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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 February 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 91 final - ANNEX
Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the Union of the Agreement between the European Union and the Republic of Korea on certain aspects of air services

Delegations will find attached document COM(2019) 91 final - ANNEX.

Encl.: COM(2019) 91 final - ANNEX

EUROPEAN
COMMISSION

Brussels, 21.2.2019
COM(2019) 91 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

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

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

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF KOREA,

of the other part,

hereinafter referred to as "the Contracting Parties",

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

NOTING that a number of bilateral air services agreements have been concluded between several Member States of the European Union and the Republic of Korea 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 Treaties,

NOTING that the European Union has exclusive competence with respect to a number of aspects that may be included in bilateral air services agreements between the 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 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 consistency between the law of the European Union and provisions of the bilateral air service agreements between Member States of the European Union and the Republic of

Korea will provide a sound legal basis for air services between the European Union and the Republic of Korea and preserve the continuity of such air services,

NOTING that provisions of the bilateral air services agreements between Member States of the European Union and the Republic of Korea, which are not inconsistent with the law of the European Union, do not need to be amended or replaced,

NOTING that such amendments would confirm the excellent relationship between the European Union and the Republic of Korea in the field of air transport, and

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 Republic of Korea, to affect the balance between European Union air carriers and air carriers of the Republic of Korea, or to prevail over the interpretation of 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; "EU Treaties" shall mean the Treaty on the European Union and the Treaty on the Functioning of the European Union; "Contracting Party" shall mean a contracting party to this Agreement; "party" shall mean the contracting party to the relevant bilateral air services agreement; "air carrier" shall also mean airline.

2. References in each of the agreements listed in Annex I 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 I 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 3 and 4 of this Article shall prevail over the corresponding provisions in the Articles listed in Annex II(a) and (b) respectively, in relation to the designation of air carriers by the Member State concerned, its authorisations and permissions granted by the Republic of Korea, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. The provisions in paragraphs 3 and 4 of this Article shall prevail over the corresponding provisions in the Articles listed in Annex II(a) and (b) respectively, in relation to the designation of air carriers by the Republic of Korea, its authorisations and permissions granted by the Member State concerned, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

3. On receipt of such a designation, and of applications from the designated air carrier(s), in the form and manner prescribed for operating authorisations and technical permissions, each party shall, subject to paragraphs 4 and 5 of this Article, grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(a) in the case of an air carrier designated by a Member State:

(i) the air carrier is established, under the EU Treaties, in the territory of the designating Member State and has a valid operating licence from a Member State 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 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 is effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex III and/or nationals of such other States;

(b) in the case of an air carrier designated by the Republic of Korea:

(i) the Republic of Korea has and maintains effective regulatory control of the air carrier; and

(ii) substantial ownership and effective control of that air carrier are vested in the Republic of Korea, nationals of the Republic of Korea, or both, and the air carrier has a valid operating licence issued by the Republic of Korea;

(c) the designated airline fulfils the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the party considering the application or applications.

4. Either party may refuse, revoke, suspend or limit the operating authorisations or technical permissions of an air carrier designated by the other party where:

(a) in the case of an air carrier designated by a Member State:

(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 from a Member State 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 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 and is not effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex III and/or nationals of such other States; or

(v) the air carrier is already authorised to operate under a bilateral agreement between the Republic of Korea and another Member State, and the Republic of Korea can demonstrate that, 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 traffic rights imposed by that other agreement; or

(vi) the air carrier holds an air operator's certificate issued by a Member State and there is no bilateral air services agreement between the Republic of Korea and that Member State and that Member State has denied traffic rights to the air carrier designated by the Republic of Korea;

(b) in the case of an air carrier designated by the Republic of Korea:

(i) the Republic of Korea is not maintaining effective regulatory control of the air carrier; or

(ii) substantial ownership and effective control of that air carrier are not vested in the Republic of Korea, nationals of the Republic of Korea, or both, or the air carrier does not have a valid operating licence issued by the Republic of Korea;

(c) the designated airline fails to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the party granting those rights.

5. In exercising its right under paragraph 4, and without prejudice to its rights under paragraph 4(a)(v) and (vi) of this Article, the Republic of Korea shall not discriminate between air carriers of Member States on the grounds of nationality.

ARTICLE 3

Rights with regard to regulatory control

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(c).

2. Where a Member State (the "first Member State") has designated an air carrier whose regulatory control is exercised and maintained by a second Member State, the rights of the Republic of Korea under the safety provisions of the agreement between the first Member State that has designated the air carrier and the Republic of Korea shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that second 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 II(d).

2. Notwithstanding any other provision to the contrary, nothing in each of the provisions listed in Annex II(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 Republic of Korea 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 I shall:

(a) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition;

(b) reinforce the effects of any such agreement, decision or concerted practice; or

(c) 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 hereof.

ARTICLE 7

Revision or amendment

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

ARTICLE 8

Entry into force

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

2. Agreements and other arrangements between Member States and the Republic of Korea which, at the date of the signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(b). This Agreement shall apply to all such agreements and arrangements upon their entry into force.

ARTICLE 9

Termination

1. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to that agreement shall terminate at the same time.

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 of such agreement.

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 Korean languages, all texts being equally authentic.

FOR THE EUROPEAN UNION FOR THE REPUBLIC OF KOREA

ANNEX I

List of agreements referred to in Article 1 of this Agreement

(a) Air services agreements between the Republic of Korea and Member States of the European Union as they may have been amended, modified or supplemented which, at the date of the signature of this Agreement, have been concluded, signed and/or are being applied provisionally are as follows:

- Agreement between the Austrian Federal Government and the Government of the Republic of Korea for Air Services between and concerning their Respective Territories done at Vienna on 15 May 1979, hereinafter referred to as " the Republic of Korea-Austria Agreement" in Annex II,

- Agreement between the Government of the Kingdom of Belgium and the Government of the Republic of Korea concerning Air Services done at Brussels on 20 October 1975, hereinafter referred to as "the Republic of Korea-Belgium Agreement" in Annex II,

- Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Korea concerning Air Services between and beyond their Respective Territories done at Sofia on 19 August 1994, hereinafter referred to as "the Republic of Korea-Bulgaria Agreement" in Annex II,

- Agreement between the Government of the Republic of Croatia and the Government of the Republic of Korea for Air Services done at Zagreb on 30 December 2015, hereinafter referred to as "the Republic of Korea-Croatia Agreement" in Annex II,

- Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the Republic of Korea for Air Services, signed at Seoul on

26 October 1990, amended by Agreement between the Government of the Czech Republic and the Government of the Republic of Korea amending the Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the Republic of Korea for Air Services, signed at Seoul on 26 October 1990, concluded by an exchange of diplomatic notes on 3 December 2004 and 14 February 2005, hereinafter referred to as "the Republic of Korea-Czech Republic Agreement" in Annex II,

– Agreement between the Government of the Republic of Korea and the Government of the Kingdom of Denmark for Scheduled Air Services between and beyond their respective territories initialled at Seoul on 6 September 1995, hereinafter referred to as "the Republic of Korea-Denmark Agreement" in Annex II,

– Air Services Agreement between the Government of the Republic of Finland and the Government of the Republic of Korea, done at Seoul on 12 November 1996, hereinafter referred to as "the Republic of Korea-Finland Agreement" in Annex II,

– Agreement between the Government of the French Republic and the Government of the Republic of Korea on Air Services done at Seoul on 7 June 1974, hereinafter referred to as "the Republic of Korea-France Agreement" in Annex II,

– Air Transport Agreement between the Federal Republic of Germany and the Republic of Korea, done at Bonn on 7 March 1995, hereinafter referred to as "the Republic of Korea-Germany Agreement" in Annex II,

– Agreement between the Government of the Hellenic Republic and the Government of the Republic of Korea for Air Services between and beyond their Respective Territories done at Athens on 25 January 1995, hereinafter referred to as "the Republic of Korea-Greece Agreement" in Annex II,

– Air Services Agreement between the Government of Hungary and the Government of the Republic of Korea signed in Seoul, 28 November 2014, hereinafter referred to as "the Republic of Korea-Hungary Agreement" in Annex II,

– Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Korea for Air Services between and beyond their Respective Territories done at Luxembourg on 27 September 2000, hereinafter referred to as "the Republic of Korea-Luxembourg Agreement" in Annex II,

– Agreement between the Government of the Republic of Korea and the Government of Malta for Air Services between and beyond their Respective Territories, done at Valletta on 25 March 1997, hereinafter referred to as "the Republic of Korea-Malta Agreement" in Annex II,

– Air Transport Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Korea, done at The Hague on 24 June 1970, hereinafter referred to as "the Republic of Korea-Netherlands Agreement" in Annex II,

– Agreement between the Government of the Republic of Poland and the Government of the Republic of Korea for Air Services, done at Seoul on 14 October 1991, hereinafter referred to as "the Republic of Korea-Poland Agreement" in Annex II,

– Agreement between the Government of Romania and the Government of the Republic of Korea relating to Civil Air Transport between and beyond their Respective Territories, done at Seoul on 10 March 1994, hereinafter referred to as "the Republic of Korea-Romania Agreement" in Annex II,

– Air Transport Agreement between the Kingdom of Spain and the Republic of Korea, done at Seoul on 21 June 1989, hereinafter referred to as "the Republic of Korea-Spain Agreement" in Annex II,

– Agreement between the Government of the Republic of Korea and the Government of the Kingdom of Sweden for Scheduled Air Services between and beyond their Respective Territories initialled at Seoul on 6 September 1995, hereinafter referred to as "the Republic of Korea-Sweden Agreement" in Annex II,

– Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea for Air Services between and beyond their Respective Territories done at Seoul on 5 March 1984, hereinafter referred to as "the Republic of Korea-United Kingdom Agreement" in Annex II;

(b) Air services agreements and other arrangements initialled or signed between the Republic of Korea and Member States of the European Union as they may have been amended, modified or supplemented which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally:

– Air Services Agreement between the Government of the Italian Republic and the Government of the Republic of Korea, initialled at Rome on 24 March 2016, hereinafter referred to as "the Republic of Korea-Italy Agreement" in Annex II,

– Air Services Agreement between the Government of the Republic of Latvia and the Government of the Republic of Korea, initialled at Riga on 6 April 2018, hereinafter referred to as "the Republic of Korea-Latvia Agreement" in Annex II,

– Agreement on Air Services between the Portuguese Republic and the Republic of Korea, signed in Seoul on 25 May 2018, hereinafter referred to as "the Republic of Korea-Portugal Agreement" in Annex II.

ANNEX II

List of Articles in the Agreements listed in Annex I
and referred to in Articles 2 to 4 of this Agreement

(a) Designation:

– Article 3 (1), (2) and (3) of the Republic of Korea-Austria Agreement,

– Article 3 (1), (2) and (3) of the Republic of Korea-Belgium Agreement,

– Article 3 of the Republic of Korea-Bulgaria Agreement,

– Article 3 of the Republic of Korea-Croatia Agreement,

– Article 3 of the Republic of Korea-Czech Republic Agreement,

– Article 3 of the Republic of Korea-Denmark Agreement,

– Article 3 of the Republic of Korea-Finland Agreement,

– Article 3 of the Republic of Korea-France Agreement,

– Article 3 (2) and (3) of the Republic of Korea-Germany Agreement,

– Article 3 of the Republic of Korea-Greece Agreement,

– Article 3 of the Republic of Korea-Hungary Agreement,

– Article 7 of the Republic of Korea-Italy Agreement,

– Article 4 of the Republic of Korea-Latvia Agreement,

– Article 3 of the Republic of Korea-Luxembourg Agreement,

– Article 3 of the Republic of Korea-Malta Agreement,

– Article 3 (1), (2) and (3) of the Republic of Korea-Netherlands Agreement,

– Article 3 of the Republic of Korea-Poland Agreement,

– Article 3 of the Republic of Korea-Portugal Agreement,

– Article 3 of the Republic of Korea-Romania Agreement,

– Article 3 of the Republic of Korea-Spain Agreement,

– Article 3 of the Republic of Korea-Sweden Agreement,

– Article 4 of the Republic of Korea-United Kingdom Agreement;

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

– Article 3 (4) and (5) of the Republic of Korea-Austria Agreement,

– Article 3 (4) and (5) of the Republic of Korea-Belgium Agreement,

– Article 4 of the Republic of Korea-Bulgaria Agreement,

– Article 4 of the Republic of Korea-Croatia Agreement,

– Article 4 of the Republic of Korea-Czech Republic Agreement,

– Article 4 of the Republic of Korea-Denmark Agreement,

– Article 4 of the Republic of Korea-Finland Agreement,

– Article 3-bis of the Republic of Korea-France Agreement,

– Article 3 (4) and (5) of the Republic of Korea-Germany Agreement,

– Article 4 of the Republic of Korea-Greece Agreement,

– Article 4 of the Republic of Korea-Hungary Agreement,

– Article 8 of the Republic of Korea-Italy Agreement,

– Article 5 of the Republic of Korea-Latvia Agreement,

– Article 4 of the Republic of Korea-Luxembourg Agreement,

– Article 4 of the Republic of Korea-Malta Agreement,

– Article 3 (4-5) of the Republic of Korea-Netherlands Agreement,

– Article 4 of the Republic of Korea-Poland Agreement,

– Article 4 of the Republic of Korea-Portugal Agreement,

– Article 4 of the Republic of Korea-Romania Agreement,

– Article 4 of the Republic of Korea-Spain Agreement,

– Article 4 of the Republic of Korea-Sweden Agreement,

– Article 5 of the Republic of Korea-United Kingdom Agreement;

(c) Regulatory control:

– Article 7 of the Republic of Korea-Austria Agreement,

– Article 7 of the Republic of Korea-Belgium Agreement,

– Article 10 of the Republic of Korea-Bulgaria Agreement,

– Article 7 of the Republic of Korea-Croatia Agreement,

– Article 8 of the Republic of Korea-Czech Republic Agreement,

– Article 17A of the Republic of Korea-Denmark Agreement,

– Article 9 of the Republic of Korea-Finland Agreement,

– The safety clause agreed between Korea and France on 23 May 2002,

– Article 8 of the Republic of Korea-Greece Agreement,

– Article 9 of the Republic of Korea-Hungary Agreement,

– Article 10 of the Republic of Korea-Italy Agreement,

– Article 15 of the Republic of Korea-Latvia Agreement,

– Article 6 of the Republic of Korea-Luxembourg Agreement,

– Article 7 of the Republic of Korea-Malta Agreement,

– The safety article agreed between Korea and The Netherlands on 13 September 2002,

– Article 14 of the Republic of Korea-Portugal Agreement,

– Article 8 of the Republic of Korea-Romania Agreement,

– The safety article agreed between Korea and Spain on 15 December 2005,

– Article 17A of the Republic of Korea-Sweden Agreement,

– The safety article agreed between Korea and the United Kingdom on 29 June 2001;

(d) Taxation of aviation fuel:

– Article 4 of the Republic of Korea-Austria Agreement,

– Article 4 of the Republic of Korea -Belgium Agreement,

– Article 5 of the Republic of Korea-Bulgaria Agreement,

– Article 10 of the Republic of Korea-Croatia Agreement,

– Article 5 of the Republic of Korea-Czech Republic Agreement,

– Article 5 of the Republic of Korea-Denmark Agreement,

– Article 5 of the Republic of Korea-Finland Agreement,

– Article 4 of the Republic of Korea-France Agreement,

– Article 5 of the Republic of Korea-Germany Agreement,

– Article 5 of the Republic of Korea-Greece Agreement,

– Article 6 of the Republic of Korea-Hungary Agreement,

– Article 12 of the Republic of Korea-Italy Agreement,

– Article 7 of the Republic of Korea-Latvia Agreement,

– Article 8 of the Republic of Korea-Luxembourg Agreement,

– Article 5 of the Republic of Korea-Malta Agreement,

– Article 4 of the Republic of Korea-Netherlands Agreement,

– Article 5 of the Republic of Korea-Poland Agreement,

– Article 6 of the Republic of Korea-Portugal Agreement,

– Article 5 of the Republic of Korea-Romania Agreement,

– Article 5 of the Republic of Korea-Spain Agreement,

– Article 5 of the Republic of Korea-Sweden Agreement,

– Article 6 of the Republic of Korea-United Kingdom Agreement.

ANNEX III

List of other States referred to in Article 2 of this Agreement

(a) 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).