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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the conclusion, on behalf of the Union, of the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo* on the establishment of a European Common Aviation Area (ECAA)

* This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 (1999) and the Opinion of the International Court of Justice on Kosovo's declaration of independence.

COUNCIL DECISION (EU) 2017/...

of ...

**on the conclusion, on behalf of the Union, of the Multilateral Agreement
between the European Community and its Member States, the Republic of Albania,
Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia,
the former Yugoslav Republic of Macedonia, the Republic of Iceland,
the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia
and the United Nations Interim Administration Mission in Kosovo*
on the establishment of a European Common Aviation Area (ECAA)**

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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

* This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 (1999) and the Opinion of the International Court of Justice on Kosovo's declaration of independence.

¹ OJ C 81 E, 15.3.2011, p. 5.

Whereas:

- (1) The Commission negotiated on behalf of the European Community and of the Member States, a Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area (ECAA) ('the Agreement').
- (2) The Agreement was signed on behalf of the Community on 9 June 2006, subject to its conclusion at a later date, pursuant to Decision 2006/682/EC of the Council and of the Representatives of the Member States of the European Union meeting within the Council¹.
- (3) The Agreement has been ratified by all Member States.

¹ Decision 2006/682/EC of the Council and of the Representatives of the Member States of the European Union meeting within the Council of 9 June 2006 on the signature and provisional application of the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA) (OJ L 285, 16.10.2006, p. 1).

- (4) Following their accession to the Union, the Republic of Bulgaria, Romania and the Republic of Croatia have become Member States and therefore automatically ceased to be Associated Parties under the Agreement in accordance with Article 31(2) thereof. This should be recalled in a notification, to be made at the time of the deposit of the instrument of approval of the Agreement.
- (5) As regards the amendments to Annex I to the Agreement concerning merely the inclusion of Union legislation into that Annex, to be adopted by the Joint Committee set up under Article 18 of the Agreement, the power to approve such amendments on behalf of Union should be given to the Commission, after consultation of a Special Committee appointed by the Council.
- (6) In all other cases, the position to be taken within the Joint Committee on behalf of the Union as regards matters falling within Union competence should be established on a case-by-case basis in accordance with the relevant provisions of the Treaty on the Function of the European Union (TFEU).
- (7) Considering that both the Union and the Member States are Parties to the Agreement, close cooperation between them is essential. In order to ensure such close cooperation and unity of external representation in the Joint Committee, and without prejudice to the Treaties, in particular to Articles 16(1) of the Treaty on European Union and Article 218(9) TFEU, a coordination on the positions to be taken in the Joint Committee, on behalf of the Union and the Member States, as regards matters falling within the competence of both the Union and the Member States, should take place prior to any meeting of the Joint Committee dealing with such a matter.

- (8) Article 2 of Decision 2006/682/EC contains provisions on the establishment of the positions to be taken within the Joint Committee during the provisional application of the Agreement. In view of the judgment of the Court of Justice of 28 April 2015 in Case C-28/12, Commission v Council¹, those provisions should cease to apply at the date of entry into force of this Decision.
- (9) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

¹ ECLI:EU:C:2015:282.

Article 1

1. The Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area (ECAA), is hereby approved on behalf of the Union¹.
2. The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 29(2) of the Agreement² and to make the following notification:
 - '1. As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community and from that date exercises all rights and assumes all obligations of the European Community. Therefore, references to "the European Community" in the text of the Agreement are, where appropriate, to be read as references to "the European Union".
 2. Following their accession to the European Union, the Republic of Bulgaria, Romania and the Republic of Croatia have become Member States of the European Union and, in accordance with Article 31(2) of the Agreement, therefore ceased to be Associated Parties under the Agreement.'

¹ The Agreement has been published in the *Official Journal of the European Union* (OJ L 285, 16.10.2006, p. 3) together with the Decision on the signing and provisional application.

² The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 2

The position to be taken by the Union as regards decisions of the Joint Committee under Article 17 of the Agreement regarding merely the inclusion of Union legislation into Annex I to the Agreement, subject to any technical adjustments needed, shall be adopted by the Commission, after consultation of a Special Committee appointed by the Council.

Article 3

Article 2 of Decision 2006/682/EC shall cease to apply at the date of entry into force of this Decision.

Article 4

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

Done at ...,

For the Council

The President
