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EUROPEAN COMMISSION

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2010/0131 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the signature and provisional application of the Agreement on certain aspects of air services between the European Union and the Republic of Indonesia**

## EXPLANATORY MEMORANDUM

### 1. Context of the proposal

- **Grounds for and objectives of the proposal**

Following the judgements of the Court of Justice in the so-called “Open Skies” cases, on 5 June 2003 the Council granted the Commission a mandate to open negotiations with third countries on the replacement of certain provisions in existing agreements with an agreement at Union level<sup>1</sup> (the “horizontal mandate”). The objectives of such agreements are to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air service agreements between Member States of the European Union and third countries in line with the law of the European Union.

- **General context**

International aviation relations between Member States of the European Union and third countries have traditionally been governed by bilateral air services agreements between Member States of the European Union and third countries, the Annexes to such agreements and other related bilateral or multilateral arrangements.

Traditional designation clauses in Member States’ bilateral air services agreements infringe the law of the European Union. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State of the European Union but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against European Union carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the European Union which guarantees nationals of Member States of the European Union who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

There are further issues, such as aviation fuel taxation or tariffs introduced by third country air carriers on intra-EU routes, where compliance with the law of the European Union should be ensured through amending or complementing existing provisions in bilateral air services agreements between Member States of the European Union and third countries.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement supersede or complement the existing provisions in the 18 bilateral air services agreements between Member States of the European Union and the Republic of Indonesia.

- **Consistency with the other policies and objectives of the Union**

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<sup>1</sup> Council Decision 11323/03 of 5 June 2003 (restricted document)

The Agreement will serve a fundamental objective of the external aviation policy of the European Union by bringing existing bilateral air services agreements in line with the law of the European Union.

## **2. Consultation of interested parties and impact assessment**

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

Member States of the European Union as well as the industry were consulted throughout the negotiations.

*Summary of responses and how they have been taken into account*

Comments made by Member States of the European Union and the industry have been taken into account.

## **3. Legal elements of the proposal**

- **Summary of the proposed action**

In accordance with the mechanisms and directives in the Annex to the "horizontal mandate", the Commission has negotiated an agreement with the Republic of Indonesia that replaces certain provisions in the existing bilateral air services agreements between Member States of the European Union and the Republic of Indonesia. Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all European Union carriers to benefit from the right of establishment. Article 4 deals with the taxation of aviation fuel, a matter which has been harmonised by Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and in particular Article 14 (2) thereof. Article 5 resolves potential conflicts with the competition rules of the European Union.

- **Legal basis**

TFEU Treaty Art. 100(2), 218(5) and 218(6)(a)

- **Subsidiarity principle**

The proposal is entirely based on the "horizontal mandate" granted by the Council taking into account the issues covered by the law of the European Union and bilateral air services agreements.

- **Proportionality principle**

The Agreement will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with the law of the European Union.

- **Choice of instruments**

The Agreement between the European Union and the Republic of Indonesia is the most efficient instrument to bring all existing bilateral air services agreements between Member States of the European Union and the Republic of Indonesia into conformity with the law of the European Union.

**4. Budgetary implication**

The proposal has no implication for the budget of the European Union.

**5. Additional information**

- **Simplification**

The proposal provides for simplification of legislation.

The relevant provisions of bilateral air services agreements between Member States of the European Union and the Republic of Indonesia will be superseded or complemented by provisions in one single agreement of the European Union.

- **Detailed explanation of the proposal**

In accordance with the standard procedure for the signature and conclusion of international agreements, the Council is asked to approve the decisions on the signature and on the conclusion of the Agreement on certain aspects of air services between the European Union and the Republic of Indonesia and to designate the persons authorised to sign the Agreement on behalf of the European Union.

Proposal for a

**COUNCIL DECISION**

**on the signature and provisional application of the Agreement on certain aspects of air services between the European Union and the Republic of Indonesia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission<sup>2</sup>,

Whereas:

- (1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level,
- (2) On behalf of the Union, the Commission has negotiated an Agreement with the Republic of Indonesia on certain aspects of air services (hereinafter "the Agreement") in accordance with the mechanisms and directives in the Annex to the Council Decision of 5 June 2003,
- (3) The Agreement negotiated by the Commission should be signed and provisionally applied subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Republic of Indonesia on certain aspects of air services is hereby approved on behalf of the Union, subject to the conclusion of the Agreement.

The text of the Agreement is attached to this Decision.

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<sup>2</sup> OJ C , , p . .

## Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign on behalf of the Union the Agreement on behalf of the Union subject to its conclusion.

## Article 3

Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose<sup>3</sup>.

## Article 4

The President of the Council is hereby authorised to make the notification provided for in Article 8(2) of the Agreement.

## Article 5

This Decision shall enter into force on the date of its adoption.

## Article 6

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council  
The President*

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<sup>3</sup> The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.