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European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 June 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 256 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and on the provisional application of the Agreement with Respect to Time Limitations on Arrangements for the Provision of Aircraft with Crew between the United States of America, the European Union, Iceland, and the Kingdom of Norway

Delegations will find attached document COM(2019) 256 final.

Encl.: COM(2019) 256 final



Brussels, 5.6.2019
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Proposal for a

COUNCIL DECISION

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The Agreement with Respect to Time Limitations on Arrangements for the Provision of Aircraft with Crew between the United States of America, the European Union, Iceland, and the Kingdom of Norway (“the Wet Lease Agreement”) has been negotiated by the Commission, as authorised by the Council on 21 December 2016.

It builds on the Air Transport Agreement (“ATA”) between the EU and the United States (“US”), which was signed on 25 and 30 April 2007¹, and confirms the establishment of clear and non-restrictive wet lease arrangements² involving the airlines of the Parties, thereby providing more precision to the respective provisions of the ATA.

The Wet Lease Agreement will not only resolve the current dispute on the application of the relevant provisions of the ATA, it will also provide clarity and legal certainty for future arrangements affecting EU, Icelandic, Norwegian and US air carriers. It is also expected to create new business opportunities and enhanced cooperation for air carriers of all sides.

• **General context**

The ATA between the EU and the US foresees an open wet-lease regime between the parties. The negotiating directives set out the general objective of negotiating a Wet Lease Agreement with the aim of providing precision to the relevant provisions of the ATA and abolishing time limitations for wet lease arrangements affecting the EU, Icelandic, Norwegian and US air carriers.

In accordance with the negotiating directives, a draft Wet Lease Agreement was initialled on 8 March 2019.

• **Consistency with existing policy provisions in the policy area**

The EU-US ATA is the most important air transport agreement in the world, providing more than 75 million seats per year, and as such a cornerstone of the EU’s external aviation policy. The Wet Lease Agreement will resolve a long-standing uncertainty concerning the application of the wet lease provisions of the ATA, and as such contribute to the well-functioning of the transatlantic aviation relationship.

The Wet Lease Agreement is in line with the EU’s overall rules on wet lease: Article 13(3)b of Regulation (EC) No 1008/2008³ as recently modified⁴ provides for the lifting of time restrictions by means of an international agreement on wet leasing signed by the Union, which is based on an EU Air Transport Agreement signed before 1 January 2008.

¹ OJ L 134, 25.5.2007, p.4.

² Wet-lease is a leasing arrangement whereby one airline (lessor) operates the flights providing the aircraft and crew to another airline (lessee).

³ 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) (OJ L 293, 31.10.2008, p. 3).

⁴ Regulation (EU) 2019/2 of the European Parliament and of the Council of 11 December 2018 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community, (OJ L 11, 14.1.2019, p. 1).

- **Consistency with existing provisions in the area of the proposal**

The Wet Lease Agreement is in line with the EU's overall rules on wet lease: Article 13(3)b of Regulation (EC) No 1008/2008 provides for the lifting of time restrictions by means of an international agreement on wet leasing signed by the Union, which is based on an EU Air Transport Agreement signed before 1 January 2008.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 100 (2) and Article 218 (5) of the Treaty on the Functioning of the European Union ("TFEU").

- **Subsidiarity (for non-exclusive competence)**

Not applicable – The Wet Lease Agreement falls under the exclusive competence of the EU according to Article 3 (2) of the TFEU.

- **Proportionality**

The Wet Lease Agreement is limited to dealing with the issue at stake and does not address other matters. By focusing exclusively on the time restrictions currently affecting the wet lease arrangements in the transatlantic market, it will bring further clarity to the wet-lease provisions in the ATA.

Furthermore, Member States will continue to carry out the traditional administrative tasks they execute in the context of approving wet leasing arrangements.

- **Choice of the instrument**

An international agreement is the only way to obtain the intended objective.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

All EU Member States, stakeholders from the entire aviation value chain and social partners, including notably trade unions, have been consulted at the different stages during the negotiations. Comments made in this process have been taken into account.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the budget of the Union.

5. OTHER ELEMENTS

- **Summary of the proposed agreement**

The Agreement consists of the main body and a Joint Declaration on the authentication of additional language versions.

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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 Article 100 (2), in conjunction with Article 218 (5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 December 2016 the Council authorised the Commission to open negotiations with the United States of America, Iceland and the Kingdom of Norway on an Agreement with Respect to Time Limitations on Arrangements for the Provision of Aircraft with Crew. The negotiations were successfully concluded by the initialling of the Agreement on 8 March 2019;
- (2) The Agreement should be signed and applied provisionally by the Union, subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement with Respect to Time Limitations on Arrangements for the Provision of Aircraft with Crew between the United States of America, the European Union, Iceland, and the Kingdom of Norway, is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union, subject to its conclusion.

Article 3

Pending its entry into force, the Agreement shall be applied provisionally by the Union in accordance with Article 7 (2) thereof.

Article 4

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

Done at Brussels,

*For the Council
The President*