



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 June 2012

**Interinstitutional File:
2012/0004 (NLE)**

**10453/12
ADD 3**

**AVIATION 93
RELEX 477
COEST 176
NIS 48
OC 259**

ADDENDUM TO "I/A" ITEM NOTE

From : Council Secretariat

To : COREPER/Council

N° Cion prop : 5922/12 AVIATION 11 RELEX 70 COEST 23 NIS 6

Subject : Proposal for a DECISION OF THE COUNCIL AND OF THE REPRESENTATIVES OF THE MEMBER STATES MEETING WITHIN THE COUNCIL on the signing, on behalf of the European Union, and provisional application of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova

– Adoption

COMMON GUIDELINES

Consultation deadline: 6.6.2012

Delegations will find attached a statement by the European Commission on the above-mentioned subject, to be added to the Council's minutes.

STATEMENT BY THE EUROPEAN COMMISSION

"In accordance with Article 218 (5) TFEU, the Commission has submitted a proposal for a Council decision authorising the signing and the provisional application of an aviation agreement with Moldova.

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 Article 218 (5) 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."