

AGREEMENT**between the European Union and the Republic of Cape Verde on certain aspects of air services**

THE EUROPEAN UNION, hereinafter referred to as 'the Union'

of the one part, and

THE REPUBLIC OF CAPE VERDE, hereinafter referred to as 'Cape Verde',

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 Union and Cape Verde containing provisions contrary to the law of the Union,

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

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

HAVING REGARD to the agreements between the Union 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 the law of the Union,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the Union and Cape Verde, which are contrary to the law of the Union, must be brought into conformity with it in order to establish a sound legal basis for air services between the Union and Cape Verde and to preserve the continuity of such air services,

RECOGNISING that in the conclusion of any air services agreements by the Government of the Republic of Cape Verde with States that are not Member States of the Union, Cape Verde implements its own policy and rules on air carriers ownership and control,

NOTING that under the law of the Union, Union air carriers may not, in principle, conclude agreements which may affect trade between Member States of the Union 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 Union and Cape Verde 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 carriers on the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of the Union, as part of this Agreement, to increase the total volume of air traffic between the Union and Cape Verde, to affect the balance between Union air carriers and air carriers of Cape Verde, 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 Union; 'EU Treaties' shall mean the Treaty on the European Union and the Treaty on the Functioning of the European Union; 'Party' shall mean a contracting party to this agreement; 'air carrier' shall also mean airline; 'territory of the Union' shall mean territories of the Member States to which the EU Treaties apply.

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.

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, authorisation and revocation**

1. The provisions in paragraphs 2 to 4 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, and the licences and permits granted to it.

2. On receipt of a designation by a Member State, Cape Verde shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(a) the air carrier is established, in the territory of the designating Member State, under the EU Treaties and has a valid Operating Licence in accordance with the law of the Union; and

(b) 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

(c) 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. Cape Verde may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

(a) the air carrier is not established, in the territory of the designating Member State, under the EU Treaties or does not have a valid Operating Licence in accordance with the law of the Union; or

(b) 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

(c) 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.

4. In exercising its right under paragraph 3 of this Article, Cape Verde 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 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 Cape Verde under the safety provisions of the agreement between the Member State that has designated the air carrier and Cape Verde 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 of a designated air carrier of Cape Verde 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***Compatibility with competition rules**

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) require or 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 6

Annexes to the Agreement

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

Article 7

Revision or amendment

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

Article 8

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. This Agreement shall apply to all agreements and arrangements listed in Annex 1 including those that, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.

Article 9

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 in duplicate, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, all texts being equally authentic.

Съставено в Брюксел на двадесет и трети март две хиляди и единадесета година.

Hecho en Bruselas, el veintitrés de marzo de dos mil once.

V Bruselu dne dvacátého třetího března dva tisíce jedenáct.

Udfærdiget i Bruxelles den treogtyvende marts to tusind og elleve.

Geschehen zu Brüssel am dreiundzwanzigsten März zweitausendelf.

Kahe tuhande üheteistkümnenda aasta märtsikuu kahekümne kolmandal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις είκοσι τρεις Μαρτίου δύο χιλιάδες έντεκα.

Done at Brussels on the twenty-third day of March in the year two thousand and eleven.

Fait à Bruxelles, le vingt-trois mars deux mille onze.

Fatto a Bruxelles, addì ventitré marzo duemilaundici.

Briselē, divi tūkstoši vienpadsmitā gada divdesmit trešajā martā.

Priimta du tūkstančiai vienuoliktą metų kovo dvidešimt trečią dieną Briuselyje.

Kelt Brüsszelben, a kétezer-tizenegyedik év március huszonharmadik napján.

Magħmul fi Brussell, fit-tlieta u għoxrin jum ta' Marzu tas-sena elfejn u ħdax.

Gedaan te Brussel, de drieëntwintigste maart tweeduizend elf.

Sporządzono w Brukseli dnia dwudziestego trzeciego marca roku dwa tysiące jedenastego.

Feito em Bruxelas, em vinte e três de Março de dois mil e onze.

Întocmit la Bruxelles la douăzeci și trei martie două mii unsprezece.

V Bruseli dňa dvadsiateho tretieho marca dvetisícjedenášť.

V Bruslju, dne triindvajsetega marca leta dva tisoč enajst.

Tehty Brysselissä kahdentenkymmenentenäkolmantena päivänä maaliskuuta vuonna kaksituhattayksitoista.

Som skedde i Bryssel den tjugotredje mars tjugohundraelva.

За Европейския съюз
 Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Għall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen

За Република Кабо Верде
 Por la República de Cabo Verde
 Za Kapverdiskou republiku
 For Republikken Kap Verde
 Für die Republik Kap Verde
 Cabo Verde Vabariigi nimel
 Για τη Δημοκρατία του Πράσινου Ακρωτηρίου
 For the Republic of Cape Verde
 Pour la République du Cap-Vert
 Per la Repubblica del Capo Verde
 Kaboverdes Republikas vārdā –
 Žaliojo Kyšulio Respublikos vardu
 A Zöld-foki Köztársaság részéről
 Għar-Repubblika Tal-Kap Verde
 Voor de Republiek Kaapverdië
 W imieniu Republiki Zielonego Przylądka
 Pela República de Cabo Verde
 Pentru Republica Capului Verde
 Za Kapverdiskú republiku
 Za Republika Zelenortski otoki
 Kap Verden tasavallan puolesta
 För Republiken Kap Verde

ANNEX 1

LIST OF AGREEMENTS REFERRED TO IN ARTICLE 1 OF THIS AGREEMENT

- (a) Air service agreements between Cape Verde and Member States which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally:
- Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Cape Verde on Air Transport signed at Brussels on 22 June 1998, hereinafter referred to 'Cape Verde — Belgium Agreement' in Annex 2,
 - Air Transport Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Cape Verde signed at Berlin on 19 June 2001, hereinafter referred to 'Cape Verde — Germany Agreement' in Annex 2,
 - Agreement between the Government of the Italian Republic and the Government of the Republic of Cape Verde concerning Air Services signed at Praia on 7 July 1998, hereinafter referred to 'Cape Verde — Italy Agreement' in Annex 2,
 - Agreement between the Kingdom of the Netherlands and the Republic of Cape Verde for air services signed at The Hague on 21 December 1988, hereinafter referred to 'Cape Verde — Netherlands Agreement' in Annex 2,
 - Air Transport Agreement between the Portuguese Republic and the Republic of Cape Verde, signed at Cidade da Praia on 30 March 2004, hereinafter referred to 'Cape Verde — Portugal Agreement' in Annex 2,
 - Agreement between the Government of the Socialist Republic of Romania and the Government of the Republic of Cape Verde concerning Air Services signed at Bucharest on 31 August 1983, hereinafter referred to 'Cape Verde — Romania Agreement' in Annex 2,
 - Agreement between the Kingdom of Spain and the Republic of Cape Verde relating to Air Services signed at Madrid on 19 September 2002, hereinafter referred to 'Cape Verde — Spain Agreement' in Annex 2,
 - Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Cape Verde concerning Air Services signed at Praia on 9 January 2007, hereinafter referred to 'Cape Verde — UK Agreement' in Annex 2.
- (b) Air service agreements and other arrangements initialled or signed between Cape Verde and Member States which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.
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ANNEX 2

LIST OF ARTICLES IN THE AGREEMENTS LISTED IN ANNEX 1 AND REFERRED TO IN ARTICLES 2 TO 4 OF THIS AGREEMENT

(a) Designation:

- Article 3 of the Cape Verde — Belgium Agreement,
- Article 3(4) of the Cape Verde — Germany Agreement,
- Article 4 of the Cape Verde — Italy Agreement,
- Article 3 of the Cape Verde — Netherlands Agreement,
- Article 3 of the Cape Verde — Romania Agreement,
- Article 3 of the Cape Verde — Spain Agreement.

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

- Article 5 of the Cape Verde — Belgium Agreement,
- Article 3(4) and Article 4 of the Cape Verde — Germany Agreement,
- Articles 4 and 5 of the Cape Verde — Italy Agreement,
- Articles 3 and 4 of the Cape Verde — Netherlands Agreement,
- Article 4 of the Cape Verde — Romania Agreement,
- Article 4 of the Cape Verde — Spain Agreement.

(c) Safety:

- Article 12 of the Cape Verde — Germany Agreement,
- Article 10 of the Cape Verde — Italy Agreement,
- Article 15 of the Cape Verde — Portugal Agreement,
- Article 9 of the Cape Verde — Romania Agreement,
- Article 13 of the Cape Verde — Spain Agreement.

(d) Taxation of aviation fuel:

- Article 10 of the Cape Verde — Belgium Agreement,
 - Article 6 of the Cape Verde — Germany Agreement,
 - Article 6 of the Cape Verde — Italy Agreement,
 - Article 6 of the Cape Verde — Netherlands Agreement,
 - Article 11 of the Cape Verde — Romania Agreement,
 - Article 5 of the Cape Verde — Spain Agreement.
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ANNEX 3

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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