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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 726 final
Subject:	ANNEX to the proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and Japan on certain aspects of air services

Delegations will find attached document COM(2022) 726 final.

Encl.: COM(2022) 726 final

EUROPEAN
COMMISSION

Brussels, 15.12.2022
COM(2022) 726 final

ANNEX

ANNEX

to the

proposal for a Council Decision

on the signing, on behalf of the European Union, of the Agreement between the European Union and Japan on certain aspects of air services

AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN ON CERTAIN PROVISIONS OF AGREEMENTS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND JAPAN FOR AIR SERVICES

THE EUROPEAN UNION and JAPAN,

NOTING that, under the law of the European Union, air carriers, which have a valid operating licence issued by a Member State of the European Union and are established in a Member State of the European Union, have the right of non-discriminatory access to routes between 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 such third countries and their nationals to acquire ownership and control of air carriers licensed in accordance with the law of the European Union;

RECOGNISING that consistency between the law of the European Union and certain provisions of agreements between Member States of the European Union and Japan for air services will provide a sound legal basis for air services between the European Union and Japan, preserve the continuity of such air services, and contribute to the further development of the relationship between the European Union and Japan in the field of air transport; and

NOTING that it is not a purpose of this Agreement to affect the interpretation of the provisions of existing agreements between Member States of the European Union and Japan for air services concerning traffic rights,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Agreement:

(a) "Contracting Party" means a contracting party to this Agreement;

(b) "Member State" means a Member State of the European Union; and

(c) "party" means a contracting party to the relevant agreement between a Member State and Japan for air services listed in Annex I.

ARTICLE 2

1. The provisions in paragraph 2 of this Article shall apply in place of the corresponding provisions listed in Annex II-A.

2.(a) Each party reserves the right to withhold or revoke the privileges, the rights or the authorisation specified in the corresponding provisions listed in Annex II-B in respect of an airline designated by the other party, or to impose such conditions as it may deem necessary on the exercise by the airline of the privileges or the rights, or on the authorisation, in any case where one of the following conditions is satisfied:

(i) in the case of an airline designated by the party which is a Member State:

(A) the airline is not established in the territory of that party or does not have a valid operating licence issued by a Member State in accordance with the law of the European Union;

(B) effective regulatory control of the airline 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;

(C) majority ownership and effective control of the airline are not vested in Member States or States listed in Annex III, or in nationals of such States;

(D) the airline does not have its principal place of business in the territory of the Member State from which it has received its operating licence;

(E) the airline has been given operating permission under an agreement between another Member State and Japan for air services, and Japan can demonstrate that it would be circumventing restrictions on routes and capacity under that agreement by operating agreed services under the agreement between that party and Japan on a route which includes a point in that other Member State; or

(F) the airline holds an air operator's certificate issued by a Member State and there is no agreement between that Member State and Japan for air services and that Member State has not consented to the operation of international air services by an airline of Japan between that Member State and Japan; and

(ii) in the case of an airline designated by Japan, substantial ownership and effective control of the airline are not vested in Japan or in nationals of Japan.

(b) In exercising its right under this paragraph, and without prejudice to its rights under subparagraphs (a)(i)(E) and (F) of this paragraph, Japan shall not discriminate between airlines designated by the party which is a Member State, of which majority ownership and effective control are vested in Member States or States listed in Annex III, or in nationals of such States, on the basis of their ownership and control.

ARTICLE 3

1. References in each of the agreements listed in Annex I to airlines of the Member State which is a party to that agreement shall be understood as referring to airlines designated by that Member State.

2. In addition to paragraph 1 of this Article, references in each of the provisions listed in Annex IV of the relevant agreement listed in Annex I to airlines of the Member State which is a party to that agreement shall be understood as referring also to airlines of that Member State which are not designated by that Member State.

ARTICLE 4

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

ARTICLE 5

1. Either Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending this Agreement. Such consultations shall begin within a period of sixty days from the date of receipt of such request.

2. This Agreement may be amended by agreement between the Contracting Parties and amendments shall enter into force in the manner as described in Article 6 of this Agreement.

3. Notwithstanding paragraph 2 of this Article, amendments related only to the Annexes may be made by means of an exchange of diplomatic notes between the European Union and the Government of Japan, in conformity with their applicable domestic procedures.

ARTICLE 6

1. Each Contracting Party shall send through diplomatic channels to the other Contracting Party the notification confirming that its internal procedures necessary for the entry into force of this Agreement have been completed.

2. This Agreement shall enter into force on the first day of the next month following the date of receipt of the latter notification.

ARTICLE 7

1. In the event that an agreement listed in Annex I is terminated, the provisions of this Agreement shall cease to apply to that agreement as from the date of termination. References in this Agreement to the terminated agreement shall be deemed null and void as from that date.

2. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate on the date of the termination of the last agreement.

ARTICLE 8

1. This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Japanese languages, all texts being equally authentic.

2. In case of any divergence of interpretation, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

Done at [….] on [….] day of […] in the year two thousand and twenty-two.

For the European Union

For Japan

ANNEX I

List of agreements referred to in Articles 1, 3 and 7 of this Agreement

Agreements between Member States and Japan for air services, as may have been amended, which are in force at the date of the signature of this Agreement, are as follows:

- Agreement between the Republic of Austria and Japan for Air Services, done at Vienna on 7 March 1989 ("Austria-Japan Agreement");

- Agreement between Belgium and Japan for Air Services, done at Tokyo on 20 June 1959 ("Belgium-Japan Agreement");

- Agreement between Denmark and Japan for Air Services, done at Copenhagen on 26 February 1953 ("Denmark-Japan Agreement");

- Agreement between the Republic of Finland and Japan for Air Services, done at Helsinki on 23 December 1980 ("Finland-Japan Agreement");

- Agreement between France and Japan for Air Services, done at Paris on 17 January 1956 ("France-Japan Agreement");

- Agreement between the Federal Republic of Germany and Japan for Air Services, done at Bonn on 18 January 1961 ("Germany-Japan Agreement");

- Agreement between the Kingdom of Greece and Japan for Air Services, done at Athens on 12 January 1973 ("Greece-Japan Agreement");

- Agreement between the Government of the Republic of Hungary and the Government of Japan for Air Services, done at Budapest on 23 February 1994 ("Hungary-Japan Agreement");

- Agreement between Italy and Japan for Air Services, done at Tokyo on 31 January 1962 ("Italy-Japan Agreement");

- Agreement between the Kingdom of the Netherlands and Japan for Air Services, done at The Hague on 17 February 1953 ("Netherlands-Japan Agreement");

- Agreement between the Government of the Republic of Poland and the Government of Japan for Air Services, done at Tokyo on 7 December 1994 ("Poland-Japan Agreement");

- Agreement between Spain and Japan for Air Services, done at Madrid on 18 March 1980 ("Spain-Japan Agreement"); and

- Agreement between Sweden and Japan for Air Services, done at Stockholm on 20 February 1953 ("Sweden-Japan Agreement").

ANNEX II-A

List of provisions referred to in Article 2(1) of this Agreement

– Article 7(1) of the Austria-Japan Agreement;

– Article 6(1) of the Belgium-Japan Agreement;

– Article 7(1) of the Denmark-Japan Agreement;

– Article 7(1) of the Finland-Japan Agreement;

– Article 6(1) of the France-Japan Agreement;

– Article 3(4) and second sentence of Article 4 of the Germany-Japan Agreement;

– Article 7(1) of the Greece-Japan Agreement;

– Article 7(1) of the Hungary-Japan Agreement;

– Article 6(1) of the Italy-Japan Agreement;

– Article 7(1) of the Netherlands-Japan Agreement;

– Article 7(1) of the Poland-Japan Agreement;

– Article 9(1) of the Spain-Japan Agreement;

– Article 7(1) of the Sweden-Japan Agreement.

ANNEX II-B

List of provisions referred to in Article 2(2) of this Agreement

– Article 4(1) and (2) of the Austria-Japan Agreement;

– Article 4(1) of the Belgium-Japan Agreement;

– Article 5(1) of the Denmark-Japan Agreement;

– Article 4(1) and (2) of the Finland-Japan Agreement;

– Article 4(1) of the France-Japan Agreement;

– Article 3(2) of the Germany-Japan Agreement;

– Article 4(1) of the Greece-Japan Agreement;

– Article 4(1) and (2) of the Hungary-Japan Agreement;

– Article 4(1) of the Italy-Japan Agreement;

– Article 5(1) of the Netherlands-Japan Agreement;

– Article 4(1) and (2) of the Poland-Japan Agreement;

– Article 4(1) of the Spain-Japan Agreement;

– Article 5(1) of the Sweden-Japan Agreement.

ANNEX III

List of States referred to in Article 2(2) of this Agreement

– Iceland (under the Agreement on the European Economic Area);

– the Principality of Liechtenstein (under the Agreement on the European Economic Area);

– 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).

ANNEX IV

List of provisions referred to in Article 3(2) of this Agreement

– Article 4(1), Article 5, and Article 13(3) and (4) of the Austria-Japan Agreement;

– Article 5(1) and (2) of the Belgium-Japan Agreement;

– Article 6(1) and (2), and Article 8 of the Denmark-Japan Agreement;

– Article 4(1) and Article 5 of the Finland-Japan Agreement;

– Article 5(1) and (2), and Article 7 of the France-Japan Agreement;

– Articles 5 and 6 of the Germany-Japan Agreement;

– Article 4(1), Article 5, and Article 13(3) and (4) of the Hungary-Japan Agreement;

– Article 6(1) and (2), and Article 8 of the Netherlands-Japan Agreement;

– Article 4(1), Article 5, and Article 13(3) and (4) of the Poland-Japan Agreement;

– Article 6(1) and (2), and Article 8 of the Sweden-Japan Agreement.