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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 27 November 2020 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2020) 763 final |
| Subject: | Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Joint Committee established by the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova |

Delegations will find attached document COM(2020) 763 final.

Encl.: COM(2020) 763 final

EUROPEAN
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Brussels, 27.11.2020
COM(2020) 763 final

2020/0337 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union within the Joint Committee established by the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the Joint Committee established by the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova ('the Agreement')[1].

## 2. CONTEXT OF THE PROPOSAL

### 2.1. The Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova

The Agreement aims at creating a Common Aviation Area (CAA) based on opening access to markets of the Parties, with equal conditions of competition, and respect of the same rules, including in the areas of safety, security, air traffic management, social aspects and the environment. The CAA rules should be based on the relevant legislation in force within the European Union, as laid down in Annex III to this Agreement in particular as regards safety, security and air traffic management.

The Agreement entered into force on 2 August 2020.

### 2.2. The Joint Committee

A Joint Committee is set up by Article 22 of the Agreement. The Joint Committee shall be responsible for the administration of the Agreement and shall ensure its proper implementation.

Its main tasks are to cooperate by: (a) reviewing market conditions affecting air services under the Agreement; (b) addressing and as far as possible effectively resolve 'doing business' issues that may, inter alia, hamper market access and smooth operation of services under this Agreement as a means to ensure a level playing field, regulatory convergence and minimising the regulatory burden of commercial operators; (c) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), competitive environment and consumer protection; (d) regularly examining the social effects of the Agreement as it is implemented, notably in the area of employment and developing appropriate responses to concerns found to be legitimate; (e) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement; (f) agreeing, on the basis of consensus, on proposals, approaches or documents of a procedural nature directly related to the functioning of the Agreement; (g) considering and developing technical assistance in the areas covered by the Agreement; and (h) fostering cooperation in relevant international fora.

Additionally, in accordance with Article 6 (Investment) of the Agreement, the Joint Committee shall examine questions relating to bilateral investments of majority ownership, or changes in the effective control of air carriers of the Parties.

Under Article 22 (3) of the Agreement, the Joint Committee shall adopt, by decision, its rules of procedure.

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[1] Council Decision (EU) 2020/951 of 26 June 2020 on the conclusion, on behalf of the Union, of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova (OJ L 212, 3.7.2020, p. 8).

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

During its first meeting, the Joint Committee is to adopt a decision regarding the adoption of the rules of procedure of the Joint Committee ('the envisaged act').

The purpose of the envisaged act is to adopt, in accordance with Article 22(3) of the Agreement, the rules of procedure underpinning the organisation and functioning of the Joint Committee to allow for the proper implementation of the Agreement.

## 3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should aim at the adoption of the rules of procedure of the Joint Committee established by the Agreement. The position should be based on the draft decision 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'.

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

The Joint Committee is a body set up by an agreement, namely the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova.

The act which the Joint Committee is called upon to adopt is an act having legal effects, since it will be binding under international law on the Parties.

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

In the light of that, 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

As the act of the Joint Committee will set out its rules of procedure, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

2020/0337 (NLE)

Proposal for a

# COUNCIL DECISION

## on the position to be taken on behalf of the European Union within the Joint Committee established by the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova

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 European Commission,

Whereas:

(1) The Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova ('the Agreement') was concluded by the Union by means of Council Decision (EU) 2020/951[1] and entered into force on 2 August 2020.

(2) Article 22 of the Agreement establishes a Joint Committee to ensure the administration and proper implementation of the Agreement.

(3) Article 22(3) of the Agreement provides that the Joint Committee shall adopt its rules of procedure.

(4) In order to ensure the proper implementation of the Agreement, the Joint Committee's rules of procedure should be adopted.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, since the decision of the Joint Committee adopting its rules of procedure will be binding on the Union. The position of the Union within the Joint Committee should be based on the attached draft Joint Committee Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on behalf of the Union in the first meeting of the Joint Committee set up by Article 22 of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova, in relation to the adoption of the rules of procedure of the Joint Committee, shall be based on the draft Decision of the Joint Committee attached to this Decision.

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

[1] Council Decision (EU) 2020/951 of 26 June 2020 on the conclusion, on behalf of the Union, of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova (OJ L 212, 3.7.2020, p. 8).

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*
*The President*