

No. 27815

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**AUSTRIA
and
SENEGAL**

**Air Transport Agreement (with annexes). Signed at Dakar on
4 February 1987**

Authentic texts: German and French.

Registered by Austria on 19 December 1990.

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**AUTRICHE
et
SÉNÉGAL**

**Accord relatif aux transports aériens (avec annexes). Signé à
Dakar le 4 février 1987**

Textes authentiques : allemand et français.

Enregistré par l'Autriche le 19 décembre 1990.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE FEDERAL GOVERNMENT OF AUSTRIA AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

The Federal Government of Austria and the Government of the Republic of Senegal, hereinafter referred to as Contracting Parties,

Desiring to promote the development of air transport services between Senegal and Austria and to further as much as possible international cooperation in this field,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944,² hereinafter referred to as the “Convention”,

Desiring to apply to these services the principles and provisions of the Convention,

Have agreed as follows:

TITLE I

GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purpose of this Agreement and its annexes:

1. The terms “territory”, “international air services”, “airline”, and “stops for non-traffic purposes” have, within the scope of the application of this Agreement, the meanings specified in articles 2 and 96 of the Convention.

2. The term “aeronautical authorities” means:

- In the case of the Republic of Senegal, the Minister responsible for air transport;
- In the case of the Republic of Austria, the Federal Minister for Public Economy and Transport;
- Or in both cases any person or body legally authorized to assume such functions.

3. The term “designated airline” means an airline which the aeronautical authorities of one Contracting Party have designated by name as the carrier which they have chosen to exercise the air traffic rights provided for in this Agreement and which shall have been accredited by the other Contracting Party in accordance with the provisions of article 8 below.

4. The term “agreed service” means the international air services specified in annex I to this Agreement.

¹ Came into force on 7 February 1988, i.e., 30 days after the date of the last of the notifications (of 7 and 8 January 1988) by which the Contracting Parties had informed each other 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.

5. The term “tariffs” means the prices or amounts to be paid for the carriage of passengers and cargo and the conditions under which those prices or amounts apply, and the prices or amounts and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

6. The term “capacity” means:

(a) In relation to an aircraft, the payload of that aircraft available on a route or section of a route;

(b) In relation to specified air service, the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route.

7. The terms “aircraft equipment”, “stores”, and “spare parts” have within the scope of the application of this Agreement, the meanings specified in annex 9 of the Convention.

Article 2. TRAFFIC RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights as regards its scheduled international air service:

(a) To fly without landing across its territory;

(b) To land 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 routes specified in accordance with annex I. Such services and routes are hereafter called “the agreed services” and “the specified routes”. While providing 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 specified points on that route as part of the operational schedule for setting down and taking on passengers and cargo including mail.

3. No provision in paragraph 2 of this article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers and cargo, including mail, carried for remuneration and destined for another point in the territory of that other Contracting Party.

4. The two Contracting Parties agree to apply the principle of equality and reciprocity in all areas connected with exercise of the rights arising from this Agreement.

The designated airlines of the two Contracting Parties shall be guaranteed fair and equitable treatment; they shall enjoy equal opportunities and rights and shall respect the principle of equal distribution of the capacity to be offered for operating the agreed services.

5. Where they operate on the same routes, they shall take their mutual interests into account so as not to affect each other’s services unduly.

Article 3. LAWS AND REGULATIONS

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

or to the operation and navigation of such aircraft while within its territorial limits, shall be applied to the aircraft of the airline designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crews or cargoes of aircraft such as regulations for entry, clearance, immigration, passports, customs and quarantine shall be complied with by such passengers and crews, either personally or through a third party acting on their behalf, and, in so far as relates to the said cargo of the airline or airlines of the other Contracting Party, upon entrance into or departure from and while within the territory of the first Contracting Party.

Article 4. RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services specified in this Agreement subject to the condition that the terms by which the certificates or licences were issued or rendered valid are equivalent to or more stringent than the minimal standards which might be set under the terms of the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party or rendered valid by another State.

Article 5. EXEMPTION FROM CUSTOMS AND OTHER DUTIES

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

2. The following shall also be exempt from the same duties and taxes with the exception of charges or taxes corresponding to the service performed:

(a) Stores of any origin taken on board in the territory of one Contracting Party within limits fixed by the authorities of such Contracting Party and taken on board the aircraft operated on international services by the other Contracting Party;

(b) Spare parts imported into the territory of one Contracting Party for the maintenance or repair of aircraft employed in international traffic by the designated airline of the other Contracting Party;

(c) Fuel and lubricants destined to supply aircraft operated in international traffic 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.

Materials referred to in subparagraphs (a), (b), and (c) above may be required to be kept under customs supervision and control.

3. The airborne equipment, as well as the materials and supplies on board the designated aircraft of a Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Party. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or have been declared to customs.

Article 6. TAXATION

1. Profits from the operation of an aircraft employed in international traffic shall be subject to tax only in the territory of the Contracting Party in which the head office of the airline is located.

2. If a special agreement for the avoidance of double taxation of income and capital exists between the Contracting Parties, the provisions of the special agreement shall apply.

Article 7. TRANSIT FORMALITIES

Passengers, cargo and mail in direct transit across the territory of one of the Contracting Parties and not leaving the area of the airport reserved for such purpose shall, except for security measures against violence and hijacking, only be subject to a simplified control.

Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

TITLE II

AIR SERVICES

Article 8. OPERATING AUTHORIZATION

1. (a) 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.

(b) In implementation of articles 77 and 79 of the Convention referring to the creation by two or more States of joint operating airline or international operating agencies, the Federal Government of Austria agrees that the Government of the Republic of Senegal, in accordance with articles 2 and 4 and the annexed documents of the Treaty relating to air transport signed at Yaoundé on 28 March 1961, to which the Republic of Senegal acceded, reserves the right to designate the Air Afrique company as the carrier it chooses to operate the agreed services.

2. As soon as this designation has been received, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 of this article, without delay grant to the airline thus designated the necessary operating authorizations.

3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to revoke the designation of any airline and to designate another.

4. The airline designated by a Contracting Party may be required to satisfy to the other Contracting Party that it fulfils the conditions prescribed by the laws and regulations normally and reasonably adopted by that Contracting Party for the operation of international air services under the Convention.

5. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this article or to impose all necessary conditions for the exercise by a designated airline of the rights specified in article 2 of this Agreement if the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party which designated the airline or its nationals.

6. When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that the tariffs established in accordance with the provisions of article 13 of this Agreement are in force and an agreement in accordance with the provisions of articles 10 and 11 of this Agreement has been reached in respect of that service.

Article 9. SUSPENSION AND REVOCATION

1. Each Contracting Party has the right 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 revoke the operating authorization or to impose the conditions deemed necessary for the exercise of those rights:

(a) If it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party that has designated the airline or in nationals of that Contracting Party; or

(b) If that airline fails to comply with the laws and regulations of the Contracting Party which has granted these rights; or

(c) If that airline fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless suspension, revocation or imposition of the conditions referred to in paragraph 1 of this article is essential to prevent further infringements of the said laws and regulations, such right shall be exercised only after consultation, as referred to in article 16, with the other Contracting Party. If such consultation is unsuccessful, arbitration shall be resorted to in accordance with article 17.

Article 10. DETERMINATION OF CAPACITY

1. The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adapted to the normal and reasonably anticipated requirements for the carriage of passengers, goods and mail from and to the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail taken up and put down at points on the specified routes in the territory of a State other than that designating the airline shall take into consideration the general principles governing capacity, which shall be linked to:

(a) Transport requirements to and from the territory of the Contracting Party which has designated the airline;

(b) Transport requirements of the region through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and

(c) The requirements of through air traffic.

2. In the case where the airline designated by one of the Contracting Parties does not wish to use on one or more routes, either a part or the whole of the transport capacity which it should offer, having regard to its rights, it may agree with the airline designated by the other Contracting Party to transfer to the latter, for a specified period of time, all or part of the transport capacity in question. The designated airline which transfers all or part of its rights may take them back at the end of the period specified.

3. Such agreement shall be submitted to the aeronautical authorities of the Contracting Parties for approval.

Article 11. OPERATING SCHEDULES

1. In order to ensure a fair and equal treatment of the designated airlines, the airlines shall agree in time on the frequencies of the scheduled services, the types of aircraft to be used and the flight schedules, including the days of operation and the times of arrival and departure.

2. In order to meet the requirement of any unforeseen or temporary traffic on these routes, the designated airlines shall decide among themselves how to respond to this temporary increase in traffic.

3. The schedules so agreed shall be submitted for the 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.

4. If the designated airlines cannot agree on the above schedules, the aeronautical authorities of the Contracting Parties shall attempt to settle the dispute.

5. In accordance with the provisions of this article, no schedule shall take effect without the approval of the aeronautical authorities of the Contracting Parties.

6. Schedules established for a season in accordance with the provisions of this article shall remain in effect for corresponding seasons until other schedules have been established on the basis of the provisions of this article.

Article 12. STATISTICS

The aeronautical authorities of one of the Contracting Parties shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical air transport data as may be reasonably required for monitoring the transport capacity provided by the designated airline of the first Contracting Party. These statistics shall include all the necessary data for determining the volume, origin and destination of the traffic carried on the agreed services.

Article 13. TRANSPORT TARIFFS

1. The tariffs to be charged by the airline of one Contracting Party for the carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all important factors including cost of operation, reasonable profit and characteristics of service supplied such as standards of speed and accommodation.

2. The tariffs referred to in paragraph 1 of this article shall be established by mutual agreement between the designated airlines of both Contracting Parties.

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

4. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least sixty (60) days before the date of their introduction; in special cases, this time-limit may be reduced, subject to mutual consent of said authorities.

5. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this article, or if, during the first thirty (30) days of the sixty (60) days' period referred to in paragraph 4 of this article, the aeronautical authorities of one Contracting Party give to the aeronautical authorities of the other Contracting Party notice of their disagreement with any tariff agreed in accordance with the provisions of paragraph 2 of this article, the aeronautical authorities of the Contracting Party shall endeavour to work together to reach a solution.

6. If the aeronautical authorities cannot agree on a tariff submitted to them in accordance with paragraph 4 above or on the determination of a tariff in accordance with paragraph 5, the Contracting Authorities shall endeavour to reach an agreement.

7. No tariff shall come into force without the approval of the aeronautical authorities of the Contracting Parties.

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.

9. The Contracting Parties shall ensure that an active and efficient mechanism exists in their territory for the investigation of violations of tariffs established in accordance with this article by any airline company, commercial agent for passage or freight, tour organizer or forwarding agent. They shall, moreover, ensure that any violation of these tariffs shall be subject to deterrent sanctions in accordance with their laws and regulations.

Article 14. TRANSFER OF REVENUES

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right to unrestricted transfer of the excess of receipts over expenditure earned in its territory and resulting from the carriage of passengers, baggage, mail and cargo by the airline of the other Contracting Party, in a freely convertible currency at the current rate of exchange. Transfers shall be made immediately within the sixty (60) days following the date of the request.

2. If a special payments agreement exists between the Contracting Parties, payments shall be made in accordance with the provisions of such agreement.

Article 15. REPRESENTATION AND SALES PROMOTION

1. The designated airline of each Contracting Party shall have the opportunity to recruit, in accordance with the laws and regulations of the other Contracting Party, the technical and commercial personnel for the operation of the agreed services on the specified routes and to open offices in the territory of the other Contracting Party.

2. Such personnel shall be recruited from among the nationals of either Contracting Party unless the Parties agree otherwise.

3. The designated airline of each Contracting Party shall have the 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 16. CONSULTATIONS AND AMENDMENTS

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 of ensuring the implementation and satisfactory application of the provisions of this Agreement and the annexes thereto.

2. If either of the Contracting Parties considers it desirable to amend any provisions of this Agreement, it may request consultation with the other Contracting Party. These consultations, which may be preceded by discussions between the aeronautical authorities, shall take place within the sixty (60) days following the date of the request unless both Contracting Parties agree to an extension of the period. Any amendments to this Agreement which have been decided on shall be subject to approval by each Contracting Party in accordance with its constitutional procedures.

3. Amendments to annex I shall be agreed between the competent authorities of the Contracting Parties.

Article 17. SETTLEMENT OF DISPUTES

1. Where a dispute relating to the interpretation or application of this Agreement has not been settled in accordance with the provisions of article 16, either between the aeronautical authorities or between the Governments of the Contracting Parties, it shall, at the request of one of the Contracting Parties, be submitted to an arbitration tribunal.

2. This arbitration tribunal shall be composed of three members. Each of the two Contracting Parties shall appoint an arbitrator and the two arbitrators shall agree upon the appointment of a national of a third State as Chairman.

If the two arbitrators have not been appointed within two months from the date on which one of the two Contracting Parties proposed arbitration of the dispute, or if the arbitrators fail to agree upon the appointment of the Chairman within one month after their appointment, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

3. If the arbitration 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 determine its own meeting place.

4. The Contracting Parties undertake to comply with any provisional measure ordered in the course of 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 an arbitral award, the other Contracting Party may limit, suspend or revoke any rights or privileges which it had granted under this Agreement to the Contracting Party in default.

6. Each Contracting Party shall pay the remuneration for the services of its own arbitrator and half the remuneration of the Chairman appointed.

Article 18. DENUNCIATION

Either Contracting Party may at any time give notice to the other Contracting Party through the diplomatic channel of its desire to denounce this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization. The denunciation shall take effect twelve (12) months after the date of receipt by the other Contracting Party, unless the notice is withdrawn by agreement before the end of that period. If the Contracting Party receiving such notice fails to acknowledge receipt thereof, the said notice shall be deemed to have been received fifteen (15) days after its receipt at the headquarters of the International Civil Aviation Organization.

Article 19. ENTRY INTO FORCE

Each of the Contracting Parties shall notify the other through the diplomatic channel of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect thirty (30) days after the date of the last notification.

Article 20. REGISTRATION

This Agreement and the annexes thereto as well as any subsequent amendments shall be communicated to the International Civil Aviation Organization for registration.

DONE at Dakar on 4 February 1987, in duplicate in the French and German languages, both texts being equally authentic.

For the Federal Government of Austria:

PFANZELTER

For the Government of the Republic of Senegal:

SAGNA

ANNEX I

ROUTE SCHEDULE

A. *Austrian Route*

The airline designated by the Austrian Federal Government is authorized to operate scheduled air services in both directions on the route specified below:

Point of departure
Points in Austria
Destination
Dakar

B. *Senegalese Route*

The airline designated by the Government of the Republic of Senegal is authorized to operate scheduled air services in both directions on the route specified below:

Point of origin
Points in Senegal
Destination
Vienna

C.

Any intermediate points and points beyond may be served by the designated airline of each Contracting Party without exercising fifth freedom traffic rights.

The exercise of fifth freedom traffic rights may be granted by the aeronautical authorities of the two Contracting Parties.

ANNEX II

ARTICLES 2 AND 4 OF THE TREATY ON AIR TRANSPORT IN AFRICA

Signed in Yaoundé on 28 March 1961

“*Article 2.* The Contracting States undertake to designate the Société commune as the carrier chosen by each of them for the exercise of its air traffic and air transport rights in the context of its international relations.”

“*Article 4.* The Société aérienne commune shall be invested with the fullest legal personality that the laws of the Contracting States accord to an artificial person and shall be regarded as holding the nationality of each of the Contracting States both *vis-à-vis* them and *vis-à-vis* third States.”

“The Société aérienne commune shall be established in the form of a public limited company governed by private law and having a one-tier structure by the Contracting States and an enterprise governed by private law deemed qualified to participate.”
