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**Joint Report**

**Pursuant to § 293a of the German Stock Corporation Act (AktG)**

by the Executive Board of

**Fraport AG Frankfurt Airport Services Worldwide**

and

the management of

**FraSec Fraport Security Services GmbH**

on the conclusion and content of a control and profit and loss transfer agreement to be concluded between the companies

## 1. General

The Executive Board of Fraport AG Frankfurt Airport Services Worldwide (hereinafter the “**controlling company**” or “**Fraport AG**”) and the management of FraSec Fraport Security Services GmbH (hereinafter the “**controlled company**”) hereby issue the following report pursuant to § 293a of the German Stock Corporation Act (Aktiengesetz, hereinafter “**AktG**”) on a control and profit and loss transfer agreement (hereinafter the “**agreement**”) which is to be concluded between the controlling company and the controlled company.

The draft of this agreement shall be submitted to the Annual General Meeting of the controlling company on June 1, 2021 for approval.

## 2. Conclusion of the Control and Profit and Loss Transfer Agreement

Fraport AG intends to conclude the agreement in the capacity of the controlling company with FraSec Fraport Security Services GmbH as the controlled company. The agreement constitutes a control and profit and loss transfer agreement pursuant to § 291(1) sentence 1 AktG. It requires the approval of both the Annual General Meeting of the controlling company and the shareholders’ meeting of the controlled company in order to be valid. The Executive Board and Supervisory Board of the controlling company will be presented with a proposal to approve the conclusion of the agreement at the Annual General Meeting of the controlling company to be convened on June 1, 2021. The shareholders’ meeting of the controlled company has not yet approved the conclusion of the agreement. This approval is expected to take place after the Annual General Meeting of the controlling company issues its approval. The agreement shall enter into effect upon entry in the commercial register for the location of the controlled company’s headquarters, and shall apply retroactively – with the exception of the “control component” – starting from the beginning of the fiscal year of the controlled company in which it enters into effect.

## 3. Parties to the agreement

### 3.1. Controlling company

The controlling company is a stock corporation (Aktiengesellschaft) under German law based in Frankfurt am Main. It is entered in the commercial register of the District Court of Frankfurt am Main under HRB 7042. The fiscal year of the controlling company is the calendar year.

The purpose of the company is the operation, maintenance, development and expansion of Frankfurt Airport. The purpose of the company additionally encompasses the operation, maintenance, development and expansion of other airports, infrastructure facilities and real estate in Germany and abroad, the provision of related services and the application and marketing of the knowledge and skills gained in the course of these activities in Germany and abroad.

In accordance with § 5(1) of the Articles of Association of the controlling company, the Executive Board consists of at least three members. In all other respects, the number of members is defined by the Supervisory Board. The Executive Board of the controlling company currently consists of five members:

Dr. Stefan Schulte (Chairman)

Ms. Anke Giesen

Mr. Michael Müller

Dr. Pierre Dominique Prümm

Dr. Matthias Zieschang

The controlling company is represented legally by two Executive Board members or by one Executive Board member together with an authorized signatory (§ 5(2) of the Articles of Association).

In its capacity as the parent company of the Fraport Group, the controlling company holds direct and indirect stakes in the controlled company and numerous other companies in Germany and abroad.

### **3.2. Controlled company**

The controlled company is a limited liability company (Gesellschaft mit beschränkter Haftung) under German law based in Frankfurt am Main. It is entered in the commercial register of the District Court of Frankfurt am Main under HRB 79714. The fiscal year of the controlled company is the calendar year. The fully paid-in share capital of the controlled company amounts to EUR 470,450.00.

The purpose of the company is the provision of services in Germany and abroad, particularly including security services, security consulting and training and the performance of security checks for airports.

The company may engage in any business dealings which are suitable for directly or indirectly pursuing its corporate purpose. In particular, the company may invest in other companies, establish new companies, acquire existing companies and resell shareholdings.

The controlling company is the sole shareholder of the controlled company.

In accordance with its Articles of Association, the controlled company has two or more managing directors. The company is represented by two managing directors or by one managing director together with an authorized signatory. The currently appointed managing directors are Martin Budweth and Frank Haindl.

The controlled company established four new subsidiaries in 2020 (all wholly-owned). The company intends to outsource each of the three business units (i) "Aviation Security (§ 5 of the German Aviation Security Act (Luftsicherheitsgesetz, hereinafter "**LuftSiG**"))", (ii) "Airport Security (§ 8 LuftSiG)" and (iii) "Other Services" to one of the new subsidiaries with retroactive effect as of January 1, 2021. No business units will be transferred to the fourth newly-established subsidiary.

Furthermore, the controlled company intends to conclude a control and profit and loss transfer agreement with each of the two subsidiaries FraSec Flughafensicherheit GmbH, entered in the commercial register of the District Court of Frankfurt am Main under HRB 121502, and FraSec Services GmbH, entered in the commercial register of the District Court of Frankfurt am Main under HRB 121503, to which the "Airport Security (§ 8 LuftSiG)" and "Other Services" business units are to be transferred, respectively, during the course of 2021.

## **4. Legal and economic reasons for the conclusion of the control and profit and loss transfer agreement**

The conclusion of the agreement is taking place in the interest of a desired harmonization and optimization of the Fraport Group.

In accordance with §§ 14(1) and (17) of the German Corporate Income Tax Act (Körperschaftsteuergesetz, hereinafter "**KStG**"), the agreement is a mandatory requirement for the establishment of a corporate and trade tax entity consisting of the controlling company and the controlled company. The establishment of this tax entity makes it possible for the specified companies to be taxed jointly. This results in a tax group within which the positive and negative results of the controlled company can be offset with the positive and negative results of the controlling company within the respective taxation/assessment period. This can lead to tax advantages depending on the taxable earnings situations of the companies involved. In addition, the establishment of an income tax group also makes it possible to transfer

the controlled company's profits to the controlling company without incurring an additional tax burden. While profits could still be transferred to the controlling company without the establishment of a tax group by means of a dividend distribution, they would still incur corporate and trade tax to a limited extent for the controlling company. 5% of the dividend would be considered non-deductible business expenses, thus increasing the taxable income of the controlling company.

In addition to the income tax group, the controlled company and the controlling company also make up a VAT group. The establishment of the VAT group results in a situation where the controlling company and the controlled company constitute a single company for the purposes of the German Value Added Tax Act (Umsatzsteuergesetz). This has the effect that only the controlling company is required to fulfill VAT-related legal obligations (such as filing provisional and annual VAT returns). The establishment of a VAT group thus serves to reduce the level of effort and resources required for filing taxes. Furthermore, it serves to simplify accounting and the performance of intra-Group services since there is no need for VAT to be charged and paid within a VAT group. This also results in a situation where the deduction of prepaid VAT is unnecessary for intra-Group services, which leads to tax advantages in cases of outputs due to which the deduction of prepaid VAT for inputs is possible only to a limited extent. Differently than in the case of an income tax group, the establishment of a VAT group is subject to the requirement, among others, of "organizational integration" of the controlled company into the controlling company. The Federal Fiscal Court has developed its jurisprudence on this subject continuously, and currently applies strict requirements for organizational integration which have also been adopted by the fiscal administration. It is required for the opportunity of the parent company (in this case, the controlling company) to control the subsidiary (in this case, the controlled company) connected with the voting majority to actually be exercised in day-to-day business management. This requires the controlling company to control the controlled company in accordance with its manner of doing business and to be able to enforce its will at the controlled company. It is insufficient to simply preclude the possibility of decisions contrary to the will of the controlling company taking place at the controlled company (cf. Section 2.8(7) sentences 1-3 of the German Value Added Tax Application Decree (Umsatzsteuer-Anwendungserlass, hereinafter "UStAE"). One means of establishing organizational integration is the conclusion of a control agreement (Section 2.8(10) sentence 4 UStAE). The agreement now to be concluded between the controlling company and the controlled company thus serves to fulfill the amended and in some cases stricter tax-related legal requirements for a VAT group. In the future, in the context of an overall view of all organizational integration measures by the controlling company, it will primarily be the control and profit and loss transfer agreement which serves to establish the sufficient degree of organizational integration in accordance with the standards of the applicable jurisprudence and the fiscal administration. The requisite level of actual influence on the management of the controlled company will be exercised accordingly.

In addition, the contractual control component serves to underscore the integration of the controlled company into the Fraport Group and is a customary element of Group management.

Finally, the conclusion of the agreement also simplifies the temporal harmonization of the recognition of profits generated by the controlled company ("same-period profit collection").

There is no alternative to the conclusion of a control and profit and loss transfer agreement which would offer equivalent or greater economic advantage.

## **5. Explanation of the control and profit and loss transfer agreement**

- a) The preamble serves as an introduction to the company law background and intended purpose of the agreement.
- b) Through § 1 of the agreement, the controlled company places the management of its company under the control of the controlling company. The controlling company shall be entitled to issue

instructions to the management of the controlled company regarding the management of the company which must be followed by the management of the controlled company. Instructions are required to be made in writing; instructions via letter, fax or e-mail are specified as permissible examples. Verbal instructions shall have no effect. The controlling company shall be entitled to issue instructions to the management of the controlled company in regard to all matters of management and the representation of the company, in regard to both fundamental matters and individual issues of day-to-day business. However, the controlling company may not instruct the management of the controlled company to amend, maintain or terminate this agreement (§ 1.3). Without prejudice to the right of instruction, the management of the controlled company shall continue to be responsible for managing transactions and representing the controlled company. The legal independence of the parties shall also remain unaffected.

Fraport AG has already held and continues to hold a comprehensive right of instruction since before the conclusion of the agreement due to its status as the sole shareholder of the controlled company.

- c) § 2 of the agreement governs various rights to information and grants the controlling company the right to inspect the books, records and other business documents of the controlled company at any time as well as the right to request information on legal, business and organizational matters relating to the controlled company. Furthermore, the controlled company is required to report on its business performance and all material business transactions on an ongoing basis.

The right of the controlling company to request information on the business of the dependent company and to inspect its books and records is an integral part of the exercise of its management powers with due care, which is why the agreement of rights to information of this type is a typical feature of control and profit and loss transfer agreements.

Fraport AG has already held and continues to hold a comprehensive right to information and inspection since before the conclusion of the agreement due to its status as the sole shareholder of the controlled company (§ 51a of the German Act Governing Limited Liability Companies (GmbHG – Gesetz betreffend die Gesellschaften mit beschränkter Haftung)).

- d) § 3 governs the transfer of profits in the narrower sense. In this section, the controlled company undertakes to transfer its entire profit to the controlling company during the term of the agreement. The provisions of § 301 AktG, as amended, shall apply accordingly to scope of the transfer of profits in all other respects. On the basis of this provision, regardless of any other arrangements which have been made in regard to the calculation the profit to be transferred, the controlled company can transfer a maximum of the annual net profit that would have been incurred without the transfer of profit, reduced by any losses carried forward from the previous year, the amount to be allocated to statutory reserves in accordance with § 300 AktG and the amount barred from distribution pursuant to § 268(8) of the German Commercial Code (Handelsgesetzbuch, hereinafter “HGB”), to the controlling company as its profit; cf. § 301 sentence 1 AktG. If any amounts have been allocated to other revenue reserves during the term of the agreement, these amounts can thus be removed from other revenue reserves and transferred as profit; cf. § 301 sentence 2 AktG.

The controlled company may, with the approval of the controlling company, transfer amounts from the net profit to other revenue reserves (§ 272(3) HGB) only insofar as this is permitted under commercial law and is justified in economic terms on the basis of a reasonable commercial appraisal. Other revenue reserves (§ 272(3) HGB) recognized during the term of this agreement shall be reversed at the request of the controlling company and transferred as profit or appropriated in accordance with § 302(1) AktG, as amended. This is without prejudice to the provisions on absorption of losses in § 4 of the agreement (see below).

Any profits carried forward which originated prior to the entry of this agreement into effect may not be transferred to the controlling company as profit or used to offset an annual net deficit. The same

applies for revenue reserves (§ 272(3) HGB) that were recognized prior to commencement of the agreement and for capital reserves (§ 272(2) HGB).

Entitlement to the transfer of profits shall in each case arise at the end of the controlled company's fiscal year and shall be due as of this time.

The controlling company may request that profits are transferred in advance if and insofar as payment of an advance dividend would be permissible.

The provisions adopted under § 3 of the agreement correspond to the provisions on the transfer of profit typically contained in profit and loss transfer agreements and are closely aligned with the applicable statutory provisions.

- e) § 4 governs the absorption of losses by the controlling company, corresponding to an antithesis to the transfer of profits to a certain extent. This is subject to the provisions of § 302 AktG, as amended. It corresponds to the current legal wording of § 17(1) sentence 2 no. 2 KStG, which requires a dynamic reference to § 302 AktG. Pursuant to § 302(1) AktG, the controlling company is obligated to offset any annual net deficit incurred by the controlled company during the term of the agreement insofar as this is not offset by the removal of amounts from other revenue reserves which have been transferred to them during the term of the agreement.
- f) § 5 of the agreement contains firm provisions on the entry into effect, duration and termination of the agreement. In this section, it is first stipulated for the sake of clarity that the agreement requires the approval of the shareholders' meeting of the controlled company as well as that of the Annual General Meeting of the controlling company in order to be valid. The agreement shall enter into effect upon entry in the commercial register of the controlled company, and shall apply for the first time with retroactive effect as of the beginning of the fiscal year of the controlled company in which it enters into effect. An exception to this provision applies to the transfer of management powers, which shall take place as of the time of the agreement's entry into effect rather than retroactively.

The subsequent provisions apply to the term of the agreement. The agreement is concluded for an indefinite period of time, but shall continue until the expiration of a period of at least five years (60 months) from the commencement of the obligation to transfer profits or absorb losses under the agreement (minimum term), after which it can be terminated by either party in writing by giving notice of three months to the end of the fiscal year of the controlled company. This provision serves to ensure compliance with the minimum term required for the recognition of the agreement for tax purposes.

Pursuant to § 5.5 of the agreement, the agreement shall end no later than the end of the fiscal year in which an external shareholder within the meaning of § 304 AktG holds shares in the controlled company. In parallel with this provision, § 307 AktG, as amended, which currently contains the same provision, is specified as applying accordingly.

Notice of termination of the agreement must be given in written form.

The agreement can also be terminated in writing during the year without notice for good cause. A non-exhaustive list of examples of good cause is subsequently specified in the agreement. According to this list, good cause particularly includes

- A sale or any other form of transfer (e.g. contribution) of shares in the controlled company by the controlling company (group investment) that results in the requirements under the relevant applicable tax provisions for financial integration of the controlled company in the controlling company no longer being met, or

- A change of legal form (§§ 190 et seq. of the German Transformation Act (UmwG – Umwandlungsgesetz)), merger (§§ 2 et seq. UmwG), division (§§ 123 et seq. UmwG) or liquidation of the controlling company or controlled company – this applies only to a change of legal form, however, where the legal form of corporation is not changed to the legal form of another corporation –

if, in the event of a termination prior to expiry of the minimum term, in each case there is simultaneously good cause for termination in a manner that is non-detrimental for tax purposes of a profit and loss transfer agreement prior to expiry of the minimum term for tax purposes.

The above list of examples of good cause is not exhaustive.

§ 5 of the agreement additionally contains a provision on creditor protection: In the event of termination of the agreement, the controlling company must furnish collateral to the creditors of the controlled company in accordance with § 303 AktG.

- g) § 6 of the agreement stipulates that the controlling company shall bear the costs arising in connection with the conclusion of the agreement. This particularly concerns consultancy and notary costs in connection with the drafting and issuance of the agreement. This constitutes a commonplace provision for addressing the duty to bear costs.
- h) The final provisions in § 7 of the agreement contain various rules. First, it is stated that the interpretation of the agreement should always take into consideration the fact that the parties intend to establish a valid tax group by means of the agreement. Amendments and additions to the agreement may be made in writing only, unless notarial certification is stipulated as a stricter format, and shall require the approval of the shareholders' meetings of the controlling company and the controlled company. These amendments shall enter into effect upon entry in the commercial register of the controlled company. A severability clause serves to ensure the validity and enforceability of the agreement in the event that individual clauses become invalid or unenforceable or already were at the time of the conclusion of the agreement: If any provision of the agreement is or becomes ineffective or unenforceable in full or in part, this shall not affect the validity of the remaining provisions of the agreement. The ineffective or unenforceable provision shall be replaced by an effective or enforceable provision that comes closest to the economic purpose pursued by the parties via the ineffective or unenforceable provision. The same shall apply in the event of an unintended gap in the provisions of the agreement.

The text of the agreement concludes with the agreement of Frankfurt am Main as the place of performance and place of jurisdiction for the controlling company and the controlled company.

In sum, the content of the agreement wholly conforms to what is commonly stipulated in a control and profit and loss transfer agreement.

## **6. No compensation and no severance pursuant to §§ 304 and 305 AktG; no contract review pursuant to § 293b AktG**

The controlling company directly holds 100% of shares in the controlled company. As the controlled company has no external shareholders, there is no need to specify appropriate compensation in the agreement pursuant to § 304 AktG. For the same reason, there is no reason to specify severance (§ 305 AktG) and no need to carry out a valuation of the companies involved in order to determine appropriate compensation or appropriate severance. Finally, there is no need for a review of the agreement by an expert auditor (contract auditor) pursuant to § 293b(1) AktG or an audit report pursuant to § 293e AktG.

Frankfurt am Main, \_\_\_\_\_ 2021

**Fraport AG Frankfurt Airport Services Worldwide**

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Dr. Stefan Schulte

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Anke Giesen

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Michael Müller

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Dr. Matthias Zieschang

\_\_\_\_\_, \_\_\_\_\_ 2021

**FraSec Fraport Security Services GmbH**  
Management

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Martin Budweth

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Frank Haindl