CONSEIL D'ETAT
LEGISLATION
05-07-2017
RAAD VAN STATE
WETGEVING
61815/3.

Vlaamse Regering

Voorontwerp van decreet houdende instemming met de overeenkomst tussen de Regering van het Koninkrijk België en de Regering van de Republiek Kaapverdië betreffende het luchtvervoer, ondertekend te _____ op _____.

DE VLAAMSE REGERING,

Op voorstel van de Vlaamse minister van Buitenlands Beleid en Onroerend Erfgoed en de Vlaamse minister van Mobiliteit, Openbare Werken, Vlaamse Rand, Toerisme en Dierenwelzijn;

Na beraadslaging,

BESLUIT:

De Vlaamse minister van Vlaamse minister van Mobiliteit, Openbare Werken, Vlaamse Rand, Toerisme en Dierenwelzijn is ermee belast, in naam van de Vlaamse Regering, bij het Vlaams Parlement het ontwerp van decreet in te dienen, waarvan de tekst volgt:

Artikel 1. Dit decreet regelt een gewestaangelegenheid.

Art. 2. De overeenkomst tussen de Regering van het Koninkrijk België en de Regering van de Republiek Kaapverdië betreffende het luchtvervoer, ondertekend te _____ op _____, zal volkomen gevolg hebben.

Brussel,

De minister-president van de Vlaamse Regering,
Vlaams minister van Buitenlands Beleid en Onroerend Erfgoed,

Geert BOURGEOIS

De Vlaamse minister van Mobiliteit, Openbare Werken, Vlaamse Rand,
Toerisme en Dierenwelzijn,

Ben WEYTS

ONTWERP VAN

MEMORIE VAN TOELICHTING

I. ALGEMENE TOELICHTING

1. Samenvatting

Bilaterale luchtvaartakkoorden omvatten de beginselen van de opsomming van de uitgewisselde vrijheden, de aanwijzing van de luchtvervoerders, de capaciteit van de ingezette vervoersmiddelen, de reiswegen en landingspunten, de tarievenregeling en de beveiliging van de vluchten.

Dit ontwerp van instemmingsdecreet kadert in de strategische doelstelling "Vlaanderen onderhoudt goede relaties met buitenlandse overheden" uit de beleidsnota Buitenlands Beleid, Internationaal Ondernemen en Ontwikkelingssamenwerking.

2. Situering

Algemeen

Ondanks zijn symboolwaarde van ongebondenheid is het luchtruim staatkundig slechts in dezelfde mate vrij als de zee. In de territoriale nabijheid en boven het grondgebied van een Staat geldt diens recht van soevereiniteit, waarbij er slechts vrije toegang is voor de luchtvaartuigen van de eigen nationaliteit.

Op deze algemene en principiële onvrijheid kunnen uitzonderingen gemaakt worden door expliciete afwijkingen die naar hun voorwerp als de vijf vrijheden van de lucht werden onderscheiden. Deze vrijheden behelzen het recht van overvliegen, het recht van niet-commerciële landing en de rechten van respectievelijk aan en van boord brengen en doorvoeren van commerciële lading nl. passagiers en hun bagage, vracht en post.

De conventie van Chicago van 7 december 1944 kwam tegemoet aan de behoefte aan internationale standaarden en afspraken voor een veilige en ordelijke ontwikkeling van het luchtverkeer. Deze conventie bepaalde onder meer dat er geen geregelde internationale luchtdiensten mogen worden geëxploiteerd over of tot in het grondgebied van één van de verdragsluitende Staten, tenzij met de bijzondere toestemming of vergunning van die Staat. Sindsdien werden er bilaterale luchtvaartakkoorden gesloten om die toestemming te regelen. Het luchtvaartakkoord tussen het Verenigd Koninkrijk en de Verenigde Staten geldt als basismodel. België heeft een 100-tal dergelijke luchtvaartakkoorden afgesloten.

Intussen werden er bevoegdheden op vlak van luchtvaart overgeheveld naar het Europese niveau. De zogenaamde 'open skies' arresten van 2002 van het Hof van Justitie van de Europese Unie veroordeelden onder meer België omdat haar bilaterale luchtvaartakkoorden vier bepalingen bevatten die niet conform het EU-recht waren. De bestaande bilaterale akkoorden dienden dus opnieuw onderhandeld te worden.

Vlaamse bevoegdheden

Deze bilaterale luchtvaartakkoorden bevatten enerzijds bepalingen die betrekking hebben op materies waarvoor de gewesten adviesbevoegdheid hebben: verkeersrechten (art. 6, §3, 6° BWHI) en beveiliging van de luchtvaart (art. 6, §4, 4° BWHI).

Anderzijds zijn er bepalingen die betrekking hebben op gewestelijke bevoegdheden.

Artikel 9 'gebruikersvergoedingen' stelt dat luchthavenvergoedingen niet hoger mogen zijn dan deze voor nationale transportmaatschappijen. Deze materie wordt binnen het Vlaams Gewest door de ministeriële besluiten van respectievelijk 17 december 2003 en 13 maart 2009 geregeld.

Artikel 10 'grondafhandeling' bevat een verbod op discriminatie. In het Vlaamse Gewest wordt de bevoegdheid tot grondafhandeling geregeld door het Besluit van de Vlaamse Regering van 17 december 1999 betreffende de toegang tot de grondafhandelingsmarkt op de Vlaamse regionale luchthavens. Dit besluit is een omzetting van de Europese richtlijn 96/67/EG.

Bovenstaande bepalingen hebben direct of indirect betrekking op de bevoegdheden van de gewesten, in het bijzonder deze vermeld in art. 6, §1, X, 7° BWHI (*'de uitrusting en uitbating van de luchthavens en openbare vliegvelden, met uitzondering van de luchthaven Brussel-Nationaal'*).

3. Inhoud

Het luchtvaartakkoord bestaat uit de tekst van het akkoord zelf – het juridische kader – en een memorandum van overeenstemming (operationeel). Deze akkoorden bestaan grotendeels uit standaardbepalingen van de conventie van Chicago en van de EU.

Het akkoord en zijn uitvoeringsbepalingen voorzien in alle exploitatiemogelijkheden die de luchtvaartmaatschappijen van beide landen wensen, zowel op het gebied van het aantal vluchten per week als op het gebied van de uitgewisselde rechten.

4. Procedureverloop

4.1. Gemengd karakter en ondertekening

Sinds eind 2007 worden de bilaterale luchtvaartakkoorden die onderhandeld worden door ons land aan het eind van de onderhandelingen wel nog geparafeerd op administratief niveau, maar niet langer ondertekend. Het uitblijven daarvan, was het gevolg van uiteenlopende zienswijzen over het karakter van de bilaterale luchtvaartakkoorden (al dan niet gemengd) en de te volgen procedure met het oog op ondertekening.

Tijdens zijn vergadering van 15 februari 2017 stemde de Interministeriële Conferentie Buitenlands Beleid (ICBB) ermee in dat een aantal geparafeerde ilaterale luchtvaartakkoorden namens het Koninkrijk België getekend worden met enkele ondertekening door de federale overheid, met dien verstande dat deze akkoorden, na ondertekening zullen beschouwd worden als gemengde verdragen.

De Werkgroep gemengde verdragen (WGV), adviesorgaan van ICBB, nam op 16 februari 2017 akte van de beslissing van de ICBB om de voorliggende akkoorden als gemengd te beschouwen. Zowel de federale overheid als de gewesten worden respectievelijk bevoegd geacht. De werkgroep besliste dat de ondertekening zal gebeuren volgens formule 5. Dat wil zeggen één ondertekening, door een federale, gewest- of gemeenschapsminister, of een andere gemachtigde, met volmachten van alle betrokken overheden, enkel in naam van het Koninkrijk België en zonder verklaring bij de ondertekening.

4.2. Advies van de Mobiliteitsraad van Vlaanderen

(p.m.)

4.3. Advies van de Raad van State, afdeling Wetgeving

(p.m.)

II. TOELICHTING BIJ DE ARTIKELEN

In artikel 1 worden enkele definities weergegeven.

Overeenkomstig artikel 2 verlenen de partijen elkaar de volgende rechten voor het uitvoeren van internationale luchtdiensten door de respectieve aangewezen luchtvaartmaatschappijen:

- om zonder te landen over haar grondgebied te vliegen;
- om op haar grondgebied te landen voor andere dan verkeersdoeleinden;
- om op haar grondgebied te landen bij de exploitatie van de routes omschreven in de Bijlage, voor het opnemen en afzetten van passagiers, vracht en post in internationaal vervoer, afzonderlijk of gecombineerd.

Artikel 3 betreft de aanwijzing voor het exploiteren van diensten. Elke luchtvaartmaatschappij moet beantwoorden aan de voorwaarden vastgelegd in de wetten en regels die normaal toegepast worden door de bevoegde overheid (artikel 4). In bepaalde gevallen kunnen de bevoegde overheden een exploitatievergunning weigeren, intrekken, opschorten of beperken (artikel 5).

Luchtvaartmaatschappijen moeten de toepasselijke wetten en regels inzake het binnenkomen of verlaten van het grondgebied of inzake de exploitatie en navigatie van luchtvaartuigen naleven (artikel 6).

Artikel 7 behandelt de bewijzen, vergunningen en veiligheidsnormen. Artikel 8 betreft de beveiliging van de luchtvaart. De partijen beschermen de beveiliging van de burgerluchtvaart tegen wederrechtelijke gedragingen. Deze verplichting maakt integraal deel uit van de overeenkomst.

Gebruikersheffingen op luchthavens, luchthavenvoorzieningen en -diensten moeten kostengerelateerd en niet discriminerend zijn (artikel 9). De luchtvaartmaatschappijen hebben het recht hun grondafhandeling te regelen en, samen te werken met andere transportdiensten (artikel 10).

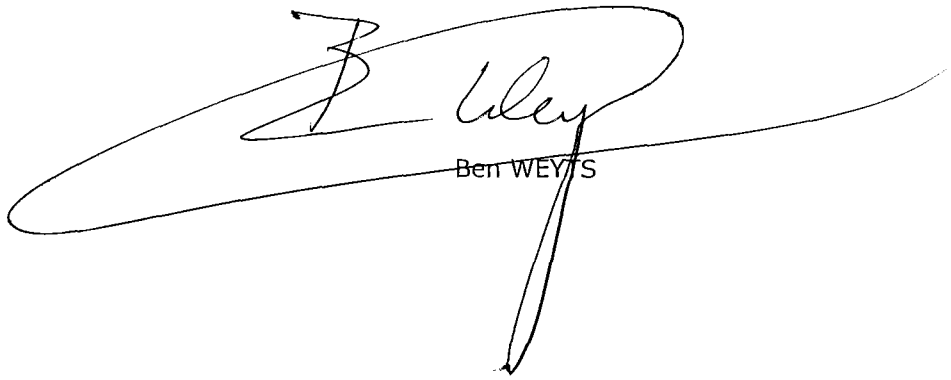
De overige artikelen betreffen de douane en accijnzen (artikel 11), capaciteit (artikel 12), de verandering van vliegtuigtype en gedeelde codes (artikel 13), de tarieven (artikel 14), het personeel (artikel 15) en de verkoop en inkomsten (artikel 16).

Tot slot bevat de overeenkomst een aantal algemene slotbepalingen inzake de uitwisseling van informatie (artikel 17) onderling overleg (artikel 18), regeling van geschillen (artikel 19), wijzigingen (artikel 20), beëindiging (artikel 21), registratie van de overeenkomst (artikel 22) en de inwerkingtreding (artikel 23).

De minister-president van de Vlaamse Regering,
Vlaams minister van Buitenlands Beleid en Onroerend Erfgoed,

Geert BOURGEOIS

De Vlaamse minister van Mobiliteit, Openbare Werken, Vlaamse Rand,
Toerisme en Dierenwelzijn,



Ben WEYTS

AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE KINGDOM OF BELGIUM

AND

THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE

ON AIR TRANSPORT

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

AND

THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE

Being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944;

Desiring to conclude an agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories;

Desiring to ensure the highest degree of safety and security in international air transport;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement, unless the context otherwise requires:

a) the term "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 or ratified by both Contracting Parties;

b) the term "Agreement" means this Agreement, the Annex attached thereto, and any modifications to the Agreement or to the Annex;

c) the term "aeronautical authorities" means: in the case of Belgium, The Federal Public Service Mobility and Transport, and in the case of Cape Verde, the Civil Aviation Authority (Agência de Aviação Civil) or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;

d) the terms "Territory", "Air Service", "International Air Service", "Airline" and "Stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention;

e) the term "Designated airline" means an airline which has been designated and authorised in accordance with Articles 3 and 4 of this Agreement;

f) the term "Agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

g) the term "Tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;

h) the term "Change of gauge" means the operation of one of the agreed services by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section;

i) the terms "aircraft equipment", "ground equipment", "aircraft stores", "spare parts" have the meanings respectively assigned to them in Annex 9 of the Convention;

j) the term "nationals of the Kingdom of Belgium" shall be understood as referring to nationals of European Union Member States;

k) the term "airlines of the Kingdom of Belgium" shall be understood as referring to airlines designated by the Kingdom of Belgium.

l) the term "EU treaties" shall be understood as referring to the Treaty on European Union and the Treaty on the Functioning of the European Union.

ARTICLE 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the respective designated airlines:

   a) to fly without landing across its territory;

   b) to make stops in its territory for non-traffic purposes;

   c) to make stops in its territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail separately or in combination.

2. Nothing in paragraph 1 of this article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

Designation to operate services

1. Each Contracting Party shall have the right to designate, by diplomatic note, to the other Contracting Party, one or more airlines to operate the agreed services on the routes specified in the Annex for such a Contracting Party.

2. Each Contracting Party shall have the right to withdraw, by diplomatic note to the other Contracting Party, the designation of any airline and to designate another one.

ARTICLE 4

Authorisation to operate services

1. Following receipt of a notice of designation by one Contracting Party, the aeronautical authorities of the other Contracting Party shall, consistent with its laws and regulations, grant the designated airlines the appropriate authorisations to operate the agreed services for which those airlines have been designated, provided that :

a) in the case of an airline designated by Belgium:

i. it is established in the territory of Belgium under the EU Treaties and has a valid Operating Licence in accordance with European Union law; and

ii. effective regulatory control of the airline is exercised and maintained by the European Union Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation.

b) in the case of an airline designated by Cape Verde:

i. it is established in the territory of Cape Verde and has a valid Operating Licence in accordance with the law applicable in Cape Verde; and

ii. Cape Verde is exercising and maintaining effective regulatory control of the airline.

2. Upon receipt of such authorisations the airlines may begin at any time to operate the agreed services, in whole or in part, provided that the airlines comply with the applicable provisions of this Agreement, that tariffs are established in accordance with the provisions of Article 14 of this Agreement, and that these services are performed with aircraft satisfying the requirement of at least Annex 16 Volume 1, part 2, Chapter III (third edition – July 1993) of the Convention

ARTICLE 5

Revocation or suspension of operating authorisation

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorisations referred to in Article 4 of this Agreement with respect to the airlines designated by the other Contracting Party, to revoke or suspend such authorisation or impose conditions, temporarily or permanently;

   a) in the event of failure by such airlines to satisfy them that they are qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by these authorities in conformity with the Convention;

   b) in the event of failure by such airlines to operate in accordance with the conditions prescribed under this Agreement;

   c) in the event of failure by such airlines to comply with the laws and regulations of that Contracting Party;

   d) in the case of an airline designated by Belgium:

      i. if it is not established in the territory of Belgium under the EU Treaties or does not have a valid Operating Licence in accordance with European Union law; or
      ii. effective regulatory control of the airline is not exercised or not maintained by the European Union Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation.

e) in the case of an airline designated by Cape Verde:

      i. if it is not established in the territory of Cape Verde or does not have a valid Operating Licence in accordance with the law applicable in Cape Verde; or
      ii. Cape Verde is not exercising or not maintaining effective regulatory control of the airline.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 18 of this Agreement.

ARTICLE 6

Application of laws and regulations

1. The laws and regulations of one Contracting Party 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 shall be complied with by the designated airlines of the other Contracting Party upon entry into, departure from and while within the said territory.

2. The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs, currency, sanitary requirements and quarantine shall be complied with by the designated airlines of the other Contracting Party and by or on behalf of their crews, passengers, cargo and mail upon transit in, admission to, departure from and while within the territory of such Contracting Party;

   Passengers in transit across the territory of either Contracting Party shall be subject to no more than a simplified control.

   This provision shall not apply if the passenger is in transit to a destination situated in a State, Party to the Convention in pursuance of the Schengen Agreement of 14 June 1985.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline engaged in similar international air services of the other Contracting Party in the application of its regulations specified in paragraphs 1 and 2 of this article or in the use of airports, airways, air traffic services and associated facilities under its control.

ARTICLE 7

Certificates, licences and safety

1. Certificates of airworthiness, certificates of competency and licences issued or validated in accordance with the laws and regulations of one Contracting Party including in the case of Belgium, European Union laws and regulations, and unexpired shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex, provided always that such certificates or licences were issued or validated equal or above the minimum standards established under the Convention.

   Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

2. If the certificates or licences referred to in paragraph 1 of this article were issued or rendered valid according to requirements different from the standards established under the Convention, and if such difference has been filed with the International Civil Aviation Organisation, the aeronautical authorities of the other Contracting Party may request consultations in accordance with Article 18 of this Agreement with a view to satisfying themselves that the requirements in question are acceptable to them.

   Failure to reach a satisfactory agreement in matters regarding flight safety will constitute grounds for the application of Article 5 of this Agreement.

3. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within 30 days of that request.

4. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within 15 days or such longer period as may be agreed, shall be grounds for the application of Article 5 of this Agreement (revocation, suspension and variation of operating authorisations).

5. Notwithstanding the obligation mentioned in Article 33 of the Chicago

Convention it is agreed that any aircraft operated or, under a lease arrangement, on behalf of the airline of one Party on services to or from the territory of another Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called «ramp inspection»), provided this does not lead to unreasonable delay.

6. If any such ramp inspection or series of ramp inspections gives rise to:

   a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention, or

   b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention,

   the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant tot the Chicago Convention.

7. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by or on behalf of the airline or airlines of one Contracting Party in accordance with paragraph 5 above is denied by the representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 6 above arise and draw the conclusions referred in that paragraph.

8. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

9. Any action by one Contracting Party in accordance with paragraphs 4 or 8 above shall be discontinued once the basis for the taking of that action ceases to exist.

10. Where Belgium has designated an air carrier whose regulatory control is exercised and maintained by another EU Member State, the rights of Cape Verde under the safety provisions of the agreement between Belgium and Cape Verde shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other EU Member State and in respect of the operating authorisation of that air carrier.

ARTICLE 8

Aviation Security

1. The Contracting Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

3. The Contracting Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts Against the Safety of International Airports and any other multilateral agreement governing civil aviation security binding upon the Contracting Parties.

4. The Contracting Parties shall, in their mutual relations, 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 or operators who have their principal place of business or permanent residence in the territory of the Contracting Parties or, in the case of the Kingdom of Belgium, operators of aircraft which are established in its territory under the EU Treaties and have valid Operating Licences in accordance with European Union Law, and the operators of airports in their territory act in conformity with such aviation security provisions.

5. Each Contracting Party agrees that its operators of aircraft shall be required to observe, for departure from or while within the territory of the other Contracting Party, aviation security provisions in conformity with the law in force in that country, including, in the case of Belgium, European Union law. Each Contracting Party agrees to take adequate measures to inspect passengers, crew, their carry-on items as well as cargo prior to boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures for its aircraft or

passengers to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

7. Should a Contracting Party depart from the aviation security provisions of this article, the aeronautical authorities of the other Contracting Party may request immediate consultations with the aeronautical authorities of that Party. Failure to reach a satisfactory agreement within thirty (30) days will constitute grounds for application of Article 5 of this Agreement.

ARTICLE 9

User charges

1. The charges imposed in the territory of one Contracting Party on the designated airlines of the other Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airlines of the other Contracting Party shall not be higher than those imposed on a national airline of the first Contracting Party engaged in similar international services.

2. Each Contracting Party shall encourage consultations between its competent charging authorities and the designated airlines using the facilities and services, where practicable, through the airlines'representative organisations. Reasonable notice should be given of any proposal for changes in user charges to enable them to express their views before changes are made.

ARTICLE 10

Ground handling provisions

Subject to the laws and regulations of each Contracting Party including, in the case of the Kingdom of Belgium, European Union law, each designated airline shall have in the territory of the other Contracting Party the right to perform its own ground handling ("self-handling") or, at its option, the right to select among competing suppliers that provide for ground handling services in whole or in part.
Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide ground handling services, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.

ARTICLE 11

Customs and Excise

1. Each Contracting Party shall exempt the designated airlines of the other Contracting Party from import restrictions, customs duties, excise taxes, inspection fees and other national, regional or local duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, ground equipment, aircraft stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airlines of such other Contracting Party operating the agreed services, as well as printed ticket stock, airway bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by those designated airlines.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1 of this article, whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are:

   a) introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party, but not alienated in the territory of the said Contracting Party;

   b) retained on board aircraft of the designated airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;

   c) taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services.

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

4. Baggage and cargo in direct transit shall be exempt from customs duties and other taxes.

5. The exemptions provided for by this article shall also be available where the designated airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph 1 of this article.

ARTICLE 12

Capacity

1. Each Contracting Party shall reciprocally allow the Designated Airlines of both Contracting Parties to compete freely in providing the international air transportation governed by this Agreement.

2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and anti-competitive or predatory practices in the exercise of the rights and entitlements set out in this Agreement.

3. There shall be no restriction on the capacity and the number of frequencies and/or type(s) of aircraft to be operated by the Designated Airlines of both Contracting Parties in any type of service (passenger, cargo, separately or in combination). Each Designated Airline is permitted to determine the frequency, capacity it offers on the Agreed Services.

4. Neither Contracting Party shall unilaterally limit the volume of traffic, frequencies, regularity of service or the aircraft type(s) operated by the Designated Airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental requirements under uniform conditions consistent with Article 16 of the Convention.

5. Neither Contracting Party shall impose on the Designated Airlines of the other Contracting Party, a first refusal requirement, uplift ratio, no objection fee or any other requirement with respect to capacity, frequencies or traffic which would be inconsistent with the purposes of this Agreement.

ARTICLE 13

Change of gauge and code-share

1. For any segment, or segments of the respective routes a designated airline may during any one continuous flight, change type of aircraft at any point of the route.

2. In operating or holding out the authorized air services on the agreed routes, any designated airline of one Contracting Party may enter into code-sharing agreements with :

- an airline or airlines of the same Contracting State
- an airline or airlines of the other Contracting State.
- an airline or airlines of a third country,

provided all airlines in such arrangements

- hold the underlying traffic rights for operating services on the relevant routes and route sections and
- in respect of any ticket sold, provide the purchaser at the time of the purchase with the proper information concerning the airline which actually operate each sector of the service and the airline or airlines with which the purchaser is entering into a contractual relationship. In operating the agreed air services on the routes specified in the Annex, each designated airline may enter into code-share arrangements with an airline of any nationality provided the latter airline holds the appropriate route and traffic rights.

ARTICLE 14

Tariffs

1. The Contracting Parties shall allow that a tariff on one of the routes as specified in the annex shall be established by each of the designated airlines.

2. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service and the interest of users.

3. Without prejudice to the application of the provisions of the preceding paragraphs of this article, the designated airlines shall be allowed to match, on sectors of the agreed services on which they exercise fifth freedom traffic rights, tariffs applied by the third and fourth freedom airlines on the same sectors.
The prices applied by the fifth freedom airlines shall not be lower and the tariff conditions shall not be less restrictive than those of the said third and fourth freedom airlines.

ARTICLE 15

Staff requirements

1. The designated airlines of one Contracting Party shall be allowed on the basis of reciprocity, to maintain in the territory of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.

2. These staff requirements may, at the option of the designated airlines, be satisfied by their own personnel of any nationality or by using the services of any other organisation, company or airline operating in the territory of the other Contracting Party and authorised to perform such services in the territory of that Contracting Party.

3. The representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party. Consistent with such law and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary work permits, employment visas or other similar documents to the representatives and staff referred to in paragraph 1 of this article.

4. To the extent permitted under national law, both Contracting Parties shall dispense with the requirement of work permits or employment visas or other similar documents for personnel performing certain temporary services and duties.

ARTICLE 16

Sales and revenues

1. Each designated airline shall be granted the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents.

   Each designated airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries.

   Any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

2. Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer of the excess of receipts over expenditures earned by the designated airline in its territory. Such transfers shall be effected on the basis of the official exchange rates for current payments, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payments, applicable on the day of the introduction of the request for transfer by the airlines designated by the other Contracting Party and shall not be subject to any charges except normal service charges collected by banks for such transactions.

3. Each Contracting Party shall, on the basis of reciprocity, exempt the designated airlines of the other Contracting Party from any form of taxation on income or profits derived by those airlines in the territory of the first Contracting Party from the operation of international air services, as well as from any tax on turnover or capital.

   This provision shall not apply if a Convention for the avoidance of double taxation providing for a similar exemption is in force between the Contracting Parties.

ARTICLE 17

Exchange of information

1. The aeronautical authorities of both Contracting Parties shall exchange information, as promptly as possible, concerning the current authorisations extended to their respective designated airlines to render service to, through, and from the territory of the other Contracting Party. This will include copies of current certificates and authorisations for services on specified routes, together with amendments, exemption orders and authorised service patterns.

2. Each Contracting Party shall cause its designated airlines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of tariffs, schedules, including any modification thereof, and all other relevant information concerning the operation of the agreed services, including information about the capacity provided on each of the specified routes and any further information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.

ARTICLE 18

Consultations

1. The aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring close co-operation in all matters affecting the implementation of, and satisfactory compliance with, the provisions of this Agreement and of its Annex.

2. Such consultations shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise agreed by the Contracting Parties.

ARTICLE 19

Settlement of disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a Tribunal of three arbitrators.

3. The arbitral tribunal shall be constituted as follows:
Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt, by one Contracting Party, through diplomatic channels, of a request for arbitration from the other Contracting Party. These two arbitrators shall by agreement appoint a third arbitrator within a further period of sixty (60) days.
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.

   If either of the Contracting 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 Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

4. The Contracting Parties undertake to comply with any decision or award given under paragraphs 2 and 3 of this article.

   If either Contracting Party fails to comply with such decision, the other Contracting Party shall have grounds for the application of article 5 of this Agreement.

5. The expenses of the arbitral tribunal shall be shared equally between the Contracting Parties.

ARTICLE 20

Modifications

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of the request.

2. If a general multilateral air convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with paragraph 1 of this article may be held with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

3. Any modification agreed pursuant to such consultations shall come into force when it has been confirmed by an exchange of diplomatic notes.

4. The Contracting Parties agree that the Route Schedule in the Annex can be modified after agreement between the Aeronautical Authorities through an administrative arrangement.

ARTICLE 21

Termination

1. Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement.

   Such notice shall be communicated simultaneously to the International Civil Aviation Organisation.

2. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period.

   In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 22

Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

ARTICLE 23

Entry into force

Each of the Contracting Parties shall notify the other Contracting Party through the diplomatic channel of the completion of its constitutional formalities required to bring this Agreement into effect.

The Agreement shall come into force on the first day of the month following the date of the last notification.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at on this day of in the English language.

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:

FOR THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE:

ANNEX

SCHEDULE OF ROUTES

1. Routes of the Republic of Cape Verde

Points of departure	Intermediate points	Points in Belgium	Points beyond
Points in Cape Verde	Any	Points in Belgium	Any

2. Routes of the Kingdom of Belgium

Points of departure	Intermediate points	Points in	Points beyond
Points in Belgium	Any	Points in Cape Verde	Any

Any point or points on the agreed routes may be omitted by the designated airlines of both Parties or may be operated in a different order on any or all flights, provided that the agreed services on the routes begin at a point in the territory of the Contracting Party designating the airline

Fifth freedom traffic rights are subject to prior approval of the Aeronautical Authorities concerned.