



**COUNCIL OF  
THE EUROPEAN UNION**

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**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject : Council Decision on the signing of the Agreement between the European Union  
and the Federative Republic of Brazil on certain aspects of air services

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**COUNCIL DECISION**

**of ...**

on the signing of the Agreement  
between the European Union  
and the Federative Republic of Brazil  
on certain aspects of air services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 100(2) in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.
- (2) On behalf of the Union, the Commission has negotiated an Agreement with the Federative Republic of Brazil on certain aspects of air services (hereinafter "the Agreement") in accordance with the mechanisms and directives in the Annex to the Council Decision of 5 June 2003.
- (3) The Agreement should be signed, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Federative Republic of Brazil on certain aspects of air services is hereby approved on behalf of the Union, subject to the conclusion of the Agreement.

The text of the Agreement is attached to this Decision.

Article 2

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

Article 3

This Decision shall enter into force on the date of its adoption.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council  
The President

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AGREEMENT  
BETWEEN THE EUROPEAN UNION  
AND THE FEDERATIVE REPUBLIC OF BRAZIL  
ON CERTAIN ASPECTS OF AIR SERVICES

THE EUROPEAN UNION,

of the one part, and

THE FEDERATIVE REPUBLIC OF BRAZIL,

of the other part

(hereinafter referred to as "the Parties"),

NOTING that bilateral air service agreements have been concluded between several Member States of the European Union and the Federative Republic of Brazil,

NOTING that the European Union has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Union and third countries,

NOTING that under the law of the European Union, European Union air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Union and third countries,

HAVING REGARD to the agreements between the European Union and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with the law of the European Union,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Union and the Federative Republic of Brazil must be brought into conformity with the law of the European Union in order to establish a sound legal basis for air services between the European Union and the Federative Republic of Brazil and to preserve the continuity of such air services,

NOTING that under the law of the European Union, air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Union and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Union and the Federative Republic of Brazil which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of the European Union, as part of this Agreement, to increase the total volume of air traffic between the European Union and the Federative Republic of Brazil, to affect the balance between European Union air carriers and air carriers of the Federative Republic of Brazil, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,



HAVE AGREED AS FOLLOWS:

## ARTICLE 1

### General provisions

1. For the purposes of this Agreement, "Member States" shall mean Member States of the European Union and "EU Treaties" shall mean the Treaty on the European Union and the Treaty on the Functioning of the European Union.
2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Union.
3. References in each of the agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

## ARTICLE 2

### Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex II (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by the Federative Republic of Brazil, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
  
2. On receipt of a designation of an air carrier by a Member State, the Federative Republic of Brazil shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
  - (i) the air carrier is established in the territory of the designating Member State under the EU Treaties and has a valid Operating Licence in accordance with the law of the European Union;
  - (ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and
  - (iii) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states.

3. The Federative Republic of Brazil may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- (i) the air carrier is not established in the territory of the designating Member State under the EU Treaties or does not have a valid Operating Licence in accordance with the law of the European Union; or
- (ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (iii) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states; or
- (iv) the air carrier is already authorised to operate under a bilateral agreement between the Federative Republic of Brazil and another Member State and the Federative Republic of Brazil demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on traffic rights imposed by that other agreement; or

- (v) the air carrier holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between the Federative Republic of Brazil and that Member State, and traffic rights to that Member State have been denied to the air carrier designated by the Federative Republic of Brazil.

In exercising its right under this paragraph, the Federative Republic of Brazil shall not discriminate between European Union air carriers on the grounds of nationality.

## ARTICLE 3

### Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II (c).
2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of the Federative Republic of Brazil under the safety provisions of the agreement between the Member State that has designated the air carrier and the Federative Republic of Brazil shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

## ARTICLE 4

### Taxation of aviation fuel

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II (d).
2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II (d) shall prevent a Member State from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Federative Republic of Brazil that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.
3. On the basis of reciprocity and in conformity with Brazilian legislation, nothing in each of the agreements listed in Annex II (d) shall prevent the Federative Republic of Brazil from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of a Member State that operates between points in the territory of the Federative Republic of Brazil.

## ARTICLE 5

### Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall:
  - (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition;
  - (ii) reinforce the effects of any such agreement, decision or concerted practice;
  - (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.
2. The provisions contained in the agreements listed in Annex I that are incompatible with paragraph 1 of this Article shall not be applied.

## ARTICLE 6

### Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

## ARTICLE 7

### Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent.

## ARTICLE 8

### Entry into force

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. This Agreement shall apply to all agreements between the Federative Republic of Brazil and Member States of the European Union listed in Annex I (b) upon their entry into force.

## ARTICLE 9

### Termination

1. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

2. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

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

Done at [...] in duplicate, on this [...] day of [..., ...] in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, and Swedish languages.

FOR THE EUROPEAN UNION:

FOR THE FEDERATIVE REPUBLIC  
OF BRAZIL:



List of agreements referred to in Article 1 of this Agreement

- (a) Air service agreements between the Federative Republic of Brazil and Member States of the European Union, as amended or modified, which, at the date of signature of this Agreement, are in force:
- Agreement between the Federal Republic of Germany and the Federative Republic of Brazil on scheduled air services signed in Rio de Janeiro on 29 August 1957, hereinafter referred to as the "Brazil – Germany Agreement" in Annex II,
  - Agreement between the Government of Austria and the Government of the Federative Republic of Brazil relating to Air Services signed in Vienna on 16 July 1993, hereinafter referred to as the "Brazil – Austria Agreement" in Annex II,

- Agreement between the Government of the Kingdom of Denmark and the Government of the Federative Republic of Brazil relating to air transport signed in Rio de Janeiro on 18 March 1969, hereinafter referred to as the "Brazil – Denmark Agreement" in Annex II,
  
- Agreement between the Spanish Government and the Government of the United States of Brazil on scheduled air transport signed in Rio de Janeiro on 28 November 1949, as amended, hereinafter referred to as the "Brazil – Spain Agreement" in Annex II,
  
- Agreement between the French Republic and the Federative Republic of Brazil signed in Paris on 29 October 1965 related to air transport, hereinafter referred to as the "Brazil – France Agreement" in Annex II,

- Air Services Agreement between the Government of the Republic of Hungary and the Government of the Federative Republic of Brazil signed in Brasilia on 3 April 1997, hereinafter referred to as the "Brazil – Hungary Agreement" in Annex II,
  
- Agreement between Italy and the United States of Brazil on scheduled air services signed in Rome on 23 January 1951, modified by exchange of notes of 30 December 1998 and 13 January 1999, hereinafter referred to as the "Brazil – Italy Agreement" in Annex II,
  
- Air Transport Agreement between the Government of the Kingdom of the Netherlands and the Government of the Federative Republic of Brazil signed in Brasilia on 6 July 1976, amended by the Memorandum of Understanding signed on 12 December 1994 and supplemented by the Agreed Record signed in Rio de Janeiro on 25 April 1996, hereinafter referred to as the "Brazil – Netherlands Agreement" in Annex II,

- Agreement between the Government of Portugal and the Government of the Federative Republic of Brazil on air transport services signed in Lisbon on 11 November 2002, hereinafter referred to as the "Brazil – Portugal Agreement" in Annex II,
  - Agreement between the Government of the Kingdom of Sweden and the Government of the Federative Republic of Brazil relating to air transport signed in Rio de Janeiro on 18 March 1969, hereinafter referred to as the "Brazil – Sweden Agreement" in Annex II.
- (b) Air service agreements between the Federative Republic of Brazil and Member States of the European Union, as amended or modified, which, at the date of signature of this Agreement, have been signed, but have not yet entered into force:
- Agreement between the Government of the Kingdom of Belgium and the Government of the Federative Republic of Brazil on air services signed in Brussels on 4 October 2009, hereinafter referred to as the "Brazil – Belgium Agreement" in Annex II,
  - Air Services Agreement between the Government of the Republic of Poland and the Government of the Federative Republic of Brazil signed in Rio de Janeiro on 13 March 2000, hereinafter referred to as the "Brazil – Poland Agreement" in Annex II.
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List of articles in the agreements listed in Annex I and referred to  
in Articles 2 to 4 of this Agreement

- (a) Designation by a Member State:
- Article 3 of the Brazil – Austria Agreement,
  - Article 3 of the Brazil – Denmark Agreement,
  - Article 2 of the Brazil – France Agreement,
  - Article 3 paragraph 1 of the Brazil – Germany Agreement,
  - Article 3 of the Brazil – Hungary Agreement,
  - Article 2(b) and 3 of the Brazil – Italy Agreement,
  - Article 2 of the Brazil – Netherlands Agreement,
  - Article 3 of the Brazil – Poland Agreement,
  - Article 3 of the Brazil – Portugal Agreement,
  - Article 4 of the Brazil – Spain Agreement,
  - Article 3 of the Brazil – Sweden Agreement;

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

- Article 4 of the Brazil – Austria Agreement,
- Article 4 of the Brazil – Denmark Agreement,
- Article 3 of the Brazil – France Agreement,
- Article 4 paragraphs 1 and 3 of the Brazil – Germany Agreement,
- Article 4 of the Brazil – Hungary Agreement,
- Article 7 of the Brazil – Italy Agreement,
- Article 6 of the Brazil – Netherlands Agreement,
- Article 4 of the Brazil – Poland Agreement,
- Article 4 of the Brazil – Portugal Agreement,
- Article 6 of the Brazil – Spain Agreement,
- Article 4 of the Brazil – Sweden Agreement;

(c) Safety:

- Article relating to safety as provided for in the Agreed Minutes signed in Rio de Janeiro on 25 April 1996 in relation to the Brazil – Netherlands Agreement,
- Article 14 of the Brazil – Portugal Agreement;

(d) Taxation of aviation fuel:

- Article 8 of the Brazil – Austria Agreement,
  - Article 11 of the Brazil – Belgium Agreement,
  - Article 6 of the Brazil – Denmark Agreement,
  - Article 4 of the Brazil – France Agreement,
  - Article 5 of the Brazil – Germany Agreement,
  - Article 8 of the Brazil – Hungary Agreement,
  - Article 4 of the Brazil – Italy Agreement,
  - Article 3 of the Brazil – Netherlands Agreement,
  - Article 6 of the Brazil – Poland Agreement,
  - Article 6 of the Brazil – Portugal Agreement,
  - Article 5 of the Brazil – Spain Agreement,
  - Article 6 of the Brazil – Sweden Agreement.
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List of other states referred to in Article 2 of this Agreement

- (a) The Republic of Iceland (under the Agreement on the European Economic Area);
  - (b) The Principality of Liechtenstein (under the Agreement on the European Economic Area);
  - (c) The Kingdom of Norway (under the Agreement on the European Economic Area);
  - (d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).
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