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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft Regulation of the European Parliament and of the Council on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (first reading) - Adoption of the legislative act - Statements

Statement by the Commission

'The Commission concurs with the statements made in Article [1bis] and Recital [5a] as regards the effects of the Regulation on the division of competences between the Union and the Member States in accordance with Article 2(2) TFEU. The Commission recalls that that division is exhaustively dealt with in the Treaties, both for usual and exceptional circumstances.

Against this background, the Commission considers that this Regulation does not prejudice the nature of the future relationship with the United Kingdom in the area of aviation and that the exercise of competence in the Regulation is temporary and strictly limited to its period of validity. It will be for the Council to establish the terms of any decision authorising the opening of negotiations for a future relationship in accordance with Article 218(3) and (4) TFEU and generally with Union law , and in full respect of the division of competences between the Union and the Member States.

The Commission furthermore recalls the European Council Guidelines of 23 March 2018 on the future relation with the United Kingdom, established with a view to the opening of negotiations on the overall understanding of the framework for the future relationship. According to point 11 of those Guidelines, in the area of aviation the aim should be to ensure continued connectivity between the United Kingdom and the EU after the former's withdrawal from the Union; this could be achieved, inter alia, through an air transport agreement, combined with aviation safety and security agreements, while ensuring a strong level playing field.

Having regard to those Guidelines, the Commission intends to submit the relevant recommendation to the Council as soon as possible in due time.'

Statement by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

The Member States consider that swift negotiations for a future comprehensive air transport agreement with the UK are important. The decision to give an authorisation for the Commission to negotiate such an agreement requires however a detailed examination of the Commission's recommendation.

The Member States consider appropriate for the future comprehensive air transport agreement with the UK to be a mixed agreement of the Union and the Member States. It is the Member States' view that nothing in the regulation (in particular recital 5 sentence 2 thereof) precludes a decision in this sense.

Statement by the United Kingdom

The United Kingdom (UK):

- Welcomes the intention of this proposal which will help ensure minimal disruption to citizens and businesses across Europe and beyond in the event of a no deal scenario. It is a pragmatic solution which would help to provide certainty for citizens and business, and the UK is prepared to grant reciprocal access to EU operators as the proposal requires.
- However, is clear that it does not accept the positions set out on Gibraltar.
- Reiterates its certainty over its sovereignty over Gibraltar (including the territory in which Gibraltar Airport is situated).
- As such, is clear and puts on the record that the UK rejects recital 7b which is not consistent with the legal position of the UK.
- Is adamant that, as this measure will be adopted while the UK is still a member state, the legal position of the UK should be reflected in the recitals.
- Makes clear that, in the process of finalising the text, it would be more appropriate to use the established language within the Regulation, which states: 'This regulation is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport of Gibraltar is situated'.
- Notes its regret that Gibraltar has not been included in the scope of this measure and reiterates its intention that, when it comes to the future relationship with the EU, it will negotiate on behalf of the entire UK family, including its Overseas Territories.

Statement by Spain

Spain reiterates that the territorial scope of the Regulation excludes Gibraltar, as stated in recital 13. Furthermore, in connection with recital 14 Spain also reiterates that it does not recognise any British sovereignty over the isthmus on which the airport is located, since it was ceded neither in Article X of the Treaty of Utrecht nor subsequently, but was the subject of a gradual, de facto appropriation by the United Kingdom with no legal basis whatsoever, which has always been rejected by Spain.
