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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	ST 15777/16 AVIATION 255 CODEC 1939
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community – General approach

1. On 21 December 2016, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community.
2. The purpose of the proposal is to ensure legal consistency with an international agreement, namely the Air Transport Agreement (ATA) between the European Community and its Member States, of the one part, and the United States of America, signed in 2007. The Council Decision on the conclusion of the ATA was adopted by the Council on 29 January 2018.
3. On 11 May 2017, the Council adopted a Council Decision authorising the Commission to open negotiations with the United States for an arrangement concerning the removal of time limitations of the wet-lease regime foreseen by the ATA. The negotiations are ongoing.

4. The above-mentioned Regulation proposal aims to align the EU legislation accordingly, namely to amend Article 13(3)(b) of Regulation (EC) 1008/2008, which defines the conditions for the lease of aircraft registered in third countries.
5. In the European Parliament, this file was appointed to the Committee on Tourism and Transport (TRAN). On 27 March 2017, the EP appointed Claudia Tapardel (S&D, Romania) as rapporteur. On 27 April 2018, the TRAN Committee adopted its report, in which it proposed a small amendment to the Commission proposal, which limits the application of the open wet-lease arrangements to international agreements signed by the Union and its Member States before 1 January 2008. On 30 May 2018, the Parliament confirmed the mandate granted to Claudia Tapardel for inter-institutional trilogue negotiations with the Council.
6. In July 2017, the European Economic and Social Committee gave its opinion on the technical adaptation of article 13(3)(b) of Regulation 1008/2008. The opinion accepts the Commission's rationale for amending Regulation 1008/2008. However, it underlines that the proposed amendment should not allow long-term wet-lease arrangements for reasons other than those included in Article 13 of the Regulation.
7. The Commission proposal for the amendment of Regulation (EC) 1008/2008 was examined in the Aviation Working Party on 12 January 2017, 23 July 2018 and 14 September 2018. Delegations welcomed the proposal and agreed with the proposed alignment with the EU-US ATA. However, several of them expressed caution about the possible misuse of wet-lease time unrestricted arrangements which might lead to social dumping or unfair competition. Therefore, they proposed to move forward with the Commission proposal but to circumscribe the modification of the Regulation, namely to make it applicable to existing air transport agreements signed before 1 January 2008, on the basis of reciprocal rights and obligations for both parties.

8. Following the comments of the delegations, the Presidency has prepared a compromise text which has been agreed at working party level.
 9. Coreper is therefore invited to examine the Presidency compromise in annex to this note and to forward it to the Council for the adoption of a general approach.
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Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in
the Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 1008/2008 includes in its Article 13 provisions allowing lease arrangements of aircraft registered in third countries, especially wet-lease arrangements.
- (2) These arrangements are allowed in exceptional circumstances, such as a lack of adequate aircraft in the Union market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of the Union and national legislation.

¹ OJ C , , p. .

² OJ C , , p. .

- (3) An Air Transport Agreement (ATA) between the EU and United States was signed in 2007 and amended by a Protocol of 24 June 2010. The ATA reflects the parties' commitment to the shared goal of continuing to remove market access barriers in order to maximise benefits for consumers, airlines, labour, and communities on both sides of the Atlantic.
- (4) Accordingly, the ATA foresees an open wet-lease regime between the parties. The relevant provisions that are included under Article 10 of the ATA allow wet-lease arrangements for international air transport provided that all participants in such arrangements hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the parties.
- (5) Relevant developments and past discussions at the Joint Committee (JC) established under the ATA have shown that parties would benefit from a dedicated wet-lease agreement which would provide precision to the relevant provisions of the ATA.
- (6) Since this agreement involves relaxation of the existing time limitations, it has a rippling effect on Article 13(3)(b) of the Regulation 1008/2008, where time limitations are foreseen in cases where Union carriers' wet-lease from third country carriers.
- (7) Article 13(3)(b) therefore needs to be modified to allow for relaxation of time limitations of wet leasing to be agreed in international agreements concluded by the Union with third countries.
- (7a) Taking into account the fact that the Commission is currently evaluating Regulation (EC) No 1008/2008, including its provisions on wet lease and their possible impact on employees and consumers, the present amendment should be limited in scope to align the Regulation with the relevant international obligations. The international agreement on wet-lease should include reciprocal rights and obligations for both parties and should be based on an existing Air Transport Agreement.
- (8) Regulation (EC) No 1008/2008 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 13(3)(b) of Regulation (EC) No 1008/2008, the introductory phrase is replaced by the following:

"unless otherwise provided for in an international agreement on wet-lease signed by the Union that is based on an Air Transport Agreement to which the European Union is a Party and which was signed before 1 January 2008, one of the following conditions is fulfilled"

Article 2

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
