

No. 24656

NETHERLANDS
and
MALTA

Agreement for air services between and beyond their respective territories (with routes schedule). Signed at The Hague on 6 November 1985

Authentic text: English.

Registered by the Netherlands on 25 March 1987.

PAYS-BAS
et
MALTE

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec tableau des routes). Signé à La Haye le 6 novembre 1985

Texte authentique : anglais.

Enregistré par les Pays-Bas le 25 mars 1987.

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF MALTA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of the Netherlands and the Government of the Republic of Malta,

Being 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. For the purpose of the present Agreement, 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 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 Kingdom of the Netherlands the Minister of Transport and Public Works and any person or body authorised to perform any function at present exercised or which may be exercised in the future by the said Minister or similar functions, and in the case of the Republic of Malta the Minister responsible for Civil Aviation and any person or body authorised to perform any functions at present exercised or which may be exercised in the future by the said Minister or similar functions;

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

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

(e) The term “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 term “Agreement” means this Agreement, its Schedule drawn up in application thereof, and any amendments thereto;

(g) The term “specified route” means a route specified in the appropriate Section of the Schedule to this Agreement;

(h) The term “agreed services” means international air services for the transport of passengers, baggage, cargo and mail on the specified routes;

¹ Came into force provisionally on 6 November 1985, the date of signature, and definitively on 3 June 1986, the day on which the Contracting Parties had informed each other in writing (7 April and 21 May 1986) of the completion of their respective constitutional formalities, 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.

(i) The term "tariff" means any amount charged or to be charged by airlines, directly or through their agents, to any person or entity for the carriage of passengers (and their baggage) and cargo (excluding mail) in air transportation, including:

- (i) The conditions governing the availability and applicability of a tariff, and
- (ii) The charges and conditions for any services ancillary to such carriage which are offered by airlines.

Article 2. (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) The right to fly across its territory without landing; and
- (b) The right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the specified routes.

(3) While operating an agreed service on a specified route an airline designated and authorised in accordance with article 3 of this Agreement shall enjoy, in addition to the rights specified in paragraph (1) of this Article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers, baggage, cargo and mail separately or in combination carried for remuneration or hire.

(4) Nothing in paragraph (3) of this Article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, baggage, cargo and mail separately or in combination carried for remuneration or hire, destined for another point in the territory of the other Contracting Party.

Article 3. (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines 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) The aeronautical authorities of each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said aeronautical authorities are not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline and/or in its nationals.

(5) When an airline has been so designated and authorised, it may at any time operate the agreed services, provided that tariffs established in accordance with the provisions of Article 10 of the present Agreement are in force in respect of those services.

(6) Each Contracting Party shall have the right to withdraw the designation of any airline and to notify the other Contracting Party of this decision.

Article 4. (1) The aeronautical authorities of 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 they may deem necessary on the exercise of these rights:

- (a) In any case where they are not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline and/or in nationals of such Contracting Party, or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights referred to in Article 3.3 of this Agreement, or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, or the provisions of this Agreement, such right shall be exercised only after consultation with the other Contracting Party.

Article 5. (1) Aircraft operated on international services by a designated airline of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels 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 charges 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) With regard to regular equipment, spare parts, supplies or fuels and lubricants and aircraft stores introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use on board aircraft in the operating of international services, no duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, shall be applied, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision and control.

This provision can not be interpreted in such a way that a Contracting Party can be made subject to the obligation to refund customs duties which already have been levied on the materials referred to above.

(3) Regular airborne equipment, spare parts, supplies of fuels and lubricants and aircraft stores retained on board the aircraft to either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 6. (1) The laws, regulations and procedures of either Contracting Party relating to the admission to or departure from its territory of aircraft engaged in inter-

national air services, or to the operation and navigation of such aircraft, shall be complied with by the designated airline of the other Contracting Party upon its entrance into, and until and including its departure from, the said territory.

(2) The laws, regulations and procedures of either Contracting Party relating to immigration, passports, or other approved travel documents, entry, clearance, customs and quarantine shall be complied with by or on behalf of crews, passengers, cargo and mail carried by aircraft of the designated airline of the other Contracting Party upon their entrance into the territory of the said Contracting Party.

(3) Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

(4) Fees and charges applied in the territory of either Contracting Party to the airline operations of the other Contracting Party for the use of airports and other aviation facilities in the territory of the first Party, shall not be higher than those applied in the territory of that first Party to the operations of other airlines engaged in similar international air services.

(5) Neither of the Contracting Parties shall give preference to any other airline over a designated airline of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.

Article 7. Certificates of airworthiness, certificates of competency and licences issued, or validated, by one Contracting Party and unexpired shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the specified routes. Provided always that such certificates or licences were issued, or validated, in conformity with the standards established under the Convention.

Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article 8. 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 that airline's discretion, through its agents in the sale of air transportation.

Article 9. (1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the specified routes the designated airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or on part of the same routes.

(3) In operating the specified routes, the designated airlines of both Contracting Parties shall agree on the services required to provide adequate capacity for the reasonably anticipated traffic demand. Should the airlines fail to reach agreement they shall be allowed to file their schedules individually with the aeronautical authorities. These shall be approved unless the aeronautical authorities of one of the Contracting Parties require consultations with the aeronautical authorities of the other Contracting Party on the ground that they consider that the interests of their own airline or airlines will be seriously damaged as a result of the proposed operations of a designated airline of the other Contracting Party.

Article 10. (1) The tariffs to be charged by the designated airline or airlines 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, for any part of the specified route.

(2) The tariffs referred to in paragraph (1) of this Article, together with the rates of agency commission applicable, shall, if possible, be agreed by the designated airlines of both Contracting Parties, directly or at their option in consultation with other airlines operating over the whole or part of the route and, where possible, through the ratefixing machinery of the International Air Transport Association.

(3) All tariffs shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least forty-five (45) 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 particular tariff, or if for some other reason any particular tariff cannot be fixed in accordance with the provisions of paragraph (2) of this Article, or if during the first twenty-one (21) days of the forty-five (45) days' period referred to in paragraph (3) of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any particular tariff agreed 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 particular tariff submitted to them under paragraph (3) of this Article or on the determination of any particular tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of Article 14 of the present Agreement.

(6) Subject to the provisions of paragraphs (3) and (5) of this Article no tariff shall come into force if the aeronautical authorities of either Contracting Party 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 11. (1) The designated airline or airlines of each Contracting Party shall communicate to the aeronautical authorities of the other Contracting Party not later than thirty days prior to the inauguration of services on the routes specified in accordance with Article 2 of the present Agreement the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

(2) The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or

other statement of statistics as may be reasonably required. Such statement shall include all information as may be reasonably required to determine the amount of traffic carried by those airlines on the agreed services and in the case of consultations pursuant to Article 9, paragraph 3, information on the origins and destination of such traffic.

Article 12. (1) The designated airlines of the Contracting Parties shall be free to transfer from the territory of sale to their home territory the excess, in the territory of sale, of receipts over expenditure. Included in such net transfer shall be revenues from sales, made directly or through an agent, of air transport services, and auxiliary or supplementary services, and normal commercial interest earned on such revenues while on deposit awaiting transfer.

(2) Such transfers will be approved with a minimum of administrative delay and shall be effected within a reasonable time from the date of lodgement of the relative application and will be treated in the same manner as the generality of imports of the Contracting Party.

Article 13. (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 the present Agreement 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 of the date of the request, unless both Contracting Parties agree to an extension of this period.

(3) Any amendment or modification of this Agreement agreed by the Contracting Parties, shall come into effect on a date to be determined in an exchange of diplomatic notes.

(4) Any amendment or modification of the Annex to this Agreement shall be agreed upon in writing between the aeronautical authorities and shall take immediate effect.

Article 14. (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; 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 channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation at the request of either Contracting Party may appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

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

Article 15. If a multilateral agreement concerning any matter covered by this Agreement, accepted by both Parties, enters into force, the relevant provisions of that agreement shall supersede the relevant provisions of the present Agreement.

Article 16. Either Contracting Party may at any time give notice 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 the receipt of the notice by the International Civil Aviation Organisation.

Article 17. As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe only.

Article 18. This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

Article 19. The present Agreement shall be provisionally applied from the date of its signature and shall come into force on the day on which the Contracting Parties have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with.

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

SIGNED at The Hague on the sixth day of November 1985 in duplicate in the English language.

For the Government of the Republic of Malta:

P. FARRUGIA

For the Government of the Kingdom of the Netherlands:

H. VAN DEN BROEK

SCHEDULE

SECTION I

Routes to be operated by the airline or airlines designated by the Government of the Netherlands:
Points in the Netherlands to Points in Malta and vice versa.

SECTION II

Routes to be operated by the airline or airlines designated by the Government of Malta
Points in Malta to Points in the Netherlands and vice versa.

NOTE. At the option of the designated airlines of both Contracting Parties the routes specified in Section I and Section II above may be operated via intermediate points and/or to points beyond.
