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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 September 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 552 final
Subject:	Amended proposal for a COUNCIL DECISION on the signature and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and on the signature and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part

Delegations will find attached document COM(2016) 552 final.

Encl.: COM(2016) 552 final



Brussels, 6.9.2016
COM(2016) 552 final

2011/0103 (NLE)

Amended proposal for a

COUNCIL DECISION

on the signature and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and

on the signature and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part

EXPLANATORY MEMORANDUM

• 1. Context of the proposal Grounds for and objectives of the proposal

The Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part ("the EU-US Air Transport Agreement") was signed on 25 and 30 April 2007¹ and amended by a Protocol of 24 June 2010². The EU-US Air Transport Agreement has been applied provisionally since 30 March 2008. The Amending Protocol has been applied provisionally as from 24 June 2010.

Article 18 (5) of the EU-US Air Transport Agreement confirms both Parties' goal of "maximising the benefits for consumers, airlines, labour and communities on both sides of the Atlantic by extending this Agreement to include third countries". Article 18 (5) of the EU-US Air Transport Agreement further asks the Joint Committee established under Article 18 (1) of the EU-US Air Transport Agreement "to develop a proposal regarding the conditions and procedures that would be required for third countries to accede to this Agreement". Norway and Iceland formally requested the accession to the EU-US Air Transport Agreement in 2007. In accordance with Article 18 (5) of the EU-US Air Transport Agreement, the Joint Committee developed in its meeting on 16 November 2010 a proposal for the accession of Iceland and Norway to the EU-US Air Transport Agreement. Consequently, an accession agreement ("the Accession Agreement") and an ancillary agreement for the internal arrangements between the Union, Norway and Iceland ("the Ancillary Agreement") were elaborated. The provisions of the Accession Agreement extend the scope of the EU-US Air Transport Agreement *mutatis mutandis* to Norway and Iceland. Norway and Iceland being an integral part of the European Common Aviation Area, these Agreements will ensure a consistent regulatory framework for flights between the US and the single aviation market in the EU – including Iceland and Norway. The agreement is intended to create commercial benefits for airlines and consumers in the EU and to ensure the consistency of the EU-US Air Transport Agreement with the common Scandinavian air transport policy. At the same time, the proposal ensures that the bilateral character of the EU-US Air Transport Agreement is maintained.

With respect to the Accession Agreement and the Ancillary Agreement, the Commission adopted a proposal for a Council decision on signature and provisional application on 2 May 2011 (COM(2011)239 final).

The Council adopted its decision on the signing and provisional application of the Accession Agreement and the Ancillary Agreement, on behalf of the Union, in one act, together with the Member States meeting within the Council, on 16 June 2011 (Decision 2011/708/EU).³ Its Article 3 provided for the provisional application of both the Accession Agreement and the Ancillary Agreement from the date of signature which took place on 21 June 2011. The two agreements are applied provisionally in full as from that date.

In its judgment of 28 April 2015 in case C-28/12, *Commission v Council*⁴, the ECJ annulled Decision 2011/708/EU but maintained its effects "until the entry into force, within a reasonable period from the delivery of the present judgment, of a new decision that is to be

¹ Council Decision of 25 April 2007 on the signature and provisional application of the EU-US Air Transport Agreement (2007/339/EC), OJ L 134, 25.5.2007, p.4.

² OJ L 223, 25.8.2010, p.3.

³ OJ L 283, 29.10.2011, p. 1.

⁴ ECLI:EU:C:2015:282.

adopted by the Council of the European Union pursuant to Article 218(5) and (8) TFEU". The Court stated that the contested decision was adopted under a procedure which involved without distinction elements falling within the decision-making process specific to the Council and elements of an intergovernmental nature (para 51). It concluded that, for this reason, the contested decision was not compatible with Article 218(2), (5) and (8) TFEU and, therefore, with Article 13(2) TEU (para 53).

- While the original Commission proposal (COM(2011)239final) was adopted fully in line with Articles 218 (2), (5) and (8) TFEU, the Commission deems it expedient to update its proposal.**General context**

The EU-US Air Transport Agreement has removed all commercial barriers for flights between any point in the EU and any point in the US. In addition, the US has granted so-called 7th freedom rights to EU air carriers to operate between the US and non-EU countries of the European Common Aviation Area (ECAA), such as Norway and Iceland. However, the ECAA has no external dimension. Therefore, EU air carriers do currently not have the right to operate flights between Norway and Iceland and third countries. In the same way, Norwegian and Icelandic air carriers do currently not have the right to operate between the EU and the US.

The EU-US Air Transport Agreement has created uniform conditions for market access for all Union air carriers, and has established new arrangements for regulatory co-operation between the European Union and the US in fields essential for the safe, secure, and efficient operation of transatlantic air services. Norway and Iceland have adopted the complete *EU acquis* in aviation policy. Therefore, including both countries in the scope of the EU-US Air Transport Agreement will ensure that all European air carriers applying the *EU acquis* will operate transatlantic air services in a harmonised framework.

The accession of Iceland and Norway to the EU-US Air Transport Agreement could be a precedent for the accession of Iceland and Norway to other aviation agreements of the Union (e.g. Euro-Mediterranean Aviation Agreement with Morocco).

- **Consistency with the other policies and objectives of the Union**

The objective of extending the EU-US Air Transport Agreement to third countries is explicitly foreseen in the EU-US Air Transport Agreement. It does not establish an external dimension to the European Economic Area Agreement. It is consistent with the EU's overall policy towards Iceland and Norway.

- **Additional Explanations**

The present amended proposal does not address the elements related to i) Consultations of interested parties & impact assessment ii) the legal elements, iii) Budgetary implications which were already provided in detail in the original Commission proposal (COM(2011)239final).

Amended proposal for a

COUNCIL DECISION

on the signature and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and

on the signature and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(5) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part ("the EU-US Air Transport Agreement") was signed on 25 and 30 April 2007⁵ and amended by a Protocol of 24 June 2010⁶. It explicitly provides for the accession of third countries to the Air Transport Agreement.
- (2) Iceland and Norway are fully integrated members of the single European Aviation Market through the Agreement on the European Economic Area. They formally requested accession to the EU-US Air Transport Agreement in 2007. In accordance with Article 18(5) of the EU-US Air Transport Agreement, the Joint Committee established thereunder raised the idea, in its meeting of 16 November 2010, for an agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, (hereinafter "the Accession Agreement").
- (3) The Commission has negotiated an Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom

⁵ Council Decision of 25 April 2007 on the signature and provisional application of the EU-US Air Transport Agreement (2007/339/EC), OJ L 134, 25.5.2007, p.4.

⁶ OJ L 223, 25.8.2010, p.3.

of Norway, of the third part, concerning the internal arrangements for the application of the Accession Agreement (hereinafter "the Ancillary Agreement").

- (4) The Commission adopted a proposal for a Council decision on signature and provisional application with respect to the Accession Agreement and the Ancillary Agreement thereto, on behalf of the Union, on 2 May 2011.⁷
- (5) On 16 June 2011 the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council, adopted a decision on the signing and provisional application, on behalf of the Union, of the Accession Agreement and the Ancillary Agreement (Decision 2011/708/EU).⁸ Its Article 3 provided for the provisional application of both the Accession Agreement and the Ancillary Agreement from the date of signature which took place on 21 June 2011 . Since that date the two agreements are applied provisionally in full.
- (6) In its judgment of 28 April 2015 in case C-28/12, *Commission v Council*⁹, the European Court of Justice annulled the decision by which the Council authorized in one act, together with the representatives of the governments of the Member States meeting within the Council, the signing and the provisional application of the Accession Agreement and the Ancillary Agreement thereto. It maintained the effects of Decision 2011/708/EU "until the entry into force, within a reasonable period from the delivery of the present judgment, of a new decision that is to be adopted by the Council of the European Union pursuant to Article 218(5) and (8) TFEU".
- (7) In view of these circumstances, the Council should adopt the present Decision on the signing and provisional application of the Accession Agreement and the Ancillary Agreement, subject to their conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the Union the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, and the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part.

Article 2

The text of the Accession Agreement and of the Ancillary Agreement are annexed to this Decision.

⁷ COM(2011)239 final.

⁸ OJ L 283, 29.10.2011, p. 1.

⁹ ECLI:EU:C:2015:282.

Article 3

The Accession Agreement and the Ancillary Agreement shall be applied provisionally from the date of signing, pending their entry into force.

Article 4

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*