



**COUNCIL OF
THE EUROPEAN UNION**

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PROPOSAL

from: European Commission
dated: 26 April 2012

No Cion doc.: COM(2012) 187 final

Subject: Proposal for a Council Decision on the position to be taken by the European Union in the Joint Committee established under the Agreement on the European Economic Area concerning an amendment to Annex XIII (Transport) thereto

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 187 final



EUROPEAN COMMISSION

Brussels, 26.4.2012
COM(2012) 187 final

2012/0094 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union in the Joint Committee established under the Agreement on the European Economic Area concerning an amendment to Annex XIII (Transport) thereto

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

With the incorporation of Regulation (EC) No 1008/2008 into the European Economic Area (EEA) Agreement (see point 64a in Annex XIII to the EEA Agreement¹), a common regime was established between the Contracting Parties to the EEA Agreement, allowing air carriers from all EEA States to operate air services within the whole area of the EEA.

The same regime has been established between the EU and Switzerland with the inclusion of Regulation (EC) No 1008/2008 into the EU-Switzerland Air Transport Agreement, for Swiss and Community air carriers².

Through inclusion of Regulation (EC) No 1008/2008 into the Convention establishing the European Free Trade Association (Vaduz Convention)³, the same regime has also been established between Switzerland and the EEA EFTA States for Swiss and EEA EFTA air carriers.

The EFTA States have raised the concern that despite this, three kinds of air services remain, however, problematic according to the present regimes:

- (i) The operation of air services by a Swiss air carrier from an EU Member State to an EEA EFTA State and vice versa.
- (ii) The operation of air services by an EU air carrier from Switzerland to an EEA EFTA State and vice versa.
- (iii) The operation of air services by an EEA EFTA air carrier from an EU Member State to Switzerland and vice versa.

In order to remove these legal restrictions so as to link the aviation markets established by the three Agreements mentioned above, it is necessary to grant air carriers from a State which is not a Party to the respective agreement the same right to operate air services as air carriers from a Contracting Party to the respective agreement (i.e. Swiss air carriers with respect to the EEA Agreement, EU air carriers with respect to the Vaduz Convention and EEA EFTA air carriers with respect to the EU-Switzerland Air Transport Agreement).

Switzerland and the EEA EFTA States therefore agreed to suggest the amendment of the three above mentioned Agreements as follows:

- (i) The EEA Agreement should be amended to grant Swiss air carriers the right to operate air services from an EU Member State to an EEA EFTA State and vice versa.
- (ii) The Vaduz Convention should be amended to grant EU air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa.

¹ EEA Joint Committee Decision No 90/2011 of 19.07.2011, OJ L262, 6.10.2011, p. 62.

² Joint Committee Decision No 1/2010 of 7.04.2010, OJ L106, 28.4.2010, p. 20.

³ Decision of the EFTA Council No 1 of 2012 of 22 March 2012 amending the Appendix to Annex Q to the Convention (Air Transport).

(iii) The EU-Switzerland Air Transport Agreement should be amended to grant EEA EFTA air carriers the right to operate air services from an EU Member State to Switzerland and vice versa.

The decisions foreseeing these amendments to the three Agreements should be linked to each other by a reciprocity clause to ensure that the decisions enter into force simultaneously.

It is in the EU interest that air services by a EU air carrier can be operated from Switzerland to an EEA EFTA State and vice versa. The envisaged amendments to the EEA Agreement, to the EU-Switzerland Air Transport Agreement and to the Vaduz Convention will create an integrated market for aviation services covering the whole EEA and Switzerland, on the basis of Regulation (EC) No 1008/2008.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The EEA EFTA States and Switzerland agree with this proposal.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposed amendments to Annex XIII of the EEA Agreement are included in the annex to the draft proposal for a Council Decision.

They consist on the addition of a new paragraph between the current paragraphs (a) and (b) of point 64(a), adding a new paragraph at the end of Article 15 of Regulation (EC) No 1008/2008 as incorporated into the EEA according to which Swiss air carriers will be entitled to operate air services from an European Union Member State to an EEA EFTA State and vice versa under the same conditions as European Union and EEA EFTA air carriers.

This will be subject to the condition that, on the one hand, the European Union and Switzerland grant EEA EFTA air carriers the right to operate air services from a European Union Member State to Switzerland and vice versa, and, on the other hand, that Switzerland and the EEA EFTA States grant European Union air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa.

To that end, the entry into force of the Joint Committee decision will be dependent on the entry into force of the necessary amendments to the EU-Switzerland Air Transport Agreement and to the Vaduz Convention.

4. BUDGETARY IMPLICATION

The proposal does not have implications for the EU budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100(2) and 218 (9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area⁴, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2011 of 19.07.2011⁵, by virtue of which Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community⁶ was incorporated into the Agreement.
- (2) Through inclusion of Regulation (EC) No 1008/2008 into the Air Transport Agreement between the European Community and the Swiss Confederation, the same regime has been established between EU and Switzerland for Swiss and Community air carriers⁷.
- (3) Through inclusion of Regulation (EC) No 1008/2008 into the Convention establishing the European Free Trade Association (Vaduz Convention)⁸, the same regime has also been established between Switzerland and the EEA EFTA States for Swiss and EEA EFTA air carriers.
- (4) Annex XIII to the EEA Agreement should therefore be amended to grant Swiss air carriers the right to operate air services from an EU Member State to an EEA EFTA State and vice versa.

⁴ OJ L 305, 30.11.1994, p. 6.

⁵ OJ L262, 6.10.2011, p. 62.

⁶ OJ L 293, 31.10.2008, p. 3.

⁷ Joint Committee Decision No 1/2010 of 7.04.2010, OJ L106, 28.4.2010, p. 20.

⁸ Decision of the EFTA Council No 1/2012 of 22.03.2012.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union within the EEA Joint Committee on the proposed amendment to Annex XIII to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

**DECISION OF THE EEA JOINT COMMITTEE
No**

of

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No ... of ...⁹.
- (2) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 90/2011 of 19 July 2011¹⁰, which incorporates into the Agreement Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)¹¹.
- (3) The Contracting Parties aim at ensuring that EEA EFTA air carriers are entitled to operate air services from an EU Member State to Switzerland and vice versa.
- (4) The Contracting Parties also aim at ensuring that Community air carriers are entitled to operate air services from an EEA EFTA State to Switzerland and vice versa.
- (5) To this end, the EEA Joint Committee is to grant, subject to the condition of reciprocity, Swiss air carriers the right to operate from an EU Member State to an EEA EFTA State and vice versa.
- (6) Annex XIII to the Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Point 64a (Regulation (EC) No 1008/2008 of the European Parliament and of the Council) of Annex XIII to the Agreement shall be amended as follows:

1. The current adaptation (b) shall be renumbered as adaptation (c).

⁹ OJ L ...

¹⁰ OJ L262, 6.10.2011, p. 62.

¹¹ OJ L 293, 31.10.2008, p. 3.

2. The following adaptation shall be inserted after adaptation (a):

‘(b) The following paragraph shall be added in Article 15:

“6. Under the same conditions as European Union and EEA EFTA air carriers, Swiss air carriers shall be entitled to operate air services from an European Union Member State to an EEA EFTA State and vice versa. This shall be subject to the condition that, on the one hand, the European Union and Switzerland grant EEA EFTA air carriers the right to operate air services from a European Union Member State to Switzerland and vice versa, and, on the other hand, that Switzerland and the EEA EFTA States grant European Union air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa.

Any restrictions on this arrangement arising from existing bilateral or multilateral agreements binding the European Union, on the one hand, and the EEA EFTA States, on the other hand, are hereby superseded.”

Article 2

This Decision shall enter into force on the twentieth day following the day of its adoption, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee*, or on the date of entry into force of the agreement between the EU and Switzerland granting EEA EFTA air carriers the right to operate air services from an EU Member State to Switzerland and vice versa, on the one hand, or of the agreement between the EEA EFTA States and Switzerland granting Community air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa, on the other hand, whatever is the latest.

Article 3

The President of the EEA Joint Committee shall notify Switzerland of the adoption of this Decision and of the last notification to the EEA Joint Committee under Article 103(1) of the Agreement, if any.

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, .

For the EEA Joint Committee

The President

*The Secretaries
to the EEA Joint Committee*