

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2013 Nr. 111

A. TITEL

*Verdrag inzake luchtdiensten tussen het Koninkrijk der Nederlanden en de Republiek Kaapverdië;
(met Bijlage)
Dakar, 23 mei 2013*

B. TEKST

**Air Service Agreement between the Kingdom of the Netherlands
and the Republic of Cape Verde**

Preamble

The Kingdom of the Netherlands

and

The Republic of Cape Verde,

Hereinafter referred to as the Contracting Parties,

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

Desiring to contribute to the progress of international aviation;

Desiring to guarantee the highest level of safety and security in international air transport;

Desiring to conclude an Agreement to replace the Agreement between the Kingdom of the Netherlands and the Republic of Cape Verde for Air Services between and beyond their respective territories, signed in The Hague on December 21, 1988;

Have agreed as follows:

CHAPTER I

INTRODUCTION

Article 1

Definitions

For the purpose of this Agreement

a) the term “Aeronautical Authorities” means: for the Kingdom of the Netherlands, the Minister of Infrastructure and Environment; for the Republic of Cape Verde, the Civil Aviation Agency, or in either case any person or body authorized to perform any functions at present exercised by the said Authorities;

b) the terms “Agreed Service” and “Specified Route” mean: international air service pursuant to this Agreement and the route specified in the Annex to this Agreement respectively;

c) the term “Agreement” means: this Agreement, its Annex drawn up in application thereof, as well as any amendment to the Agreement or the Annex;

d) the terms “Air Service”, “International Air Service”, “Airline” and “Stop for non-traffic purposes” shall have the meaning respectively assigned to them in Article 96 of the Convention;

e) the term “Change of Aircraft” means: the operation of one of the Agreed Services by a Designated Airline in such a way that one or more sectors of the Specified Route are flown by different aircraft;

f) the term “the Convention” means: the Convention on International Civil Aviation, opened for signature at Chicago on 7 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, insofar as those Annexes and amendments have become effective for, or been ratified by both Contracting Parties;

g) the term “Designated Airline” means: the Airline which has been designated and authorized in accordance with Article 3 of this Agreement (Designation and Authorization);

h) the term “Stores”, including Bonded Stores means: articles, of a readily consumable nature, for use or sale on board an aircraft during flight including commissary supplies;

the term “Bonded Stores” means: Stores that are temporarily kept under customs custody;

i) the term “Price” means: any amount, excluding governmental levies, charged or to be charged by the Airline, 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 Price; and

(II) the charges and conditions for any services ancillary to such carriage which are offered by the Airline;

j) the term “Territory” in relation to either Contracting Party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of the Contracting Party;

k) the term “User Charge” means: a charge imposed on Airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities;

l) the term “Capacity” means: the combination of frequency per week and (the configuration of) the type of aircraft used on the route offered to the public by the Designated Airline;

m) the term “EU Member State” means: a State that is now or in the future a contracting party to the Treaty establishing the European Union.

CHAPTER II

OBJECTIVES

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party, except as otherwise specified in the Annex, the following rights for the conduct of international air transportation by the Designated Airline(s) of the other Contracting Party:

- a) the right to fly across its Territory without landing;
- b) the right to make stops in its Territory for non-commercial traffic purposes; and
- c) while operating an Agreed Service on a Specified Route, the right to make stops in its Territory for the purposes of taking up and discharging international traffic in passengers, baggage, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party’s Airline(s) to participate in air transportation between points in the Territory of the other Contracting Party (cabotage).

Article 3

Designation and Authorization

1. Either Contracting Party shall have the right to designate, by written notification through diplomatic channels to the other Contracting

Party, one or more Airline(s) to operate International Air Services on the routes specified in the Annex and to substitute another Airline for an Airline previously designated.

2. On receipt of such a notification, each Contracting Party shall, without delay, grant to the Airline(s) so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this article, unless it is not satisfied that:

(i) in the case of the Airline(s) designated by the Kingdom of the Netherlands:

1. it is established in the Territory of the Kingdom of the Netherlands under the European Union Treaties and has a valid operating licence in accordance with European Union law; or

2. effective regulatory control of the Airline(s) is exercised and maintained by the EU Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; or

3. the Airline is owned, directly or through majority ownership, and it is effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States.

(ii) in the case of the Airline(s) designated by the Republic of Cape Verde:

1. it is established in the Territory of the Republic of Cape Verde and has a valid Operating Licence in accordance with applicable law of the Republic of Cape Verde; or

2. effective regulatory control of the Airline(s) is exercised and maintained by the Republic of Cape Verde; or

3. the Airline has its principal place of business in the Republic of Cape Verde.

and that:

(iii) the Government designating the Airline(s) is maintaining and administering the standards set forth in Article 15 (Safety) and Article 16 (Aviation Security) of this Agreement;

(iv) the Designated Airline(s) is/are qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of international air transportation by the Contracting Party considering the application or applications.

3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airline(s) may at any time begin to operate the Agreed Services, in part or in whole, provided that it complies with the provisions of this Agreement.

Article 4

Revocation and Suspension of Authorization

1. Each Contracting Party shall have the right to withhold, revoke, suspend or limit the operating authorizations of an Airline designated by the other Contracting Party:

(i) In the case of the Airline(s) designated by the Kingdom of the Netherlands, when:

1. it is not established in the Territory of the Kingdom of the Netherlands under European Union Treaties or does not have a valid operating licence in accordance with European Union law; or

2. effective regulatory control of the Airline(s) is not exercised or not maintained by the EU Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation; or

3. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States.

(ii) in the case of the Airline(s) designated by the Republic of Cape Verde:

1. it is not established in the Territory of the Republic of Cape Verde or has no valid operating licence in accordance with applicable law of the Republic of Cape Verde; or

2. effective regulatory control of the Airline is not exercised or not maintained by the Republic of Cape Verde; or

3. the Airline does not have its principal place of business in the Republic of Cape Verde.

(iii) in case that Airline has failed to comply with the laws and regulations referred to in Article 13 (Application of Laws, Regulations and Procedures) of this Agreement;

(iv) in case the other Contracting Party is not maintaining and administering the standards set forth in Article 15 (Safety) of this Agreement;

(v) in the event of failure by such Airline to qualify before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of International Air Services by these Authorities in conformity with the Convention;

(vi) in case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further non-compliance with paragraph 1 of this Article, the rights established by this Article shall be exercised only after consultation with the other Con-

tracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of the request.

3. This Article does not limit the rights of either Contracting Party to withhold, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of the other Contracting Party in accordance with the provisions of Article 16 (Aviation Security) of this Agreement.

CHAPTER III

COMMERCIAL PROVISIONS

Article 5

Prices

1. Each Contracting Party shall allow Prices for air transportation to be established by each Designated Airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of unreasonably discriminatory Prices or practices;
- b) protection of consumers from Prices that are unreasonably high or restrictive due to the abuse of a dominant position;
- c) protection of Airlines from Prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Neither Contracting Party shall require notification or filing of any Price to be charged by the designated Airline or Airlines of the other Contracting Party. Prices may remain in effect unless subsequently disapproved under paragraph 3 below.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a Price charged or proposed to be charged by (a) an Airline of either Contracting Party for international air transportation between the Territories of the Contracting Parties, or (b) an Airline of one Contracting Party for international air transportation between the Territory of the other Contracting Party and any other country.

If either Contracting Party considers any such Price inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach

agreement with respect to a Price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new Price shall not take effect nor continue to be in effect.

Article 6

Commercial Activities

1. The Designated Airline(s) of each Contracting Party shall be allowed:

a) to establish in the Territory of the other Contracting Party offices for the promotion and sale of air transportation and ancillary or supplemental services (including the right to sell and to issue any ticket and/or airway bill, both its own tickets and/or airway bills and of any other carrier) as well as other facilities required for the provision of air transportation;

b) in the Territory of the other Contracting Party to engage directly and, at its discretion, through its agents, and/ or other Airlines in the sale of air transportation and ancillary or supplemental services;

c) to sell such transportation and ancillary or supplemental services and any person shall be free to purchase such transportation or services in any currency.

2. The Designated Airline(s) of each Contracting Party shall be allowed to bring in and maintain in the Territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation and ancillary or supplemental services.

3. These staff requirements may, at the option of the Designated Airline, be satisfied by its own personnel or by using the services of any other organization, company or Airline operating in the Territory of the other Contracting Party, authorized to perform such services in the Territory of that Contracting Party.

4. Each Designated Airline shall have the right to perform its own ground handling in the Territory of the other Contracting Party (“self handling”), or, at its option, select among competing agents or Airlines, for such services in whole or in part. This right shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self handling, ground services shall be available on an equal basis to all Airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self handling were possible.

5. a) In operating or holding out the Air Services on the Specified Routes, each Designated Airline of one Contracting Party may enter into commercial and/or cooperative marketing arrangements including, but not limited to blocked-space, code-sharing and leasing arrangements, with:

- (i) the Designated Airline(s) of the same Contracting Party;
- (ii) the Designated Airline(s) of the other Contracting Party, including domestic code share;
- (iii) the Designated Airline(s) of a third country;
- (iv) a cargo surface transportation provider of any country.

b) The operating Airline(s) involved in the co-operative marketing arrangements shall hold the underlying traffic rights including the route rights and the Capacity entitlements and meet the requirements normally applied to such arrangements.

c) All marketing Airlines involved in the co-operating arrangements shall hold the underlying route rights and meet the requirements normally applied to such arrangements.

d) The total Capacity operated by the Air Services performed under such arrangements shall be counted only against the Capacity entitlement of the Contracting Party designating the operating Airline(s). The Capacity offered by the marketing Airline(s) on such services shall not be counted against the Capacity entitlement of the Contracting Party designating that Airline.

e) When holding out services for sale under such arrangements, the concerned Airline or its agent shall make it clear to the purchaser at the point of sale as to which Airline shall be the operating Airline on each sector of the service and with which Airline(s) the purchaser is entering into a contractual relationship.

f) These provisions shall be applicable to passenger, combination and all-cargo services.

6. Notwithstanding any other provision of this Agreement, the Designated Airline(s) and indirect providers of air transportation of either of the Contracting Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for passengers, baggage, cargo and mail to or from any points in the Territory of either of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo and mail in bond under applicable laws and regulations.

Such passengers, baggage, cargo and mail, whether moving by surface or by air, shall have access to airport customs processing and facilities. Designated Airline(s) may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other Airlines and indirect providers of air cargo transportation. Such intermodal services may be offered at a single, through Price for the air and surface transportation

combined, provided that passengers and shippers are not misled as to the facts concerning such transportation.

7. The activities mentioned in this Article shall be carried out in accordance with the laws and regulations of the other Contracting Party. In case of the Netherlands this includes applicable European Union law.

Article 7

Change of Aircraft

1. On any segment or segments of the Specified Routes, a Designated Airline may perform international air transportation without any limitation as to change at any point on the Specified Route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the Territory of the Contracting Party that has designated the Airline and, in the inbound direction, the transportation to the Territory of the Contracting Party that has designated the Airline is a continuation of the transportation from beyond such point.

2. For the purpose of Change of Aircraft operations, a Designated Airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial and/or cooperative marketing arrangements with (an) other Airline(s).

3. A Designated Airline may use different or identical flight numbers for the sectors of its Change of Aircraft operations.

Article 8

Fair Competition

1. Each Contracting Party shall allow a fair and equal opportunity for each Designated Airline to compete 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 or unfair competitive practices adversely affecting the competitive position of a Designated Airline of the other Contracting Party.

3. Each Contracting Party shall allow each Designated Airline to determine the frequency and Capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the air-

craft type(s) operated by the Designated Airline(s) of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

4. Neither Party shall impose on the other Party's Designated Airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to Capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

CHAPTER IV

FINANCIAL PROVISIONS

Article 9

Taxes, Customs Duties and Charges

1. Aircraft operating on International Air Services by the Designated Airline(s) of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants, Stores as well as advertising and promotional material kept on board such aircraft shall, on the basis of reciprocity, be exempt from all customs duties, inspection fees and similar national or local duties and charges, on arrival in the Territory of the Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. With regard to regular equipment, spare parts, supplies of fuels and lubricants and Stores introduced into the Territory of one Contracting Party by or on behalf of a Designated Airline of the other Contracting Party or taken on board the aircraft operated by such Designated Airline and intended solely for use on board that aircraft while operating International Air Services, no duties and charges, including customs duties and inspection fees imposed in the Territory of the first Contracting Party, shall be applied, even when these supplies are to be used on the parts of the journey performed over the Territory of the Contracting Party in which they are taken on board.

The articles referred to above may be required to be kept under customs supervision and control. The provisions of this paragraph 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 items referred to above.

3. Regular airborne equipment, spare parts, supplies of fuels and lubricants and Stores 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 Contracting

Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

4. Baggage, cargo and mail in transit shall be exempt from customs duties and other similar taxes.

5. The exemptions provided by this Article shall also be available where a Designated Airline(s) of one Contracting Party has 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 paragraphs 1, 2 and 3 of this Article.

6. Nothing in this Agreement shall prevent the Kingdom of the Netherlands 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 Republic of Cape Verde that operates between a point in the Territory of the Kingdom of the Netherlands and another point in the Territory of the Kingdom of the Netherlands or in the Territory of another European Union Member State.

ARTICLE 10

User Charges

1. User Charges that may be imposed and or controlled by the competent charging authorities or bodies of each Contracting Party on the Airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably appointed among categories of users. In any event, any such Users Charges shall be assessed on the Airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.

2. User Charges imposed on the Airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its Territory and the Airlines using the services and facilities, and shall encourage the competent

charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article.

Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held to be in breach of a provision of this Article, unless: (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 11

Double Taxation

1. Income and profits from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the Designated Airline is situated.

2. Gains from the alienation of aircraft operated in international traffic shall be taxable only in the State in which the place of effective management of the Designated Airline is situated.

3. Capital represented by aircraft operated in international traffic and by moveable property pertaining to the operation of such aircraft shall be taxable only in the State in which the place of effective management of the Designated Airline is situated.

4. The provisions of paragraph 1 of this Article shall also apply to income and profits from the participation in a pool, a joint business, a cooperative marketing arrangement or an international operating agency.

5. If an agreement between the Contracting Parties on avoidance of double taxation and the prevention of fiscal evasion on income and on capital in which air transport is addressed envisages procedures different from those referred to in paragraph 1-4 of this Article, the provisions of the agreement on avoidance of double taxation on income or capital shall be applicable.

Article 12

Transfer of Funds

1. The Designated Airline(s) of each Contracting Party shall be entitled 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 agents, of air transport services, and ancillary or supplemental services, and normal commercial interest earned on such revenues while on deposit awaiting transfer.

2. The Designated Airline(s) of each Contracting Party shall receive approval for such transfer within at most thirty (30) days of application, into any currency, at the official rate of exchange for conversion of local currency, as at the date of sale.

3. The Designated Airline(s) of each Contracting Party shall be entitled to effect the actual transfer on receipt of approval.

CHAPTER V

REGULATORY PROVISIONS

Article 13

Application of Laws, Regulations and Procedures

1. The laws, regulations and procedures of either Contracting Party relating to the entrance or entry into 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(s) of the other Contracting Party upon their entrance into, and until and including their departure from, the said Territory.

2. The laws, regulations and procedures of either Contracting Party relating to immigration, passports, or other approved travel documents, entry, clearance, customs and quarantine shall be complied with, by crews or passengers and/or on behalf of cargo and mail carried by aircraft of the Designated Airline(s) of the other Contracting Party upon their entrance into, and until and including their departure from the Territory of the said Contracting Party.

3. Passengers, baggage, cargo and mail in 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 and air piracy, be subject to no more than a simplified control.

4. Neither of the Contracting Parties shall give preference to any other Airline over the Designated Airline(s) 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.

5. Each Contracting Party shall, upon request of the other Contracting Party supply copies of the relevant laws, regulations and procedures referred to in this Agreement.

Article 14

Recognition of Certificates and Licenses

Certificates of airworthiness, certificates of competency and licenses issued, or rendered in reciprocity, by one Contracting Party and still valid, shall be recognized as valid by the other Contracting Party for the purpose of operating the Agreed Services on the Specified Routes, provided that the requirements under which such certificates and licenses were issued, or rendered in reciprocity, are equal to or higher than the minimum requirements which are, or may be in the future, established under the Convention.

Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its Territory, certificates of competency and licenses granted to or validated for its own nationals by the other Contracting Party.

Article 15

Safety

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

2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in any such area that are at least equal to the minimum standards established at that time pursuant to the 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 4 of this Agreement (Revocation and Suspension of Authorization).

3. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any Aircraft operated by or, under a lease arrangement, on behalf of the Airline or Airlines of one Contracting Party on Services to or from the Territory of the other Contracting Party may, while within the Territory of the other Contracting Party, be made the subject of an examination by the authorized 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 conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.

4. 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 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 Convention,

the Contracting Party carrying out the inspection shall, for the purpose of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licenses 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 to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the Airline or Airlines of one Contracting Party in accordance with paragraph 3 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 4 above arise and to draw the conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization 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, consultations or otherwise, that immediate action is essential to the safety of the Airline's operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

8. Each Contracting Party shall see to it that the Designated Airline(s) will be provided with communicative, aviation and meteorological facilities and any other Services necessary for the safe operations of the Agreed Services.

Article 16

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. 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, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Montreal Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marketing of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 and any aviation security agreement that becomes binding on both Contracting Parties.

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. 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.

4. The Contracting 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 Chi-

cago Convention to the extent that such security provisions are applicable to the Contracting Parties. Each Contracting Party shall require that its Airlines and the operators of airports in its Territory act in conformity with such aviation security provisions.

5. Each Contracting Party agrees that its Airlines shall be required to observe the aviation security provisions referred to in paragraph 4 of this article required by the other Contracting Party for entry into the Territory of that other Contracting Party. For departure from, or while within, the Territory of the Netherlands, Airlines shall be required to observe aviation security provisions in conformity with European Union law. For departure from, or while within, the Territory of Cape Verde, Airlines shall be required to observe aviation security provisions in conformity with the law in force in Cape Verde. Each Contracting Party shall ensure that adequate security measures are effectively applied within its Territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft Stores prior to and during boarding or loading, and that those measured are adjusted to meet any increased threat to the security of civil aviation. Each Contracting Party agrees that security provisions required by the other Contracting Party for departure from and while within the Territory of that other Contracting Party must be observed.

Each Contracting Party shall also act favourably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

6. With full regard and mutual respect for each other's sovereignty, a Contracting Party may adopt security measures for entry into its Territory. Where possible, that Contracting Party shall take into account the security measures already applied by the other Contracting Party and any views that the other Contracting Party may offer. Each Contracting Party recognises, however, that nothing in this Article limits the rights of a Contracting Party to refuse entry into its Territory of any flight of flights that it deems to present a threat to its security.

7. A Contracting Party may take emergency measures to meet a specific security threat. Such measures shall be notified immediately to the other Contracting Party.

8. Without prejudice to the need to take immediate action in order to protect transport security, the Contracting Parties affirm that when considering security measures, a Contracting Party shall evaluate possible adverse effects on international air transport and, unless constrained by law, shall take such factors into account when it determines what measures are necessary and appropriate to address those security concerns.

9. Each Contracting Party may request consultations at any time concerning security standards adopted by the other Contracting Party. Such Consultations shall take place within 30 days of that request. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from provisions of this Article, that Contracting Party may request immediate consultations with the other Contracting Party. Failure to reach a satisfactory resolution within 15 days from the date of such request, shall constitute grounds to revoke, suspend or limit the operating authorisation and technical permissions of an Airline or Airlines of the other Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of 15 days.

CHAPTER VI

PROCEDURAL PROVISIONS

Article 17

Timetable

Neither Contracting Party shall require the filing of schedules, programs for flights nor operational plans by Designated Airline(s) of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of Article 9 (Fair Competition) or as may be specifically authorized in the Annex to this Agreement. If a Contracting Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on Designated Airlines of the other Contracting Party.

Article 18

Consultation and Amendment

1. In a spirit of close cooperation the Aeronautical Authorities of the Contracting Parties may consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.

2. Either Contracting Party may request consultations with a view to amend this Agreement and or its Annex. These consultations shall begin within sixty (60) days from the date of the receipt of the request by the other Contracting Party, unless otherwise agreed. Such consultations may be conducted through discussion or by correspondence.

3. Any amendment of this Agreement shall be agreed upon by the Contracting Parties and shall come into force on the date on which the Contracting Parties have informed each other in writing, through the exchange of diplomatic notes, of the completion of their respective constitutional requirements.

4. Notwithstanding the provisions of paragraph 3 above any amendment of the Annex to this Agreement shall be agreed upon in writing between the Aeronautical Authorities and shall take effect on a date to be determined by the said Authorities.

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 their dispute by bilateral negotiations.

2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

CHAPTER VII

FINAL PROVISIONS

Article 20

Duration and 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.

2. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement between the Contracting Parties before the expiry of this period. In the absence of acknowledgement of receipt of the notice of termination by the other Contracting Party, such notice shall be deemed to have been received fourteen (14) working days after the receipt of that notice by the International Civil Aviation Organization.

Article 21

Registration with ICAO

This Agreement shall be registered with the International Civil Aviation Organization.

Article 22

Applicability of Multilateral Agreements and Conventions

1. The provisions of the Convention shall be applicable to this Agreement.

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

3. The Contracting Parties may consult each other to determine the consequences for this Agreement of the supersession, as mentioned under paragraph 2 of this Article and to agree upon required amendments to this Agreement.

Article 23

Applicability of the Agreement

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

Article 24

Entry into Force

This Agreement shall come into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the formalities and constitutional requirements in their respective countries have been complied with.

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

DONE at Dakar on 23 May 2013 in two original copies, in the English language.

For the Kingdom of the Netherlands,

P.J. KLEIWEG DE ZWAAN

For the Republic of Cape Verde,

FRANCISCO VEIGA

Annex:

Route schedule

Route Schedule

1. *For the Designated Airlines of the Kingdom of the Netherlands:*
Points in the Netherlands – All Intermediate points – Points in Cape Verde – All points beyond
2. *For the Designated Airline(s) of the Republic of Cape Verde:*
Points in Cape Verde – all Intermediate points – Points in the Netherlands – All points beyond

Note 1:

Each Airline may on any or all flights and at its option:

- a) operate flights in either or both directions;
 - b) terminate any or all of their services in the Territory of the other Contracting Party;
 - c) combine different flight numbers within one aircraft operation;
 - d) serve intermediate and beyond point and points in the Territories of the Contracting Parties in any combination and in any order;
 - e) omit stops at any point or points;
 - f) transfer traffic from any of its aircraft to any of its other aircraft at any point;
 - g) serve points behind any point in its Territory with or without Change of Aircraft or flight number and hold out and advertise such services to the public as through services;
 - h) make stopovers at any point whether within or outside the Territory of either Contracting Party;
 - i) carry transit traffic through the other Contracting Party's Territory;
- and
- j) combine traffic on the same aircraft regardless of where such traffic originates;

Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that any service either begins or terminates in the Territory of the country designating the Airline(s).

D. PARLEMENT

Het Verdrag, met Bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met Bijlage, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Bijlage, zullen ingevolge artikel 24 in werking treden op de eerste dag van de tweede maand volgend op de datum waarop de verdragsluitende partijen elkaar schriftelijk ervan in kennis hebben gesteld dat aan de formaliteiten en constitutionele vereisten in hun onderscheiden landen is voldaan.

J. VERWIJZINGEN

Verbanden

Het Verdrag dient ter vervanging van:

- Titel : Overeenkomst tussen het Koninkrijk der Nederlanden en de Republiek Kaapverdië inzake luchtdiensten tussen en via hun onderscheiden grondgebieden; 's-Gravenhage, 21 december 1988
- Tekst : *Trb.* 1989, 25 (Nederlands, Portugees en Engels)
- Laatste *Trb.* : *Trb.* 1991, 170

Overige verwijzingen

- Titel : Verdrag inzake de internationale burgerluchtvaart; Chicago, 7 december 1944
- Tekst : *Stb.* 1947, 165 (Engels)
- : *Trb.* 1973, 109 (vertaling, geconsolideerd)
- Laatste *Trb.* : *Trb.* 2012, 126
- Titel : Verdrag betreffende de werking van de Europese Unie; Rome, 25 maart 1957
- Tekst : *Trb.* 1957, 74 (Frans)
- : *Trb.* 2008, 51 (Nederlands, geconsolideerd)
- Laatste *Trb.* : *Trb.* 2013, 83
- Titel : Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van luchtvaartuigen; Tokio, 14 september 1963
- Tekst : *Trb.* 1964, 115 (Engels en Frans)
- : *Trb.* 1964, 186 (vertaling)
- Laatste *Trb.* : *Trb.* 1995, 203
- Titel : Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen; 's-Gravenhage, 16 december 1970
- Tekst : *Trb.* 1971, 50 (Engels, Frans en vertaling)
- Laatste *Trb.* : *Trb.* 1995, 204
- Titel : Verdrag tot bestrijding van wederrechtelijke gedragingen gericht tegen de veiligheid van de burgerluchtvaart; Montreal, 23 september 1971
- Tekst : *Trb.* 1971, 218 (Engels, Frans en vertaling)
- Laatste *Trb.* : *Trb.* 1995, 205

- Titel** : Protocol tot bestrijding van wederrechtelijke daden van geweld op luchthavens voor de internationale burgerluchtvaart bij het Verdrag tot bestrijding van wederrechtelijke gedragingen tegen de veiligheid van de burgerluchtvaart, gedaan te Montreal op 23 september 1971;
Montreal, 24 februari 1988
- Tekst** : *Trb.* 1988, 88 (Engels, Frans en vertaling)
- Laatste *Trb.*** : *Trb.* 2011, 41
- Titel** : Verdrag inzake het merken van kneedspringstoffen ten behoeve van de opsporing ervan;
Montreal, 1 maart 1991
- Tekst** : *Trb.* 1991, 127 (Engels en Frans)
Trb. 1992, 80 (vertaling)
- Laatste *Trb.*** : *Trb.* 2011, 34
- Titel** : Verdrag betreffende de Europese Unie;
Maastricht, 7 februari 1992
- Tekst** : *Trb.* 2008, 53 (Nederlands, geconsolideerd)
- Laatste *Trb.*** : *Trb.* 2012, 182

Uitgegeven de *elfde* juli 2013.

De Minister van Buitenlandse Zaken,

F.C.G.M. TIMMERMANS