

No. 27814

---

**AUSTRIA  
and  
KENYA**

**Agreement for air services between and beyond their respective territories (with annex). Signed at Nairobi on 15 May 1985**

*Authentic text: English.*

*Registered by Austria on 19 December 1990.*

---

**AUTRICHE  
et  
KENYA**

**Accord relatif aux transports aériens entre leurs territoires respectifs et au-delà (avec annexe). Signé à Nairobi le 15 mai 1985**

*Texte authentique : anglais.*

*Enregistré par l'Autriche le 19 décembre 1990.*

## AGREEMENT<sup>1</sup> BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Austrian Federal Government and the Government of the Republic of Kenya,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,<sup>2</sup> and

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 this Agreement, unless the context otherwise requires,

- (a) the term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Minister of Transport, in the case of the Republic of Kenya, the Minister in charge of Civil Aviation or any person or body authorised to perform a particular function to which this Agreement relates;
- (b) the terms "air service", "international air services", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (c) the term "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 the Convention and any amendment of the Annexes or the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;
- (d) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (e) the term "tariff" means the prices or charges to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices or charges apply, including prices or charges and conditions for agency, but excluding remuneration and conditions for the carriage of mail;
- (f) the term "territory" has the meaning assigned to it in Article 2 of the Convention;
- (g) the term "capacity" means:
  - (I) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;
  - (II) in relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route.

2. The Annex to this Agreement shall form an integral part of the Agreement and all references to this Agreement, unless otherwise expressly provided, shall apply to the Annex.

### ARTICLE 2

#### Applicability of the Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

<sup>1</sup> Came into force on 1 January 1986, i.e., the first day of the second month following the date on which the Contracting Parties had notified each other in an exchange of notes (of 4 October and 8 November 1985) that the requirements for its entry into force under their respective constitutional procedures had been fulfilled, in accordance with article 19.

<sup>2</sup> 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.

### ARTICLE 3

#### Grant of Rights

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;
- (b) the right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party 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.

3. While operating an agreed service on a specified route the airline designated by each Contracting Party 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 Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

4. Nothing in this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail destined for another point in the territory of the other Contracting Party.

### ARTICLE 4

#### 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 aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs 3 and 4 of this Article, grant to the airline designated in accordance with paragraph 1 of this Article the appropriate operating authorisation.

3. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally applied to the operation of international air services by such authorities.

4. 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 3 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 operate the agreed services for which it is designated provided that a tariff established in accordance with the provisions of Article 10 of this Agreement is in force in respect of that service and is at all times adhered to by that designated airline.

### ARTICLE 5

#### Revocation or Suspension of Operating Authorisation

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights granted under this 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:

- (a) in any case where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; or
- (b) in the case of failure by that airline to comply with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or
- (c) in case 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 infringements of the laws or the regulations or the provisions of this Agreement, such right shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

## ARTICLE 6

### Application of Laws and Regulations

1. The laws and regulations of one Contracting Party relating to admission to, flight within or departure from its territory of aircraft of its designated airline engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew and cargo including mail carried by the aircraft of the designated airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.

3. Subject to laws and regulations of each Contracting Party passengers, cargo and baggage in transit across the territory of either Contracting Party shall be allowed free passage. Passengers in transit across the territory of either Contracting Party shall not be subject to control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

## ARTICLE 7

### Approval of Timetables

1. The designated airline of either Contracting Party shall, not later than 30 days prior to the date of operation of any agreed service, submit its proposed timetables to the aeronautical authorities of the other Contracting Party for their approval. Such timetables shall include all relevant information, such as the type of service, aircraft to be used,

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

2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetable, the designated airlines shall first consult between themselves and submit their recommendations to the respective aeronautical authorities of the Contracting Parties for their final decision.

## [ARTICLE 8]

### Operation of Agreed Services and Capacity Regulations

1. The designated airlines of the two Contracting Parties shall enjoy fair and equal treatment in the operation of the agreed air services as provided in the Annex to this Agreement.

2. The operation of the agreed services between the territories of the Contracting Parties in both directions along the specified routes constitutes a basic and primary right of the two Contracting Parties.

3. For the operation of the agreed services:

- (a) the total capacity provided on the specified routes shall bear close relationship, at a reasonable load factor, to the demand for the carriage of traffic originating in the territory of each Contracting Party and destined to the territory of the other Contracting Party;
- (b) the capacity referred to in sub-paragraph (a) of this paragraph shall be divided equally between the designated airlines of the two Contracting Parties;
- (c) provision may also be made by the aeronautical authorities of the Contracting Parties for the carriage of passengers and cargo including mail, taken on board or discharged at points on the specified routes in the territories of states other than the Contracting Parties.

4. In order to achieve a fair and equal treatment of the designated airlines the airlines have to agree in time on the frequencies of their scheduled services, the types of aircraft to be used and the flight schedules including the days of operation as well as the estimated times of arrival and departure.

5. The schedules agreed according to the provisions of paragraph 4 of this Article shall be submitted for approval to the aeronautical authorities of both Contracting Parties in accordance with the provisions of Article 7 of this Agreement.

6. If the designated airlines cannot agree on the schedules or measures as mentioned in paragraph 4 of this Article and paragraph 2 of Article 7 the aeronautical authorities of the Contracting Parties shall endeavour to settle the problem.

7. Subject to the provisions of this Article, no schedules shall come into force, unless the aeronautical authorities of the Contracting Parties have approved them.

8. The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

9. If the designated airline of one Contracting Party does not wish to use one or more specified routes, part or all of the capacity allocated to it, for reasons other than scale of traffic, it may consult the designated airline of the other Contracting Party with a view to transferring to the latter, for a fixed period and on terms to be mutually agreed upon the whole or part of the capacity at its disposal within the agreed limits. The designated airline which has transferred all or part of its capacity may recover the same at the end of the agreed period. Any agreement concluded between the airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of the Contracting Parties.

#### ARTICLE 9

##### Exemption from Customs Duties, Inspection Fees and other similar Charges

1. Aircraft operated on international air 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 time as they are re-exported or are used on the part of the journey performed over that territory.

2. There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the service performed:

- (a) aircraft stores taken on board in the territory of a Contracting Party, within the limits fixed by the customs authorities of the said territory, and for use on board outbound aircraft of the other Contracting Party engaged on an international air service;
- (b) spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the said designated airline of the other Contracting Party;
- (c) fuels and lubricants supplied to an aircraft of the designated airline of a Contracting Party, engaged on international air service, in the territory of the other Contracting Party and used on an inward flight until that flight is completed, on an outward flight from the time that flight commences or on a through-transiting flight, notwithstanding that on all such flights the aircraft may make intermediate landings in that territory.

3. Materials referred to in sub-paragraphs (a), (b) and (c) above 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 customs authorities of that territory. In such cases 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 10

##### 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 shall be agreed by the designated airlines of both Contracting Parties.

3. Agreements according to paragraph 2 above may, when possible be reached through the rate-fixing machinery of the International Air Transport Association.

4. The tariffs so agreed shall be submitted for approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction. In special cases this period may be reduced subject to the Agreement of the said authorities.

5. No tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

6. If a tariff cannot be agreed upon in accordance with paragraph 2 of this Article, or if, during the first thirty days of the sixty days period referred to in paragraph 4 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.

7. A tariff established in accordance with provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph, where a tariff has a terminal date, for more than 12 months after that date.

8. The aeronautical authorities of each Contracting Party shall ensure that the designated airlines conform to the tariffs approved by the aeronautical authorities of the Contracting Parties and that no airline reduces any portion of such tariffs by any means directly or indirectly.

#### ARTICLE 11

##### Transfer of Earnings

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by each designated airline in the territory of the other Contracting Party. Such transfers shall be effected immediately on the basis of the official exchange rates, for current payments, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payments.

#### ARTICLE 12

##### Provision of Statistics

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party on request periodic statistics or other similar information relating to the traffic carried on the agreed services by the respective designated airlines.

#### ARTICLE 13

##### Airline Representation

1. On basis of reciprocity each Contracting Party grants to the designated airline of the other Contracting Party the right to maintain in its territory offices and administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.

2. The establishment of the offices and the employment of the personnel referred to in paragraph 1 of this Article shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting Party concerned.

3. 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 14

##### Consultations

1. In a spirit of close cooperation 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 hereto and shall consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultations which may be oral or in writing. Such consultations 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.

**ARTICLE 15****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.

3. 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 specified period, 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 a case, the third arbitrator shall be a national of a third state and shall act as President of the arbitral tribunal.

4. The arbitral tribunal shall determine its own procedure and decide on the apportionment of the cost of the arbitration.

5. The Contracting Parties shall comply with any decision given under paragraphs 3 and 4 of this Article.

**ARTICLE 16****Amendments**

Any amendments to this Agreement and/or its Annex shall be agreed upon between the appropriate authorities of the Contracting Parties and shall

come into force sixty (60) days after the date of an exchange of diplomatic notes.

**ARTICLE 17****Registration of Agreement and Amendments**

This Agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organisation.

**ARTICLE 18****Termination**

Either Contracting Party may at any time give written notice through diplomatic channels 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 case this Agreement shall terminate twelve (12) months after the date when the notice has been received 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, written notice through diplomatic channels shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

**ARTICLE 19****Entry into Force**

This Agreement shall enter into force on the first day of the second month following the date on which the two Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE in duplicate at Nairobi this 15 day of May 1985 in the English language.

For the Federal Government of the Republic of Austria:

Dr. WOSCHNAGG

For the Government of the Republic of Kenya:

MAGUGU



ANNEX

## ROUTE SCHEDULE

## SECTION 1

The route to be operated by the designated airline of Kenya:

Points of Origin	Intermediate Points	Points in Austria	Points beyond
Nairobi	To be agreed upon	Vienna	To be agreed upon

## SECTION 2

The route to be operated by the designated airline of Austria:

Points of Origin	Intermediate Points	Points in Kenya	Points beyond
Vienna	To be agreed upon	Nairobi	To be agreed upon