

No. 18804

**FEDERAL REPUBLIC OF GERMANY
and
KUWAIT**

**Agreement for air services (with exchange of notes). Signed
at Kuwait on 30 April 1974**

Authentic texts: German, Arabic and English.

Registered by the International Civil Aviation Organization on 12 May 1980.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
KOWEÏT**

**Accord relatif aux services aériens (avec échange de notes).
Signé à Koweït le 30 avril 1974**

Textes authentiques : allemand, arabe et anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 12 mai 1980.

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE STATE OF KUWAIT FOR AIR SERVICES

The Government of the Federal Republic of Germany and the Government of the State of Kuwait,

Desiring to foster the development of air services between the Federal Republic of Germany and the State of Kuwait, and to promote in the greatest possible measure international co-operation in this field,

Desiring to apply to these services the principles and provisions of the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,²

Have agreed as follows:

Article 1. (1) For the purpose of the present Agreement, unless the text otherwise requires:

a) The term “aeronautical authorities” shall mean, in the case of the Federal Republic of Germany, the Federal Ministry of Transport; in the case of the State of Kuwait, the Directorate General of Civil Aviation; or in both cases any other person or agency authorized to perform the functions exercised by the said authorities.

b) The term “designated airline” shall mean an airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with article 3 of the present Agreement as being an airline which is to operate the agreed air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement.

(2) The terms “territory”, “air service”, “international air service” and “stop for non-traffic purposes” shall, for the purpose of the present Agreement, have the meaning laid down in articles 2 and 96 of the Convention.

Article 2. (1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airline to establish and operate international air services on the routes specified in the route schedule (hereinafter called “agreed services” and “specified routes” respectively) to be agreed upon in an exchange of notes between the Governments of the Contracting Parties.

(2) Subject to the provisions of the present Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges:

- a) To fly without landing across the territory of the other Contracting Party;
- b) To make stops in the said territory for non-traffic purposes; and
- c) To make stops in the said territory at the point or points specified for that route in the route Schedule for the purpose of discharging and of taking on international traffic in passengers, mail and cargo.

¹ Came into force on 28 August 1979, i.e., 30 days following the exchange of the instruments of ratification, which took place at Kuwait on 29 July 1979, in accordance with article 15.

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, and vol. 1008, p. 213.

Article 3. (1) The agreed services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement may be started at any time, provided:

- a) The Contracting Party to whom the rights specified in paragraph (2) of article 2 have been granted, has designated an airline in writing; and
- b) The Contracting Party granting these rights has authorized the designated airline to initiate the air services.

(2) The Contracting Party granting these rights shall, subject to the provisions of paragraphs (3) and (4) of this article, give without undue delay, the said authorization to operate the agreed services; provided that a tariff in respect of the agreed services shall have been established in accordance with the provisions of article 9 of the present Agreement.

(3) The airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services.

(4) Each Contracting Party may withhold the exercise of the privileges provided for in article 2 of the present Agreement from an airline designated by the other Contracting Party if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in its nationals or Corporations.

Article 4. (1) Each Contracting Party shall have the right to suspend the exercise by a designated airline of the privileges specified in article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by that airline of those privileges where the airline fails to comply with the laws or regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in the present Agreement; provided that, unless immediate suspension or imposition of conditions is considered necessary to prevent further infringement of laws or regulations or is in the interest of aviation safety, this right shall be exercised only after consultation with the other Contracting Party.

(2) In the event of action by one Contracting Party under this article, the rights of the other Contracting Party shall not be prejudiced.

Article 5. The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities on the aircraft of a designated airline of the other Contracting Party shall not be higher than those imposed on aircraft of a national airline engaged in similar international air services.

Article 6. (1) Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, supplies of fuels and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

(2) There shall also be exempt from the same duties and taxes, with the exception of charges or taxes corresponding to the service performed:

- a) Aircraft stores of all origin taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged in an international air service of the other Contracting Party;
- b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airline of the other Contracting Party;
- c) Fuel and lubricants destined to supply outbound aircraft operated on international air services by the designated airline of the other Contracting Party even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

(3) The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7. (1) There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate air services on any route specified in accordance with paragraph (1) of article 2 of the present Agreement.

(2) In the operation of agreed services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement, the designated airline of either Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the whole routes or parts thereof.

(3) The agreed services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, mail and cargo, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting Party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be in accordance with the principles that such traffic will be of a supplementary character and capacity shall be related to:

- a) Traffic demands between the territory of the Contracting Party designating the airline and the points on the specified routes;
- b) Traffic requirements of the areas through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- c) The requirements of through airline operation.

Article 8. (1) The designated airlines shall communicate to the aeronautical authorities of the Contracting Parties not later than thirty days prior to the initiation of air services on the routes specified in accordance with paragraph (1) of article 2 of the present agreement, the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

(2) The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement. Such data shall include all information required to determine the amount of traffic carried and the origins and destinations of such traffic.

Article 9. (1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service on the various routes (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this article.

(2) The tariffs referred to in paragraph (1) of this article shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned in consultation when necessary with other airlines operating over the whole or part of that route, and such agreement shall, wherever possible, be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties and shall be submitted to these authorities at least 30 days prior to the proposed date of introduction of these tariffs.

(3) If the designated airlines cannot agree on any of these tariffs, or if for some reason a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this article or on the determination of any tariff under paragraph (3), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of article 11 of the present Agreement.

(5) Pending determination of the tariffs in accordance with the provisions of this article, the tariffs already in force shall prevail.

Article 10. (1) Exchange of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application of the present Agreement.

(2) Each Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending the present Agreement or the Route Schedule. Such consultations shall begin within a period of 60 days from the date of receipt of such request. Any amendment to the present Agreement agreed to as a result of such consultation shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

Article 11. (1) If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

(2) If the Contracting Parties fail to reach within 60 days a settlement by negotiations they shall refer the dispute for decision to an arbitration tribunal. The arbitration tribunal shall be composed as follows:

- a) Each Contracting Party shall nominate an arbitrator; if one Contracting Party fails to nominate its arbitrator, such arbitrator shall be nominated by the President of the Council of the International Civil Aviation Organization at the request of the other Contracting Party;
- b) The third arbitrator, who shall be a national of a third State and who shall preside at the arbitral tribunal, shall be nominated either:
 - i) By agreement between the Contracting Parties; or
 - ii) If within 60 days the Contracting Parties do not so agree by appointment of the President of the Council of the International Civil Aviation Organization by the request of either Contracting Party.

(3) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the Chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12. In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with paragraph 2, article 10, of the present Agreement.

Article 13. Either Contracting Party may at any time notify the other of its decision to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate twelve months after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiry of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen days after the date of receipt by the International Civil Aviation Organization of its copy.

Article 14. The present Agreement, the route schedule and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 15. The present Agreement shall be subject to ratification by each Contracting Party in accordance with its constitutional procedures and the Agreement shall come into force 30 days after the exchange of instruments of ratification.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed at Kuwait this 30th day of April, 1974, the present Agreement, done in six originals 2 each in the German, Arabic and English languages; the German and Arabic texts being equally authentic. The English text shall prevail in the event of any discrepancy in interpretation of the two other texts.

For the Federal Republic of Germany:

[Signed — Signé]¹

For the State of Kuwait:

[Signed — Signé]²

EXCHANGE OF NOTES

I

THE AMBASSADOR OF THE FEDERAL REPUBLIC OF GERMANY

Kuwait, April 30th, 1974

Excellency,

I have the honour in implementation of paragraph (1) of article 2 of the Agreement for Air Services between the Federal Republic of Germany and the State of Kuwait, signed on April 30th, 1974, to propose to you on behalf of the Government of the Federal Republic of Germany that the following Arrangement be concluded:

Air services between our respective territories may be operated over the routes specified in the following route schedule:

ROUTE SCHEDULE

*Route to be operated by the designated airline
of the Federal Republic of Germany*

Federal Republic of Germany—two intermediate points to Kuwait—a point in Pakistan or a point in India and beyond via intermediate points to Japan.

*Route to be operated by the designated airline
of the State of Kuwait*

Kuwait—two intermediate points—a point in the Federal Republic of Germany—two points in Europe, one of which may be London and beyond to North America.

NOTES 1) A designated airline may, if it so desires, omit one or more of the points on a specified route, provided that the point of origin of such route lies in the territory of the Contracting Party that has designated the airline.

2) No commercial traffic may be uplifted by the designated airline of the Federal Republic of Germany at any Arab point for discharge in Kuwait and no commercial traffic may be uplifted in Kuwait for discharge in any Arab point.

3) Until such time as the designated airline of the State of Kuwait exercises the right to operate beyond the territory of the Federal Republic of Germany to North America, no commercial traffic may be uplifted in Kuwait for discharge in points east of Kuwait and no traffic may be uplifted in points east of Kuwait for discharge in Kuwait by the designated airline of the Federal Republic of Germany.

¹ Signed by Freundt — Signé par Freundt.

² Signed by Mahmoud Mohammed Al Awadhi — Signé par Mahmoud Mohammed Al Awadhi.

4) No commercial traffic may be uplifted in the Federal Republic of Germany for discharge to points beyond and no commercial traffic may be uplifted at points beyond for discharge in the Federal Republic of Germany by the designated airline of the State of Kuwait, as long as the designated airline of the Federal Republic of Germany is not given traffic rights beyond Kuwait to the east.

5) The services operated by the designated airline of the Federal Republic of Germany shall not terminate at Kuwait.

If the Government of the State of Kuwait agrees to the above route schedule, I have the honor to propose that the present Note and Your Excellency's Note in reply thereto shall constitute an arrangement between our two Governments, to enter into force on the date of your Note in reply.

Accept, Excellency, the assurance of my highest consideration.

[Signed]

FREUNDT

His Excellency the Minister of Foreign Affairs
of the State of Kuwait Shaikh Sabah Al-Ahmad Al-Jaber
Kuwait

II

Kuwait, 30th April, 1974

Your Excellency,

I have the honour to acknowledge receipt of your Note of 30th April, 1974, which reads as follows:

[See note I]

I have the honour to inform you the agreement of the Government of the State of Kuwait to the mentioned route schedule and that your Note together with this reply constitute an arrangement between our Governments coming into force from the date of this reply.

Accept, Your Excellency, my highest consideration.

[Signed]

SABAH AL-AHMAD AL-JABER AL-SABAH
Minister of Foreign Affairs of the State of Kuwait

His Excellency Hans Helmut Freundt
Ambassador of the Federal Republic of Germany
Kuwait