



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement on Air Transport between the European Union and its Member States, of the one part, and the Federative Republic of Brazil, of the other part

EXPLANATORY MEMORANDUM

1. Context of the proposal

- Grounds for and objectives of the proposal

The Agreement on Air Transport between the European Union and its Member States, of the one part, and the Federative Republic of Brazil (hereinafter referred to as Brazil), of the other part has been negotiated by the Commission as authorised by the Council in October 2010. Air services between the EU and Brazil presently operate on the basis of bilateral agreements between individual Member States and Brazil. It is part of the EU's external aviation policy to negotiate comprehensive air services agreements with key partners where the added value and economic benefits of such agreements have been demonstrated. The Agreement aims at:

- gradual market opening in terms of access to routes and capacity on a reciprocal basis;
- promoting air services based on competition among air carriers with minimum government interference and regulation;
- non-discrimination and level playing field for economic operators;
- promoting regulatory cooperation and, to the extent practical, harmonisation of regulations and approaches.

- **General context**

The negotiating directives set out the general objective of negotiating a comprehensive air transport agreement with the aim of gradually and reciprocally opening market access and ensuring regulatory convergence.

In accordance with the negotiating directives, a draft Agreement with Brazil was initialled by the two sides on 17 March 2011.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement shall prevail over the relevant provisions of the existing bilateral air services agreements between Member States and Brazil.

- **Consistency with the other policies and objectives of the Union**

The conclusion of a comprehensive air transport agreement with Brazil is an important element in the development of the EU external aviation policy, as described in the Commission Communication COM(2005) 79 final "Developing the agenda for the Community's external aviation policy".

2. Consultation of interested parties and impact assessment

In line with Art. 218 (4) TFEU the Commission has conducted the negotiations in consultation with a special committee.

In addition, it consulted interested parties throughout the process.

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission has consulted with stakeholders, in particular via the Consultative Forum comprising representatives of air carriers, airports, and labour organisations.

Summary of responses and how they have been taken into account

All comments from stakeholders were duly taken into consideration in the preparation of the Union's negotiating position.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Agreement ensures the gradual opening of the EU-Brazil air transport market. A report prepared for the Commission in 2009 by consultants, estimated that a comprehensive EU-Brazil air transport agreement opening up the market could generate up to 460,000 extra passengers and consumer benefits of up to 460 million € in the first effective year of market opening. The employment impact of an EU-Brazil agreement is expected to be positive and should stimulate employment for a number of years. The total direct and indirect jobs expected to be created as a result of liberalisation is 980 (with a lower and upper bound of 870 and 1360 respectively).

The report has been made available to Member States and stakeholders via the CIRCA database.

The Agreement establishes a Joint Committee which will be responsible for reviewing the implementation of the Agreement and its effects.

3. **Legal elements of the proposal**

- **Summary of the proposed action**

The Agreement consists of the main body including the main principles, and two annexes: Annex I on route schedule, traffic rights and operational flexibility, and Annex II on bilateral air services agreements.

- **Legal basis**

Article 100 (2), in conjunction with Article 218 (6)(a) of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The provisions of the Agreement will prevail over the relevant provisions of the existing arrangements made by individual Member States. The Agreement creates

simultaneously for all Union air carriers equal and uniform conditions for market access, and establishes new arrangements for regulatory co-operation between the European Union and Brazil in fields essential for the safe, secure, and efficient operation of air services. These arrangements can only be achieved at Union level because they involve a number of areas of exclusive Union competence.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The Agreement allows for the simultaneous extension of its terms to the 27 Member States, applying the same rules without discrimination and benefiting all Union air carriers regardless of their nationality. These carriers will be able to operate freely from any point in the European Union to any point in Brazil which is currently not the case.

Removal of all market access restrictions between the EU and Brazil will not only attract new entrants to the market and create opportunities to operate to underserved airports, but will also facilitate consolidation between EU air carriers.

The Agreement secures for all EU air carriers access to commercial opportunities, such as the possibility to freely establish prices. One further objective of the mandate is to create a level playing field between all EU and Brazil air carriers, and this requires strong regulatory co-operation which can only be delivered at Union level. Finally, a key objective of the mandate was to create a framework for addressing and resolving "doing business" obstacles faced by EU carriers in Brazil. The Union will have more leverage in seeking to resolve these problems than is possible at national level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

A Joint Committee will be established to discuss matters related to the implementation of the Agreement. The Joint Committee will foster expert-level exchanges on new legislative or regulatory initiatives or developments and consider potential areas for further development of the Agreement. The Joint Committee will be composed of representatives of the Commission and the Member States.

Furthermore, Member States will continue to carry out the traditional administrative tasks they execute in the context of international air transport, but under common rules applied uniformly.

- **Choice of instruments**

Proposed instruments: international agreement

Other means would not be adequate for the following reason(s).

External aviation relations can only be given effect through international agreements.

4. Budgetary implication

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union and in particular Article 100 (2), in conjunction with Article 218 (6)(a)

Having regard to the consent of the European Parliament

Whereas:

- (1) the Commission has negotiated on behalf of the Union and of the Member States an Agreement on Air Transport with the Federative Republic of Brazil (hereinafter, the “Agreement”)
- (2) In accordance with Council Decision 2011/xxx of (...) the Agreement was signed on (...);
- (3) It is necessary to lay down appropriate arrangements for the coordination between and representation of the Union and the Member States in the Joint Committee set up under Article 21 of the Agreement.
- (4) The Agreement should be concluded,

HAS DECIDED AS FOLLOWS:

Article 1
Conclusion

1. The Agreement on Air Transport between the European Union and its Member States, on the one part, and the Federative Republic of Brazil, of the other part, is hereby concluded. The text of the Agreement is attached to this Decision.
2. The President of the Council shall designate the person empowered to proceed on behalf of the European Union, to make the notifications provided for in Article 27 of the Agreement in order to express the consent of the European Union to be bound by the Agreement.

Article 2
Joint Committee

1. Representatives of the European Union and the Member States shall be represented in the Joint Committee established under Article 21 of the Agreement.
2. The European Union shall be represented in the Joint Committee by the Commission.
3. The position to be taken by the European Union and its Member States within the Joint Committee with respect to matters of exclusive competence of the EU that do not require the adoption of a decision having legal effect will be established by the Commission and will be notified in advance to the Council and the Member States.
4. For Joint Committee decisions concerning matters that fall within the competence of the EU, the position to be taken by the European Union and its Member States will be adopted by the Council, acting by qualified majority on a proposal from the Commission, unless the applicable voting procedures set down in the EU Treaties provide otherwise.
5. For Joint Committee decisions concerning matters that fall within Member States' competence, the position to be taken by the European Union and its Member States will be adopted by the Council, acting by unanimity, on a proposal from the Commission or from Member States, unless a Member State has informed General Secretariat of the Council within one month of the adoption of that position that it can only consent to the decision to be taken by the Joint Committee with the agreement of its legislative bodies.

Article 3
Settlement of Disputes

1. The Commission shall represent the Union in dispute settlement proceedings under Article 22 of the Agreement.
2. Any appropriate action to be taken under Article 22 of the Agreement on matters which fall within the Union competence shall be decided upon by the Commission, in consultation with a Special Committee of representatives of the Member States appointed by the Council.

Article 4
Information to the Commission

1. Member States shall inform in advance the Commission of any decision to refuse, revoke, suspend or limit the authorisation of an airline of the Federative Republic of Brazil that they intend to adopt under Article 5 of the Agreement.
2. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 7 (Safety) of the Agreement.
3. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 8 (Aviation security) of the Agreement.

Article 5
Entry into force

This decision shall enter into force on the day of its adoption. It shall be published in the Official Journal of the European Union.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX
AGREEMENT ON AIR TRANSPORT
BETWEEN
THE FEDERATIVE REPUBLIC OF BRAZIL
AND
THE EUROPEAN UNION AND ITS MEMBER STATES

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ANNEXES

Annex I Agreed services and specified routes

Annex II Bilateral air services agreements/arrangements

THE FEDERATIVE REPUBLIC OF BRAZIL (hereinafter Brazil), 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 on European Union and the Treaty on the Functioning of the European Union (hereinafter referred together as the Treaties) and being Member States of the European Union (hereinafter the Member States),

and the EUROPEAN UNION, of the other part;

Brazil and the Member States of the European Union being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944, together with the European Union;

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

DESIRING to promote their interests in respect of air transportation;

RECOGNISING the importance of efficient air transportation in promoting trade, tourism and investment;

DESIRING to enhance air services;

DESIRING to ensure the highest degree of safety and security in air transportation;

DETERMINED to obtain the potential benefits of regulatory cooperation and, to the extent practical, harmonisation of regulations and approaches;

ACKNOWLEDGING the important potential benefits that may arise from competitive air services and viable air services industries;

DESIRING to foster a competitive air services environment, recognising that where there is not a level competitive playing field for air carriers, potential benefits may not be realised;

DESIRING to make it possible for their air carriers to have a fair and equal opportunity to provide the air services under this Agreement;

DESIRING to maximise benefits to passengers, shippers, air carriers and airports and their employees, and others benefiting indirectly;

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

NOTING the importance of protecting consumers and encouraging an appropriate level of consumer protection associated with air services;

NOTING the importance of capital to the aviation industry for the further development of air services;

DESIRING to conclude an agreement on air transport, supplementary to the said Convention,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

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

1. "Agreement" means this Agreement, Any Annexes and Appendices to it, 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, which, for the avoidance of doubt, shall include scheduled and non-scheduled services;
3. "Citizenship determination" means a finding that an air carrier proposing to operate services under this Agreement satisfies the requirements of Article 3 regarding its ownership, effective control, and principal place of business;
4. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
 - (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Brazil 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 Brazil and the Member State or Member States as is relevant to the issue in question;
5. "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;
6. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;
7. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;
8. "Member-states of the Latin American Civil Aviation Commission" means Argentina, Aruba, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela;
9. "Party" means, on the one hand, Brazil, and, on the other hand, the European Union or its Member States, or the European Union and its Member States, in accordance with their respective powers;
10. "Principal place of business" means the head office or registered office of an air carrier in the Party within which the principal financial functions and operational control, including continued airworthiness management, of the air carrier are exercised;
11. "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;

12. "Subsidy": means any financial contribution granted by a government, a regional body or another public organisation, i.e. when:

- (a) a practice of a government or regional body or other public organisation involves a direct transfer of funds such as grants, loans or equity infusion, potential direct transfer of funds to the company, the assumption of liabilities of the company such as loan guarantees, capital injections, ownership, insurance or protection against bankruptcy;
- (b) revenue of a government or regional body or other public organisation that is otherwise due is foregone or not collected;
- (c) a government or regional body or other public organisation provides goods or services other than general infrastructure, or purchases goods or services; or
- (d) a government or regional body or other public organisation makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated under (a), (b) and (c) which would normally be vested in the government and, in practice, in no real sense differs from practices normally followed by governments;

and where a benefit is thereby conferred.

13. "Tariff" means any fare, rate, charge or allowance for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation, including surface transportation in connection with air transportation, if applicable, charged by air carriers, including their agents, and the conditions governing the availability of such fare, rate, charge or allowance including prices and conditions for agency services and other auxiliary services;

14. "Territory" means, for Brazil, the land areas (mainland and islands), internal waters and territorial sea under its sovereignty or jurisdiction, and, for the European Union and its Member States, the land areas (mainland and islands), internal waters and territorial sea in which the Treaty on the European Union and the Treaty on the functioning of the European Union are applied and under the conditions laid down in those Treaties and any successor instrument. The application of this Agreement to the Airport of Gibraltar 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 EU 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

15. "User charge" means a charge imposed on air carriers for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

Article 2

Grant of rights

1. Each Party grants to the other Party, the following rights for the conduct of international air transportation by the air carriers 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 in accordance with the provisions of Annex I; and
- (d) the rights otherwise specified in this Agreement.

2. Nothing in this Agreement shall be deemed to confer on the air carriers of:

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

Article 3

Authorisation

On receipt of applications from an air carrier of one Party, the other Party shall grant appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) for an air carrier of Brazil, majority ownership and effective control of that air carrier are vested in Brazil or member-states of the Latin American Civil Aviation Commission which, in particular, have an agreement on certain aspects of air services (Horizontal Agreement) with the European Union, or nationals of such State or States, or both; and effective regulatory control of the air carrier is exercised and maintained by Brazil having issued its Air Operator's Certificate and that air carrier has its principal place of business in the territory of Brazil;
- (b) for an air carrier of the European Union, majority ownership and effective control of that air carrier are vested in a European Union Member State or Member States or Switzerland or signatories of the European Economic Area Agreement (EEA) or nationals of such State or States, or both; and effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and that air carrier has its principal place of business in the territory of the European Union;
- (c) the air carrier meets 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 out in Article 7 (Safety) and Article 8 (Aviation Security) of this Agreement are being maintained and administered.

2. The Parties agree to promote, as from the signature of this Agreement, simplification and harmonisation of procedures with regard to granting of authorisations. The Joint Committee under Article 21 shall develop within one year after the signature of this Agreement a process of cooperation in this regard.

Article 4

Reciprocal recognition of regulatory determinations with regard to air carrier fitness and citizenship

Upon receipt of an application for authorisation from an air carrier of one Party, the competent authorities of the other Party shall recognise expeditiously any fitness and/or

citizenship determination made by the competent authorities of the first Party with respect to that air carrier as if such determination had been made by its own competent authorities, and not inquire further into such matters, except as provided for at Sections a) and b) below.

- (a) If, after receipt of an application for authorisation from an air carrier, or after the grant of such authorisation, the competent authorities of the receiving Party have a specific reason for concern that, despite the determination made by the competent authorities of the other Party, the conditions prescribed in Article 3 (Authorisation) of this Agreement for the grant of appropriate authorisations or permissions have not been met, including reasons related to regulatory determination of ownership of air carriers designated by either Party, then they are to promptly advise those authorities, giving substantive reasons for their concern. In that event, either Party may seek consultations, which may include representatives of the relevant competent authorities, and/or additional information relevant to this concern, and such requests are to be met as soon as practicable. If the matter remains unresolved, either Party may bring the matter to the Joint Committee set up under Article 22 (Joint Committee) of this Agreement. If the matter can not be resolved by the Joint Committee, the Parties retain the possibility of refusing, revoking, suspending or limiting the operating authorisations or otherwise suspending or limiting the operations of air carriers concerned.
- (b) This article does not cover recognition of determinations in relation to:
 - Safety certificates or licences;
 - Security arrangements; or
 - Insurance coverage.

Article 5

Revocation of authorisation

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

- (a) for an air carrier of Brazil, majority ownership and effective control of that air carrier are not vested in Brazil or member-states of the Latin American Civil Aviation Commission which, in particular, have an agreement on certain aspects of air services (Horizontal Agreement) with the European Union, or nationals of such State or States, or both; or effective regulatory control of the air carrier is not exercised and maintained by Brazil having issued its Air Operator's Certificate or that air carrier does not have its principal place of business in the territory of Brazil;
- (b) for an air carrier of the European Union, majority ownership and effective control of that air carrier are not vested in a European Union Member State or Member States or Switzerland or signatories of the European Economic Area Agreement (EEA) or nationals of such State or States, or both; or effective regulatory control of the air carrier is not exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate or that air

carrier does not have its principal place of business in the territory of the European Union;

- (c) that air carrier has failed to comply with the laws and regulations referred to in Article 6 (Application of Laws) of this Agreement; or
- (d) a Party has made the determination in accordance with Article 15 (Competitive Framework) of this Agreement that the conditions for a competitive environment are not being fulfilled.

2. Unless immediate action is essential to prevent further noncompliance with subparagraphs 1(c) or (d) or with paragraph 3 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 authorisation or technical permission of an air carrier or air carriers of the other Party in accordance with the provisions of Article 7 (Safety) or Article 8 (Aviation Security) of this Agreement.

Article 6

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 utilised by the air carriers 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 air carriers.

Article 7

Safety

1. The Parties reaffirm the importance of close cooperation in the field of aviation safety. In that context, the Parties shall engage in further cooperation including in relation to air operations, notably to allow the sharing of information which may have an impact on the safety of international air navigation, the participation in each other's oversight activities or conducting joint oversight activities in the field of aviation safety and the development of joint projects and initiatives, including with third countries. This cooperation shall be developed in the framework of the *Agreement on Civil Aviation Safety between the European Union and the Government of the Federative Republic of Brazil*, done at Brasilia on 14 July 2010 (hereinafter the Safety Agreement), with respect to matters covered by that Safety Agreement.

2. Certificates of airworthiness, certificates of competency and licences, issued or rendered valid by one Party in accordance with the Safety Agreement, and still in force, shall be recognised as valid by the other Party and its aeronautical authorities for the purpose of operating the air services, provided that such certificates or licences were issued or rendered

valid pursuant to, and in conformity with, as a minimum, the international standards and recommended practices established by the International Civil Aviation Organization .

3. A Party or its responsible aeronautical authorities may request at any time consultations with the other Party or its responsible aeronautical authorities concerning the safety standards and requirements maintained and administered by those aeronautical authorities. If, following such consultations, the requesting Party or its responsible aeronautical authorities find that the other Party or its responsible aeronautical authorities do not effectively maintain and administer safety standards and requirements in these areas, that, unless otherwise decided, are at least equal to the minimum standards established pursuant to the Convention, the other Party or its responsible aeronautical authorities shall be notified of such findings and the steps considered necessary to conform with these minimum standards. Failure by the other Party or its responsible aeronautical authorities to take appropriate corrective action within fifteen (15) days, or such other period as may be decided, shall constitute grounds for the requesting Party or its responsible aeronautical authorities to revoke, suspend or limit the operating authorisations or technical permissions or to otherwise suspend or limit the operations of an air carrier, the safety oversight of which is the responsibility of the other Party or its responsible aeronautical authorities.

4. Each Party accepts that any aircraft operated by or, on behalf of, an air carrier of one Party, may, while within the territory of the other Party, be the subject of a ramp inspection by the aeronautical authorities of the other Party, to verify the validity of the relevant aircraft documents, and those of its crew members and the apparent condition of the aircraft and its equipment, provided that such examination does not cause an unreasonable delay in operation of the aircraft.

5. If the aeronautical authorities of one Party, after carrying out a ramp inspection, find that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention or there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention, the aeronautical authorities of that Party shall notify the aeronautical authorities of the other Party that are responsible for the safety oversight of the air carrier operating the aircraft of such findings and the steps considered necessary to conform with these minimum standards. Failure to take appropriate corrective action within fifteen (15) days shall constitute grounds for revoking, suspending or limiting the operating authorisations or technical permissions or to otherwise suspend or limit the operations of the air carrier operating the aircraft. The same determination may be made in the case of denial of access for ramp inspection.

6. Each Party, through its responsible aeronautical authorities, shall have the right to take immediate action including the right to revoke, suspend or limit the operating authorisations or technical permissions or otherwise suspend or limit the operations of an air carrier of the other Party, if they conclude that it is necessary in view of an immediate threat to aviation safety. Where practicable, the Party taking such measures shall endeavour to consult the other Party before hand.

7. Any action by a Party or its responsible aeronautical authorities in accordance with paragraphs 3, 5 or 6 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

Article 8

Aviation 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.
2. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo, 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague, 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal, 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal, 24 February 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, as well as with any other convention and protocol relating to the security of civil aviation which is binding upon both Parties.
3. 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.
4. The Parties shall act in conformity with the international aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization. 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.
5. 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.
6. With full regard and mutual respect for each other's sovereignty, a Party may adopt security measures for entry into its territory, which should be communicated to the other Party without delay. 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 recognises, 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.
7. 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.
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 civil 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. Each Party shall take all measures it finds practicable to ensure that an aircraft subjected to an act of unlawful seizure or other acts of unlawful interference which is on the ground in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

11. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the responsible authorities of that Party may request immediate consultations with the responsible authorities of the other Party. Such consultations shall start within fifteen (15) days from receipt of such a request. Failure to reach a satisfactory agreement within fifteen (15) days from the starting date of such consultations shall constitute grounds for the Party that requested the consultations to take action to withhold, revoke, suspend or impose conditions on the operating authorisation and technical permissions of an air carrier or air carriers of that Party to ensure compliance with the provisions. When required by an emergency, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action.

Article 9

Commercial opportunities

Doing business

1. The Parties agree that obstacles to doing business of commercial operators would hamper the benefits to be achieved by this Agreement. The Parties therefore agree to engage, as from the signature of this Agreement, in an effective and reciprocal process of removal of obstacles to doing business of air carriers of both Parties where such obstacles may hamper commercial operations, create distortions to competition or hamper the development of a level playing field.

2. Where references are made to national laws and regulations in relation to commercial opportunities covered by this Article, the Parties shall ensure that these laws and regulations do not unduly hamper commercial operations.

3. The Joint Committee set up in accordance with Article 21 shall develop a process of cooperation in relation to doing business and commercial opportunities; shall monitor progress in effectively addressing obstacles to doing business of commercial operators and shall regularly review developments, including towards legislative and regulatory changes. In accordance with Article 21 (Joint Committee) a Party may request a meeting of the Joint Committee to discuss any question related to the application of the present article.

Air carrier Representatives

4. According to each Party's laws and regulations, the air carriers of each Party shall have the right to freely establish offices in the territory of the other Party for the promotion and sale of air transportation and related services.

5. The air carriers 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. Both Parties shall facilitate and expedite the granting of employment authorisations, where required, for personnel employed in the offices according to this paragraph, including those performing certain temporary duties not exceeding ninety (90) days, subject to the relevant laws and regulations in force.

Groundhandling

6. (a) Without prejudice to subparagraph (b) below, each air carrier shall have in relation to ground handling in the territory of the other Party:

- (i) the right to perform its own ground-handling ("self-handling"), or
- (ii) the right to select among competing suppliers, including other air carriers, that provide ground-handling 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 constraints according to the laws and regulations applicable in the territory of the other Party. Where such constraints preclude self-handling and where there is no effective competition between suppliers that provide ground-handling services, the relevant Party shall ensure that all such services are available on both an equal and an adequate basis to all air carriers; prices of such services shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

Allocation of slots at airports

7. The allocation of available slots at the airports in the territories of the Parties shall be carried out in an independent, transparent, non-discriminatory and timely manner. An air carrier shall be allowed to operate in accordance with the slots allocated without further approval of schedules, programmes or operational plans.

Operational plans, programmes and schedules

8. Notification of operational plans, programmes or schedules for air services operated under this Agreement may be required by a Party for information purposes only. If a Party requires such notification, it shall minimise the administrative burdens of notification requirements and procedures on air transportation intermediaries and on air carriers of the other Party.

Sales, Local Expenses, and Transfer of Funds

9. According to each Party's laws and regulations, any air carrier of each Party shall have the right to engage in the sale of air transportation and related services in the territory of the other Party directly and/or, at the air carrier's discretion, through its sales agents, through other intermediaries appointed by the air carrier or through any other available channels. Each air carrier shall have the right to sell such transportation and related services, according to each Party's laws and regulations, and any person shall be free to purchase such transportation and related services, in the currency of that territory or in freely convertible currencies.

10. The air carriers 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 air carriers of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies, according to national currency laws and regulations.

11. Each Party shall grant to any air carrier of the other Party the right to convert into freely convertible currency and remit from the territory of the other Party to its home territory and,

except where inconsistent with national currency laws and regulations, the country or countries of its choice, 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. The conversion and remittance of such revenues shall not be subject to any administrative or exchange charges except those normally made by banks for the carrying out of such conversion and remittance. The provisions of this Article do not exempt the air carriers of both Parties from any duties, taxes and contributions to which they are otherwise subject. If there is a special agreement between an EU Member State and Brazil to avoid double taxation, or a special agreement or any other provisions relating to revenue/profits taxation agreed bilaterally which regulate transferring of funds between that EU Member State and Brazil, such agreements shall prevail.

Cooperative Arrangements

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

- (a) any air carrier or air carriers of the same Party;
- (b) any air carrier or air carriers of the other Party;
- (c) any air carrier or air carriers of a third country; and
- (d) any surface (land or maritime) transportation provider of any country;

provided that (i) the operating carrier holds the appropriate traffic rights 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.

The Parties may require the air carriers to notify cooperative marketing arrangements under this Agreement with the competent authorities, for information purposes only.

13. In respect of passenger transport sold involving cooperative marketing arrangements, the purchaser shall be informed at the point of sale, or in any case before boarding, which transportation providers will operate each sector of the service.

14. In relation to the transport of passengers, surface transportation providers shall not be subject to laws and regulations governing air transport on the sole basis that such surface transportation is held out by an air carrier under its own name. Surface transportation providers have the discretion to decide whether to enter into cooperative arrangements. In deciding on any particular arrangement, surface transportation providers may consider, among other things, consumer interests and technical, economic, space, and capacity constraints.

15. Notwithstanding any other provision of this Agreement, air carriers 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. Air carriers may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other air carriers and indirect providers of cargo air transportation. Such inter-modal 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.

Franchising / Branding

16. The air carriers of each Party shall be entitled to enter into franchising or branding arrangements with companies, including air carriers, of either Party or third countries, provided that the air carriers hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements, including those related to Articles 7 (Safety) and 8 (Aviation Security) of this Agreement.

Leasing

17. The air carriers of each Party may, in accordance with the laws and regulations of the Parties involved, enter into arrangements for the provision of aircraft with or without crew for international air transportation with:

- (a) any air carriers or air carriers of the Parties; and
- (b) any air carriers or air carriers 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 the air carrier providing the aircraft to hold traffic rights under this Agreement for the routes on which the aircraft will be operated. The Parties may require these arrangements to be approved by their competent authorities. Where a Party requires such approval, it shall minimise the administrative burdens for air carriers of the approval procedures.

Article 10

Inward Investment

Each Party shall permit nationals of the other Party to own and control up to 49% of the voting interests of their air carriers.

Article 11

Customs duties and charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the air carriers 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 imposed by the national, state and/or local authorities of both Parties, and are 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 air carrier 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 air carrier 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 air carrier 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, including free publicity material, 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 air carrier 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. Notwithstanding any other provision to the contrary, nothing in this Agreement shall prevent a Party from imposing taxes, levies, duties, fees or charges on fuel supplied in its territory on a non-discriminatory basis for use in an aircraft of an air carrier that operates between two points in its territory.

4. 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.

5. The exemptions provided by this Article shall also be available where the air carriers of one Party have contracted with another air carrier, 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.

6. 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.

7. If necessary in order to ensure compliance with the provisions of paragraphs 1 and 2 of this Article, a Party may request the assistance of the other Party, on behalf of its air carrier or air carriers, 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, if necessary, take appropriate action to ensure the proper application of the provisions of paragraphs 1 and 2 of this Article.

8. Baggage and cargo in direct transit across the territory of a Party shall be exempt from taxes, customs duties, fees and other similar charges that are not based on the cost of the service provided.

9. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of an air carrier of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

10. The stipulations of this Agreement shall not affect the field of VAT, with the exception of such tax on imports. The provisions of existing conventions in force between a Member State and Brazil for the avoidance of double taxation on income and on capital shall be unaffected by this Agreement.

Article 12

User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the air carriers of the other Party shall be just, reasonable and not discriminatory. In any event, any such user charges shall be assessed on the air carriers of the other Party on terms not less favourable than the most favourable terms available to any other air carrier at the time the charges are assessed.

2. User charges imposed on the air carriers of the other Party shall be transparent and 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 air carriers using the services and facilities. Each Party shall encourage the competent charging authorities or bodies and the air carriers 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. Competent charging authorities shall provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views and provide comments before any changes are made.

Article 13

Tariffs

1. The Parties shall permit tariffs to be freely established by the air carriers on the basis of free and undistorted competition.

2. Either Party may require, on a non-discriminatory basis, notification to its aeronautical authorities of tariffs offered for services originating from its territory by air carriers of both Parties on a simplified basis and for information purposes only. Such notification by the air carriers may be required to be made no earlier than the initial offering of a tariff.

3. Discussions between the aeronautical authorities of the Parties may be held to discuss matters such as, but not limited to, the requirements and procedures for notification of tariffs and tariffs which may be unjust, unreasonable or discriminatory.

Article 14

Statistics

1. The aeronautical authorities of one Party may require from the aeronautical authorities of the other Party to provide available statistics related to the traffic carried on services performed under this Agreement to be provided, as required by domestic laws and regulations, on a non-discriminatory basis, and as may reasonably be required.
2. The Parties shall cooperate in the framework of the Joint Committee to facilitate the exchange of statistical information between them for the purpose of monitoring the development of the air services.

Article 15

Competitive Framework

1. Each Party shall allow a fair and equal opportunity for the air carriers of both Parties to compete in providing the air transportation governed by this Agreement. The competition laws of each Party, as amended from time to time, shall apply to the operation of the air carriers within the jurisdiction of the respective Party. The Parties share the objective of compatibility and convergence of competition law and will cooperate as appropriate and where relevant on application of competition law.
2. The Parties affirm that free and undistorted competition is important to promote the objectives of this Agreement and note that the sound and effective enforcement of their competition laws contributes to the efficient functioning of the provision of air transport services between the Parties. The Parties recognise that cooperation and coordination between the competition authorities of the Parties serves to promote competition and effective resolution of competition concerns and serves to lessen the possibility or minimise the impact of differences in the application of their competition laws.
3. Each Party shall ensure that airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in its territory shall be available for use by the air carriers of the other Party on a non-discriminatory basis.
4. The Parties recognise that government subsidies and support may adversely affect the fair and equal opportunity of air carriers to compete in providing the international air transportation governed by this Agreement. Without limitation, it may include capital injections, cross subsidisation, grants, guarantees, relief or tax exemption, protection against bankruptcy, or insurance, by any government entities.
5. If one Party finds that its air carriers are being subjected to discrimination or unfair practices of the other Party, or that a subsidy or support being considered or provided by the other Party would adversely affect or is adversely affecting the fair and equal opportunity of the air carriers of the first Party to compete in an undistorted manner, it may submit observations to the other Party. Furthermore, either Party may request a meeting of the Joint Committee in such instances, as provided for in Article 21 (Joint Committee) to consider the issue.
6. If, following consultations in the Joint Committee, either Party believes that the conditions referred to in paragraph 5 persist and are likely to result in irreparable harm being caused to its air carrier or air carriers, it may take action in compliance with the procedures and criteria established by the Joint Committee under Article 21 (Joint Committee). Any such action shall be appropriate, proportionate and restricted with regard to scope and duration to what is

strictly necessary. It shall be exclusively directed towards the air carrier or air carriers benefiting from the conditions referred to in paragraph 5, and shall be without prejudice to the right of either Party to take action under Article 22 (Settlement of Disputes).

7. In undertaking the discussions described in paragraphs 5 and 6 above, the Parties shall:

- (a) coordinate their actions with the relevant authorities;
- (b) consider alternative means which might also achieve the objectives of action consistent with general competition and consumer law; and
- (c) take into account the views of the other Party and the other Party's obligations under other international agreements.

8. Notwithstanding anything in paragraphs 1 to 7 above, nothing in this Article shall limit the authority of the competition authorities of either Party, and all matters relating to the enforcement of competition law shall be under the exclusive competence of those authorities.

Article 16

Environment

1. The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties intend to work together to identify issues related to the impacts of international aviation on the environment.

2. The Parties recognise the importance of working together, to consider and minimise the effects of aviation on the environment, and to ensure that any measure is fully consistent with the objectives of this Agreement.

3. The Parties endorse and should encourage the exchange of information and regular dialogue among experts to enhance cooperation on addressing international aviation environmental impacts including:

- (a) on research and development of environmentally-friendly aviation technology;
- (b) in air traffic management innovation with a view to reducing the environmental impacts of aviation;
- (c) on research and development of renewable fuels for aviation;
- (d) exchange of views on issues dealing with the environmental effects of international aviation; and
- (e) in noise monitoring and mitigation measures with a view to reducing the health and environmental impacts of aviation.

4. The Parties shall also, in compliance with their multilateral environmental rights and obligations, enhance cooperation, including financial and technological, in relation to measures aimed at addressing greenhouse gas emissions from international aviation.

5. Nothing in this Agreement shall be construed to limit the authority of the competent authorities of a Party to take appropriate measures to prevent or otherwise address the environmental impacts of air transport, provided that such measures are fully consistent with their rights and obligations under international law.

Article 17

Air Traffic Management

The Parties shall cooperate in effectively addressing safety oversight and policy issues relating to air traffic management, with a view to optimising overall flight efficiency, reducing costs, and enhancing the safety and capacity of the existing systems. The Parties shall encourage their civil aviation authorities and air navigation service providers to continue to collaborate on regulatory issues and interoperability to further integrate both sides' systems where possible, to reduce the environmental impact of aviation, and to share information where appropriate.

Article 18

Consumer protection

1. The Parties affirm the importance of protecting the interests of consumers.
2. The Parties recognise the importance of promoting mutual cooperation in this area and of avoiding the imposition of incompatible requirements on air carriers. To this end the Parties shall consult each other within the framework of the Joint Committee on future developments and regulatory proposals in this area.

Article 19

Labour Issues

1. The Parties recognise the importance of considering the effects of this Agreement on labour, employment and working conditions. The Parties undertake to cooperate on labour matters within the scope of this agreement.
2. The Parties recognise the importance of the benefits that arise when the significant economic gains from open and competitive markets are combined with high labour standards for employees. The Parties shall implement the provisions of the Agreement in a manner that contributes to high labour standards, irrespective of the ownership or nature of the companies concerned, and to ensure that the rights and principles contained in their respective laws are not undermined.
3. Either Party may request a meeting of the Joint Committee to address labour issues that the requesting Party identifies as significant.

Article 20

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 21

The Joint Committee

1. A Joint Committee composed of representatives of both Parties shall be responsible for overseeing the administration of this Agreement and shall ensure its proper implementation. The Joint Committee shall meet as and when necessary and at least on an annual basis. Either Party may request the convening of a meeting.

2. The Joint Committee shall decide its rules of procedures.

3. The Joint Committee shall operate, and take decisions, on the basis of consensus.

4. A Party may request a meeting of the Joint Committee to seek to resolve any question relating to the interpretation or application of this Agreement. Such a meeting shall begin at the earliest possible date, and not later than two months from the date of receipt of the request, unless otherwise agreed by the Parties.

5. The Joint Committee shall make recommendations and take decisions where expressly provided by this Agreement and, in particular, establishing the procedures and criteria referred to in paragraph 6 of Article 15 (Competitive Framework);

6. The Joint Committee shall also develop cooperation, in particular by, but not limited to:

- (a) reviewing market conditions affecting air services under this Agreement;
- (b) addressing and as far as possible effectively resolve "doing business" issues that may, inter alia, hamper market access and smooth operation of services under this agreement as a means to ensure a level playing field, regulatory convergence and minimising the regulatory burden of operating air services;
- (c) exchanging information, including advising as to changes to domestic law and policies which might affect the air services under this Agreement;
- (d) fostering expert-level exchanges on new legislative or regulatory initiatives and developments on matters covered by this Agreement, such as the environment or consumer protection with a view to achieving compatibility in approaches to the extent possible;
- (e) considering potential areas for the further development of this Agreement, including the recommendation of amendments to this Agreement;
- (f) discussing issues related to investment, ownership and control;
- (g) developing regulatory cooperation and mutual commitment to achieve reciprocal recognition and convergence of rules and measures;
- (h) fostering consultation, where appropriate, on air transport issues dealt with in international organisations, in relations with third countries and in multilateral arrangements, including consideration of whether to adopt a joint approach; and

- (i) facilitating the exchange of statistical information between them for the purpose of monitoring the development of air services under this Agreement.

7. Where a Party is developing or implementing aviation policy measures or other measures that may have a significant impact on aviation, it shall evaluate the possible effects of those measures on the rights contained in this Agreement. Either Party may request a meeting of the Joint Committee to discuss the possible effects of aviation policy measures or other measures that may have a significant impact on aviation and to recommend appropriate steps to be taken by the Parties in respect to the rights contained in this Agreement. If such measures have adverse effects, the Joint Committee shall take appropriate steps, within its remit, to minimise such adverse effects.

8. This Agreement shall not preclude cooperation and discussions between responsible authorities of the Parties outside the Joint Committee, including in the fields of security, safety, the environment, air traffic management, aviation infrastructure, competition and consumer protection. The Parties shall inform the Joint Committee of the outcome of such cooperation and discussions which may have an impact on the implementation of this Agreement.

Article 22

Settlement of disputes

Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 15, that is not resolved by a meeting of the Joint Committee may be settled through diplomatic channels and, if persisting, be referred to a person or body for decision by agreement of the Parties (Mediation). If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with procedures to be agreed by the Parties.

Article 23

Relationship to other agreements

1. Upon entry into force pursuant to Article 27 of this Agreement, this Agreement shall prevail over the relevant provisions of bilateral agreements listed in section 1 of Annex II, except to the extent provided in section 2 of Annex II.
2. If the Parties become parties to a multilateral agreement, or endorse a decision adopted by the International Civil Aviation Organization or another international organisation, 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 24

Amendment

Any amendment to this Agreement may be mutually determined by the Parties pursuant to consultations held in conformity with Article 21 (Joint Committee) of this Agreement. Amendments shall come into force in accordance with the terms set out in Article 27 (Entry into Force).

Article 25

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 26

Registration of the Agreement

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization and with the United Nations Secretariat, in accordance with Article 102 of the Charter of the United Nations, following its entry into force.

Article 27

Entry into force

This Agreement and any amendments thereto 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, Brazil shall deliver to the European Union the diplomatic note to the European Union and its Member States, and the European Union shall deliver to Brazil the diplomatic note or notes from the European Union and its Member States. 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 Agreement have been completed.

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

Done at [...] on [...] in the year [...], in duplicate, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, each text being equally authentic.

For the Federative Republic of Brazil

For the European Union

For Austria

For Belgium

For Bulgaria

Etc.

ANNEX I

ROUTE SCHEDULE

1. For the purposes of paragraph 1 (c) of Article 2 and Section 2 of Annex II of this Agreement, each Party shall permit the air carriers of the other Party to operate on the routes specified hereunder:

(a) for air carriers of the European Union:

Points Behind – Points in the territory of the European Union and its Member States
–Intermediate Points – Points in Brazil – Points Beyond

(b) for air carriers of Brazil:

Points Behind – Points in Brazil – Intermediate Points – Points in the territory of the
European Union and its Member States – Points Beyond

TRAFFIC RIGHTS

2. Each Party shall grant the air carriers of the other Party the following traffic rights on the routes specified:

Scheduled and non-scheduled combination services:

- for air carriers of Brazil: the right to provide international air transportation between any points in Brazil and any points in the territory of the European Union and its Member States
- for air carriers of the European Union: the right to provide international air transportation between any points in the territory of the European Union and its Member States and any points in Brazil

Nothing in this paragraph shall be deemed to confer on the air carriers of Brazil the right to take on board, in the territory of one Member State, passengers, baggage, cargo, and/or mail carried for compensation and destined for a point in the territory of another Member State;

All-cargo services:

- for air carriers of Brazil: the right to provide international air transportation between any points in Brazil and any points in the territory of the European Union and its Member States with unlimited traffic rights through intermediate points and/or to beyond points (fifth freedom rights)
- for air carriers of the European Union: the right to provide international air transportation between any points in the territory of the European Union and its Member States and any points in Brazil with unlimited traffic rights through intermediate and/or to beyond points (fifth freedom rights).

When operating all-cargo services, the air carriers of the Parties may omit calling at any of the above points provided that the agreed services on the route begin or terminate in their respective territories.

OPERATIONAL FLEXIBILITY

3. Air carriers of both Parties may on any or all flights and at their option on the routes specified:

- (a) operate flights in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) serve intermediate and beyond points, as specified in paragraphs 1 and 2 of this Annex, and within the scope of cooperative marketing arrangements as specified in paragraph 9 of Article 9 of this Agreement, 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 (change of gauge);
- (f) make stopovers at any points whether within or outside the territory of either Party;
- (g) carry transit traffic through the other Party's territory;
- (h) combine traffic on the same aircraft regardless of where such traffic originates;
- (i) serve more than one point on the same service (co-terminalisation)

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that the services begin or terminate in their respective territories.

4. Each Party shall allow each air carrier 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 air carriers of the other Party.

ANNEX II

BILATERAL AIR SERVICES AGREEMENTS

Section 1

As provided in Article 23 of this Agreement, this Agreement shall prevail over the relevant provisions of the following bilateral agreements between Brazil and Member States:

- (a) Air service agreements between the Federative Republic of Brazil and Member States of the European Union, as amended, modified or effectively replaced, which, at the date of signature of this Agreement, are in force or in effect:
 - Agreement between the Federal Republic of Germany and the Federative Republic of Brazil on scheduled air services signed in Rio de Janeiro on 29 August 1957,
 - Agreement between the Government of Austria and the Government of the Federative Republic of Brazil relating to Air Services signed in Vienna on 16 July 1993,
 - Agreement between the Government of the Kingdom of Denmark and the Government of the Federative Republic of Brazil relating to air transport signed in Rio de Janeiro on 18 March 1969,
 - Agreement between the Spanish Government and the Government of the United States of Brazil on scheduled air transport signed in Rio de Janeiro on 28 November 1949,
 - Agreement between the French Republic and the Federative Republic of Brazil signed in Paris on 29 October 1965 related to air transport,
 - Air Services Agreement between the Government of the Republic of Hungary and the Government of the Federative Republic of Brazil signed in Brasilia on 3 April 1997,
 - Agreement between Italy and the United States of Brazil on scheduled air services signed in Rome on 23 January 1951,
 - Air Transport Agreement between the Government of the Kingdom of the Netherlands and the Government of the Federative Republic of Brazil signed in Brasilia on 6 July 1976,
 - Air Services Agreement between the Portuguese Republic and the Federative Republic of Brazil signed in Lisbon on 11 November 2002,
 - Agreement between the Government of the Kingdom of Sweden and the Government of the Federative Republic of Brazil relating to air transport signed in Rio de Janeiro on 18 March 1969,

- Agreement between the Government of the United States of Brazil and the Government of the United Kingdom of Great Britain and Northern Ireland concerning air transport done in Rio de Janeiro on 31 October 1946.
- (b) Air service agreements between the Federative Republic of Brazil and Member States of the European Union, as amended or modified, which, at the date of signature of this Agreement, have been signed, but have not yet entered into force:
 - Agreement between the Government of the Kingdom of Belgium and the Government of the Federative Republic of Brazil on air services signed in Brussels on 4 October 2009,
 - Air Services Agreement between the Government of the Republic of Poland and the Government of the Federative Republic of Brazil signed in Rio de Janeiro on 13 March 2000.

Section 2

Notwithstanding Section 1 of this Annex, existing and new rights, including rights to serve intermediate and beyond points, and more favourable provisions or treatments under the above bilateral agreements or other arrangements between Brazil and EU Member States and which are not covered, or which are more favourable than, under this Agreement can be exercised and be agreed, provided that there is no discrimination between air carriers of the European Union on the basis of nationality.

Section 3

Notwithstanding Section 1 of this Annex, for areas that are not encompassed within the definition of "Territory" in Article 1 (Definitions) of this Agreement, the bilateral agreements listed in Section 1 between Brazil and The Kingdom of Denmark, The French Republic, The Kingdom of the Netherlands, and The United Kingdom of Great Britain and Northern Ireland respectively shall continue to apply, according to their terms.