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ASIE 65**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

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

PH/EU/en 1

THE EUROPEAN UNION

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

(hereinafter referred to as "the Philippines")

of the other part

(hereinafter referred to as "the Parties")

NOTING that bilateral air service agreements have been concluded between some Member States of the European Union and the Philippines 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 air carriers established in a Member State of the European Union 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 the Philippines, which are contrary to the law of the European Union, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Union and the Philippines 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 the Philippines, 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 the purpose of the European Union, as part of this Agreement, to increase the total volume of air traffic between the European Union and the Philippines, to affect the balance between air carriers of Member States of the European Union and air carriers of the Philippines 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 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 a Member State, its authorisation and permissions granted by the Philippines 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, the Philippines shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (i) the air carrier is established, under the EU Treaties, in the territory of the designating Member State and has a valid Operating Licence in accordance with the law of the European Union; and
- (ii) 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
- (iii) 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. The Philippines 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 EU Treaties, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with the law of the European Union; or
- (ii) 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

- (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 3 and/or nationals of such other states; or
- (iv) the air carrier is already authorised to operate under a bilateral agreement between the Philippines and another Member State and the Philippines can demonstrate that by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, the air carrier would be circumventing restrictions on the traffic rights imposed by that other agreement.

In exercising its right under this paragraph, the Philippines shall not discriminate between air carriers of Member States 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 the Philippines under the safety provisions of the agreement between the Member State that has designated the air carrier and the Philippines 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 provisions 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 the Philippines 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) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

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

ARTICLE 6

Annexes to the Agreement

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

ARTICLE 7

Revision or amendment

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

ARTICLE 8

Entry into force and provisional application

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

3. This Agreement shall apply to all agreements and arrangements listed in Annex 1 including those that, at the date of signature of this Agreement, have not yet entered into force.

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, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, all texts being equally authentic.

For the European Union:

For the Government

of the Republic of the Philippines:

LIST OF AGREEMENTS REFERRED TO IN ARTICLE 1 OF THIS AGREEMENT

Air service agreements and other arrangements between the Philippines 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 the Philippines, signed in Manila, on 12 August 1992, hereinafter referred to as "the Philippines – Austria Agreement" in Annex 2;
- Air Transport Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of the Philippines, signed in Manila, on 30 January 1970, hereinafter referred to as "the Philippines – Belgium Agreement" in Annex 2;
- Air Transport Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the Republic of the Philippines, signed in Prague, on 23 April 1992, hereinafter referred to as "the Philippines – Czech Republic Agreement" in Annex 2;
- Air Transport Agreement between the Government of the Kingdom of Denmark and the Republic of the Philippines, signed in Oslo, on 8 May 1969, hereinafter referred to as "the Philippines – Denmark Agreement" in Annex 2;

- Air Transport Agreement between the Republic of the Philippines and the Kingdom of Sweden, signed in Oslo, on 8 May 1969, hereinafter referred to as "the Philippines – Sweden Agreement" in Annex 2;
- Air Transport Agreement between the Federal Republic of Germany and the Republic of the Philippines, signed in Manila, on 6 August 1971, hereinafter referred to as "the Philippines – Germany Agreement" in Annex 2;
- Air Transport Agreement between the Royal Hellenic Government and the Government of the Republic of the Philippines, signed in Athens, on 8 October 1949, hereinafter referred to as "the Philippines – Greece Agreement" in Annex 2;
- Air Services Agreement between the Government of the Republic of Hungary and the Government of the Republic of the Philippines, signed in Budapest, on 21 May 1992, hereinafter referred to as "the Philippines – Hungary Agreement" in Annex 2;
- Air Transport Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of the Philippines, signed in Luxembourg, on 21 November 2001, hereinafter referred to as "the Philippines – Luxembourg Agreement" in Annex 2;
- Agreement between the Government of the Republic of Poland and the Government of the Republic of the Philippines concerning civil air services, signed in Manila, on 1 July 1993, hereinafter referred to as "the Philippines – Poland 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:

- Article 3 of the Philippines – Austria Agreement;
- Article 3 of the Philippines – Belgium Agreement;
- Article III of the Philippines – Czech Republic Agreement;
- Article 3 of the Philippines – Denmark Agreement;
- Article 3 of the Philippines – Sweden Agreement;
- Article 3(1) of the Philippines – Germany Agreement;
- Articles 2 and 3 of the Philippines – Greece Agreement;
- Article III of the Philippines – Hungary Agreement;

- Article III of the Philippines – Luxembourg Agreement;
 - Article III of the Philippines – Poland Agreement;
- (b) Refusal, revocation, suspension or limitation of authorisations or permissions:
- Article 3 of the Philippines – Austria Agreement;
 - Article 3 of the Philippines – Belgium Agreement;
 - Article III of the Philippines – Czech Republic Agreement;
 - Article 3 of the Philippines – Denmark Agreement;
 - Article 3 of the Philippines – Sweden Agreement;
 - Article 3(4) and (5) and the first sentence of Article 3(6) of the Philippines – Germany Agreement;
 - Article 6 of the Philippines – Greece Agreement;
 - Article IV of the Philippines – Hungary Agreement;

- Article III of the Philippines – Luxembourg Agreement;
- Article III of the Philippines – Poland Agreement;

(c) Safety:

- Article 6 of the Philippines – Austria Agreement;
- Article 11 of the Philippines – Belgium Agreement;
- Article X of the Philippines – Czech Republic Agreement;
- Article 11 of the Philippines – Denmark Agreement;
- Article 11 of the Philippines – Sweden Agreement;
- Article 10 of the Philippines – Germany Agreement;
- Article 4 of the Philippines – Greece Agreement;
- Article XIII of the Philippines – Hungary Agreement;
- Article XI of the Philippines – Luxembourg Agreement;
- Article XII of the Philippines – Poland Agreement;

(d) Taxation of aviation fuel:

- Article 7 of the Philippines – Austria Agreement;
 - Article 4 of the Philippines – Belgium Agreement;
 - Article IV of the Philippines – Czech Republic Agreement;
 - Article 4 of the Philippines – Denmark Agreement;
 - Article 4 of the Philippines – Sweden Agreement;
 - Article 4 of the Philippines – Germany Agreement;
 - Article 3 of the Philippines – Greece Agreement;
 - Article V of the Philippines – Hungary Agreement;
 - Article IV of the Philippines – Luxembourg Agreement;
 - Article IV of the Philippines – Poland Agreement.
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LIST OF OTHER STATES REFERRED TO IN ARTICLE 2 OF THIS AGREEMENT

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