

**WORKING PAPER**

[MODEL]

**AGREEMENT**  
**between the European Community and [name of the third country]**  
**on certain aspects of air services**

THE EUROPEAN COMMUNITY

of the one part, and

[NAME OF THE THIRD COUNTRY]

of the other part

(hereinafter referred to as ‘the Parties’)

NOTING that bilateral air service agreements have been concluded between [several] Member States of the European Community and [name of the third country] containing provisions contrary to Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and [name of the third country], which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and [name of the third country] and to preserve the continuity of such air services,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Community and [name of the third country] which i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or ii) reinforce the effects of any such agreement, decision or concerted practice; or iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air

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carriers on the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of the European Community, as part of this agreement, to increase the total volume of air traffic between the European Community and [*name of the third country*], to affect the balance between Community air carriers and air carriers of [*name of the third country*], or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights.

HAVE AGREED AS FOLLOWS:

### ARTICLE 1

#### General provisions

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Community.
2. References in each of the agreements listed in Annex 1 to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.
3. References in each of the agreements listed in Annex 1 to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

### ARTICLE 2

#### Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by [*name of the third country*], and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
2. On receipt of a designation by a Member State, [*name of the third country*] shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
  - i. the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law; and
  - ii. effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and

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- iii. the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states.

3. [name of the third country] may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- i. the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community law; or
- ii. effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- iii. the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states.

In exercising its right under this paragraph, [name of the third country] shall not discriminate between Community air carriers on the grounds of nationality.

### ARTICLE 3

#### Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (c).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of [name of the third country] under the safety provisions of the agreement between the Member State that has designated the air carrier and [name of the third country] shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

### ARTICLE 4

#### Taxation of aviation fuel

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (d).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent a Member State from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft

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of a designated air carrier of [*name of the third country*] that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.

### **ARTICLE 5**

#### **Tariffs for carriage within the European Community**

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (e).
2. The tariffs to be charged by the air carrier(s) designated by [*name of the third country*] under an agreement listed in Annex 1 containing a provision listed in Annex 2 (e) for carriage wholly within the European Community shall be subject to European Community law.

### **ARTICLE 6**

#### **Compatibility with competition rules**

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.
2. The provisions contained in the agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not be applied.

### **ARTICLE 7**

#### **Annexes to the Agreement**

The Annexes to this Agreement shall form an integral part thereof.

### **ARTICLE 8**

#### **Revision or amendment**

The Parties may, at any time, revise or amend this Agreement by mutual consent.

### **ARTICLE 9**

#### **Entry into force and provisional application**

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

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2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

3. Agreements and other arrangements between Member States and [*name of the third country*] which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex 1 (b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

ARTICLE 10

Termination

1. In the event that an agreement listed in Annex 1 is terminated, all provisions of this Agreement that relate to the agreement listed in Annex 1 concerned shall terminate at the same time.

2. In the event that all agreements listed in Annex 1 are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at [...] in duplicate, on this [...] day of [..., ...] in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish and [*name of the language of the third country*] languages.<sup>1</sup>

FOR THE EUROPEAN COMMUNITY:

FOR [*NAME OF THE THIRD COUNTRY*]:

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<sup>1</sup> If the official language of the third country is also a Community language you can add: “In case of divergence the [*name of the language of the third country which is also a Community language*] text shall prevail over the other language texts.”

**List of agreements referred to in Article 1 of this Agreement**

**(a) Air service agreements between [name of the third country] and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally**

- Agreement between **the Government of [name of the MS] and the Government of [name of the third country]** relating to Air Services signed at [place] on [date], hereinafter referred to “[name of the third country] – [name of the MS] Agreement” in Annex 2 ;

Last modified by [Agreed Minutes / Memorandum of Understanding] done at [place] on [date].

Etc;

**(b) Air service agreements and other arrangements initialled or signed between [name of the third country] and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally**

**List of articles in the agreements listed in Annex 1 and referred to in Articles 2 to 6 of this Agreement**

*[Describe according to the provision and text to be amended – Some examples provided]*

**(a) Designation by a Member State:**

- Article X, Paragraph Y, [Subparagraph (z)] of the [*name of the third country*] – [*name of the MS*] Agreement;
- Etc;

**(b) Refusal, revocation, suspension or limitation of authorisations or permissions:**

- Article X, Paragraph Y, [Subparagraph (z)] of the [*name of the third country*] – [*name of the MS*] Agreement;
- Article X, Paragraph Y, Subparagraph (z) as provided for in the Memorandum of Understanding signed at [*place*] on [*date*], the [*name of the third country*] – [*name of the MS*] Agreement;
- Etc;

**(c) Safety:**

- Article relating to safety as provided for in attachment [X] to the Memorandum of Understanding signed at [*place*] on [*date*], amending the [*name of the third country*] – [*name of the MS*] Agreement;
- Article Z of the [*name of the third country*] – [*name of the MS*] Agreement;
- Etc;

**(d) Taxation of aviation fuel:**

- Article Z of the [*name of the third country*] – [*name of the MS*] Agreement;
- Etc;

**(e) Tariffs for carriage within the European Community:**

- Article Z of the [*name of the third country*] – [*name of the MS*] Agreement;
- Etc.

**List of other states referred to in Article 2 of this Agreement**

- (a) The Republic of Iceland** (under the Agreement on the European Economic Area);
  
- (b) The Principality of Liechtenstein** (under the Agreement on the European Economic Area);
  
- (c) The Kingdom of Norway** (under the Agreement on the European Economic Area);
  
- (d) The Swiss Confederation** (under the Agreement between the European Community and the Swiss Confederation on Air Transport)