



**COUNCIL OF
THE EUROPEAN UNION**

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**AVIATION 214
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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between the European Union and the Government of the Republic of Peru on certain aspects of air services

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE GOVERNMENT OF THE REPUBLIC OF PERU
ON CERTAIN ASPECTS OF AIR SERVICES

THE EUROPEAN UNION,

(hereinafter referred to as "the Union"),

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF PERU,

(hereinafter referred to as "Peru"),

of the other part,

(hereinafter jointly referred to as "the Parties"),

NOTING that bilateral air service agreements have been concluded between several Member States of the Union and Peru containing provisions contrary to the law of the Union;

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

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

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

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the Union and Peru, which are contrary to the law of the Union, must be brought into conformity with it in order to establish a sound legal basis for air services between the Union and Peru and to preserve the continuity of such air services;

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

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

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

HAVE AGREED AS FOLLOWS:

ARTICLE 1

General provisions

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

ARTICLE 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in points (a) and (b) of Annex 2 respectively, in relation to the designation of an air carrier by a Member State concerned, the authorisations and permissions granted to it by Peru, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, Peru shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) the air carrier is established, under the EU Treaties, in the territory of the designating Member State and has a valid Operating Licence in accordance with the law of the Union;
- (b) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and
- (c) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex 3 and/or nationals of such other States.

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

- (a) the air carrier is not established, under the EU Treaties, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with the law of the Union;
- (b) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

- (c) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex 3 and/or nationals of such other States.

In exercising its right under this paragraph, Peru shall not discriminate between Community air carriers on the grounds of nationality.

ARTICLE 3

Safety

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

ARTICLE 4

Taxation of aviation fuel

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in point (d) of Annex 2.
2. Notwithstanding any other provision to the contrary, nothing in any of the agreements listed in point (d) of Annex 2 shall prevent a Member State from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of Peru that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.
3. Notwithstanding any other provision to the contrary, nothing in any of the agreements listed in point (d) of Annex 2 shall prevent Peru 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 carrier of a Member State that operates between two points in the territory of Peru.
4. Nothing in this Article shall allow cabotage.

ARTICLE 5

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not be applied.

ARTICLE 6

Annexes to the Agreement

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

ARTICLE 7

Revision or amendment

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

ARTICLE 8

Entry into force and provisional application

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.
2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.
3. This Agreement shall apply to all agreements and arrangements listed in Annex 1 including those that, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.

ARTICLE 9

Termination

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

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

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

For the European Union

For the Government of the
Republic of Peru

List of agreements referred to in Article 1 of this Agreement

Air service agreements and other arrangements between Peru and Member States as modified or amended which, at the date of signature of this Agreement, have been concluded, signed or initialled:

- Air Services Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Peru, signed at Lima on 29 December 1967, hereinafter referred to as "Peru – Belgium Agreement" in Annex 2;
- Draft Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Peru, initialled at Lima on 28 May 2009, hereinafter referred to as "Draft Peru – Belgium Agreement" in Annex 2;
- Bilateral Air Transport Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Peru, signed at Lima on 14 July 1960, hereinafter referred to as "Peru – Denmark Agreement" in Annex 2;
- Transport Agreement between the French Republic and the Republic of Peru, signed at Lima on 23 April 1959, hereinafter referred to as "Peru – France Agreement" in Annex 2;

- Agreement between the Federal Republic of Germany and the Republic of Peru for air transport, signed at Lima on 30 April 1962, hereinafter referred to as "Peru – Germany Agreement" in Annex 2;
- Bilateral Air Transport Agreement between the Government of the Italian Republic and the Government of the Republic of Peru, signed at Lima on 17 March 1964, hereinafter referred to as "Peru – Italy Agreement" in Annex 2;
- Draft Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Peru related to scheduled air services, initialled as Annex B to the Memorandum of Understanding signed at Lima on 27 June 2001, hereinafter referred to as "Draft Peru – Netherlands Agreement" in Annex 2;
- Agreement between the Government of the Kingdom of Spain and the Government of the Republic of Peru related to air services, signed at Lima on 31 March 1954, hereinafter referred to as "Peru – Spain Agreement" in Annex 2;
- Draft Air Transport Agreement between the Kingdom of Spain and the Republic of Peru, initialled as Annex II to the Agreed Record signed in Madrid on 6 April 2005, hereinafter referred to as "Draft Peru – Spain Agreement" in Annex 2;
- Bilateral Air Transport Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Peru, signed at Lima on 14 July 1960, hereinafter referred to as "Peru – Sweden Agreement" in Annex 2;

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Peru for air services between and beyond their respective territories, signed at Lima on 22 December 1947, hereinafter referred to as "Peru - UK Agreement" in Annex 2;

 - Draft Air Transport Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Peru, initialled as Annex B to the Memorandum of Understanding between the aeronautical authorities of the Republic of Peru and the United Kingdom of Great Britain and Northern Ireland, signed at Lima on 26 May 2004, hereinafter referred to as "Draft Peru – UK Agreement" in Annex 2.
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List of articles in the agreements listed in Annex 1
and referred to in Articles 2 to 4 of this Agreement

(a) Designation by a Member State:

- Article 3 of the Peru – Belgium Agreement;
- Article 3 of the Peru – Germany Agreement;
- Article 3 of the Peru – Italy Agreement;
- Article 3 of the Draft Peru – Netherlands Agreement.

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

- Article 5 of the Peru – Belgium Agreement;
- Article 7 of the Peru – Denmark Agreement;
- Article 5 of the Peru – France Agreement;
- Article 4 of the Peru – Germany Agreement;
- Article 4 of the Peru – Italy Agreement;
- Article 4 of the Draft Peru – Netherlands Agreement;
- Article 11 of the Peru – Spain Agreement;
- Article 7 of the Peru – Sweden Agreement;
- Article 4 of the Peru – UK Agreement.

(c) Safety:

- Article 7 of the Draft Peru – Belgium Agreement;
- Article 15 of the Draft Peru – Netherlands Agreement.

(d) Taxation of aviation fuel:

- Article 6 of the Peru – Belgium Agreement;
 - Article 11 of the Draft Peru – Belgium Agreement;
 - Article 4 of the Peru – Denmark Agreement;
 - Article 2 of the Peru – France Agreement;
 - Article 6 of the Peru – Germany Agreement;
 - Article 5 of the Peru – Italy Agreement;
 - Article 10 of the Draft Peru – Netherlands Agreement;
 - Article 5 of the Peru – Spain Agreement;
 - Article 5 of the Draft Peru – Spain Agreement;
 - Article 4 of the Peru – Sweden Agreement;
 - Article 8 of the Draft Peru – UK Agreement.
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List of other States referred to in Article 2 of this Agreement

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