



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 October 2012

14494/12

**Interinstitutional File:
2012/0006 (NLE)**

**AVIATION 146
RELEX 884
COEST 331
NIS 76
OC 538**

"I/A" ITEM NOTE

From : Council Secretariat

To : COREPER/Council

N° Cion prop.: 5935/12 AVIATION 12 RELEX 72 COEST 24 NIS 7

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

- Request by the Council for the consent of the European Parliament

COMMON GUIDELINES

Consultation deadline for Croatia: 8 October 2012

1. The above Agreement is the result of the mandate granted by the Council to the Commission on 16 June 2011, to open negotiations with the Republic of Moldova for establishing a Common Aviation Area Agreement.
2. The Commission presented the above mentioned proposal to the Council (doc. 5935/12) on 27 January 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 Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova was adopted by the Council on 7 June 2012. The Agreement was signed on 26 June 2012, subject to its conclusion at a later date.

4. 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. All delegations supported the adapted draft Decision which thereafter has been revised by the Legal Linguistic Services.

5. 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 13800/12 AVIATION 138 RELEX 813 COEST 306 NIS 72 OC 495 as well as the text of the Agreement as contained in J/L document 8185/12 AVIATION 57 RELEX 284 COEST 107 NIS 28 OC 173 + REV 1 (fi) + REV 2 (hu) + COR 1 (fr) 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 (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."