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ANNEX
Accompanying document

Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Peru on certain aspects of air services

ANNEX

DRAFT

AGREEMENT

between the European Community and the Republic of Peru on certain aspects of air services

THE EUROPEAN UNION

of the one part, and

THE REPUBLIC OF PERU

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 Community and the Republic of Peru containing provisions contrary to Community law.

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 European Union law Community 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 by the Member States of the European Union,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Union and the Republic of Peru, 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 the Republic of Peru and to preserve the continuity of such air services,

NOTING that under European Union law 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 Republic of Peru 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 these negotiations, to increase the total volume of air traffic between the European Union and the Republic of Peru, to affect the balance between EU air carriers and air carriers of the Republic of Peru, 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.

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, authorisation and revocation

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 Republic of Peru, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively. The provisions

in paragraphs 4 and 5 of this Article shall supersede the corresponding provisions in the articles listed in Annex II (a) and (b) respectively, in relation to the designation of an air carrier by the Republic of Peru, its authorisations and permissions granted by the Member State, 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 Republic of Peru 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 Treaty on European Union and the Treaty on the Functioning of the European Union, and has a valid operating licence from a Member State in accordance with European Union law;

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 is owned, directly or through majority ownership, and effectively controlled by Member States and/or nationals of Member States, or by other states listed in Annex 3 and/or nationals of such other states.

3. The Republic of Peru 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 Treaty on European Union and the Treaty on the Functioning of the European Union or does not have a valid Operating Licence from a Member State in accordance with European Union law; 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 is not owned, directly or through majority ownership, and effectively controlled by Member States and/or nationals of Member States, or by other states listed in Annex 3 and/or nationals of such other states.

In exercising its right under this paragraph, the Republic of Peru shall not discriminate between Community air carriers on the grounds of nationality.

4. On receipt of a designation by a Member State, the Republic of Peru shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

i. the air carrier is established in the territory of the Republic of Peru;

ii. the Republic of Peru exercises and maintains effective regulatory control of the air carrier and is responsible for issuing its Air Operator’s Certificate; and

iii. the air carrier is established according to the Peruvian legislation with regard to ownership and control.

5. A Member State may refuse, revoke, suspend or limit the authorisation or permissions of an air carrier designated by the Republic of Peru where:

i. the air carrier is not established in the territory of the Republic of Peru; or

ii. the Republic of Peru does not exercise or maintain effective regulatory control of the air carrier or is not responsible for issuing its Air Operator's Certificate; or

iii. the air carrier does not comply with the requirements set by the Peruvian legislation with regard to ownership and control.

Article 3
Safety

1. The provisions in paragraph 2 of this Article shall complement 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 Republic of Peru under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of Peru 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 Member States 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 Republic of Peru 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.

3. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent the Republic of Peru 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 a Member State that operates between two points in the territory of the Republic of Peru.

4. Nothing in the above provisions shall allow cabotage.

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 I 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 in 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.

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 and Swedish languages. In case of divergence the Spanish text shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY:……FOR THE REPUBLIC OF PERU:

Annex 1

List of agreements referred to in Article 1

Air service agreements and other arrangements between the Republic of Peru 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 Services Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Peru, signed at Lima on 29 December 1967, hereinafter referred to as 'Peru–Belgium Agreement';

- Bilateral Air Transport Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Peru, signed at Lima on 14 July 1960, hereinafter referred to as 'Peru–Denmark Agreement';

- Transport Agreement between the French Republic and the Republic of Peru, signed at Lima on 23 April 1959, hereinafter referred to as 'Peru–France Agreement';

- Agreement between the Federal Republic of Germany and the Republic of Peru on air transport, signed at Lima on 30 April 1962, hereinafter referred to as 'Peru–Germany Agreement';

- Bilateral Air Transport Agreement between the Government of the Italian Republic and the Government of the Republic of Peru, signed at Lima on 17 March 1964, hereinafter referred to as 'Peru –Italy Agreement';

- Draft Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Peru related to scheduled air services, initialled as Annex B to the Memorandum of Understanding signed at Lima on 27 June 2001, hereinafter referred to as 'Draft Peru–Netherlands Agreement';

- Agreement between the Government of the Kingdom of Spain and the Government of the Republic of Peru related to air services, signed at Lima on 31 March 1954, hereinafter referred to as 'Peru-Spain Agreement';

- Draft Air Transport Agreement between the Kingdom of Spain and the Republic of Peru, initialled as Annex II to the Agreed Record signed in Madrid on 6 April 2005, hereinafter referred to as '2005 Draft Peru-Spain Agreement';

- Bilateral Air Transport Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Peru, signed at Lima on 14 July 1960, hereinafter referred to as 'Peru – Sweden Agreement';

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic Peru for air services between and beyond their respective territories, signed at Lima on 22 December 1947, hereinafter referred to as 'Peru–UK Agreement'.

– Draft Air Transport Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Peru, initialled as Annex B to the Memorandum of Understanding between the aeronautical authorities of the Republic of Peru and the United Kingdom of Great Britain and Northern Ireland, signed at Lima on 26 May 2004, hereinafter referred to as '2004 Draft Peru – UK Agreement'.

Annex 2

List of articles in the agreements listed in Annex 1 and referred to in Articles 2 to 5 of this Agreement

(a) Designation:

– Article 3 of the Peru-Belgium Agreement;

– Article 3 of the Peru-Germany Agreement;

– Article 3 of the Peru-Italy Agreement;

– Article 3 of the Draft Peru-Netherlands Agreement;

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

– Article 5 of the Peru-Belgium Agreement;

– Article 7 of the Peru-Denmark Agreement;

– Article 5 of the Peru-France Agreement;

– Article 4 of the Peru-Germany Agreement;

– Article 4 of the Peru-Italy Agreement;

– Article 4 of the Draft Peru-Netherlands Agreement;

– Article 11 of the Peru-Spain Agreement;

– Article 7 of the Peru-Sweden Agreement;

– Article 4 of the Peru-UK Agreement;

(c) Regulatory Control:

– Article 15 of the Draft Peru-Netherlands Agreement;

(d) Taxation of aviation fuel:

– Article 6 of the Peru-Belgium Agreement;

– Article 4 of the Peru-Denmark Agreement;

– Article 2 of the Peru-France Agreement;

– Article 6 of the Peru-Germany Agreement;

– Article 5 of the Peru-Italy Agreement;

– Article 10 of the Draft Peru-Netherlands Agreement;

– Article 5 of the Peru-Spain Agreement;

– Article 5 of the 2005 Draft Peru-Spain Agreement;

– Article 4 of the Peru-Sweden Agreement;

– Article 8 of the 2004 Draft Peru-UK Agreement;

Annex 3

List of other States referred to in Article 2

(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);

The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).