

No. 22859

**FEDERAL REPUBLIC OF GERMANY
and
KENYA**

Agreement for air services between and beyond their respective territories (with exchange of notes concerning the route schedule). Signed at Bonn on 24 July 1979

Authentic texts: German and English.

Registered by the International Civil Aviation Organization on 4 April 1984.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
KENYA**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec échange de notes relatif au tableau de routes). Signé à Bonn le 24 juillet 1979

Textes authentiques : allemand et anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 4 avril 1984.

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

The Federal Republic of Germany and the Republic of Kenya,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944², and

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

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement unless the context otherwise requires:

a) The term “aeronautical authorities” means, in the case of the Federal Republic of Germany the Federal Minister of Transport or any person or agency authorised to perform the functions exercised by the said Minister; and 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 service”, “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 that 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 to be paid for the carriage of passengers and cargo and the conditions under which those prices apply; including prices and conditions of agency, and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and

f) The term “territory” in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that state.

Article 2. APPLICABILITY OF 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 19 November 1982, after the Contracting Parties had notified each other (on 15 April and 19 November 1982) of the completion of their constitutional requirements, in accordance with article 19 (1).

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 the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the Route Schedule agreed upon in an Exchange of Notes between the Governments of the Contracting Parties. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. 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 Route Schedule for the purpose of taking on board and discharging passengers, mail and cargo.

(3) Nothing in paragraph (2) of 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, mail and cargo carried for hire or reward and 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 authorisations.

(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 in conformity with the provisions of the Convention.

(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 9 of this Agreement is in force in respect of that service.

*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 that 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. EXEMPTION FROM TAXES, CUSTOMS DUTIES,
CHARGES AND FEES*

(1) Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all taxes, duties, inspection fees and other charges, levied on the occasion of importation, exportation or transit of such goods 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 or are used on the part of the journey performed over that territory.

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

- a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs authorities of the said territory, and for use on board out-bound aircraft engaged on 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) Fuels and lubricants supplied to an aircraft of the designated airline of a Contracting Party in the territory of the other Contracting Party and used in an international air service.

(3) Materials referred to in sub-paragraphs *a)*, *b)* and *c)* of paragraph (2) above may be required to be kept under Customs supervision or control.

Article 7. UNLOADING OF EQUIPMENT, ETC.

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of Customs authorities of that

territory. In such cases 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 8. PRINCIPLES GOVERNING OPERATION
OF AGREED SERVICES*

(1) The designated airlines of the two Contracting Parties shall be afforded fair and equitable treatment in order that they may enjoy equal opportunity in the operation of agreed services. They shall take into account their mutual interests so as not to affect unduly their respective services.

(2) The operation of the agreed services between Kenya and the Federal Republic of Germany 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 designated airlines of both Contracting Parties shall be entitled to an equal share of the total capacity provided on the specified routes;
- b) The total capacity provided on each of the routes shall be adapted to reasonably anticipated traffic requirements;
- c) In order to meet seasonal fluctuations or unexpected traffic demands of a temporary character, the designated airlines of the two Contracting Parties shall agree between themselves on suitable measures to meet the temporary increase in traffic. Any agreement concluded between the airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of the two Contracting Parties;
- d) If the designated airline of one Contracting Party does not use on one or several routes, part or all of the transport capacity allocated to it, it may transfer part or all of this transport capacity to the designated airline of the other Contracting Party for a fixed period of time. The designated airline, which has transferred part or all of its rights may recover them at the end of the above period.

Article 9. TARIFFS

(1) The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, characteristics of each service, reasonable profit, and the tariffs of other airlines.

(2) The tariffs referred to in paragraph (1) of this Article, shall, if possible, be agreed by the designated airlines of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

(3) The tariffs so agreed shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction. This period may be reduced, subject to the agreement of the said authorities.

(4) The approval referred to in paragraph (3) of this Article may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission in accordance with paragraph (3) of this Article, these tariffs shall be considered as approved. In the event of the period for

submission being reduced as provided for in paragraph (3) the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

(5) If a tariff cannot be agreed in accordance with paragraph (2) of this Article, or if, during the period applicable in accordance with paragraph (4) of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.

(6) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired.

Article 10. PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be necessary for the purpose of reviewing the capacity provided on the agreed services by the designated airline of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed service and the origins and destinations of such traffic.

Article 11. TRANSFER OF EARNINGS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipt over expenditure earned by each designated airline in the territory of the other Contracting Party. Such transfers shall be effected on the basis of the official exchange rates for current payments, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payments.

Article 12. AIRPORT AND SIMILAR CHARGES

When using the airports and other air navigation facilities, including radio and meteorological services, offered by one Contracting Party, the designated airline of either Contracting Party shall not pay, in respect of its aircraft used for the operation of the agreed services, charges higher than those payable by the national aircraft of the same class of the other Contracting Party engaged in scheduled international air services.

Article 13. AIRLINE REPRESENTATION

(1) Each Contracting Party grants to the designated airline of the other Contracting Party, on the basis of reciprocity, the right to maintain in its territory offices and administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.

(2) The establishment of the offices and the employment of the personnel referred to in paragraph (1) of this Article shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting Party concerned.

Article 14. CONSULTATIONS

(1) In a spirit of close cooperation the aeronautical authorities of the Contracting Parties shall exchange views from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the Route Schedule and shall consult when necessary to provide for modification thereof.

(2) Either Contracting Party may request consultations which may be oral or in writing and shall begin within a period of sixty (60) days from the date of the request unless both Contracting Parties agree to an extension of this period.

Article 15. SETTLEMENT OF DISPUTES

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

(2) If the Governments fail to reach a settlement by negotiation, they may, at the request of either Contracting Party, submit the dispute for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the specified period, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

(3) The arbitral tribunal shall determine its own procedure.

(4) Each Contracting Party shall bear the cost of its own member as well as the cost of its representation in the arbitral proceedings. The cost of the Chairman and any other related costs shall be borne in equal parts by the Contracting Parties.

(5) The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

*Article 16. AMENDMENT OF AGREEMENT
TO CONFORM TO MULTILATERAL TREATIES*

The present Agreement shall be amended so as to conform to any multilateral agreement which may become binding on both Contracting Parties.

*Article 17. REGISTRATION OF AGREEMENT
AND ROUTE SCHEDULE*

The present Agreement, the Route Schedule and any subsequent amendments to the Agreement or the Route Schedule shall be registered with the International Civil Aviation Organisation.

Article 18. TERMINATION

Either Contracting Party may at any time give written notice to the other Contracting Party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case this Agreement shall terminate twelve (12) months after the date when the notice has been received by the other Contracting Party unless the notice to terminate is withdrawn by agreement 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 fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

Article 19. ENTRY INTO FORCE

(1) The present Agreement and any amendments thereto shall enter into force on the date when the Contracting Parties have notified one another that their constitutional requirements have been fulfilled.

(2) The Route Schedule referred to in Article 3 of this Agreement and any amendments to it agreed to by the aeronautical authorities shall come into effect through an exchange of diplomatic notes.

ZU URKUND DESSEN haben die hierzu von ihren Regierungen gehörig befugten Unterzeichneten dieses Abkommen unterschrieben.

GESCHEHEN zu Bonn am 24. Juli 1979 in zwei Urschriften, jede in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Bonn this day of July 24, 1979, in two originals, in the English and German languages, both texts being equally authentic.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:

G. VAN WELL

Für die Republik Kenia:
For the Republic of Kenya:

J. B. K. MWAURA

EXCHANGE OF NOTES — ÉCHANGE DE NOTES

I

[GERMAN TEXT — TEXTE ALLEMAND]

AUSWÄRTIGES AMT

Bonn, den 24. Juli 1979

Exzellenz,

Ich beehre mich, Ihnen in Ausführung des Artikels 3 Absatz 2 des am heutigen Tage unterzeichneten Abkommens zwischen der Bundesrepublik Deutschland und der Republik Kenia über de Fluglinienverkehr zwischen ihren Hoheitsgebieten und darüber hinaus namens der Regierung der Bundesrepublik Deutschland folgende Vereinbarung vorzuschlagen:

Der Fluglinienverkehr zwischen unseren Hoheitsgebieten kann auf den in nachstehendem Fluglinienplan festgelegten Linien durchgeführt werden:

FLUGLINIENPLAN

Fluglinie für das von der Bundesrepublik Deutschland bezeichnete Luftfahrtunternehmen

Punkte in der Bundesrepublik Deutschland—Kairo—Khartoum—Addis Abeba—Entebbe—Nairobi—Lusaka—Johannesburg—ein weiterer noch zu vereinbarenden Punkt.

Fluglinie für das von der Republik Kenia bezeichnete Luftfahrtunternehmen

Punkte in der Republik Kenia—Entebbe—Kairo—Rom—Wien—Frankfurt—London—Kopenhagen—ein weiterer noch zu vereinbarenden Punkt.

Beim Betrieb der vereinbarten Dienste auf den genannten Linien kann jedes der bezeichneten Luftfahrtunternehmen den Anflug eines oder aller Punkte, die in dem

AUSWÄRTIGES AMT¹

Bonn, July 24, 1979

Excellency,

I have the honour in implementation of paragraph (2) of Article 3 of the Agreement between the Federal Republic of Germany and the Republic of Kenya for Air Services between and beyond their respective Territories signed today, 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 for the designated airline of the Federal Republic of Germany

Points in the Federal Republic of Germany—Cairo—Khartoum—Addis Abeba—Entebbe—Nairobi—Lusaka—Johannesburg—one other point to be agreed.

Route for the designated airline of the Republic of Kenya

Points in the Republic of Kenya—Entebbe—Cairo—Rome—Vienna—Frankfurt—London—Copenhagen—one other point to be agreed.

In operating the agreed services on the specified routes either designated airline may omit calling at any or all of the points mentioned in the routes enumerated.

¹ Ministry of Foreign Affairs — Ministère des affaires étrangères.

obengenannten Fluglinienplan aufgeführt sind, auslassen unter der Voraussetzung, daß die Dienste von dem Hoheitsgebiet der vertragsschließenden Partei, deren Luftfahrtgesellschaft betroffen ist, ausgehen.

Falls sich die Regierung der Republik Kenia mit dem vorstehenden Fluglinienplan einverstanden erklärt, werden diese Note und die das Einverständnis Ihrer Regierung zum Ausdruck bringende Antwortnote Eurer Exzellenz eine Vereinbarung zwischen unseren Regierungen bilden, die am gleichen Tage in Kraft tritt, wie das eingangs erwähnte Abkommen.

Genehmigen Sie, Exzellenz, die Versicherung meiner ausgezeichnetsten Hochachtung.

[Signed — Signé]

VAN WELL

Seiner Exzellenz dem Botschafter der Republik Kenia
Herrn J. B. K. Mwaura

ated in the Route Schedule above provided that the services originate in the territory of the Contracting Party of the airline concerned.

If the Government of the Republic of Kenya agrees to the above Route Schedule, the present note and the note in reply expressing your Government's agreement shall constitute an Arrangement between our Governments, to enter into force on the same date as the Air Transport Agreement mentioned above.

Accept, Excellency, the assurance of my highest consideration.

[Signed]

VAN WELL

His Excellency the Ambassador of the Republic of Kenya
Mr. J. B. K. Mwaura

II

[GERMAN TEXT — TEXTE ALLEMAND]

EMBASSY OF THE REPUBLIC OF KENYA

Bonn, den 24. Juli 1979

Herr Staatssekretär,

Ich beehre mich, den Empfang Ihrer Note vom heutigen Tage zu bestätigen, die wie folgt lautet:

[See note I — Voir note I]

Ich beehre mich, Ihnen mitzuteilen, daß die Regierung der Republik Kenia mit dem in Ihrer Note enthaltenen Fluglinienplan und damit einverstanden ist, daß Ihre Note und diese Antwort eine Vereinbarung zwischen unseren Regierungen bilden, die am gleichen Tage wie das heute unterzeichnete Abkommen zwi-

EMBASSY OF THE REPUBLIC OF KENYA

Bonn, July 24, 1979

Excellency,

I have the honour to confirm the receipt of your note of today which reads as follows:

[See note I]

I have the honour to inform you that the Government of the Republic of Kenya agrees to the Route Schedule contained in your note and to your proposal that your note and the present Note in reply shall constitute an Arrangement between our Governments, to enter into force on the same date as the Agreement between the

schen der Republik Kenia und der Bundesrepublik Deutschland über den Fluglinienverkehr zwischen ihren Hoheitsgebieten und darüber hinaus in Kraft tritt.

Genehmigen Sie, Herr Staatssekretär, die Versicherung meiner ausgezeichnetsten Hochachtung.

[Signed — Signé]¹

Seiner Exzellenz dem Staatssekretär des Auswärtigen Amts Herrn Günther van Well

Republic of Kenya and the Federal Republic of Germany for Air Services between and beyond their respective Territories signed today.

Accept, Excellency, the assurance of my highest consideration.

[Signed — Signé]¹

His Excellency
Mr. Günther van Well
Staatssekretär des Auswärtigen Amts²

¹ Signed by J. B. K. Mwaura — Signé par J. B. K. Mwaura.

¹ Signed by J. B. K. Mwaura — Signé par J. B. K. Mwaura.

² Federal Minister for Foreign Affairs — Secrétaire d'Etat aux affaires étrangères.