



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 October 2013

14331/13

**Interinstitutional File:
2012/0324 (NLE)**

**AVIATION 169
ISR 8**

"I/A" ITEM NOTE

From :	Council Secretariat
To :	COREPER/Council
N° Cion prop.:	16650/12 AVIATION 180 ISR 19
Subject :	Proposal for a COUNCIL DECISION on the conclusion of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Government of the State of Israel, of the other part - Request by the Council for the consent of the European Parliament

1. The above Agreement is the result of the mandate granted by the Council and the Representatives of the Governments of the Member States, meeting within the Council, to the Commission on 8 April 2008, in order to open negotiations with Israel on a comprehensive air transport agreement.
2. The Commission presented the above-mentioned proposal to the Council (doc. 16650/12) on 22 November 2012. The Decision of the Council and of the representatives of the Member States meeting within the Council concerning the signature and provisional application of the Euro-mediterranean Aviation Agreement between the European Union and its Member States and the Government of the State of Israel was adopted by the Council on 20 December 2012. The Agreement was signed on 10 June 2013, subject to its conclusion at a later date.

3. At the time of the examination of the Commission proposal on conclusion by the Aviation Working Party, the Presidency proposed to adapt the text in order to reflect the provisions of the Decision on the signature of the Agreement (doc. 12277/13). All delegations supported the adapted draft Decision which thereafter has been revised by the Legal Linguistic Services.
4. With a view to preparing the conclusion of the Agreement, COREPER is invited to:
 - suggest that the Council, in part "A" of the agenda of a forthcoming meeting, decides to forward the draft Decision on the conclusion of the Agreement as contained in J/L document 13521/13 AVIATION 1346 ISR 7 as well as the text of the Agreement as contained in J/L document 16828/12 AVIATION 183 RELEX 1078 ISR 22 OC 685 + REV 1 (pl) + REV 2 (pt) + COR 1 (pt) + COR 2 (all languages) to the European Parliament for its consent.
 - include in its Minutes the Commission statement set out in the Annex to this Note.

Statement by the Commission

"In accordance with Article 218 (6) TFEU, the Commission has submitted a proposal for a Council decision on the conclusion of an aviation agreement with the Government of the State of Israel.

The Commission takes note of the Council's unanimous decision to adopt a "hybrid" act consisting concurrently of a decision of the Council and of the Representatives of Governments of the Member States meeting within the Council.

The Commission is of the opinion that this "hybrid" act violates the Treaties in that it, among other reasons, distorts the procedure and voting rules set out in 218 (6) TFEU and (8) first subparagraph TFEU.

The Commission also notes that under Article 218 (9) TFEU Member States have no competences in establishing the positions to be adopted on the Union's behalf in a body set-up by an agreement when that body is called upon to adopt acts having legal effects, irrespective of the nature of the Union's competence concerned.

Under these circumstances, the Commission considers that the procedure for establishing the EU position in the Joint Committee set up under Article 22 of the Agreement is contrary to the Treaties. The Commission recalls its application in the Case C-28/12 Commission v Council which is pending before the Court of Justice and, reserves the right to make use of all the legal means at its disposal to ensure the respect of the provisions of the Treaties."
