



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 June 2013

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**AVIATION 89
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"I/A" ITEM NOTE

From : General Secretariat of the Council
To : COREPER/Council

N° Cion props : 13170/12 AVIATION 125

Subject : COUNCIL DECISION on the conclusion of the Agreement between the European Union and the European Organisation for the Safety of Air Navigation providing a general framework for enhanced cooperation
- Adoption

1. On 8 June 2011, the Commission submitted to the Council a Recommendation in order to authorise it to open negotiations on a High Level Agreement between the European Union and the European Organisation for the Safety of Air Navigation (EUROCONTROL), providing a general framework for enhanced cooperation (doc. 11356/11, RESTREINT UE).
2. On 6 October 2011, the EU Transport Ministers adopted a Decision authorising the Commission to negotiate on behalf of the Union a High Level Agreement between the European Union and the European Organisation for Safety of Air Navigation (EUROCONTROL), providing a general framework for enhanced cooperation (doc. 14241/11 RESTREINT UE).

3. On the basis of this mandate, the Commission conducted negotiations with EUROCONTROL and on 24 April 2012 the draft High Level Agreement (HLA) was initialled by the two negotiators.
4. The Commission presented to the Council a proposal for a Council Decision on the signature and provisional application of the HLA on 2 August 2012 (doc. 13169/12). The Council Decision concerning the signature and provisional application of the HLA was adopted by the TTE Council on 29 October 2012 (doc. 13792/12)..
5. The HLA was signed in the margins of the TTE Council on 20 December 2012. The HLA, together with the Decision on the signing, was published in the Official Journal of the European Union on 19 January 2013¹. The HLA has been provisionally applied since the day of the signature.
6. The text of the above draft Council Decision has been prepared by the Council Legal Linguist Services² and subsequently transmitted to the European Parliament on 18 February 2013 for its consent.
7. The European Parliament gave its consent to the proposed Council Decision on the conclusion of the HLA on 21 May 2013.
8. COREPER is therefore invited to examine the above text and to invite the Council:
 - to adopt the above draft Council Decision so as to permit the conclusion of the High Level Agreement;
 - to take note of the UK statement as set out in the Annex to this Note.

¹ OJ L 16, 19.01.2013, p. 2

² 5822/13 + COR 1.

STATEMENT FOR THE COUNCIL MINUTES

Ad item XX:

STATEMENT BY THE UNITED KINGDOM

"The UK strongly welcomes the Draft Agreement between the European Union and the European Organisation for the Safety of Air Navigation providing a general framework for enhanced cooperation, which will establish and strengthen cooperation in this key area for European aviation.

However, the UK objects to the inclusion of the citation of Articles 218 and 220 TFEU in the recitals to the Draft Agreement.

The citation of specific TFEU articles in an international agreement risks undermining the EU decision-making process, which must consider the appropriate legal bases to cite for the Council Decisions on signature and conclusion.

The risks associated with this approach are highlighted in this case by the discrepancies in the legal bases cited in the recitals to the Draft Agreement and those cited in the original negotiating mandate for the Draft Agreement and the Council Decision on signature. The Draft Agreement cites Articles 218 and 220 TFEU, the negotiating mandate cites Article 100 and the Council Decision on signature and provisional application of the Agreement cites Articles 218(5) and Article 100.

The UK does not consider that the citation of Article 220 in the Draft Agreement is correct in this context. Article 220 concerns administrative cooperation between the EU and international organisations, but is not the appropriate legal base under the TFEU for the negotiation of legally binding agreements with international organisations on behalf of the EU."