

## AGREEMENT

### **between the European Union and the Government of the Macao Special Administrative Region of the People's Republic of China on certain aspects of air services**

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

of the one part, and

THE GOVERNMENT OF THE MACAO SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, hereinafter referred to as 'the Macao SAR', having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China,

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 the Macao SAR 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 parties,

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

HAVING REGARD to the agreements between the Union and certain third parties providing for the possibility for the nationals of such third parties 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 the Macao SAR, which are contrary to the law of the Union, must be brought into conformity with that law in order to establish a sound legal basis for air services between the Union and the Macao SAR and to preserve the continuity of such air services,

NOTING that under the law of the Union air carriers cannot 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 the Macao SAR 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 in the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of this agreement to increase the total volume of air traffic between the Union and the Macao SAR, to affect the balance between Community air carriers and air carriers of the Macao SAR, or to amend 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, and 'EU Treaties' shall mean the Treaty on European Union and the Treaty on the Functioning of the European Union.
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 any 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 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, the authorisations and permissions granted to it by the Macao SAR, and the refusal, revocation, suspension or limitation of such authorisations or permissions, respectively.

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

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

In exercising its right under this paragraph, the Macao SAR 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 the Macao SAR under the safety provisions of the Agreement between the Member State that has designated the air carrier and the Macao SAR 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 the Macao SAR 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 apply this Agreement on a provisional basis 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, Swedish and Chinese languages, all texts being equally authentic.

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  
 Ghall-Unjoni Ewropea  
 Voor de Europese Unie  
 W imieniu Unii Europejskiej  
 Pentru Uniunea Europeană  
 Za Európsku úniu  
 Za Evropsko unijo  
 Euroopan unionin puolesta  
 För Europeiska unionen  
 歐洲聯盟代表  
 Pela União Europeia

За правителството на Специалния административен район на Китайската народна република Макао  
 Por el Gobierno de la Región Administrativa Especial de Macao de la República popular China  
 Za vládu Zvláštní administrativní oblasti Čínské lidové republiky Macao  
 For regeringen for Folkerepublikken Kinas særlige administrative region Macao  
 Für die Regierung der Sonderverwaltungsregion Macau der Volksrepublik China  
 Hiina Rahvavabariigi Macau erihalduspiirkonna valitsuse nimel  
 Για την κυβέρνηση της Ειδικής Διοικητικής Περιοχής Μακάο της Λαϊκής Δημοκρατίας της Κίνας  
 For the Government of the Macao Special Administrative Region of the People's Republic of China  
 Pour le gouvernement de la région administrative spéciale de Macao de la République populaire de Chine  
 Per il governo della regione amministrativa speciale di Macao della Repubblica popolare cinese  
 Ķīnas Tautas Republikas Makao Īpašās pārvaldes apgabala valdības vārdā –  
 Ypatingojo administracinio Kinijos regiono Makao vyriausybės vardu  
 A Kínai Népköztársaság Makaói Különleges Közigazgatási Területének kormánya részéről  
 Ghall-Guvern tar-Regjun Amministrattiv Speċjali tal-Makaw tar-Repubblika Popolari taċ-Ċina  
 Voor de regering van de Speciale Administratieve Regio Macau van de Volksrepubliek China  
 W imieniu Rządu Specjalnego Regionu Administracyjnego Makau Chińskiej Republiki Ludowej  
 Pentru Guvernul Regiunii Administrative Speciale Macao a Republicii Populare Chineze  
 Za vládu osobitnej administratívnej oblasti Čínskej ľudovej republiky Macao  
 Za vladu Posebne upravne regije Macao Ljudske republike Kitajske  
 Kiinan kansantasavallan erityishallintoalueen Macaon hallituksen puolesta  
 För Folkrepubliken Kinas särskilda administrativa region Macaos regering  
 中華人民共和國澳門特別行政區政府代表  
 Pelo Governo da Região Administrativa Especial de Macau da República Popular da China

## ANNEX 1

**List of agreements referred to in article 1 of this agreement**

Air service Agreements and other Arrangements between the Macao SAR and Member States as modified or amended which, at the date of signature of this Agreement, have been concluded, signed or initialled:

- Air Transport Agreement between the Austrian Federal Government and the Government of Macau done at Vienna on 4 November 1994, hereinafter referred to as 'Macao SAR-Austria Agreement' in Annex 2;
- Agreement between the Government of the Kingdom of Belgium and the Government of Macau on air transport done at Brussels on 16 November 1994, hereinafter referred to as 'Macao SAR-Belgium Agreement' in Annex 2;
- Air Services Agreement between the Government of the Czech Republic and the Government of the Macao Special Administrative Region of the People's Republic of China done at Prague on 25 September 2001, hereinafter referred to as 'Macao SAR-Czech Republic Agreement' in Annex 2;
- Air Services Agreement between the Government of the Kingdom of Denmark and the Government of Macau done at Oslo on 12 December 1996, hereinafter referred to as 'Macao SAR-Denmark Agreement' in Annex 2;
- Air Services Agreement between the Government of the Republic of Finland and the Government of Macau done at Macau on 9 September 1994, hereinafter referred to as 'Macao SAR-Finland Agreement' in Annex 2;
- Air Services Agreement between the Government of the French Republic and the Government of the Macao Special Administrative Region of the People's Republic of China done at Paris on 23 May 2006, hereinafter referred to as 'Macao SAR-France Agreement' in Annex 2;
- Air Transport Agreement between the Government of the Federal Republic of Germany and the Government of Macau done at Bonn on 5 September 1996, hereinafter referred to as 'Macao SAR-Germany Agreement' in Annex 2;
- Air Services Agreement between the Government of the Hellenic Republic and the Government of the Macao Special Administrative Region of the People's Republic of China initialled at Macau on 17 February 2006, hereinafter referred to as 'Macao SAR-Greece Agreement' in Annex 2;
- Agreement between the Government of the Grand Duchy of Luxembourg and the Government of Macau on air services done at Macau on 14 December 1994, hereinafter referred to as 'Macao SAR-Luxembourg Agreement' in Annex 2;
- Agreement between the Kingdom of the Netherlands and Macau for Air Services between and beyond their respective Areas done at The Hague on 16 November 1994, hereinafter referred to as 'Macao SAR-Netherlands Agreement' in Annex 2;
- Agreement between the Government of the Republic of Poland and the Government of Macau concerning air services done at Warsaw on 22 October 1999, hereinafter referred to as 'Macao SAR-Poland Agreement' in Annex 2;
- Air Transport Agreement between the Government of the Portuguese Republic and the Government of Macau done at Lisbon on 31 August 1995, hereinafter referred to as 'Macao SAR-Portugal Agreement' in Annex 2;
- Air Services Agreement between the Government of the Slovak Republic and the Government of the Macao Special Administrative Region of the People's Republic of China initialled at Macau on 3 March 2006, hereinafter referred to as 'Macao SAR-Slovakia Agreement' in Annex 2;
- Air Services Agreement between the Government of the Kingdom of Sweden and the Government of Macau done at Oslo on 12 December 1996, hereinafter referred to as 'Macao SAR-Sweden Agreement' in Annex 2;
- Agreement between the Government of the Macao Special Administrative Region of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland concerning air services done at London on 19 January 2004, hereinafter referred to as 'Macao SAR-United Kingdom Agreement' in Annex 2.

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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 by a Member State:
- Article 4 of the Macao SAR-Austria Agreement;
  - Article 3 of the Macao SAR-Czech Republic Agreement;
  - Article 4 of the Macao SAR-Denmark Agreement;
  - Article 4(4) of the Macao SAR-Germany Agreement;
  - Article 4 of the Macao SAR-Luxembourg Agreement;
  - Article 4 of the Macao SAR-Poland Agreement;
  - Article 4 of the Macao SAR-Portugal Agreement;
  - Article 4 of the Macao SAR-Sweden Agreement.
- (b) Refusal, revocation, suspension or limitation of authorisations or permissions:
- Article 5 of the Macao SAR-Austria Agreement;
  - Article 6 of the Macao SAR-Belgium Agreement;
  - Article 4 of the Macao SAR-Czech Republic Agreement;
  - Article 5 of the Macao SAR-Denmark Agreement;
  - Article 4 of the Macao SAR-Finland Agreement;
  - Article 4(4) and Article 5 of the Macao SAR-Germany Agreement
  - Article 5 of the Macao SAR-Luxembourg Agreement;
  - Article 5 of the Macao SAR-Netherlands Agreement;
  - Article 5 of the Macao SAR-Poland Agreement;
  - Article 6 of the Macao SAR-Portugal Agreement;
  - Article 5 of the Macao SAR-Sweden Agreement.
- (c) Safety:
- Article 7 of the Macao SAR-Czech Republic Agreement;
  - Article 9 of the Macao SAR-France Agreement;
  - Article 7 of the Macao SAR-Greece Agreement;
  - Article 7 of the Macao SAR-Luxembourg Agreement;
  - Article 6 of the Macao SAR-Slovakia Agreement;
  - Article 14 of the Macao SAR-United Kingdom Agreement.
- (d) Taxation of aviation fuel:
- Article 8 of the Macao SAR-Austria Agreement;
  - Article 11 of the Macao SAR-Belgium Agreement;
  - Article 8 of the Macao SAR-Czech Republic Agreement;
  - Article 7 of the Macao SAR-Denmark Agreement;
  - Article 6 of the Macao SAR-Finland Agreement;
  - Article 7 of the Macao SAR-Germany Agreement;

- Article 9 of the Macao SAR-Luxembourg Agreement;
  - Article 10 of the Macao SAR-Netherlands Agreement;
  - Article 7 of the Macao SAR-Poland Agreement;
  - Article 10 of the Macao SAR-Portugal Agreement;
  - Article 7 of the Macao SAR-Sweden Agreement;
  - Article 8 of the Macao SAR-United Kingdom 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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