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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 March 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 106 final
Subject:	Recommendation for a COUNCIL DECISION amending the Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence

Delegations will find attached document COM(2020) 106 final.

Encl.: COM(2020) 106 final

Brussels, 20.3.2020
COM(2020) 106 final

Recommendation for a

COUNCIL DECISION

amending the Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

- **Reasons for and objectives of the recommendation**

On 7 December 2015, the European Commission proposed an Aviation Strategy for Europe which included a number of proposals for Council decisions authorising the Commission to open negotiations between the European Union and certain third countries on comprehensive air transport agreements. One of these proposals (COM(2015) 609 final) was to open negotiations with the Association of Southeast Asian Nations (ASEAN).

On 7 June 2016, the Council decided to authorise the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the ASEAN Member States as regards matters falling within exclusive Union competence. The Council decision has a validity of four years i.e. it will expire on 7 June 2020.

In relation to the Council decision the Commission made a statement in which it considered that the time limitation of the authorisation is incompatible with the Treaties, and in particular with Article 218 (3) TFEU.

On 24 June 2016, the Commission informed the government of each of the 10 ASEAN Member States about the authorisation of the Council to open negotiations with the ASEAN Member States and invited ASEAN to start negotiations.

The first round of negotiations was held on 27-28 November 2016 in Brussels. The eighth and so far latest round of negotiations was held on 20-22 November 2018 in Salzburg. During the eighth round of negotiations most parts of the draft agreement were agreed while the two sides agreed to consult internally on a few outstanding issues.

Internal consultations on the ASEAN side are still on-going.

The objective of this recommendation is to invite the Council to amend its Decision of 7 June 2016 without modifying the negotiating directives annexed to the Council's decision.

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

The recommendation to amend the June 2016 decision to authorise the Commission to open negotiations with the ASEAN Member States is fully consistent with the Union's external policy objectives as set out in the comprehensive Aviation Strategy that the Commission proposed in December 2015 aimed at bolstering the competitiveness of the European aviation sector.

- **Consistency with other Union policies**

This recommendation is fully in line with the Union's aviation policy objectives and also promotes other policy objectives and associated policies, for example in the fields of labour rights, environment and the fight against climate change, with a view to better secure the achievement of these objectives on both sides.

2. LEGAL BASIS

- **Legal basis**

Article 218(3) TFEU.

- **Choice of the instrument**

Proposed instrument: Council Decision under Article 218(3) TFEU.

Other means would not be adequate for the following reason:

A Council Decision under Article 218(3) TFEU authorising the Commission to open negotiations is the foreseen procedure for international transport negotiations.

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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 218(3) thereof,

Having regard to the recommendation from the Commission,

Whereas:

Immediately after the adoption of the Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence, the Commission has contacted each of the ASEAN Member States with a view to commencing negotiations.

Eight rounds of negotiations have been held since November 2016.

Under the circumstances, it is unlikely that negotiations could be successfully concluded before the expiry of the authorisation conferred by the Council Decision of 7 June 2016, i.e. by 7 June 2020.

It is therefore necessary to amend that Decision so as to allow the Commission to conduct negotiations within a framework conducive to a successful conclusion, in the interest of the Union.

HAS ADOPTED THIS DECISION:

Article 1

The Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence is amended as follows:

1. The title of the Decision is replaced by the following:

“Council Decision of 7 June 2016 authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States”

2. The text of Article 1 is replaced by the following:

“The Commission is hereby authorised to negotiate, on behalf of the Union, a comprehensive air transport agreement with the Association of Southeast Asian Nations (ASEAN) Member States.”

3. The text of Article 3a is replaced by the following:

“This Decision shall be valid for an unlimited period of time.”

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*