42 (1990) Nr. 5

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2012 Nr. 64

A. TITEL

Overeenkomst inzake luchtvervoer tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Republiek Indonesië;
(met Bijlage)
's-Gravenhage, 23 november 1990

B. TEKST

De Engelse tekst van de Overeenkomst, met Bijlage, is geplaatst in *Trb.* 1990, 178.

Voor een wijziging van de Bijlage bij de Overeenkomst, zie rubriek J van *Trb.* 1994, 57.

Op 29 december 2011 is te Jakarta een notawisseling tot stand gekomen houdende een verdrag tot wijziging van de Overeenkomst. De Engelse tekst van deze notawisseling luidt als volgt:

Nr. I

EMBASSY OF THE KINGDOM OF THE NETHERLANDS

Jakarta, 29 December 2011

JAK-EA/248/2011

The Embassy of the Kingdom of the Netherlands presents its compliments to the Ministry of Foreign Affairs of the Republic of Indonesia and has the honour to refer to the consultations held in The Hague on 19 August 2009 between delegations of the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia

concerning the Air Transport Agreement, done at The Hague on 23 November 1990, hereinafter referred to as "the Agreement".

The Embassy of the Kingdom of the Netherlands has the honour to propose the following amendments to the Agreement:

To replace Article 5 on Tariffs with the following text:

Tariffs

1. The tariffs in respect of the agreed services operated by the designated airline(s) of each Contracting Party shall be established by each designated airline individually based upon its commercial considerations in the market place at reasonable levels, due regard being paid to all relevant factors, including the cost of operation and reasonable profit.

2. The tariffs established under paragraph 1 shall be notified by the designated airline(s) of one Contracting Party with aeronautical authorities of the other Contracting Party.

3. Notwithstanding the foregoing, each Contracting Part shall have the right to intervene so as to:
a) prevent tariffs whose application constitutes anti-competitive behaviour which has or is likely to or intended to have effect of crippling a competitor or excluding a competitor from a route;
b) protect consumers from tariffs that are excessive or restrictive due to the abuse of a dominant position; and
c) protect airlines form tariffs that are predatory or artificially low.

4. The aeronautical authorities of one Contracting Party may require the designated airline(s) of the other Contracting Party to provide relevant information relating to the establishment of tariffs.

5. If such requesting Contracting Party believes that the tariff notified by the designated airline(s) of the other Contracting Party is inconsistent with the considerations set forth in paragraph 3 or published tariffs considerations of the requesting Contracting Party, it shall notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible and request consultation which shall be held no later than thirty (30) calendar days after receipt of the request.

6. If the Contracting Parties are unable to settle the matter through consultations, it shall be settled in accordance with the provisions of Article 17 of the Agreement.

7. Pending resolution of the matter in accordance with paragraph 5 and 6, the tariff in question shall be put on hold and the present tariff shall continue to be in place.

To replace Article 15 on Aviation Security with the following text:

Aviation Security

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, and any other convention on aviation security to which the Contracting Parties shall become party.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and, so far as they are applied by them, the Recommended Practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; and shall require that operators of aircraft of their registry, operators who have their principal place of business or permanent residence in their territory, and the operators of airports in the territory, act in conformity with such aviation security provisions. In this paragraph the reference to aviation security standards includes any difference notified by the Contracting Party concerned.

4. Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet the increase

in the threat. Each Contracting Party agrees that its designated airline(s) may be required to observe that aviation security provisions referred to in paragraph 3 required by the other Contracting Party for entrance into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall also act favourable upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate as rapidly as possible commensurate with minimum risk to life such incident or threat.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations with the other Contracting Party. Such consultations shall take place within thirty (30) days of that request. These consultations will be aimed to reach an agreement upon the measures suitable to eliminate the more immediate reasons of worry and to adopt in the framework of the ICAO security standards, the actions necessary to establish the appropriate conditions of security.

7. Each Contracting Party shall take such measures, as it may find practicable, to ensure that an aircraft subject to an act of unlawful seizure or other acts of unlawful interference which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

A new Article on Code share and cooperative arrangements, numbered Article 6 bis, to be added, with the following text:

Code Share and Cooperative Arrangements

In operating or holding out air services on the agreed routes, the designated airline(s) of one Contracting Party may enter into commercial and/or cooperative marketing arrangement including but not limited to blocked space, code sharing and leasing arrangements with:

a) an airline or airlines of the same Contracting Party;

b) an airline or airlines of the other Contracting Party, including domestic code share services operated by such airline;

c) an airline or airlines of a third country.

Provided that all airlines in such arrangements:

a) hold the appropriate authority;
b) meet the requirements normally applied to such arrangements;
c) must in respect of any ticket sold by it, make it clear to the purchaser at the point of sale which airline or airlines will actually operate each sector of the service and with which airline or airlines the purchaser is entering into a contractual relationship;
d) the code-share services of the marketing carriers will not be counted as a frequency.

A new Article on Aviation Safety, numbered Article 14 bis, to be added, with the following text:

Aviation Safety

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to air crew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.

2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement (Revocation and Suspension of Authorization).

3. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any Aircraft operated by or, under a lease arrangement, on behalf of the Airline or Airlines of one Contracting Party on Services to or from the Territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft, to check both the validity of the aircraft documents and those of its crew and the apparent conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to:
a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; or

b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention, the Contracting Party carrying out the inspection shall, for the purpose of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the Airline or Airlines of one Contracting Party in accordance with paragraph 3 above is denied by the representative of that Airline or Airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and to draw the conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an Airline or Airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultations or otherwise, that immediate action is essential to the safety of the Airline's operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for taking of that action ceases to exist.

8. Each Contracting Party shall see to it that the Designated Airline(s) will be provided with communicative, aviation and meteorological facilities and any other services necessary for the safe operations of the agreed services.

The Embassy of the Kingdom of the Netherlands further has the honour to propose that this Note together with the Note in reply confirming on behalf of the Government of the Republic of Indonesia the foregoing understanding, shall be regarded as constituting an agreement between the two Governments to amend the Agreement. This agreement to amend the Agreement shall be provisionally applied from the date of the reply of the Government of the Republic of Indonesia, and shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

The Embassy of the Kingdom of the Netherlands avails itself of this

opportunity to renew to the Ministry the assurances of its highest consideration.

Nr. II

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF INDONESIA

Jakarta, 29 December 2011

No. D. 03960/BK/12/2011/38

The Ministry of Foreign Affairs of the Republic Indonesia presents its compliments to the Embassy of the Kingdom of the Netherlands and has the honour to acknowledge receipt of todays Embassy's Note proposing amendments to the Air Transport Agreement between Indonesia and the Netherlands, done at the Hague on 23 November 1990, which read as follows:

(zoals in nota Nr. I)

The Ministry of Foreign Affairs has the honour to confirm that the above mentioned amendments are acceptable to the Government of the Republic Indonesia and that the Embassy's Note and this reply constitute an agreement between the two Governments which shall be provisionally applied from the date of this reply, and which shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to Embassy the assurances of its highest consideration.

Embassy of the Kingdom of the Netherlands
Jakarta

C. VERTALING

Zie *Trb.* 1991, 68.

D. PARLEMENT

Zie *Trb.* 1991, 68 en *Trb.* 1994, 57.

Het in de nota's vervatte verdrag van 29 december 2011 behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het in de nota's vervatte verdrag kan worden gebonden.

F. VOORLOPIGE TOEPASSING

Het in de nota's vervatte verdrag van 29 december 2011 wordt ingevolge het gestelde in de op één na laatste alinea van nota Nr. I en nota Nr. II vanaf 29 december 2011 voorlopig toegepast.

Wat betreft het Koninkrijk der Nederlanden, geldt de voorlopige toepassing alleen voor Nederland (het Europese deel).

G. INWERKINGTREDING

Zie *Trb.* 1994, 4 en rubriek J van *Trb.* 1994, 57.

De bepalingen van het in de nota's vervatte verdrag van 29 december 2011 zullen ingevolge het gestelde in de op één na laatste alinea van nota Nr. I en nota Nr. II in werking treden op de datum waarop beide partijen elkaar er schriftelijk van in kennis hebben gesteld dat aan de grondwettelijke vereisten voor inwerkingtreding is voldaan.

J. VERWIJZINGEN

Zie voor verwijzingen en overige verdragsgegevens *Trb.* 1990, 178, *Trb.* 1994, 4 en *Trb.* 1994, 57.

Verbanden

De Overeenkomst wordt aangevuld door:

Titel	:	Overeenkomst tussen de Europese Unie en de regering van de Republiek Indonesië inzake bepaalde aspecten van luchtdiensten; Brussel, 29 juni 2011
Tekst	:	*Pb.* EU L 264 van 8 oktober 2011, blz. 2 e.v.

Overige verwijzingen

Titel	:	Verdrag inzake de internationale burgerluchtvaart; Chicago, 7 december 1944
Laatste *Trb.*	:	*Trb.* 2010, 259
Titel	:	Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van luchtvaartuigen; Tokio, 14 september 1963
Laatste *Trb.*	:	*Trb.* 1995, 203
Titel	:	Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen; 's-Gravenhage, 16 december 1970
Laatste *Trb.*	:	*Trb.* 1995, 204
Titel	:	Verdrag tot bestrijding van wederrechtelijke gedragingen gericht tegen de veiligheid van de burgerluchtvaart; Montreal, 23 september 1971
Laatste *Trb.*	:	*Trb.* 1995, 205
Titel	:	Verdrag van de Verenigde Naties inzake het recht van de zee; Montego Bay, 10 december 1982
Laatste *Trb.*	:	*Trb.* 2009, 77

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het in de nota's vervatte verdrag van 29 december 2011 zal zijn bekendgemaakt in Nederland (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *tiende* april 2012.

De Minister van Buitenlandse Zaken,

U. ROSENTHAL

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