



EUROPEAN
COMMISSION

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2014/0007 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of a Common Aviation Area Agreement between the European Union
and its Member States and Ukraine**

EXPLANATORY MEMORANDUM

1. Context of the proposal

- Grounds for and objectives of the proposal

The Common Aviation Area Agreement between the European Union and its Member States and Ukraine has been negotiated by the Commission as authorised by the Council in December 2006.

The air services market between the EU and Ukraine is significant.

Traffic by air involves more than 4 million passengers (source Eurostat 2012), growing at an average yearly rate of 17% over the past 10 years. Aviation services for cargo are also on the increase, registering a double growth over the same period. It is also worth noting that traffic between the EU and the Ukraine averaged almost 43% of the Ukraine's total international traffic during the last 4 years.

Air services between the EU and Ukraine operate at present on the basis of bilateral agreements between individual Member States and Ukraine. It is part of the EU's external aviation policy to negotiate comprehensive air services agreements with neighbouring countries, where the added value and economic benefits of such agreements have been demonstrated. The Agreement aims in particular at:

- gradual market opening in terms of access to routes and capacity on a reciprocal basis;
- ensuring regulatory convergence and effective compliance by Ukraine with EU aviation related legislation; and
- non-discrimination and level playing field for economic operators.

- **General context**

The negotiating directives set out the general objective of negotiating a comprehensive air transport agreement with the aim of gradually and reciprocally opening market access and ensuring regulatory convergence and effective implementation of EU requirements and standards.

In accordance with the negotiating directives, a draft Agreement with Ukraine was initialled by the two sides on 28 November 2013.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement shall prevail over the relevant provisions of the existing bilateral air services agreements between Member States and Ukraine. However, existing traffic rights which originate from these bilateral agreements and which are not covered under this Agreement can continue to be exercised, provided that there is no discrimination between the Member States and their nationals.

- **Consistency with the other policies and objectives of the Union**

The conclusion of a comprehensive air transport agreement with Ukraine is an important element in the development of the EU external aviation policy and a crucial component of the EU neighbourhood policy and the creation of a wider European Common Aviation Area, as described in the Commission Communication COM(2012) 556 final on the "EU's External Aviation Policy - Addressing Future Challenges".

2. Consultation of interested parties and impact assessment

In line with Article 218 (4) TFEU the Commission has conducted the negotiations in consultation with a special committee.

In addition, it consulted interested parties throughout the process.

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission has consulted with stakeholders, in particular via the Consultative Forum comprising representatives of air carriers, airports and trade unions.

Summary of responses and how they have been taken into account

All comments from the stakeholders, mainly related to the balance between the opening of the market and the implementation by Ukraine of EU aviation requirements and standards, were duly taken into consideration in the preparation of the Union's negotiating position. The stakeholders have after the finalisation of the negotiations expressed they are keen to see the agreement signed and implemented.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact Assessment**

As in the case of other Agreements between the EU and third countries, it is expected that due to the liberalisation of the market between the EU and Ukraine, new routes would be opened between airports of the Parties. New airlines are also expected to enter the market. This evolution would bring about more competition and allow for more choices at better prices for consumers. Besides, this is the first time that such an agreement (unilaterally) grants EU carriers the possibility to carry out stand alone and consecutive cabotage operations in the Ukrainian domestic market.

In addition, the implementation by Ukraine of EU aviation requirements and standards in all aspects pertaining to the operation of airlines (for instance regarding safety, air traffic management, security, social standards and environment) will allow the establishment of fair competition conditions for all airlines. Furthermore, the Agreement opens up investment opportunities for the air carriers of the Parties by allowing reciprocal majority ownership, which will facilitate the development of

airlines and promote the consolidation of the sector. Also, it will ease various doing-business issues, since it provides for a series of business related prospects aimed at facilitating the operation of airlines, such as code share arrangements, groundhandling, leasing, intermodal transportation, as well as a right for night stops in both Parties' airports.

More generally, the EU and Ukraine aviation markets would be progressively largely interconnected and expanded.

3. Legal elements of the proposal

- **Summary of the proposed action**

The Agreement creates equal and uniform conditions for market access for all Union carriers and establishes new arrangements for regulatory co-operation and convergence between the European Union and Ukraine in fields essential for the safe, secure, and efficient operation of air services.

Notably, it allows for the extension of its terms to the 28 Member States, applying the same rules without discrimination and benefiting all Union air carriers regardless of their nationality. These carriers will be able to operate freely from any point in the European Union to any point in Ukraine which is currently not the case.

The Agreement consists of the main body including the core principles and seven annexes: Annex I on EU applicable requirements and standards; Annex II on agreed services and specified routes; Annex III on transitional provisions; Annex IV on the list of certificates to be recognised; Annex V on the list of States referred to in Articles 17, 19 and 22 and Annexes II and III to the Agreement; Annex VI on procedural rules; and Annex VII on criteria referred to in Article 26, paragraph 4 of the Agreement.

- **Legal basis**

Article 100 (2), in conjunction with Article 218 (6) (a) of the Treaty on the Functioning of the European Union.

- **Choice of instruments**

Proposed instruments: international agreement

Other means would not be adequate for the following reason.

External aviation relations can only be given effect through international agreements.

4. Budgetary implication

The proposal has no implication for the Union budget.

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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 (6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament

Whereas:

- (1) In accordance with Council Decision 2014/xxx of (...) the Common Aviation Area Agreement with Ukraine (hereinafter, the “Agreement”) was signed on (...), subject to its conclusion at a later date;
- (2) The Agreement creates equal and uniform conditions for market access for all Union carriers and establishes new arrangements for regulatory co-operation and convergence between the European Union and Ukraine in fields essential for the safe, secure, and efficient operation of air services;
- (3) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The Common Aviation Area Agreement between the European Union and its Member States and the Government of Ukraine is hereby approved on behalf of the Union.
2. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed on behalf of the European Union to the notification provided for in Article 38 of the Agreement in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This decision shall enter into force on the day of its adoption.¹

Done at Strasbourg,

For the Council

The President

[...]

¹ The date of entry into force will be published in the *Official Journal of the European Union* by the Secretariat General of the Council.