

No. 24101

**AUSTRIA
and
LIBYAN ARAB JAMAHIRIYA**

**Air Transport Agreement (with annex). Signed at Tripoli on
13 May 1984**

*Authentic texts: German, Arabic and English.
Registered by Austria on 9 May 1986.*

**AUTRICHE
et
JAMAHIRIYA ARABE LIBYENNE**

**Accord relatif aux transports aériens (avec annexe). Signé à
Tripoli le 13 mai 1984**

*Textes authentiques : allemand, arabe et anglais.
Enregistré par l'Autriche le 9 mai 1986.*

AIR TRANSPORT AGREEMENT¹ BETWEEN THE FEDERAL GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

The Federal Government of the Republic of Austria and the Socialist People's Libyan Arab Jamahiriya being parties to the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944,² and affirming their faith in the progress of international civil aviation by their strict adherence to the provisions of the said Convention, 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 the present Agreement, unless the context otherwise specifies:

(a) The term "the 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 Convention under Articles 90 and 94 thereof so far as those annexes and amendments have become effective for, or been ratified by both Contracting Parties.

(b) The term "aeronautical authorities" means in the case of the Austrian Federal Government, the Federal Minister of Transport or any other authority legally empowered to perform the functions presently exercised by the said Minister, and in the case of the Socialist People's Libyan Arab Jamahiriya, Director General of Civil Aviation Administration, Secretariat of Communications and Marine Transport, and any person or body authorized to perform any functions at present exercised by the said Director General, or similar functions.

(c) The term "designated airline" means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article 3 of the present Agreement.

(d) The terms "territory", "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

(e) The term "capacity" in relation to an aircraft means the payload of that aircraft available on the route or section thereof.

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

¹ Came into force on 31 August 1985, i.e., 60 days after the Contracting Parties had notified each other (on 15 December 1984 and 2 July 1985) of the completion of their respective constitutional requirements, 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.

2. The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the Agreement shall include reference to the Annex, except where otherwise expressly provided.

Article 2. GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex to the present Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.

2. Subject to the provisions of this Agreement, the airline designated by each Contracting Party shall enjoy the following rights while operating an agreed service on a specified route:

- (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;
- (c) To make stops in the said territory at the points specified for that route in the Annex to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up in the territory of the other Contracting Party passengers, cargo or mail carried for hire or reward and destined for another point in the territory of that Contracting Party.

Article 3. DESIGNATION AND AUTHORIZATION OF AIRLINES

1. Each Contracting Party may operate the routes specified in the Annex to this Agreement in whole or in part immediately or at a later date at its discretion subject to the following:

(a) The Contracting Party shall have designated in writing to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes.

(b) The other Contracting Party shall have granted without undue delay to the designated airline the appropriate operating authorizations in accordance with its laws, rules and regulations.

2. The aeronautical authorities of one Contracting Party may require an 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 and reasonably applied to the operating of international air services by such authorities, in conformity with the provisions of the Convention.

Article 4. REVOCATION OR SUSPENSION OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the rights specified in Article 3 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of these rights 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.

2. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of the present 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 in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or, in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement. Unless immediate revocation, suspension or imposition of the conditions aforementioned is essential to prevent further infringements of laws or regulations such rights shall be exercised only after consultation with the other Contracting Party.

3. In case any action is taken in pursuance of this Article, the rights of the other Contracting Party shall not be affected.

Article 5. FAIR COMPETITION

1. There shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interest of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

Article 6. CAPACITY

1. The agreed services provided by the designated airline of the Contracting Parties shall bear close relationship to the requirements of the public for transportation of the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Contracting Party designating the airline and the country of ultimate destination of the traffic.

2. Provisions for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of states other than those designating the airline shall be made in accordance with the general principles that capacity would normally be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) Traffic requirements of the area 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.

3. In operating the agreed services, the capacity provided by each designated airline shall be determined by agreement between the aeronautical authorities of the two Contracting Parties before the inauguration of the agreed services, or in case of no objection by any of the aeronautical authorities of the two Contracting Parties, by direct agreement between the two designated airlines, subject to the approval of the aeronautical authorities of both Contracting Parties.

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

5. If the designated air carriers cannot agree on the schedules mentioned above, the aeronautical authorities of the Contracting Parties shall endeavour to settle the problem.

6. Subject to the provisions of this Article, no schedule shall come into force, if the aeronautical authorities of the Contracting Parties have not approved it.

Article 7. APPLICATION OF LAWS

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 flights of such aircraft over that 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, transit through and departure from its territory of passengers, crew, cargo and mail, such as formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures shall apply to passengers, crew, cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

Article 8. COMMERCIAL OPERATIONS

1. The designated airline of each Contracting Party shall have an equal opportunity to employ, subject to the laws and regulations of the other Contracting Party, the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices therefor in the territory of the other Contracting Party.

2. Subject to the laws and regulations of the other Contracting Party the designated airline of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and to promote sales in the territory of the other Contracting Party.

Article 9. STATISTICS

The aeronautical authority of a Contracting Party shall supply to the aeronautical authority of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines 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 those airlines on the agreed services and the origins and destinations of such traffic.

Article 10. CUSTOMS DUTIES

1. The aircraft of the designated airline of either Contracting Party engaged in operating the agreed services, 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 exempted 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 corresponding to the service performed:

- (a) Aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board aircraft engaged on international air services of the other Contracting Party;
- (b) Spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airline of the other Contracting Party;
- (c) Fuel and lubricants destined to supply aircraft operated on international 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.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

3. 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 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 11. TARIFFS

1. Rates to be charged for the carriage of passengers and cargo on any of the agreed services shall be fixed at a reasonable level, due regard being paid to all relevant factors, including cost of economical operation, reasonable profit, difference of characteristics of service (including standards of speed and accommodation) and the rates by the other scheduled air service operators on the route concerned or any section thereof.

2. The rates to be charged by any of the designated airlines in respect of tariffs on any of the specified routes between the territories of the two Contracting Parties, or between the territory of a third country and the territory of one of the Contracting Parties shall be fixed either:

- (a) In accordance with such rate resolutions as may be adopted by the International Air Transport Association of which the designated airlines concerned are members; or
- (b) By agreement between the designated airlines concerned where these airlines are not members of the same airline organisation, or where no resolution as referred to in paragraph 2 (a) of this Article has been adopted; provided that if either Contracting Party has not designated an airline in respect of any of the specified routes and rates for that route have not been fixed pursuant to paragraph 2 (a) of this Article the airline designated by the other Contracting Party to operate on that route may fix the rates thereof.

3. Rates fixed according to the procedure envisaged under paragraph 2 of this Article shall be submitted for approval to the aeronautical authorities of the Contracting Parties and shall become effective upon notification by the said aeronautical authorities of their approval. In the absence of approval of the proposed tariffs, the aeronautical authorities shall, upon written request of the aeronautical authority of one Contracting Party, within sixty days, enter into consultation with a view to find a solution in the matter.

4. In the event that rates are not fixed in accordance with paragraphs 2 and 3 of this Article the Contracting Parties themselves shall endeavour to reach agreement and shall take all necessary steps to give effect to such agreement.

5. Should the Contracting Parties fail to agree, the dispute shall be dealt with in accordance with Article 14 of this Agreement.

Article 12. TRANSFER OF NET REVENUES

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer to its head office at the official rate of exchange fixed in accordance with the regulations in force at the time when transfer is requested, the excess of gains over expenditure earned by this airline on its territory in connection with the carriage of passengers, mail and cargo.

2. Whenever the payments system between the Contracting Parties is governed by a special agreement, this agreement shall apply.

Article 13. AIRPORT AND SIMILAR CHARGES

The charges imposed by either Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline of the other Contracting Party shall not be higher than those paid by its designated airline operating international services.

Article 14. SETTLEMENT OF DISPUTES

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.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be submitted 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 days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fail to nominate an arbitrator or to appoint one within the period specified, 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 body.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

Article 15. CONSULTATIONS

1. In the spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensure the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annex thereto.

2. Either Contracting Party may request consultation, which shall begin within a period of sixty (60) days of the date of receipt of the request unless both Contracting Parties agree to an extension of this period.

Article 16. AMENDMENTS

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party; such consultation, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of request. Any modifications so agreed shall come into force sixty (60) days after they have been confirmed by an exchange of diplomatic notes.

2. If either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of the two Contracting Parties and in that event such consultation shall begin within a period of thirty days from the date of the request. Any modifications so agreed between these authorities shall come into force thirty (30) days after they have been confirmed by an exchange of diplomatic notes.

Article 17. TERMINATION

Either Contracting Party may at any time give written notice through diplomatic channels to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case, the Agreement shall terminate twelve (12) months after the date of receipt of the notice 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 receipt of the notice by the International Civil Aviation Organisation.

Article 18. REGISTRATION

This Agreement, its Annex and amendments thereto, shall be registered with the International Civil Aviation Organisation set up under the Convention of International Civil Aviation.

Article 19. DATE OF EFFECT

This Agreement shall come into force sixty (60) days after the Contracting Parties have notified each other by exchange of diplomatic notes of the completion of their respective constitutional requirements.

DONE in Tripoli this 13th day of May nineteen hundred and eighty-four corresponding to 13th Shaaban thirteen hundred and ninety-three in triplicate in the German, Arabic and English languages, all three texts being equally authentic. In case of any dispute concerning the interpretation of this Agreement the English text is to be held authoritative.

For the Federal Government of the Republic
of Austria:

Dr. SCHMIDT

For the Socialist People's Libyan Arab Jamahiriya:

OMAR MUSTAFA AL MUNTASAR

ANNEX

PART 1

Routes to be operated in both directions by the airline designated by the Federal Government of the Republic of Austria:

Points of departure: Points in Austria;

Intermediate points: None;

Destination: Tripoli;

Points beyond: To be specified later by the aeronautical authorities of the two Contracting Parties.

PART 2

Routes to be operated in both directions by the airline designated by the Socialist People's Libyan Arab Jamahiriya:

Points of departure: Points in the Socialist People's Libyan Arab Jamahiriya;

Intermediate points: None;

Destination: Vienna;

Points beyond: To be specified later by the aeronautical authorities of the two Contracting Parties.

PART 3

Intermediate points and points beyond other than those having been agreed upon by virtue of this Annex may be served by the designated airline of each Contracting Party without exercising fifth freedom traffic rights.