

No. 25195

**NETHERLANDS
and
NIGERIA**

**Bilateral Air Services Agreement (with annex). Signed at
The Hague on 26 January 1983**

Authentic text: English.

*Registered by the International Civil Aviation Organization on 17 August
1987.*

**PAYS-BAS
et
NIGÉRIA**

**Accord bilatéral relatif aux services aériens (avec annexe).
Signé à La Haye le 26 janvier 1983**

Texte authentique : anglais.

*Enregistré par l'Organisation de l'aviation civile internationale le 17 août
1987.*

BILATERAL AIR SERVICES AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

The Government of the Kingdom of the Netherlands and the Government of the Federal Republic of Nigeria (hereinafter referred to as the “Contracting Parties”),

Considering that the Kingdom of the Netherlands and the Federal Republic of Nigeria are parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,² 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. INTERPRETATION

For the purpose of this Agreement and the Annex drawn up in application thereof, unless the context otherwise requires:

(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 Annexes adopted under Article 90 of that Convention and any amendment of the Annexes of that Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

(b) The term “aeronautical authorities” means, in the case of the Federal Republic of Nigeria, the Minister responsible for matters relating to Civil Aviation and any person or body authorised to perform any functions which at present are being performed by the said Minister or similar functions, and, in the case of the Kingdom of the Netherlands, the Minister of Transport and Public Works responsible for matters relating to Civil Aviation and any person or body authorised to perform any functions which at present are being performed by the said Minister or similar functions;

(c) The term “designated airline” means an airline which has been designated and authorised in accordance with Article 3 of this Agreement;

(d) The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;

¹ Came into force provisionally on 26 January 1983, the date of signature, and definitively on 19 August 1983, the date agreed upon in an exchange of notes confirming the completion of the constitutional requirements, in accordance with article 17.

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 service”, “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 respectively assigned to them in Annex 9 of the Convention; and

(g) The term “tariff” means the prices to be paid for the carriage of passengers and cargo and the conditions under which these prices apply, including prices and conditions for agency and other auxiliary services but excluding remunerations and conditions for the carriage of mail.

Article 2. RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINES

1. Each Contracting Party shall grant 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 Annex to this Agreement. Such services and routes are hereafter called “the agreed services” and “the specified routes” respectively. The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

(a) To fly without landing across the territory of the other Contracting Party;

(b) To make stops in the said territory for non-traffic purposes; and

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

2. Nothing in paragraph 1 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 and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 3. 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 other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, without delay grant to the airline designated the appropriate operating authorisation.

3. 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 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 impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 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 begin at any time to operate the agreed services provided that tariffs established in accordance with the provisions of this Agreement are in force in respect of these services.

6. The designated airline shall submit to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the commencement of the operation of an agreed service, information about the frequency, schedule and type of aircraft. The same applies to subsequent modifications.

Article 4. REVOCATION AND SUSPENSION OF RIGHTS

1. 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 this Agreement by the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights in any of the following cases:

(a) If 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;

(b) Failure by the airline to comply with the laws or regulations of the Contracting Party granting these rights; or

(c) If 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 infringement of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 5. VALIDITY OF CERTIFICATES

1. Certificates of airworthiness, certificates of competency and licences issued or validated by either Contracting Party which have not expired, shall be recognized as valid by the other Contracting Party for the purposes of operating the specified routes in the Annex.

2. Each Contracting Party reserves the right to refuse to recognize as valid for the purposes of operating the said specified routes over its own territory, certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 6. EXEMPTION FROM CUSTOMS DUTIES

1. Aircraft operated on international 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 customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such a time as they are re-exported or are used on the part of the journey performed over that territory.

2. There shall also be exemption from the same duties, fees, and charges with the exception of charges corresponding to the services performed in relation to:

(a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of that Contracting Party, and for use on board an outbound aircraft engaged in an international service of the other Contracting Party;

(b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repairs of aircraft used on international services by the designated airline of the other Contracting Party;

(c) Fuel and lubricants destined to supply outbound aircraft operated on international service by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

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

4. 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 that Contracting Party. In such a case, they may be required to be placed under the supervision of the said authorities up to such a time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

Article 7. MODE OF OPERATION

1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes.

2. The mode of operation on the agreed services on the specified routes is as set out in the Annex to this Agreement.

Article 8. COMMERCIAL OPERATIONS

The designated airlines of both Contracting Parties shall be allowed:

(a) To establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation;

(b) To bring in and maintain in the territory of the other Contracting Party — in accordance with the laws and regulations of that other Contracting Party relating to entry, residence and employment — managerial, sales, technical, operational and other specialist staff required for the provision of air transportation, and

(c) In the territory of the other Contracting Party to engage directly and, at the airline's discretion, through its agents in the sale of air transportation in the currency of that Contracting Party.

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, reasonable profit and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article, together with the rates of agency commission applicable, shall, if possible, be agreed upon by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed upon shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least thirty (30) days before the proposed date of their introduction; in special cases this time-limit may be reduced subject to the agreement of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if during the first fifteen (15) days of the thirty (30) days period referred to in paragraph 3 of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 13 of this Agreement.

6. Subject to the provisions of paragraph 5 of this Article, no tariff shall come into force if the aeronautical authorities of both Contracting Parties have not approved it.

7. 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 10. STATEMENTS OF STATISTICS

1. The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at the latter's 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 airline of the former Contracting Party.

2. Such statements shall include all information required to determine the amount of traffic carried by the airline on the agreed services and the origin and destination of such traffic.

Article 11. TRANSFER OF EXCESS RECEIPTS

1. Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to transfer at the official rate of exchange the excess of receipt over expenditure earned by the airline in its territory in connection with the carriage of passengers, mail and cargo, subject to the prevailing regulations in the territory of each Contracting Party.

2. Whenever the payment system between the Contracting Parties is governed by a special agreement, that agreement shall apply in place of the provisions of this Article.

Article 12. CONSULTATIONS

1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement and the Annex attached thereto and shall also consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultation which may be through discussion or by correspondence 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 13. SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this 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; if they do not so agree, the dispute shall 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 (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channel 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 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 either 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 first endeavour to reconcile the two Contracting Parties, failing which it shall consider the dispute and give its decision by a majority vote. Unless otherwise agreed between the Contracting Parties, the Tribunal shall itself draw up its rules of procedure, choose its own venue and give its decision within ninety (90) days following its constitution.

4. The Contracting Parties shall comply with any decision given under paragraph 2 or 3 of this Article.

5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the Tribunal including those of the President.

6. If, and so long as either Contracting Party fails to comply with a decision given under this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it had granted by virtue of this Agreement to the Contracting Party in default or to its designated airline.

Article 14. EFFECT OF MULTILATERAL AGREEMENTS

This Agreement and its Annex shall be amended so as to conform with any multilateral treaties which may become binding on both Contracting Parties.

Article 15. AMENDMENTS

1. If either Contracting Party considers it desirable to modify any provision of this Agreement it may request consultations in accordance with the provisions of Article 12 of this Agreement.

2. Any modification of this Agreement decided upon during the consultations referred to in paragraph 1 of this Article shall be agreed upon in writing between the Contracting Parties and shall take effect on a date to be determined by the Contracting Parties who shall exchange notes in that respect through diplomatic channel confirming that the constitutional requirements in their respective countries have been complied with.

3. Any modification of the Annex to this Agreement which has been agreed upon by the aeronautical authorities of the Contracting Parties during the consultations referred to in paragraph 1 of this Article, shall take effect on a date to be determined by the Contracting Parties who shall exchange notes in that respect through diplomatic channel.

Article 16. REGISTRATION OF AGREEMENT WITH I.C.A.O.

This Agreement together with its Annex and any amendments made thereto shall be registered with the International Civil Aviation Organisation.

Article 17. ENTRY INTO FORCE

This Agreement shall be applied provisionally from the date of its signature. It shall enter into force on the date to be determined in an exchange of notes between the Contracting Parties through diplomatic channel confirming that the constitutional requirements in their respective countries have been complied with.

Article 18. APPLICATION

In the case of the Kingdom of the Netherlands this Agreement shall apply only to the part of the Kingdom in Europe.

Article 19. DURATION AND TERMINATION

1. This Agreement shall be in force for an indefinite period of time, subject to the provisions of paragraph 2 below.

2. Either Contracting Party may at any time give notice to the other Contracting Party of its intention to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such a 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 the receipt of the notice by the International Civil Aviation Organisation.

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

DONE at The Hague this 26th day of January 1983 in two originals in the English language.

For the Government of the Kingdom of the Netherlands:
H. VAN DEN BROEK

For the Government of the Federal Republic of Nigeria:
J. D. CHINADE

ANNEX

1. Operation of the agreed services

a. Unless otherwise agreed between the two designated airlines and subject to the provisions of paragraph (c) of this Article, in operating the agreed services, capacity shall be shared equally between the said airlines of the two Contracting Parties.

b. The total capacity to be provided on each of the specified routes shall be in accordance with reasonably anticipated traffic demand.

c. In order to meet the requirements of seasonal or future traffic growth on the specified routes in the Annex, the airlines designated by both Contracting Parties shall make arrangements relating to the conditions under which the air services shall be operated. The arrangements so made by the designated airlines shall determine the frequency of services and the schedules. These arrangements together with any modifications thereto shall be submitted to the aeronautical authorities of the two Contracting Parties for approval.

d. If and so long as the designated airline of one Contracting Party does not desire to utilise the whole or part of its own share of the capacity on one or more routes, it may allow the airline of the other Contracting Party to utilise its said share of the capacity during a specified period.

2. Schedules

a. Routes to be operated by the designated airline of the Federal Republic of Nigeria

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Point in the Kingdom of the Netherlands</i>	<i>Points beyond</i>
Any points in Nigeria	London** Frankfurt* Zurich* Paris* Brussels* Rome*	Amsterdam	London** Copenhagen* Oslo* Stockholm*

** With fifth freedom traffic rights to and from the Netherlands.

* Without fifth freedom traffic rights to and from the Netherlands.

b. Routes to be operated by the designated airline of the Kingdom of the Netherlands

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Point in the Federal Republic of Nigeria</i>	<i>Points beyond</i>
Any points in the Kingdom of the Netherlands	Tunis*	Lagos	Accra* Lome* Douala* Brazzaville* Lusaka** Blantyre* Maputo* Salisbury*

** With fifth freedom traffic rights to and from Nigeria.

* Without fifth freedom traffic rights to and from Nigeria.

3. Notes to Schedules 2 (a) and (b) above

a. Type of aircraft: The designated airline of either Contracting Party may operate a DC10 aircraft or its equivalent.

b. Frequency: The designated airline of either Contracting Party is only allowed to operate four (4) times weekly on the specified routes.

c. Points may be served in any order and may be omitted on any or all flights at the option of the designated airline.

d. The designated airline may terminate any or all flights in the territory of the other Contracting Party.