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THE EUROPEAN UNION**

**Brussels, 17 February 2009**

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**PROPOSAL**

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from: European Commission

dated: 17 February 2009

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Subject: 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 signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand

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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 Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Javier SOLANA, Secretary-General/High Representative.

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Encl.: COM(2009) 62 final



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.2.2009  
COM(2009)62 final

2009/0018 (CNS)

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 signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand**

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 Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand**

## **EXPLANATORY MEMORANDUM**

### **1. Context of the proposal**

#### **• Grounds for and objectives of the proposal**

The Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand has been negotiated under a mandate received from the Council in October 2007. Air services between the EU and Canada presently operate on the basis of bilateral agreements between individual Member States and Canada. These bilateral agreements contain provisions that the European Court of Justice ruled in November 2002 to be incompatible with Community law. It is therefore essential that a new Community-level framework for EU/Canada air services is established. The Agreement represents a comprehensive agreement and includes a gradual phasing-in of traffic rights and investment opportunities. It would meet the legal requirements of the Community and deliver substantial immediate economic benefits for transatlantic air travellers and shippers.

#### **• General context**

The negotiating mandate set the objective of establishing an Open Aviation Area (OAA) between the EU and Canada. This would create a single market for air transport between the EU and Canada in which investment could flow freely and in which European and Canadian airlines would be able to provide air services without any restriction, including in the domestic markets of both parties. Achievement of the mandate in full would require significant legislative changes in Canada, in particular to remove the existing legal restrictions on foreign ownership and control of Canadian airlines and on cabotage. For this reason, the mandate explicitly recognises the possibility of implementing an agreement in a phased approach.

The EU accepted during the negotiations that full investment opening could not be achieved from the start, but would be gradually introduced in different phases during a transitional period.

Based on the negotiating directives of the mandate, and in line with conclusions of the EU-Canada summit of October 2008, the draft Agreement with Canada was finalised by the Commission in November 2008.

#### **• Existing provisions in the area of the proposal**

The provisions of the Agreement supersede the existing bilateral air services agreements between Member States and Canada.

#### **• Consistency with the other policies and objectives of the Union**

The conclusion of an Air Transport Agreement with Canada has been a long-standing priority for the EU and is a key element in the development of the EU's external aviation policy, as identified in Commission Communication COM(2005) 79 final "Developing the agenda for the Community's external aviation policy". The Agreement will also serve a fundamental objective of the Community external aviation policy by

bringing existing bilateral air services agreements in line with Community law.

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

### **• Consultation of interested parties**

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

Throughout the negotiating process, the Commission has consulted extensively with stakeholders, in particular via regular meetings of the Consultative Forum comprising representatives of air carriers, airports, and labour organisations.

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

More than 10 meetings have been held with the Consultative Forum, during which all elements of the negotiations were discussed in detail. All comments from stakeholders were duly taken into consideration in the preparation of the Community's negotiating position.

### **• Collection and use of expertise**

There was no need for external expertise.

### **• Impact assessment**

The Agreement ensures the gradual establishment of an EU/Canada Open Aviation Area. A report prepared for the Commission in 2006 by consultants, estimated that an EU/Canada Open Aviation Area would generate upwards of 17 million extra passengers a year, consumer benefits of at least €5billion a year, and would support employment on both sides of the Atlantic.

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 represents a comprehensive agreement that will replace the existing bilateral agreements concluded by Member States with Canada. The Agreement removes all existing restrictions on the rights of both Community air carriers and Canadian air carriers to operate between points in the European Community and points in Canada. In this respect, the Agreement removes the obstacles to the ability of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access, in relation to the provision of air services to and from Canada.

### **• Legal basis**

Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof.

- **Subsidiarity principle**

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

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

The Agreement establishes new arrangements at Community level governing the provision of transatlantic air services that will replace the existing arrangements made by individual Member States. The Agreement creates simultaneously for all Community air carriers uniform conditions for market access, and establishes new arrangements for regulatory co-operation between the European Community and Canada in fields essential for the safe, secure, and efficient operation of transatlantic air services. In particular, there will be strengthened co-operation in matters concerning aviation security and aviation safety. There will also be new arrangements for co-operation to ensure a competitive level playing-field. These arrangements can only be achieved at Community level because they involve a number of areas of exclusive Community competence.

Community action will better achieve the objectives of the proposal 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 Community air carriers regardless of their nationality. These carriers can now operate freely from any point in the European Union to any point in Canada.

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

The Agreement secures for all Community air carriers access to commercial opportunities, such as the possibility to freely establish prices, which no Member State has been able to secure by negotiating individually. One of the main objectives of the mandate is to create a level playing field between all EU and Canadian air carriers, and this requires strong regulatory co-operation which can only be delivered at Community 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. The position on matters related to Article 8 will be discussed in the relevant Community fora such as the VAT

Committee.

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: other.

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 Community budget.

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 signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand**

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL

Having regard to the Treaty establishing the European Community and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof

Whereas

- (1) the Commission has negotiated on behalf of the Community and of the Member States an Agreement on Air Transport with Canada (hereinafter, the "Agreement") in accordance with the Council Decision authorising the Commission to open negotiations;
- (2) the Agreement was initialled on 30 November 2008;
- (3) the Agreement negotiated by the Commission should be signed and applied provisionally by the Community and the Member States, subject to its possible conclusion at a later date;
- (4) it is necessary to lay down procedural arrangements for deciding, if appropriate, how to discontinue the provisional application of the Agreement. It is also necessary to lay down appropriate procedural arrangements for the participation of the Community and the Member States in the Joint Committee set up under Article 17 of the Agreement and in the dispute settlement procedures provided in Article 21 of the Agreement, as well as for implementing certain provisions of the Agreement concerning security and safety.

HAVE DECIDED AS FOLLOWS:

*Article 1 (Signature)*

1. The signing of the Air Transport Agreement between the European Community and its Member States, of the one part, and Canada, of the other part, (hereinafter the Agreement), is hereby approved on behalf of the Community, subject to a Council

Decision concerning the conclusion of the Agreement. The text of the agreement is attached to this Decision.

2. The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community, subject to its conclusion.

*Article 2 (Provisional application)*

Pending its entry into force, the Agreement shall be applied on a provisional basis by the Community and by the Member States, in accordance with the application of national law, from the first day of the month following the date of the latest note of which the Parties have notified each other of the completion of the procedures necessary to provisionally apply the Agreement.

*Article 3 (Joint Committee)*

1. The Community and the Member States shall be represented in the Joint Committee established under Article 17 of the Agreement by representatives of the Commission and of the Member States.
2. The position to be taken by the Community within the Joint Committee with respect to matters of exclusive Community competence that do not require the adoption of a decision having legal effects shall be established by the Commission.
3. For other Joint Committee decisions concerning matters that fall within Community competence, the position to be taken by the Community and its Member States shall be adopted by the Council, acting by qualified majority on a proposal from the Commission.
4. For other Joint Committee decisions concerning matters that fall within Member States' competence, the position to be taken by the Community and its Member States shall be adopted by the Council, acting by unanimity, on a proposal from the Commission or from Member States.
5. The position of the Community and of the Member States within the Joint Committee shall be presented by the Commission, except in areas that fall exclusively within Member States' competence, in which case it shall be presented by the Presidency of the Council or, if the Council so decides, by the Commission.

*Article 4 (Settlement of Disputes)*

1. The Commission shall represent the Community and the Member States in dispute settlement proceedings under Article 21 of the Agreement.

2. The decision to suspend the application of benefits pursuant to Article 21 (7) of the Agreement shall be taken by the Council on the basis of a Commission proposal. The Council shall decide by qualified majority.
3. Any other appropriate action to be taken under Article 21 of the Agreement on matters which fall within the Community competence shall be decided upon by the Commission, with the assistance of a Special Committee of representatives of the Member States appointed by the Council.

*Article 5 (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 Canada that they intend to adopt under Article 3 of the Agreement.
2. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 6 (Safety) of the Agreement.
3. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 7 (Security) of the Agreement.

Done at Brussels, [...]

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

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 Air Transport Agreement between the European Community and its Member States, on the one hand, and Canada, on the other hand**

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL

Having regard to the Treaty establishing the European Community and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof

Having regard to the opinion of the European Parliament

Whereas:

- (1) the Commission has negotiated on behalf of the Community and of the Member States an Agreement on Air Transport with Canada (hereinafter, the "Agreement");
- (2) the Agreement was signed on ....;
- (3) the Agreement should be approved by the Community and the Member States;
- (4) it is necessary to lay down procedural arrangements for deciding, if appropriate, how to terminate the Agreement. It is also necessary to lay down appropriate procedural arrangements for the participation of the Community and the Member States in the Joint Committee set up under Article 17 of the Agreement and in the arbitration procedures provided in Article 21 of the Agreement, as well as for implementing certain provisions of the Agreement concerning security and safety.

HAVE DECIDED AS FOLLOWS:

*Article I (Approval)*

1. The Agreement on Air Transport between the European Community and its Member States, on the one part, and Canada, of the other part, is hereby approved on behalf of the Community. The text of the Agreement is attached to this decision.
2. Upon completion of its internal procedures for entry into force of the Agreement, each Member State shall transmit to the Secretariat of the Council the diplomatic note provided for in Article 23 (1) of the Agreement.

3. The President of the Council is hereby authorised to designate the person empowered to deliver to Canada the diplomatic notes provided in Article 23 (1) of the Agreement on behalf of the Community and of the Member States.

*Article 2 (Termination)*

A decision to terminate the Agreement and give notice thereof to Canada in accordance with Article 24 of the Agreement, and a decision to withdraw such notice, shall be taken by the Council, on behalf of the Community and of the Member States, acting unanimously on the basis of a Commission proposal.

*Article 3 (Joint Committee)*

1. The Community and the Member States shall be represented in the Joint Committee established under Article 17 of the Agreement by representatives of the Commission and of the Member States.
2. The position to be taken by the Community within the Joint Committee with respect to matters of exclusive Community competence that do not require the adoption of a decision having legal effects shall be established by the Commission.
3. For other Joint Committee decisions concerning matters that fall within Community competence, the position to be taken by the Community and its Member States shall be adopted by the Council, acting by qualified majority on a proposal from the Commission.
4. For other Joint Committee decisions concerning matters that fall within Member States' competence, the position to be taken by the Community and its Member States shall be adopted by the Council, acting by unanimity, on a proposal from the Commission or from Member States.
- 4 The position of the Community and of the Member States within the Joint Committee shall be presented by the Commission, except in areas that fall exclusively within Member States' competence, in which case it shall be presented by the Presidency of the Council or, if the Council so decides, by the Commission.

*Article 4 (Settlement of Disputes)*

1. The Commission shall represent the Community and the Member States in dispute settlement proceedings under Article 21 of the Agreement.
2. The decision to suspend the application of benefits pursuant to Article 21 (7) of the Agreement shall be taken by the Council on the basis of a Commission proposal. The Council shall decide by qualified majority.

3. Any other appropriate action to be taken under Article 21 of the Agreement on matters which fall within the Community competence shall be decided upon by the Commission, with the assistance of a Special Committee of representatives of the Member States appointed by the Council.

*Article 5 (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 Canada that they intend to adopt under Article 3 of the Agreement.
2. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 6 (Safety) of the Agreement.
3. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 7 (Security) of the Agreement.

Done at Brussels, [...]

*For the Council*

*The President*

[...]

**ATTACHMENT 1**

**AGREEMENT ON AIR TRANSPORT  
BETWEEN  
THE GOVERNMENT OF CANADA  
AND  
AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES**

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**AGREEMENT ON AIR TRANSPORT**

BETWEEN

the Government of Canada

on 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,

The Republic of Malta,

The Kingdom of the Netherlands,

The Republic of Poland,

The Portuguese Republic,

Romania,

The Slovak Republic,

The Republic of Slovenia,

The Kingdom of Spain,

The Kingdom of Sweden,

The United Kingdom of Great Britain and Northern Ireland,

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

and the European Community,

on the other part;

The Government of Canada and the Governments of Member States 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 Community;

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

Desiring to promote their interests in respect of air transportation;

Recognizing 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, harmonization 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, recognizing that where there is not a level competitive playing field for airlines, potential benefits may not be realized;

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

Desiring to maximize benefits to passengers, shippers, airlines 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 airline 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**

### Headings and Definitions

1. Headings used in this Agreement are for reference purposes only.
2. For the purpose of this Agreement, unless otherwise stated:
  - (a) "Aeronautical authorities" means any authority or person empowered by the Parties to perform the functions set out in this Agreement;
  - (b) "Air services" means scheduled air services on the routes specified in this Agreement for the transport of passengers and cargo, including mail, separately or in combination;
  - (c) "Agreement" means this Agreement, any Annex attached thereto, and any amendments to the Agreement or to any Annex;
  - (d) "Airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
  - (e) "Party" means either Canada or the Member States and the European Community taken together or individually;
  - (f) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Parties; and,
  - (g) "Territory" means for Canada, its land areas (mainland and islands), internal waters and territorial sea as determined by its domestic law, and includes the air space above these areas; and for the Member States of the European Community, the land areas (mainland and islands), internal waters and territorial sea in which the Treaty Establishing the European Community is applied and under the conditions laid down in that Treaty and any successor instrument, and includes the air space above these areas; 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 European Community aviation measures existing as at 18 September 2006 as between Member States, in accordance with the Ministerial statement on Gibraltar Airport agreed in Cordoba on September 2006.

## **ARTICLE 2**

### **Grant of Rights**

1. Each Party grants to the other Party the following rights for the conduct of air transportation by the airlines of the other Party:
  - (a) the right to fly across its territory without landing;
  - (b) the right to make stops in its territory for non-traffic purposes;
  - (c) to the extent permitted in this Agreement, the right to make stops in its territory on the routes specified in this Agreement for the purpose of taking up and discharging traffic in passenger and cargo, including mail, separately or in combination; and,
  - (d) the rights otherwise specified in this Agreement.
2. Each Party also grants the rights specified in paragraphs 1 (a) and (b) of this Article to the other Party for airlines other than those referred to under Article 3 (Designation, Authorisation and Revocation) of this Agreement.

## **ARTICLE 3**

### **Designation, Authorisation and Revocation**

1. The Parties recognize as constituting a designation under this Agreement the licenses or other forms of authorisation issued by the other Party for the conduct of air services under this Agreement. Upon request by the aeronautical authorities of one Party, the aeronautical authorities of the other Party which issued the licence or other form of authorization shall verify the status of such licences or authorisations.
2. On receipt of applications from a designated airline of one Party, in the form and manner prescribed, the other Party shall, consistent with its laws and regulations, grant requested authorisations and permissions to that airline to operate the air services with minimum procedural delay, provided that:
  - (a) such airline qualifies under the laws and regulations normally applied by the aeronautical authorities of the Party granting the authorizations and permissions;
  - (b) such airline complies with the laws and regulations of the Party granting the authorizations and permissions;
  - (c) subject to Annex 2, in the case of an airline of Canada, effective control of the airline is vested in nationals of either Party, the airline is licensed as a Canadian airline, and the airline has its principal place of business in Canada; in the case of an airline of a Member State, effective control of the airline is vested in nationals of either Party, Iceland, Liechtenstein, Norway or

Switzerland, the airline is licensed as a Community airline, and the airline has its principal place of business in a Member State; and,

- (d) the airline otherwise operates in a manner consistent with the conditions set out in this Agreement.
3. A Party may withhold the authorisations or permissions referred to in paragraph 2 of this Article, and revoke, suspend, impose conditions or limit the operating authorisations or permissions or otherwise suspend or limit the operations of an airline or airlines of the other Party in the event of failure by that airline to comply with the provisions of paragraph 2 or where it has been determined by a Party that conditions in the territory of the other Party are not consistent with a fair and competitive environment and are resulting in a significant disadvantage or harm to its airline or airlines, pursuant to paragraph 5 of Article 14 (Competitive Environment).
  4. The rights enumerated in paragraph 3 of this Article shall be exercised only after consultations in the Joint Committee unless immediate action is essential to prevent infringement of the laws and regulations referred to in paragraph 2 or unless safety or security requires action in accordance with the provisions of Article 6 (Aviation Safety) and Article 7 (Aviation Security).

## **ARTICLE 4**

### **Investment**

Each Party shall permit full ownership of its airlines by nationals of Canada or a Member State or States subject to the conditions in Annex 2.

## **ARTICLE 5**

### **Application of Laws**

Each Party shall require compliance with:

- (a) its laws, regulations and procedures relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft, by airlines upon entrance into, departure from and while within the said territory; and,
- (b) its laws and regulations relating to the admission to, remaining in, or departure from its territory of passengers, crew members and cargo including mail (such as regulations relating to entry, clearance, transit, aviation security, immigration, passports, customs and quarantine) by airlines and by or on behalf of such passengers, crew members and cargo including mail, upon transit of, admission to, departure from and while within the said territory. In the application of such laws and regulations, each Party shall, under similar circumstances, accord to airlines treatment no less favourable than that accorded to its own or any other airline engaged in similar international air services.

## ARTICLE 6

### Aviation 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 Community and Canada*, [entered into force on XXX], with respect to matters covered by that Agreement.
2. Certificates of airworthiness, certificates of competency and licences, issued or rendered valid by the aeronautical authorities of one Party, in accordance with the Agreement on Civil Aviation Safety between the European Union and Canada where such provisions may exist, and still in force, shall be recognized as valid by the aeronautical authorities of the other Party 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 standards established under the Convention.
3. If the privileges or conditions of the licences or certificates referred to in paragraph 2 above, issued by the aeronautical authorities of one Party to any person or airline or in respect of an aircraft used in the operation of the air services, should permit a difference that is lower than the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, or if those authorities should apply a standard or standards that are higher than, or other than, standards established under the Convention, the other Party may request consultations between the Parties in conformity with Article 17 (Joint Committee) of this Agreement with a view to clarifying the practice in question. Until such time as consultations may lead to a consensus and, in the spirit of a regime of reciprocal acceptance of each others' certificates and licenses, the aeronautical authorities shall continue to recognize the certificates and licenses rendered valid by the aeronautical authorities of the other Party, or in accordance with the *Agreement on Civil Aviation Safety between the European Union and Canada* where provisions related to reciprocal acceptance of certificates and licenses may exist.
4. Consistent with applicable laws and within the framework of the *Agreement on Civil Aviation Safety between the European Community and Canada*, signed at X on XXX the Parties undertake to achieve reciprocal acceptance of certificates and licences.
5. The aeronautical authorities of a Party may request at any time consultations with the responsible aeronautical authorities of the other Party concerning the safety standards and requirements maintained and administered by those aeronautical authorities. If, following such consultations, the requesting aeronautical authorities find that those 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, those aeronautical

authorities shall be notified of such findings and the steps considered necessary to conform with these minimum standards. Failure by those 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 aeronautical authorities to revoke, suspend or limit the operating authorisations or technical permissions or to otherwise suspend or limit the operations of an airline, the safety oversight of which is the responsibility of the other aeronautical authority.

6. Each Party accepts that any aircraft operated by or, on behalf of, an airline of one Party, may, while within the territory of the other Party, be the subject of an examination (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.
7. 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 that are responsible for the safety oversight of the airline 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 airline operating the aircraft. The same determination may be made in the case of denial of access for ramp inspection.
8. The aeronautical authorities of each Party 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 airline 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.
9. Any action by aeronautical authorities in accordance with paragraphs 5, 7 or 8 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

## **ARTICLE 7**

### **Aviation Security**

1. Consistent 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 on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, signed at Montreal on February 24, 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on March 1, 1991 and any other multilateral agreement governing aviation security binding upon the Parties.

3. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other acts of unlawful interference against the safety of such aircraft, their passengers and crew members, airports and air navigation facilities, and any other threat to the security of civil aviation.
4. The Parties shall act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry, 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. Accordingly, each Party, upon request, shall provide the other Party notification of any difference between its regulations and practices and the aviation security standards of the Annexes referred to in this paragraph, where these differences exceed or complement such standards and have relevance for the operators of the other Party. Either Party may at any time request consultations, to be held without unreasonable delay, with the other Party to discuss any such differences.
5. With full regard and mutual respect for the sovereignty of states, each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 4 above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to exercise security controls on passengers, crew members, baggage, carry-on items, cargo, mail and aircraft stores prior to boarding or loading.
6. The Parties agree to work towards achieving mutual recognition of each other's security standards and close cooperation on quality control measures on a reciprocal basis. The Parties also agree, where appropriate, and on the basis of decisions to be taken by Parties separately, to create preconditions for implementing one-stop security for flights between the territories of the Parties, meaning the exemption of transfer passengers, transfer baggage, and/or transfer cargo from re-screening. To this end, they shall establish administrative arrangements allowing for consultations within the framework of the Joint Committee on existing or planned aviation security measures and for cooperation and sharing of information on quality control measures implemented by the Parties. The Parties shall consult each other on planned security measures of relevance for operators located in the territory of the other Party to such administrative arrangements.

7. Each Party shall, as far as may be practicable, meet any request from the other Party for reasonable special security measures to meet a particular threat for a specific flight or a specific series of flights.
8. The Parties agree to cooperate on inspections undertaken by them in either territory through the establishment of mechanisms, including administrative arrangements, for the reciprocal exchange of information on results of such inspections. The Parties agree to consider positively requests to:
  - (a) participate, as observers, in security inspections undertaken by the other Party; or,
  - (b) jointly conduct, as appropriate, an assessment in the territory of the other Party as regards the security measures undertaken by aircraft operators in respect of flights arriving from, or departing to the territory of either Party.
9. When an incident or threat of an incident of unlawful seizure of civil aircraft or other acts of unlawful interference against the safety of such aircraft, their passengers and crew members, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and taking other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
10. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the responsible authorities may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for the Party that requested the consultations to take action to withhold, revoke, suspend or impose appropriate conditions on the authorisations of the airlines of the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the Party that believes that the other Party has departed from the provisions of this Article may take interim appropriate action at any time.
11. 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 economic and operational effects on the operation of air services under this Agreement 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.

## ARTICLE 8

### Customs Duties, Taxes and Charges

1. Each Party shall, to the fullest extent possible under its national laws and regulations, and on the basis of reciprocity, exempt airlines of the other Party with respect to their aircraft operated in international air transport, their regular equipment, fuel, lubricants, consumable technical supplies, ground equipment, spare parts (including engines), aircraft stores (including but not limited to such items as 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 transport from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are imposed by the Parties, and not based on the cost of services provided.

2. The Parties shall also exempt, to the fullest extent possible under national laws and regulations and on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
  - (a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transport, even when these stores are to be used on a part of the journey performed over the said territory;
  - (b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transport as well as computer equipment and component parts for the handling of passengers or cargo, or security checks;
  - (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transport, even when these supplies are to be used on a part of the journey performed over the said territory; and,
  - (d) printed matter, including airline tickets, ticket covers, airway bills and other related advertising materials distributed without charge by the airline.
3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft used by an airline of a 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 required to 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.
4. The exemptions provided by this Article shall also be available where the airlines of a Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2.
5. The provisions of the respective conventions in force between a Member State and Canada for the avoidance of double taxation on income and on capital are not altered by this Agreement.

## **ARTICLE 9**

### Statistics

1. Each Party shall provide to the other Party statistics that are required by domestic laws and regulations, and, upon request, other available statistical information as may be reasonably required for the purpose of reviewing the operation of the air services.
2. The Parties shall cooperate in the framework of the Joint Committee under Article 17 to facilitate the exchange of statistical information between them for the purpose of monitoring the development of the air services.

## **ARTICLE 10**

### Consumer Interests

1. The Parties recognise the importance of protecting the interests of consumers and may require airlines, on a non-discriminatory basis, to take reasonable and proportionate measures, including but not limited to:
  - (a) requirements to protect funds advanced to airlines;
  - (b) denied boarding compensation initiatives;
  - (c) passenger refunds;
  - (d) public disclosure of the identity of an air carrier actually operating the aircraft;
  - (e) financial fitness of its own airlines;
  - (f) passenger injury liability insurance; and,
  - (g) setting accessibility measures.
2. The Parties endeavour to consult each other, within the framework of the Joint Committee under Article 17, on matters of consumer interest, including their planned measures, with a view to achieve compatible approaches to the extent possible.

## **ARTICLE 11**

### Availability of Airports and Aviation Facilities and Services

1. Each Party shall ensure that airports, airways, air traffic control and air navigation services, aviation security, ground handling, and other related facilities and services that are provided in its territory shall be available for use by the airlines of the other Party on a non-discriminatory basis at the time arrangements for use are made.
2. To the fullest extent possible, Parties shall take all reasonable measures to ensure effective access to facilities and services, subject to legal, operational and physical

constraints and on the basis of fair and equal opportunity, and transparency with respect to the procedures for gaining access.

3. Each Party shall ensure that its procedures, guidelines and regulations to manage slots applicable to airports in its territory are applied in a transparent, effective and non-discriminatory manner.
4. If a Party believes that the other Party is in violation of this Article, it may notify the other Party of its findings and request consultations under paragraph 4 of Article 17 (Joint Committee).

## **ARTICLE 12**

### **Charges for Airports and Aviation Facilities and Services**

1. Each Party shall ensure that user charges that may be imposed by its competent charging authorities or bodies on the airlines of the other Party for the use of air navigation and air traffic control services shall be just, reasonable, cost-related and not unjustly discriminatory. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline.
2. Each Party shall ensure that user charges that may be imposed by its competent charging authorities or bodies on the airlines of the other Party for the use of airport, aviation security and related facilities and services shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. These charges may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport and aviation security facilities and services at that airport or within that airport's system. These charges may include a reasonable return on assets, after depreciation. Facilities and services for which user charges are made shall be provided on an efficient and economic basis. In any event, these charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines or their representative bodies using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines or their representative bodies to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable those authorities to consider the views expressed by the users before changes are made.
4. No Party shall be held, in dispute resolution procedures pursuant to Article 21 (Settlement of Disputes), to be in breach of a provision of this Article, unless:
  - (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or,

- (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

## ARTICLE 13

### Commercial Framework

- 1. Each Party shall allow a fair and equal opportunity for the airlines of the other Party to provide the air services under this Agreement.

### Capacity

- 2. Each Party shall allow any airline of the other Party to determine the frequency and capacity of the air services it offers under this Agreement based upon the airline's commercial considerations in the marketplace. No Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party, nor shall it require the filing of schedules, programmes for charter flights, or operations plans by airlines of the other Party, except as may be required for technical, operational or environmental (local air quality and noise) reasons under uniform conditions consistent with Article 15 of the Convention.

### Codesharing

- 3.
  - (a) Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, any airline of the other Party may enter into cooperative arrangements for the purposes of:
    - (i) holding out the air services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by any airlines of Canada, or of Member States, and/or of any third country; and/or a surface (land or marine) transportation provider of any country; and/or,
    - (ii) carrying traffic under the code of any other airline where such other airline has been authorized by the aeronautical authorities of a Party to sell transportation under its own code on flights operated by any airline of a Party.
  - (b) The aeronautical authorities of a Party may require all airlines involved in codesharing arrangements to hold the appropriate underlying route authority.
  - (c) The aeronautical authorities of a Party shall not withhold permission for codesharing services identified in paragraph (3) (a) (i) of this Article on the basis that the airline operating the aircraft does not have the right to carry traffic under the codes of other airlines.
  - (d) The aeronautical authorities of the Parties shall require all airlines in such codesharing arrangements to ensure that passengers are fully informed of the

identity of the operator and the mode of transportation for each segment of the journey.

## **Ground Handling**

4. Each Party shall permit the airlines of the other Party when operating in its territory:
  - (a) on the basis of reciprocity, to perform their own ground handling in its territory and, at their option, to have ground handling services provided in whole or in part by any agent authorized by its competent authorities to provide such services; and,
  - (b) to provide ground handling services for other airlines operating at the same airport, where authorised and consistent with applicable laws and regulations.
5. The exercise of the rights set forth in paragraphs 4 (a) and (b) of this Article shall be subject only to physical or operational constraints resulting primarily from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline of any country engaged in similar international air services at the time the constraints are imposed.

## **Airline Representatives**

6. Each Party shall permit:
  - (a) the airlines of the other Party on the basis of reciprocity, to bring into and to maintain in its territory their representatives and commercial managerial, sales, technical, operational, and other specialist staff, as required in connection with their services;
  - (b) these staff requirements at the option of the airlines of the other Party, to be satisfied by their own personnel or, by using the services of any other organization, company or airline operating in its territory and authorized to perform such services for other airlines; and,
  - (c) the airlines of the other Party to establish offices in its territory for the promotion and sale of air transportation and related activities.
7. Each Party shall require the representatives and staff of the airlines of the other Party to be subject to its laws and regulations. Consistent with such laws and regulations:
  - (a) each Party shall, with the minimum of delay, grant the necessary employment authorisations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 6 of this Article; and,
  - (b) each Party shall facilitate and expedite the approval of any requirement for employment authorisations for personnel performing certain temporary duties not exceeding ninety (90) days.

## **Sales, Local Expenses, and Transfer of Funds**

8. Each Party shall permit the airlines of the other Party:
  - (a) to engage in the sale of air transportation in its territory directly or, at the discretion of the airlines, through their agents and to sell transportation in the currency of its territory or, at the discretion of the airlines, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by those airlines;
  - (b) to pay local expenses, including purchases of fuel, in its territory in local currency, or at the discretion of the airlines, in freely convertible currencies; and,
  - (c) to convert and remit abroad, on demand, funds obtained in the normal course of their operations. Such conversion and remittance shall be permitted without restrictions or delay at the foreign exchange market rates for current payments prevailing at the time of submission of the request for transfer, and shall not be subject to any charges except normal service charges collected by banks for such transactions.

## **Intermodal Services**

9. Each Party shall permit airlines operating:
  - (a) passenger-combination services, to employ surface transportation (land or maritime) in connection with the air services. Such transportation may be provided by the airlines through arrangements with surface carriers, or the airlines may elect to perform the surface transportation themselves;
  - (b) cargo services, to employ without restriction in connection with the air services any surface transportation (land or maritime) 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; access to airport customs processing and facilities for cargo moving by surface or by air; and to elect to perform their own cargo surface transportation, subject to domestic laws and regulations governing such transportation, or to provide it through arrangements with other surface carriers, including surface transportation operated by airlines of any other country; and,
  - (c) intermodal services, to offer, at a single through price air and surface transportation combined, provided that passengers and shippers are not misled as to the facts concerning such transportation.

## **Pricing**

10. The Parties shall permit prices to be freely established by the airlines on the basis of free and fair competition.
11. The Parties shall not require prices to be filed with aeronautical authorities.
12. Discussions between aeronautical authorities may be held to discuss matters such as, but not limited to prices which may be unjust, unreasonable or discriminatory.

## **Computer Reservation Systems**

13. The Parties shall apply their respective laws and regulations relating to the operations of Computer Reservation Systems in their territories on a fair and non-discriminatory basis.

## **Franchising and Branding**

14. The airlines of any Party may provide air services under this Agreement, pursuant to a franchising or branding arrangement with companies, including airlines, provided that the airline providing the air services holds the appropriate route authority, the conditions prescribed under domestic laws and regulations are met, and subject to the approval of aeronautical authorities.

## **Wet Leasing**

15. For the purposes of providing the air services under this Agreement, provided that the airline providing the air services and the operator of the aircraft in such arrangements hold the appropriate authorities, airlines of the Parties may provide air services under this Agreement using aircraft and flight crew provided by other airlines, including from other countries, subject to the approval of aeronautical authorities. For the purposes of this paragraph, airlines operating the aircraft shall not be required to have underlying route authority.

## **Charter / Non-scheduled Flights**

16. The provisions set out in Articles 4 (Investment), 5 (Application of Laws), 6 (Aviation Safety), 7 (Aviation Security), 8 (Customs Duties, Taxes and Charges), 9 (Statistics), 10 (Consumer Interests), 11 (Availability of Airports and Aviation Facilities and Services), 12 (Charges for Airports and Aviation Facilities and Services), 13 (Commercial Framework), 14 (Competitive Environment), 15 (Air Traffic Management), 17 (Joint Committee) and 18 (Environment) of this Agreement apply as well to charters and other non-scheduled flights operated by air carriers of one Party into or from the territory of the other Party.
17. When granting requested authorisations and permissions to an air carrier on receipt of applications to operate charters and other non-scheduled flights, the Parties shall act with minimum procedural delay.

## **ARTICLE 14**

### **Competitive Environment**

1. The Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of the air services. The Parties recognize that fair competitive practices by airlines are most likely to occur where these airlines operate on a fully commercial basis and are not state subsidized. They recognize that matters, such as, but not limited to the conditions under which airlines are privatised, the removal of competition distorting subsidies, equitable and non-discriminatory access

to airport facilities and services and computer reservation systems are key factors to achieve a fair and competitive environment.

2. If one Party finds that conditions exist in the territory of the other Party that would adversely affect a fair and competitive environment and its airlines' operation of the air services under this Agreement, it may submit observations to the other Party. Furthermore, it may request a meeting of the Joint Committee, as provided for in Article 17 of the Agreement. The Parties accept that the degree to which the objectives in the Agreement related to a competitive environment may be undermined by a subsidy or other intervention is a legitimate subject for discussion in the Joint Committee.
3. Issues that may be raised under this Article, include but are not limited to, capital injections, cross subsidisation, grants, guarantees, ownership, relief or tax exemption, protection against bankruptcy or insurance, by any government entities. Subject to paragraph 4 of this Article, a Party, upon notification to the other Party, may approach responsible government entities in the territory of the other Party including entities at the state, provincial or local level to discuss matters relating to this Article.
4. The Parties recognise the cooperation between their respective competition authorities as evidenced by the "Agreement between the Government of Canada and the European Communities regarding the Application of their Competition Laws", which entered into force on June 17, 1999.
5. If, following consultations in the Joint Committee, a Party believes that the conditions referred to in paragraph 3 persist and are likely to result in significant disadvantage or harm being caused to its airline or airlines, it may take action. A Party may take action under this paragraph from the earlier of the establishment of procedures and criteria by the Joint Committee for the exercise of such action or one year from the date on which rights under this Agreement become available. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. It shall be exclusively directed towards the entity benefiting from the conditions referred to in paragraph 3, and shall be without prejudice to the right of any Party to take action under Article 21 (Settlement of Disputes).

## **ARTICLE 15**

### **Air Traffic Management**

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

## **ARTICLE 16**

### Continuation of Designations and Authorizations

1. Any airline of Canada or of a Member State holding a current designation from its respective government under an air transport agreement with Canada superceded by this Agreement shall be deemed to be an airline designated to conduct air services.
2. Any airline of Canada or of a Member State holding a licence or authorization issued by the aeronautical authorities of a Party valid for the operation of air services on the date of entry into force of this Agreement shall, pending issuance of any new or amended licence or authorization under this Agreement, continue to have all the authorities provided in the said licence or authorization and be deemed to have therein the authority to operate air services as provided for in this Agreement.
3. Nothing in this Article shall prevent an airline of a Party not referred to in paragraphs 1 or 2 above from being designated or authorised to conduct air services.

## **ARTICLE 17**

### Joint Committee

1. A committee composed of representatives of the Parties (hereinafter referred to as the Joint Committee) is hereby established.
2. The Joint Committee shall identify and facilitate contacts between aeronautical authorities and other competent authorities for matters covered under this Agreement.
3. The Joint Committee shall meet as and when necessary and at least once a year. Either Party may request the convening of a meeting.
4. A Party may also request a meeting of the Joint Committee to consult regarding any question relating to the interpretation or application of this Agreement and seek to resolve any concerns raised by the other Party. Such a meeting shall begin at the earliest possible date, but not later than two months from the date of receipt of the request, unless otherwise decided by the Parties.
5. The Joint Committee shall adopt decisions where expressly provided by the Agreement.
6. The Joint Committee shall foster cooperation between the Parties and may consider any matter related to the operation or implementation of this Agreement, including, but not limited to:
  - (a) reviewing market conditions affecting air services under this agreement;
  - (b) exchanging information, including advising as to changes to domestic law and policies, which affect the Agreement;

- (c) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;
  - (d) recommending conditions, procedures, and amendments required for new Member States of the European Union to become Parties to this Agreement; and,
  - (e) discussing issues related to investment, ownership and control, and confirming when the conditions for the progressive opening of traffic rights as set out in Annex 2 are met.
7. The Joint Committee shall develop cooperation and foster expert-level exchanges on new legislative or regulatory initiatives.
  8. The Joint Committee shall adopt, by a decision, its rules of procedure.
  9. All decisions of the Joint Committee shall be made by consensus.

## **ARTICLE 18**

### **Environment**

1. The Parties recognize the importance of protecting the environment when developing and implementing international aviation policy.
2. Without prejudice to the rights and obligations of the Parties under international law and the Convention, each Party within its own sovereign jurisdiction shall have the right to take and apply the appropriate measures to address the environmental impacts of air transport provided that such measures are applied without distinction as to nationality.
3. The Parties recognize that the costs and benefits of measures to protect the environment must be carefully weighed in developing international aviation policy. When a Party is considering proposed environmental measures, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects.
4. The Parties recognise the importance of working together, and within the framework of multilateral discussions, to consider the effects of aviation on the environment and the economy, and to ensure that any mitigating measures are fully consistent with the objectives of this Agreement.
5. When environmental measures are established, the aviation environmental standards adopted by International Civil Aviation Organization in Annexes to the Convention shall be followed except where differences have been filed.
6. The Parties will endeavour to consult each other on matters of the environment, including on planned measures likely to have a significant effect on the international air services covered by this Agreement, with a view to achieve compatible

approaches to the extent possible. Consultations shall start within 30 days of receipt of such a request, or any other period of time where mutually determined.

## **ARTICLE 19**

### Labour Matters

1. The Parties recognise the importance of considering the effects of this Agreement on labour, employment and working conditions.
2. Either Party may request a meeting of the Joint Committee under Article 17 in order to discuss the labour matters referred to in paragraph 1 of this Article.

## **ARTICLE 20**

### International Cooperation

The Parties may bring to the Joint Committee under Article 17 issues related to:

- (a) air transport and international organisations;
- (b) possible developments in relations between the Parties and other countries in air transport; and,
- (c) trends in bilateral or multilateral arrangements

including, where possible, proposals on the development of coordinated positions in these fields.

## **ARTICLE 21**

### Settlement of Disputes

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement they shall in the first place endeavour to settle it through formal consultations within the Joint Committee. Such formal consultations shall begin as soon as possible and notwithstanding paragraph 4 of Article 17 within a period of no more than 30 days from the date of receipt by one Party of the written request made by the other Party, referring to this Article, unless otherwise decided by the Parties.
2. If the dispute is not resolved within 60 days of the receipt of the request for formal consultations, it may be referred to a person or body for decision by consent of the Parties. If the Parties do not so consent, the dispute shall, at the request of either Party be submitted to arbitration by a tribunal of three arbitrators in accordance with the procedures set forth below.
3. Within 30 days from the receipt of a request for arbitration each Party to the dispute shall nominate an independent arbitrator. The third arbitrator shall be appointed

within a further period of 45 days by agreement between the two arbitrators named by the Parties. If either of the Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Party to appoint an arbitrator or arbitrators as the case requires. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment. In all cases the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.

4. The Tribunal shall establish its own rules of procedure and the timetable for the proceedings.
5. At the request of a Party the Tribunal may order the other Party to the dispute to implement interim relief measures pending the Tribunal's final determination.
6. The Tribunal shall attempt to render a written decision within 180 days from the receipt of the request for arbitration. The decision of the majority of the Tribunal shall prevail.
7. If the Tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach a resolution with the other Party to the dispute on a mutually satisfactory solution within 30 days after notification of the Tribunal's decision, the other Party may suspend the application of equivalent benefits arising under this Agreement until such time as the dispute has been resolved.
8. The expenses of the Tribunal shall be shared equally between the Parties to the dispute.
9. For the purposes of this Article, the European Community and the Member States shall act together.

## **ARTICLE 22**

### **Amendment**

Any amendment to this Agreement mutually determined by the Parties, which may be pursuant to consultations held in conformity with Article 17 (Joint Committee) of this Agreement, shall come into force in accordance with the terms set out in Article 23 (Entry into Force and Provisional Application).

## **ARTICLE 23**

### **Entry into Force and Provisional Application**

1. This Agreement or any amendment to this Agreement shall enter into force one month after the date of the latest diplomatic note in which the Parties confirm that all necessary procedures for the entry into force of the Agreement have been completed.

For purposes of this exchange, Canada shall deliver to the European Community the diplomatic note to the European Community and its Member States, and the European Community shall deliver to Canada the diplomatic notes from the European Community and its Member States.

2. Notwithstanding paragraph 1 of this Article, the Parties agree to provisionally apply this Agreement from the first day of the month following the date of the latest note of which the Parties have notified each other of the completion of the procedures necessary to provisionally apply this Agreement.

## **ARTICLE 24**

### Termination

A Party may at any time from the entry into force of this Agreement give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization and the United Nations Secretariat. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period. In the absence of an acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization and the United Nations Secretariat.

## **ARTICLE 25**

### Registration of the Agreement

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization and the United Nations Secretariat upon entry into force.

## **ARTICLE 26**

### Multilateral Conventions

If a multilateral convention comes into force in respect of the Parties, consultations may be held in the framework of the Joint Committee under Article 17 of this Agreement with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

## **ARTICLE 27**

### Relationship to Other Agreements

1. If the Parties become parties to a multilateral agreement, or endorse a decision adopted by the International Civil Aviation Organisation 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.

2. During the period of provisional application pursuant to paragraph 2 of Article 23 (Entry into Force and Provisional Application) of the Agreement, the bilateral agreements in force listed in Annex 3 shall be suspended except to the extent provided in Annex 2. Upon entry into force pursuant to paragraph 1 of Article 23 of this Agreement, this Agreement shall supersede the relevant provisions of the bilateral agreements in force listed in Annex 3 except to the extent provided in Annex 2.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at ..... on this ..... day of ..... , 200 ... in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish languages, each version being equally authentic.

## ANNEX 1

### ROUTE SCHEDULE

1. For the purposes of paragraph 1 (c) of Article 2 of this Agreement each Party shall permit the airlines of the other Party to provide transportation on the routes specified hereunder:

(a) For the airlines of Canada:

Points Behind – Points in Canada – Intermediate Points – Points in and within Member States – Points Beyond

(b) For the airlines of the European Community:

Points Behind – Points in Member States – Intermediate Points – Points in and within Canada – Points Beyond

2. Airlines of a Party may on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) serve behind, intermediate and beyond points and points in the territory of any Party and in any combination or any order;
- (d) omit stops at any point or points;
- (e) transfer traffic from any of its aircraft to any of its other aircraft without any limitation as to change in type or number of aircraft operated at any point;
- (f) serve points behind any point in that Party's territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
- (g) make stopovers at any points whether within or outside the territory of either Party;
- (h) carry transit traffic at intermediate points and at points in the territory of the other Party;
- (i) combine traffic on the same aircraft regardless of where such traffic originates; and,
- (j) provide service through codesharing consistent with paragraph 3 of Article 13 (Commercial Framework) of this Agreement;

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

## ANNEX 2

### ARRANGEMENTS FOR THE AVAILABILITY OF RIGHTS

#### SECTION 1

##### **Ownership and Control of the Airlines of both Parties**

1. Notwithstanding Article 4 (Investment), ownership of a Party's airlines by nationals of all other Parties shall be allowable, on the basis of reciprocity, to the extent permitted by Canada's domestic laws and regulations for foreign investment in airlines.
2. Notwithstanding paragraph 2 (c) of Article 3 (Designation, Authorisation and Revocation) and Article 4 (Investment) of the Agreement, the following provision shall apply with respect to ownership and control of airlines in place of paragraph 2 (c) of Article 3 (Designation, Authorisation and Revocation) until the laws and regulations referred to in paragraph 2 (c) and (d) of Section 2 of this Annex dictate otherwise:

“in the case of an airline of Canada, substantial ownership and effective control of the airline are vested in nationals of Canada, the airline is licensed as a Canadian airline, and the airline has its principal place of business in Canada; in the case of an airline of a Member State, substantial ownership and effective control of the airline is vested in nationals of Member States, Iceland, Liechtenstein, Norway or Switzerland, the airline is licensed as a Community airline, and the airline has its principal place of business in a Member State”.

#### SECTION 2

##### **Progressive Availability of Traffic Rights**

1. When exercising the traffic rights set out in paragraph 2 of this Section, the airlines of the Parties shall enjoy the operational flexibilities permitted in paragraph 2 of Annex 1.
2. Notwithstanding the traffic rights set out in Annex 1 of this Agreement:
  - (a) when the national laws and regulations of both Parties permit nationals of the other Party to own and control up to a total of 25 per cent of the voting interests of its airlines, the following rights shall apply:
    - (i) for passenger-combination and all-cargo services, for Canadian airlines, the right to provide international transportation between any Points in Canada and any Points in Member States; for Community airlines, the right to provide air services between any Points in Member States and any Points in Canada. In addition, for passenger-combination and all-cargo services, for airlines of a Party, the right to provide international transportation to and from Points in third countries via any points in the territory of that Party with or without change of aircraft or flight number

and hold out and advertise such services to the public as through services;

- (ii) for all-cargo services, for airlines of both Parties, the right to provide international transportation between the territory of the other Party and points in third countries in conjunction with services between points in its territory and points in the territory of the other Party;
  - (iii) for passenger-combination and all-cargo services, for airlines of both Parties, operating rights that are provided for in bilateral air transport agreements in force between Canada and individual Member States, as specified in Section 1 of Annex 3, and the operating rights in arrangements that were being applied between Canada and individual Member States, as specified in Section 2 of Annex 3. With respect to beyond fifth freedom rights specified in this subparagraph, all limitations other than geographic limitations, limitations as to the number of points and specified frequency limitations shall no longer apply; and,
  - (iv) for greater certainty, the rights contained in subparagraph (i) and (ii) above shall be available where no bilateral agreement or arrangement existed at the time signature of this Agreement, or where the rights in an agreement that were available immediately prior to the signature of this Agreement are not as liberal as the rights contained in subparagraph (i) and (ii) above.
- (b) when the national laws and regulations of both Parties permit nationals of the other Party to own and control up to a total of 49 per cent of the voting interests of its airlines, the following rights additional to subparagraph 2 (a) shall apply:
- (i) for passenger-combination services, for the airlines of both Parties, fifth freedom rights shall be available at any Intermediate Points, and for Canadian airlines, between any Points in Member States and any Points in other Member States, provided that in the case of Canadian airlines the service includes a Point in Canada, and in the case of Community airlines the service includes a Point in any Member State;
  - (ii) for passenger-combination services, for the airlines of Canada, fifth freedom rights shall be available between any Points in Member States and any Points in Morocco, Switzerland, the European Economic Area, and other members of the European Common Aviation Area; and,
  - (iii) for all-cargo services, for the airlines of a Party, the right to provide international transportation between Points in the territory of the other Party and points in third countries without a requirement to serve a Point in the territory of that Party.
- (c) when the national laws and regulations of both Parties permit the nationals of the other Party to establish an airline in its territory for domestic and international air services, and pursuant to paragraphs 5, 6 (e) and 9 of Article

17 (Joint Committee) of this Agreement, the following rights additional to subparagraphs 2 (a) and (b) shall apply:

- (i) for passenger-combination services, for airlines of both Parties, fifth freedom rights shall be available to any Points Beyond without frequency limitations.
- (d) when the national laws and regulations of both Parties permit the full ownership and control of their airlines by nationals of the other Party and both Parties permit full application of Annex 1, pursuant to paragraphs 5, 6 (e) and 9 of Article 17 (Joint Committee) of this Agreement and pursuant to a confirmation by the Parties through their respective procedures, the provisions of Annex 2 above shall no longer apply and Annex 1 shall take effect.

## ANNEX 3

### BILATERAL AGREEMENTS BETWEEN CANADA AND THE MEMBER STATES OF THE EUROPEAN COMMUNITY

1. As provided in Article XXX of this Agreement, the following bilateral agreements, entered into force and otherwise, between Canada and the Member States shall be suspended or superseded by this Agreement:
  - (a) **The Republic of Austria:** *Agreement between the Government of Canada and the Austrian Federal Government on Air Transport*, signed June 22, 1993;
  - (b) **The Kingdom of Belgium:** *Agreement between the Government of Canada and the Government of Belgium on Air Transport*, signed May 13, 1986; *PROTOCOL To amend the Agreement between the Government of Belgium and the Government of Canada on Air Transport*, initialled ad referendum May 23, 2000;
  - (c) **The Republic of Bulgaria:** *Agreement between the Government of Canada and the Government of the Republic of Bulgaria on Air Transport*, initialled ad referendum April 12, 1991, ad referendum;
  - (d) **The Czech Republic:** *Agreement between the Government of Canada and the Government of the Czech Republic on Air Transport*, signed March 13, 1996; Exchange of Notes amending the Agreement, initialled *ad referendum* June 28, 2004;
  - (e) **The Kingdom of Denmark:** Agreement between Canada and Denmark for Air Services between the Two Countries signed December 13, 1949. *Agreement between the Government of Canada and the Government of the Kingdom of Denmark on Air Transport*, initialled ad referendum on February 17, 1989;
  - (f) **The Republic of Finland:** *Agreement between the Government of Canada and the Government of Finland for Air Services between and Beyond their Respective Territories*, signed May 28, 1990. *Exchange of Notes constituting an Agreement amending the Agreement between the Government of Canada and the Government of Finland for Air Services between and beyond their Respective Territories*, done at Helsinki on May 28, 1990, signed 1 October 1999;
  - (g) **The French Republic:** *Air Transport Agreement between the Government of Canada and the Government of the French Republic*, signed June 15, 1976 *Exchange of Notes between the Government of Canada and the Government of the French Republic amending the Air Transport Agreement* signed in Paris June 15, 1976, signed December 21, 1982;
  - (h) **The Federal Republic of Germany:** *Air Transport Agreement between the Government of Canada and the Government of the Federal Republic of Germany*, signed March 26, 1973; *Exchange of Notes between the Government of Canada and the Government of the Federal Republic of Germany amending the Air Transport Agreement* signed at Ottawa on March 26, 1973 done 20

January 1983; Amendments to the Agreement) initialled ad referendum, July 9, 1993 and Amendments to the Agreement, initialled ad referendum October 24, 1996.

- (i) **The Hellenic Republic:** *Agreement between the Government of Canada and the Government of the Hellenic Republic on Commercial Scheduled Air Services*, signed August 20, 1984; *Exchange of Notes constituting an Agreement between the Government of Canada and the Government of the Hellenic Republic amending the Agreement on Air Transport*, done at Toronto on August 20, 1984 signed June 23, 1995;
- (h) **The Republic of Hungary:** *Agreement between the Government of Canada and the Government of the Republic of Hungary on Air Transport*, signed December 7, 1998;
- (i) **Ireland:** *Agreement between the Government of Canada and the Government of Ireland on Air Transport*, signed April 27, 2007, provisionally in force; *Agreement between Canada and Ireland for Air Services between the two countries*, signed 08 August 1947; *Exchange of Notes (April 19 and May 31, 1948) between Canada and Ireland amending the Agreement for Air Services between the two countries*, signed 31 May 1948; *Exchange of Notes between Canada and Ireland constituting an Agreement amending the Annex to the Air Agreement of August 8, 1947*, signed 09 July 1951. *Exchange of Notes between Canada and Ireland modifying the Air Agreement of August 8, 1947* between the two countries, signed 23 December 1957;
- (j) **The Italian Republic:** *Agreement between the Government of Canada and the Government of Italy on Air Transport*, done May 16, 2002 ad referendum; *Agreement between Canada and Italy for Air Services*, signed 13 April 1962; *Exchange of Notes between the Government of Canada and the Government of the Republic of Italy constituting an Agreement to Amend the Agreement for Air Services as specified in the Agreed Minute of April 28, 1972*, signed 28 August 1972;
- (k) **The Kingdom of the Netherlands:** *Agreement between the Government of Canada and the Government of the Kingdom of the Netherlands relating to Air Transport*, signed June 2, 1989;
- (l) **The Republic of Poland:** *Agreement between the Government of Canada and the Government of the Republic of Poland on Air Transport*, initialled ad referendum on April 5, 2001; *Air Transport Agreement between the Polish People's Republic and the Government of Canada*, done 14 May 1976;
- (m) **The Portuguese Republic:** *Agreement between the Government of Canada and the Government of Portugal on Air Transport*, initialled ad referendum on June 8 2006; *Agreement between the Government of Canada and the Government of Portugal on Air Transport*, signed April 10, 1987;
- (n) **Romania:** *Agreement between the Government of Canada and the Government of the Socialist Republic of Romania on Civil Air Transport*, signed October 27, 1983; *Exchange of Notes between the Government of Canada and the*

*Government of Romania amending the Agreement*, signed May 31, 1999 and July 12, 1999;

- (o) **The Kingdom of Spain:** *Agreement between the Government of Canada and the Government of Spain on Air Transport*, signed September 15, 1988;
  - (p) **The Kingdom of Sweden:** *Agreement between the Government of Canada and the Government of Sweden for Air Services between Canadian and Swedish Territories* signed June 27, 1947. *Agreement between the Government of Canada and the Government of the Kingdom of Sweden on Air Transport*, done February 17, 1989, ad referendum; and,
  - (q) **The United Kingdom of Great Britain and Northern Ireland:** *Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Air Services*, initialled ad referendum on April 12, 2006; *Agreement between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Air Services*, signed June 22, 1988.
2. Notwithstanding Article 1 of this Annex, for areas that are not included within the definition of "territory" in Article 1 of this Agreement, the agreements in paragraphs (e) The Kingdom of Denmark, (g) The French Republic, (k) The Kingdom of the Netherlands, and (q) The United Kingdom of Great Britain and Northern Ireland shall continue to apply, according to their terms.

## **ATTACHMENT 2**

### **MEMORANDUM OF CONSULTATION**

1. Delegations representing Canada and the European Community and its Member States participated in four rounds of negotiations, held between November 2007 and September 2008, on a comprehensive Air Transport Agreement. Delegation lists are attached as Appendix A.
2. The discussions took place in a cordial and constructive atmosphere, reflective of the excellent relations between Canada and the European Community and its Member States.
3. Delegations concluded negotiations at the level of officials of an Agreement on Air Transport between the Government of Canada and the European Community and its Member States (“the Agreement”), the text of which was initialled and is attached as Appendix B to this Memorandum. Both Delegations acknowledged that the act of initialling the text only represents the close of negotiations on the substantive issues and does not indicate that the text is adopted or authenticated, and will remain open to linguistic and textual changes required prior to signature to accurately describe the obligations undertaken by the Parties to this Agreement.
4. The delegations undertook to submit the Agreement to their respective authorities with a recommendation that the Parties adopt the attached Agreement, subject to any necessary adjustments for legal, linguistic or textual purposes, as authentic and definitive by signature and to bring it into force in accordance with their respective legal requirements. Delegations confirmed that upon signature, the Agreement in its entirety will be applied administratively. Prior to signature, Canada and the Member States may, at their discretion, make all the rights set out in the Agreement available administratively to each other. With the goal of completing ratification and definitive entry into force as soon as possible, the Canadian delegation undertook to provide to the European Union delegation a French language version of the Agreement for its review. Similarly, the European Union delegation undertook to provide the Canadian delegation with texts in all other official languages of the European Community for review.

#### **1. DESIGNATION**

5. With regard to Article 3 as well as Article 16, the European Union delegation indicated that no formal diplomatic designation of airlines would be undertaken by EU Member States authorities. The delegations concurred that licences or other forms of authorisation issued by each Party to its airlines constitute designation for the purposes of this Agreement.
6. The European Union delegation concurred that, should Canada become a member country of a single air transport market based on common safety and licensing rules

acceptable to Canada and comparable to the provisions of this Agreement, the European Community and its Member States will grant Canada a reciprocal designation entitlement allowing Canada to designate airlines of its partners, where those partners provide reciprocal treatment to European Community airlines for the purpose of designation, and allowing the designation of Canada's airlines by Canada's partners to operate air services under their respective air transport agreements with the European Community and/or Member States.

## **2. INVESTMENT, OWNERSHIP, AND CONTROL OF AIRLINES**

7. Delegations constructed an agreement that provides for the possibility of even more liberal arrangements should each side's policies and legislation permit a higher foreign ownership limit and/or relaxation of control requirements of its airlines in the future.
8. The Canadian delegation explained to the European Union delegation that Canada has taken a relatively flexible approach with respect to foreign ownership of Canadian airlines. While Canada's foreign ownership limit of Canadian air carriers is 25 percent of voting interests at this time, Canada permits variable voting equity structures, which potentially allow more than 50 percent of an air carrier's voting shares to be owned by non-Canadians. Under the traditional structure, Canada had interpreted each voting share, whether held by a Canadian or a non-Canadian, to carry one vote. Under a variable voting structure, each voting share does not necessarily convey one vote. In addition, Canada's practice is to permit non-Canadian nationals to potentially hold up to 100 percent of non-voting shares in Canadian air carriers. A Canadian air carrier must be controlled in fact by Canadians. With respect to control in fact of Canadian carriers by nationals of EU Member States, the Canadian Transportation Agency does not have codified and published criteria for determining control in fact, allowing every case to be fully assessed on its own merits with full flexibility to consider positively all relevant elements.
9. The European Union delegation indicated that the European Community is in a position to allow its airlines to be 100 percent owned by non-EU Member States' nationals where provided for in an international agreement to which the Community is a Party. Furthermore, as a result of treaty commitments with European Economic Area countries and Switzerland, nationals of Iceland, Liechtenstein, Norway and Switzerland are permitted to own and control European Community airlines.
10. With respect to existing discretion under bilateral agreements pertaining to foreign ownership structures of many of its bilateral partners' airlines, Canada has, to date, not found it inimical to its interests and, therefore, has not exercised its discretion to take action regarding third country nationals' investment in bilateral partners' airlines. The Canadian delegation accepted the right for nationals of Iceland, Liechtenstein, Norway and Switzerland immediately to own and control European Community airlines.
11. Both delegations noted that potential changes to rules on ownership and control related to Article 4 as well as paragraph 2 (c) and 2 (d) of Section 2 in Annex 2 of the Agreement would not impose obligations on any of the Parties to secure the recognition by third countries of airlines owned by nationals of another Party.

### **3. CUSTOMS DUTIES, TAXES, AND CHARGES**

12. During the discussion on Article 8, the European Union delegation underlined that the present Agreement will not affect the area of Value Added Tax (VAT), with the exception of turnover tax on imports. The European Union delegation also explained that under Community law (Council Directive 2006/112/EC), goods supplied on board intra-Community flights other than for immediate consumption must be taxed under the conditions and subject to the VAT rate applicable in the Member State of departure. Excisable goods intended for such purpose are considered to have left the suspension system put in place under Community law (Council Directive 92/12/EEC) and would not be able to be carried in an untaxed state. The law applies to intra-EU flights whether operated by Community or third-country carriers. As regards flights between any of the Member States and Canada, the legal position is different. The European Union delegation confirmed that in the case of a flight from Canada to a Member State, there is nothing in Community legislation which would prevent duty free sales to passengers on board who, upon disembarkation, will in any case be subject to customs control. Similarly, if the flight is from a Member State, directly or via a third country, to Canada as destination, duty free sales are also possible under the export rules, with customs control taking place in Canada. In neither case would the situation change merely by a stopover in the Community, provided there is no embarkation or disembarkation. With regard to the same Article, the European Union delegation also noted that the general rule under Community law (Council Directive 2003/96/EC) is that Member States shall exempt energy products used for commercial air transportation. The Directive contains provisions, however, that would allow Member States to limit the general exemption and to tax aviation fuel for domestic or intra-Community flights. The Canadian delegation noted that under previous bilateral air transport arrangements with Member States, Canada has exemptions from tax on aviation fuel. The Canadian delegation further noted that prior to implementation of tax on aviation fuel by Member States for intra-Community flights, Canada would require discussions at Joint Committee.

### **4. STATISTICS**

13. With regard to Article 9, both delegations reaffirmed that it was not their intention to create administrative burden by requiring the submission of statistics to authorities that are not normally required by existing legislation and regulations. The Canadian delegation explained that all air carriers flying to Canada are required to electronically submit basic operational data. The European Union delegation acknowledged that similar requirements exist for various Member State governments.

### **5. CHARGES FOR AIRPORTS AND AVIATION FACILITIES AND SERVICES**

14. With regard to Article 12 of the Agreement, the European Union delegation expressed its interest in including a reference to the need for charges to be ‘cost-related’. The Canadian delegation accepted that the term be included in the provisions dealing with air navigation services, provided that it is understood that, for Canada, the cost elements and process for establishing air navigation charges are set out in legislation which prohibits discrimination and differentiation between

categories of users, and specifies costs which are to be taken into account in the establishment of air navigation charges. Under the *Civil Air Navigation Services Commercialization Act*, charges must not be set at a level that, based on reasonable and prudent projections, would generate revenues exceeding NavCanada's current and future financial requirements in relation to the provision of civil air navigation services. The charging principles and financial requirements are defined in this Act as well as the delineation where charges could deviate from being cost-related. The European Union delegation took note of this explanation.

## **6. COMMERCIAL FRAMEWORK: AIRLINE REPRESENTATIVES**

15. With regard to paragraphs 6 and 7 of Article 13 of the Agreement, the delegations expressed that one objective of the provisions is to facilitate requests for employment authorizations, visas, and other relevant documents for airline representatives/staff, including in circumstances where the entry or residence of staff is required on an emergency and temporary basis.

## **7. COMMERCIAL FRAMEWORK: INTERMODAL SERVICES**

16. With regard to paragraph 9 (b) of Article 13 of the Agreement, delegations concurred that with respect to intermodal services and where airlines elect to perform surface transportation themselves, such services are subject to domestic laws and regulations.

## **8. COMMERCIAL FRAMEWORK: PRICES**

17. With regard to paragraphs 10 to 12 of Article 13 of the Agreement, delegations concurred that although prices are not required under the Agreement to be filed with the aeronautical authorities, it is necessary for those authorities from time to time to seek information from airlines regarding specific prices to allow, for example, for the resolution of complaints such as overcharging or failing to apply the applicable price. Delegations further concurred that such requests for information are not to be used as an alternative filing process.

## **9. CHARTER AIR SERVICES**

18. The European Community no longer distinguishes by regulation between scheduled and charter air services. Canada continues to have regulations distinguishing between scheduled and charter air services and establishing consumer protection requirements for charter programmes. The delegations continue to encourage the further development of charter air services and confirmed that all Parties may benefit from the flexibility provided by national laws and regulations relating to charter air services.

## **10. JOINT COMMITTEE AND SETTLEMENT OF DISPUTES**

19. With regard to Article 17 and Article 21 of the Agreement, delegations understood that the Joint Committee would consist of representatives of Canada, the European

Commission and the Member States. Delegations further understood that, for the resolution of disputes pursuant to the Agreement, the Parties will be represented by Canada and the European Commission. In all dispute settlement proceedings, the Member State or States concerned will be present.

## **11. ENVIRONMENT**

20. The delegations noted that sovereign jurisdiction includes jurisdiction over the territory of a Party.

## **12. LABOUR MATTERS**

21. With regard to Article 19 of the Agreement, the European Union delegation noted the importance that it attaches to labour issues in the context of the Agreement and recommended that the Parties monitor the effects of the Agreement, in particular on employment conditions, to promote better understanding of each Party's labour systems related to mobile aviation employees, sound labour policies and practices and to improve the capacities and capabilities of the Parties to find appropriate responses where necessary. The European Union delegation also noted the obligations of signatories to abide by the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), notably the right to freedom of association and effective recognition and enforcement of the right to collective bargaining. At the same time, the delegations recognised their respective sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations. The European Union delegation stressed the opportunities for the social partners to strengthen cooperation on labour matters through the Agreement. The Canadian delegation recommended that it be left to each Party to decide how it may want to monitor the effects of the Agreement on labour. The delegations concurred that the provisions of the Agreement have no application to specific instances of collective bargaining or other private industrial relations actions.

## **13. FUTURE RIGHTS**

22. The Canadian delegation indicated that full ownership of Canada's air carriers by foreign nationals, seventh freedom rights for passenger-combination services for airlines of both Parties (separate and apart from Community airlines operating from any EU Member States), cabotage and rights of establishment are not within Canada's air transportation policy, and would require changes to Canadian policy and/or laws and regulations.

### **Overseas Territories**

23. With respect to the overseas territories of Member States, delegations acknowledged that this Agreement will apply only to the overseas territories of the Member States as dictated by the Treaty Establishing the European Community. The overseas territories are the French Overseas Departments (French Guyana, Guadeloupe, Martinique and Réunion), the Azores, Madeira and the Canary Islands. For the Member States' overseas territories to which the Treaty does not apply, the

appropriate bilateral air transport agreement between Canada and that Member State listed in Annex 3 continues to apply.

Done in London, United Kingdom on the 30<sup>th</sup> day of November 2008.

For the Delegation of Canada

Nadir Patel

Head of Delegation

Chief Air Negotiator

Government of Canada

For the Delegation of the European Community and its Member States

Olivier Onidi

Head of Delegation

Directorate General for Energy and Transport

European Commission