Freight Export Council Inc
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Top End
- Tropical Tourism North Queensland
- Virgin Blue (now known as Virgin Australia)
- Westralia Airports Corporation Pty Ltd

37. Comments were received from Qantas, Virgin Blue and the South Australian Government Department of Transport and Urban Planning. and a number of Commonwealth agencies.

38. Stakeholders who provided comments supported the negotiation of a new air services agreement with Hungary to open market access for airlines in both countries.

39. State and Territory Governments were consulted via the mechanism of the biannual Commonwealth Standing Committee on Treaties.