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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 153 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part

Delegations will find attached document COM(2021) 153 final.

Encl.: COM(2021) 153 final

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2021/0079 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Euro-Mediterranean Aviation Agreement between the European Union and its Member States and the Republic of Tunisia has been negotiated by the Commission as authorised by the Council on 9 December 2008.

Air services between the EU and Tunisia operate at present on the basis of bilateral agreements between individual Member States and Tunisia.

It is part of the EU's external aviation policy to negotiate comprehensive air services agreements with neighbouring countries, where the added value and economic benefits of such agreements have been demonstrated. The Agreement aims in particular at:

- gradual market opening in terms of access to routes and capacity on a reciprocal basis;

- ensuring regulatory convergence and effective compliance by Tunisia with EU aviation related legislation; and

- non-discrimination and level playing field for economic operators.

• General context

The negotiating directives set out the general objective of negotiating a comprehensive air transport agreement with the aim of gradually and reciprocally opening market access and ensuring regulatory convergence and effective implementation of EU requirements and standards.

In accordance with the negotiating directives, a draft Agreement with Tunisia was initialled by the two sides on 11 December 2017.

• Consistency with existing policy provisions in the policy area

The conclusion of a Euro-Mediterranean Aviation Agreement with Tunisia is an important element in the development of the EU external aviation policy and a crucial component of the EU neighbourhood policy and the creation of a wider European Common Aviation Area, as described in the Commission Communication COM (2012) 556 final on the "EU's External Aviation Policy - Addressing Future Challenges".

• Consistency with existing provisions in the area of the proposal

The provisions of the Agreement shall prevail over the relevant provisions of the existing bilateral air services agreements between Member States and the Republic of Tunisia. However, existing traffic rights which originate from these bilateral agreements and which are not covered under this Agreement can continue to be exercised, provided that there is no discrimination between the Member States and their nationals.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Art. 100(2) and 218(6)(a) of the Treaty on the Functioning of the European Union.

• Subsidiarity (for non-exclusive competence)

The provisions of the Agreement will prevail over the relevant provisions of the existing arrangements made by individual Member States. The Agreement creates simultaneously for all Union air carriers' equal and uniform conditions for market access, and establishes new arrangements for regulatory co-operation and convergence between the European Union and Tunisia in fields essential for the safe, secure, and efficient operation of air services. These arrangements can only be achieved at Union level because they involve a number of areas of exclusive Union competence.

Union action will better achieve the objectives of the proposal for the following reason(s).

The Agreement allows for the simultaneous extension of its terms to the 27 Member States, applying the same rules without discrimination and benefiting all Union air carriers regardless of their nationality. These carriers will be able to operate freely from any point in the European Union to any point in Tunisia which is currently not the case.

The gradual removal of market access restrictions between the EU and Tunisia will not only attract new entrants to the market and create opportunities to operate to underserved airports, but will also facilitate consolidation between EU air carriers.

The Agreement secures for all EU air carriers access to commercial opportunities, such as the ones relating to ground-handling, code-sharing, inter-modality and the possibility to freely establish prices.

• Proportionality

A Joint Committee will be established to discuss matters related to the implementation of the Agreement. The Joint Committee will foster expert-level exchanges on new legislative or regulatory initiatives or developments and consider potential areas for further development of the Agreement. The Joint Committee will be composed of representatives of the Commission and the Member States.

Furthermore, Member States will continue to carry out the traditional administrative tasks they execute in the context of international air transport, but under common rules applied uniformly.

• Choice of the instrument

External aviation relations can only be given effect through international agreements.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

Not applicable

- **Stakeholder consultations**

In line with Article 218(4) TFEU, the Commission has conducted the negotiations in consultation with a special committee (Consultative Forum). Industry has equally been consulted during the negotiations.

Comments made in this process have been taken into account. The Member States concerned verified the accuracy of the references to the bilateral air services agreements. Industry underlined the importance of a sound legal basis for their commercial operations.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the budget of the Union.

5. OTHER ELEMENTS

- **Summary of the proposed agreement**

The Agreement consists of the main body including the core principles and three annexes: Annex I on transitional provisions, Annex Ia on transitional provisions relating to Tunis-Carthage International Airport and Annex II on the EU rules applicable to civil aviation.

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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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision XXXX/XX, the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part, was signed on XX, subject to its conclusion at a later date.

(2) The Agreement has been ratified by all Member States.

(3) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia of the other part is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to deliver the diplomatic note provided for in Article 30 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 3

The Commission is authorised to adopt the position to be taken by the Union as regards decisions of the Joint Committee under Article 21 of the Agreement to amend Annex II thereto by integrating Union legislation into that Annex, subject to any technical adjustments needed, after consultation of a Special Committee appointed by the Council.

Article 4

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President