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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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

– Adoption

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 2007¹ and amended by a Protocol of 24 June 2010². The EU-US Air Transport Agreement has been in force since 29 June 2020. The Amending Protocol has been in force since 5 May 2022.
2. Subsequently, an agreement for the accession of Iceland and Norway to the EU-US Air Transport Agreement ("the Accession Agreement") and an ancillary agreement for the internal arrangements between the Union, Norway and Iceland ("the Ancillary Agreement") were negotiated.

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.

The Commission adopted a proposal for a Council decision on signature and provisional application of those two agreements on 2 May 2011 (ST 9849/11).

3. Together with the Representatives of the Governments of the Member States of the European Union, meeting within the Council, the Council adopted a decision on the signing and provisional application of the Accession Agreement and the Ancillary Agreement on 16 June 2011 (Decision 2011/708/EU)³.
4. In its judgment of 28 April 2015 in case *Commission v Council*, C-28/12⁴ the Court of justice determined that the adoption by the Council of hybrid decisions, such as Decision 2011/708/EU, was incompatible with the Treaties and therefore annulled Decision 2011/708/EU. The Court decided to maintain the effects of the annulled decision until the entry into force, within a reasonable period of time, of a new decision to be adopted by the Council pursuant to Article 218(5) and (8) TFEU.
5. Further to that judgment, the Commission submitted a proposal for a new Council Decision to replace the annulled decision (ST 11984/16 + ADD1 REV1 + ADD2 REV1).
6. The Working Party on Aviation discussed the draft Council Decision on 12 and 19 March 2019 and 12 December 2022.
7. Following the examination at working party level, the text of the new Council Decision was revised by the Council's legal-linguistic services.
8. The Committee of Permanent Representatives is invited to approve the draft Council Decision as set out in J/L document 6260/23, and suggest that the Council, in part "A" of the agenda of a forthcoming meeting, adopts the Decision.
9. The European Parliament will be informed of the adoption in accordance with Article 218(10) TFEU and the Decision will be transmitted to the EP.

³ OJ L 283, 29.10.2011, p. 1–15

⁴ EU:C:2015:282.