

**No. 22865**

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**SWITZERLAND  
and  
TOGO**

**Air Transport Agreement (with annex). Signed at Lomé on  
3 December 1980**

*Authentic text: French.*

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

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**SUISSE  
et  
TOGO**

**Accord relatif aux transports aériens (avec annexe). Signé à  
Lomé le 3 décembre 1980**

*Texte authentique : français.*

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

[TRANSLATION — TRADUCTION]

## AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE SWISS CONFEDERATION AND THE TOGOLESE REPUBLIC

The Swiss Federal Council, on the one hand,

The Government of the Togolese Republic, on the other,

Desiring to promote the development of air transport between Switzerland and the Togolese Republic and to further international co-operation in this field to the greatest possible extent;

Desiring to create the necessary basis for the establishment of air services;

Desiring to apply to such transport the principles and provisions of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;<sup>2</sup>

Considering that the development of air transport can contribute to the maintenance of friendship and understanding between the Contracting States;

Have agreed as follows:

*Article 1.* For the purpose of this Agreement and its annexes:

(a) The term "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944.

(b) The term "aeronautical authorities" means, in the case of Switzerland, the Federal Civil Aviation Office, and, in the case of the Togolese Republic, the Minister of Civil Aviation, or, in either case, any person or agency authorized to perform the functions at present assigned to the said authorities.

(c) The term "designated airline" means an airline which one of the Contracting Parties has designated, in accordance with this Agreement, to operate the agreed air services.

(d) The term "tariff" means the prices to be paid for the carriage of passengers, baggage and cargo, and the conditions under which those prices apply, including commissions and other additional remuneration in respect of the issue or sale of tickets, but excluding remuneration or conditions for the carriage of mail.

(e) The word "territory" shall be understood as defined in article 2 of the Convention on International Civil Aviation.

(f) The terms "air services", "international air service", "airline" and "stop for non-traffic purposes" shall have the meanings given in article 96 of the Convention.

(g) The terms "equipment on board", "aircraft stores on board" and "spare parts" shall have the meanings given in annex 9 to the Convention.

2. The annexes to this Agreement shall be an integral part of the Agreement. Any reference to the Agreement shall also apply to the annexes, except otherwise expressly provided.

<sup>1</sup> Came into force provisionally on 3 December 1980, the date of signature, and definitively on 12 April 1983, the date on which the Contracting Parties notified each other of the completion of their constitutional formalities, in accordance with article 20 (1).

<sup>2</sup> 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 2.* 1. Each Contracting Party grants to the other Contracting Party the rights enumerated in this Agreement for the purpose of establishing air services on the routes specified in the schedules annexed hereto. Such services and routes are hereinafter referred to as “agreed services” and “specified routes”.

2. Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating international services:

- (a) The right to fly without landing across the territory of the other Contracting Party;
- (b) The right to make stops for non-traffic purposes in the said territory;
- (c) The right to take on and put down in the said territory, at points specified in the annex, international traffic in passengers, cargo and mail.

*Article 3.* 1. Each Contracting Party shall have the right to designate, in writing, to the other Contracting Party an airline to operate the agreed services.

2. Subject to the provisions of paragraphs 3 and 4 of this article, the aeronautical authorities which have received notification of designation shall without delay grant to the airline designated by the other Contracting Party the necessary operating authorization.

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 regulations normally applied by those authorities to the operation of international air services in accordance with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorization provided for in paragraph 2 of this article, or to impose such conditions as it may deem necessary for the exercise of the rights specified in article 2 of this Agreement, when the said Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party which has designated the airline or in its nationals.

5. Upon receipt of the operating authorization provided for in paragraph 2 of this article, the designated airline may at any time commence operation of any agreed service, provided that a tariff established in accordance with the provisions of article 11 of this Agreement is in force.

*Article 4.* Notwithstanding the provisions of articles 3 and 5 of this Agreement, either Contracting Party may designate a joint airline company constituted in accordance with articles 77 and 79 of the Convention, and such company shall be accepted by the other Contracting Party.

*Article 5.* 1. Each Contracting Party shall have the right to revoke an operating authorization or suspend the exercise of the rights specified in article 2 of this Agreement by the designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of such rights, if:

- (a) The airline cannot prove that substantial ownership and effective control of it are vested in the Contracting Party which has designated the airline or in its nationals; or
- (b) The airline has failed to comply with, or has seriously disregarded, the laws and regulations of the Contracting Party which granted those rights; or

(c) The airline fails to operate the agreed services in the manner prescribed in this Agreement.

2. Such right shall be exercised only after consultation with the other Contracting Party, unless immediate revocation, suspension or imposition of the conditions referred to in paragraph 1 of this article is imperative in order to prevent further infringements of the laws and regulations.

*Article 6.* 1. Operation of the agreed services between the territories of the two Contracting Parties shall constitute a basic and primary right of the two countries.

2. There shall be fair and equitable treatment of the designated airlines of the two Contracting Parties so that they might enjoy equal opportunities in operating the agreed services.

3. Where they operate on the same routes, they shall take their mutual interests into account so as not to affect each other's services unduly.

4. On each of the specified routes, the agreed services shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the normal and reasonably foreseeable requirements of international air traffic originating from, or bound for, the territory of the Contracting Party which has designated the airline operating the said services.

The aeronautical authorities shall ensure that the capacities allotted to each designated airline are observed. Such capacities shall be revised according to requirements.

5. The airline designated by one of the Contracting Parties may, however, meet traffic requirements between the territories of States situated on the specified routes and the territory of the other Contracting Party, taking account of local and regional services.

6. In order to meet unforeseen or temporary traffic requirements on the specified routes, the designated airlines shall agree upon appropriate measures to deal with such temporary increase in traffic. They shall submit such measures to the aeronautical authorities of the two Contracting Parties for their approval.

7. If the airline designated by one of the Contracting Parties does not wish to operate, on one or more of the routes, part or all of the transport capacity at its disposal in accordance with paragraphs 1, 2, 3, 4 and 6 of this article, it shall arrange with the airline designated by the other Contracting Party to transfer to it, for a given period, all or part of the capacity in question.

*Article 7.* 1. Aircraft employed in international service by the designated airline of one Contracting Party, as well as their regular equipment, reserves of fuel and lubricants, and aircraft stores, including food, beverages and tobacco, shall be exempt, on entry into the territory of the other Contracting Party, from all customs duties or similar taxes, provided that such equipment, reserves and supplies remain on board until they are re-exported.

2. The following shall likewise be exempt from such duties and taxes, excluding charges or taxes in respect of services performed:

(a) Aircraft stores taken on board in the territory of one Contracting Party, within limits fixed by the authorities of the said Contracting Party, and intended for consumption on board aircraft employed in international service by the designated airline of the other Contracting Party;

- (b) Spare parts and regular airborne equipment imported into the territory of one Contracting Party for the maintenance or repair of aircraft employed in international service;
- (c) Fuels and lubricants intended to supply aircraft employed in international service by the designated airline of the other Contracting Party, even though such supplies are to be used on that part of the flight which takes place over the territory of the Contracting Party in which they were taken on board.

3. Regular equipment, and products and stores which are on board aircraft employed by the designated airline of one Contracting Party may not be unloaded in the territory of the other Contracting Party without 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 until they have been covered by a customs declaration.

*Article 8.* 1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation, or governing flights of such aircraft over its territory, shall apply to the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party governing entry into, sojourn in and departure from its territory of passengers, crew, baggage, cargo or mail, such as those relating to entry, departure, emigration and immigration, customs and health measures, shall apply to passengers, crew, baggage, cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are in the said territory.

*Article 9.* 1. Neither Contracting Party shall be entitled to give preferential treatment to its own airline over the designated airline of the other Contracting Party in the application of the laws and regulations referred to in article 8 of this Agreement.

2. For the use of airports and other facilities made available by one Contracting Party, the designated airline of the other Contracting Party shall not be required to pay charges greater than those to be paid in respect of national aircraft engaged in scheduled international services.

3. The designated airline of one Contracting Party shall have the right to maintain agents in the territory of the other Contracting Party, should it consider that necessary.

Such agents may include essential commercial, operational and technical personnel, local or foreign. With regard to commercial activity, the principle of reciprocity shall apply.

*Article 10.* 1. Certificates of airworthiness, certificates of competency and licences issued or validated by one of the Contracting Parties shall, during the period of their validity, be recognized as valid by the other Contracting Party.

2. Each Contracting Party reserves the right, however, to refuse to recognize as valid, for the purpose of flight over its territory, certificates of competency and licences issued to or validated for its own nationals by the other Contracting Party or by any other State.

*Article 11.* 1. The tariffs to be applied by the designated airline of one Contracting Party for carriage to or from the territory of the other Contracting Party

shall be fixed at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, the characteristics of each service 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, in consultation with other airlines operating over the whole or part of the route concerned. The designated airlines shall as far as possible apply for this purpose the rate-fixing machinery established by the international agency which puts forward proposals in this respect.

3. The tariffs so fixed shall be submitted for approval to the aeronautical authorities of the other Contracting Party at least 60 days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities. If the aeronautical authorities of either Contracting Party fail to communicate their non-approval within 30 days of submission, such tariffs shall be considered to have been approved.

4. If the designated airlines are unable to reach an agreement or if the tariffs are not approved by the aeronautical authorities of one Contracting Party, the aeronautical authorities shall endeavour to fix the tariffs by agreement between themselves. Negotiations shall begin within 30 days after it has been clearly established that the designated airlines are unable to reach an agreement or after the aeronautical authorities of one Contracting Party have notified the aeronautical authorities of the other Contracting Party of their non-approval with regard to the tariffs.

5. If there is no agreement, the dispute shall be subject to the procedure provided for in article 16 below.

6. Tariffs already established shall remain in force until new tariffs are fixed in accordance with the provisions of this article or of article 16 of this Agreement, but no longer than 12 months after the date on which the aeronautical authorities of one of the Contracting Parties withheld approval.

*Article 12.* The designated airline of one Contracting Party shall submit for approval to the aeronautical authorities of the other Contracting Party, not later than 30 days prior to starting the agreed services, proposals regarding the nature of carriage, the type of aircraft to be used, and the timetables envisaged. The same procedure shall apply to any subsequent changes.

*Article 13.* 1. Subject to reciprocity, each Contracting Party undertakes to enable the other Contracting Party to transfer freely, at official rates, any receipts in excess of expenditure accruing in its territory from the carriage of passengers, baggage, cargo and mail by the designated airline of the other Contracting Party.

2. The profits made in the territory of one Contracting Party by the designated airline of the other Contracting Party in respect of the carriage of passengers, baggage, cargo and mail shall be exempt from income tax levied by the first Contracting Party.

3. If payments and fiscal arrangements between the Contracting Parties are governed by special agreements, such special agreements shall apply.

*Article 14.* The aeronautical authorities of the Contracting Parties shall transmit to each other, upon request, periodic statements of statistics or other similar information relating to the amount of traffic on the agreed services.

*Article 15.* 1. A Contracting Party or its aeronautical authorities may request a consultation with the other Contracting Party or with its aeronautical authorities.

2. A consultation requested by a Contracting Party or its aeronautical authorities shall begin within 60 days of the date of receipt of the request.

*Article 16.* 1. Disputes between the Contracting Parties relating to the interpretation or application of this Agreement which cannot be settled by direct negotiation or through the diplomatic channel shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

2. This tribunal shall be composed of three members. Each of the two Parties shall nominate one arbitrator; the two arbitrators shall agree on the nomination of a national of a third State as Chairman.

3. If within two months of the date on which one of the two Parties proposes the settlement of a dispute by arbitration, the two arbitrators have not been nominated, or if during the following month, the arbitrators have not agreed on the nomination of a Chairman, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary nominations.

4. The arbitral tribunal shall make a ruling by a majority vote if it fails to bring about an amicable settlement. Unless the Contracting Parties agree otherwise, it shall establish its own rules of procedure and decide where to be based. It shall determine the costs arising from this procedure.

5. The Contracting Parties undertake to comply with any provisional measures enacted during proceedings, and with the arbitral decision, that decision being considered, in all cases, final.

6. If one of the Contracting Parties fails to comply with the decisions of the arbitral tribunal, the other Contracting Party may, for the duration of that failure to comply, restrict, suspend or revoke the rights or privileges it had granted in accordance with this Agreement to the Contracting Party at fault.

*Article 17.* This Agreement and subsequent amendments thereto shall be registered with the International Civil Aviation Organization.

*Article 18.* This Agreement shall be harmonized with any multilateral convention which may in future bind the two Contracting Parties.

*Article 19.* Either Contracting Party may at any time give notice to the other Contracting Party of its denunciation of this Agreement. Such notice shall be communicated at the same time to the International Civil Aviation Organization. Denunciation shall take effect one year after the date of receipt of the notice by the other Contracting Party, unless the notice has been withdrawn by mutual agreement before the end of that period. If the Contracting Party receiving such notice fails to acknowledge receipt, it shall be deemed to have been received by that Party 15 days after its receipt at the headquarters of the International Civil Aviation Organization.

*Article 20.* 1. This Agreement shall be applied provisionally from the date of its signature. It shall enter into force when the Contracting Parties have notified each other of the completion of their constitutional formalities relating to the conclusion and entry into force of international agreements.

2. Any amendment of this Agreement shall be applied provisionally from the date of its signature. It shall enter into force when the Contracting Parties have notified each other of the completion of constitutional formalities.

3. Amendments to the annexes may be agreed upon directly by the aeronautical authorities of the Contracting Parties. They shall be applied provisionally from the date of their signature, and shall enter into force after they have been confirmed by an exchange of diplomatic notes.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting Parties have signed this Agreement.

DONE at Lomé on 3 December 1980, in duplicate in the French language.

For the Swiss Federal Council:

MICHAEL VON SCHENCK

For the Government  
of the Togolese Republic:

KOFFI WALLA

## ANNEX

### ROUTE SCHEDULES

#### *Schedule I*

Routes on which air services may be operated by the designated airline of Switzerland:

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Point in Togo</i>	<i>Points beyond</i>
Points in Switzerland	To be determined later	Lomé or Niamtougou	Luanda

#### *Schedule II*

Routes on which air services may be operated by the designated airline of Togo:

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points in Switzerland</i>	<i>Points beyond</i>
Points in Togo	To be determined later	Basel or Geneva or Zurich	Paris and a point in Western Europe to be selected later

NOTES. 1. Points on the specified routes may be omitted on any or all flights at the option of the designated airlines.

2. Points on the specified routes need not be served in the order given, provided that the service in question is operated on a more or less direct route.

3. Each designated airline may determine any of the agreed services in the territory of the other Contracting Party.

4. Each designated airline may serve points not mentioned, provided that traffic rights are not exercised between such points and the territory of the other Contracting Party.