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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 157 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Agreement on Air Transport between the State of Qatar, of the one part, and the European Union and its Member States, of the other part

Delegations will find attached document COM(2021) 157 final.

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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and provisional application of the Agreement on Air Transport between the State of Qatar, of the one part, and the European Union and its Member States, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Agreement on Air Transport between the State of Qatar (thereafter “Qatar”) and the European Union and its Member States has been negotiated by the Commission as authorised by the Council on 7 June 2016.

Air services between the Union and Qatar operate at present based on bilateral agreements between individual Member States and Qatar, so they exist.

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

- ensuring fair competition, non-discrimination, transparency and a level playing field for economic operators;

- gradual market opening in terms of access to routes and capacity;

- enhancing connectivity, thereby benefitting consumers and the economy.

• 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, enhancing regulatory co-operation and convergence and ensuring fair competition and transparency.

In accordance with the negotiating directives, a draft Agreement with Qatar was initialled by the two sides on 4 March 2019.

• Consistency with existing policy provisions in the policy area

The conclusion of an EU air transport agreement is a key element in the development of the EU external aviation policy, as described in the Commission Communications COM (2012) 556 final on the "EU's External Aviation Policy - Addressing Future Challenges" and COM (2015) 598 final on “An Aviation Strategy for Europe”: Qatar is one of the fastest growing extra-EU markets, where passenger numbers have increased to more than 6 million (Eurostat 2019). Nearly all Member States have already granted full market access through their existing bilateral air services agreements with Qatar. Yet, these agreements lack adequate provisions on essential elements to avoid abuses of a liberalised marketplace such as fair competition, transparency or social matters.

• 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 Qatar. 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.

Regulation (EU) 2019/712 on safeguarding competition in air transport ensures that any measures adopted on its basis must respect international obligations, including those of this Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 100(2) in conjunction with Article 218(5) 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 European 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 Qatar in fields essential for the safe, secure, and efficient operation of air services. These arrangements can only be achieved at Union level.

Union action will better achieve the objectives of the proposal for the following reasons.

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. It includes comprehensive provisions on subsidies, anticompetitive practices and transparency and robust mechanisms to enforce them, thereby contributing to a level playing field for air services between the EU and Qatar, and between the EU and other destinations, for example in Asia, operated via Qatar.

The Agreement further secures for all Union air carriers access to commercial opportunities, such as the ones relating to ground-handling, code-sharing, inter-modality, the possibility to freely establish prices and removes the requirement for Union air carriers to work with a local sponsor to establish local offices in Qatar. It also includes provisions on social matters in line with those included in EU international trade agreements, committing the Parties to improve the social and labour policies as per their international commitments, notably the in the context of the International Labour Organization (ILO).

Following a transition period, air carriers will be able to operate passenger and cargo services freely from any point in the European Union to Qatar, within the single regulatory framework of the Agreement, which is currently not the case. Air carriers will also be able to operate some all-cargo services to points beyond subject to geographic and frequency limitations.

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

• 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 and may consider

potential areas for further development of the Agreement. The Joint Committee will be composed of representatives of the Commission and the Member States, and representatives of Qatar.

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**

International agreement.

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. Stakeholders from the entire aviation value chain and social partners, including notably trade unions, have equally been consulted during the negotiations. Comments made in this process have been taken into account.

- **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 two annexes: Annex I on transitional provisions and Annex II on the geographic applicability of fifth freedom traffic rights for all-cargo services.

Since 1 January 2021, Union law no longer applies to the United Kingdom. Therefore, in agreement with Qatar, all references to the United Kingdom in the initialled text have been removed and a standard territorial clause has been included.

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on the signing, on behalf of the Union, and provisional application of the Agreement on Air Transport between the State of Qatar, of the one part, and the European Union and its Member States, of the other part

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 (5), thereof.

Having regard to the proposal from the European Commission,

Whereas:

(1) On 7 June 2016, the Council authorised the Commission to open negotiations with the State of Qatar, on an Agreement on Air Transport between the State of Qatar, of the one part, and the European Union and its Member States, of the other part (hereinafter, the "Agreement"). The negotiations were successfully concluded by the initialling of the Agreement on 4 March 2019.

(2) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.

(3) The Agreement should be applied provisionally.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement on Air Transport between the State of Qatar, of the one part, and the European Union and its Member States, of the other part, is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

Pending its entry into force, the Agreement shall be applied on a provisional basis by the Union in accordance with Article 29(3) thereof.

Article 4

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

Done at Brussels,

For the Council
The President