

No. 32677

**NETHERLANDS
and
CAPE VERDE**

Agreement for air services between and beyond their respective territories (with annex). Signed at The Hague on 21 December 1988

Authentic texts: Dutch, Portuguese and English.

Registered by the Netherlands on 29 February 1996.

**PAYS-BAS
et
CAP-VERT**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec annexe). Signé à La Haye le 21 décembre 1988

Textes authentiques : néerlandais, portugais et anglais.

Enregistré par les Pays-Bas le 29 février 1996.

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF CAPE VERDE FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of the Netherlands

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 seventh day of December 1944;²

Desiring to contribute to the progress of international civil aviation;

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories, have agreed as follows:

Article 1

1. For the purpose of this Agreement and its Annex, unless the context otherwise requires:

a. the term “the 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 the Convention under Articles 90 and 94 thereof, in so far as those Annexes and amendments have become effective for, or been ratified by, both Contracting Parties;

b. the term “aeronautical authorities” means:
– for the Kingdom of the Netherlands: the Minister of Transport and Public Works and any person or body authorised to perform any functions at present exercised by the said Minister;
– for the Republic of Cape Verde: the Ministry of Transport Commerce and Tourism and any person or body authorised to perform any functions at present exercised by the said Ministry;

c. the term “designated airline” means an airline which has been designated and authorised in accordance with Article 3 of the present Agreement;

d. the term “territory” in relation to a State has the meaning assigned to it in Article 2 of the Convention;

¹ Came into force provisionally on 21 December 1988 by signature, and definitively on 1 July 1991, the date of receipt of the last of the notifications (of 24 May 1989 and 28 June 1991) by which the Contracting Parties informed each other of the completion of their constitutional requirements, in accordance with article 24.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

e. the terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meaning respectively assigned to them in Article 96 of the Convention;

f. the term “capacity” means the available payload of an aircraft on a given route or section of a route, multiplied by the frequency of services on that route or route-section operated with such aircraft over a given period of time;

g. the term “agreed service” and “specified route” have the meaning respectively of international air service pursuant to article 2 of this Agreement and the route specified in the appropriate Section of the Annex of this Agreement.

h. the term “tariff” means any amount charged or to be charged by airlines, directly or through their agents, to any person or entity for the carriage of passengers (and their baggage) and cargo (excluding mail) in air transportation, including:

i. the conditions governing the availability and applicability of a tariff, and

ii. the charges and conditions for any services ancillary to such carriage which are offered by airlines.

i. the term “aircraft equipment” means articles, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment.

j. the term “spare parts” means articles of a repair or replacement nature for incorporation in an aircraft, including engines and propellers.

k. the term “stores” means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies.

l. the term “Agreement” means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or to the Annex.

Article 2

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing agreed services on specified routes. The airline, designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the right to make stops in the said territory at the points specified in the Annex to it, for the purpose of putting down or taking up international traffic in passengers, baggage, cargo and mail separately or in combination, carried for remuneration or hire.

2. The provisions in paragraph 1 of this Article shall not be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, baggage, cargo and mail carried for remuneration or hire originating in that territory and destined for another point in the territory of that other Contracting Party.

3. In addition to the rights granted in paragraph 1 of this Article, each Contracting Party grants also to the airlines of the other Con-

tracting Party for international air services and for operational flights incidental to such services:

- a. the right to fly across its territory without landing;
- b. the right to make stops in such territory for non-traffic purposes.

Article 3

1. Each Contracting Party shall have the right to designate by written notification through diplomatic channels to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

Each Contracting Party shall have the right to substitute by written notification through diplomatic channels the airline designated by another airline.

2. On receipt of such notification, each Contracting Party shall grant to the airline designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of paragraphs 3 and 4 of this Article.

3. The aeronautical authorities of each Contracting Party may require the airline, designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to grant this authorization under conditions that may be deemed necessary on the exercise by the designated airline of the rights specified in Article 2 of this Agreement, if it does not obtain the required evidence prescribed under paragraph 3 of this Article, or is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating it or in its nationals or in both.

5. On receipt of the operating authorization referred to in paragraph 2 of this Article, the designated airline may begin at any time to operate any agreed service, provided that the tariffs established in accordance with the provisions of Article 9 of this Agreement are in force in respect of that service.

Article 4

1. Each Contracting Party shall have the right to revoke, suspend or limit an operating authorization or to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline designated by the other Contracting Party, or to maintain such authorization under conditions that may be deemed necessary:

- a. in any case where substantial ownership and effective control of that airline are not vested in the Contracting Party designating the airline or in its nationals or in both;
- b. in the case of failure by that airline to comply with the laws or regulations normally and reasonably applied to the operation of

international air services which are in force in the territory of the Contracting Party granting these rights; or

c. in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 b and c of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 5

1. There shall be fair and equal opportunity for the airlines designated by both Contracting Parties to operate the agreed services on the specified routes between their territories.

2. The agreed services provided by the airlines designated by the Contracting Parties shall bear reasonable relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably anticipated requirements for the carriage of passengers, baggage, cargo and mail between the territories of the Contracting Parties.

Article 6

1. Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their aircraft equipment, spare parts, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges and taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

2. Subject to paragraph 3 of this Article, there shall also be exempt from customs duties, inspection fees and similar charges, with the exception of payments for services performed:

a. aircraft stores taken on board in the territory of a Contracting Party, for use on board outbound aircraft engaged on an agreed service by the designated airline of the other Contracting Party;

b. spare parts introduced into the territory of either Contracting Party for the maintenance or repair of an aircraft used on the agreed services by the designated airline of the other Contracting Party;

c. fuel and lubricants to be supplied to an outbound aircraft-operated on agreed services by the designated airline of the other Contracting Party, even when such supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board;

d. aircraft equipment temporarily introduced in the territory of a Contracting Party.

3. Materials and supplies referred to in paragraph 2 of this Article may be required to be kept under customs surveillance or control.

4. This Article cannot be interpreted in such a way that a Contracting Party can be made subject to the obligation to refund customs duties which already have been levied on the materials referred to above.

Article 7

The regular airborne equipment, spare parts, aircraft stores, as well as the materials and supplies including fuel and lubricants retained on board the aircraft 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 Party. In such case, they may be required to be placed under the surveillance of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8

Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy or in cases of serious suspicion of fraud, be subject to no more than a simplified control. Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

Article 9

1. The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between their territories shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit and the tariffs of other airlines for any part of the specified route.

2. Tariffs referred to in paragraph 1 of this Article shall, whenever possible, be agreed by the designated airlines of both Contracting Parties.

3. The tariffs so agreed between the designated airlines shall be submitted for the approval of their aeronautical authorities at least 60 (sixty) days before the proposed date of their introduction. In special cases this period may be reduced, subject to agreement of the said authorities.

4. In the event of the period for submission being reduced, as provided for in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be reduced accordingly.

5. Approval of tariffs may be given expressly, or, if neither of the aeronautical authorities has expressed disapproval within 30 (thirty) days from the date of submission, in accordance with paragraph 3 of this Article, the tariffs shall be considered as approved.

6. If, during the period applicable in accordance with paragraph 4 of this Article, one aeronautical authority gives the other aeronau-

tical authority notice of its disapproval of any tariff filed in accordance with paragraph 3 of this Article, the aeronautical authorities of the two Contracting Parties shall, after consultations with the aeronautical authorities of any other State whose advice they consider useful, endeavour to determine the tariff by mutual agreement.

7. If the aeronautical authorities cannot agree on the determination of a tariff under paragraph 5 of this Article, the dispute shall be settled in accordance with the provisions of Article 15 of this Agreement.

8. Tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established.

Article 10

1. The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, statements of statistics of traffic carried on the agreed services by the designated airline of the Contracting Party referred to first in this Article.

2. The airline, designated by each Contracting Party shall submit to the aeronautical authorities of the other Contracting Party for approval, one month in advance, the time table of the services specifying the frequencies and the type of aircraft to be used, as well as any other information concerning the operation of the agreed services.

3. Extra flights and additional flights shall be agreed between the airlines prior to submission to the respective aeronautical authorities for their approval in accordance with their requirements.

Article 11

1. The airlines of the Contracting Parties shall be free to sell air transport services in the territories of both Contracting Parties, either directly or through their agents.

2. The airlines of the Contracting Parties shall be free to transfer from the territory of sale to their home territory the excess, in the territory of sale, of receipts over expenditure. Included in such net transfer shall be revenues from sales, made directly or through an agent, of air transport services, and ancillary or supplementary services, and normal commercial interest if applicable earned on such revenues while on deposit awaiting transfer.

3. The airlines of the Contracting Parties shall receive approval for such transfers within at most 90 days after the date of filing of the application, into a freely convertible currency, at the official rate of exchange for conversion of local currency, as at the date of approval. The airlines of the Contracting Parties shall be free to effect the actual transfer on receipt of approval.

Article 12

1. Income and profits from the operation of aircraft in international traffic by a designated airline of one of the Contracting Parties

shall be exempt in the territory of the other Contracting Party from taxes on income and profits of every form, irrespective of the manner in which they are levied. These provisions shall also apply to income and profits from the participation in an airline-pool, joint venture or an international operating agency.

2. Aircraft operated on the agreed services by a designated airline of one of the Contracting Parties and movable property pertaining to the operation of such aircraft, shall be exempt in the territory of the other Contracting Party from taxes on capital of every form, irrespective of the manner in which they are levied.

Article 13

1. The designated airlines of both Contracting Parties shall be allowed in the territory of the other Contracting Party:

a. to establish offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation;

b. to bring in and maintain managerial, sales, technical, operational and other specialist staff required for the provision of air transportation; and

c. to engage directly and, at that airline's discretion, through its agents in the sale of air transportation.

2. The above activities shall be carried out in accordance with the laws and regulations of the other Contracting Party.

Article 14

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other periodically with a view to ensuring the proper implementation of the present Agreement.

2. Either Contracting Party may, at any time, request consultation with the other Contracting Party in connection with the interpretation, application and modification of this Agreement. Such consultation shall begin within a period of 60 (sixty) days of the date of sending of the request, unless both Contracting Parties agree to an extension or reduction of this period.

Article 15

1. Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.

2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) within 30 (thirty) days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 (sixty) days after these two arbitrators have been named, they shall by agreement

appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) if either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 (thirty) days. 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.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 (fifteen) days after the tribunal is fully constituted.

4. Except as otherwise agreed, each Party shall submit a memorandum within 45 (forty-five) days of the time the tribunal is fully constituted. Replies shall be due 60 (sixty) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 (fifteen) days after replies are due.

5. The tribunal shall attempt to render a written decision within 30 (thirty) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 15 (fifteen) days after it is rendered and any clarification given shall be issued within 15 (fifteen) days of such request.

7. The tribunal shall be competent, in any event and at any time, either upon its own motion or at the request of either Party, to prescribe provisional measures necessary to safeguard the rights of the Parties. A Party may make such request in its written pleadings, at the hearing, or subsequently.

8. Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

9. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph 2 (b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

Article 16

1. Any amendment or modification to this Agreement, agreed between the Contracting Parties after consultation in accordance with Article 14 of the present Agreement, shall come into effect on a date to be determined in an exchange of diplomatic notes.

2. Any amendment or modification of the Annex to the Agreement may be effected by direct agreement between the aeronautical autho-

rities of both Contracting Parties. The agreed amendments or modifications shall come into effect on a date mutually determined by the aeronautical authorities.

Article 17

1. The provisions of this Agreement shall be subject to those provisions of the Convention which are applicable to international air services.

2. If a multilateral agreement concerning any matter covered by this Agreement, accepted by both Parties, enters into force, the relevant provisions of that agreement shall supersede the relevant provisions of the present Agreement.

Article 18

1. Consistent with their rights and obligations under international law, the Contracting Parties affirm 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. Without limiting the generality of their rights and obligations under international law, the Contracting 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 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³

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

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization 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 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.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage,

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177, and vol. 1217, p. 404 (Corrigendum to volume 974).

cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or 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.

Article 19

1. The laws, regulations and procedures of either Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft, shall be complied with by the designated airline of the other Contracting Party upon its entrance into, and until and including its departure from the said territory.

2. The laws, regulations and procedures of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers or cargo including mail, such as laws and regulations relating to entry, exit, emigration, immigration, passports as well as customs and health or sanitary measures, shall apply to passengers and cargo including mail carried by the aircraft of the designated airline of the other Contracting Party upon entrance into or departure from or while within the territory of the said Contracting Party.

3. Fees and charges applied in the territory of either Contracting Party to the airline operations of the other Contracting Party for the use of airports and other aviation facilities in the territory of the first Contracting Party, shall not be higher than those applied in the territory of that first Party to similar operations of other airlines.

4. Neither of the Contracting Parties shall give preference to any other airline over the designated airline of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.

Article 20

Certificates of airworthiness, certificates of competency and licences issued, or validated, by one Contracting Party and unexpired shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services on the specified routes, provided always that such certificates or licences were issued, or validated, in conformity with the standards established under the Convention.

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

Article 21

As regards the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

Article 22

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

Article 23

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate 12 (twelve) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual agreement before the expiry of this period.

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

Article 24

The present Agreement shall be applied provisionally as from the date of its signing. It shall come into force on the date of receipt of the second of the notes exchanged by both Contracting Parties notifying the completion of their constitutional requirements.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their Governments, have signed the present Agreement.

DONE in duplicate at The Hague this 21st day of December 1988 in the Dutch, Portuguese and English languages, each version being equally authentic.

For the Government
of the Kingdom of the Netherlands:

H. VAN DEN BROEK

For the Government
of the Republic of Cape Verde:

L. DA FONSECA

ANNEX

A. Route Schedule

I. Routes to be operated by the designated airline of the Republic of Cape Verde:

Points in SAL ISLAND – intermediate points – Points in the Netherlands – points beyond.

II. routes to be operated by the designated airline of the Kingdom of the Netherlands:

Points in the Netherlands – intermediate points – points in SAL ISLAND – points beyond.

B.

1. Any point or points on the specified route may, at the option of a designated airline, be omitted on any or all flights, provided that the service begins or terminates in the territory of the Contracting Party designating the airline.

2. Between intermediate points or points beyond and the territory of one Contracting Party no traffic rights shall be exercised, unless these rights are specifically granted to the respective designated airline of the other Contracting Party.
