



Council of the  
European Union

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**AVIATION 57  
RELEX 296**

**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 April 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 164 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established by the European Common Aviation Agreement (ECAA) as regards its internal rules of procedure

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Delegations will find attached document COM(2018) 164 final.

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Encl.: COM(2018) 164 final



Brussels, 5.4.2018  
COM(2018) 164 final

2018/0077 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Joint Committee established by the European Common Aviation Agreement (ECAA) as regards its internal rules of procedure**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT-MATTER OF THE PROPOSAL**

The present proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee set up by the agreement establishing the European Common Aviation Area in connection with the envisaged adoption of its internal rules of procedure.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The multilateral agreement on the establishment of a European Common Aviation Area (ECAA)**

The multilateral agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo<sup>1</sup> on the establishment of a European Common Aviation Area ('the ECAA Agreement') aims to create a European Common Aviation Area based on a free market access, freedom of establishment, equal conditions of competition and common rules including in the areas of safety, security, air traffic management, social and environment. The ECAA Agreement entered into force on 1 December 2017.

The European Union is a party to the ECAA Agreement<sup>2</sup>.

#### **2.2. The Joint Committee**

The Joint Committee established in Article 18 of the ECAA Agreement is responsible for the administration of the Agreement and shall ensure its proper implementation, through recommendations and decisions in the cases provided for in the Agreement. The Joint Committee shall act by unanimity. However, it may decide to lay down a majority voting procedure for certain specific issues. The European Commission shall chair the Joint Committee, with the participation of the Member States.

#### **2.3. The envisaged acts of the Joint Committee**

During its first meeting, the Joint Committee is to adopt its internal rules of procedure.

The envisaged act will be adopted in accordance with Article 18(5) of the ECAA Agreement, which provides that the Joint Committee "shall adopt its rules of procedure".

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The Council is requested to establish the position on the Union's behalf as regards the internal rules of procedure in order to allow the Joint Committee to function properly in accordance with Article 18(5) of the ECAA Agreement.

As a Party to the Agreement, the Union has to present its position to ECAA partners during the Joint Committee, allowing proper implementation of the Agreement and fulfilling its commitments.

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<sup>1</sup> Pursuant to UN Security Council Resolution 1244 of 10 June 1999

<sup>2</sup> OJ L 26, 31.1.2018, p. 1

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

#### *4.1.2. Application to the present case*

The Joint Committee is a body set up by an agreement, namely the ECAA Agreement.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 19 of the ECAA Agreement.

The envisaged act does not supplement or amend the institutional framework of the ECAA Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

### **4.2. Substantive legal basis**

#### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

#### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to air transport.

Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

Following Article 19 of the ECAA Agreement the decisions of the Joint Committee shall be published in the Official Journal of the European Union after their adoption.

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Joint Committee established by the European Common Aviation Agreement (ECAA) as regards its internal rules of procedure**

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(9) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Multilateral agreement on the establishment of a European Common Aviation Area ('the ECAA Agreement') was concluded by the Union by Council Decision 2018/145<sup>3</sup> and entered into force on 1 December 2017.
- (2) Pursuant to Article 18(5) of the ECAA Agreement, the Joint Committee shall adopt its rules of procedure.
- (3) The Joint Committee, during its first meeting scheduled on 3 May 2018, is to adopt the internal rules of procedure in order to allow the Joint Committee to function properly in accordance with Article 18(5) of the ECAA Agreement.
- (4) It is appropriate to establish the position to be adopted on behalf of the Union in the Joint Committee, as the act to be adopted by the Joint Committee will be legally binding.
- (5) Pursuant to Article 19(2) of the ECAA agreement, the decisions of the Joint Committee are to be published in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the first meeting of the Joint Committee shall be the following:

- accept the Joint Committee internal rules of procedure attached in the Annex to this Decision;

Minor changes to the draft Decision of the Joint Committee may be agreed to by the representatives of the Union in the Joint Committee without further decision of the Council.

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<sup>3</sup> OJ L 26, 31.1.2018, p. 1.

*Article 2*

After its adoption, the acts of the Joint Committee shall be published in the Official Journal of the European Union.

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*