

**AGREEMENT****between the European Community and the Government of Nepal on certain aspects of air services**

THE EUROPEAN COMMUNITY

of the one part, and

THE GOVERNMENT OF NEPAL

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 Nepal 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 Nepal, 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 Nepal and to preserve the continuity of such air services,

RECOGNISING that bilateral air service agreements between Member States of the European Community and Nepal should be consistent with the laws of Nepal and the European Community and provide a viable and sound legal basis for ensuring continuity and development of air services between the European Community and Nepal,

NOTING that provisions of the bilateral air service agreements between Member States of the European Community and Nepal, which are not inconsistent with European Community law, do not need to be affected by this Agreement,

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 Nepal 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 in 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 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 bring about any changes in the total volume of air traffic between the European Community and Nepal, to affect the balance between Community air carriers and air carriers of Nepal, or to make 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 I 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 I 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, authorisation and revocation**

1. The provisions in paragraphs 3 and 4 of this Article shall supersede the corresponding provisions in the Articles listed in Annex II(a) and (b) respectively, in relation to the designation of air carriers by the Member State concerned, its authorisations and permissions granted by Nepal, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
2. The provisions in paragraphs 3 and 4 of this Article shall supersede the corresponding provisions in the Articles listed in Annex II(a) and (b) respectively, in relation to the designation of air carriers by Nepal, its authorisations and permissions granted by the Member State concerned, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
3. On receipt of such a designation, and of applications from the designated air carrier(s), in the form and manner prescribed for authorisations and permissions, the other party shall, subject to paragraphs 4 and 5 grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(a) in the case of an air carrier designated by a Member State:

- (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 from a Member State 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

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

(b) in the case of an air carrier designated by Nepal:

- (i) it has its principal place of business in Nepal; and
- (ii) Nepal has and maintains effective regulatory control of the air carrier.

4. Either party may refuse, revoke, suspend or limit the authorisation or permissions of an air carrier designated by the other party where:

(a) in the case of an air carrier designated by a Member State:

- (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 from a Member State 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 and is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states; or

(b) in the case of an air carrier designated by Nepal:

- (i) it does not have its principal place of business in Nepal; or
- (ii) Nepal is not maintaining effective regulatory control of the air carrier; or
- (iii) majority ownership or control of the air carrier designated by Nepal is vested in a third country that does not effectively accept the designation of Community air carriers established in the Community.

5. In exercising its right under paragraph 4, Nepal shall not discriminate between air carriers of Member States 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 II(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 the Government of Nepal under the safety provisions of the agreement between the Member State that has designated the air carrier and the Government of Nepal 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 II(d).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II(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 of a designated air carrier of Nepal 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 II(e).

2. The tariffs to be charged by the air carrier(s) designated by the Government of Nepal under an agreement listed in Annex I containing a provision listed in Annex II(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 I shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict 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 I 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.

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 the Government of Nepal 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 I(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 I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

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

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

Done at Brussels in duplicate, on the twenty-third day of January in the year two thousand and nine in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Nepali languages.

За Европейската Общност  
 Por la Comunidad Europea  
 Za Evropské společenství  
 For Det Europæiske Fællesskab  
 Für die Europäische Gemeinschaft  
 Euroopa Ühenduse nimel  
 Για την Ευρωπαϊκή Κοινότητα  
 For the European Community  
 Pour la Communauté européenne  
 Per la Comunità europea  
 Eiropas Kopienas vārdā  
 Europos bendrijos vardu  
 Az Európai Közösség részéről  
 Ghall-Komunità Ewropea  
 Voor de Europese Gemeenschap  
 W imieniu Wspólnoty Europejskiej  
 Pela Comunidade Europeia  
 Pentru Comunitatea Europeană  
 Za Európske spoločenstvo  
 Za Evropsko skupnost  
 Euroopan yhteisön puolesta  
 För Europeiska Gemenskapen  
 यूरोपेली समुदायको लागि

За правителството на Непал  
 Por el Gobierno de Nepal  
 Za vládu Nepálu  
 For Nepals regering  
 Für die Regierung von Nepal  
 Nepali valitsuse nimel  
 Για την Κυβέρνηση του Νεπάλ  
 For the Government of Nepal  
 Pour le gouvernement du Népal  
 Per il governo del Nepal  
 Nepālas valdības vārdā  
 Nepalo vyriausybės vardu  
 Nepál kormánya részéről  
 Ghall-Gvern tan-Nepal  
 Voor de Regering van Nepal  
 W imieniu Rządu Nepalu  
 Pelo Governo do Nepal  
 Pentru Guvernul Nepalului  
 Za vládu Nepálu  
 Za vlado Nepala  
 Nepalín hallituksen puolesta  
 För Nepals regering  
 नेपाल सरकारको लागि



## ANNEX I

## LIST OF AGREEMENTS REFERRED TO IN ARTICLE 1 OF THIS AGREEMENT

- (a) Air service agreements between the Government of Nepal 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 Austrian Federal Government and His Majesty's Government of Nepal relating to Civil Air Transport signed at Kathmandu on 29 October 1997, hereinafter referred to as 'Nepal-Austria Agreement' in Annex II,
  - Agreement between the Government of the Grand Duchy of Luxembourg and His Majesty's Government of Nepal on air services done at Luxembourg on 18 June 1999, hereinafter referred to as 'Nepal-Luxembourg Agreement' in Annex II,
  - Agreement between the Kingdom of the Netherlands and His Majesty's Government of Nepal on air services done at Schiphol Airport on 10 June 1998, hereinafter referred to as 'Nepal-The Netherlands Agreement' in Annex II,
  - Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Nepal concerning air services done at Kathmandu on 3 March 1994, hereinafter referred to as 'Nepal-United Kingdom Agreement' in Annex II;
- (b) Air service agreements and other arrangements initialled or signed between the Government of Nepal 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:
- Air Services Agreement between His Majesty's Government of Nepal and the Government of the Republic of France initialled at Kathmandu on 7 July 1998, hereinafter referred to as 'Nepal-France Agreement' in Annex II,
  - Agreement between the Government of the Federal Republic of Germany and His Majesty's Government of Nepal on Air Services initialled and attached as Annex III to the Protocol done at Bonn on 26 July 2000, hereinafter referred to as 'Nepal-Germany Agreement' in Annex II,
  - Agreement between His Majesty's Government of Nepal and the Government of the Italian Republic concerning Air Services initialled at Kathmandu on 8 May 1992 hereinafter referred to as 'Nepal-Italy Agreement' in Annex II.
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## ANNEX II

**LIST OF ARTICLES IN THE AGREEMENTS LISTED IN ANNEX I AND REFERRED TO IN ARTICLES 2 TO 6 OF THIS AGREEMENT**

- (a) Designation by a Member State:
- Article 4 of the Nepal-Austria Agreement,
  - Article 4 of the Nepal-France Agreement,
  - Article 4 of the Nepal-Italy Agreement,
  - Article 3 of the Nepal-Luxembourg Agreement,
  - Article 5 of the Nepal-The Netherlands Agreement,
  - Article 4 of the Nepal-United Kingdom Agreement;
- (b) Refusal, revocation, suspension or limitation of authorisations or permissions:
- Article 4 of the Nepal-Austria Agreement,
  - Article 5 of the Nepal-France Agreement,
  - Article 4 of the Nepal-Germany Agreement,
  - Article 5 of the Nepal-Italy Agreement,
  - Article 4 of the Nepal-Luxembourg Agreement,
  - Article 6 of the Nepal-The Netherlands Agreement,
  - Article 5 of the Nepal-United Kingdom Agreement;
- (c) Safety:
- Article 8 of the Nepal-Austria Agreement,
  - Article 9 of the Nepal-France Agreement,
  - Article 14 of the Nepal-Germany Agreement,
  - Article 10 of the Nepal-Italy Agreement,
  - Article 6 of the Nepal-Luxembourg Agreement,
  - Article 10 of the Nepal-The Netherlands Agreement;
- (d) Taxation of aviation fuel:
- Article 9 of the Nepal-Austria Agreement,
  - Article 12 of the Nepal-France Agreement,
  - Article 7 of the Nepal-Germany Agreement,
  - Article 6 of the Nepal-Italy Agreement,
  - Article 8 of the Nepal-Luxembourg Agreement,
  - Article 13 of the Nepal-The Netherlands Agreement,
  - Article 8 of the Nepal-United Kingdom Agreement;
- (e) Tariffs for carriage within the European Community:
- Article 12 of the Nepal-Austria Agreement,
  - Article 14 of the Nepal-France Agreement,
  - Article 8 of the Nepal-Italy Agreement,
  - Article 10 of the Nepal-Luxembourg Agreement,
  - Article 8 of the Nepal-The Netherlands Agreement,
  - Article 7 of the Nepal-United Kingdom Agreement.
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*ANNEX III***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).
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