EU/Indonesia Agreement: air services

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PURPOSE: to conclude the Agreement on certain aspects of air services between the EU and Indonesia.

PROPOSED ACT: Council Decision.

LEGAL BASE: Art. 100(2), 218(5) and 218(6)(a) of the Treaty on the Functioning of the EU. The proposal is entirely based on the "horizontal mandate" granted by the Council taking into account the issues covered by EU law and bilateral air services agreements. It will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with EU law.

BACKGROUND: international aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements, the Annexes to such agreements and other related bilateral or multilateral arrangements. Following the judgements of the Court of Justice in the so-called "Open Skies" cases, on 5 June 2003, it was held that traditional designation clauses in Member States' bilateral air services agreements infringe EU law. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated

by a Member but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against EU carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the EU which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State .

There are further issues, such as aviation fuel taxation or tariffs introduced by third country air carriers on intra-EU routes, where compliance with EU law should be ensured through amending or complementing existing provisions in bilateral air services agreements between Member States and third countries.

IMPACT ASSESSMENT: no impact assessment was carried out.

CONTENT: this proposal will supersede or complement the existing provisions in the 18 bilateral air services agreements between Member States and Indonesia. The Commission has negotiated an agreement with Indonesia that replaces certain provisions in the existing bilateral air services agreements between Member States and Indonesia:

- Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all European Union carriers to benefit from the right of establishment;
- Article 4 deals with the taxation of aviation fuel, a matter which has been harmonised by Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and in particular Article 14 (2) thereof;
- lastly, Article 5 resolves potential conflicts with the competition rules of the European Union.

In accordance with the standard procedure for the signature and conclusion of international agreements, the Council is asked to approve this proposal on the conclusion of the Agreement on certain aspects of air services between the EU and Indonesia.

FINANCIAL IMPLICATIONS: the proposal has no implication for the budget of the European Union.