



Brussels, 7.9.2015
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Proposal for a

COUNCIL DECISION

**on the signing, on behalf of the Union, and provisional application of the Agreement
between the European Union and the Government of the People's Republic of
Bangladesh on certain aspects of air services**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Following the judgements of the Court of Justice in the so-called “Open Skies” cases, on 5 June 2003 the Council authorized the Commission to open negotiations with third countries on the replacement of certain provisions in existing agreements with an agreement at Union level (the “horizontal authorisation”). The objectives of such agreements are to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air services agreements between Member States and third countries in line with Union law.

- **General context**

International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements between Member States and third countries, the annexes to such agreements and other related bilateral or multilateral arrangements.

Traditional designation clauses in Member States’ bilateral air services agreements infringe Union law. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against EU air carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the European Union which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

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

The provisions of the Agreement supersede or complement the existing provisions in 8 bilateral air services agreements between Member States and the People's Republic of Bangladesh.

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

The Agreement will serve a fundamental objective of the external aviation policy of the Union by bringing existing bilateral air services agreements in line with Union law.

2. CONSULTATION OF INTERESTED PARTIES

Consultation methods, main sectors targeted and general profile of respondents

In line with Article 218(4) TFEU, the Commission has conducted the negotiations in consultation with a special committee. Industry has equally been consulted during the negotiations.

Summary of responses and how they have been taken into account

Comments made in this process have been taken into account. The Member States concerned verified the accuracy of the references to the bilateral air services agreements. Industry underlined the importance of a sound legal basis for their commercial operations.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

In accordance with the mechanisms and directives in the Annex to the "horizontal authorisation", the Commission has negotiated an agreement with the People's Republic of Bangladesh that replaces certain provisions in the existing bilateral air services agreements between Member States and the People's Republic of Bangladesh. Article 2 of the Agreement replaces the traditional designation clauses with an EU designation clause, permitting all EU carriers to benefit from the right of establishment. Article 5 resolves potential conflicts with the competition rules of the Union.

The negotiations on the agreement having been successfully concluded, it should be signed on behalf of the European Union. A decision to this effect is proposed herewith.

It is also proposed to have the agreement provisionally applied from the date of signature to ensure that the bilateral air services agreements between Member States and the People's Republic of Bangladesh are applied in line with Union law without any further delays. Provisional application is essential as experience with similar agreements has shown that ratification processes can be lengthy.

- **Legal basis**

Art. 100(2), 218(5) TFEU

- **Choice of instruments**

The Agreement between the Union and the People's Republic of Bangladesh is the most efficient instrument to bring all existing bilateral air services agreements between Member States and the People's Republic of Bangladesh into conformity with Union law.

4. BUDGETARY IMPLICATION

The proposal has no implication for the budget of the Union.

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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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.
- (2) Accordingly, on behalf of the Union, the Commission has negotiated an Agreement with the Government of the People's Republic of Bangladesh on certain aspects of air services (the Agreement). The negotiations were successfully concluded by the initialling of the Agreement on 27 February 2015.
- (3) The objective of the Agreement is to bring bilateral air services agreements between 8 Member States and the People's Republic of Bangladesh in line with Union law.
- (4) Therefore, the Agreement should be signed on behalf of the European Union, subject to its conclusion at a later date.
- (5) In order to bring about the benefits of the Agreement as soon as possible, it should be applied provisionally.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Government of the People's Republic of Bangladesh on certain aspects of air services (the Agreement) is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached 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 negotiator of the Agreement.

Article 3

Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose.

Article 4

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 8(2) of the Agreement.

Article 5

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

Done at Brussels,

*For the Council
The President*