Council of the European Union

Brussels, 21 October 2021
(OR. en)

13079/21

Interinstitutional File:
2021/0331(NLE)

AVIATION 262
CHINE 5
RELEX 879

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 639 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee under the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China, with regard to the adoption of the Rules of Procedure of the Joint Committee

Delegations will find attached document COM(2021) 639 final.

Encl.: COM(2021) 639 final

EUROPEAN
COMMISSION

Brussels, 20.10.2021
COM(2021) 639 final

2021/0331 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee under the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China, with regard to the adoption of the Rules of Procedure of the Joint Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee of the Parties established by Article 11 of the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China regarding the envisaged adoption of the Joint Committee's Rules of Procedure.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China

The Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China ('the Agreement') aims to foster bilateral cooperation on civil aviation safety and facilitate trade and investment in aeronautical products between the Union and the People's Republic of China. The Agreement entered into force on 1 September 2020.

2.2. The Joint Committee of the Parties

The Joint Committee of the Parties is established for the effective functioning of the Agreement, including (a) resolving any question relating to the application and implementation of the Agreement; (b) considering ways to enhance the operation of this Agreement and make as appropriate recommendations to the Parties for the amendment of the Agreement; (c) adopting amendments to the Annexes; (d) coordinating the development of and adopting new Annexes and (e) adopting, as appropriate, working procedures on regulatory cooperation and transparency for all activities referred to in Article 3 of the Agreement. The Joint Committee shall draw up and adopt its rules of procedure.

The Union shall be represented in the Joint Committee by the European Commission, assisted by the European Union Aviation Safety Agency ('EASA') and accompanied by the aviation authorities as representatives of the Member States[1].

2.3. The envisaged act of the Joint Committee of the Parties

During its first meeting, envisaged to take place in the second half of 2021, the Joint Committee of the Parties is to adopt its rules of procedure ('the envisaged act'). The purpose of the envisaged act is to establish the rules and procedures necessary to organise and hold meetings of the Joint Committee of the Parties. The envisaged act consists of eleven Articles.

Article provides for definitions of the terms "Party" and "Parties".

Article 2 defines that the Joint Committee shall be chaired jointly by a representative of the European Union and by a representative of the Government of the People's Republic of China. This Article also defines that the European Union is represented in the Joint Committee by the European Commission, assisted by the European Union Aviation Safety Agency (EASA) and accompanied by the aviation authorities of the European Union Member States. Finally, Article 2 states that the Government of the People's Republic of China is represented in the Joint Committee by the Civil Aviation Administration of China (CAAC).

Article 3 sets out that the Joint Committee shall meet at regular intervals, if possible once a year and that the meeting locations will alternate, as much as possible, between Brussels and

[1] COUNCIL DECISION (EU) 2020/1075 of 26 June 2020 on the conclusion of the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China, Article 3.1

Beijing. As an alternative, discussions via videoconference could be organised, whereby decisions and recommendations adopted during videoconferences will have the same legal value as those adopted in physical meetings. Further, except as otherwise agreed by the chairpersons, the meetings of the Joint Committee shall not be open to public participation. Meetings and documents will be in English. Costs of interpretation or translation into another language shall be borne by the Party requesting it.

Article 4 defines that prior to each meeting, the Parties shall inform each other of the intended composition of their respective delegations, nominating their respective chairperson. The chairpersons may, on an ad-hoc basis, agree to invite third parties to attend meetings of the Joint Committee in order to provide information on particular subjects or as observers.

In Article 5, it is stated that an official of the European Commission and an official of the Civil Aviation Administration of China shall act jointly as secretaries of the Joint Committee.

Article 6 defines that the chairpersons shall establish the provisional agenda of each meeting by mutual agreement. This provisional agenda and any relevant meeting documents shall be transmitted by the secretaries to the participants at the latest fifteen working days before the date of the meeting. Further, the agenda shall be adopted by the Joint Committee at the beginning of each meeting.Items other than those appearing on the provisional agenda may be included in the agenda if the Parties so agree. The chairpersons may modify, by agreement, the time limit for transmitting documents, referred to in paragraph 1, including the provisional agenda, in order to take into account the requirements of a Party's internal procedures or the urgency of a particular matter.

Article 7 defines that draft minutes of each Joint Committee meeting shall be drawn up after the meeting. They shall indicate the decisions and recommendations adopted and the conclusions made. The minutes shall be adopted by the Joint Committee at its next meeting. When approved, the minutes shall be signed by the chairpersons, and one original or scanned copy shall be filed by each Party.

Article 8 is about defining the written procedure, to allow, where necessary and justified, recommendations and decisions of the Joint Committee to be adopted through written procedure. To that end, the chairpersons shall exchange the draft measures on which the opinion of the Joint Committee is sought, which may then be confirmed by exchange of correspondence. Any Party may however request that the Joint Committee be convened to discuss the matter.

Article 9 is about the decision making process in the Joint Committee. The Joint Committee shall adopt its decisions and recommendations by consensus between the Parties. Further, decisions and recommendations of the Joint Committee shall be entitled respectively "Decision" and "Recommendation" and be followed by a serial number, by the date of their adoption and by a description of their subject. The chairpersons shall sign the decisions and recommendations of the Joint Committee and once adopted by the Joint Committee they shall be implemented by the Parties in accordance with their own internal procedures. Finally, decisions adopted by the Joint Committee may be published by the Parties in their respective official publications. Recommendations or any other act adopted by the Joint Committee may be published if the Parties so agree. One original or scanned copy of the decisions and recommendations shall be retained by each Party.

Article 10 allows the Joint Committee to establish and oversee technical working groups to assist the Joint Committee in carrying out its tasks. The terms of reference for a working group shall be included as an attachment to the decision setting up the working group. The terms of reference may comprise, inter alia, the composition of the working group. The

working groups shall be composed of representatives of the Parties and shall work under the authority of the Joint Committee, to which they shall report after each of their meetings. They shall not take decisions, but may make recommendations to the Joint Committee. The Joint Committee may, at any time, decide to abolish an existing working group, modify its terms of reference, or establish new working groups to assist it in carrying out its tasks.

The final Article 11 is about expenses. The Parties shall be responsible for paying their own expenses incurred by reason of their participation in the meetings of the Joint Committee and of working groups, including staff, travelling and subsistence expenditures and postal and telecommunications costs. Expenditure relating to the material organisation of meetings shall be borne by the Party hosting the meeting.

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

The position to be taken on behalf of the Union in the Joint Committee established under the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China is to adopt the envisaged act at the first meeting of the Joint Committee.

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*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[2].

4.1.2. Application to the present case

The Joint Committee of the Parties is a body set up by an agreement, namely the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China.

The act, which the Joint Committee of the Parties is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 11 of the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China.

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

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

[2] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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 the common transport policy, and in particular to aviation policy.

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

4.3. Conclusion

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

2021/0331 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee under the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China, with regard to the adoption of the Rules of Procedure of the Joint Committee

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100 (2) in conjunction with Article 218 (9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China[3] ('the Agreement') was approved on behalf of the Union by Council Decision (EU) 2020/1075 of 26 June 2020[4] and entered into force on 1 September 2020. [5]

(2) Article 11 (1) of the Agreement, provides for a Joint Committee of the Parties to be established for the effective functioning of the Agreement.

(3) Article 11 (3) of the Agreement further provides that the Joint Committee shall draw up and adopt its Rules of Procedure.

(4) Draft Rules of Procedure have been prepared in cooperation between the Commission and the Civil Aviation Administration of China.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee with regard to the adoption of the Rules of Procedure of the Joint Committee, as the Rules of Procedure will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Joint Committee established under the Agreement on civil aviation safety between the European Union and the Government of the People's Republic of China with regard to the adoption of the Rules of Procedure of the Joint Committee shall be based on the Annex to this Decision.

[3] OJ L 240, 24.7.2020, p. 4-23
[4] OJ L 240, 24.7.2020, p. 1-3
[5] OJ L 3, 7.1.2021, p. 3–3

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President