

N° 8236

CHAMBRE DES DEPUTES

Session ordinaire 2022-2023

PROJET DE LOI

**portant approbation de l'Accord entre le Gouvernement
du Grand-Duché de Luxembourg et le Gouvernement de
la République du Ghana relatif à des services aériens,
fait à Luxembourg, le 13 décembre 2021**

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Document de dépôt

Dépôt: le 9.6.2023

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ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Affaires étrangères et européennes et après délibération du Gouvernement en Conseil;

Arrêtons

Article unique. Notre Ministre des Affaires étrangères et européennes est autorisé à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021.

Château de Berg, le 26 mai 2023

*Le Ministre des Affaires étrangères
et européennes,*

Jean ASSELBORN

HENRI

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TEXTE DU PROJET DE LOI

Art. unique.

Est approuvé l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021.

Mandons et ordonnons que la présente loi soit insérée au Journal officiel du Grand-Duché de Luxembourg pour être exécutée et observée par tous ceux que la chose concerne.

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EXPOSE DES MOTIFS

L'objet du projet de loi consiste à approuver l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021.

Cet accord est la confirmation de la politique poursuivie par le Gouvernement en matière de transports aériens ayant pour objectif d'assurer les perspectives d'avenir tant des compagnies aériennes nationales en leur procurant un maximum de droits de trafic, que de l'aéroport de Luxembourg comme plate-forme internationale pour le trafic de passagers et de fret.

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CONSIDERATIONS GENERALES

L'existence d'accords aériens bilatéraux constitue, aujourd'hui comme par le passé, un préalable à l'ouverture de liaisons aériennes régulières, soit par un transporteur aérien luxembourgeois, soit par un transporteur aérien de l'autre partie contractante. Ces accords constituent la base juridique indispensable pour proposer des services aériens réguliers. Ils permettent en effet aux autorités aéronautiques respectives de réagir rapidement si un ou des transporteurs aériens de part et d'autre soumettent une demande d'exploitation de services aériens.

Dans le cadre de la libéralisation européenne du transport aérien, un rôle de plus en plus important revient à l'Union européenne, considérée comme un marché aérien unique. Ainsi, l'accord aérien concerné par le présent projet de loi contient également des clauses portant sur la désignation, la révocation et le contrôle, telles qu'elles sont exigées par le droit communautaire.

L'accord qui fait l'objet du présent projet de loi a été rédigé, en partie, sur base du modèle d'accord de l'Organisation de l'Aviation Civile Internationale (ci-après « OACI ») et en tenant compte des clauses types de l'Union européenne, conformément au Règlement (CE) 847/2004 du Parlement et du Conseil du 29 avril 2004 concernant la négociation et la mise en œuvre d'accords relatifs à des services aériens entre les Etats membres et les pays tiers. Après ratification, l'accord sera enregistré auprès de l'OACI. L'Etat avec lequel cet accord a été conclu est membre de l'Organisation de l'Aviation Civile Internationale.

Quant au fond, l'accord est similaire, dans une large mesure, à d'autres accords aériens signé par le Grand-Duché de Luxembourg dans le passé. Plus précisément, l'accord couvre une série de dispositions traditionnellement jugées comme piliers d'un accord sur les services aériens, y compris les dispositions concernant les tarifs, les activités commerciales ou encore les dispositions relatives à la sécurité et à la sûreté de l'aviation. Mis à part ces dispositions issues du modèle d'accord de l'OACI et largement acceptées par la communauté internationale de l'aviation civile, l'accord faisant l'objet du présent projet de loi contient également d'autres articles, dont les caractéristiques éditoriales diffèrent d'un accord à l'autre afin de mieux répondre aux besoins nationaux particuliers exprimés par les partenaires respectifs.

Les principaux éléments contenus dans l'accord sont les suivants :

- les définitions terminologiques arrêtées par la Convention de Chicago, signée à Chicago le 7 décembre 1944 ;
- l'indication des droits octroyés pour l'exploitation des services, c'est-à-dire, le survol, l'escale technique, l'escale commerciale et les libertés de l'air ;

- l’inclusion de la clause dite de désignation européenne garantissant le principe selon lequel un transporteur aérien de l’Union européenne (ci-après « UE ») établi dans un Etat membre de l’UE a droit à un accès non discriminatoire au marché créé par les accords relatifs aux services aériens conclus entre un Etat membre autre que celui de son établissement principal et les pays tiers. Ainsi, ce principe issu des arrêts dits « Ciel ouvert » rendus par la Cour de Justice de l’Union européenne, permet à un transporteur aérien d’être désigné par un Etat membre alors même que cet Etat membre n’est pas celui qui octroie sa licence d’exploitation ;
- la stipulation permettant la limitation voire le retrait d’une autorisation dans le cas où le transporteur ne se conforme pas aux termes de l’accord, ni aux lois et règlements de la partie contractante ayant délivré l’autorisation ;
- l’exonération, sous certaines conditions, de tous droits de douane, frais d’inspection et autres droits et taxes similaires des avions utilisés, y compris les équipements normaux, le carburant, les pièces de rechange, les provisions de bord etc. ;
- les principes déterminant la capacité mise en œuvre (donc la charge payante disponible) et son adaptation à la demande de trafic ;
- la procédure d’établissement des tarifs ;
- l’application des lois et règlements internes ;
- l’engagement des parties contractantes de faire respecter les Conventions internationales existantes en matière de sûreté de l’aviation civile ;
- le transfert des excédents de recettes réalisés sur le territoire de l’autre partie contractante;
- le principe de la consultation périodique entre les autorités aéronautiques ;
- la procédure de règlement des différends ;
- l’engagement d’adapter l’accord à toute convention multilatérale ultérieure, liant les parties en matière aéronautique ;
- l’égalité des chances des opérateurs aériens désignées ainsi que la sauvegarde de leurs intérêts mutuels.

L’accord sous objet prévoit en outre des dispositions relatives aux possibilités d’amendement ou de dénonciation à la demande d’une partie contractante, la production de statistiques sur le trafic aérien, la non-discrimination dans l’application des taxes aéroportuaires et la procédure d’entrée en vigueur.

En outre, l’accord comporte une annexe qui définit le tableau des routes classiques, entre le Luxembourg et des destinations situées sur le territoire du Ghana, avec possibilité d’escales intermédiaires et/ou d’escales au-delà dans des pays tiers. Les points d’escale seront fixés ultérieurement d’un commun accord par les autorités aéronautiques concernées en fonction des besoins formulés par la ou les compagnies aériennes intéressées.

Il convient également de souligner que l’accord a fait l’objet d’une notification auprès de la Commission européenne à travers une notification dite d’ouverture des négociations (« *Notification of the opening of negotiations* ») et une notification dite de clôture/résultat des négociations (« *Notification of the outcome of negotiations* »).

La notification de l’ouverture et de clôture des négociations avec un Etat tiers est entièrement digitalisée et elle s’effectue à travers une plateforme sécurisée de la Commission européenne. La Commission européenne est notifiée par le biais d’un formulaire – le « *Notification of the opening of negotiations* ». Suite au paraphage de l’accord aérien par les autorités compétentes, la Direction de l’Aviation Civile informe la Commission européenne de la clôture et des résultats des négociations via la « *Notification of the outcome of negotiations* » et enregistre une version scannée de l’accord paraphé sur ladite plateforme afin que la Commission européenne puisse exercer son droit de regard.

L’ouverture des pourparlers a été notifiée sur la plateforme CIRCABC le 22 janvier 2020 et le résultat des négociations a été notifié le 25 février 2020.

CONSIDERATIONS PARTICULIERES

L'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021 se situe dans la lignée de la politique poursuivie par le gouvernement en matière de transports aériens. En effet, cet accord permettra d'assurer les perspectives d'avenir tant des compagnies aériennes nationales à travers l'octroi d'un maximum de droits de trafic, que de l'aéroport de Luxembourg en tant que plateforme internationale pour le trafic de fret et de passagers.

L'Accord aérien ainsi que les droits de trafic mutuels qui en résultent permettront d'établir un cadre réglementaire propice au développement des relations économiques et commerciales entre les deux pays. En effet, le Ghana est l'une des rares destinations en Afrique de l'ouest dans lesquelles l'opérateur reçoit une demande d'exportation saisonnière régulière (export de fruits frais vers l'Europe) en plus de demandes d'importation (fret général, y compris des biens de consommation, le fret industriel ou encore des marchandises hors gabarit).

Comme dans le cas de l'accord avec le Koweït, la partie ghanéenne a demandé l'insertion de la clause « anti-free-rider » à l'article 4, paragraphe 1, points d) et e) afin d'éviter toute pratique jugée opportuniste de la part d'autres opérateurs de l'Union européenne.

Le Ghana jouit aujourd'hui d'une stabilité à la fois institutionnelle (alternance démocratique) et sécuritaire qui en fait un pays à part dans la région. Depuis 2017, le gouvernement ghanéen s'est attelé à mettre en œuvre le programme « Ghana beyond Aid », programme de relance principalement axé sur l'économie. Décliné sous différentes formes, ce programme vise principalement l'industrialisation du pays (« One District One Factory ») et la remise à niveau de l'agriculture (« One Village One Dam » ; « Programme for Planting for Food and Jobs »). Par ailleurs, le Président Akufo-Addo a instauré la gratuité des études secondaires.

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FICHE D'EVALUATION D'IMPACT

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| Intitulé du projet: | Projet de loi portant approbation de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021 |
| Auteur: | Pit Bichel et Luc Schons |
| Tél. : | 247-74912 et 247-83690 |
| Courriel: | pit.bichel@av.etat.lu et luc.schons@mae.etat.lu |
| Objectif(s) du projet: | Le présent projet de loi se propose d'approuver l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la République du Ghana relatif à des services aériens, fait à Luxembourg, le 13 décembre 2021. |
| Autre(s) Ministère(s)/Organisme(s)/Commune(s) impliqué(e)(s): | Ministère du Ministère de la Mobilité et des Travaux publics, Ministère des Affaires étrangères et européennes. |
| Date: | 3 février 2023 |

Mieux légiférer

1. Partie(s) prenante(s) (organismes divers, citoyens,...) consultée(s): Oui: Non: ¹

Si oui, laquelle/lesquelles: Cargolux

Remarques/Observations:

¹ Double-click sur la case pour ouvrir la fenêtre permettant de l'activer

2. Destinataires du projet:
- Entreprises/Professions libérales: Oui: Non:
 - Citoyens: Oui: Non:
 - Administrations: Oui: Non:
3. Le principe « Think small first » est-il respecté?
(c.-à-d. des exemptions ou dérogations sont-elles prévues suivant la taille de l'entreprise et/ou son secteur d'activité?)
Remarques/Observations:
- Oui: Non: N.a.:²
4. Le projet est-il lisible et compréhensible pour le destinataire?
Existe-t-il un texte coordonné ou un guide pratique, mis à jour et publié d'une façon régulière?
Remarques/Observations:
- Oui: Non:
Oui: Non:
5. Le projet a-t-il saisi l'opportunité pour supprimer ou simplifier des régimes d'autorisation et de déclaration existants, ou pour améliorer la qualité des procédures?
Remarques/Observations:
- Oui: Non:
6. Le projet contient-il une charge administrative³ pour le(s) destinataire(s)? (un coût imposé pour satisfaire à une obligation d'information émanant du projet?)
Si oui, quel est le coût administratif approximatif total?
(nombre de destinataires x coût administratif⁴ par destinataire)
- Oui: Non:
7. a) Le projet prend-il recours à un échange de données inter-administratif (national ou international) plutôt que de demander l'information au destinataire?
Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il?
- Oui: Non: N.a.:
- b) Le projet en question contient-il des dispositions spécifiques concernant la protection des personnes à l'égard du traitement des données à caractère personnel?
Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il?
- Oui: Non: N.a.:
8. Le projet prévoit-il:
- une autorisation tacite en cas de non réponse de l'administration? Oui: Non: N.a.:
 - des délais de réponse à respecter par l'administration? Oui: Non: N.a.:
 - le principe que l'administration ne pourra demander des informations supplémentaires qu'une seule fois? Oui: Non: N.a.:
9. Y a-t-il une possibilité de regroupement de formalités et/ou de procédures (p. ex. prévues le cas échéant par un autre texte)?
Si oui, laquelle:
- Oui: Non: N.a.:

2 N.a.: non applicable.

3 Il s'agit d'obligations et de formalités administratives imposées aux entreprises et aux citoyens, liées à l'exécution, l'application ou la mise en oeuvre d'une loi, d'un règlement grand-ducal, d'une application administrative, d'un règlement ministériel, d'une circulaire, d'une directive, d'un règlement UE ou d'un accord international prévoyant un droit, une interdiction ou une obligation.

4 Coût auquel un destinataire est confronté lorsqu'il répond à une obligation d'information inscrite dans une loi ou un texte d'application de celle-ci (exemple: taxe, coût de salaire, perte de temps ou de congé, coût de déplacement physique, achat de matériel, etc...).

10. En cas de transposition de directives communautaires, le principe « la directive, rien que la directive » est-il respecté? Oui: Non: N.a.:
Sinon, pourquoi?
11. Le projet contribue-t-il en général à une:
a. simplification administrative, et/ou à une Oui: Non:
b. amélioration de la qualité réglementaire? Oui: Non:
Remarques/Observations:
12. Des heures d'ouverture de guichet, favorables et adaptées aux besoins du/des destinataire(s), seront-elles introduites? Oui: Non: N.a.:
13. Y a-t-il une nécessité d'adapter un système informatique auprès de l'Etat (e-Government ou application back-office)? Oui: Non:
Si oui, quel est le délai pour disposer du nouveau système:
14. Y a-t-il un besoin en formation du personnel de l'administration concernée? Oui: Non: N.a.:
Si oui, lequel?
Remarques/Observations:

Egalité des chances

15. Le projet est-il:
– principalement centré sur l'égalité des femmes et des hommes? Oui: Non:
– positif en matière d'égalité des femmes et des hommes? Oui: Non:
Si oui, expliquez de quelle manière:
– neutre en matière d'égalité des femmes et des hommes? Oui: Non:
Si oui, expliquez pourquoi: n.a.
– négatif en matière d'égalité des femmes et des hommes? Oui: Non:
Si oui, expliquez de quelle manière:
16. Y a-t-il un impact financier différent sur les femmes et les hommes ? Oui: Non: N.a.:
Si oui, expliquez de quelle manière:

Directive « services »

17. Le projet introduit-il une exigence relative à la liberté d'établissement soumise à évaluation⁵ ? Oui: Non: N.a.:
18. Le projet introduit-il une exigence relative à la libre prestation de services transfrontaliers⁶ ? Oui: Non: N.a.:

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⁵ Article 15, paragraphe 2 de la directive « services » (cf. Note explicative, p. 10-11)

⁶ Article 16, paragraphe 1, troisième alinéa et paragraphe 3, première phrase de la directive « services » (cf. Note explicative, p.10-11)

FICHE FINANCIERE

concernant les coûts engendrés par le projet de loi (article 79 de la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'État).

Ce projet de loi n'a pas d'impact financier sur le budget de l'État.

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AGREEMENT

between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Ghana on air services

| | |
|------------|---|
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The Government of the Grand Duchy of Luxembourg
and
The Government of the Republic of Ghana

Hereinafter referred individually as „the Contracting Party“ and collectively as „the Contracting Parties“;

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

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

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

HAVE AGREED as follows:

Article 1

Definitions

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

- (a) „Aeronautical authorities“ means: in the case of the Grand Duchy of Luxembourg, the Minister responsible for the subject of Civil Aviation and, in the case of the Republic of Ghana, the Minister responsible for Civil Aviation and the Ghana Civil Aviation Authority or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;
- (b) „Agreed services“ means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;
- (c) „Agreement“ means this Agreement, its Annex, and any amendments thereto;
- (d) „Air services“, „International air service“, „Airline“ and „Stop for non-traffic purposes“ have the meaning respectively assigned to them in Article 96 of the Convention;
- (e) „Convention“ means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted or ratified by both Contracting Parties;
- (f) „Designated airline“ means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- (g) „Directives“ means the Ghana Civil Aviation Directives which are the domestic regulations in application of the ICAO Annexes;
- (h) „EU Treaties“ mean the Treaty on European Union and the Treaty on the functioning of the European Union;
- (i) „EU Member State“ or „Member State of the European Union“ or „European Member State“ means a State that is member of the European Union;
- (j) „Tariffs“ means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;
- (k) „Territory“ has the meaning assigned to it in Article 2 of the Convention;
- (l) „User charge“ means a charge imposed on air carriers for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities;

- (m) „Airlines of the Grand Duchy of Luxembourg“ shall be understood in this Agreement as referring to airlines designated by the Grand Duchy of Luxembourg.

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airline designated by the other Contracting Party:
 - (a) to fly without landing across the territory of the other Contracting Party;
 - (b) to make stops in the said territory for non-traffic purposes;
 - (c) to make stops in the said territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination.

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

Article 3

Designation and Authorization

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 on the specified routes and to withdraw or alter such designations.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall grant the appropriate authorizations and permissions with minimum procedural delay provided that:
 - a) In the case of an airline or airlines designated by the Grand Duchy of Luxembourg:
 - (i) the airline is established in the territory of the Grand Duchy of Luxembourg under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Union law; and
 - (ii) effective regulatory control of the airline is exercised and maintained by the European Member State responsible for issuing its Air Operator Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - (iii) the airline is owned directly or through majority ownership and is effectively controlled by European Member States and/or nationals of European Member States, and/or Member States of the European Free Trade Association and/or nationals of such States; and
 - (iv) the airline is already authorised to operate under a bilateral agreement between the Republic of Ghana and another EU Member State; and
 - (v) the airline complies with the laws, Directives and regulations of the Republic of Ghana; and
 - (vi) the airline operates in accordance with the conditions prescribed under this Agreement.
 - b) In the case of an airline or airlines designated by the Republic of Ghana:
 - i) the airline is established and has its principal place of business in the territory of the Republic of Ghana and has a valid Operating Licence delivered by the authorities of the Republic of Ghana; and
 - ii) effective regulatory control of the airline is exercised and maintained by the authorities of the Republic of Ghana; and
 - (iii) the airline complies with the laws and regulations of the Grand Duchy of Luxembourg; and
 - (iv) the airline operates in accordance with the conditions prescribed under this Agreement.

3. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.

Article 4

Revocation and Limitation of Authorization

1. The aeronautical authorities of the Republic of Ghana shall have the right to withhold the authorization referred to in Article 3 of this Agreement with respect to an airline designated by the Grand Duchy of Luxembourg, to revoke or suspend such authorizations or impose conditions, temporarily or permanently, in case:

- (a) it is not established in the territory of the Grand Duchy of Luxembourg under the treaty establishing the European Union or does not have a valid Operating Licence in accordance with European Union law; or
- (b) effective regulatory control of the airline is not exercised or not maintained by the European Union Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (c) the airline is not owned, directly or through majority ownership, or it is not effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such states, or
- (d) the airline is already authorised to operate under a bilateral agreement between the Republic of Ghana and another EU Member State and the Republic of Ghana demonstrates that, by exercising traffic right under this agreement on a route that includes a point in that other EU Member State, the air carrier would be circumventing restrictions on traffic imposed by that other agreement; or
- (e) the airline holds an Air Operator Certificate issued by an EU Member State and there is no bilateral air services agreement between the Republic of Ghana and that EU Member State and that EU Member State has denied traffic rights to the air carrier designated by the Republic of Ghana; or
- (f) of failure by the airline to comply with the laws, Directives and regulations of the Republic of Ghana; or
- (g) the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement;

2. The aeronautical authorities of the Grand Duchy of Luxembourg shall have the right to withhold the authorization referred to in Article 3 of this Agreement with respect to an airline designated by the Republic of Ghana, to revoke or suspend such authorizations or impose conditions, temporarily or permanently, in case:

- (a) it is not established in the territory and does not have its principal place of business in Ghana of the Republic of Ghana and does not have a valid Operating Licence delivered by the authorities of the Republic of Ghana; or
- (b) effective regulatory control of the airline is not exercised or maintained by the authorities of the Republic of Ghana; or
- (c) of failure by the airline to comply with the laws and regulations of the Grand Duchy of Luxembourg; or
- (d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

*Article 5****Application of Laws, Directives and Regulations***

1. The laws, Directives and regulations of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the airline or airlines of the other Contracting Party upon entry into, departure from and while within the said territory.
2. The laws, Directives and regulations of one Contracting Party with respect to entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the airline or airlines of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.
3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.
4. 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 purpose shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

*Article 6****Aviation Safety***

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within 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 and requirements in any such area that are at least equal to the minimum standards established at the 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 the 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 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 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 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 certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the

requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline(s) 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 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 authorization or technical permission of an airline or airlines designated by the other Contracting Party in the event the first Contracting Party concludes, whether as a result of a ramp inspection, consultation or otherwise, that immediate action is essential for 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. Certificates of airworthiness, certificates of competency and licences, issued or validated by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex provided that such certificates or licences were issued or validated pursuant to, and in conformity with the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party or by any other State.

9. If the privileges or condition of the licences or certificates referred to in paragraph 8 of this Article, issued by the Aeronautical Authorities of one Contracting Party to any person or designated airline(s) or in respect of an aircraft operating the agreed services on the specified routes would permit a difference to be filed with the International Civil Organization, the Aeronautical Authorities of that Contracting Party may request consultations in accordance with Article 18 of this Agreement. Failure to reach a satisfactory agreement will constitute grounds for the application of Article 4 of this Agreement.

Article 7

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 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 and the Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on 1 March 1991 and any other agreement governing civil aviation security and binding upon 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 security of civil aviation.

3. The Contracting Parties shall act in conformity with the aviation security provisions and technical requirements established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions and

requirements are applicable to the Contracting Parties. They shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their state territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions and requirements referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from, or while within the state territory of that other Contracting Party.

5. Each Contracting Party shall ensure that adequate measures are effectively applied within its State 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. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

6. 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.

7. Should one Contracting Party have problems with regard to the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

Article 8

Customs Duties and Other Charges

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article which are:

- (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
- (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services,

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated in the territory of the said Contracting Party.

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

*Article 9****Capacity***

1. The designated airline or airlines of the Contracting Parties shall have a fair and equal opportunity to operate the agreed services covered by this Agreement.
2. The capacity provided by each designated airline shall be such as to enable that airline to provide the agreed services at a reasonable load factor, taking full account of the requirements of through-airline operations.
3. Neither Contracting Party may unilaterally impose any restrictions on the designated airline or airlines of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with services over any of the routes specified in the Annex to this Agreement. In the event that one of the Contracting Parties believes that the operation proposed or conducted by the airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may request consultation pursuant to Article 18 of this Agreement.

*Article 10****Tariffs***

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 predatory or discriminatory prices or practises;
 - b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and
 - c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Contracting Party. Notification or filing by the airlines of both Contracting Parties may be required no more than thirty (30) days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.
3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Contracting Party or by an airline of a third country for international air transportation between the territories of the Contracting Parties, or (b) an airline of one Contracting Party or an airline of a third country for international air transportation between the territory of the other Contracting Party and any other country, including in both cases transportation on an interline or intra-line basis.
4. If either Contracting Party believes that any such price is 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 parties shall cooperate 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 mutual agreement, that price shall go into or continue in effect.
5. No 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.

6. Notwithstanding the provisions of paragraphs 1,2 and 3 of the present Article, the tariffs to be charged by the designated airline(s) of the Republic of Ghana for carriage wholly within the European Union shall be subject to European Union law.

Article 11

Airline Representatives

1. The designated airline or airlines of one Contracting Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.
2. These staff requirements may, at the option of the designated airline or airlines of one Contracting Party, 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, and authorized to perform such services in the territory of that Contracting Party.
3. The representatives and staff shall be subject to the laws, Directives and regulations in force of the other Contracting Party, and, consistent with such laws, Directives and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article.

Article 12

Commercial Opportunities and Transfer of Funds

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to sell transportation in the currency of that territory or, to the extent permitted by national law, in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.
2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by that airline in its territory in connection with the carriage of passengers, mail and cargo in accordance with national laws.
3. The designated airline(s) of each Contracting Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency or, provided this accord with local currency regulations in freely convertible currencies.

Article 13

Fair Competition Clause

1. Each Contracting Party shall allow a fair and equal opportunity to the designated airline(s) of both Parties to compete in providing the international air transportation governed by this Agreement.
2. Each Contracting Party shall adopt all the appropriate measures within its jurisdiction to eliminate all form of discrimination or unfair competition practices with an adverse effect on the competitive position of the designated airline(s) of the other Contracting Party.
3. Neither Contracting Party shall allow its designated airline(s), neither in conjunction with any other airline(s) or separately, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening a competitor or excluding a competitor from a route.

*Article 14****Cooperative Arrangements***

The designated airlines of each Contracting Party that hold the required authorisations to operate the agreed air services will be entitled to operate and/or offer the agreed services on the specified routes or in any of the sections of those routes by way of different cooperative arrangements such as code-sharing, blocked space, joint venture or other ways of cooperation with:

- a) an airline or airlines of one Contracting Party, or
- b) an airline or airlines of the other Contracting Party, or
- c) an airline or airlines of a third country,

provided that such carriers hold the appropriate authority to operate the routes and segments concerned.

*Article 15****Intermodal Cargo Transport***

Notwithstanding any other provision of this Agreement, airlines and indirect providers of air cargo transportation of both Contracting Parties shall be permitted, without restriction, to employ any surface transportation for air cargo to or from points in the territories 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 air cargo in bond under applicable laws, Directives and regulations. Such air cargo, whether moving by surface or by air, shall have access to airport customs and processing facilities. Airlines 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 cargo services may be offered at a single through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

*Article 16****User Charges***

1. Fees and other charges for the use of each airport including its installations, technical and other facilities and services as well as any charges for the use of air navigation facilities, communication facilities and services shall be made in accordance with the rates and tariffs established by each Contracting Party.
2. The designated airline or airlines of one Contracting Party shall not pay higher fees than those imposed on the designated airline or airlines of the other Contracting Party and/or on any other foreign airlines operating similar international services, for the use of installations and services of the other Contracting Party.

*Article 17****Statistics***

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services.

*Article 18****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 of its Annex, and shall also 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 19

Settlement of Disputes

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

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. 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 and the third arbitrator shall be appointed within a further period of sixty (60) days.

3. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case requires.

4. The Vice-President or a senior member of the Council of the International Civil Aviation Organization, not being a national of either of the Contracting Parties, as the case may be, shall replace the President of the International Civil Aviation Organization in its arbitral duties, as mentioned in paragraph (3) of this Article, in case of absence or incompetence of the latter.

In any case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

5. The arbitral tribunal shall determine its procedures and the place of arbitration subject to provisions agreed upon between the Contracting Parties.

6. The decisions of the arbitral tribunal shall be final and binding upon the Contracting Parties to the dispute.

7. If either Contracting Party or the designated airline of either Contracting Party fails to comply with the decision given under paragraph (6) of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which have been granted by virtue of this Agreement to the Contracting Party in default.

8. Each Contracting Party shall bear the expenses of its own arbitrator. The expenses of the umpire, including his/her fees and any expenses incurred by the International Civil Aviation Organization in connection with the appointment of the umpire and/or the arbitrator of the Party in default as referred to in paragraph (3) of this Article shall be shared equally by the Contracting Parties.

9. Pending the submission to arbitration and thereafter until the arbitral tribunal publishes its award; the Contracting Parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with the said award.

*Article 20****Modification of Agreement***

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement or its Annex, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of the request unless both Contracting Parties agree to an extension of this period. Any modifications so agreed shall come into force once the internal constitutional procedures have been confirmed by an exchange of diplomatic notes.

*Article 21****Multilateral Convention***

This Agreement and its Annexes will be amended such as to conform with any multilateral convention which may become binding on both Contracting Parties.

*Article 22****Termination***

1. Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization.
2. The 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 before the expiry of this period.
3. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by the International Civil Aviation Organization.

*Article 23****Registration***

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

*Article 24****Entry into Force***

This Agreement shall be approved according to the constitutional requirements of each Contracting Party and shall enter into force on the date of an exchange of diplomatic notes confirming that all the constitutional procedures required for the entry into force of this Agreement by each Contracting Party have been completed.

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

DONE in Duplicate at Luxembourg on this 13th day of December 2021, in the English language.

*For the Government of the
Grand Duchy of Luxembourg*

François BAUSCH
*Minister for Mobility
and Public Works*

*For the Government of the
Republic of Ghana*

Kwaku OFORI ASIAMAH
Minister for Transport

ROUTE ANNEX

Routes to be operated by the designated airline or airlines of Luxembourg:

Luxembourg – Intermediate points – Points in Ghana – Points beyond

Routes to be operated by the designated airline or airlines of Ghana:

Points in Ghana – Intermediate points – Luxembourg – Points beyond

1. Any intermediate and/or beyond points may be served by the designated airline or airlines from both Contracting Parties without exercising 5th freedom traffic rights.
2. The designated airline(s) of each Contracting Party shall be entitled to exercise unrestricted 5th freedom traffic rights on all-cargo services.
3. The exercise of 5th freedom traffic rights for passenger services by the designated airline(s) may be agreed upon by the aeronautical authorities of both Contracting Parties on a case by case basis.
4. The designated airline or airlines of each Contracting Party may on any or all flights omit calling at any of the points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin or terminate in the territory of the Contracting Party designating the airline or airlines.

