



Council of the European Union  
General Secretariat

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Eingelangt am 26/05/20

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CM 2261/20

AVIATION  
RELEX  
ASIE  
PROCED

### COMMUNICATION

#### WRITTEN PROCEDURE

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Subject: **Written Procedure with reply by Tuesday 26 May 2020 at 15:00 P.M. CET (Brussels time) by email to [avia-mar@consilium.europa.eu](mailto:avia-mar@consilium.europa.eu)**  
**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**

- Adoption
- = End of the written procedure

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Delegations are informed that the written procedure, opened by CM 2260/20 of 20 May 2020, was completed on 26 May 2020.

All delegations voted in favour.

The result of the written procedure is that Council adopted the **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**, as set out, after lawyer-linguistic revision, in document ST 7787/20.

The European Parliament will be informed about the adoption of the Council Decision.

The statement by the Commission is reproduced in the Annex to this CM.

The above statement will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

The Council Secretariat takes this opportunity to thank delegations for their kind cooperation.

Statement by the Commission

**Commission statement in relation to 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 and Decision of the Representatives of the Governments of the Member States meeting within the Council amending the Decision of the Representatives of the Governments of the Member States, meeting within the Council of 7 June 2016 authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States on matters that do not fall within the exclusive Union competence.**

The Commission takes note of the intention of the Council to adopt a decision amending the Council Decision of 7 June 2016 authorising the Commission to open negotiations with the ASEAN Member States only as regards matters falling within the exclusive Union competence. The Commission also notes that the Representatives of the Governments of the Member States, meeting within the Council, have the intention to adopt a decision amending the Decision of the Representatives of the Governments of the Member States, meeting within the Council of 7 June 2016 authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States on matters that do not fall within the exclusive Union competence. The Commission considers that the Union is competent to negotiate and conclude comprehensive agreements in the field of air transport, such as the agreement with ASEAN, in all their parts. It also recalls that, in accordance with the jurisprudence of the Court, as reflected in [Case C-459/03](#) (points 92 to 95), the existence of the Union's external competence is not in principle contingent on the adoption of measures of secondary law covering the area in question. Therefore, the Commission does not agree that the

Union can participate in the negotiations only "as regards matters falling under the exclusive Union competence", nor with the Council's approach whereby authorisations to negotiate on matters covered by Union competence, even if only shared and not yet exercised, could in any way "affect" Member State competences. The Commission considers moreover that the negotiation of a comprehensive air transport agreement by the Union alone is the most effective way to achieve the objectives of the Common Transport Policy, in particular as regards a common treatment to be granted within the Union to air carriers established in third countries and a common treatment to be granted by third countries to Union air carriers. In order for the benefits from international aviation agreements, such as the agreement with ASEAN, to be reaped without undue delay, they should apply as soon as possible after their signature. The current practice shows that the participation of Member States in such agreements causes considerable delays in their entry into force. This is contrary to the interest of the Union. The duty of sincere cooperation (Article 4(3) TEU) requires the institutions and Member States to do everything possible to facilitate the exercise of the Union's powers and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaties.

The Commission considers moreover that the time limitation of the authorisation(s) is incompatible with the Treaties, and in particular with Article 218(3) TFEU. The Commission considers that such a time limitation can only be part of negotiating directives addressed by the Council to the Commission under Article 218(4) TFEU and thus merely constitute guidance for the negotiator, inviting him to use its best endeavour to conclude negotiations within the respective timeframe.

The Commission maintains its view that Article 218(3) and (4) TFEU provide a sufficient legal basis for the Council Decision, without any substantive legal base being necessary.

The Commission reserves its right to make use, if necessary, of all the legal means at its disposal to ensure the respect of the provisions of the Treaties.