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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 295 final - ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion, on behalf of the Union of the Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services

Delegations will find attached document COM(2018) 295 final - ANNEX 1.

Encl.: COM(2018) 295 final - ANNEX 1



Brussels, 17.5.2018
COM(2018) 295 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the conclusion, on behalf of the Union of the Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services

DRAFT

AGREEMENT

**between the European Union and the Government of the People's Republic of China
on certain aspects of air services**

THE EUROPEAN UNION

of the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

of the other part

(hereinafter referred to as 'the Parties')

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

NOTING that a number of bilateral air services agreements have been concluded between several Member States of the European Union and the Government of the People's Republic of China containing similar provisions and that there is an obligation on Member States to take all appropriate steps to eliminate incompatibilities between such agreements and the EU Treaty,

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 of the European Union have the right to non-discriminatory access to provide air services 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 consistency between European Union law and provisions of bilateral air service agreements between Member States of the European Union and the Government of the People's Republic of China will provide a sound legal basis for air services between the European Union and China and preserve the continuity of such air services,

RECOGNISING that where a Member State of the European Union has designated an air carrier whose regulatory control with regard to safety oversight is exercised and maintained by another Member State of the European Union, the rights of the People's Republic of China under the safety provisions of the agreement between the Member State that has designated the carrier and the People's Republic of China shall apply equally in relation to that other Member State,

NOTING that it is not a purpose of the European Union in this Agreement, to increase the total volume of air traffic between the European Union and the People's Republic of China, to affect the balance between European Union air carriers and air carriers of the People's Republic of China, or to prevail over the interpretation of the provisions of existing bilateral air service agreements concerning traffic rights,

REAFFIRMING their intentions that the recognition of the right of establishment and the adoption of the principle of EU designation are not to be intended or construed to enable circumvention and would not prevent the refusal of traffic rights in such case of circumvention.

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; "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.
4. The granting of traffic rights will continue to be carried out through bilateral arrangements between the People's Republic of China and each individual Member State.

ARTICLE 2 Air carrier designation, authorisations and permissions, refusal, revocation, suspension or limitation of authorisations or permissions

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 China, 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 China 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 in compliance with the laws and regulations on establishment 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 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 3 and/or nationals of such other States.

3. The People's Republic of China 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 Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- iii. the air carrier does not have its principal place of business in the territory of the Member State from which it has received its operating licence; or
- iv. 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
- v. the air carrier is already authorised to operate under a bilateral agreement between the People's Republic of China and another Member State and that, by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, including the operation of a service which is marketed as, or otherwise constitutes a through service, it would be circumventing restrictions on the third or fourth or fifth freedom traffic rights imposed by that other agreement; or
- vi. the air carrier designated holds an Air Operators Certificate issued by a Member State with which the People's Republic of China does not have a bilateral air services agreement and that Member State has denied traffic rights to the People's Republic of China.

4. The rights and obligations under this Article shall not be exercised in a manner that would discriminate between European Union 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 China under the safety provisions of the agreement between the Member State that has designated the air carrier and the People's Republic of China 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

Compatibility with competition rules

1. Bilateral air service agreements concluded between Member States and the Peoples Republic of China shall be without prejudice to the competition rules of the Parties.

2. The provisions listed in Annex 2 (d) shall be deleted and shall cease to have effect.

ARTICLE 5

Annexes to the Agreement

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

ARTICLE 6

Entry into force

1. The Parties shall notify each other in writing through diplomatic channels about the completion of their respective internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the date of the later notification.

2. This Agreement shall apply to those agreements and arrangements listed in Annex 1 which are in force.

ARTICLE 7

Review, revision or amendment

1. The Parties shall monitor and regularly review the implementation of this Agreement. Such reviews shall in particular assess any unforeseen negative effects of the Agreement, as perceived by either Party.
2. If requested by either of them, the Parties shall hold consultations in order to discuss appropriate responses to the unforeseen effects mentioned in paragraph 1.
3. The Parties may, at any time, review, revise or amend this Agreement by mutual consent.

ARTICLE 8
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 Chinese languages.

FOR THE EUROPEAN UNION:

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA:

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements and other arrangements between the People's Republic of China 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:

- Agreement between **the Austrian Federal Government and the Government of the People's Republic of China** relating to Civil Air Transport signed at Beijing on 12 September 1985, hereinafter referred to as "China-Austria Agreement" in Annex 2;
- Agreement between **the Government of the Kingdom of Belgium and the Government of the People's Republic of China** relating to civil air transport signed at Beijing on 20 April 1975, hereinafter referred to as "China-Belgium Agreement" in Annex 2;
- Air Transport Agreement between **the Government of the Republic of Bulgaria and the Government of the People's Republic of China** signed at Beijing on 21 June 1993, hereinafter referred to as "China-Bulgaria Agreement" in Annex 2;
- Air Services Agreement between **the Government of the Republic of Croatia and the Government of the People's Republic of China** signed at Zagreb on 20 June 2009, hereinafter referred to as "China-Croatia Agreement" in Annex 2;
- Civil Air Transport Agreement between **the Government of the Republic of Cyprus and the Government of the People's Republic of China**, initialled on 5 April 2000, hereinafter referred to as "China-Cyprus Agreement" in Annex 2;
- Air Transport Agreement between **the Government of the Czechoslovak Socialist Republic and the Government of the People's Republic of China** signed at Beijing on 25 May 1988, in respect of which the Czech Republic declared that it considers itself to be bound by the provisions thereof, hereinafter referred to as "China-Czech Republic Agreement" in Annex 2;
- Air Services Agreement between **the Government of the Kingdom of Denmark and the Government of the People's Republic of China** initialled on 12 March 2010 hereinafter referred to as "China-Denmark Agreement" in Annex 2;
- Agreement between **the Government of the Republic of Estonia and the Government of the People's Republic of China** relating to civil air transport signed at Tallinn on 1 March 1999 hereinafter referred to as "China-Estonia Agreement" in Annex 2;
- Agreement between **the Government of the Republic of Finland and the Government of the People's Republic of China** relating to civil air transport signed at Beijing on 2 October 1975 hereinafter referred to as "China-Finland Agreement" in Annex 2;
- Agreement between **the Government of the French Republic and the Government of the People's Republic of China** "*relatif aux communications*

aériennes” signed at Paris on 1 June 1966, hereinafter referred to as “China-France Agreement” in Annex 2;

- Civil Air Transport Agreement between **the Government of the Federal Republic of Germany and the Government of the People’s Republic of China** signed at Beijing on 31 October 1975 as amended by the Protocol Amending the Civil Air Transport Agreement between the Government of the Federal Republic of Germany and the Government of the People’s Republic of China signed at Beijing on 11 December 1995 hereinafter referred to as “China-Germany Agreement” in Annex 2;
- Agreement between **the Government of the Kingdom of Greece and the Government of the People’s Republic of China** relating to Civil air transport signed at Beijing on 23 May 1973 hereinafter referred to as “China-Greece Agreement” in Annex 2.
- Air Transport Agreement between **the Government of the Republic of Hungary and the Government of the People’s Republic of China** signed at Budapest on 15 September 1993, hereinafter referred to as “China-Hungary Agreement” in Annex 2;
- Agreement between **the Government of Ireland and the Government of the People’s Republic of China** on civil air transport, signed at Beijing on 14 September 1998, hereinafter referred to “China-Ireland Agreement” in Annex 2;
- Agreement between **the Government of the Italian Republic and the Government of the Peoples Republic of China** relating to civil air transport signed at Beijing on 8 January 1973, hereinafter referred to “China-Italy Agreement” in Annex 2;
- Agreement between **the Government of the Republic of Latvia and the Government of the People’s Republic of China** relating to civil air transport signed at Riga on 4 March 1999 hereinafter referred to as “China-Latvia Agreement” in Annex 2.
- Agreement between **the Government of the Grand Duchy of Luxembourg and the Government of the People’s Republic of China** relating to civil air transport signed at Beijing on 18 November 2002 hereinafter referred to as “China-Luxembourg Agreement” in Annex 2;
- Agreement between the **Government of the Republic of Malta and the Government of the People’s Republic of China** relating to civil air transport signed at Beijing on the 1 September 1997, hereinafter referred to as “China-Malta Agreement” in Annex 2.
- Agreement between **the Government of the Kingdom of the Netherlands and the Government of the People’s Republic of China** relating to civil air transport, signed at Beijing on 23 May 1996; hereinafter referred to as “China-The Netherlands Agreement” in Annex 2;
- Agreement between **the Government of the Polish People’s Republic and the Government of the People’s Republic of China** relating to civil air transport signed at Beijing on 20 March 1986 hereinafter referred to as “China-Poland Agreement” in Annex 2;

- Air Transport Agreement between **the Portuguese Republic and the People's Republic of China** initialled on 26 March 1999, hereinafter referred to as "China-Portugal Agreement" in Annex 2;
- Agreement between **the Government of the Socialist Republic of Romania and the Government of the People's Republic of China** relating to civil air transport signed at Bucharest on 6 April 1972 hereinafter referred to as "China-Romania Agreement" in Annex 2;
- Air Services Agreement between **the Government of the Slovak Republic and the Government of the People's Republic of China** initialled on August 12, 2010 hereinafter referred to as "China-Slovakia Agreement" in Annex 2;
- Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the People's Republic of China Relating to Civil Air Transport signed at Belgrade on 14 April 1972 and remains effective between China and Slovenia, hereinafter referred to as "China-Slovenia Agreement" in Annex 2;
- Agreement between **the Government of the Kingdom of Spain and the Government of the People's Republic of China** signed at Beijing on 19 June 1978 hereinafter referred to as "China-Spain Agreement" in Annex 2;
- Air Services Agreement between **the Government of the Kingdom of Sweden and the Government of the People's Republic of China** initialled on 12 March 2010 hereinafter referred to as "China-Sweden Agreement" in Annex 2;
- Agreement between **the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China** concerning air services initialled on 14 April 2011 hereinafter referred to as "China-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 China-Austria Agreement;
- Article 3 of the China-Belgium Agreement;
- Article 3 of the China-Bulgaria Agreement
- Article 3 of the China-Croatia Agreement;
- Article 3 of the China-Cyprus Agreement;
- Article 3 of the China-Czech Republic Agreement;
- Article 3 of the China-Denmark Agreement;
- Article 3 of the China-Estonia Agreement;
- Article 2 of the China-Finland Agreement;
- Article 2 of the China-France Agreement;
- Article 2, paragraph 2, of the China-Germany Agreement;
- Article 3 of the China-Greece Agreement;
- Article 3 of the China-Hungary Agreement;
- Article 3 of the China-Ireland Agreement;
- Article III of the China-Italy Agreement;
- Article 3 of the China-Latvia Agreement;
- Article 3 of the China-Luxembourg Agreement;
- Article 3 of the China-Malta Agreement;
- Article 3 of the China-The Netherlands Agreement;
- Article 3 of the China-Poland Agreement;
- Article 3 of the China-Portugal Agreement;
- Article 2 of the China-Romania Agreement;
- Article 3 of the China-Slovakia Agreement;
- Article 2 of the China-Slovenia Agreement;
- Article 2 of the China-Spain Agreement;
- Article 3 of the China-Sweden Agreement;
- Article 4 of the China-UK Agreement.

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

- Article 4 of the China-Austria Agreement;
- Article 4 of the China-Belgium Agreement;
- Article 4 of the China-Bulgaria Agreement;
- Article 4 of the China-Croatia Agreement;
- Article 4 of the China-Cyprus Agreement;
- Article 4 of the China-Czech Republic Agreement;
- Article 4 of the China-Denmark Agreement;
- Article 4 of the China-Estonia Agreement;
- Article 3 of the China-Finland Agreement.
- Article 15 of the China-France Agreement;
- Article 3, paragraph 1a) of the China-Germany Agreement;
- Article 4 of the China-Greece Agreement;
- Article 4 of the China-Hungary Agreement;
- Article 4 of the China-Ireland Agreement;
- Article III of the China-Italy Agreement;
- Article 4 of the China-Latvia Agreement;
- Article 4 of the China-Luxembourg Agreement;
- Article 4 of the China-Malta Agreement;
- Article 4 of the China-The Netherlands Agreement;
- Article 4 of the China-Poland Agreement;
- Article 4 of the China-Portugal Agreement;
- Article 2 of the China-Romania Agreement;
- Article 4 of the China-Slovakia Agreement;
- Article 3 of the China-Slovenia Agreement;
- Article 3 of the China-Spain Agreement;
- Article 4 of the China-Sweden Agreement;
- Article 5 of the China-UK Agreement.

(c) Safety:

- Article 15 of the China-Croatia Agreement;
- Article 13 of the China-Denmark Agreement;
- Article 17 of the China-Hungary Agreement;
- Article XIbis of the China-Italy Agreement;

- Article 6 of the China-Luxembourg Agreement;
- Article 15 of the China-Portugal Agreement;
- Article 8 of the China-Slovakia Agreement;
- Annex 3 of the China-Spain Memorandum of Understanding done in Beijing on 26 November 2004;
- Article 13 of the China-Sweden Agreement;
- Article 10 of the China-UK Agreement.

(d) Compatibility with competition rules:

- Article 12 (2) and Article 14 (2-4) of the China-Bulgaria Agreement;
- Article 9 (2-4) of the China-Cyprus Agreement;
- Article 10 (2) and Article 12 (2-4) of the China-Czech Republic Agreement;
- Article 8 (2-4) of the China-Estonia Agreement;
- Article 7 (3) and Article 8 (2-6) of the China-Finland Agreement;
- For the China-France Agreement;
 - o last sentence of paragraph 1, and paragraphs 2 and 3 of Article 5,
 - o first two sentences of paragraph 1, first sentence of paragraph 2 and sub-paragraph (B) of paragraph 2, in Article 3,
 - o the words "in the currency agreed on between the designated airlines of both Contracting Parties", in Article 12, as modified by the exchange of diplomatic notes of 15 and 22 September 1966,
 - o Article 16, as modified by the exchange of diplomatic notes of 27 July and 7 September 1973,
 - o 2nd paragraph of sub-paragraph 2) of paragraph II of the exchange of diplomatic notes of 19 January and 11 March 1991 (starting by "Moreover, the operating conditions of those services...");
- For the China-Germany Agreement;
 - o Article 7 (3) first sentence and the words "so agreed" in the second sentence,
 - o Article 8 (2) first sentence and the word "Such" in the second sentence,
 - o the words "so agreed" in Article 8 (3),
 - o the words "If a tariff cannot be agreed in accordance with paragraph 2 of this Article, or" and the words "agreed in accordance with the provisions of paragraph 2" in Article 8 (4);
- Article 10 (2) and Article 11 (2-5) of the China-Greece Agreement;
- Article 10 (2-4) of the China-Hungary Agreement;
- Article 8 (2-4) of the China-Latvia Agreement
- Article 11 (2-4) of the China-Luxembourg Agreement;
- Article 12 (2.a-b) of the China-Malta Agreement;

- Article 8 (2-4) of the China-The Netherlands Agreement;
- Article 10 (2) and Article 12 (2-4) of the China-Poland Agreement;
- Article 17 (2-5) of the China-Portugal Agreement;
- Article 4 (2-3) of the China-Slovenia Agreement;
- Article 7 (3) and Article 8 (2-6) of the China-Spain Agreement.

ANNEX 3

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).