

No. 24267

**BELGIUM
and
TOGO**

**Air Transport Agreement (with annex and protocol). Signed
at Brussels on 12 May 1981**

Authentic text: French.

Registered by Belgium on 14 August 1986.

**BELGIQUE
et
TOGO**

**Accord relatif aux transports aériens (avec annexe et
protocole). Signé à Bruxelles le 12 mai 1981**

Texte authentique : français.

Enregistré par la Belgique le 14 août 1986.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE KINGDOM OF BELGIUM AND THE TOGOLESE REPUBLIC

The Kingdom of Belgium, on the one hand, and
The Togolese Republic, on the other,
Hereinafter referred to as “the Contracting Parties”,

Wishing to promote the development of air transport between the Togolese Republic and the Kingdom of Belgium and, to the fullest extent possible, to develop international co-operation in this domain,

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

Considering that the development of air transport can help maintain friendship and understanding between the Contracting States,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. For the purposes of this Agreement and its annexes unless otherwise stated:

(a) The term “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes any annex adopted under article 90 of that Convention and any amendment to the annexes or the Convention adopted by the Contracting Parties under articles 90 and 94;

(b) The term “aeronautical authorities” means, in the case of the Kingdom of Belgium, the Minister of Civil Aviation or any other person or body authorized to perform the functions at present exercised by the Minister of Civil Aviation or any similar functions, and, in the case of the Togolese Republic, the Minister of Aviation Administration or any other person or body authorized to perform the functions at present exercised by the Minister of Aviation Administration or any similar functions;

(c) The term “designated airline” means an airline that one Contracting Party has designated in writing to the other Contracting Party, in accordance with article 9 of this Agreement, for the operation of air services on the routes specified in the notice of designation;

(d) The term “territory” has the meaning assigned to it in article 2 of the Convention;

¹ Came into force provisionally on 12 May 1981, the date of signature, and definitively on 25 October 1984, the date of the last of the notifications by which the Contracting Parties informed each other (on 14 July 1983 and 25 October 1984) of the completion of the required constitutional procedures, 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.

(e) The terms “air services”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in article 96 of the Convention;

(f) The terms “aircraft equipment”, “aircraft stores” and “spare parts” have the meanings assigned to them in annex 9 to the Convention; and

(g) The term “tariff” means the prices to be paid for the carriage of passengers, luggage and cargo, and the conditions under which those prices apply, including commissions and other supplementary payments for the issuance or sale of transport documents, except for payments and conditions relating to the carriage of postal parcels.

Article 2. 1. Aircraft operated on international services by the designated airline of one Contracting Party, together with their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food beverages and tobacco) shall, on arriving in the territory of the other Contracting Party, be exempt from all customs duties, inspection fees and other similar duties or taxes, provided that such equipment or supplies remain on board the aircraft until such time as they are re-exported.

2. The following shall also be exempt from the said duties or taxes, with the exception of charges and taxes relating to services performed:

- (a) Aircraft stores of whatever origin acquired in the territory of one Contracting Party, within the limits laid down by the authorities of the said Contracting Party, and taken on board aircraft engaged in an international service of the other Contracting Party;
- (b) Spare parts imported into the territory of one Contracting Party for the maintenance or repair of aircraft operated on international services by the designated airline of the other Contracting Party; and
- (c) Fuel and lubricants intended for use in aircraft operated on international services by the designated airline of the other Contracting Party, even when these supplies are to be consumed on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. The regular equipment, materials and supplies carried on board the aircraft of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the consent of the customs authorities of that territory. In this case, they may be placed under the supervision of the said authorities until such time as they are re-exported or are entered on a customs declaration.

Article 3. Certificates of airworthiness, certificates of competency and licences issued or validated by one Contracting Party shall, if unexpired, be recognized as valid by the other Contracting Party for the purpose of operating on the air routes specified in the annex hereto.

However, each Contracting Party reserves the right to refuse to recognize as valid for the purpose of flight over its own territory certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 4. 1. The laws and regulations of one Contracting Party relating to the admission to and departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft

while within its territory, shall be applied to the aircraft of the airline designated by the other Contracting Party.

2. Passengers, crew and shippers of cargo shall be bound to comply, either in person or through a third party acting on their behalf, with the laws and regulations governing admission to, stay in and departure from the territory of each Contracting Party of passengers, crew and cargo, such as those relating to entry, clearance formalities, immigration, customs and procedures deriving from health regulations.

Article 5. 1. Either Contracting Party may at any time request a consultation between the competent authorities of the Contracting Parties concerning the interpretation, application or modification of this Agreement.

2. Such consultation shall begin not later than 60 (sixty) days after the receipt of the request.

3. If it is decided to make any amendments to this Agreement, they shall come into force following their confirmation by an exchange of diplomatic notes.

Article 6. Either Contracting Party may at any time give notice to the other Contracting Party if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. The termination shall take effect one year after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by mutual agreement before the end of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received 15 (fifteen) days after its receipt at the headquarters of the International Civil Aviation Organization.

Article 7. 1. If a dispute relating to the interpretation or application of this Agreement cannot be settled in accordance with the provisions of article 5 either by the aeronautical authorities or by the Governments of the Contracting Parties, it shall be referred, at the request of one of the Contracting Parties, to an arbitral tribunal.

2. The tribunal shall be composed of three members. Each of the two Governments shall appoint an arbitrator. The two arbitrators shall agree on the appointment of a national of a third State as President.

If, within a period of two months from the day on which either Government proposed the settlement of the dispute by arbitration, the two arbitrators have not been appointed, or if, in the course of the following month the arbitrators have not reached agreement on the appointment of a President, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

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

4. The Contracting Parties undertake to comply with any interim measures that may be adopted during the proceedings and with the arbitral award, which shall be deemed final in all cases.

5. If and so long as either Contracting Party fails to comply with the decisions of the arbitrators, the other Contracting Party may limit, suspend or

revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

6. Each Contracting Party will be responsible for the remuneration of its arbitrator and one half of the remuneration of the President appointed.

PART II. AGREED SERVICES

Article 8. 1. Each Contracting Party grants the other Contracting Party the rights specified in this Agreement for the purpose of establishing air services on the routes specified in the appropriate section of the schedule included in the annex to this Agreement (hereinafter referred to as the "agreed services" and "specified routes").

2. Subject to the provisions of this Agreement, the airlines designated by each Contracting Party shall enjoy the following privileges in operating an agreed service over a specified route:

- (a) To overfly, without landing, the territory of the other Contracting Party;
- (b) To land in the territory of the other Contracting Party for non-traffic purposes; and
- (c) To land in the territory of the other Contracting Party for the purpose of putting down and taking on international traffic in passengers, cargo and mail, at the points specified for that route in the schedule in the annex to this Agreement.

Article 9. 1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph 3 of this article or those of article 10 of this Agreement, without delay grant the appropriate operating permits to the designated airline.

3. The aeronautical authorities of one Contracting Party may require the airline designated to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by the said authorities, in conformity with the provisions of the Convention on International Civil Aviation.

Article 10. 1. Each Contracting Party shall have the right not to grant the operating permits referred to in article 9, paragraph 2, if 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 nationals of such Contracting Party.

2. Each Contracting Party shall have the right to revoke an operating permit or to suspend the exercise, by the airline designated by the other Contracting Party, of the rights specified in article 8 of this Agreement if:

- (a) It is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- (b) The airline fails to comply with the laws and regulations of the Contracting Party granting these rights; or

(c) The airline does not operate in accordance with the conditions prescribed by this Agreement.

3. Unless revocation or suspension is necessary in order to prevent further infringements of the said laws and regulations, such a right may be exercised only after consultation with the other Contracting Party, as provided for in article 5. If consultation is of no avail, recourse shall be had to arbitration, in accordance with article 7.

Article 11. Pursuant to articles 77 and 79 of the Convention on International Civil Aviation concerning the creation by two or more States of joint operating organizations or international operating agencies:

The Government of the Kingdom of Belgium agrees that the Government of the Togolese Republic, in accordance with articles 2 and 4 and the appendices to the Treaty on Air Transport in Africa, signed at Yaoundé on 28 March 1961, to which Togo has acceded, reserves the right to designate Air Afrique as the instrument chosen by the Togolese Republic for the operation of the agreed services.

On a reciprocal basis, the Government of the Togolese Republic agrees that the Government of the Kingdom of Belgium reserves the right to designate, in accordance with the provisions of article 9 above, its chosen instrument for the operation of the agreed services.

Article 12. 1. The operation of the agreed services between Togolese territory and Belgian territory or *vice versa* (i.e., services operated on the routes specified in the schedule annexed to this Agreement) constitutes a fundamental and primordial right for both countries.

2. The two Contracting Parties agree to apply the principle of equality and reciprocity in all areas relating to the exercise of the rights deriving from this Agreement.

The designated airlines of the two Contracting Parties shall be accorded fair and equitable treatment, shall have equal opportunities and rights and shall respect the principle of equal division of the capacity to be offered in the operation of the agreed services.

3. On routes common to both, they shall take their mutual interests into consideration so as not to unduly affect their respective services.

Article 13. 1. On each of the routes appearing in the annex to this Agreement, the agreed services shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate for the normal and reasonably foreseeable requirements of international air traffic originating in or destined for the territory of the Contracting Party which has designated the airline operating the said services.

2. The designated airline or airlines of each of the Contracting Parties may meet the traffic requirements between the territories of third States situated on the agreed routes and the territory of the other Contracting Party, taking account of local and regional services, within the limits of the global capacity envisaged in the first paragraph of this article.

3. In order to respond to requirements created by unforeseen or temporary traffic on these routes, the designated airlines shall decide on appropriate measures to deal with such temporary increase in traffic. They shall immediately

report such measures to the aeronautical authorities of their respective countries, which may consult each other if they consider it beneficial.

4. Should the designated airline of one Contracting Party not wish to utilize, on one or more routes, all or parts of the capacity it should offer on the basis of its rights, it shall reach an agreement with the designated airline of the other Contracting Party with a view to transferring to that Party, for a specified period, all or part of the capacity in question.

The Contracting Party that has transferred all or part of its rights may recover them at the end of the said period.

Article 14. 1. At least (30) thirty days before the agreed services are introduced, the designated airlines shall advise the aeronautical authorities of both Contracting Parties of the kind of transport to be provided, the types of aircraft to be used and the expected timetables. The same rule shall apply to subsequent changes.

2. The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such regular or other statistical data on the designated airline as may reasonably be required for the purpose of monitoring the capacity provided by the designated airline of the first Contracting Party. These statistics shall include all the data necessary to determine the volume, origin and destination of traffic but shall not exceed the requirements established by the International Civil Aviation Organization.

Article 15. Any airline designated by one Contracting Party may maintain its own essential technical and administrative personnel at the airports and in the cities of the other Contracting Party where it intends to have its own representation.

Where a designated airline decides not to maintain its own organization at the airports of the other Contracting Party, it shall, as far as possible, entrust any work to the staff of the airports or of an airline designated by the other Contracting Party.

Article 16. The two Contracting Parties agree to consult each other whenever necessary with a view to co-ordinating their respective air services.

Article 17. 1. The tariffs to be charged on the agreed services on the routes between the territories of the Contracting Parties shall be established at a reasonable level, due regard being paid to all factors, including operating costs, a reasonable profit and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be determined by the designated airlines of the two Contracting Parties.

These airlines shall proceed by direct agreement, after consultation, if necessary, with the airlines of third countries operating over all or part of the same routes.

Whenever possible, in reaching such agreement the designated airlines shall, as and when necessary, make use of the rate-fixing machinery of the International Air Transport Association (I.A.T.A.).

3. The tariffs so determined shall be submitted for approval to the aeronautical authorities of each Contracting Party at least (30) thirty days before

the proposed date of their introduction; this period may be reduced in special cases, subject to the consent of the said authorities.

4. If the airlines fail to agree on a tariff in accordance with the provisions of paragraph 1 above, or if in the fortnight following the period of (30) thirty days provided for in paragraph 3 above, either of the Contracting Parties makes known its dissatisfaction with the tariffs submitted to it in accordance with the provisions of paragraph 2 above, the aeronautical authorities of the two Contracting Parties shall endeavour to arrive at a satisfactory settlement.

5. If the aeronautical authorities fail to agree on a tariff in accordance with paragraph 3 above or on the establishment of a tariff in accordance with paragraph 4, the matter shall be submitted to arbitration, as provided for under article 7 of this Agreement.

6. Subject to the provisions of paragraph 5 above, no tariff shall come into force without the approval of the aeronautical authorities.

7. Pending the arbitral decision, the Contracting Party which has made known its dissatisfaction shall have the rights to require the other Contracting Party to maintain the tariffs previously in force.

8. The tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established in accordance with the provisions of this article.

Article 18. Each Contracting Party undertakes, on the basis of reciprocity, to allow the other Contracting Party the free transfer, at the official rate of exchange in force at the time the request is made, without taxes or charges of the surplus of income over expenditure obtained in its territory from the carriage of passengers, luggage, postal parcels and cargo by the designated airline of the other Contracting Party.

PART III. FINAL PROVISIONS

Article 19. 1. This Agreement shall enter into force provisionally on the date of its signature.

2. Each Contracting Party shall notify the other of the completion of the constitutional formalities required for the entry into force of this Agreement.

3. This Agreement shall enter into force definitively on the date of the second such notification.

Article 20. This Agreement and its annex shall be communicated to the International Civil Aviation Organization for registration.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Brussels on 12 May 1981, in duplicate in the French language.

For the Kingdom of Belgium:

[Signed]

CHARLES-FERDINAND NOTHOMB

For the Togolese Republic:

[Signed]

K. V. DAGADOU

ANNEX

ROUTE SCHEDULE

1. *Belgian routes*

<i>Departure points</i>	<i>Intermediate points</i>	<i>Points in Togo</i>	<i>Points beyond</i>
Points in Belgium	Monrovia or Freetown		Lusaka

2. *Togolese routes*

<i>Departure points</i>	<i>Intermediate points</i>	<i>Points in Belgium</i>	<i>Points beyond</i>
Points in Togo	Paris or Geneva		Amsterdam

NOTES. 1) A designated airline may omit any of the points specified in the route schedule.

2) The designated airline of a Contracting Party may stop at one or more points other than those specified in the route schedule; however, no traffic rights shall be exercised between the point or points and the territory of the other Contracting Party.

3) The designated airlines may terminate any of their services on the specified routes.

PROTOCOL

Following the negotiations which led on today's date to the signing of an Air Transport Agreement between the Togolese Republic and the Kingdom of Belgium, it has been agreed as follows:

1. The Government of the Togolese Republic designates Air Afrique, established by the Treaty of Yaoundé on 28 March 1961, as the airline for the operation of the agreed services, and the Belgian Government accepts this designation.

2. The Belgian Government designates the Belgian airline Sabena as the airline for the operation of the agreed services, and the Government of the Togolese Republic accepts this designation.

3. Each of the airlines designated by the two Contracting Parties shall have the right to operate one flight per week. The aeronautical authorities of the two Contracting Parties shall reach agreement on any subsequent changes.

DONE at Brussels on 12 May 1981.

For the Togolese Republic:

K. V. DAGADOU

For the Kingdom of Belgium:

CH. F. NOTHOMB