

No. 26122

MULTILATERAL

International Agreement on the sharing of capacity on intra-European scheduled air services (with annex and a declaration by member States of the European Communities). Concluded at Paris on 16 June 1987

Authentic texts: English, French and Spanish.

Registered by the International Civil Aviation Organization on 9 August 1988.

MULTILATÉRAL

Accord international relatif au partage de la capacité sur les services aériens réguliers intra-européens (avec annexe et une déclaration par les Etats membres des Communautés européennes). Conclu à Paris le 16 juin 1987

Textes authentiques : anglais, français et espagnol.

Enregistré par l'Organisation de l'aviation civile internationale le 9 août 1988.

INTERNATIONAL AGREEMENT¹ ON THE SHARING OF CAPACITY ON INTRA-EUROPEAN SCHEDULED AIR SERVICES

The Governments signatory hereto,

Considering that, in order to encourage a greater degree of controlled competition, increased flexibility in capacity sharing is desirable; and

Considering that the principles and procedures for the sharing of capacity on intra-European scheduled air services should be uniform,

Have agreed as follows:

Article 1. (1) This Agreement shall establish the arrangements between Parties for the sharing of capacity as defined in the scheme specified in the Annex to this Agreement.

(2) The Parties undertake not to enter into any obligations or understandings between them which would be more restrictive than this Agreement. However, Parties shall not be precluded by this Agreement from maintaining or developing, on a bilateral basis or amongst a group of States, arrangements leading to more flexibility than that contained herein.

Article 2. In this Agreement:

(a) The term “intra-European” applies exclusively to the territories within Europe of Member States of the European Civil Aviation Conference*;

(b) The term “capacity” means the number of seats offered on scheduled air services in a given traffic season;

(c) The term “capacity share” means the share of the airline or airlines of a Party to this Agreement expressed as a percentage of the total capacity in an intra-European bilateral relationship with another Party;

(d) The term “zone of flexibility” means a capacity range within the limits specified in the Annex to this Agreement.

Article 3. Inter-airline consultations on capacity sharing matters may be permitted but shall not be made a mandatory requirement by Parties to this Agreement.

Article 4. (1) For each country pair, all designated airlines of the two Parties concerned, authorized to operate scheduled air services between their territories, shall, simultaneously with their flight programmes, submit to the aeronautical authorities of both Parties their capacity proposals for those services for the following season. These submissions shall be made sixty days in advance of the commencement of this season.

* For the application of the capacity-sharing provisions of the present Agreement, Denmark, Norway and Sweden shall be considered as one territory.

¹ Came into force on 17 July 1988, i.e., the thirtieth day after five signatory States had deposited their instruments of ratification or notifications of approval or acceptance with the International Civil Aviation Organization, in accordance with article 11 (1):

<i>State</i>	<i>Date of deposit of the instrument of ratification or of the notification of approval (AA)</i>
Denmark	17 June 1988 AA
Finland	2 November 1987
France	20 November 1987 AA
Norway	6 May 1988
Sweden	20 May 1988

(2) Without prejudice to bilateral or multilateral provisions governing the determination of capacity, both aeronautical authorities shall, forty-five days in advance of the commencement of the season, add up the total capacity proposed, which figure shall be regarded as the total capacity on which the zone of flexibility shall be calculated, and approve the capacity proposals which correspond to the scheme specified in the Annex to this Agreement.

(3) In any case where the airline or airlines of one Party unilaterally propose a reduction in their capacity, or where one Party unilaterally restricts the total capacity to be offered, the capacity proposals of the airline or airlines of the other Party shall be approved up to the upper limit of the zone of flexibility applied to the total capacity of the preceding corresponding season.

(4) Any portion of capacity proposed which exceeds the upper limit of the zone of flexibility shall be subject to the bilateral arrangements or approval regimes in force between the two Parties. Where in any case the capacity share proposed by the airline or airlines of one Party exceeds the upper limit of the zone of flexibility, that Party shall be notified, forty-five days in advance of the commencement of the season, of the maximum number of seats which the other Party is prepared to approve and the airline or airlines so informed.

(5) In any situation in which the capacity share proposed by the airlines of one Party exceeds the upper limit of the zone of flexibility and where approval has been limited in accordance with paragraph 4 of this Article, it shall be a matter for the aeronautical authorities of the applicant airlines to allocate the capacity among their designated airlines. Such allocation shall be notified to the aeronautical authorities of the other Party.

Article 5. The provisions of the scheme specified in the Annex to this Agreement shall not be used to effect restrictions in existing capacity arrangements.

Article 6. The provisions of the scheme specified in the Annex to this Agreement shall not be used to affect capacity matching in that, after the automatic approval of capacity in accordance with the scheme, the airline or airlines of the Party offering less capacity may decide to match, totally or partially, the capacity offered by the airline or airlines of the other Party. However, the airline or airlines of this latter Party shall not receive automatic approval for additional increases in the same period.

Article 7. Any dispute relating to application of the provisions of this Agreement shall be resolved by recourse to the bilateral disputes settlement procedures in force between the two Parties concerned.

Article 8. (1) Any dispute between two or more Parties concerning the interpretation of this Agreement which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration.

(2) If, within six months from the date of the request for arbitration, the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article 9. This Agreement shall be open for signature on behalf of any Member State of the European Civil Aviation Conference.

Article 10. (1) This Agreement shall be subject to ratification, approval or acceptance by the signatory States.

(2) The instruments of ratification and notifications of approval or acceptance shall be deposited with the International Civil Aviation Organization.

Article 11. (1) This Agreement shall enter into force on the thirtieth day after five signatory States have deposited their instruments of ratification or notifications of approval or acceptance.

(2) Thereafter, it shall enter into force for each State on the thirtieth day after deposit of its instrument of ratification or of its notification of approval or acceptance.

Article 12. (1) After it has entered into force this Agreement shall be open for accession by any non-signatory Member State of the European Civil Aviation Conference.

(2) Accession shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the thirtieth day after the date of deposit.

Article 13. (1) Any Party may propose an amendment to this Agreement by notice in writing to the Secretary of the European Civil Aviation Conference who shall circulate the amendment forthwith to all other Parties. If not less than twenty-five per cent of the Parties (including the Party proposing the amendment) agree to a meeting of Parties to consider the amendment, the European Civil Aviation Conference shall convene such a meeting by giving not less than three months' notice to the Parties.

(2) Any proposed amendment that is approved by a majority of the Parties attending the meeting referred to in paragraph 1 of this Article and then agreed by two-thirds of the Parties shall be submitted to all Parties for ratification, approval or acceptance.

(3) Such an amendment shall enter into force, for those Parties which have ratified, approved or accepted it, thirty days after two Parties have deposited their instruments of ratification or their notifications of approval or acceptance with the International Civil Aviation Organization.

(4) The amendment shall enter into force, for each Party ratifying, approving or accepting it thereafter, on the thirtieth day after the deposit of its instrument of ratification or its notification of approval or acceptance.

Article 14. (1) Notwithstanding the provisions of Article 13, any amendment to the zonal scheme as specified in the Annex to this Agreement which is agreed by the aeronautical authorities of two-thirds of the Parties shall be submitted to the aeronautical authorities of all Parties for acceptance.

(2) Such amendment shall enter into force, for those Parties whose aeronautical authorities have accepted it, thirty days after the aeronautical authorities of two Parties have notified their acceptance to the International Civil Aviation Organization.

(3) Thereafter, the amendment shall enter into force, for each Party whose aeronautical authority accepts it, thirty days after the receipt of notification to the International Civil Aviation Organization.

Article 15. This Agreement may be denounced by any Party by notification addressed to the International Civil Aviation Organization. Denunciation shall take effect one year from the receipt of the said notification.

Article 16. (1) Except as hereinafter provided, no reservations may be made to this Agreement.

(2) Any Party may, at the time of signature, ratification, approval or acceptance of this Agreement, or of accession thereto, declare that it does not consider itself bound by paragraph 2 of Article 8. The other Parties shall not be bound by that paragraph with respect to any Party which has made such a reservation.

(3) Any Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw it by notification to the International Civil Aviation Organization.

Article 17. (1) The International Civil Aviation Organization shall send a certified copy of this Agreement to all Member States of the European Civil Aviation Conference.

(2) As soon as this Agreement enters into force it shall be registered by the International Civil Aviation Organization with the United Nations.

(3) The International Civil Aviation Organization shall notify all States Parties to this Agreement of:

- (a) Any signature of this Agreement;
- (b) The deposit of any instrument of ratification, of any notifications of approval or acceptance or of any instrument of accession, and the date thereof, within thirty days from the date of deposit;
- (c) The date on which this Agreement enters into force in accordance with Article 11;
- (d) Any notification of denunciation of this Agreement in accordance with Article 15, and the date thereof, within thirty days from the date of receipt;
- (e) Any reservation notified in accordance with Article 16 and any withdrawal of such a reservation;
- (f) The date of entry into force of any amendment to this Agreement in accordance with Article 13.

IN WITNESS WHEREOF the undersigned, having been duly authorized, have signed this Agreement.

DONE at Paris, on the sixteenth day of June, one thousand nine hundred and eighty-seven in a single copy in the English, French and Spanish languages, the three texts being equally authoritative.

[For the signature pages, see p. 170 of this volume.]

Austria:
Autriche :
Austria:

Belgium:
Belgique :
Belgica:

[LUC SMOLDEREN]¹
1.XII.1987

Cyprus:
Chypre :
Chipre:

Denmark:
Danemark :
Dinamarca:

[GULDBORG-HENRIKSEN]

Finland:
Finlande :
Finlandia:

[CARL-ERIK CALÀS]

France:
France :
Francia:

[DANIEL TENENBAUM]

¹ Names of signatories appearing between brackets were not legible and have been supplied by the International Civil Aviation Organization — Les noms des signataires donnés entre crochets étaient illisibles et ont été fournis par l'Organisation de l'aviation civile internationale.

Federal Republic of Germany:
République fédérale d'Allemagne :
República Federal de Alemania:

[FRANZ JOACHIM SCHOELLER]
[DETLEF WINTER]

Greece:
Grèce :
Grecia:

Iceland:
Islande :
Islandia:

Ireland:
Irlande :
Irlanda:

Italy:
Italie :
Italia:

[FEDERICO QUARANTA]

Luxembourg:
Luxembourg :
Luxemburgo:

Malta:
Malte :
Malta:

The Netherlands:
Pays-Bas :
Holanda:

Norway:
Norvège :
Noruega:

[ERIK WILLOCK]

Portugal:
Portugal :
Portugal:

Spain:
Espagne :
España:

Ad Referendum

[MANUEL MEDEROS]

Sweden:
Suède :
Suecia:

[BENGT JOHANSSON]

Switzerland:
Suisse :
Suiza:

[MAX NEUENSCHWANDER]

Turkey:
Turquie :
Turquía:

The United Kingdom of Great Britain and Northern Ireland:
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :
Reino Unido de Gran Bretaña e Irlanda del Norte:

Yugoslavia:
Yougoslavie :
Yugoslavia:

ANNEX

ZONAL SCHEME

1. The scheme shall be established for a trial period of three years from the date the Agreement enters into force.
2. The scheme shall contain two tiers, the first of which (Tier 1) shall commence on the date the Agreement enters into force and the second of which (Tier 2) shall commence two years after that date.
3. During Tier 1 and subject to Article 4 of the Agreement, designated airlines shall be free within a zone of flexibility of forty-five per cent to fifty-five per cent to offer, without possibility of regulatory intervention, the capacity they consider is required to meet market demands.
4. A review of the progress of the scheme shall be launched under the auspices of the European Civil Aviation Conference eighteen months after it has come into force. In conjunction with this review, proposals relating to the procedures, criteria and scope of Tier 2 of the scheme may be submitted by any Member State of the European Civil Aviation Conference, with the object of providing for greater flexibility than obtained in Tier 1. Amendments to the scheme resulting from this review shall be subject to the procedure of Article 14 of the Agreement.
5. In the event that the review provided for in paragraph 4 does not result in the coming into force of more flexible arrangements than those applicable during Tier 1, the airline or airlines of any Party which at the end of the two-year period of Tier 1 had reached the maximum capacity share of fifty-five per cent, shall be entitled for Tier 2 to an automatic increase of one percentage point in capacity share, calculated on this ceiling.
6. Subject to paragraph 4, the flexibility zone of forty-five per cent to fifty-five per cent shall continue to be applicable throughout the three-year trial period.

ANNEXE

SYSTÈME DE ZONES

1. Le système est établi pour une période expérimentale de trois ans à partir de la date d'entrée en vigueur de l'Accord.
2. Le système comprend deux étapes, dont la première (Etape 1) commence à la date d'entrée en vigueur de l'Accord et la deuxième (Etape 2) deux ans après cette date.
3. Au cours de l'Etape 1 et sous réserve des dispositions de l'Article 4 du présent Accord, les entreprises de transport aérien désignées ont toute liberté pour déployer, dans les limites d'une zone de souplesse de quarante-cinq pour cent à cinquante-cinq pour cent et sans possibilité d'intervention réglementaire, la capacité qui leur paraît répondre aux besoins du marché.
4. Un bilan de l'avancement du système sera entamé, sous les auspices de la Commission Européenne de l'Aviation Civile, dix-huit mois après son entrée en vigueur. A l'occasion de ce bilan, des propositions portant sur les procédures, critères et champ d'application de la deuxième étape pourront être soumises par tout Etat membre de la Commission Européenne de l'Aviation Civile, dans le but d'accroître la souplesse par rapport à la première étape. Les modifications de système résultant de ce bilan seront soumises à la procédure prévue à l'Article 14 de l'Accord.
5. Dans l'éventualité où le bilan prévu au paragraphe 4 n'aboutirait pas à l'entrée en vigueur d'arrangements plus souples que ceux applicables au cours de l'Etape 1, l'entreprise ou les entreprises de transport aérien de toute Partie ayant atteint à la fin des deux années de l'Etape 1 la part maximale de cinquante-cinq pour cent de capacité, auront droit pour l'Etape 2 à une augmentation automatique de leur part de capacité valant un point de pourcentage calculé sur ce plafond.
6. Sous réserve des dispositions du paragraphe 4, la zone de souplesse de quarante-cinq pour cent à cinquante-cinq pour cent reste applicable pendant la période expérimentale de trois ans.

DECLARATION BY MEMBER STATES OF THE EUROPEAN COMMUNITIES ON
SIGNATURE OF THE INTERNATIONAL AGREEMENT ON THE SHARING
OF CAPACITY ON INTRA-EUROPEAN SCHEDULED AIR SERVICES, DATED
16 JUNE 1987

While signing the present Agreement, the Member States of the European Communities declare that the provisions of this Agreement cannot prevail over Community law as regards relations between them.

Belgium:
Belgique :
Bélgica:

[LUC SMOLDEREN]¹

Denmark:
Danemark :
Dinamarca:

[INGE GULDBORG-HENRIKSEN]

France:
France :
Francia:

[DANIEL TENENBAUM]

Federal Republic of Germany:
République fédérale d'Allemagne :
República Federal de Alemania:

[FRANZ JOACHIM SCHOELLER]
[DETLEF WINTER]

Greece:
Grèce :
Grecia:

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Irlande :
Irlanda:

Italy:
Italie :
Italia:

[FEDERICO QUARANTA]

Luxembourg:
Luxembourg :
Luxemburgo:

The Netherlands:
Pays-Bas :
Holanda:

Portugal:
Portugal :
Portugal:

Spain:
Espagne :
España:

Ad Referendum
[MANUEL MEDEROS]

The United Kingdom of Great Britain and Northern Ireland:
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Reino Unido de Gran Bretaña e Irlanda del Norte: