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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 7 September 2015

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2015) 423 final ANNEX 1

Subject: ANNEX to the Proposal for a Council Decision on the conclusion of an
Agreement between the European Union and the Government of the
People's Republic of Bangladesh on certain aspects of air services
Agreement between the European Union and the People's Republic of
Bangladesh on certain aspects of air services

Delegations will find attached document COM(2015) 423 final ANNEX 1.

Encl.: COM(2015) 423 final ANNEX 1



Brussels, 7.9.2015
COM(2015) 423 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision on the conclusion of an Agreement between the European Union and the Government of the People's Republic of Bangladesh on certain aspects of air services

Agreement between the European Union and the People's Republic of Bangladesh on certain aspects of air services

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Proposal for a Council Decision on the conclusion of an Agreement between the European Union and the Government of the People's Republic of Bangladesh on certain aspects of air services

Agreement between the European Union and the People's Republic of Bangladesh on certain aspects of air services

THE EUROPEAN UNION

of the one part, and

THE PEOPLE'S REPUBLIC OF BANGLADESH

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 the People's Republic of Bangladesh 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 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 People's Republic of Bangladesh, 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 People's Republic of Bangladesh 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 People's Republic of Bangladesh 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 the People's Republic of Bangladesh, to affect the balance between European Union air carriers and air carriers of the People's Republic of Bangladesh, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

NOTING that the Court of Justice of the European Union has found that certain provisions of bilateral agreements entered into by several Member States with third countries are incompatible with the law of the European Union,

RECOGNISING that consistency between the law of the European Union and provisions of bilateral air services agreements between Member States of the European Union and the People's Republic of Bangladesh will provide viable means to ensure continuity and development of air services between the European Union and Bangladesh,

NOTING that provisions of the bilateral air services agreements between Member States of the European Union and the People's Republic of Bangladesh which are not inconsistent with the law of the European Union do not need to be affected by this agreement,

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 the People's Republic of Bangladesh, 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 People's Republic of Bangladesh shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- i. 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
- 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 People's Republic of Bangladesh 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 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
- 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 People's Republic of Bangladesh and another Member State and 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 holds an Air Operator's Certificate issued by a Member State with which the People's Republic of Bangladesh does not have a

bilateral air services agreement and that Member State has denied traffic rights to a carrier designated by the People's Republic of Bangladesh.

In exercising its right under this paragraph, the People's Republic of Bangladesh 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 the People's Republic of Bangladesh under the safety provisions of the agreement between the Member State that has designated the air carrier and the People's Republic of Bangladesh 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 the People's Republic of Bangladesh 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. Agreements and other arrangements between Member States and the People's Republic of Bangladesh 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 1 (b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

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, Slovene, Spanish, Swedish and Bengali languages.

FOR THE EUROPEAN UNION:

FOR THE PEOPLE'S REPUBLIC OF
BANGLADESH:

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the People's Republic of Bangladesh and Member States of the European Union which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally

- Agreement between **the Government of the Kingdom of Belgium and the Government of the People's Republic of Bangladesh** on air services done at Brussels on 20 January 1995, hereinafter referred to as "Bangladesh-Belgium Agreement" in Annex 2;

Modified by Memorandum of Understanding done at Brussels on 20 July 2000;

- Agreement between **the Government of the Federal Republic of Germany and the Government of the People's Republic of Bangladesh** on air transport done at Bonn on 8 December 1992, hereinafter referred to as "Bangladesh-Germany Agreement" in Annex 2;

To be read together with Memorandum of Understanding between the Federal Republic of Germany and the Government of the People's Republic of Bangladesh done at Bonn on 8 December 1992;

- Agreement between **the Government of the People's Republic of Bangladesh and the Government of the Italian Republic** for air services between their respective territories done at Rome on 16 December 1980, hereinafter referred to as "Bangladesh-Italy Agreement" in Annex 2;

To be read together with Confidential Memoranda of Understanding between the Government of the People's Republic of Bangladesh and the Government of the Italian Republic done at Rome on 16 December 1980;

- Agreement between **the Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bangladesh** relating to air services done at Dacca on 3 November 1973, hereinafter referred to as "Bangladesh-The Netherlands Agreement" in Annex 2;

Modified by Agreed Minutes signed by the delegations of the Kingdom of the Netherlands and the People's Republic of Bangladesh at The Hague on 7 November 1989;

Modified by Memorandum of Understanding between the Government of the Netherlands and the Government of the People's Republic of Bangladesh done at the Hague on 6 April 1994;

- Agreement between **the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom's Republic of Bangladesh** for Air Services between and beyond their Respective Territories done at London on 5 July 1978, hereinafter referred to as "Bangladesh-UK Agreement" in Annex 2;

Modified by Memorandum of Understanding between the Aeronautical Authorities of the United Kingdom of Great Britain and Northern Ireland and People's Republic of Bangladesh signed in London on 7 February 2007;

Modified by Memorandum of Understanding between the Aeronautical Authorities of the People's Republic of Bangladesh and the United Kingdom of Great Britain and Northern Ireland signed in Dhaka on 7 January 2010.

(b) Air service agreements and other arrangements initialled or signed between the People's Republic of Bangladesh and Member States of the European Union which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.

- Agreement between **the Government of the People's Republic of Bangladesh and the Government of the Republic of Poland** on air services initialled at Dhaka on 9 June 1997 hereinafter referred to as "Bangladesh-Poland Agreement" in Annex 2;

To be read together with Memorandum of Understanding between the Government of the People's Republic of Bangladesh and the Government of the Republic of Poland done at Dhaka on 9 June 1997;

- Air Services Agreement between **the Government of the People's Republic of Bangladesh and the Government of the Republic of France** initialled at Dhaka on 2 July 1998 hereinafter referred to as "Bangladesh-France Agreement" in Annex 2;

To be read together with Memorandum of Understanding between the Government of the People's Republic of Bangladesh and the Government of the Republic of France done at Dhaka on 2 July 1998;

- Air Services Agreement between **the Government of the People's Republic of Bangladesh and the Government of the Slovak Republic** initialled at Dhaka on 17 January 2007 hereinafter referred to as "Bangladesh-Slovakia Agreement" in Annex 2;

To be read together with Memorandum of Understanding between the Government of the People's Republic of Bangladesh and the Government of the Slovak Republic done at Dhaka on 17 January 2007;

Modified by Memorandum of Understanding between the Aeronautical Authorities of the Government of the People's Republic of Bangladesh and the Government of the Slovak Republic signed in Slovakia on 30 August 2007.

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 Bangladesh-Belgium Agreement;
- Article 3 of the Bangladesh-France Agreement;
- Article 3 of the Bangladesh-Germany Agreement;
- Article 4 of the Bangladesh-Italy Agreement;
- Article 3 of the Bangladesh-The Netherlands Agreement;
- Article 3 of the Bangladesh-Poland Agreement;
- Article 3 of the Bangladesh-Slovakia Agreement;
- Article 4 of the Bangladesh-UK Agreement;

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

- Article 5 of the Bangladesh-Belgium Agreement;
- Article 4 of the Bangladesh-France Agreement;
- Article 4 of the Bangladesh-Germany Agreement;
- Article 5 of the Bangladesh-Italy Agreement;
- Article 4 of the Bangladesh-The Netherlands Agreement;
- Article 4 of the Bangladesh-Poland Agreement;
- Article 4 of the Bangladesh-Slovakia Agreement;
- Article 5 of the Bangladesh-UK Agreement;

(c) Safety:

- Article 7 of the Bangladesh-Belgium Agreement;
- Article 8 of the Bangladesh-France Agreement;
- Article 6 of the Bangladesh-Germany Agreement;
- Article 10 of the Bangladesh-Italy Agreement;
- Article 9 of the Bangladesh-Poland Agreement;
- Article 9 of the Bangladesh-Slovakia Agreement;

(d) Taxation of aviation fuel:

- Article 10 of the Bangladesh-Belgium Agreement;
- Article 10 of the Bangladesh-France Agreement;

- Article 8 of the Bangladesh-Germany Agreement;
- Article 6 of the Bangladesh-Italy Agreement;
- Article 5 of the Bangladesh-The Netherlands Agreement;
- Article 7 of the Bangladesh-Poland Agreement;
- Article 6 of the Bangladesh-Slovakia 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).