

No. 14865

**FEDERAL REPUBLIC OF GERMANY
and
TOGO**

Air Transport Agreement. Signed at Bonn on 27 May 1971

Authentic texts: German and French.

Registered by the Federal Republic of Germany on 21 July 1976.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
TOGO**

**Accord relatif au transport aérien. Signé à Bonn le 27 mai
1971**

Textes authentiques : allemand et français.

Enregistré par la République fédérale d'Allemagne le 21 juillet 1976.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE TOGOLESE REPUBLIC

The Federal Republic of Germany and the Togolese Republic,

Desiring to promote the development of air transport between their respective territories and to further as much as possible international co-operation in this field,

Desiring to apply to that transport the principles and provisions of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,²

Have agreed as follows:

PART I. GENERAL

Article 1. The Contracting Parties shall grant to each other the rights specified in this Agreement for the establishment of the international civil air services listed in a route schedule to be laid down in an exchange of diplomatic notes.

Article 2. For the purposes of this Agreement:

(a) The term “aeronautical authorities” means:

- in the case of the Federal Republic of Germany, the Federal Minister of Transport,
- in the case of the Togolese Republic, the Minister of Public Works, Mining, Transport, Posts and Telecommunications:

(b) The term “designated airline” means:

- the airline which one of the Contracting Parties has designated in writing to the other Contracting Party in accordance with article 12 of this Agreement.

Article 3. 1. Aircraft operated in international service by the designated airline of a Contracting Party, and their regular equipment, supplies of fuel and lubricants, and aircraft stores (including foodstuffs, beverages and tobacco), shall, on entry into the territory of the other Contracting Party, be exempt from all customs duties, inspection fees and similar duties or charges, provided that such equipment and stores remain on board the aircraft until re-exported. Such aircraft shall remain subject to customs control.

2. The following shall likewise be exempt from all customs duties, inspection fees and similar duties or charges, excluding fees or charges for services rendered:

- (a) aircraft stores, equipment and other consumable items, irrespective of origin, obtained in the territory of either Contracting Party in quantities not exceeding the limits set by the authorities of the said Contracting Party, which are taken on board aircraft of the other Contracting Party engaged in international service;
- (b) spare parts imported into the territory of either Contracting Party for the maintenance or repair of aircraft used in international navigation by the designated airline of the other Contracting Party;

¹ Came into force on 21 March 1976, i.e., 30 days after the date of the exchange of the instruments of ratification, which took place at Lomé on 20 February 1976, in accordance with article 19(2).

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; and vol. 958, p. 217.

- (c) fuels and lubricants intended for aircraft used in international traffic by the designated airline of the other Contracting Party, even when such supplies are to be used during that part of the flight which takes place over the territory of the Contracting Party in which they were taken on board.

Either Contracting Party may keep the goods referred to above under customs control.

3. Regular equipment, supplies and stores on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the consent of the customs authorities of that territory. When so unloaded, they may be placed under the supervision of the said authorities until they are re-exported or have been the subject of a customs declaration.

Article 4. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still valid shall be recognized as valid by the other Contracting Party for the purpose of operating the air services specified in the route schedule. Each Contracting Party reserves the right, however, to refuse to recognize as valid for flight over its own territory certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 5. 1. The laws and regulations of each Contracting Party relating to the admission to and departure from its territory of aircraft engaged in international navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the airline of the other Contracting Party.

(2) Passengers, crews and shippers of goods shall be required to comply either personally or through a third party acting in their name and on their behalf with the laws and regulations in force in the territory of each Contracting Party governing the entry, stay and departure of passengers, crews and cargo, such as those relating to entry, clearance formalities, immigration, customs and measures under health regulations.

Article 6. The charges levied in the territory of a Contracting Party for the use of airports and other aeronautical facilities by aircraft of the designated airline of the other Contracting Party shall not be higher than those levied on aircraft of a domestic airline engaged in similar international air services.

Article 7. Each Contracting Party reserves the right to withhold an operating permit from the airline designated by the other Contracting Party or to revoke such a permit if it considers on sufficient grounds that it has no proof that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals or if that airline fails to comply with the laws and regulations referred to in article 5 or to fulfil its obligations under this Agreement.

Article 8. An exchange of views shall take place between the aeronautical authorities of the two Contracting Parties whenever necessary to ensure close co-operation and agreement in all matters pertaining to the application and interpretation of this Agreement. If, in the opinion of either Contracting Party, such an exchange of views has not achieved its purpose, the procedure provided for in article 9 shall be applied.

Article 9. Either Contracting Party may at any time request consultation between the competent authorities of the two Contracting Parties concerning the

interpretation, application or amendment of this Agreement. Such consultation shall begin no later than 30 days after the request is received.

Article 10. 1. Any dispute relating to the interpretation or application of this Agreement which cannot be settled in accordance with the provisions of article 9 shall, at the request of either Contracting Party, be referred to an arbitral tribunal.

2. This *ad hoc* arbitral tribunal shall be established in the following manner: each Contracting Party shall appoint one arbitrator and these two arbitrators shall choose a national of a third State as Chairman, who shall be appointed by the Governments of the two Contracting Parties.

3. If the two arbitrators have not been appointed within a period of 60 days from the date on which one of the two Governments proposed arbitration of the dispute, or if the arbitrators fail to agree on the appointment of a Chairman within a further period of 30 days, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

4. If the arbitral tribunal fails to reach an amicable settlement, it shall render its decision by majority vote. Unless the Contracting Parties agree otherwise, it shall draw up its own rules of procedure and choose its own meeting-place.

5. The Contracting Parties undertake to comply with any interim measures ordered in the course of the proceedings and with the arbitral award, which shall be deemed final in all cases.

6. If and for so long as either Contracting Party fails to comply with an arbitral award, the other Contracting Party may limit, suspend or revoke the rights and privileges which it had granted under this Agreement to the offending Contracting Party. Each Contracting Party shall pay the remuneration for the services of its own arbitrator and half of the remuneration of the Chairman.

PART II. AGREED SERVICES

Article 11. Each Contracting Party shall grant to the other Contracting Party the right to have the air services specified in the route schedule provided for in article 1 of this Agreement operated by a designated airline. The said services shall hereinafter be referred to as "agreed services".

Article 12. 1. The agreed services may be operated immediately or at a later date, at the option of the Contracting Party to which the rights are granted, provided that:

- (a) the Contracting Party to which the rights have been granted has designated an airline to operate the specified route or routes;
- (b) the Contracting Party granting the rights has, on the conditions laid down in paragraph 2 issued to the airline concerned the requisite operating permit, which shall be granted as soon as possible, subject to the provisions of article 7 of this Agreement;
- (c) the provisions of article 18 have been complied with.

2. The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is in a position to satisfy the requirements prescribed by the laws and regulations normally applied by those authorities to the operation of commercial airlines.

Article 13. 1. The airline designated by the Federal Republic of Germany under this Agreement shall enjoy, in Togolese territory, the right to set down and pick up passengers, mail and cargo in international traffic on the German routes listed in the route schedule.

2. The airline designated by the Togolese Republic under this Agreement shall enjoy, in the territory of the Federal Republic of Germany, the right to set down and pick up passengers, mail and cargo in international traffic on the Togolese routes listed in the route schedule.

Article 14. 1. Substantial ownership of the airline designated by each of the Contracting Parties under articles 11 and 12 shall be vested in the Contracting Party designating the airline or its national.

2. A Contracting Party which considers that it has insufficient proof that this condition is satisfied may, before issuing the requested permit, seek consultations according to the procedure laid down in article 9. If such consultations fail to achieve their purpose, the matter shall be submitted to arbitration in accordance with article 10.

Article 15. 1. The airlines designated by the two Contracting Parties shall be guaranteed fair and equitable treatment so that they may enjoy equal opportunity to operate the agreed services.

2. On common route segments they shall take their mutual interests into account so as not to affect each other's services unduly.

Article 16. 1. The operation of the agreed services between the territory of Togo and the territory of the Federal Republic of Germany in both directions shall constitute a basic and prime right of the two countries.

2. For the purposes of operating these services:

- (a) the capacity shall be equally divided between the German and Togolese airlines, subject to paragraph 4 of this article;
- (b) the total capacity provided on each of the routes shall be adapted to reasonably expected requirements.

3. In order to meet unforeseen or temporary traffic demands on the agreed routes, the designated airlines shall decide between themselves on appropriate measures to deal with such temporary increase in traffic. They shall report such measures immediately to the aeronautical authorities of their respective countries, which may proceed to an exchange of views if they see fit.

4. Should one of the Contracting Parties not wish to utilize, on one or more routes, part or all of the transport capacity allotted to it, the aeronautical authorities of the two Contracting Parties shall come to an agreement with a view to transferring to the other Contracting Party, for a specified period, all or part of the capacity at its disposal within the agreed limits. The Contracting Party that has transferred all or part of its rights may recover them at the end of the specified period.

Article 17. 1. The designated airlines shall inform the aeronautical authorities of the two Contracting Parties not later than 30 days before the inauguration of the agreed services, of the type of service, the types of aircraft to be used and the proposed time-tables. The same rule shall apply to any subsequent changes.

2. The aeronautical authorities of either Contracting Party shall supply, on request, to the aeronautical authorities of the other Contracting Party such periodic or

other statistical information on the designated airline as may reasonably be required in order to monitor the transport capacity provided by the designated airline of the first Contracting Party. These statistics shall include all the data required to determine the volume, origin and destination of the aircraft.

Article 18. 1. The tariffs to be applied for passengers and cargo on the agreed services shall be fixed with due regard to all factors, such as the cost of operation, reasonable profit, the special characteristics of each route and the tariffs applied by other airlines operating on all or part of the same route. The tariffs shall be fixed in accordance with the provisions of the following paragraphs.

2. The tariffs shall, if possible, be fixed for each route by agreement between the designated airlines concerned. The designated airlines shall take into account the tariff-fixing procedure recommended by the International Air Transport Association (IATA) or, if possible, they shall fix the tariffs by direct agreement, after consultation with airlines of third States serving all or part of the same route.

3. The tariffs so agreed shall be submitted for approval to the aeronautical authorities of each Contracting Party not less than 30 days before the intended date of their entry into force. In certain cases this period may be reduced, subject to the agreement of the aeronautical authorities.

4. If the designated airlines fail to agree upon the tariffs in accordance with paragraph 2, or if one of the Contracting Parties states that it cannot approve the tariffs submitted to it in accordance with paragraph 3 of this article, the aeronautical authorities of the two Contracting Parties shall by agreement establish the tariffs for those routes and parts of routes in respect of which no agreement was reached.

5. If no agreement is reached between the aeronautical authorities of the two Contracting Parties in accordance with paragraph 4 of this article, article 10 of this Agreement shall apply. Pending the announcement of the arbitral award, the Contracting Party which has not agreed to a tariff shall have the right to require the other Contracting Party to maintain the tariff previously in force.

PART III. FINAL PROVISIONS

Article 19. 1. This Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Lomé.

2. This Agreement shall enter into force 30 days after the exchange of instruments of ratification.

Article 20. Either Contracting Party may at any time denounce this Agreement in writing. Notice of its termination shall be communicated at the same time to the International Civil Aviation Organization. The Agreement shall terminate 12 months after the date of receipt of the notice of denunciation by the other Contracting Party, unless the two Contracting Parties agree that the notice of denunciation should be withdrawn before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received 15 days after its receipt at the headquarters of the International Civil Aviation Organization.

Article 21. This Agreement and the route schedule shall be communicated to the International Civil Aviation Organization for registration.

DONE at Bonn on 27 May 1971, in four original copies, two in the German language and two in the French language, all texts being equally authentic.

For the Federal Republic of Germany:
SIGISMUND Frhr. v. BRAUN

For the Republic of Togo:
JOACHIM HUNLÉDÉ
