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MEMORANDUM TO THE COMMISSION

1. The Agreement between the European Community and the Republic of Kazakhstan on certain aspects of air services is another agreement proposed under the Community's new role in external aviation. This role follows the Court Judgements of 5 November 2002 in the "open skies" cases¹, and the Council decision of 5 June 2003 to authorise the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement ("horizontal mandate").² The "horizontal agreement" will bring all existing bilateral air services agreements between Kazakhstan and EU Member States into conformity with Community law and the 2002 jurisprudence.
2. Based on the negotiating directives of the "horizontal mandate", the text of the horizontal agreement with Kazakhstan was agreed on 11 December 2007 in Astana. Article 2 of the agreement replaces the traditional national designation clauses (confirmed as illegal under the Court Decisions of 5 November 2002) with a non-discriminatory Community designation clause and thus allows all Community air carriers to be designated under bilateral air services agreements of Member States with Kazakhstan. Further provisions allow Member States to tax aviation fuel for domestic or intra-Community flights (Article 4 of the Agreement) and take into account the legal framework for pricing for intra-Community flights (Article 5 of the Agreement) and the EC competition rules (Article 6 of the Agreement).
3. The agreement is an important step towards strengthening our air transport relations with Kazakhstan.
4. There were no comments from other services consulted during the Inter-service Consultation.
5. The Commission is requested
 - to approve the proposals (1) for a Council decision on the signature of the Agreement between the European Community and the Republic of Kazakhstan on certain aspects of air services and (2) for a Council decision on the conclusion of the Agreement between the European Community and the Republic of Kazakhstan on certain aspects of air services,
 - to forward the proposal plus the annexes thereto to the Council and to the European Parliament.

¹ Cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, C-476/98. See also the Communication from the Commission "on the consequences of the Court judgements of 5 November 2002" (COM(2002)649 of 19 November 2002), as well as the Communication from the Commission "on relations between the Community and third countries in the field of air transport" (COM(2003)94 of 26 February 2003).

² Council decision 11323/03 of 5 June 2003.