



EUROPEAN COMMISSION

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Proposal for a

### **COUNCIL DECISION**

**on the conclusion of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and**

**on the conclusion of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part**

## EXPLANATORY MEMORANDUM

### 1. Context of the proposal

- **Grounds for and objectives of the proposal**

The Air Transport Agreement between the European Union and its Member States, on the one hand, and the United States of America (US), on the other hand, signed on 25 and 30 April 2007 ("the EU-US Air Transport Agreement"), entered into effect on 30 March 2008. Article 18 (5) of the EU-US Air Transport Agreement confirms both Parties' 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". Article 18 (5) of the EU-US Air Transport Agreement further asks the Joint Committee established under Article 18 (1) of the EU-US Air Transport Agreement "to develop a proposal regarding the conditions and procedures that would be required for third countries to accede to this Agreement". Norway and Iceland formally requested the accession to the EU-US Air Transport Agreement in 2007. In accordance with Article 18 (5) of the EU-US Air Transport Agreement, the Joint Committee developed in its meeting on 16 November 2010 a proposal for the accession of Iceland and Norway to the EU-US Air Transport Agreement, consisting of a four-party "Cover Letter Agreement" and an Ancillary Agreement for the internal arrangements between the Union, Norway and Iceland. Norway and Iceland being an integral part of the European Common Aviation Area, these Agreements will ensure a consistent regulatory framework for flights between the US and the single aviation market in the EU – including Iceland and Norway. It will create commercial benefits for airlines and consumers in the EU and it will particularly ensure the consistency of the EU-US Air Transport Agreement with the common Scandinavian air transport policy. At the same time, the proposal ensures that the bilateral character of the EU-US Air Transport Agreement is maintained. Iceland and Norway will be committed to the negotiations of a second-stage air transport agreement with the US.

- **General context**

The EU-US Air Transport Agreement has removed all commercial barriers for flights between any point in the EU and any point in the US. In addition, the US has granted so-called 7<sup>th</sup> freedom rights to EU air carriers to operate between the US and non-EU countries of the European Common Aviation Area (ECAA), such as Norway and Iceland. However, the ECAA has no external dimension. Therefore, EU air carriers do currently not have the right to operate flights between Norway and Iceland and third countries. In the same way, Norwegian and Icelandic air carriers do currently not have the right to operate between the EU and the US.

The EU-US Air Transport Agreement has created uniform conditions for market access for all Union air carriers, and has established new arrangements for regulatory co-operation between the European Union and the US in fields essential for the safe, secure, and efficient operation of transatlantic air services. Norway and Iceland have adopted the complete *acquis communautaire* in aviation policy. Therefore, including

both countries in the scope of the EU-US Air Transport Agreement will ensure that all European air carriers applying the *acquis communautaire* will operate transatlantic air services in a harmonised framework.

The accession of Iceland and Norway to the EU-US Air Transport Agreement could be a precedent for the accession of Iceland and Norway to other aviation agreements of the Union (e.g. Euro-Mediterranean Aviation Agreement with Morocco).

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

The provisions of the Cover Letter Agreement extend the scope of the EU-US Air Transport Agreement *mutatis mutandis* to Norway and Iceland. The provisions of the Ancillary Agreement are based on the Council Decision of 25 April 2007 on the signature and provisional application of the EU-US Air Transport Agreement (2007/339/EC).

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

The objective of extending the EU-US Air Transport Agreement to third countries is explicitly foreseen in the EU-US Air Transport Agreement. The Cover Letter Agreement will establish the necessary link between the EU-US Air Transport Agreement and the European Common Aviation Area Agreement. It will not establish an external dimension to the European Economic Area Agreement. It is consistent with the EU's overall policy towards Iceland and Norway.

## 2. **Consultation of interested parties and impact assessment**

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

The accession of Iceland and Norway to the EU-US Air Transport Agreement has been discussed in various meetings of the Joint Committee established under the EU-US Air Transport Agreement and in informal technical meetings with Member States. All these meetings have been prepared in meetings of the Industry Consultative Forum with representatives of air carriers, airports, and labour organisations.

*Summary of responses and how they have been taken into account*

The issue of accession of Iceland and Norway to the EU-US Air Transport Agreement has been discussed in four meetings of the Industry Consultative Forum, during which all elements of the approach were discussed in detail. All comments from Member States and stakeholders were duly taken into consideration in the preparation of the Union's position for the Joint Committee held on 16 November 2010.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Agreement extends the scope of the EU-US Air Transport Agreement to Iceland and Norway. This will give EU air carriers the opportunity to take up the rights granted by the US since 30 March 2008 to operate passenger flights between the US and Iceland or Norway.

### 3. **Legal elements of the proposal**

- **Summary of the proposed action**

The proposal consists of two elements:

- The four-party "Cover Letter Agreement" extends the scope of the EU-US Air Transport Agreement *mutatis mutandis* to all four parties.
- The Ancillary Agreement ensures that the bilateral nature of the EU-US Air Transport Agreement is maintained. Norway and Iceland will be represented in the Joint Committee by the Commission for all areas that are not in the exclusive competence of Member States. Rules are established for the exchange of information, the participation in second-stage negotiations, and the representation in arbitration procedures.

- **Legal basis**

Article 100(2), in conjunction with Article 218(6)(a)(v) thereof.

- **Subsidiarity principle**

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

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason:

The EU-US Air Transport Agreement has established new arrangements at Union level governing the provision of transatlantic air services that replaced the previous arrangements made by individual Member States. The accession of third countries to the EU-US Air Transport Agreement can only be achieved at Union level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

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

The proposal will not affect the regulatory framework within the European Common Aviation Area. The proposal will not modify the EU-US Air Transport Agreement. The proposal is limited on ensuring consistency between the common aviation market in

Europe and the regulatory framework for transatlantic flights established by the EU-US Air Transport Agreement.

The proposal does not create any new obligations for EU aviation authorities or for EU industry. It creates new rights for EU air carriers and ensures full consistency of the EU-US Air Transport Agreement with the common Scandinavian air transport policy.

- **Choice of instruments**

Other means would not be adequate for the following reasons:

The four-party Cover Letter Agreement and an Ancillary Agreement are the most effective instruments to ensure both full extension of the EU-US Air Transport Agreement to Iceland and Norway and the bilateral character of the EU-US Air Transport Agreement. A multilateral agreement replacing the EU-US Air Transport Agreement would reduce the EU to one player in a four-party Agreement while the proposed Agreements maintain the bilateral relationship between the US, on the one hand, and Europe, on the other hand. Parallel bilateral agreements between (1) Iceland-US, (2) Norway-US, (3) Iceland-European Union, and (4) Norway-European Union would add unnecessary complexity and would not guarantee the full consistency of the regulatory framework for transatlantic flights.

#### **4. Budgetary implication**

The proposal has no implication for the Union budget.

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and**

**on the conclusion of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part**

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) thereof,

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Air Transport Agreement signed by the European Community and its Member States and the United States of America on April 25 and 30, 2007 (hereinafter, "the Air Transport Agreement"), as amended by the Protocol to amend the Air Transport Agreement signed by the European Union and its Member States and the United States of America on June 24, 2010 (hereinafter, "the Protocol") explicitly provides for the accession of third countries to the Air Transport Agreement.
- (2) In accordance with Article 18(5) of the Air Transport Agreement, as amended by the Protocol, the Joint Committee established thereunder has developed a proposal for the accession of Iceland and the Kingdom of Norway to the Air Transport Agreement.
- (3) On 16 November 2010 the Joint Committee proposed an Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, (hereinafter, "the Agreement").
- (4) The Commission has negotiated an Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway,

of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, (hereinafter, "the Ancillary Agreement").

- (5) In accordance with Council Decision 2011/XXX<sup>1</sup> of (...), the Agreement and the Ancillary Agreement were signed on [insert date] subject to their conclusion at a later date
- (6) The Agreements should be concluded.

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (hereinafter, "the Agreement") is hereby concluded<sup>2</sup>.

The text of the Agreement is attached to this Decision.

2. The Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (hereinafter, "the Ancillary Agreement") is hereby concluded.

The text of the Ancillary Agreement is attached to this Decision.

#### *Article 2*

The President of the Council shall designate the person empowered to make the notifications provided for in Article 6 of the Agreement and Article 9 of the Ancillary Agreement.

#### *Article 3*

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

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<sup>1</sup> OJ L, p...

<sup>2</sup> The Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part has been published in OJ L, p...together with the decision on signing.

Done at [Place],

*For the Council*  
*The President*  
[...]

**ATTACHMENT 1**

**AIR TRANSPORT AGREEMENT**

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

of the first part;

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 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 second part;

ICELAND,

of the third part; and

THE KINGDOM OF NORWAY (hereinafter, "Norway"),

of the fourth 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 travelling 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, 1944;

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

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, 1999;

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;

RECOGNIZING 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;

RECOGNIZING that the European Union replaced and succeeded the European Community as a consequence of the entry into force on December 1, 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 Air Transport Agreement signed by the European Community and its Member States and the United States of America on April 25 and 30, 2007, apply to the European Union;

HAVE AGREED AS FOLLOWS:

## ARTICLE 1

### Definition

"Party" means the United States, the European Union and its Member States, Iceland, or Norway.

## ARTICLE 2

Application of the Air Transport Agreement as amended by the Protocol

and the Annex to this Agreement

The provisions of the Air Transport Agreement signed by the European Community and its Member States and the United States of America on April 25 and 30, 2007 (hereinafter, "the Air Transport Agreement"), as amended by the Protocol to Amend the Air Transport Agreement signed by the United States of America and the European Union and its Member States on June 24, 2010 (hereinafter, "the Protocol"), which are hereby incorporated by reference, shall apply to all Parties to this Agreement, subject to the Annex to this Agreement. The provisions of the Air Transport Agreement, as amended by the Protocol, shall apply to Iceland and Norway as though they were Member States of the European Union, so that Iceland and Norway shall have all of the rights and

obligations of Member States under that agreement. The provisions of the Annex to this Agreement form an integral part of this Agreement.

### ARTICLE 3

#### Termination

1. Either the United States or the European Union and its Member States may, at any time, give notice in writing through diplomatic channels to the other three Parties of its decision to terminate this Agreement or to end this Agreement's provisional application under Article 5.

A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization (ICAO). This Agreement shall terminate, or provisional application of this Agreement shall end, at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of the written notification, unless the notice is withdrawn by agreement of all of the Parties before the end of this period.

2. Either Iceland or Norway may, at any time, give notice in writing through diplomatic channels to the other Parties of its decision to withdraw from this Agreement or to end its provisional application of this Agreement under Article 5. A copy of the notice shall be sent simultaneously to ICAO. Such withdrawal or cessation of provisional application shall be effective at midnight GMT at the end of the IATA traffic season in effect one year following the date of written notification, unless the notice is withdrawn by agreement of the Party giving written notice, the United States, and the European Union and its Member States before the end of this period.

3. Either the United States or the European Union and its Member States may, at any time, give notice in writing through diplomatic channels to Iceland or Norway of its decision to terminate this Agreement or to end this Agreement's provisional application, with respect to Iceland or Norway. Copies of the notice shall be sent simultaneously to the other two Parties to this Agreement and to ICAO. Termination or cessation of provisional application with respect to Iceland or Norway shall be effective at midnight GMT at the end of the IATA traffic season in effect one year following the date of written notification, unless the notice is withdrawn by agreement of the United States, the European Union and its Member States, and the Party receiving the notice, before the end of this period.

4. For purposes of the diplomatic notes contemplated by this Article, 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.

5. Notwithstanding any other provision of this Article, if the Air Transport Agreement, as amended by the Protocol, is terminated, this Agreement shall terminate simultaneously.

### ARTICLE 4

#### Registration with ICAO

This Agreement and all amendments thereto shall be registered with ICAO by the General Secretariat of the Council of the European Union.

## ARTICLE 5

### Provisional Application

Pending its entry into force, the Parties agree to provisionally apply this Agreement, to the extent permitted under applicable domestic law, from the date of signature. If the Air Transport Agreement, as amended by the Protocol, is terminated in accordance with Article 23 thereof, or its provisional application ceases in accordance with Article 25 of that agreement, or provisional application of the Protocol ceases in accordance with Article 9 of the Protocol, provisional application of this Agreement shall cease simultaneously.

## ARTICLE 6

### Entry into force

This Agreement shall enter into force on the later of:

1. the date of entry into force of the Air Transport Agreement,
2. the date of entry into force of the Protocol, and
3. one month after the date of the last note of the exchanges of diplomatic notes among the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed.

For the 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 Agreement have been completed.

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

DONE at....., in quadruplicate, this ..... day of ....., 2011.

FOR THE UNITED STATES OF AMERICA      FOR THE KINGDOM OF BELGIUM

FOR THE REPUBLIC OF BULGARIA

FOR THE CZECH REPUBLIC

FOR THE KINGDOM OF DENMARK

FOR THE FEDERAL REPUBLIC OF GERMANY

FOR THE REPUBLIC OF ESTONIA

FOR IRELAND

FOR THE HELLENIC REPUBLIC

FOR THE KINGDOM OF SPAIN

FOR THE FRENCH REPUBLIC

FOR THE ITALIAN REPUBLIC

FOR THE REPUBLIC OF CYPRUS

FOR THE REPUBLIC OF LATVIA

FOR THE REPUBLIC OF LITHUANIA

FOR THE GRAND DUCHY OF LUXEMBOURG

FOR THE REPUBLIC OF HUNGARY

FOR THE REPUBLIC OF MALTA

FOR THE KINGDOM OF THE NETHERLANDS

FOR THE REPUBLIC OF AUSTRIA

FOR THE REPUBLIC OF POLAND

FOR THE PORTUGUESE REPUBLIC

FOR ROMANIA

FOR THE REPUBLIC OF SLOVENIA

FOR THE SLOVAK REPUBLIC

FOR THE REPUBLIC OF FINLAND

FOR THE KINGDOM OF SWEDEN

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

FOR THE EUROPEAN UNION

FOR ICELAND

FOR THE KINGDOM OF NORWAY

Specific Provisions with Respect to Iceland and Norway

The provisions of the Air Transport Agreement, as amended by the Protocol, modified as follows, shall apply to all Parties to this Agreement. The provisions of the Air Transport Agreement, as amended by the Protocol, shall apply to Iceland and Norway as though they were Member States of the European Union, so that Iceland and Norway shall have all of the rights and obligations of Member States under that agreement:

1. Paragraph 9 of Article 1 of the Air Transport Agreement, as amended by the Protocol, shall read as follows:

"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 Union and its Member States, the land areas (mainland and islands), internal waters and territorial sea in which the Agreement on the European Economic Area is applied and under the conditions laid down in that agreement and any successor instrument, with the exception of the land areas and internal waters under the sovereignty or jurisdiction of the Principality of Liechtenstein; 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 Union 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

2. Articles 23 to 26 of the Air Transport Agreement, as amended by the Protocol, shall not apply to Iceland and Norway.

3. Articles 9 and 10 of the Protocol shall not apply to Iceland and Norway.

4. The following shall be added to Section 1 of Annex 1 of the Air Transport Agreement, as amended by the Protocol:

w. Iceland: Air Transport Agreement, signed at Washington June 14, 1995; amended March 1, 2002 by exchange of notes; amended August 14, 2006 and March 9, 2007 by exchange of notes.

x. The Kingdom of Norway: Agreement relating to Air Transport Services effected by exchange of notes at Washington, October 6, 1945; amended August 6, 1954 by exchange of notes; amended June 16, 1995 by exchange of notes.

5. The text of Section 2 of Annex 1 of the Air Transport Agreement, as amended by the Protocol, shall read as follows:

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), (v) (United Kingdom-United States), and (x) (Norway-United States) of that section shall continue to apply, according to their terms.

6. The text of Section 3 of Annex 1 of the Air Transport Agreement, as amended by the Protocol, shall read as follows:

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, the Republic of Malta, the Republic of Poland, the Portuguese Republic, the Slovak Republic, Iceland, and the Kingdom of Norway.

7. The following sentence shall be added at the end of Article 3 of Annex 2 of the Air Transport Agreement, as amended by the Protocol:

For Iceland and Norway, this includes, but is not limited to, Articles 53, 54, and 55 of the Agreement on the European Economic Area and the EU Regulations implementing Articles 101, 102 and 105 of the Treaty on the Functioning of the European Union as incorporated into the Agreement on the European Economic Area, as well as any amendments thereto.

8. Article 21 paragraph 4 of the Air Transport Agreement as amended by the Protocol shall apply to Iceland and Norway to the extent that the relevant laws and regulations of the European Union are incorporated into the Agreement on the European Economic Area, in accordance with any adaptations thereby stipulated.

## Joint Declaration

Representatives of the United States of America, the European Union and its Member States, Iceland, and the Kingdom of Norway confirmed that the text of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (the "Agreement"), is to be authenticated in other languages, as provided either, before signature of the Agreement, by Exchanges of Letters among the United States of America, the European Commission on behalf of the European Union and its Member States, Iceland, and the Kingdom of Norway or, after signature of the Agreement, by decision of the Joint Committee.

This Joint Declaration is an integral part of the Agreement.

For the United States of America:

For the European Union and its Member States:

XXX

XXX

For Iceland:

For the Kingdom of Norway:

XXX

XXX



**ATTACHMENT 2**

ANCILLARY AGREEMENT

BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES,  
OF THE FIRST PART,

ICELAND, OF THE SECOND PART,

AND THE KINGDOM OF NORWAY, OF THE THIRD PART,

ON THE APPLICATION OF THE AIR TRANSPORT AGREEMENT  
BETWEEN

THE UNITED STATES OF AMERICA, OF THE FIRST PART, THE EUROPEAN UNION  
AND ITS MEMBER STATES, OF THE SECOND PART,  
ICELAND, OF THE THIRD PART,

AND THE KINGDOM OF NORWAY, OF THE FOURTH PART

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 first part;

ICELAND,

of the second part;

and

THE KINGDOM OF NORWAY (hereinafter, "Norway"),

of the third part;

NOTING that the European Commission has negotiated, on behalf of the European Union and of the Member States, an Agreement on Air Transport with the United States of America in accordance with the Council Decision authorising the Commission to open negotiations,

NOTING that the Air Transport Agreement between the United States of America and the European Community and its Member States (hereinafter, "the Air Transport Agreement") was initialled on 2 March 2007, signed at Brussels on 25 April 2007 and at Washington, D.C. on 30 April 2007 and provisionally applied from 30 March 2008,

NOTING that the Air Transport Agreement was amended by the Protocol to amend the Air Transport Agreement between the United States of America and the European Union and its

Member States (hereinafter, "the Protocol"), initialled on 2 March 2010, and signed at Luxembourg on 24 June 2010,

NOTING that Iceland and Norway, being fully integrated members of the single European Aviation Market through the Agreement on the European Economic Area, have adhered to the Air Transport Agreement as amended by the Protocol through an Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, of even date, (hereinafter, "the Agreement"), which incorporates the Air Transport Agreement as amended by the Protocol.

RECOGNISING that it is necessary to lay down procedural arrangements for deciding, if appropriate, how to take measures pursuant to Article 21 paragraph 5 of the Air Transport Agreement as amended by the Protocol.

RECOGNISING that it is furthermore necessary to lay down procedural arrangements for the participation of Iceland and Norway in the Joint Committee set up under Article 18 of the Air Transport Agreement as amended by the Protocol and in the arbitration procedures provided for in Article 19 of the Air Transport Agreement as amended by the Protocol. These procedural arrangements should ensure the necessary cooperation, flow of information and consultation before Joint Committee meetings, as well as the implementation of certain provisions of the Air Transport Agreement as amended by the Protocol, including those concerning security, safety, the granting and revocation of traffic rights and government support,

HAVE AGREED AS FOLLOWS:

#### ARTICLE 1

##### Notification

Should the European Union and its Member States decide to terminate the Agreement in accordance with Article 3 of the Agreement or to discontinue its provisional application, or to withdraw notices to that effect, the Commission shall, before giving notice through diplomatic channels to the United States of America, immediately notify Iceland and Norway thereof. Iceland and/or Norway shall likewise immediately notify the Commission of any such decision(s).

#### ARTICLE 2

##### Suspension of Traffic Rights

A decision not to allow airlines of the other Party to operate additional frequencies or enter new markets under the Agreement and give notice thereof to the United States of America, or to agree to lift any such decision, taken in accordance with Article 21 paragraph 5 of the Air Transport Agreement as amended by the Protocol, shall be adopted by the Council, on behalf of the European Union and of the Member States, acting unanimously in accordance with the relevant Treaty provisions, and by Iceland and Norway. The president of the Council, acting on behalf of the European Union and of the Member States, Iceland and Norway shall then give notice to the United States of America of any such decision.

#### ARTICLE 3

## Joint Committee

1. The European Union, the Member States, Iceland and Norway shall be represented in the Joint Committee established under Article 18 of the Air Transport Agreement as amended by the Protocol by representatives of the Commission, the Member States, Iceland and Norway.
2. The position of the European Union, the Member States, Iceland and Norway within the Joint Committee shall be presented by the Commission, except in areas that within the EU fall exclusively within Member States' competence, in which case it shall be presented by the Presidency of the Council or by the Commission, Iceland and Norway as appropriate.
3. The position to be taken by Iceland and Norway within the Joint Committee as regards matters falling within Articles 14 or 20 of the Air Transport Agreement as amended by the Protocol or matters that do not require the adoption of a decision having legal effects shall be adopted by Iceland and Norway in agreement with the Commission.
4. For other Joint Committee decisions concerning matters that fall within regulations and directives that are incorporated in the Agreement on the European Economic Area, the position to be taken by the European Union, the Member States, Iceland and Norway, shall be adopted by the Commission in agreement with Iceland and Norway.
5. For other Joint Committee decisions concerning matters that fall outside regulations and directives that are incorporated in the Agreement on the European Economic Area, the position to be taken by Iceland and Norway, shall be adopted by Iceland and Norway in agreement with the Commission.
6. The Commission shall take adequate measures to ensure full participation of Iceland and Norway in any coordination, consultation or decision shaping meetings with the Member States and access to the relevant information in preparation to Joint Committee meetings to be held.

## ARTICLE 4

### Arbitration

1. The Commission shall represent the European Union, the Member States, Iceland and Norway in arbitration proceedings under Article 19 of the Air Transport Agreement as amended by the Protocol.
2. The Commission shall, as appropriate, take measures to ensure the involvement of Iceland and Norway in the preparation and coordination of arbitration proceedings.
3. If the Council decides to suspend benefits in accordance with Article 19 paragraph 7 of the Air Transport Agreement as amended by the Protocol that decision shall be notified to Iceland and Norway. Iceland and/or Norway shall likewise inform the Commission of any such decision(s) made.
4. Any other appropriate action to be taken under Article 19 of the Air Transport Agreement as amended by the Protocol on matters which within the EU fall within the Union competence shall be decided upon by the Commission, with assistance of a Special

Committee of representatives of the Member States appointed by the Council, of Iceland and of Norway.

## ARTICLE 5

### Exchange of Information

1. Iceland and Norway shall promptly inform the Commission of any decision to refuse, revoke, suspend or limit the authorisations of an airline of the United States of America that they have adopted under Article 4 or 5 of the Air Transport Agreement as amended by the Protocol. The Commission shall likewise promptly inform Iceland and Norway of any such decision taken by Member States.
2. Iceland and Norway shall inform the Commission immediately of any requests or notifications made or received by them under Article 8 of the Air Transport Agreement as amended by the Protocol. The Commission shall likewise immediately inform Iceland and Norway of any such requests or notifications made or received by Member States.
3. Iceland and Norway shall inform the Commission immediately of any requests or notifications made or received by them under Article 9 of the Air Transport Agreement as amended by the Protocol. The Commission shall likewise immediately inform Iceland and Norway of any such requests or notifications made or received by Member States.

## ARTICLE 6

### Government subsidies and support

1. Should Iceland or Norway believe that a subsidy or support being considered or provided by a governmental entity in the territory of the United States of America will have the adverse competitive effects referred to in Article 14 paragraph 2 of the Air Transport Agreement as amended by the Protocol, it shall bring the matter to the attention of the Commission. Should a Member State have brought a similar matter to the attention of the Commission, the Commission shall likewise bring the matter to the attention of Iceland and Norway.
2. The Commission, Iceland and Norway may approach such entity or request a meeting of the Joint Committee established under Article 18 of the Air Transport Agreement as amended by the Protocol.
3. The Commission, Iceland and Norway shall inform each other immediately when they are contacted by the United States of America under Article 14 paragraph 3 of the Air Transport Agreement as amended by the Protocol.

## ARTICLE 7

### Termination

1. A Party may, at any time, give notice in writing through diplomatic channels to the other Parties of its decision to terminate this Ancillary Agreement or to end its provisional application. This Ancillary Agreement shall terminate or shall cease to be provisionally applied at midnight GMT six months following the date of the written notification of

termination or of cessation of provisional application, unless the notice is withdrawn by agreement of the Parties before the end of this period.

2. Notwithstanding any other provision of this Article, if the Agreement is terminated or its provisional application is ended, this Ancillary Agreement shall simultaneously terminate or cease to be provisionally applied.

## ARTICLE 8

### Provisional application

Pending entry into force pursuant to Article 9, the Parties agree to apply this Ancillary Agreement provisionally in accordance with the national laws of the Parties from the later of the date of the signature of this Ancillary Agreement or of the date of provisional application specified in Article 5 of the Agreement.

## ARTICLE 9

### Entry into force

This Ancillary Agreement shall enter into force either (a) one month after the date of the latest note in exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Ancillary Agreement have been completed, or (b) on the date of entry into force or provisional application of the Agreement, whichever is the later.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Ancillary Agreement.

DONE at ..... in triplicate, this ..... day of ....., 2011 in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Icelandic, Irish, Italian, Latvian, Lithuanian, Maltese, Norwegian, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, all texts being authentic.

FOR THE KINGDOM OF BELGIUM

FOR THE REPUBLIC OF BULGARIA

FOR THE CZECH REPUBLIC

FOR THE KINGDOM OF DENMARK

FOR THE FEDERAL REPUBLIC OF GERMANY

FOR THE REPUBLIC OF ESTONIA

FOR IRELAND

FOR THE HELLENIC REPUBLIC

FOR THE KINGDOM OF SPAIN

FOR THE FRENCH REPUBLIC

FOR THE ITALIAN REPUBLIC  
FOR THE REPUBLIC OF CYPRUS  
FOR THE REPUBLIC OF LATVIA  
FOR THE REPUBLIC OF LITHUANIA  
FOR THE GRAND DUCHY OF LUXEMBOURG  
FOR THE REPUBLIC OF HUNGARY  
FOR THE REPUBLIC OF MALTA  
FOR THE KINGDOM OF THE NETHERLANDS  
FOR THE REPUBLIC OF AUSTRIA  
FOR THE REPUBLIC OF POLAND  
FOR THE PORTUGUESE REPUBLIC  
FOR ROMANIA  
FOR THE REPUBLIC OF SLOVENIA  
FOR THE SLOVAK REPUBLIC  
FOR THE REPUBLIC OF FINLAND  
FOR THE KINGDOM OF SWEDEN  
FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
FOR THE EUROPEAN UNION  
FOR ICELAND  
FOR THE KINGDOM OF NORWAY