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Proposal for a

**Decision of the Council and the representatives of the Governments of the  
Member States of the European Union, meeting within the Council**

**On the conclusion of the Protocol to Amend the Air Transport Agreement  
between the European Community and its Member States, of the one part, and  
the United States of America, of the other part**

**ANNEX**  
**ATTACHMENT 1**

PROTOCOL TO AMEND THE AIR TRANSPORT AGREEMENT BETWEEN THE  
UNITED STATES OF AMERICA AND THE EUROPEAN COMMUNITY AND ITS  
MEMBER STATES, SIGNED ON APRIL 25 AND 30, 2007

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

of the one part; and

THE KINGDOM OF BELGIUM,  
THE REPUBLIC OF BULGARIA,  
THE CZECH REPUBLIC,  
THE KINGDOM OF DENMARK,  
THE FEDERAL REPUBLIC OF GERMANY,  
THE REPUBLIC OF ESTONIA,  
IRELAND,  
THE HELLENIC REPUBLIC,  
THE KINGDOM OF SPAIN,  
THE FRENCH REPUBLIC,  
THE ITALIAN REPUBLIC,  
THE REPUBLIC OF CYPRUS,  
THE REPUBLIC OF LATVIA,  
THE REPUBLIC OF LITHUANIA,  
THE GRAND DUCHY OF LUXEMBOURG,  
THE REPUBLIC OF HUNGARY,  
MALTA,  
THE KINGDOM OF THE NETHERLANDS,  
THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

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

and the EUROPEAN UNION,

of the other part;

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

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

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 Agreement apply to the European Union;

Have agreed to amend the Agreement as follows:

### **Article 1**

#### Definitions

Article 1 of the Agreement shall be amended by:

1. Inserting the following new definition after paragraph 2:

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

2. Inserting the following new definition after paragraph 3:

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

## Article 2

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

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

#### ARTICLE 6 *bis*

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

1. Upon receipt of an application for operating authorisation, pursuant to Article 4, from an air carrier of one Party, the aeronautical authorities of the other Party shall recognise any fitness and/or citizenship determination made by the aeronautical authorities of the first Party with respect to that air carrier as if such a determination had been made by its own aeronautical authorities and not enquire further into such matters, except as provided for at sub-paragraph (a) below:
  - (a) If, after receipt of an application for operating authorisation from an air carrier, or after the grant of such authorisation, the aeronautical authorities of the receiving Party have a specific reason for concern that, despite the determination made by the aeronautical authorities of the other Party, the conditions prescribed in Article 4 of this Agreement for the grant of appropriate authorisations or permissions have not been met, then they shall promptly advise those authorities, giving substantive reasons for their concern. In that event, either Party may seek consultations, which should include representatives of the relevant aeronautical authorities, and/or additional information relevant to this concern, and such requests shall be met as soon as practicable. If the matter remains unresolved, either Party may bring the matter to the Joint Committee;
  - (b) This Article shall not apply to determinations in relation to safety certificates or licences; security arrangements; or insurance coverage.
2. Each Party shall inform the other in advance where practicable, and otherwise as soon as possible afterward, through the Joint Committee of any substantial changes in the criteria it applies in making the determinations referred to in paragraph 1 above. If the receiving Party requests consultations on any such change they shall be held in the Joint Committee within 30 days of such a request, unless the Parties agree otherwise. If, following such consultations, the receiving Party considers that the revised criteria of the other Party would not be satisfactory for the reciprocal recognition of regulatory determinations, the receiving Party may inform the other Party of the suspension of paragraph 1. This suspension

may be lifted by the receiving Party at any time. The Joint Committee shall be informed accordingly.

### **Article 3**

#### Environment

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

### ARTICLE 15

#### Environment

1. The Parties recognise the importance of protecting the environment when developing and implementing international aviation policy, carefully weighing the costs and benefits of measures to protect the environment in developing such policy, and, where appropriate, jointly advancing effective global solutions. Accordingly, the Parties intend to work together to limit or reduce, in an economically reasonable manner, the impact of international aviation on the environment.
2. When a Party is considering proposed environmental measures at the regional, national, or local level, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects. At the request of a Party, the other Party shall provide a description of such evaluation and mitigating steps.
3. When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organisation in Annexes to the Convention shall be followed except where differences have been filed. The Parties shall apply any environmental measures affecting air services under this Agreement in accordance with Article 2 and 3(4) of this Agreement.
4. The Parties reaffirm the commitment of Member States and the United States to apply the balanced approach principle.
5. The following provisions shall apply to the imposition of new mandatory noise-based operating restrictions at airports which have more than 50,000 movements of civil subsonic jet aeroplanes per calendar year:
  - (a) The responsible authorities of a Party shall provide an opportunity for the views of interested parties to be considered in the decision-making process.
  - (b) Notice of the introduction of any new operating restriction shall be made available to the other Party at least 150 days prior to the entry into force of that operating restriction. At the request of that other Party, a written report shall be provided without delay to that other Party explaining the reasons for introducing the operating restriction, the environmental objective established for the airport, and the measures that were

considered to meet that objective. That report shall include the relevant evaluation of the likely costs and benefits of the various measures considered.

- (c) Operating restrictions shall be (i) non-discriminatory, (ii) not more restrictive than necessary in order to achieve the environmental objective established for a specific airport, and (iii) non-arbitrary.
6. The Parties endorse and shall encourage the exchange of information and regular dialogue among experts, in particular through existing communication channels, to enhance cooperation, consistent with applicable laws and regulations, on addressing international aviation environmental impacts and mitigation solutions, including:
- (a) research and development of environmentally-friendly aviation technology;
  - (b) improvement of scientific understanding regarding aviation emissions impacts in order to better inform policy decisions;
  - (c) air traffic management innovation with a view to reducing the environmental impacts of aviation;
  - (d) research and development of sustainable alternative fuels for aviation; and
  - (e) exchange of views on issues and options in international fora dealing with the environmental effects of aviation, including the coordination of positions, where appropriate.
7. If so requested by the Parties, the Joint Committee, with the assistance of experts, shall work to develop recommendations that address issues of possible overlap between and consistency among market-based measures regarding aviation emissions implemented by the Parties with a view to avoiding duplication of measures and costs and reducing to the extent possible the administrative burden on airlines. Implementation of such recommendations shall be subject to such internal approval or ratification as may be required by each Party.
8. If one Party believes that a matter involving aviation environmental protection, including proposed new measures, raises concerns for the application or implementation of this Agreement, it may request a meeting of the Joint Committee, as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

#### **Article 4**

##### Social Dimension

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

##### ARTICLE 17 *bis*



## Social Dimension

1. The Parties recognise the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws.
2. The principles in paragraph 1 shall guide the Parties as they implement the Agreement, including regular consideration by the Joint Committee, pursuant to Article 18, of the social effects of the Agreement and the development of appropriate responses to concerns found to be legitimate.

### Article 5

#### The Joint Committee

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

3. The Joint Committee shall review, as appropriate, the overall implementation of the Agreement, including any effects of aviation infrastructure constraints on the exercise of rights provided for in Article 3, the effects of security measures taken under Article 9, the effects on the conditions of competition, including in the field of Computer Reservation Systems, and any social effects of the implementation of the Agreement. The Joint Committee shall also consider, on a continuing basis, individual issues or proposals that either Party identifies as affecting, or having the potential to affect, operations under the Agreement, such as conflicting regulatory requirements.
4. The Joint Committee shall also develop cooperation by:
  - (a) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;
  - (b) considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate;
  - (c) maintaining an inventory of issues regarding government subsidies or support raised by either Party in the Joint Committee;
  - (d) making decisions, on the basis of consensus, concerning any matters with respect to application of paragraph 6 of Article 11;
  - (e) developing, where requested by the Parties, arrangements for the reciprocal recognition of regulatory determinations;
  - (f) fostering cooperation between the respective authorities of the Parties in efforts to develop their respective air traffic management systems

with a view toward optimising the interoperability and compatibility of those systems, reducing costs, and enhancing their safety, capacity, and environmental performance;

- (g) promoting the development of proposals for joint projects and initiatives in the field of aviation safety, including with third countries;
  - (h) encouraging continued close cooperation among the relevant aviation security authorities of the Parties, including initiatives to develop security procedures that enhance passenger and cargo facilitation without compromising security;
  - (i) considering whether the Parties' respective laws, regulations, and practices in areas covered by Annex 9 of the Convention (Facilitation) may affect the exercise of rights under this Agreement;
  - (j) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), and consumer protection;
  - (k) fostering consultation, where appropriate, on air transport issues dealt with in international organisations and in relations with third countries, including consideration of whether to adopt a joint approach; and
  - (l) taking, on the basis of consensus, the decisions to which paragraph 3 of Article 1 of Annex 4 and paragraph 3 of Article 2 of Annex 4 refer.
5. The Parties share the goal of maximizing the benefits for consumers, airlines, labour, and communities on both sides of the Atlantic by extending this Agreement to include third countries. To this end, the Joint Committee shall consider, as appropriate, the conditions and procedures, including any necessary amendments to this Agreement, that would be required for additional third countries to accede to this Agreement.

## **Article 6**

### Further Expansion of Opportunities

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

## **ARTICLE 21**

### Further Expansion of Opportunities

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

framework that will encourage other countries to open up their own air services markets.

2. Pursuant to the shared goal in paragraph 1, and in fulfilling its responsibilities under Article 18 to oversee implementation of this Agreement, the Joint Committee shall review annually developments, including towards the legislative changes referred to in this Article. The Joint Committee shall develop a process of cooperation in this regard including appropriate recommendations to the Parties. The European Union and its Member States shall allow majority ownership and effective control of their airlines by the United States or its nationals, on the basis of reciprocity, upon confirmation by the Joint Committee that the laws and regulations of the United States permit majority ownership and effective control of its airlines by the Member States or their nationals.
3. Upon written confirmation by the Joint Committee, in accordance with paragraph 6 of Article 18, that the laws and regulations of each Party permit majority ownership and effective control of its airlines by the other Party or its nationals:
  - (a) Section 3 of Annex 1 to the Agreement shall cease to have effect;
  - (b) Airlines of the United States shall have the right to provide scheduled passenger combination services between points in the European Union and its Member States and five countries, without serving a point in the territory of the United States. These countries shall be determined by the Joint Committee within one year from the date of signature of this Protocol. The Joint Committee may amend the list, or increase the number, of such countries; and
  - (c) The text of Article 2 of Annex 4 to the Agreement (“Ownership and Control of Third-Country Airlines”) shall cease to have effect and the text of Annex 6 to the Agreement shall take effect in its place, with regard to third-country airlines owned and controlled by the United States or its nationals.
4. Upon written confirmation by the Joint Committee, in accordance with paragraph 6 of Article 18, that the laws and regulations of the European Union and its Member States with regard to the imposition of noise-based operating restrictions at airports having more than 50,000 annual movements of civil subsonic jet aeroplanes provide that the European Commission has the authority to review the process prior to the imposition of such measures, and, where it is not satisfied that the appropriate procedures have been followed in accordance with applicable obligations, to take in that case, prior to their imposition, appropriate legal action regarding the measures in question:
  - (a) Airlines of the European Union shall have the right to provide scheduled passenger combination services between points in the United States and five additional countries, without serving a point in the territory of the European Union and its Member States. These

countries shall be determined by the Joint Committee within one year from the date of signature of this Protocol. The Joint Committee may amend the list, or increase the number, of such countries; and

- (b) The text of Article 2 of Annex 4 to the Agreement (“Ownership and Control of Third-Country Airlines”) shall cease to have effect and the text of Annex 6 to the Agreement shall take effect in its place, with regard to third-country airlines owned and controlled by Member States or their nationals.
5. Following written confirmation by the Joint Committee that a Party has met the conditions of paragraphs 3 and 4 that are applicable to that Party, that Party may request high-level consultations regarding the implementation of this Article. Such consultations shall commence within 60 days of the date of delivery of the request, unless otherwise agreed by the Parties. The Parties shall make every effort to resolve the matters referred to consultation. If the Party requesting consultations is dissatisfied with the outcome of the consultations, that Party may give notice in writing through diplomatic channels of its decision that no airline of the other Party shall operate additional frequencies or enter new markets under this Agreement. Any such decision shall take effect 60 days from the date of notification. Within that period, the other Party may decide that no airline of the first Party shall operate additional frequencies or enter new markets under the Agreement. Such a decision shall take effect on the same day as the decision by the first Party. Any such decision by a Party may be lifted by agreement of the Parties, which shall be confirmed in writing by the Joint Committee.

## **Article 7**

### **U.S. Government Procured Transportation**

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

Annex 3

Concerning

### **U.S. Government Procured Transportation**

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

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

and that transportation is:

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

(b) between any two points outside the United States.

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

### **Article 8**

#### **Annexes**

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

## **Article 9**

### **Provisional Application**

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

## **Article 10**

### **Entry into Force**

This Protocol shall enter into force on the later of:

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

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

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

DONE at

ANNEX 6

Ownership and Control of Third Country Airlines

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

## Joint Declaration

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

This Joint Declaration is an integral part of the Protocol.

For the United States:

For the European Union and its  
Member States:

John Byerly (*signed*)

Daniel Calleja (*signed*)

25 March 2010