



European Union No. 5 (2011)

Air Transport Agreement

between the European Community and its Member States, of the one part, and
the United States of America, of the other part

Brussels, 25 April 2007

with

Amending Protocol

Luxembourg, 24 June 2010

[The Agreement is not yet in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2011*



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This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780101813723

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID: 2441221 07/11 13465 19585

Printed on paper containing 35% recycled fibre content minimum.

**AIR TRANSPORT AGREEMENT BETWEEN THE EUROPEAN
COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART AND THE
UNITED STATES OF AMERICA, OF THE OTHER PART**

THE UNITED STATES OF AMERICA (hereinafter the "United States"),

of the one part; and

THE REPUBLIC OF AUSTRIA,

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE REPUBLIC OF CYPRUS,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE REPUBLIC OF ESTONIA,

THE REPUBLIC OF FINLAND,

THE FRENCH REPUBLIC,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE REPUBLIC OF HUNGARY,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE KINGDOM OF SPAIN,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

being parties to the Treaty establishing the European Community and being Member States of the European Union (hereinafter the "Member States"),

and the EUROPEAN COMMUNITY,

of the other part;

DESIRING to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

DESIRING to facilitate the expansion of international air transport opportunities, including through the development of air transportation networks to meet the needs of passengers and shippers for convenient air transportation services;

DESIRING to make it possible for airlines to offer the traveling and shipping public competitive prices and services in open markets;

DESIRING to have all sectors of the air transport industry, including airline workers, benefit in a liberalized agreement;

DESIRING to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

NOTING the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944¹;

RECOGNISING that government subsidies may adversely affect airline competition and may jeopardize the basic objectives of this Agreement;

¹ Treaty Series No. 08 (1953) Cmnd 8742

AFFIRMING the importance of protecting the environment in developing and implementing international aviation policy;

NOTING the importance of protecting consumers, including the protections afforded by the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999¹;

INTENDING to build upon the framework of existing agreements with the goal of opening access to markets and maximizing benefits for consumers, airlines, labor, and communities on both sides of the Atlantic;

RECOGNISING the importance of enhancing the access of their airlines to global capital markets in order to strengthen competition and promote the objectives of this Agreement;

INTENDING to establish a precedent of global significance to promote the benefits of liberalization in this crucial economic sector;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. "Agreement" means this Agreement, its Annexes and Appendix, and any amendments thereto;
2. "Air transportation" means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire;
3. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
 - (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both the United States and the Member State or Member States as is relevant to the issue in question, and
 - (b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both the United States and the Member State or Member States as is relevant to the issue in question;

¹ Treaty Series No. 044 (2004) Cm 6369

4. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;
5. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;
6. "Party" means either the United States or the European Community and its Member States;
7. "Price" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
8. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
9. "Territory" means, for the United States, the land areas (mainland and islands), internal waters and territorial sea under its sovereignty or jurisdiction, and, for the European Community and its Member States, the land areas (mainland and islands), internal waters and territorial sea in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and any successor instrument; application of this Agreement to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated, and to the continuing suspension of Gibraltar Airport from European Community aviation measures existing as at 18 September 2006 as between Member States, in accordance with the Ministerial statement on Gibraltar Airport agreed in Córdoba on 18 September 2006; and
10. "User charge" means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

ARTICLE 2

Fair and Equal Opportunity

Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.

ARTICLE 3

Grant of Rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:
 - (a) the right to fly across its territory without landing;
 - (b) the right to make stops in its territory for non-traffic purposes;
 - (c) the right to perform international air transportation between points on the following routes:
 - (i) for airlines of the United States (hereinafter "U.S. airlines"), from points behind the United States via the United States and intermediate points to any point or points in any Member State or States and beyond; and for all-cargo service, between any Member State and any point or points (including in any other Member States);
 - (ii) for airlines of the European Community and its Member States (hereinafter "Community airlines"), from points behind the Member States via the Member States and intermediate points to any point or points in the United States and beyond; for all-cargo service, between the United States and any point or points; and, for combination services, between any point or points in the United States and any point or points in any member of the European Common Aviation Area (hereinafter the "ECAA") as of the date of signature of this Agreement; and
 - (d) the rights otherwise specified in this Agreement.
2. Each airline may on any or all flights and at its option:
 - (a) operate flights in either or both directions;
 - (b) combine different flight numbers within one aircraft operation;
 - (c) serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;
 - (d) omit stops at any point or points;
 - (e) transfer traffic from any of its aircraft to any of its other aircraft at any point;
 - (f) serve points behind any point in its territory with or without change of

aircraft or flight number and hold out and advertise such services to the public as through services;

- (g) make stopovers at any points whether within or outside the territory of either Party;
- (h) carry transit traffic through the other Party's territory; and
- (i) combine traffic on the same aircraft regardless of where such traffic originates;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

3. The provisions of paragraph 1 of this Article shall apply subject to the requirements that:

- (a) for U.S. airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States, and
- (b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and any member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

4. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party, nor shall it require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party, except as may be required for customs, technical, operational, or environmental (consistent with Article 15) reasons under uniform conditions consistent with Article 15 of the Convention.

5. Any airline may perform international air transportation without any limitation as to change, at any point, in type or number of aircraft operated; provided that, (a) for U.S. airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States, and (b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and a member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

6. Nothing in this Agreement shall be deemed to confer on:

- (a) U.S. airlines the right to take on board, in the territory of any Member State, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that Member State;

- (b) Community airlines the right to take on board, in the territory of the United States, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of the United States.

7. Community airlines' access to U.S. Government procured transportation shall be governed by Annex 3.

ARTICLE 4

Authorization

On receipt of applications from an airline of one Party, in the form and manner prescribed for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- (a) for a U.S. airline, substantial ownership and effective control of that airline are vested in the United States, U.S. nationals, or both, and the airline is licensed as a U.S. airline and has its principal place of business in U.S. territory;
- (b) for a Community airline, substantial ownership and effective control of that airline are vested in a Member State or States, nationals of such a state or states, or both, and the airline is licensed as a Community airline and has its principal place of business in the territory of the European Community;
- (c) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
- (d) the provisions set forth in Article 8 (Safety) and Article 9 (Security) are being maintained and administered.

ARTICLE 5

Revocation of Authorization

1. Either Party may revoke, suspend or limit the operating authorizations or technical permissions or otherwise suspend or limit the operations of an airline of the other Party where:

- (a) for a U.S. airline, substantial ownership and effective control of that

airline are not vested in the United States, U.S. nationals, or both, or the airline is not licensed as a U.S. airline or does not have its principal place of business in U.S. territory;

- (b) for a Community airline, substantial ownership and effective control of that airline are not vested in a Member State or States, nationals of such a state or states, or both, or the airline is not licensed as a Community airline or does not have its principal place of business in the territory of the European Community; or
- (c) that airline has failed to comply with the laws and regulations referred to in Article 7 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1(c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 8 (Safety) or Article 9 (Security).

ARTICLE 6

Additional Matters related to Ownership, Investment, and Control

Notwithstanding any other provision in this Agreement, the Parties shall implement the provisions of Annex 4 in their decisions under their respective laws and regulations concerning ownership, investment and control.

ARTICLE 7

Application of Laws

1. The laws and regulations of a 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 territory, shall be applied to the aircraft utilized by the airlines of the other Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Party.

2. While entering, within, or leaving the territory of one Party, the laws and regulations applicable within that territory relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

ARTICLE 8

Safety

1. The responsible authorities of the Parties shall recognize as valid, for the purposes of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by each other and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. The responsible authorities may, however, refuse to recognize as valid for purposes of flight above their own territory, certificates of competency and licenses granted to or validated for their own nationals by such other authorities.

2. The responsible authorities of a Party may request consultations with other responsible authorities concerning the safety standards maintained by those authorities relating to aeronautical facilities, aircrews, aircraft, and operation of the airlines overseen by those authorities. Such consultations shall take place within 45 days of the request unless otherwise agreed. If following such consultations, the requesting responsible authorities find that those authorities do not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the requesting responsible authorities shall notify those authorities of such findings and the steps considered necessary to conform with these minimum standards, and those authorities shall take appropriate corrective action. The requesting responsible authorities reserve the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines for which those authorities provide safety oversight in the event those authorities do not take such appropriate corrective action within a reasonable time and to take immediate action as to such airline or airlines if essential to prevent further noncompliance with the duty to maintain and administer the aforementioned standards and requirements resulting in an immediate threat to flight safety.

3. The European Commission shall simultaneously receive all requests and notifications under this Article.

4. Nothing in this Article shall prevent the responsible authorities of the Parties from conducting safety discussions, including those relating to the routine application of safety standards and requirements or to emergency situations that may arise from time to time.

ARTICLE 9

Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil

aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the following agreements: the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963¹, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970², the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971³, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal February 24, 1988⁴.

2. The Parties shall provide upon request all necessary assistance to each other to address any threat to the security of civil aviation, including the prevention of acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registries, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Party shall ensure that effective measures are taken within its territory to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading; and that those measures are adjusted to meet increased threats to the security of civil aviation. Each Party agrees that the security provisions required by the other Party for departure from and while within the territory of that other Party must be observed. Each Party shall give positive consideration to any request from the other Party for special security measures to meet a particular threat.

5. With full regard and mutual respect for each other's sovereignty, a Party may adopt security measures for entry into its territory. Where possible, that Party shall take into account the security measures already applied by the other Party and any views that the other Party may offer. Each Party recognizes, however, that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.

6. A Party may take emergency measures including amendments to meet a specific security threat. Such measures shall be notified immediately to the responsible authorities of the other Party.

7. The Parties underline the importance of working towards compatible practices

¹ Treaty Series No. 126 (1969) Cmnd 4230

² Treaty Series No. 39 (1972) Cmnd 4956

³ Treaty Series No. 10 (1974) Cmnd 5524

⁴ Treaty Series No. 20 (1991) Cm 1470

and standards as a means of enhancing air transport security and minimising regulatory divergence. To this end, the Parties shall fully utilize and develop existing channels for the discussion of current and proposed security measures. The Parties expect that the discussions will address, among other issues, new security measures proposed or under consideration by the other Party, including the revision of security measures occasioned by a change in circumstances; measures proposed by one Party to meet the security requirements of the other Party; possibilities for the more expeditious adjustment of standards with respect to aviation security measures; and compatibility of the requirements of one Party with the legislative obligations of the other Party. Such discussions should serve to foster early notice and prior discussion of new security initiatives and requirements.

8. Without prejudice to the need to take immediate action in order to protect transportation security, the Parties affirm that when considering security measures, a Party shall evaluate possible adverse effects on international air transportation and, unless constrained by law, shall take such factors into account when it determines what measures are necessary and appropriate to address those security concerns.

9. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

10. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the responsible authorities of that Party may request immediate consultations with the responsible authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

11. Separate from airport assessments undertaken to determine conformity with the aviation security standards and practices referred to in paragraph 3 of this Article, a Party may request the cooperation of the other Party in assessing whether particular security measures of that other Party meet the requirements of the requesting Party. The responsible authorities of the Parties shall coordinate in advance the airports to be assessed and the dates of assessment and establish a procedure to address the results of such assessments. Taking into account the results of the assessments, the requesting Party may decide that security measures of an equivalent standard are applied in the territory of the other Party in order that transfer passengers, transfer baggage, and/or transfer cargo may be exempted from re-screening in the territory of the requesting Party. Such a decision shall be communicated to the other Party.

ARTICLE 10

Commercial Opportunities

1. The airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation and related activities.
2. The airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff who are required to support the provision of air transportation.
3. (a) Without prejudice to subparagraph (b) below, each airline shall have in relation to groundhandling in the territory of the other Party:
 - (i) the right to perform its own groundhandling ("self-handling") or, at its option
 - (ii) the right to select among competing suppliers that provide groundhandling services in whole or in part where such suppliers are allowed market access on the basis of the laws and regulations of each Party, and where such suppliers are present in the market.
- (b) The rights under (i) and (ii) in subparagraph (a) above shall be subject only to specific constraints of available space or capacity arising from the need to maintain safe operation of the airport. Where such constraints preclude self-handling and where there is no effective competition between suppliers that provide groundhandling services, all such services shall be available on both an equal and an adequate basis to all airlines; prices of such services shall not exceed their full cost including a reasonable return on assets, after depreciation.
4. Any airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and/or, at the airline's discretion, through its sales agents or other intermediaries appointed by the airline. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each airline shall have the right to convert and remit from the territory of the other Party to its home territory and, except where inconsistent with generally applicable law or regulation, the country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

6. The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

7. In operating or holding out services under the Agreement, any airline of a Party may enter into cooperative marketing arrangements, such as blocked-space or code-sharing arrangements, with:

- (a) any airline or airlines of the Parties;
- (b) any airline or airlines of a third country; and
- (c) a surface (land or maritime) transportation provider of any country;

provided that (i) all participants in such arrangements hold the appropriate authority and (ii) the arrangements meet the conditions prescribed under the laws and regulations normally applied by the Parties to the operation or holding out of international air transportation.

8. The airlines of each Party shall be entitled to enter into franchising or branding arrangements with companies, including airlines, of either Party or third countries, provided that the airlines hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Annex 5 shall apply to such arrangements.

9. The airlines of each Party may enter into arrangements for the provision of aircraft with crew for international air transportation with:

- (a) any airlines or airlines of the Parties; and
- (b) any airlines or airlines of a third country;

provided that all participants in such arrangements hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Neither Party shall require an airline of either Party providing the aircraft to hold traffic rights under this Agreement for the routes on which the aircraft will be operated.

10. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties, or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform

their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

ARTICLE 11

Customs Duties and Charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (a) imposed by the national authorities or the European Community, and (b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- (a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;
- (b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation;
- (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and
- (d) printed matter, as provided for by the customs legislation of each Party, introduced into or supplied in the territory of one Party and taken on board for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used

on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

5. Nothing in this Agreement shall prevent either Party from imposing taxes, levies, duties, fees or charges on goods sold other than for consumption on board to passengers during a sector of an air service between two points within its territory at which embarkation or disembarkation is permitted.

6. In the event that two or more Member States envisage applying to the fuel supplied to aircraft of U.S. airlines in the territories of such Member States for flights between such Member States any waiver of the exemption contained in Article 14.1 (b) of Council Directive 2003/96/EC of 27 October 2003, the Joint Committee shall consider that issue, in accordance with paragraph 4(e) of Article 18.

7. A Party may request the assistance of the other Party, on behalf of its airline or airlines, in securing an exemption from taxes, duties, charges and fees imposed by state and local governments or authorities on the goods specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the cost of providing the service. In response to such a request, the other Party shall bring the views of the requesting Party to the attention of the relevant governmental unit or authority and urge that those views be given appropriate consideration.

ARTICLE 12

User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for

which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

ARTICLE 13

Pricing

1. Prices for air transportation services operated pursuant to this Agreement shall be established freely and shall not be subject to approval, nor may they be required to be filed.

2. Notwithstanding paragraph 1:

- (a) The introduction or continuation of a price proposed to be charged or charged by a U.S. airline for international air transportation between a point in one Member State and a point in another Member State shall be consistent with Article 1(3) of Council Regulation (EEC) 2409/92 of 23 July 1992, or a not more restrictive successor regulation.
- (b) Under this paragraph, the airlines of the Parties shall provide immediate access, on request, to information on historical, existing, and proposed prices to the responsible authorities of the Parties in a manner and format acceptable to those authorities.

ARTICLE 14

Government Subsidies and Support

1. The Parties recognize that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.

2. If one Party believes that a government subsidy or support being considered or provided by the other Party for or to the airlines of that other Party would adversely affect or is adversely affecting that fair and equal opportunity of the airlines of the first Party to compete, it may submit observations to that Party. Furthermore, it may request a meeting of the Joint Committee as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

3. Each Party may approach responsible governmental entities in the territory of the other Party, including entities at the state, provincial or local level, if it believes that a subsidy or support being considered or provided by such entities will have the adverse competitive effects referred to in paragraph 2. If a Party decides to make such direct contact it shall inform promptly the other Party through diplomatic channels. It may also request a meeting of the Joint Committee.

4. Issues raised under this Article could include, for example, capital injections, cross-subsidization, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.

ARTICLE 15

Environment

1. The Parties recognize the importance of protecting the environment when developing and implementing international aviation policy. The Parties recognize that the costs and benefits of measures to protect the environment must be carefully weighed in developing international aviation policy.

2. When a Party is considering proposed environmental measures, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects.

3. When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organization in Annexes to the Convention shall be followed except where differences have been filed. The Parties shall apply any environmental measures affecting air services under this Agreement in accordance with Article 2 and 3(4) of this Agreement.

4. If one Party believes that a matter involving aviation environmental protection raises concerns for the application or implementation of this Agreement, it may request a meeting of the Joint Committee, as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

ARTICLE 16

Consumer Protection

The Parties affirm the importance of protecting consumers, and either Party may request a meeting of the Joint Committee to discuss consumer protection issues that the requesting Party identifies as significant.

ARTICLE 17

Computer Reservation Systems

1. Computer Reservation Systems (CRS) vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party provided the CRS complies with any relevant regulatory requirements of the other Party.
2. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to CRS displays (including edit and display parameters), operations, practices, sales, or ownership than those imposed on its own CRS vendors.
3. Owners/Operators of CRSs of one Party that comply with the relevant regulatory requirements of the other Party, if any, shall have the same opportunity to own CRSs within the territory of the other Party as do owners/operators of that Party.

ARTICLE 18

The Joint Committee

1. A Joint Committee consisting of representatives of the Parties shall meet at least once a year to conduct consultations relating to this Agreement and to review its implementation.
2. A Party may also request a meeting of the Joint Committee to seek to resolve questions relating to the interpretation or application of this Agreement. However, with respect to Article 20 or Annex 2, the Joint Committee may consider questions only relating to the refusal by either Participant to implement the commitments undertaken, and the impact of competition decisions on the application of this Agreement. Such a meeting shall begin at the earliest possible date, but not later than 60 days from the date of receipt of the request, unless otherwise agreed.
3. The Joint Committee shall review, no later than at its first annual meeting and thereafter as appropriate, the overall implementation of the Agreement, including any effects of aviation infrastructure constraints on the exercise of rights provided for in

Article 3, the effects of security measures taken under Article 9, the effects on the conditions of competition, including in the field of Computer Reservation Systems, and any social effects of the implementation of the Agreement.

4. The Joint Committee shall also develop cooperation by:

- (a) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), and consumer protection;
- (b) considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate;
- (c) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;
- (d) maintaining an inventory of issues regarding government subsidies or support raised by either Party in the Joint Committee;
- (e) making decisions, on the basis of consensus, concerning any matters with respect to application of paragraph 6 of Article 11;
- (f) developing, within one year of provisional application, approaches to regulatory determinations with regard to airline fitness and citizenship, with the goal of achieving reciprocal recognition of such determinations;
- (g) developing a common understanding of the criteria used by the Parties in making their respective decisions in cases concerning airline control, to the extent consistent with confidentiality requirements;
- (h) fostering consultation, where appropriate, on air transport issues dealt with in international organizations and in relations with third countries, including consideration of whether to adopt a joint approach;
- (i) taking, on the basis of consensus, the decisions to which paragraph 3 of Article 1 of Annex 4 and paragraph 3 of Article 2 of Annex 4 refer.

5. The Parties share the goal of maximizing the benefits for consumers, airlines, labor, and communities on both sides of the Atlantic by extending this Agreement to include third countries. To this end, the Joint Committee shall work to develop a proposal regarding the conditions and procedures, including any necessary amendments to this Agreement, that would be required for third countries to accede to this Agreement.

6. The Joint Committee shall operate on the basis of consensus.

ARTICLE 19

Arbitration

1. Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 20 or under Annex 2, that is not resolved by a meeting of the Joint Committee may be referred to a person or body for decision by agreement of the Parties. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.

2. Unless the Parties otherwise agree, arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

- (a) Within 20 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 45 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the tribunal.
- (b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days of receipt of that request. If the President of the Council of the International Civil Aviation Organization is a national of either the United States or a Member State, the most senior Vice President of that Council who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. At the request of a Party, the tribunal, once formed, may ask the other Party to implement interim relief measures pending the tribunal's final determination. At the direction of the tribunal or at the request of either Party, a conference shall be held not later than 15 days after the tribunal is fully constituted for the tribunal to determine the precise issues to be arbitrated and the specific procedures to be followed.

4. Except as otherwise agreed or as directed by the tribunal:

- (a) The statement of claim shall be submitted within 30 days of the time the tribunal is fully constituted, and the statement of defense shall be submitted 40 days thereafter. Any reply by the claimant shall be submitted within 15 days of the submission of the statement of defense. Any reply by the respondent shall be submitted within 15 days thereafter.
- (b) The tribunal shall hold a hearing at the request of either Party, or may hold a hearing on its own initiative, within 15 days after the last reply is

filed.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, within 30 days after the last reply is submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 10 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal's decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take proportional measures in accordance with international law.

8. The expenses of the tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization, or by any Vice President of that Council, in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the tribunal.

ARTICLE 20

Competition

1. The Parties recognize that competition among airlines in the transatlantic market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not individual competitors.

2. The Parties recognize that differences may arise concerning the application of their respective competition regimes to international aviation affecting the transatlantic market, and that competition among airlines in that market might be fostered by minimising those differences.

3. The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results and to minimise differences in approach with respect to their respective competition reviews of inter-carrier agreements. Consequently, the Parties shall further this cooperation to the extent feasible, taking into account the different responsibilities, competencies and procedures of the authorities, in accordance with Annex 2.

4. The Joint Committee shall be briefed annually on the results of the cooperation under Annex 2.

ARTICLE 21

Second Stage Negotiations

1. The Parties share the goal of continuing to open access to markets and to maximise benefits for consumers, airlines, labor, and communities on both sides of the Atlantic, including the facilitation of investment so as to better reflect the realities of a global aviation industry, the strengthening of the transatlantic air transportation system, and the establishment of a framework that will encourage other countries to open their own air services markets. The Parties shall begin negotiations not later than 60 days after the date of provisional application of this Agreement, with the goal of developing the next stage expeditiously.

2. To that end, the agenda for the second stage negotiations shall include the following items of priority interest to one or both Parties:

- (a) further liberalization of traffic rights;
- (b) additional foreign investment opportunities;
- (c) effect of environmental measures and infrastructure constraints on the exercise of traffic rights;
- (d) further access to Government-financed air transportation; and
- (e) provision of aircraft with crew.

3. The Parties shall review their progress towards a second stage agreement no later than 18 months after the date when the negotiations are due to start in accordance with paragraph 1. If no second stage agreement has been reached by the Parties within twelve months of the start of the review, each Party reserves the right thereafter to suspend rights specified in this Agreement. Such suspension shall take effect no sooner than the start of the International Air Transport Association (IATA) traffic season that commences no less than twelve months after the date on which notice of suspension is given.

ARTICLE 22

Relationship to Other Agreements

1. During the period of provisional application pursuant to Article 25 of this Agreement, the bilateral agreements listed in section 1 of Annex 1, shall be suspended, except to the extent provided in section 2 of Annex 1.

2. Upon entry into force pursuant to Article 26 of this Agreement, this Agreement shall supersede the bilateral agreements listed in section 1 of Annex 1, except to the extent provided in section 2 of Annex 1.

3. If the Parties become parties to a multilateral agreement, or endorse a decision adopted by the International Civil Aviation Organization or another international organization, that addresses matters covered by this Agreement, they shall consult in the Joint Committee to determine whether this Agreement should be revised to take into account such developments.

ARTICLE 23

Termination

Either Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

ARTICLE 24

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 25

Provisional Application

Pending entry into force pursuant to Article 26:

- 1) The Parties agree to apply this Agreement from 30 March 2008.
- 2) Either Party may at any time give notice in writing through diplomatic channels to the other Party of a decision to no longer apply this Agreement. In that event, application shall cease at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification, unless the notice is withdrawn by agreement of the Parties before the end of this period.

ARTICLE 26

Entry into Force

This Agreement shall enter into force one month after the date of the later note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed. For purposes of this exchange, the United States shall deliver to the European Community the diplomatic note to the European Community and its Member States, and the European Community shall deliver to the United States the diplomatic note or notes from the European Community and its Member States. The diplomatic note or notes from the European Community and its Member States shall contain communications from each Member State confirming that its necessary procedures for entry into force of this Agreement have been completed.

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

DONE at Brussels on the twenty-fifth day of April, 2007 and at Washington on the thirtieth day of April, 2007, in duplicate.

[Here follows the signatures]

SECTION 1

As provided in Article 22 of this Agreement, the following bilateral agreements between the United States and Member States shall be suspended or superseded by this Agreement:

- a. The Republic of Austria: Air services agreement, signed at Vienna March 16, 1989; amended June 14, 1995.
- b. The Kingdom of Belgium: Air transport agreement, effected by exchange of notes at Washington October 23, 1980; amended September 22 and November 12, 1986; amended November 5, 1993 and January 12, 1994.

(amendment concluded on September 5, 1995 (provisionally applied).)

- c. The Republic of Bulgaria: Civil aviation security Agreement, signed at Sofia April 24, 1991.
- d. The Czech Republic: Air transport agreement, signed at Prague September 10, 1996; amended June 4, 2001 and February 14, 2002.
- e. The Kingdom of Denmark: Agreement relating to air transport services, effected by exchange of notes at Washington December 16, 1944; amended August 6, 1954; amended June 16, 1995.
- f. The Republic of Finland: Air transport agreement, signed at Helsinki March 29, 1949; related protocol signed May 12, 1980; agreement amending 1949 agreement and 1980 protocol concluded June 9, 1995.
- g. The French Republic: Air transport agreement, signed at Washington June 18, 1998; amended October 10, 2000; amended January 22, 2002.
- h. The Federal Republic of Germany: Air transport agreement and exchanges of notes, signed at Washington July 7, 1955; amended April 25, 1989.

(related protocol concluded November 1, 1978; related agreement concluded May 24, 1994; protocol amending the 1955 agreement concluded on May 23, 1996; agreement amending the 1996 protocol concluded on October 10, 2000 (all provisionally applied).)

- i. The Hellenic Republic: Air transport agreement, signed at Athens July 31, 1991; extended until July 31, 2007 by exchange of notes of June 22 and 28, 2006.
- j. The Republic of Hungary: Air transport agreement and memorandum of understanding, signed at Budapest July 12, 1989; extended until July 12, 2007

by exchange of notes of July 11 and 20, 2006.

- k. Ireland: Agreement relating to air transport services, effected by exchange of notes at Washington February 3, 1945; amended January 25, 1988 and September 29, 1989; amended July 25 and September 6, 1990.

(Memorandum of consultations, signed at Washington October 28, 1993 (provisionally applied).)

- l. The Italian Republic: Air transport agreement, with memorandum and exchange of notes, signed at Rome June 22, 1970; amended October 25, 1988; related memorandum of understanding signed September 27, 1990; amendment of 1970 agreement and 1990 MOU concluded November 22 and December 23, 1991; amendment of 1970 agreement and 1990 MOU concluded May 30 and October 21, 1997; agreement supplementing the 1970 agreement concluded December 30, 1998 and February 2, 1999.

(Protocol amending the 1970 agreement concluded December 6, 1999 (provisionally applied).)

- m. The Grand Duchy of Luxembourg: Air transport agreement, signed at Luxembourg August 19, 1986; amended June 6, 1995; amended July 13 and 21, 1998.

- n. Malta: Air transport agreement, signed at Washington October 12, 2000.

- o. The Kingdom of the Netherlands: Air transport agreement, signed at Washington April 3, 1957; protocol amending the 1957 agreement concluded on March 31, 1978; amendment of 1978 protocol concluded June 11, 1986; amendment of 1957 agreement concluded October 13 and December 22, 1987; amendment of 1957 agreement concluded January 29 and March 13, 1992; amendment of 1957 agreement and 1978 protocol concluded October 14, 1992.

- p. The Republic of Poland: Air transport agreement, signed at Warsaw June 16, 2001.

- q. The Portuguese Republic: Air transport agreement, signed at Lisbon May 30, 2000.

- r. Romania: Air transport agreement, signed at Washington July 15, 1998.

- s. The Slovak Republic: Air transport agreement, signed at Bratislava January 22, 2001.

- t. The Kingdom of Spain: Air transport agreement signed at Madrid February 20, 1973; related agreement of February 20, March 31 and April 7, 1987; amendment of 1973 agreement concluded May 31, 1989; amendment of 1973 agreement concluded November 27, 1991.

- u. The Kingdom of Sweden: Agreement relating to air transport services, effected by exchange of notes at Washington December 16, 1944; amended August 6, 1954; amended June 16, 1995.
- v. The United Kingdom of Great Britain and Northern Ireland: Agreement concerning air services, and exchange of letters, signed at Bermuda July 23, 1977¹; agreement relating to North Atlantic air fares, concluded March 17, 1978; agreement amending the 1977 agreement, concluded April 25, 1978²; agreement modifying and extending the 1978 agreement relating to North Atlantic air fares, concluded November 2 and 9, 1978; agreement amending the 1977 agreement, concluded December 4, 1980³; agreement amending the 1977 agreement, concluded February 20, 1985⁴; agreement amending Article 7, Annex 2, and Annex 5 of the 1977 agreement, concluded May 25, 1989⁵; agreement concerning amendments of the 1977 agreement, termination of the US/UK Arbitration Concerning Heathrow Airport User Charges and the request for arbitration made by the United Kingdom in its embassy's note no. 87 of 13 October 1993 and settlement of the matters which gave rise to those proceedings, concluded March 11, 1994⁶; agreement amending the 1977 agreement, concluded March 27, 1997⁷.

(Arrangements, being provisionally applied, contained in the memorandum of consultations dated September 11, 1986; arrangements contained in the exchange of letters dated July 27, 1990; arrangements contained in the memorandum of consultations of March 11, 1991; arrangements contained in the exchange of letters dated October 6, 1994; arrangements contained in the memorandum of consultations of June 5, 1995; arrangements contained in the exchange of letters dated March 31 and April 3, 2000 (all provisionally applied).)

SECTION 2

Notwithstanding section 1 of this Annex, for areas that are not encompassed within the definition of "territory" in Article 1 of this Agreement, the agreements in paragraphs (e) (Denmark-United States), (g) (France-United States), and (v) (United Kingdom-United States) of that section shall continue to apply, according to their terms.

¹ Treaty Series No. 076 (1977) Cmnd 7016

² Treaty Series No. 085 (1978) Cmnd 7332

³ Treaty Series No. 021 (1981) Cmnd 8222

⁴ Treaty Series No. 009 (1986) Cmnd 9720

⁵ Treaty Series No. 041 (1989) Cm 792

⁶ Treaty Series No. 057 (1994) Cm 2711

⁷ Treaty Series No. 034 (1997) Cm 3673

SECTION 3

Notwithstanding Article 3 of this Agreement, U.S. airlines shall not have the right to provide all-cargo services, that are not part of a service that serves the United States, to or from points in the Member States, except to or from points in the Czech Republic, the French Republic, the Federal Republic of Germany, the Grand Duchy of Luxembourg, Malta, the Republic of Poland, the Portuguese Republic, and the Slovak Republic.

SECTION 4

Notwithstanding any other provisions of this Agreement, this section shall apply to scheduled and charter combination air transportation between Ireland and the United States with effect from the beginning of IATA Winter season 2006/2007 until the end of the IATA Winter season 2007/2008.

- a.
 - (i) Each U.S. and Community airline may operate 3 non-stop flights between the United States and Dublin for each non-stop flight that the airline operates between the United States and Shannon. This entitlement for non-stop Dublin flights shall be based on an average of operations over the entire three-season transitional period. A flight shall be deemed to be a non-stop Dublin, or a non-stop Shannon, flight, according to the first point of entry into, or the last point of departure from, Ireland.
 - (ii) The requirement to serve Shannon in subparagraph (a)(i) of this Section shall terminate if any airline inaugurates scheduled or charter combination service between Dublin and the United States, in either direction, without operating at least one non-stop flight to Shannon for every three non-stop flights to Dublin, averaged over the transition period.
- b. For services between the United States and Ireland, Community airlines may serve only Boston, New York, Chicago, Los Angeles, and 3 additional points in the United States, to be notified to the United States upon selection or change. These services may operate via intermediate points in other Member States or in third countries.
- c. Code sharing shall be authorized between Ireland and the United States only via other points in the European Community. Other code-share arrangements will be considered on the basis of comity and reciprocity.

**CONCERNING COOPERATION WITH RESPECT TO COMPETITION
ISSUES IN THE AIR TRANSPORTATION INDUSTRY**

ARTICLE 1

The cooperation as set forth in this Annex shall be implemented by the Department of Transportation of the United States of America and the Commission of the European Communities (hereinafter referred to as "the Participants"), consistent with their respective functions in addressing competition issues in the air transportation industry involving the United States and the European Community.

ARTICLE 2

Purpose

The purpose of this cooperation is:

1. To enhance mutual understanding of the application by the Participants of the laws, procedures and practices under their respective competition regimes to encourage competition in the air transportation industry;
2. To facilitate understanding between the Participants of the impact of air transportation industry developments on competition in the international aviation market;
3. To reduce the potential for conflicts in the Participants' application of their respective competition regimes to agreements and other cooperative arrangements which have an impact on the transatlantic market; and
4. To promote compatible regulatory approaches to agreements and other cooperative arrangements through a better understanding of the methodologies, analytical techniques including the definition of the relevant market(s) and analysis of competitive effects, and remedies that the Participants use in their respective independent competition reviews.

ARTICLE 3

Definitions

For the purpose of this Annex, the term "competition regime" means the laws, procedures and practices that govern the Participants' exercise of their respective functions in reviewing agreements and other cooperative arrangements among airlines in the international market. For the European Community, this includes, but

is not limited to, Articles 81, 82, and 85 of the Treaty Establishing the European Community and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto. For the Department of Transportation, this includes, but is not limited to, sections 41308, 41309, and 41720 of Title 49 of the United States Code, and its implementing Regulations and legal precedents pursuant thereto.

ARTICLE 4

Areas of Cooperation

Subject to the qualifications in subparagraphs 1(a) and 1(b) of Article 5, the types of cooperation between the Participants shall include the following:

(1) Meetings between representatives of the Participants, to include competition experts, in principle on a semi-annual basis, for the purpose of discussing developments in the air transportation industry, competition policy matters of mutual interest, and analytical approaches to the application of competition law to international aviation, particularly in the transatlantic market. The above discussions may lead to the development of a better understanding of the Participants' respective approaches to competition issues, including existing commonalities, and to more compatibility in those approaches, in particular with respect to inter-carrier agreements.

(2) Consultations at any time between the Participants, by mutual agreement or at the request of either Participant, to discuss any matter related to this Annex, including specific cases.

(3) Each Participant may, at its discretion, invite representatives of other governmental authorities to participate as appropriate in any meetings or consultations held pursuant to paragraphs 1 or 2 above.

(4) Timely notifications of the following proceedings or matters, which in the judgment of the notifying Participant may have significant implications for the competition interests of the other Participant:

- a. With respect to the Department of Transportation, (i) proceedings for review of applications for approval of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for antitrust immunity involving airlines organized under the laws of the United States and the European Community, and (ii) receipt by the Department of Transportation of a joint venture agreement pursuant to section 41720 of Title 49 of the United States Code; and
- b. With respect to the Commission of the European Communities, (i) proceedings for review of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for alliance and other cooperative agreements involving airlines organized

under the laws of the United States and the European Community, and (ii) consideration of individual or block exemptions from European Union competition law;

(5) Notifications of the availability, and any conditions governing that availability, of information and data filed with a Participant, in electronic form or otherwise, that, in the judgment of that Participant, may have significant implications for the competition interests of the other Participant; and

(6) Notifications of such other activities relating to air transportation competition policy as may seem appropriate to the notifying Participant.

ARTICLE 5

Use and Disclosure of Information

(1) Notwithstanding any other provision of this Annex, neither Participant is expected to provide information to the other Participant if disclosure of the information to the requesting Participant:

- a. is prohibited by the laws, regulations or practices of the Participant possessing the information; or
- b. would be incompatible with important interests of the Participant possessing the information.

(2) Each Participant shall to the extent possible maintain the confidentiality of any information provided to it in confidence by the other Participant under this Annex and to oppose any application for disclosure of such information to a third party that is not authorized by the supplying Participant to receive the information. Each Participant intends to notify the other Participant whenever any information proposed to be exchanged in discussions or in any other manner may be required to be disclosed in a public proceeding.

(3) Where pursuant to this Annex a Participant provides information on a confidential basis to the other Participant for the purposes specified in Article 2, that information should be used by the receiving Participant only for that purpose.

ARTICLE 6

Implementation

(1) Each Participant is designating a representative to be responsible for coordination of activities established under this Annex.

(2) This Annex, and all activities undertaken by a Participant pursuant to it, are

- a. intended to be implemented only to the extent consistent with all laws, regulations, and practices applicable to that Participant; and
- b. intended to be implemented without prejudice to the Agreement between the European Communities and the Government of the United States of America Regarding the Application of their Competition Laws.

CONCERNING U.S. GOVERNMENT PROCURED TRANSPORTATION

Community airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a U.S. Government civilian department, agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government, or (2) provides the transportation to or for a foreign country or international or other organization without reimbursement, and that transportation is (a) between any point in the United States and any point in a Member State, except - with respect to passengers only – between points for which there is a city-pair contract fare in effect, or (b) between any two points outside the United States. This paragraph shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.

**CONCERNING ADDITIONAL MATTERS RELATED TO OWNERSHIP,
INVESTMENT AND CONTROL**

ARTICLE 1

Ownership of Airlines of a Party

1. Ownership by nationals of a Member State or States of the equity of a U.S. airline shall be permitted, subject to two limitations. First, ownership by all foreign nationals of more than 25 percent of a corporation's voting equity is prohibited. Second, actual control of a U.S. airline by foreign nationals is also prohibited. Subject to the overall 25 percent limitation on foreign ownership of voting equity:

a. ownership by nationals of a Member State or States of:

(1) as much as 25 percent of the voting equity; and/or

(2) as much as 49.9 percent of the total equity

of a U.S. airline shall not be deemed, of itself, to constitute control of that airline;

and

b. ownership by nationals of a Member State or States of 50 percent or more of the total equity of a U.S. airline shall not be presumed to constitute control of that airline. Such ownership shall be considered on a case-by-case basis.

2. Ownership by U.S. nationals of a Community airline shall be permitted subject to two limitations. First, the airline must be majority owned by Member States and/or by nationals of Member States. Second, the airline must be effectively controlled by such states and/or such nationals.

3. For the purposes of paragraph (b) of Article 4 and subparagraph 1(b) of Article 5 of this Agreement, a member of the ECAA as of the date of signature of this Agreement and citizens of such a member shall be treated as a Member State and its nationals, respectively. The Joint Committee may decide that this provision shall apply to new members of the ECAA and their citizens.

4. Notwithstanding paragraph 2, the European Community and its Member States reserves the right to limit investments by U.S. nationals in the voting equity of a Community airline made after the signature of this Agreement to a level equivalent to that allowed by the United States for foreign nationals in U.S. airlines, provided that the exercise of that right is consistent with international

law.

ARTICLE 2

Ownership and Control of Third-Country Airlines

1. Neither Party shall exercise any available rights under air services arrangements with a third country to refuse, revoke, suspend or limit authorizations or permissions for any airlines of that third country on the grounds that substantial ownership of that airline is vested in the other Party, its nationals, or both.
2. The United States shall not exercise any available rights under air services arrangements to refuse, revoke, suspend or limit authorizations or permissions for any airline of the Principality of Liechtenstein, the Swiss Confederation, a member of the ECAA as of the date of signature of this Agreement, or any country in Africa that is implementing an Open-Skies air services agreement with the United States as of the date of signature of this Agreement, on the grounds that effective control of that airline is vested in a Member State or States, nationals of such a state or states, or both.
3. The Joint Committee may decide that neither Party shall exercise the rights referred to in paragraph 2 of this Article with respect to airlines of a specific country or countries.

ARTICLE 3

Control of Airlines

1. The rules applicable in the European Community on ownership and control of Community air carriers are currently laid down in Article 4 of Council Regulation (EEC) No. 2407/92 of 23 July 1992 on licensing of air carriers. Under this Regulation, responsibility for granting an Operating Licence to a Community air carrier lies with the Member States. Member States apply Regulation 2407/92 in accordance with their national regulations and procedures.
2. The rules applicable in the United States are currently laid down in Sections 40102(a)(2), 41102 and 41103 of Title 49 of the United States Code (U.S.C.), which require that licenses for a U.S. "air carrier" issued by the Department of Transportation, whether a certificate, an exemption, or commuter license, to engage in "air transportation" as a common carrier, be held only by citizens of the United States as defined in 49 U.S.C §40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers of a corporation be U.S. citizens, that at least 75 percent of the voting stock be owned by U.S. citizens, and that the corporation be under the actual control of U.S. citizens. The requirement must be met initially by an applicant, and continue to be met by a U.S. airline holding a license.

3. The practice followed by each Party in applying its laws and regulations is set out in the Appendix to this Annex.

Appendix to Annex 4

1. In the United States, citizenship determinations are necessary for all U.S. air carrier applicants for a certificate, exemption, or commuter license. An initial application for a license is filed in a formal public docket, and processed "on the record" with filings by the applicant and any other interested parties. The Department of Transportation renders a final decision by an Order based on the formal public record of the case, including documents for which confidential treatment has been granted. A "continuing fitness" case may be handled informally by the Department, or may be set for docketed procedures similar to those used for initial applications.
2. The Department's determinations evolve through a variety of precedents, which reflect, among other things, the changing nature of financial markets and investment structures and DOT's willingness to consider new approaches to foreign investment that are consistent with U.S. law. DOT works with applicants to consider proposed forms of investment and to assist them in fashioning transactions that fully comply with U.S. citizenship law, and applicants regularly consult with DOT staff before finalising their applications. At any time before a formal proceeding has begun, DOT staff may discuss questions concerning citizenship issues or other aspects of the proposed transaction and offer suggestions, where appropriate, as to alternatives that would allow a proposed transaction to meet U.S. citizenship requirements.
3. In making both its initial and continuing citizenship and fitness determinations, DOT considers the totality of circumstances affecting the U.S. airline, and Department precedents have permitted consideration of the nature of the aviation relationship between the United States and the homeland(s) of any foreign investors. In the context of this Agreement, DOT would treat investments from EU nationals at least as favorably as it would treat investments from nationals of bilateral or multilateral Open-Skies partners.
4. In the European Union, paragraph 5 of Article 4 of Regulation 2407/92 provides that the European Commission, acting at the request of a Member State, shall examine compliance with the requirements of Article 4 and take a decision if necessary. In taking such decisions the Commission must ensure compliance with the procedural rights recognized as general principles of Community law by the European Court of Justice, including the right of interested parties to be heard in a timely manner.
5. When applying its laws and regulations, each Party shall ensure that any transaction involving investment in one of its airlines by nationals of the other Party is afforded fair and expeditious consideration.

CONCERNING FRANCHISING AND BRANDING

1. The airlines of each Party shall not be precluded from entering into franchise or branding arrangements, including conditions relating to brand protection and operational matters, provided that: they comply, in particular, with the applicable laws and regulations concerning control; the ability of the airline to exist outside of the franchise is not jeopardized; the arrangement does not result in a foreign airline engaging in cabotage operations; and applicable regulations, such as consumer protection provisions, including those regarding the disclosure of the identity of the airline operating the service, are complied with. So long as those requirements are met, close business relationships and cooperative arrangements between the airlines of each Party and foreign businesses are permissible, and each of the following individual aspects, among others, of a franchise or branding arrangement would not, other than in exceptional circumstances, of itself raise control issues:

- a) using and displaying a specific brand or trademark of a franchisor, including stipulations on the geographic area in which the brand or trademark may be used;
- b) displaying on the franchisee's aircraft the colors and logo of the franchisor's brand, including the display of such a brand, trademark, logo or similar identification prominently on its aircraft and the uniforms of its personnel;
- c) using and displaying the brand, trademark or logo on, or in conjunction with, the franchisee's airport facilities and equipment;
- d) maintaining customer service standards designed for marketing purposes;
- e) maintaining customer service standards designed to protect the integrity of the franchise brand;
- f) providing for license fees on standard commercial terms;
- g) providing for participation in frequent flyer programs, including the accrual of benefits; and
- h) providing in the franchise or branding agreement for the right of the franchisor or franchisee to terminate the arrangement and withdraw the brand, provided that nationals of the United States or the Member States remain in control of the U.S. or Community airline, respectively.

2. Franchising and branding arrangements are independent of, but may coexist with, a code-sharing arrangement that requires that both airlines have the appropriate authority from the Parties, as provided for in paragraph 7 of Article 10 of this Agreement.

Joint Declaration

Representatives of the United States and of the European Community and its Member States confirmed that the Air Transport Agreement initialled in Brussels on 2 March 2007 and envisioned for signature on 30 April 2007 is to be authenticated in other languages, as provided either by exchange of letters, before signature of the Agreement, or by decision of the Joint Committee, after signature of the Agreement.

This Joint Declaration is an integral part of the Air Transport Agreement.

For the United States

For the European Community
and its Member States; *ad referendum*

[signed. John Byerly]

[signed. Daniel Calleja]

Date: 18 April 2007

Date: 18 April 2007

**PROTOCOL TO AMEND THE AIR TRANSPORT AGREEMENT BETWEEN
THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE
ONE PART AND THE UNITED STATES OF AMERICA, OF THE OTHER
PART SIGNED ON 205 AND 30 APRIL 2007**

THE UNITED STATES OF AMERICA (hereinafter: 'the United States'),

of the one part; and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

being parties to the Treaty on European Union and to the Treaty on the Functioning of the European Union and being Member States of the European Union (hereinafter: 'the Member States'),

and the EUROPEAN UNION,

of the other part;

INTENDING to build upon the framework established by the Air Transport Agreement between the United States and the European Community and its Member States, signed on 25 and 30 April 2007 (hereinafter referred to as 'the Agreement'), with the goal of opening access to markets and maximising benefits for consumers, airlines, labour, and communities on both sides of the Atlantic,

FULFILLING the mandate in Article 21 of the Agreement to negotiate expeditiously a second stage agreement that advances this goal,

RECOGNISING that the European Union replaced and succeeded the European Community as a consequence of the entry into force on 1 December 2009 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, and that as of that date, all the rights and obligations of, and all the references to, the European Community in the Agreement apply to the European Union,

HAVE AGREED TO AMEND THE AGREEMENT AS FOLLOWS:

ARTICLE 1

Definitions

Article 1 of the Agreement shall be amended by:

1. inserting the following new definition after paragraph 2:

‘2 bis “Citizenship determination” means a finding that an air carrier proposing to operate services under this Agreement satisfies the requirements of Article 4 regarding its ownership, effective control, and principal place of business;’

2. inserting the following new definition after paragraph 3:

‘3 bis “Fitness determination” means a finding that an air carrier proposing to operate services under this Agreement has satisfactory financial capability and adequate managerial expertise to operate such services and is disposed to comply with the laws, regulations, and requirements that govern the operation of such services;’

ARTICLE 2

Reciprocal Recognition of Regulatory Determinations with Regard to Airline Fitness and Citizenship

A new Article 6 bis shall be inserted following Article 6 as follows:

‘Article 6 bis

Reciprocal Recognition of Regulatory Determinations with Regard to Airline Fitness and Citizenship

1. Upon receipt of an application for operating authorisation, pursuant to Article 4, from an air carrier of one Party, the aeronautical authorities of the other Party shall recognise any fitness and/or citizenship determination made by the aeronautical authorities of the first Party with respect to that air carrier as if such a determination had been made by its own aeronautical authorities and not enquire further into such matters, except as provided for at subparagraph (a) below.

- (a) If, after receipt of an application for operating authorisation from an air carrier, or after the grant of such authorisation, the aeronautical authorities of the receiving Party have a specific reason for concern that, despite the determination made by the aeronautical authorities of the other Party, the conditions prescribed in Article 4 of this Agreement for the grant of appropriate authorisations or permissions have not been met, then they shall promptly advise those authorities, giving substantive reasons for their concern. In that event, either Party may seek consultations, which should include representatives of the relevant aeronautical authorities, and/or additional information relevant to this concern, and such requests shall be met as soon as practicable. If the matter remains unresolved, either Party may bring the matter to the Joint Committee.
- (b) This Article shall not apply to determinations in relation to safety certificates or licences; security arrangements; or insurance coverage.

2. Each Party shall inform the other in advance where practicable, and otherwise as soon as possible afterward, through the Joint Committee of any substantial changes in the criteria it applies in making the determinations referred to in paragraph 1 above. If the receiving Party requests consultations on any such change they shall be held in the Joint Committee within 30 days of such a request, unless the Parties agree otherwise. If, following such consultations, the receiving Party considers that the revised criteria of the other Party would not be satisfactory for the reciprocal recognition of regulatory determinations, the receiving Party may inform the other Party of the suspension of paragraph 1. This suspension may be lifted by the receiving Party at any time. The Joint Committee shall be informed accordingly.’

ARTICLE 3

Environment

Article 15 of the Agreement shall be deleted in its entirety and replaced with the following:

‘Article 15

Environment

1. The Parties recognise the importance of protecting the environment when developing and implementing international aviation policy, carefully weighing the costs and benefits of measures to protect the environment in developing such policy, and, where appropriate, jointly advancing effective global solutions. Accordingly, the Parties intend to work together to limit or reduce, in an economically reasonable manner, the impact of international aviation on the environment.

2. When a Party is considering proposed environmental measures at the regional, national, or local level, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects. At the request of a Party, the other Party shall provide a description of such evaluation and mitigating steps.

3. When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organization in annexes to the Convention shall be followed except where differences have been filed. The Parties shall apply any environmental measures affecting air services under this Agreement in accordance with Article 2 and Article 3(4) of this Agreement.

4. The Parties reaffirm the commitment of Member States and the United States to apply the balanced approach principle.

5. The following provisions shall apply to the imposition of new mandatory noise-based operating restrictions at airports which have more than 50 000 movements of

civil subsonic jet aeroplanes per calendar year.

- (a) The responsible authorities of a Party shall provide an opportunity for the views of interested parties to be considered in the decision-making process.
- (b) Notice of the introduction of any new operating restriction shall be made available to the other Party at least 150 days prior to the entry into force of that operating restriction. At the request of that other Party, a written report shall be provided without delay to that other Party explaining the reasons for introducing the operating restriction, the environmental objective established for the airport, and the measures that were considered to meet that objective. That report shall include the relevant evaluation of the likely costs and benefits of the various measures considered.
- (c) Operating restrictions shall be (i) non-discriminatory; (ii) not more restrictive than necessary in order to achieve the environmental objective established for a specific airport; and (iii) non-arbitrary.

6. The Parties endorse and shall encourage the exchange of information and regular dialogue among experts, in particular through existing communication channels, to enhance cooperation, consistent with applicable laws and regulations, on addressing international aviation environmental impacts and mitigation solutions, including:

- (a) research and development of environmentally friendly aviation technology;
- (b) improvement of scientific understanding regarding aviation emissions impacts in order to better inform policy decisions;
- (c) air traffic management innovation with a view to reducing the environmental impacts of aviation;
- (d) research and development of sustainable alternative fuels for aviation; and
- (e) exchange of views on issues and options in international fora dealing with the environmental effects of aviation, including the coordination of positions, where appropriate.

7. If so requested by the Parties, the Joint Committee, with the assistance of experts, shall work to develop recommendations that address issues of possible overlap between and consistency among market-based measures regarding aviation emissions implemented by the Parties with a view to avoiding duplication of measures and costs and reducing to the extent possible the administrative burden on airlines. Implementation of such recommendations shall be subject to such internal approval or ratification as may be required by each Party.

8. If one Party believes that a matter involving aviation environmental protection, including proposed new measures, raises concerns for the application or implementation of this Agreement, it may request a meeting of the Joint Committee, as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.’

ARTICLE 4

Social Dimension

A new Article 17 bis shall be inserted following Article 17 as follows:

‘Article 17 bis

Social Dimension

1. The Parties recognise the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties’ respective laws.

2. The principles in paragraph 1 shall guide the Parties as they implement the Agreement, including regular consideration by the Joint Committee, pursuant to Article 18, of the social effects of the Agreement and the development of appropriate responses to concerns found to be legitimate.’

ARTICLE 5

The Joint Committee

Paragraphs 3, 4, and 5 of Article 18 of the Agreement shall be deleted in their entirety and replaced with the following:

‘3. The Joint Committee shall review, as appropriate, the overall implementation of the Agreement, including any effects of aviation infrastructure constraints on the exercise of rights provided for in Article 3, the effects of security measures taken pursuant to Article 9, the effects on the conditions of competition, including in the field of Computer Reservation Systems, and any social effects of the implementation of the Agreement. The Joint Committee shall also consider, on a continuing basis, individual issues or proposals that either Party identifies as affecting, or having the potential to affect, operations under the Agreement, such as conflicting regulatory requirements.

4. The Joint Committee shall also develop cooperation by:

- (a) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;
- (b) considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate;
- (c) maintaining an inventory of issues regarding government subsidies or support raised by either Party in the Joint Committee;
- (d) making decisions, on the basis of consensus, concerning any matters with respect to application of paragraph 6 of Article 11;
- (e) developing, where requested by the Parties, arrangements for the reciprocal recognition of regulatory determinations;
- (f) fostering cooperation between the respective authorities of the Parties in efforts to develop their respective air traffic management systems with a view toward optimising the interoperability and compatibility of those systems, reducing costs, and enhancing their safety, capacity, and environmental performance;
- (g) promoting the development of proposals for joint projects and initiatives in the field of aviation safety, including with third countries;
- (h) encouraging continued close cooperation among the relevant aviation security authorities of the Parties, including initiatives to develop security procedures that enhance passenger and cargo facilitation without compromising security;
- (i) considering whether the Parties' respective laws, regulations, and practices in areas covered by Annex 9 to the Convention (Facilitation) may affect the exercise of rights under this Agreement;
- (j) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), and consumer protection;
- (k) fostering consultation, where appropriate, on air transport issues dealt with in international organisations and in relations with third countries, including consideration of whether to adopt a joint approach; and
- (l) taking, on the basis of consensus, the decisions to which paragraph 3 of Article 1 of Annex 4 and paragraph 3 of Article 2 of Annex 4 refer.

5. The Parties share the goal of maximising the benefits for consumers, airlines, labour, and communities on both sides of the Atlantic by extending this Agreement to

include third countries. To this end, the Joint Committee shall consider, as appropriate, the conditions and procedures, including any necessary amendments to this Agreement, that would be required for additional third countries to accede to this Agreement.’

ARTICLE 6

Further Expansion of Opportunities

Article 21 shall be deleted in its entirety and replaced with the following:

‘Article 21

Further Expansion of Opportunities

1. The Parties commit to the shared goal of continuing to remove market access barriers in order to maximise benefits for consumers, airlines, labour, and communities on both sides of the Atlantic, including enhancing the access of their airlines to global capital markets, so as better to reflect the realities of a global aviation industry, the strengthening of the transatlantic air transportation system, and the establishment of a framework that will encourage other countries to open up their own air services markets.

2. Pursuant to the shared goal in paragraph 1, and in fulfilling its responsibilities pursuant to Article 18 to oversee implementation of this Agreement, the Joint Committee shall review annually developments, including towards the legislative changes referred to in this Article. The Joint Committee shall develop a process of cooperation in this regard including appropriate recommendations to the Parties. The European Union and its Member States shall allow majority ownership and effective control of their airlines by the United States or its nationals, on the basis of reciprocity, upon confirmation by the Joint Committee that the laws and regulations of the United States permit majority ownership and effective control of its airlines by the Member States or their nationals.

3. Upon written confirmation by the Joint Committee, in accordance with paragraph 6 of Article 18, that the laws and regulations of each Party permit majority ownership and effective control of its airlines by the other Party or its nationals:

- (a) Section 3 of Annex 1 to the Agreement shall cease to have effect;
- (b) airlines of the United States shall have the right to provide scheduled passenger combination services between points in the European Union and its Member States and five countries, without serving a point in the territory of the United States. These countries shall be determined by the Joint Committee within one year from the date of signature of this Protocol. The Joint Committee may amend the list, or increase the number, of such countries; and

- (c) the text of Article 2 of Annex 4 to the Agreement (“Ownership and Control of Third-Country Airlines”) shall cease to have effect and the text of Annex 6 to the Agreement shall take effect in its place, with regard to third-country airlines owned and controlled by the United States or its nationals.

4. Upon written confirmation by the Joint Committee, in accordance with paragraph 6 of Article 18, that the laws and regulations of the European Union and its Member States with regard to the imposition of noise-based operating restrictions at airports having more than 50 000 annual movements of civil subsonic jet aeroplanes provide that the European Commission has the authority to review the process prior to the imposition of such measures, and, where it is not satisfied that the appropriate procedures have been followed in accordance with applicable obligations, to take in that case, prior to their imposition, appropriate legal action regarding the measures in question:

- (a) airlines of the European Union shall have the right to provide scheduled passenger combination services between points in the United States and five additional countries, without serving a point in the territory of the European Union and its Member States. These countries shall be determined by the Joint Committee within one year from the date of signature of this Protocol. The Joint Committee may amend the list, or increase the number, of such countries; and
- (b) the text of Article 2 of Annex 4 to the Agreement (“Ownership and Control of Third-Country Airlines”) shall cease to have effect and the text of Annex 6 to the Agreement shall take effect in its place, with regard to third-country airlines owned and controlled by Member States or their nationals.

5. Following written confirmation by the Joint Committee that a Party has met the conditions of paragraphs 3 and 4 that are applicable to that Party, that Party may request high-level consultations regarding the implementation of this Article. Such consultations shall commence within 60 days of the date of delivery of the request, unless otherwise agreed by the Parties. The Parties shall make every effort to resolve the matters referred to consultation. If the Party requesting consultations is dissatisfied with the outcome of the consultations, that Party may give notice in writing through diplomatic channels of its decision that no airline of the other Party shall operate additional frequencies or enter new markets under this Agreement. Any such decision shall take effect 60 days from the date of notification. Within that period, the other Party may decide that no airline of the first Party shall operate additional frequencies or enter new markets under the Agreement. Such a decision shall take effect on the same day as the decision by the first Party. Any such decision by a Party may be lifted by agreement of the Parties, which shall be confirmed in writing by the Joint Committee.’

ARTICLE 7

US Government Procured Transportation

Annex 3 to the Agreement shall be deleted in its entirety and replaced with the following:

‘ANNEX 3

Concerning US Government Procured Transportation

Community airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a US Government civilian department, agency, or instrumentality:

- (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or
- (2) provides the transportation to or for a foreign country or international or other organisation without reimbursement,

and that transportation is:

- (a) between any point in the United States and any point outside the United States, to the extent such transportation is authorised under subparagraph 1(c) of Article 3, except – with respect to passengers who are eligible to travel on city-pair contract fares – between points for which there is a city-pair contract fare in effect; or
- (b) between any two points outside the United States.

This Annex shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.’

ARTICLE 8

Annexes

The text of the Attachment to this Protocol shall be appended to the Agreement as Annex 6.

ARTICLE 9

Provisional Application

1. Pending its entry into force, the Parties agree to provisionally apply this Protocol, to the extent permitted under applicable domestic law, from the date of signature.

2. Either Party may at any time give notice in writing through diplomatic channels to the other Party of a decision to no longer apply this Protocol. In that event, application of this Protocol shall cease at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification, unless notice is withdrawn by agreement of the Parties before the end of this period. In the event that provisional application of the Agreement ceases pursuant to paragraph 2 of Article 25 of the Agreement, provisional application of this Protocol shall cease simultaneously.

ARTICLE 10

Entry into Force

This Protocol shall enter into force on the later of:

1. the date of entry into force of the Agreement; and
2. one month after the date of the last note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Protocol have been completed.

For purposes of this exchange of diplomatic notes, diplomatic notes to or from the European Union and its Member States shall be delivered to or from, as the case may be, the European Union. The diplomatic note or notes from the European Union and its Member States shall contain communications from each Member State confirming that its necessary procedures for entry into force of this Protocol have been completed.

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

Done at Luxembourg on the twenty-fourth day of June in the year two thousand and ten.

[Here follows the signatures]

Attachment to the Protocol

ANNEX 6

Ownership and Control of Third Country Airlines

1. Neither Party shall exercise any available rights under air services arrangements with a third country to refuse, revoke, suspend or limit authorisations or permissions for any airlines of that third country on the grounds that substantial ownership of that airline is vested in the other Party, its nationals, or both.
2. The United States shall not exercise any available rights under air services arrangements to refuse, revoke, suspend or limit authorisations or permissions for any airline of the Principality of Liechtenstein, the Swiss Confederation, a member of the ECAA as of the date of signature of this Agreement, or any country in Africa that is implementing an Open-Skies air services agreement with the United States as of the date of signature of this Agreement, on the grounds that effective control of that airline is vested in a Member State or States, nationals of such a state or states, or both.
3. Neither Party shall exercise available rights under air services arrangements with a third country to refuse, revoke, suspend or limit authorisations or permissions for any airlines of that third country on the grounds that effective control of that airline is vested in the other Party, its nationals, or both, provided that the third country in question has established a record of cooperation in air services relations with both Parties.
4. The Joint Committee shall maintain an inventory of third countries that are considered by both Parties to have established a record of cooperation in air services relations.

Joint Declaration

Representatives of the United States and of the European Union and its Member States confirmed that the Protocol to Amend the Air Transport Agreement between the United States of America and the European Community and its Member States, initialled in Brussels on 25 March 2010, is to be authenticated in other languages, as provided either by Exchange of Letters, before signature of the Protocol, or by decision of the Joint Committee, after signature of the Protocol.

This Joint Declaration is an integral part of the Protocol.

For the United States:
John BYERLY (signed)
25 March 2010

For the European Union and its Member
States:
Daniel CALLEJA (signed)
25 March 2010

MEMORANDUM OF CONSULTATIONS

1. Delegations representing the European Union and its Member States and the United States met in Brussels 23-25 March 2010 to complete negotiations of a second stage air transport agreement. Delegation lists are appended as Attachment A.
2. The delegations reached ad referendum agreement on, and initialled the text of, a Protocol to Amend the Air Transport Agreement between the United States and the European Community and its Member States, signed on 25 and 30 April 2007 (the 'Protocol', appended as Attachment B). The delegations intend to submit the draft Protocol to their respective authorities for approval, with the goal of its entry into force in the near future.
3. References in this Memorandum to the Agreement and to articles, paragraphs, and annexes are to the Agreement, as it would be amended by the Protocol.
4. The EU delegation confirmed that as a consequence of the entry into force on 1 December 2009 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, the European Union replaced and succeeded the European Community and that, as of that date, all the rights and obligations of, and all the references to, the European Community in the Agreement refer to the European Union.
5. The delegations affirmed that the procedures for reciprocal recognition of regulatory determinations with regard to airline fitness and citizenship in the new Article 6 bis are not intended to modify the conditions prescribed under the laws and regulations normally applied by the Parties to the operation of international air transportation referred to in Article 4 of the Agreement.
6. With respect to Article 9, the delegations expressed their desire to further EU/US cooperation on aviation security, with the aim of achieving, wherever possible, maximum reliance on each other's security measures, consistent with applicable laws and regulations, to reduce unnecessary duplication of such measures.
7. The delegations noted that security cooperation is expected to include regular consultations on amendments to existing requirements, where feasible prior to their implementation; close coordination of airport assessment activities and, where possible and appropriate, air carrier inspections; and exchange of information on new security technologies and procedures.
8. With a view to fostering efficient use of the resources available, enhancing security, and promoting facilitation, the delegations noted the benefit of swift and, wherever possible, coordinated responses to new threats.
9. Both delegations noted that the provisions of the respective conventions in force between a Member State and the United States for the avoidance of double taxation on income and on capital remain unaffected by the Protocol.

10. With respect to paragraph 7 of Article 15, the EU delegation noted that the issues to be addressed by any work in this area would be expected to include, among other things, the environmental effectiveness and technical integrity of the respective measures, the need to avoid competitive distortion and carbon leakage and, where appropriate, whether and how such measures may be linked or integrated with each other. The US delegation noted that in developing recommendations, it would expect to focus, inter alia, on consistency with the Chicago Convention and the promotion of the objectives of the Agreement.

11. The two delegations emphasised that nothing in the Agreement affects in any way their respective legal and policy positions on various aviation-related environmental issues.

12. In recognition of shared environmental objectives, the delegations developed a Joint Statement on Environmental Cooperation appended as Attachment C to this Memorandum of Consultations.

13. The EU delegation restated the EU's intention to continue to work through the United Nations Framework Convention on Climate Change to establish global emissions reduction targets for international aviation.

14. The US and EU delegations restated the US and EU intentions to work through the International Civil Aviation Organization (ICAO) to address greenhouse gas emissions from international aviation. Both delegations also noted the contributions from industry in support of this process.

15. Both delegations noted that the references to the balanced approach in paragraph 4 of Article 15 refer to Resolution A35-5 unanimously adopted at the 35th ICAO Assembly. The delegations emphasised that all aspects of the balanced approach principle established in that Resolution are relevant and important, including the recognition that 'States have relevant legal obligations, existing agreements, current laws and established policies which may influence their implementation of the ICAO balanced approach'.

16. Both delegations underscored their support for applying ICAO's 'Guidance on the Balanced Approach to Aircraft Noise', which is currently published in ICAO Document 9829 (2nd edition).

17. With regard to paragraph 5(a) of Article 15, the EU delegation noted that 'interested parties' is defined in Article 2(f) of Directive 2002/30/EC to mean 'natural or legal persons affected or likely to be affected by, or having a legitimate interest in the introduction of, noise reduction measures, including operating restrictions'. The EU delegation also noted that, pursuant to Article 10 of that Directive, Member States must ensure that, for the application of Articles 5 and 6 of that Directive, procedures for consultation of interested parties are established in accordance with applicable national law.

18. Recognising the challenges related to the increasing cross-border mobility of workers and structure of companies, the EU delegation noted that the European Commission is closely monitoring the situation and is considering further initiatives in order to improve implementation, application, and enforcement in this area. The EU delegation also referred to the work being undertaken by the European Commission on transnational company agreements and stated its willingness to inform the Joint Committee about these and other related initiatives, as appropriate.

19. The US delegation noted that, in the United States, the principle that allows for selection of a single representative for a defined class or craft of employees at an airline has helped promote rights for both airline flight and ground workers to organise themselves and to negotiate and enforce collective bargaining agreements.

20. Both delegations noted that, in the event that a Party would take measures contrary to the Agreement, including Article 21, the other Party may avail itself of any appropriate and proportional measures in accordance with international law, including the Agreement.

21. In relation to paragraph 4 of Article 21, the EU delegation noted that the review referred to in that paragraph will be exercised by the European Commission *ex officio* or *ex parte*.

22. The delegations noted that the traffic rights referred to in paragraph 4(a) of Article 21 would be in addition to those granted to the European Union and its Member States in Article 3 of the Agreement.

23. The delegations expressed their satisfaction with the cooperation between the US Department of Transportation and the European Commission, as provided for in the Agreement, with the shared objective of improving each other's understanding of the laws, procedures and practices of each other's competition regimes and the impact that developments in the air transportation industry have had, or are likely to have, on competition in the sector.

24. The delegations affirmed the commitment of the respective competition authorities to dialogue and cooperation and to the principle of transparency, consistent with legal requirements, including the protection of confidential commercial information. The delegations further affirmed the willingness of the respective competition authorities to provide guidance on procedural requirements, where appropriate.

25. The delegations noted that any communication to the Joint Committee or elsewhere relating to the cooperation under Annex 2 must respect the rules governing disclosure of confidential or market-sensitive information.

26. For the purposes of paragraph 4 of Annex 6, the delegations expressed their expectation that the Joint Committee will develop, within one year of signature of the Protocol, appropriate criteria for determining whether countries have established a

record of cooperation in air services relations.

27. The delegations welcomed the participation of representatives of Iceland and Norway as observers on the EU delegation and noted that work will continue in the Joint Committee to develop a proposal regarding conditions and procedures for Iceland and Norway to accede to the Agreement, as amended by the Protocol.

28. Both delegations expressed their expectation that their respective aeronautical authorities would permit operations consistent with the terms of the Agreement, as amended by the Protocol, on the basis of comity and reciprocity, or on an administrative basis, from the date of signature of the Protocol.

For the Delegation of the
European Union and its Member States
Daniel CALLEJA

For the Delegation of the
United States of America
John BYERLY

ATTACHMENT C

Joint Statement on Environmental Cooperation

The delegations of the United States and the European Union and its Member States reaffirmed the critical importance of addressing the environmental impacts of international aviation. They expressed their shared commitment to the environmental objectives established at the 35th Assembly of the International Civil Aviation Organization (ICAO), namely to strive to:

- (a) limit or reduce the number of people affected by significant aircraft noise;
- (b) limit or reduce the impact of aviation emissions on local air quality; and
- (c) limit or reduce the impact of aviation greenhouse gas emissions on the global climate.

The delegations acknowledged the outcome of the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change and the Copenhagen Accord, including the shared recognition of the scientific view that the increase in global temperature should be below two degrees Celsius.

The delegations confirmed the Parties' strong desire and willingness to work together to build upon the progress achieved by the ICAO High Level Meeting on International Aviation and Climate Change by seeking to join with international partners in a collective effort at ICAO to establish a more ambitious program of action, including robust goals, a framework for market-based measures, and considerations for the special needs of developing countries.

Both sides noted their commitment to cooperate within the ICAO Committee on Aviation Environmental Protection (CAEP) to ensure the timely and effective delivery of its work programme, including adoption of a global aircraft CO₂ standard and other measures on climate change, noise, and air quality.

The delegations emphasised the importance of reducing the environmental impacts of aviation through:

- continuing cooperation on the NextGen and SESAR air traffic management modernisation programmes, including the Atlantic Interoperability Initiative to Reduce Emissions (AIRE),
- fostering and accelerating, as appropriate, the development and implementation of new aircraft technologies and sustainable alternative fuels, including through the Clean Sky Joint Technology Initiative, the Continuous Low Energy, Emissions and Noise (CLEEN) Program, the Commercial Aviation Alternative Fuels Initiative (CAAFI), and the Sustainable Way for Alternative Fuel and Energy in Aviation (SWAFEA) initiative, and

- collaborating with the scientific community through, for example, the CAEP Impacts and Science Group to better understand and quantify the effects of aviation on the environment, such as health and non-CO₂ climate impacts.



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