

AGREEMENT**between the European Community and the Government of Malaysia on certain aspects of air services**

THE EUROPEAN COMMUNITY,

of the one part, and

THE GOVERNMENT OF MALAYSIA (hereinafter Malaysia),

of the other part,

(hereinafter referred to as 'the Parties'),

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

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

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

HAVING REGARD to the agreements between the European Community 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 European Community law,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community 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 European Community and the Malaysia 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 European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and Malaysia, to affect the balance between Community air carriers and air carriers of Malaysia, 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 European Community.
2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.
3. References in each of the agreements listed in Annex I 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 Annex II(a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Malaysia, 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, Malaysia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
 - (i) the air carrier is established, under the Treaty establishing the European Community, in the territory of the designating Member State and has a valid Operating Licence in accordance with European Community law; and
 - (ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - (iii) the air carrier has its principal place of business in the territory of the Member State from which it has received the valid Operating Licence; and
 - (iv) 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 III and/or nationals of such other States.
3. Malaysia may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- (i) the air carrier is not established, under the Treaty establishing the European Community, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with European Community law; or
- (ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (iii) 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 III and/or nationals of such other States; or
- (iv) the air carrier is already authorised to operate under a bilateral agreement between Malaysia and another Member State and Malaysia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement; or
- (v) the air carrier designated holds an Air Operators Certificate issued by a Member State and no bilateral air services agreement is in force between Malaysia and that Member State and that Member State has denied traffic rights to the air carriers designated by Malaysia.

In exercising its right under this paragraph, Malaysia 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 Annex II(c).
2. Where a Member State (the first Member State) has designated an air carrier whose regulatory control is exercised and maintained by a second Member State, the rights of Malaysia under the safety provisions of the agreement between the first Member State that has designated the air carrier and Malaysia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that second 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 Annex II(d).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II(d) 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 Malaysia 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.

*Article 5***Tariffs for carriage within the European Community**

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(e).

2. The tariffs to be charged by the air carrier(s) designated by Malaysia under an agreement listed in Annex I containing a provision listed in Annex II(e) for carriage wholly within the European Community shall be subject to European Community law.

*Article 6***Compatibility with competition rules**

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex I shall (i) 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 I that are incompatible with paragraph 1 of this Article shall not be applied.

*Article 7***Annexes to the Agreement**

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

*Article 8***Revision or amendment**

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

*Article 9***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. Agreements and other arrangements between Member States and Malaysia which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

*Article 10***Termination**

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

2. In the event that all agreements listed in Annex I 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 Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish and Bahasa Melayu languages.

For the European Community *For the government of Malaysia*

ANNEX I

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between Malaysia and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally

- Agreement between the Austrian Federal Government and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 22 November 1976, hereinafter referred to as 'Malaysia-Austria Agreement' in Annex II;

Modified by Memorandum of Understanding done at Vienna on 23 August 1990;

Last modified by Note Verbale done at Kuala Lumpur on 14 September 1994;

- Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de Malaisie, relatif aux services aériens entre leurs territoires respectifs et au-delà, signed at Kuala Lumpur on 26 February 1974, hereinafter referred to as 'Malaysia-Belgium Agreement' in Annex II;

Modified by Agreed Minutes done at Brussels on 25 July 1978;

Last modified by Agreed Minutes done at Kuala Lumpur on 14 October 1993;

- Agreement between the Government of the Czechoslovak Socialist Republic and the Government of Malaysia for air services between and beyond their respective territories, signed at Prague on 2 May 1973, hereinafter referred to as 'Malaysia-Czech Republic Agreement' in Annex II;

To be read together with Memorandum of Understanding signed at Prague on 2 May 1973;

- Agreement between the Government of the Kingdom of Denmark and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 19 October 1967, hereinafter referred to as 'Malaysia-Denmark Agreement' in Annex II;

- Draft Air Services Agreement between the Government of the Kingdom of Denmark and the Government of Malaysia, initialled 1997 and 2002, hereinafter referred to as 'Draft Malaysia-Denmark Agreement' in Annex II;

- Agreement between the Government of the Republic of Finland and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 6 November 1997, hereinafter referred to as 'Malaysia-Finland Agreement' in Annex II;

To be read together with Memorandum of Understanding done at Kuala Lumpur on 15 September 1997;

- Accord entre le Gouvernement de la République française et le Gouvernement de Malaisie relatif aux transports aériens, signed at Kuala Lumpur on 22 May 1967, hereinafter referred to as 'Malaysia-France Agreement' in Annex II;

- Agreement between the Federal Republic of Germany and Malaysia for Air Services between and beyond their respective territories, signed at Kuala Lumpur on 23 July 1968, hereinafter referred to 'Malaysia-Germany Agreement' in Annex II;

- Agreement between the Government of the Republic of Hungary and the Government of Malaysia for air services between and beyond their territories, signed at Kuala Lumpur on 19 February 1993, hereinafter referred to as 'Malaysia-Hungary Agreement' in Annex II;

— Agreement between the Government of Ireland and the Government of Malaysia on air transport, signed at Shannon on 17 February 1992, hereinafter referred to as 'Malaysia-Ireland Agreement' in Annex II;

— Agreement between the Government of Malaysia and the Government of Republic of Italy concerning air services, signed at Kuala Lumpur on 23 March 1995, hereinafter referred to as 'Malaysia-Italy Agreement' in Annex II;

To be read together with Confidential Memorandum of Understanding done at Rome on 30 November 1994;

Modified by Confidential Memorandum of Understanding done at Kuala Lumpur on 18 July 1997;

Modified by Agreed Record of discussions between Malaysia and Italy, done at Rome on 18 May 2005;

Last modified by Memorandum of Understanding done at London on 18 July 2006;

— Air Services Agreement between the Government of Malaysia and the Government of the Grand Duchy of Luxembourg, initialled at Kuala Lumpur on 19 July 2002, as Attachment II of Confidential Memorandum of Understanding, signed at Kuala Lumpur on 19 July 2002; hereinafter referred to as 'Malaysia-Luxembourg Agreement' in Annex II;

— Agreement between the Government of Malta and the Government of Malaysia for air services between and beyond their respective territories, signed at Malaysia on 12 October 1993, hereinafter referred to as 'Malaysia-Malta Agreement' in Annex II;

To be read together with Memorandum of Understanding done at Valletta on 28 February 1984;

— Agreement between the Government of the Kingdom of the Netherlands and the Government of Malaysia for air services between and beyond their respective territories, signed Kuala Lumpur on 15 December 1966, hereinafter referred to as 'Malaysia-Netherlands Agreement' in Annex II;

Modified by Exchange of Notes of 25 March 1988;

Modified by Confidential Memorandum of 23 October 1991;

Modified by Exchange of Notes done at Kuala Lumpur on 10 May 1993;

Last modified by Confidential Memorandum of Understanding attached as Appendix A to the Agreed Minutes done at Kuala Lumpur on 19 September 1995;

Last amended by Exchange of Notes done at Kuala Lumpur on 23 May 1996;

— Agreement between the Government of the Polish People's Republic and the Government of Malaysia concerning civil air transport, signed at Kuala Lumpur on 24 March 1975, hereinafter referred to as 'Malaysia-Poland Agreement' in Annex II;

— Agreement between the Government of Malaysia and the Portuguese Republic for air services between and beyond their respective territories, initialled and attached as Attachment II to the Memorandum of Understanding done at Kuala Lumpur on 19 May 1998, hereinafter referred to as 'Malaysia-Portugal Agreement' in Annex II;

— Agreement between the Government of the Republic of Slovenia and the Government of Malaysia for air services between and beyond their respective territories, signed at Ljubljana on 28 October 1997, hereinafter referred to as 'Malaysia-Slovenia Agreement' in Annex II;

- Air transport agreement between the Government of Spain and the Government of Malaysia, signed at Kuala Lumpur on 23 March 1993, hereinafter referred to as 'Malaysia-Spain Agreement' in Annex II;
- Agreement between the Government of the Kingdom of Sweden and the Government of Malaysia for Air Services between and beyond their respective territories, signed at Kuala Lumpur on 19 October 1967, hereinafter referred to as 'Malaysia-Sweden Agreement' in Annex II;
- Draft Air Services Agreement between the Government of the Kingdom of Sweden and the Government of Malaysia, initialled 1997 and 2002, hereinafter referred to as 'Draft Malaysia-Sweden Agreement' in Annex II;
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for air services between and beyond their respective territories, signed at London on 24 May 1973, hereinafter referred to as 'Malaysia-United Kingdom Agreement' in Annex II;

Modified by Exchange of Notes done at Kuala Lumpur on 14 September 1993;

Last modified by Memorandum of Understanding done at London on 18 January 2006;

- (b) Air service agreements and other arrangements initialled or signed between Malaysia and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally
- Draft Memorandum of Understanding attached as Appendix 1 to the Agreed Record done in Kuala Lumpur on 15 December 2004, modifying the Malaysia-United Kingdom Agreement.

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ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 to 6 of this Agreement

(a) Designation by a Member State:

- Article 3(1-3) of the Malaysia-Austria Agreement;
- Article 2 of the Malaysia-Belgium Agreement;
- Article 3(1-3) of the Malaysia-Czech Republic Agreement;
- Article II of the Malaysia-Denmark Agreement;
- Article 3 of the Draft Malaysia-Denmark Agreement;
- Article 3(1-3) of the Malaysia-France Agreement;
- Article 3(1-3) of the Malaysia-Germany Agreement;
- Article 3 of the Malaysia-Finland Agreement;
- Article 3(1-3) of the Malaysia-Hungary Agreement;
- Article 3(1-2) of the Malaysia-Ireland Agreement;
- Article 4 of the Malaysia-Italy Agreement;
- Article 3 of the Malaysia-Malta Agreement;
- Article 3(1-3) of the Malaysia-Netherlands Agreement;
- Article 3 of the Malaysia-Poland Agreement;
- Article 3(1-3) of the Malaysia-Portugal Agreement;
- Article 3(1-3) of the Malaysia-Slovenia Agreement;
- Article 3 of the Malaysia-Spain Agreement;
- Article II of the Malaysia-Sweden Agreement;
- Article 3 of the Draft Malaysia-Sweden Agreement;
- Article 3(1-3) of the Malaysia-United Kingdom Agreement;

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

- Article 3(4-7) of the Malaysia-Austria Agreement;
- Article 3 of the Malaysia-Belgium Agreement;
- Article 3(4-6) of the Malaysia-Czech Republic Agreement;
- Article III of the Malaysia-Denmark Agreement;
- Article 4 of the Draft Malaysia-Denmark Agreement;
- Article 4 of the Malaysia-Finland Agreement;
- Article 3(4-6) of the Malaysia-France Agreement;
- Article 3(4-6) of the Malaysia-Germany Agreement;
- Article 3(4-6) of the Malaysia-Hungary Agreement;

- Article 3(3-6) of the Malaysia-Ireland Agreement;
 - Article 5 of the Malaysia-Italy Agreement;
 - Article 4 of the Malaysia-Malta Agreement;
 - Article 3(4-6) of the Malaysia-Netherlands Agreement;
 - Article 4 of the Malaysia-Poland Agreement;
 - Article 3(4-6) of the Malaysia-Portugal Agreement;
 - Article 3(4-6) of the Malaysia-Slovenia Agreement;
 - Article 4 of the Malaysia-Spain Agreement;
 - Article III of the Malaysia-Sweden Agreement;
 - Article 4 of the Draft Malaysia-Sweden Agreement;
 - Article 3(4-6) of the Malaysia-United Kingdom Agreement;
- (c) Safety:
- Article 7 of the Malaysia-Belgium Agreement;
 - Article 15 of the Draft Malaysia-Denmark Agreement;
 - Article 9 of the Malaysia-Hungary Agreement;
 - Article 10 of the Malaysia-Italy Agreement;
 - Article 6 of the Malaysia-Luxembourg Agreement;
 - Article 11 of the Malaysia-Portugal Agreement;
 - Article 11 of the Malaysia-Spain Agreement;
 - Article 15 of the Draft Malaysia-Sweden Agreement;
 - Article 9A of the Malaysia-United Kingdom Agreement;
- (d) Taxation of aviation fuel:
- Article 4 of the Malaysia-Austria Agreement;
 - Article 4 of the Malaysia-Belgium Agreement;
 - Article 4 of the Malaysia-Czech Republic Agreement;
 - Article IV of the Malaysia-Denmark Agreement;
 - Article 6 of the Draft Malaysia-Denmark Agreement;
 - Article 5 of the Malaysia-Finland Agreement;
 - Article 4 of the Malaysia-France Agreement;
 - Article 4 of the Malaysia-Germany Agreement;
 - Article 4 of the Malaysia-Hungary Agreement;
 - Article 11 of the Malaysia-Ireland Agreement;
 - Article 6 of the Malaysia-Italy Agreement;

- Article 9 of the Malaysia-Luxembourg Agreement;
 - Article 5 of the Malaysia-Malta Agreement;
 - Article 4 of the Malaysia-Netherlands Agreement;
 - Article 6 of the Malaysia-Poland Agreement;
 - Article 4 of the Malaysia-Portugal Agreement;
 - Article 4 of the Malaysia-Slovenia Agreement;
 - Article 5 of the Malaysia-Spain Agreement;
 - Article IV of the Malaysia-Sweden Agreement;
 - Article 6 of the Draft Malaysia-Sweden Agreement;
 - Article 4 of the Malaysia-United Kingdom Agreement;
 - (e) Tariffs for carriage within the European Community:
 - Article 7 of the Malaysia-Austria Agreement;
 - Article 10 of the Malaysia-Belgium Agreement;
 - Article 7 of the Malaysia-Czech Republic Agreement;
 - Article VII of the Malaysia-Denmark Agreement;
 - Article 11 of the Draft Malaysia-Denmark Agreement;
 - Article 10 of the Malaysia-Finland Agreement;
 - Article 7 of the Malaysia-France Agreement;
 - Article 7 of the Malaysia-Germany Agreement;
 - Article 7 of the Malaysia-Spain Agreement;
 - Article 8 of the Malaysia-Hungary Agreement;
 - Article 6 of the Malaysia-Ireland Agreement;
 - Article 8 of the Malaysia-Italy Agreement;
 - Article 11 of the Malaysia-Luxembourg Agreement;
 - Article 10 of the Malaysia-Malta Agreement;
 - Article 7 of the Malaysia-Netherlands Agreement;
 - Article 10 of the Malaysia-Poland Agreement;
 - Article 9 of the Malaysia-Portugal Agreement;
 - Article 8 of the Malaysia-Slovenia Agreement;
 - Article VII of the Malaysia-Sweden Agreement;
 - Article 11 of the Draft Malaysia-Sweden Agreement;
 - Article 7 of the Malaysia-United Kingdom Agreement.
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*ANNEX III***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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