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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 May 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 194 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States

Delegations will find attached document COM(2022) 194 final.

Encl.: COM(2022) 194 final



EUROPEAN
COMMISSION

Brussels, 6.5.2022
COM(2022) 194 final

2022/0139 (NLE)

Proposal for a

COUNCIL DECISION

**on the signing, on behalf of the Union, of the Comprehensive Air Transport Agreement
between the Member States of the Association of Southeast Asian Nations, and the
European Union and its Member States**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States (EU-ASEAN CATA), has been negotiated by the Commission as authorised by Council decisions of 7 June 2016 and 26 May 2020.

Air services between the Union and ASEAN Member States operate at present based on bilateral agreements between Member States and individual ASEAN Member States.

In its *Aviation Strategy for Europe*,¹ the Commission highlighted that “by adopting an ambitious external aviation policy through the negotiation of comprehensive aviation agreements, with a clear focus on growth markets, the EU can contribute to improving market access and investment opportunities for European aviation in important overseas markets, increasing Europe's international connectivity and ensuring fair and transparent market conditions for EU airlines”. In order to untap these benefits, the Commission recommended to the Council to authorize the opening of negotiations of comprehensive EU-level air transport agreements with a number of countries and regions, including ASEAN. This Agreement aims in particular at:

- ensuring fair competition, non-discrimination, transparency and a level playing field for economic operators;
- gradual market opening in terms of access to routes and capacity;
- enhancing connectivity, thereby benefitting consumers and the economy.

The negotiators reached agreement on the draft text of the EU-ASEAN CATA on 2 June 2021. The Agreement will enter into force once all ASEAN Member States, all EU Member States and the Union have completed their respective ratification or approval processes. However, it may also enter into force for the Union and its Member States and all ASEAN Member States except Malaysia, if Malaysia is the only ASEAN Member State not having ratified it. In such case, the Agreement would enter into force also for Malaysia once the latter ratifies it.

• Consistency with existing policy provisions in the policy area

As mentioned above, the Agreement has been negotiated based on an authorization by the Council to open negotiations, following a recommendation presented by the Commission as a follow-up to its 2015 *Aviation Strategy for Europe*.

The Communication from the Commission on *Sustainable and Smart Mobility Strategy – putting European transport on track for the future* (COM(2020) 789 final) calls for turning the Union into the world's connectivity hub. The Communication explains that, in order to achieve this objective, “ensuring undistorted international competition, reciprocity and a level playing field is essential”. The Communication continues with the announcement that “the Commission will also continue to promote the use of European technical, social,

¹ *An Aviation Strategy for Europe*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 598 final, 7.12.2015.

environmental and competition standards in [...] relations with individual non-EU countries across transport modes” and “continue to deepen transport relations, including with key strategic partners [...], and will further develop links with new international partners, such as high-growth and emerging economies”.

ASEAN Member States are among the fastest growing economies in the world, and represent together a market of over 650 million people. With 11.2 million passengers in 2019, ASEAN collectively is the 13th biggest aviation partner of the Union, with a strong potential to grow further. Current bilateral aviation agreements between Member States and individual ASEAN Member States provide for some mutual market access, which remain unequal from one country pair to another. Furthermore, those bilateral agreements lack adequate provisions on essential elements to avoid abuses of a liberalised marketplace, such as fair competition, transparency or social matters.

The EU-ASEAN CATA addresses, vis-à-vis ASEAN, the objective of the Sustainable and Smart Mobility Strategy of turning the Union into the world’s connectivity hub.

By facilitating the operation of direct EU-to-ASEAN connections, the EU-ASEAN CATA will help reduce the dependence on connecting flights through hubs in third countries. This will not only benefit Union carriers, but also reduce the environmental footprint of individual EU-ASEAN trips, by shortening flight routes and reducing the number of take-off and landing operations – in line with the objectives of the Sustainable and Smart Mobility Strategy and of the Communication from the Commission on *the European Green Deal* (COM(2019) 640 final).

- **Consistency with other Union policies**

Regulation (EU) 2019/712 on safeguarding competition in air transport ensures that any measures adopted on its basis respect international obligations, including those of this Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 100(2) in conjunction with Article 218(5) of the Treaty on the Functioning of the European Union (TFEU).

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

The provisions of the Agreement will prevail over the relevant provisions of the existing arrangements made between Member States and individual ASEAN Member States. The Agreement creates simultaneously for all Union air carriers equal and uniform conditions for market access, and establishes new arrangements for regulatory co-operation and convergence between the Union and ASEAN Member States in fields essential for the safe, secure and efficient operation of air services. These arrangements can only be achieved at Union level.

Union action will better achieve the objectives of the proposal for the following reasons.

The Agreement will apply to the 27 Member States, therefore, the same rules will apply without discrimination and benefiting all Union air carriers regardless of their nationality. It includes comprehensive provisions on subsidies, anticompetitive practices and transparency and robust mechanisms to enforce them, thereby contributing to a level playing field for air

services between the Union and ASEAN Member States, and between the Union and other destinations, operated via ASEAN Member States.

The Agreement further secures for all Union air carriers access to commercial opportunities, such as the ones relating to ground-handling, code-sharing, inter-modality and the possibility to freely establish prices. It also includes provisions on social matters in line with those included in Union international trade agreements, committing the Parties to improve the social and labour policies as per their international commitments, notably those made in the context of the International Labour Organization (ILO). Last but not least, it sets up a framework for cooperation between the Union and ASEAN Member States in minimising the impact of aviation on the environment, and particularly in addressing the greenhouse gas emissions associated with aviation.

Air carriers will be able to operate passenger and cargo services freely from any point in the Union to ASEAN Member States, within the single regulatory framework of the Agreement, which is currently not the case. Air carriers will also be able to operate unlimited all-cargo services to points beyond, and passenger and combination services to points beyond subject to frequency limitations.

The removal of market access restrictions between the Union and ASEAN Member States will not only attract new entrants to the market and create opportunities to operate to underserved airports, but will also facilitate consolidation between Union air carriers.

- **Proportionality**

Not applicable.

- **Choice of the instrument**

International agreement.

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

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

Not applicable.

- **Stakeholder consultations**

Stakeholders from the entire aviation value chain and social partners, including notably trade unions, have been consulted 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

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 authorises the signature of the Agreement on behalf of the Union, subject to its conclusion.

Article 2 requires the Council Secretariat General to establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person or persons indicated by the Commission.

Article 3 approves two statements, to be made on behalf of the Union on the occasion of the signature of the Agreement, regarding the expedient entry into force of the Agreement and the intention of the Parties to maintain close discussions and coordination on responses to unexpected crisis events with the objective of mitigating any disruptive effects on air services, respectively.

Article 4 provides for the entry into force of the proposed Decision.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States

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 7 June 2016, the Council authorised the opening of negotiations with the ASEAN Member States on a Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States (hereinafter, the “Agreement”).
- (2) On 26 May 2020, the Council extended by one year the authorisation of 7 June 2016.
- (3) The negotiations were successfully finalised on 2 June 2021.
- (4) The ASEAN Member States are among the fastest growing economies in the world and their markets for air services have strong potential for further growth. The Agreement aims in particular at ensuring between the Union and the ASEAN Member States fair competition, facilitation of gradual market opening, and increase in access to routes and capacity, thereby benefitting consumers and the economy.
- (5) The Agreement should therefore be signed on behalf of the Union, subject to its conclusion at a later date.
- (6) In order for the Agreement to deliver its full benefits as early as possible, the Parties should conclude it swiftly. To that effect, it is envisaged that in connection with the signature of the Agreement, the Parties make a statement that they will take all necessary steps in accordance with their applicable laws and regulations to bring the Agreement into force as expediently as possible. The statement to that effect to be made on behalf of the Union should therefore be approved.
- (7) Furthermore, the uncoordinated response of countries across the world to the COVID-19 pandemic was particularly disruptive for the aviation industry. In order to avoid such disruptions in case of future crises, there is need for better coordination between the Union and key international partners. In view of that, it is envisaged that on the occasion of the signature of the Agreement, the Parties make a statement expressing their intention to maintain close discussions and coordination, within the framework of the Joint Committee provided for under the Agreement, on responses to unexpected crisis events, such as the COVID-19 pandemic, with the objective of mitigating, to the extent possible, any disruptive effects to air services. The statement to that effect to be made on behalf of the Union should therefore be approved,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached as Annex 1 to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 3

The statements to be made on behalf of the Union on the occasion of the signature of the Agreement are hereby approved.

The texts of the statements are included in the Record of Statements attached as Annex 2 to this Decision.

Article 4

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

Done at Brussels,

*For the Council
The President*