

AGREEMENT**between the European Community and the Government of the Republic of India on certain aspects of air services**

THE EUROPEAN COMMUNITY,

of the one part, and

THE REPUBLIC OF INDIA,

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 India containing provisions contrary to Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community 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 Community and third countries,

HAVING REGARD to the agreements between the European Community 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 European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and the Republic of India, must be brought into conformity with European Community law in order to establish a sound legal basis for air services between the European Community and the Republic of India and to preserve the continuity of such air services,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community 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 Community and the Republic of India 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 application of the competition rules applicable to undertakings,

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

NOTING that the bilateral air services agreements listed in Annex I are based on the general principle that the designated airlines of the parties shall have fair and equal opportunities in operating the agreed services on the specified routes,

NOTING that it is not a purpose of this agreement, to increase the total volume of air traffic between the European Community and the Republic of India, to affect the balance between Community air carriers and air carriers of the Republic of India, 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 Community.
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 Community.
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.
4. The granting of traffic rights will continue to be carried out through bilateral arrangements.

Article 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 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 Member State concerned, its authorisations and permissions granted by the Republic of India, 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 India 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 establishing the European Community and has a valid Operating Licence in accordance with European Community law;
 - (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 is owned and shall continue to be owned directly or through majority ownership 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, and shall at all times be effectively controlled by such states and/or such nationals.

3. The Republic of India 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 establishing the European Community or does not have a valid Operating Licence in accordance with European Community law;
- (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;
- (iii) 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 III and/or nationals of such other states;
- (iv) the air carrier is already authorised to operate under a bilateral agreement between the Republic of India and another Member State and 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 the traffic rights imposed by that other agreement; or
- (v) the air carrier designated holds an Air Operator's Certificate issued by a Member State with which the Republic of India does not have a bilateral air services agreement and that Member State has denied traffic rights to the Republic of India.

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

*Article 3***Safety**

1. The provisions in paragraph 2 of this Article shall complement the corresponding Articles listed in Annex II(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 India under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of India 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. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex I 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 5***Annexes to the Agreement**

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

*Article 6***Review, revision or amendment**

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

*Article 7***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.

3. Agreements and other arrangements between Member States and the Republic of India which, at the date of 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 or provisional application.

*Article 8***Termination**

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

2. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

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

Done at Marseille in duplicate, on this twenty-eighth day of September two thousand and eight in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Hindi languages.

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduse nimel
 Για την Ευρωπαϊκή Κοινότητα
 For the European Community
 Pour la Communauté européenne
 Per la Comunità europea
 Eiropas Kopienas vārdā
 Europos bendrijos vardu
 Az Európai Közösség részéről
 Ghall-Komunità Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 För Europeiska gemenskapen
 यूरोपीय समुदाय की ओर से



За правителството на Република Индия
 Por el Gobierno de la República de la India
 Za vládu Indické republiky
 For regeringen for Republikken Indien
 Für die Regierung der Republik Indien
 India Vabariigi valitsuse nimel
 Για την κυβέρνηση της Δημοκρατίας της Ινδίας
 For the Government of the Republic of India
 Pour le gouvernement de la République de l'Inde
 Per il governo della Repubblica dell'India
 Indijas Republikas valdības vārdā
 Indijos Respublikos Vyriausybės vardu
 Az Indiai Köztársaság kormányának részéről
 Ghall-Gvern tar-Repubblika ta' l-Indja
 Voor de Regering van de Republiek India
 W imieniu Rządu Republiki Indii
 Pelo Governo da República da Índia
 Pentru Guvernul Republicii India
 Za vládu Indické republiky
 Za Vlado Republike Indije
 Intian tasavallan hallituksen puolesta
 För Republiken Indiens regering
 भारत गणराज्य की सरकार की ओर से



ANNEX I

List of agreements referred to in Article 1 of this Agreement

- (a) Air service agreements between the Government of India and Member States of the European Community as they may have been amended, modified or supplemented, which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally
- Agreement between the Austrian Federal Government and the Government of India relating to Air Services signed at New Delhi on 26 October 1989,
 - Agreement between the Government of the Kingdom of Belgium and the Government of India relating to Air Services signed at New Delhi on 6 April 1967,
 - Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of India relating to air services done at New Delhi on 16 June 1992,
 - Agreement between the Government of the Republic of Cyprus and the Government of India relating to air services done at Nicosia on 18 December 2000,
 - Air Transport Agreement between the Government of the Czech Republic and the Government of the Republic of India signed at Delhi on 16 October 1997,
 - Agreement between the Government of the Kingdom of Denmark and the Government of India relating to Air Services signed at New Delhi on 19 December 1995,
 - Air Services Agreement between the Government of the Republic of Finland and the Government of India signed at New Delhi on 18 July 1995,
 - Agreement between the Government of the French Republic and the Government of India relating to Air Services signed at New Delhi on 16 July 1947,
 - Agreement between the Federal Republic of Germany and the Government of India relating to Air Services signed at New Delhi on 31 May 1963,
 - Agreement between the Government of the Hungarian People's Republic and the Government of India relating to Air Services signed at New Delhi on 23 February 1966,
 - Air Transport Agreement between the Government of Ireland and the Government of India signed at New Delhi on 20 February 1991,
 - Agreement between the Government of Italy and the Government of India relating to Air Services signed at Rome on 16 July 1959,
 - Agreement between the Government of the Republic of Latvia and the Government of the Republic of India relating to Air Services signed at New Delhi on 20 October 1997,
 - Agreement between the Government of the Republic of Lithuania and the Government of the Republic of India relating to Air Services signed at New Delhi on 20 February 2001,
 - Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of India relating to air services signed in New Delhi on 8 January 2001,
 - Agreement between the Government of the Republic of Malta and the Government of India relating to Air Services signed at Malta on 5 October 1998,
 - Agreement between the Government of the Netherlands and the Government of India relating to Air Services signed at New Delhi on 24 May 1951,
 - Agreement between the Government of the Polish People's Republic and the Government of the Republic of India relating to Air Services signed at New Delhi on 25 January 1977,

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- Air Services Agreement between the Government of the Republic of Portugal and the Government of the Republic of India signed at New Delhi on 6 February 1997,
 - Air Services Agreement between the Government of Romania and the Government of India done at New Delhi on 4 December 1993,
 - Agreement between the Government of the Slovak Republic and the Government of India relating to Scheduled Air Services signed at Bratislava on 9 October 1996,
 - Agreement between the Government of the Republic of Slovenia and the Government of India relating to Scheduled Air Services signed at New Delhi on 16 February 2004,
 - Air Transport Agreement between the Government of Spain and the Government of the Republic of India signed at New Delhi on 10 April 1987,
 - Agreement between the Government of the Kingdom of Sweden and the Government of India relating to Air Services signed at New Delhi on 19 December 1995,
 - Air Services Agreement between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland signed at New Delhi on 8 September 2005;
- (b) Air service agreements and other arrangements initialled or signed between the Government of India and Member States of the European Community 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 Transport Agreement between the Government of the Hellenic Republic and the Government of the Republic of India initialled at Athens on 23 October 1997.
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ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 and 3 of this Agreement

(a) Designation by a Member State:

- Article 3, of the India — Austria Agreement,
- Article 3, paragraphs 1 to 5, of the India — Belgium Agreement,
- Article III of the India — Bulgaria Agreement,
- Article 3, of the India — Cyprus Agreement,
- Article 3, of the India — Czech Republic Agreement,
- Article 3, of the India — Denmark Agreement,
- Article 3, of the India — Finland Agreement,
- Article 2, of the India — France Agreement,
- Article III, of the India — Germany Agreement,
- Article 3, of the India — Greece Agreement,
- Article 3, of the India — Hungary Agreement,
- Article 3, of the India — Ireland Agreement,
- Article IV, of the India — Italy Agreement,
- Article 3, of the India — Latvia Agreement,
- Article 3, of the India — Lithuania Agreement,
- Article 3, of the India — Luxembourg Agreement,
- Article 3, of the India — Malta Agreement,
- Article 2, of the India — Netherlands Agreement,
- Article IV, of the India — Poland Agreement,
- Article 3, of the India — Portugal Agreement,
- Article 3, of the India — Romania Agreement,
- Article 3, of the India — Slovakia Agreement,
- Article 3, of the India — Slovenia Agreement,
- Article II, of the India — Spain Agreement,
- Article 3, of the India — Sweden Agreement,
- Article 4, of the India — United Kingdom Agreement;

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

- Article 4, of the India — Austria Agreement,
- Article 3, paragraph 6, of the India — Belgium Agreement,

- Article IV of the India — Bulgaria Agreement,
 - Article 4, of the India — Cyprus Agreement,
 - Article 4, of the India — Czech Republic Agreement,
 - Article 4, of the India — Denmark Agreement,
 - Article 4, of the India — Finland Agreement,
 - Article 9, of the India — France Agreement,
 - Article IV, of the India — Germany Agreement,
 - Article 4, of the India — Greece Agreement,
 - Article 4, of the India — Hungary Agreement,
 - Article 4, of the India — Ireland Agreement,
 - Article IV, paragraphs 4 to 6, of the India — Italy Agreement,
 - Article 4, of the India — Latvia Agreement,
 - Article 4, of the India — Lithuania Agreement,
 - Article 4, of the India — Luxembourg Agreement,
 - Article 4, of the India — Malta Agreement,
 - Article 8, of the India — Netherlands Agreement,
 - Article V, of the India — Poland Agreement,
 - Article 4, of the India — Portugal Agreement,
 - Article 4, of the India — Romania Agreement,
 - Article 4, of the India — Slovakia Agreement,
 - Article 4, of the India — Slovenia Agreement,
 - Article IV, of the India — Spain Agreement,
 - Article 4, of the India — Sweden Agreement,
 - Article 5, of the India — United Kingdom Agreement;
- (c) Safety:
- The safety article agreed between India and Denmark on 30 November 2006,
 - The safety article agreed between India and Finland on 18 May 2006,
 - Appendix C, of the India — Greece Agreement,
 - Article XI, of the India — Spain Agreement,
 - The safety article agreed between India and Sweden on 30 November 2006,
 - Article 7, of the India — United Kingdom Agreement.
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*ANNEX III***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).
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