

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

---

JAARGANG 2020 Nr. 136

---

## A. TITEL

*Verdrag inzake luchtdiensten tussen het Koninkrijk der Nederlanden, ten behoeve van Curaçao, en de Republiek Malta (met Bijlage);  
Valletta, 16 november 2020*

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 013267 in de Verdragenbank.

## B. TEKST

### **Air Services Agreement between the Kingdom of the Netherlands, in respect of Curaçao, and the Republic of Malta**

The Kingdom of the Netherlands, in respect of Curaçao,

and

the Republic of Malta, hereinafter "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 civil aviation;

Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories;

Have agreed as follows:

#### Article 1

##### *Definitions*

For the purposes of this Agreement, unless otherwise stated:

- a) the term "aeronautical authorities" means, in the case of the Republic of Malta, the Minister responsible for Civil Aviation, and, in the case of the Kingdom of the Netherlands, in respect of Curaçao, the Minister responsible for Civil Aviation; or, in both cases, any other authority or person authorised to perform the functions exercised by the said authorities;
- b) the term "Agreement" means this Agreement, its Annex, and any amendments thereto, all of which shall form an integral part thereof;
- c) the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings assigned to them in Article 96 of the Convention;
- d) the term "agreed service" means the public carriage by aircraft on the routes specified in the Annex to this Agreement for the carriage of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- e) the term "Annex" means the Annex, including the routes specified in the Route Schedule to this Agreement or as amended in accordance with the provisions of Article 22 (Amendments) of this Agreement. All references to the Agreement shall include references to the Annex, except where otherwise explicitly provided;
- f) the term "capacity", in relation to an aircraft, means the payload of that aircraft available on a route specified in the Annex to this Agreement, or a section of such a route;

- g) the term "capacity", in relation to an agreed service, means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route specified in the Annex to this Agreement, or a section of such a route;
- h) the term "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 amendments of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as such Annexes and amendments have become effective for, or been ratified by both Contracting Parties;
- i) the term "designated airline" means an airline, designated and authorised in accordance with Article 3 (Designation and Authorisation) of this Agreement;
- j) 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;
- k) the term "EU Member State" shall mean a State that is now or in the future a contracting party to the EU Treaties;
- l) the term "ICAO" means the International Civil Aviation Organization;
- m) the term "international air services" is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one Contracting Party are destined for the other Contracting Party;
- n) the term "tariff" 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 auxiliary services, but excluding remuneration or conditions for the carriage of mail;
- o) the term "territory", in relation to a Contracting Party, has the meaning assigned to it in Article 2 of the Convention;
- p) the term "user charges" means a charge imposed on airlines by the competent authorities, or permitted by them to be imposed, for the provision of airport property or facilities, or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo;
- q) the term "nationals of the Republic of Malta" shall be understood as referring to nationals of EU Member States; and
- r) the term "airlines of the Republic of Malta" shall be understood as referring to airlines designated by the Republic of Malta.

## Article 2

### *Grant of Rights*

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Annex (Route Schedule) to this Agreement.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:
  - a) the right to fly without landing across the territory of the other Contracting Party;
  - b) the right to make stops for non-traffic purposes in the territory of the other Contracting Party; and
  - c) the right to make stops at the point(s) on the route(s) specified in the Annex (Route Schedule) to this Agreement for the purpose of taking on board and discharging passengers, cargo and mail, separately or in combination.
3. Nothing in paragraph 2 of this Article shall be deemed to confer on the airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail, separately or in combination, carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.
4. The exercise of fifth freedom traffic rights shall be subject to approval between the aeronautical authorities of both Contracting Parties and may be agreed upon in an arrangement.

## Article 3

### *Designation and Authorisation*

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services in accordance with this Agreement, and to withdraw or alter such designation.
2. Upon receipt of such a designation, the aeronautical authority of the other Contracting Party shall grant the appropriate operating authorisations and permissions with minimum procedural delay, provided that:
  - a) in the case of an airline designated by the Republic of Malta:

- (i) the airline is established in the territory of the Republic of Malta 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 EU Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and
  - (iii) the airline is owned, directly or through majority ownership, and the airline is effectively controlled by EU Member States or States of the European Free Trade Association and/or by nationals of such States;
- b) in the case of an airline designated by Curaçao:
- (i) the airline is established in the territory of Curaçao and licensed in accordance with the applicable law of Curaçao; and
  - (ii) effective regulatory control of the airline is exercised and maintained by Curaçao; and
  - (iii) the airline is owned, directly or through majority ownership, and the airline is effectively controlled by Curaçao and/or nationals of Curaçao;
- c) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party receiving the designation.
3. Upon receipt of the operating authorisation referred to in paragraph 2 of this Article, the designated airline may begin at any time to operate the agreed services, in part or in whole, provided that the airline complies with the applicable provisions of this Agreement.

#### Article 4

##### *Revocation and Suspension of Authorisation*

1. Each Contracting Party may revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Contracting Party, where:
- a) in the case of an airline designated by the Republic of Malta:
    - (i) the airline is not established in the territory of the Republic of Malta 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 EU Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation; or
    - (iii) the airline is not owned, directly or through majority ownership, or the airline is not effectively controlled by EU Member States or States of the European Free Trade Association and/or by nationals of such States;
  - b) in the case of an airline designated by Curaçao:
    - (i) the airline is not established in the territory of Curaçao or does not have a valid Operating Licence in accordance with the applicable law of Curaçao; or
    - (ii) effective regulatory control of the airline is not exercised or not maintained by Curaçao; or
    - (iii) the airline is not owned, directly or through majority ownership, or is not effectively controlled by Curaçao and/or by nationals of Curaçao;
  - c) the airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws and Regulations) of this Agreement;
  - d) the Contracting Party designating the airline fails to comply with the provisions set forth in Article 8 (Safety) and Article 9 (Aviation Security) of this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws and/or regulations, such right shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 (Consultations) of this Agreement.

#### Article 5

##### *Application of Laws and Regulations*

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air services or the operation and navigation of such aircraft while within its territory shall apply to the designated airline(s) of the other Contracting Party.
2. The laws and regulations of one Contracting Party governing entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline(s) of the other Contracting Party while they are within the said territory.

3. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air services in the application of its immigration, customs, quarantine and similar regulations.

#### Article 6

##### *Direct Transit*

Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall only be subject to a simplified control, except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

#### Article 7

##### *Recognition of Certificates and Licences*

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 the Republic of Malta, 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 specified routes, provided always that such certificates or licences were issued, or validated, are equal to or above the minimum standards established under the Convention.

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

#### Article 8

##### *Safety*

1. Each Contracting Party may request consultations in conformity with Article 20 (Consultations) of this Agreement 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 thirty (30) 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 in any such area referred to in paragraph 1 of this Article 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 fifteen (15) days, or such longer period as may be agreed, shall be grounds for the application of Article 4 (Revocation and Suspension of Authorisation) of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by 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 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.

4. If any 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 purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificates 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 to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline of one Contracting Party in accordance with paragraph 3 of this Article is denied by the representative

of that airline, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 of this Article arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline 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.

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

8. When the Republic of Malta has designated an airline whose regulatory control is exercised and maintained by another EU Member State, the rights of the other Contracting Party under this Article 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 airline.

## Article 9

### *Aviation Security*

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their obligations to each other to protect the security of civil aviation against acts of unlawful interference form 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, its 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 Marking of Plastic Explosives for the purpose of Detection, signed at Montreal on 1 March 1991, as well as any other Convention and Protocol relating to the security of civil aviation which both Contracting Parties adhere to.

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 Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties. They shall require that operators of aircraft of their registry or operators which have their principal place of business or permanent residence in the territory of the Contracting Parties or, in the case of the Republic of Malta, 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.

4. Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet the increase in the threat. 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 the Republic of Malta, European Union law. 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.

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 as rapidly and safely such incident or threat thereof.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of the first Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. These consultations will be aimed to reach an agreement upon the measures suitable to eliminate the more immediate reasons of worry and to adopt in the framework of the ICAO security standards, the actions necessary to establish the appropriate conditions of security.

7. Each Contracting Party shall take such measures, as it may find practicable, to ensure that an aircraft subject to an act of unlawful seizure or other acts of unlawful interference which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

8. Each Contracting Party agrees that its operators of aircraft shall be required to observe for entry into, departure from or while within the territory of the other Contracting Party, the aviation security provisions in force in that other Contracting Party, including in the case of the Republic of Malta, European Union law.

#### Article 10

##### *Aircraft Leasing*

1. Any designated airline of either Contracting Party may operate the capacity entitlements by using their own aircraft, dry or wet leased aircraft, provided that:

- a) the operating aircraft and crew shall comply with the relevant requirements of both Contracting Parties;
- b) where an aircraft is wet-leased from airlines of third countries, only the lessee airlines will be entitled to exercise traffic rights on the services performed; and
- c) in the case of wet-leased aircraft from third countries, the designated airlines concerned shall submit liability, insurance and other relevant documents to the relevant authorities of both Contracting Parties as required while filing the applications.

2. Either Contracting Party may prevent the use of leased aircraft for services under this Agreement which do not meet the applicable safety and security requirements.

3. Any leasing arrangement shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

#### Article 11

##### *User Charges*

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the designated airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the designated 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 designated 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 designated airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the designated airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the user 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 changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 21 (Settlement of Disputes) of this Agreement, to be in breach of a provision of this Article, unless:

- a) it fails to undertake a review of the user charge or practice that is the subject of complaint by the other Contracting Party within a reasonable period of time; or
- b) following such a review it fails to take all steps within its power to remedy any user charge or practice that is inconsistent with this Article.

#### Article 12

##### *Exemption from Taxes, Customs Duties and other Charges*

1. Aircraft operated on international air services by a designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted, on the basis of reciprocity, and according to its national legislation, from all taxes, customs duties, inspection fees and other similar charges on arriving in

the territory of the other Contracting Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.

2. There shall also be exempt from the taxes, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- a) aircraft stores taken on board in the territory of one Contracting Party, within reasonable limits, for use on an outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;
- b) spare parts, including engines, introduced into the territory of one Contracting Party for the maintenance or repair of aircraft engaged in an international air service of a designated airline of the other Contracting Party;
- c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of one Contracting Party for use in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the first mentioned Contracting Party, in which territory they are taken on board; and
- d) airline documents, such as tickets and air waybills, as well as publicity and promotional material within reasonable limits, intended for use by a designated airline of one Contracting Party and introduced into the territory of the other Contracting Party.

3. Materials referred to in paragraph 2 of this Article may be required to be kept under customs supervision or control of the customs authorities.

4. The regular airborne equipment, as well as the materials, supplies and spare parts normally retained on board aircraft operated by a designated airline of one 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. In such case, they may be placed under the supervision or control of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

5. Baggage and cargo in direct transit across the territory of a Contracting Party shall be exempt from taxes, customs duties, fees and other similar charges not based on the cost of services on arrival or departure.

6. The exemptions provided 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 paragraphs 1 and 2 of this Article.

7. Nothing in this Agreement shall prevent the Republic of Malta 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 airline of Curaçao that operates between a point in the territory of the Republic of Malta and another point in the territory of another EU Member State.

## Article 13

### *Fair Competition*

1. Each Contracting Party shall allow a fair and equal opportunity for each designated airline to compete in providing the international air services governed by this Agreement.

2. Each Contracting Party shall, where necessary, take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airline(s) of the other Contracting Party.

3. The Contracting Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:

- a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
- b) the addition of excessive capacity or frequency of service;
- c) the practices in question are sustained rather than temporary;
- d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline;
- e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and
- f) behaviour indicating an abuse of dominant position on the route.

4. If the aeronautical authorities of one Contracting Party consider that an operation or operations intended or conducted by the designated airline of the other Contracting Party may constitute unfair competitive

behaviour in accordance with the indicators listed in paragraph 1 of this Article, they may request consultation in accordance with Article 20 (Consultations) of this Agreement with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request.

5. If the Contracting Parties fail to reach a resolution of the problem through consultations, either Contracting Party may invoke the dispute resolution mechanism under Article 21 (Settlement of Disputes) of this Agreement to resolve the dispute.

#### Article 14

##### *Capacity*

1. Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air services it offers based upon commercial considerations in the marketplace.

2. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by a designated airline 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.

3. Neither Contracting Party shall impose on the other Contracting 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.

4. Each Contracting Party may require the filing of traffic programmes and individual flights or operational plans by the designated airlines of the other Contracting Party. The administrative burden of filing requirements shall be minimized and all filings shall be dealt with promptly by the respective aeronautical authorities.

#### Article 15

##### *Tariffs*

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based upon commercial considerations in the market place. Neither Contracting Party shall require their designated airline(s) to consult other airlines about tariffs they charge or propose to charge for air services covered by this Agreement.

2. Each Contracting Party may require notification or filing of any tariff to be charged by its own designated airline or airlines. Neither Contracting Party shall require notification or filing of any tariff to be charged by the designated airline or airlines of the other Contracting Party. Tariffs may remain in effect unless subsequently disapproved under paragraphs 4 and 5 of this Article.

3. Intervention by the Contracting Parties shall be limited to:

- a) the protection of consumers from tariffs that are excessive due to the abuse of market power;
- b) the prevention of tariffs whose application constitutes anti-competitive behaviour which has or is likely to have or is explicitly intended to have the effect of preventing, restricting or distorting competition or excluding a competitor from the route.

4. Each Contracting Party may unilaterally disallow any tariff filed or charged by one of its own designated airline(s). However, such intervention shall be made only if it appears to the aeronautical authority of that Contracting Party that a tariff charged or proposed to be charged meets either of the criteria set out in paragraph 3 of this Article.

5. Neither Contracting Party shall take unilateral action to prevent the coming into effect or continuation of a tariff charged or proposed to be charged by a designated airline of the other Contracting Party. If one Contracting Party believes that any such tariff is inconsistent with the considerations set out in paragraph 3 of this Article, it may request consultations and notify the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than fourteen (14) days after receipt of the request. Without a mutual agreement, the tariff shall take effect or continue to be in effect.

6. Notwithstanding the provisions of the paragraphs of this Article, the tariffs to be charged by the designated airline(s) of Curaçao for carriage wholly within the European Union shall be subject to European Union law.



## Article 16

### *Transfer of Earnings*

Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer, in any freely convertible currencies in accordance with the foreign exchange regulations in force, of the excess of receipts over expenditure earned by these airlines in its territory in connection with the carriage of passengers, mail and cargo.

## Article 17

### *Taxation*

1. Profits from the operation of the aircraft of a designated airline of a Contracting Party in international traffic shall be taxable, in accordance with its national laws and regulations, only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
2. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. Capital represented by aircraft operated in international traffic by a designated airline of a Contracting Party, and by movable property pertaining to the operation of such aircraft, shall be taxable, in accordance with its national laws and regulations, only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
4. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

## Article 18

### *Airline Representation and Sales*

1. The designated airline(s) of each Contracting Party shall have the right, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring into and maintain in the territory of that other Contracting Party their representatives and commercial, technical, operational and other specialist staff who are required for the promotion or provision of air services.
2. The designated airline(s) of one Contracting Party shall have the right to establish in the territory of the other Contracting Party an office or offices for promotion of air services and sale of the air services, subject to the laws and regulations in force in the territory of the latter Contracting Party.

## Article 19

### *Ground Handling*

Subject to the laws and regulations of each Contracting Party, including, in the case of the Republic of Malta, European Union law, each designated airline shall have, in the territory of the other Contracting Party, the right to perform its own ground handling services ("self-handling") or, at its option, the right to select among competing suppliers that provide 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 regard to their access to self-handling and ground handling services provided by a supplier or suppliers.

## Article 20

### *Consultations*

1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and its Annex and shall consult, when necessary, to provide for modification thereof.
2. Either Contracting Party may request consultations which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of the date of the request, unless both Contracting Parties agree to an extension of this period.

## Article 21

### *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 consultations and negotiation.
2. If the Contracting Parties fail to reach a settlement through consultations, they may agree to refer the dispute for decision to some person or body. If they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice, through diplomatic channels, requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, the President of the Council of ICAO, at the request of either Contracting Party, may appoint an arbitrator or arbitrators, as the case requires. In such a case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.
4. If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the requirements of paragraph 3 of this Article, the other Contracting Party may limit or revoke any right which it has granted by virtue of this Agreement.

## Article 22

### *Amendments*

1. If either Contracting Party considers it desirable to amend any provisions of this Agreement, it may at any time request consultation with the other Contracting Party. Such consultation may be through discussions or by correspondence and shall begin within a period of sixty (60) days from the date of receipt of the request.
2. Any amendment to this Agreement shall be agreed upon by the Contracting Parties and shall be effected through an exchange of diplomatic notes. Such amendment shall enter into force in accordance with the provisions of Article 27 (Entry into Force) of this Agreement.
3. Notwithstanding the provisions of paragraph 2 of this Article, any amendments to the Annex to this Agreement may be agreed upon by the aeronautical authorities of the Contracting Parties, confirmed in writing through an exchange of diplomatic notes, and shall enter into force on a date to be determined in the diplomatic notes. This exception to paragraph 2 of this Article does not apply in case any traffic rights are added to the above-mentioned Annex.

## Article 23

### *Multilateral Conventions*

If any multilateral convention concerning air transportation enters into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with Article 20 (Consultations) of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the said multilateral convention.

## Article 24

### *Termination*

1. Either Contracting Party may, at any time, give notice in writing to the other Contracting Party of its decision, to terminate this Agreement. Such notice shall simultaneously be communicated to ICAO.
2. In such a 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 mutual agreement of the Contracting Parties 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 fourteen (14) days after the receipt of the notice by ICAO.

## Article 25

### *Registration with ICAO*

This Agreement and any amendments thereto shall be registered with ICAO.

## Article 26

### *Territorial Application*

As regards the Kingdom of the Netherlands, this Agreement shall apply to Curaçao only.

## Article 27

### *Entry into Force*

This Agreement shall enter into force on the first day of the second month following the date of the last written notification, through diplomatic channels, by which the Contracting Parties shall have notified each other that all necessary internal procedures for entry into force of this Agreement have been completed.

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

DONE at Valletta, this 16<sup>th</sup> day of November 2020, in two original copies in the English language.

*For the Kingdom of the Netherlands, in respect of Curaçao,*

FREDRIK LAMMERT KEURHORST

*For the Republic of Malta,*

CAPTAIN CHARLES PACE

---

## Annex

### Route Schedule

#### *Section A*

The designated airline or airlines of the Republic of Malta shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

<b>Points of Origin</b>	<b>Intermediate Points</b>	<b>Points of Destination</b>	<b>Points Beyond</b>
Malta	Any Points	Curaçao	Any Points

#### *Section B*

The designated airline or airlines of the Curaçao shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

<b>Points of Origin</b>	<b>Intermediate Points</b>	<b>Points of Destination</b>	<b>Points Beyond</b>
Curaçao	Any Points	Malta	Any Points

#### *Section C*

Notes on the routes to be operated by the designated airline(s) of both Contracting Parties:

1. Intermediate points and points beyond on any of the specified routes may, at the option of the designated airline(s), be omitted on any or all flights, provided that any service either begins or terminates in the territory of the Contracting Party designating the airline(s).
2. The designated airline(s) of each Contracting Party have the right to operate the agreed services on the specified routes at any intermediate points and points beyond without exercising fifth freedom traffic rights.

3. The designated airline(s) of each Contracting Party may serve intermediate points and points beyond specified in this Annex.
- 

#### D. PARLEMENT

Het Verdrag, met Bijlage, heeft 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 27 van het Verdrag in werking treden op de eerste dag van de tweede maand die volgt op de datum van de laatste schriftelijke kennisgeving langs diplomatieke weg, waarin de verdragsluitende partijen elkaar ervan in kennis hebben gesteld dat alle benodigde interne procedures voor de inwerkingtreding van het Verdrag zijn voltooid.

Uitgegeven de *achttiende* december 2020.

*De Minister van Buitenlandse Zaken,*

S.A. BLOK