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ANNEX

AGREEMENT

between the European Union and the Government of the Republic of Indonesia

on certain aspects of air services

accompanying document to

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement on certain aspects of air services

between the European Union and the Republic of Indonesia

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THE EUROPEAN UNION

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

(hereinafter referred to as Indonesia)

of the other part

(hereinafter referred to as ‘the Parties’)

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

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

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

HAVING REGARD to the agreements between the European 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 European Union,

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

services between the European Union and Indonesia and to preserve the continuity of such air services,

NOTING that under the law of the European Union air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European 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 European Union and Indonesia 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 Union, as part of this agreement, to increase the total volume of air traffic between the European Union and Indonesia, to affect the balance between European Union air carriers and air carriers of Indonesia, 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 Union and 'EU Treaties' shall mean the Treaty on the 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 of the European Union.
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 Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Indonesia, 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, Indonesia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) the air carrier is established in the territory of the designating Member State under the EU Treaties and has a valid Operating Licence in accordance with the law of the European Union; and
- (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. Indonesia 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 in the territory of the designating Member State under the EU Treaties or does not have a valid Operating Licence in accordance with the law of the European Union; or
- (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; or
- (d) the air carrier is already authorised to operate under a bilateral agreement between Indonesia and another Member State and Indonesia 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
- (e) the air carrier designated holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between Indonesia and that Member State and that Member State has denied traffic rights to the air carrier designated by Indonesia.

In exercising its right under this paragraph, Indonesia shall not discriminate between European Union 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 2 (c).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Indonesia under the safety provisions of the agreement between the Member State that has designated the air carrier and Indonesia 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 Annex 2 (d).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (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 Indonesia 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

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 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 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, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Indonesian languages.

FOR THE EUROPEAN UNION: FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA:

List of agreements referred to in Article 1 of this Agreement

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

- Air Transport Agreement between **the Austrian Federal Government and the Government of the Republic of Indonesia** on scheduled air transport, signed at Vienna on 19 March 1987, hereinafter referred to “Indonesia – Austria Agreement” in Annex 2;
- Agreement between **the Government of the Kingdom of Belgium and the Government of the Republic of Indonesia** for air services between and beyond their territories, initialled at Djakarta on 10 October 1970, and attached to a Memorandum of Understanding, signed at Djakarta on 10 October 1970, hereinafter referred to “Indonesia – Belgium Agreement” in Annex 2;
- Air transport agreement between **the Government of the Republic of Bulgaria and Government of the Republic of Indonesia** for air services between and beyond their respective territories, done at Jakarta on 22 June 1992, hereinafter referred to "Indonesia-Bulgaria Agreement" in Annex 2;
- Air transport agreement between **the Government of the Czechoslovak Socialist Republic and the Government of the Republic of Indonesia**, signed at Prague on 10 May 1972, hereinafter referred to “Indonesia – Czech Republic Agreement” in Annex 2;

Last modified by Exchange of letters done at Djakarta on 18 January 1986;

- Agreement between **the Government of Denmark and the Government of the Republic of Indonesia** for Air Services between their respective Territories, signed at Copenhagen on 23 June 1971, hereinafter referred to “Indonesia – Denmark Agreement” in Annex 2;
- Air services agreement between **the Government of the Republic of Finland and the Government of the Republic of Indonesia**, signed at Djakarta on 7 November 1997, hereinafter referred to “Indonesia – Finland Agreement” in Annex 2;
- Accord entre **le Gouvernement de la République Française et le Gouvernement de la République d’Indonésie** relatif aux services aériens entre leurs territoires respectifs et au-delà de ceux-ci, done at Djakarta on 24 November 1967, hereinafter referred to “Indonesia – France Agreement” in Annex 2;
- Agreement between **the Federal Republic of Germany and the Republic of Indonesia** for Air Services between and beyond their respective Territories, signed at Djakarta on 4 December 1969, hereinafter referred to “Indonesia – Germany Agreement” in Annex 2;
- Agreement between **the Government of the Hellenic Republic and the Government of the Republic of Indonesia**, initialled at Athens on 2 June 2006, and attached to a Agreed Minutes, signed at Athens on 2 June 2006;

- Air transport agreement between **the Government of the Republic of Hungary and the Government of the Republic of Indonesia**, signed at Djakarta on 20 September 1994, hereinafter referred to “Indonesia – Hungary Agreement” in Annex 2;
- Agreement between **the Government of the Italian Republic and the Government of the Republic of Indonesia** for air services between and beyond their respective Territories, signed at Djakarta on 7 December 1966, hereinafter referred to “Indonesia – Italy Agreement” in Annex 2;
- Draft Agreement between **the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Indonesia** on air services, hereinafter referred to “Indonesia – Luxembourg Agreement” in Annex 2;
- Air Transport Agreement between **the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia**, signed at The Hague on 23 November 1990, hereinafter referred to “Indonesia – Netherlands Agreement” in Annex 2;
- Air transport agreement between **the Government of the Republic of Poland and the Republic of Indonesia** relating to scheduled air transport, signed at Djakarta on 13 December 1991, hereinafter referred to “Indonesia – Poland Agreement” in Annex 2;
- Air services agreement between **the Government of Romania and the Government of the Republic of the Indonesia**, signed at Jakarta on 7 September 1993, hereinafter referred to "Indonesia – Romania Agreement" in Annex 2;
- Agreement between **the Government of the Kingdom of Spain and the Government of the Republic of Indonesia** related to scheduled air services, done at Madrid on 5 October 1993, hereinafter referred to "Indonesia-Spain Agreement in Annex 2;
- Agreement between **the Government of Sweden and the Government of the Republic of Indonesia** for air services between their respective territories, signed at Copenhagen on 23 June 1971, hereinafter referred to “Indonesia – 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 Indonesia** for Air services between and beyond their respective territories, signed at Jakarta on 28 June 1973, hereinafter referred to "Indonesia – UK Agreement" in Annex 2;

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 Indonesia – Austria Agreement;
Article 3 of the Indonesia – Belgium Agreement;
Article III of the Indonesia – Bulgaria Agreement;
Article 3 of the Indonesia – Czech Republic Agreement;
Article 3 of the Indonesia – Denmark Agreement;
Article 3 of the Indonesia – Finland Agreement;
Article 3 of the Indonesia – France Agreement;
Article 3 of the Indonesia – Germany Agreement;
Article 3 of the Indonesia – Hungary Agreement;
Article 3 of the Indonesia – Italy Agreement;
Article 3 of the Indonesia – Luxembourg Agreement;
Article 3 of the Indonesia – Netherlands Agreement;
Article 3 of the Indonesia – Poland Agreement;
Article 3 of Indonesia – Romania Agreement;
Article III of the Indonesia – Spain Agreement;
Article 3 of the Indonesia – Sweden Agreement;
Article 3 of the Indonesia – UK Agreement.

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

Articles 3 and 4 of the Indonesia – Austria Agreement;
Article 3 of the Indonesia – Belgium Agreement;
Article IV of the Indonesia – Bulgaria Agreement;
Article 3 of the Indonesia – Czech Republic Agreement;
Article 3 of the Indonesia – Denmark Agreement;

Articles 3 and 4 of the Indonesia – Finland Agreement;
Article 3 of the Indonesia – France Agreement;
Article 3 of the Indonesia – Germany Agreement;
Article 4 of the Indonesia – Hungary Agreement;
Article 3 of the Indonesia – Italy Agreement;
Article 4 of the Indonesia – Luxembourg Agreement;
Articles 3 and 4 of the Indonesia – Netherlands Agreement;
Articles 3 and 4 of the Indonesia – Poland Agreement;
Article 4 of the Indonesia – Romania Agreement;
Articles III and IV of the Indonesia – Spain Agreement;
Article 3 of the Indonesia – Sweden Agreement;
Article 3 of the Indonesia – UK Agreement.

(c) Safety:

Articles 3 and 6 of the Indonesia – Austria Agreement;
Article 3 of the Indonesia – Belgium Agreement;
Article 3 of the Indonesia – Czech Republic Agreement;
Article 3 of the Indonesia – Denmark Agreement;
Article 16 of the Indonesia – Finland Agreement;
Article 3 of the Indonesia – France Agreement;
Safety Article of the Indonesia – Germany Agreement;
Article 16 of the Indonesia – Hungary Agreement;
Article 3 of the Indonesia – Italy Agreement;
Article 6 of the Indonesia – Luxembourg Agreement;
Article 14 of the Indonesia – Netherlands Agreement;
Article 3 of the Indonesia – Poland Agreement;
Article VI of the Indonesia – Spain Agreement;
Article 3 of the Indonesia – Sweden Agreement.

(d) Taxation of aviation fuel:

Article 7 of the Indonesia – Austria Agreement;
Article 4 of the Indonesia – Belgium Agreement;
Article VI of the Indonesia – Bulgaria Agreement;
Article 5 of the Indonesia – Czech Republic Agreement;
Article 4 of the Indonesia – Denmark Agreement;
Article 6 of the Indonesia – Finland Agreement;
Article 4 of the Indonesia – France Agreement;
Article 5 of the Indonesia – Germany Agreement;
Article 6 of the Indonesia – Hungary Agreement;
Article 4 of the Indonesia – Italy Agreement;
Article 8 of the Indonesia – Luxembourg Agreement;
Article 10 of the Indonesia – Netherlands Agreement;
Article 6 of the Indonesia – Poland Agreement;
Article 9 of the Indonesia – Romania Agreement;
Article VIII of the Indonesia – Spain Agreement;
Article 4 of the Indonesia – Sweden Agreement;
Article 4 of the Indonesia – UK Agreement.

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)