

No. 27814

**AUSTRIA
and
KENYA**

Agreement for air services between and beyond their respective territories (with annex). Signed at Nairobi on 15 May 1985

Authentic text: English.

Registered by Austria on 19 December 1990.

**AUTRICHE
et
KENYA**

Accord relatif aux transports aériens entre leurs territoires respectifs et au-delà (avec annexe). Signé à Nairobi le 15 mai 1985

Texte authentique : anglais.

Enregistré par l'Autriche le 19 décembre 1990.

AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Austrian Federal Government and the Government of the Republic of Kenya,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,² and

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

Have agreed as follows:

ARTICLE 1

Definitions

1. For the purpose of this Agreement, unless the context otherwise requires,

- (a) the term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Minister of Transport, in the case of the Republic of Kenya, the Minister in charge of Civil Aviation or any person or body authorised to perform a particular function to which this Agreement relates;
- (b) the terms "air service", "international air services", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (c) the term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of the Convention and any amendment of the Annexes or the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

(d) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;

(e) the term "tariff" means the prices or charges to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices or charges apply, including prices or charges and conditions for agency, but excluding remuneration and conditions for the carriage of mail;

(f) the term "territory" has the meaning assigned to it in Article 2 of the Convention;

(g) the term "capacity" means:

(I) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;

(II) in relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route.

2. The Annex to this Agreement shall form an integral part of the Agreement and all references to this Agreement, unless otherwise expressly provided, shall apply to the Annex.

ARTICLE 2

Applicability of the Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

¹ Came into force on 1 January 1986, i.e., the first day of the second month following the date on which the Contracting Parties had notified each other in an exchange of notes (of 4 October and 8 November 1985) that the requirements for its entry into force under their respective constitutional procedures had been fulfilled, in accordance with article 19.

² 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.

ARTICLE 3

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the Annex to this Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively.

3. While operating an agreed service on a specified route the airline designated by each Contracting Party shall enjoy, in addition to the rights specified in paragraph 1 of this Article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

4. Nothing in this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail destined for another point in the territory of the other Contracting Party.

ARTICLE 4

Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs 3 and 4 of this Article, grant to the airline designated in accordance with paragraph 1 of this Article the appropriate operating authorisation.

3. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally applied to the operation of international air services by such authorities.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph 2 of this Article or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. When an airline has been so designated and authorised, it may operate the agreed services for which it is designated provided that a tariff established in accordance with the provisions of Article 10 of this Agreement is in force in respect of that service and is at all times adhered to by that designated airline.

ARTICLE 5

Revocation or Suspension of Operating Authorisation

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights granted under this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; or
- (b) in the case of failure by that airline to comply with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or
- (c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or the regulations or the provisions of this Agreement, such right shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

ARTICLE 6

Application of Laws and Regulations

1. The laws and regulations of one Contracting Party relating to admission to, flight within or departure from its territory of aircraft of its designated airline engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew and cargo including mail carried by the aircraft of the designated airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.

3. Subject to laws and regulations of each Contracting Party passengers, cargo and baggage in transit across the territory of either Contracting Party shall be allowed free passage. Passengers in transit across the territory of either Contracting Party shall not be subject to control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

ARTICLE 7

Approval of Timetables

1. The designated airline of either Contracting Party shall, not later than 30 days prior to the date of operation of any agreed service, submit its proposed timetables to the aeronautical authorities of the other Contracting Party for their approval. Such timetables shall include all relevant information, such as the type of service, aircraft to be used,

and the flight schedules. In special cases, this time limitation may be reduced subject to the consent of the said authorities.

2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetable, the designated airlines shall first consult between themselves and submit their recommendations to the respective aeronautical authorities of the Contracting Parties for their final decision.

[ARTICLE 8]

Operation of Agreed Services and Capacity Regulations

1. The designated airlines of the two Contracting Parties shall enjoy fair and equal treatment in the operation of the agreed air services as provided in the Annex to this Agreement.

2. The operation of the agreed services between the territories of the Contracting Parties in both directions along the specified routes constitutes a basic and primary right of the two Contracting Parties.

3. For the operation of the agreed services:

- (a) the total capacity provided on the specified routes shall bear close relationship, at a reasonable load factor, to the demand for the carriage of traffic originating in the territory of each Contracting Party and destined to the territory of the other Contracting Party;
- (b) the capacity referred to in sub-paragraph (a) of this paragraph shall be divided equally between the designated airlines of the two Contracting Parties;
- (c) provision may also be made by the aeronautical authorities of the Contracting Parties for the carriage of passengers and cargo including mail, taken on board or discharged at points on the specified routes in the territories of states other than the Contracting Parties.

4. In order to achieve a fair and equal treatment of the designated airlines the airlines have to agree in time on the frequencies of their scheduled services, the types of aircraft to be used and the flight schedules including the days of operation as well as the estimated times of arrival and departure.