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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 April 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 153 final
Subject:	Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services

Delegations will find attached document COM(2025) 153 final.

Encl.: COM(2025) 153 final

EUROPEAN
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Brussels, 4.4.2025
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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Following the judgements of the Court of Justice in the so-called "Open Skies" cases, on 5 June 2003 the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral air services agreements with an agreement at Union level (the "horizontal authorisation").

The Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services (the Agreement') is based on that horizontal authorisation and has the specific objective to amend the existing bilateral air services agreements to bring them in line with Union law, by giving all EU air carriers non-discriminatory access to routes between the European Union and third countries.

Negotiations with Kazakhstan started in 2007 and a first draft "Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services" (the "2007 Agreement") was initialled with Kazakhstan. In 2008, the Commission submitted a proposal for a Council Decision on the signature and provisional application of that first agreement (COM(2008) 92). However, Kazakhstan subsequently declined to sign the 2007 Agreement.

Negotiations with Kazakhstan resumed in 2022 and the negotiators initialled a revised Agreement in October 2024.

The current proposal replaces the proposal for a Council Decision on the signature and provisional application of the first agreement (COM(2008) 92), which has become obsolete and is hereby withdrawn. The current Agreement differs considerably from the 2007 Agreement. There is no provisional application foreseen in the new draft agreement and various other provisions have been modified to take into account best practices derived from experience with that kind of agreement during the intervening sixteen years.

• Consistency with existing policy provisions in the policy area

The provisions of the Agreement supersede or complement the existing provisions in 17 bilateral air services agreements between Member States and Kazakhstan.

• Consistency with other Union policies

The Agreement will serve a fundamental objective of the external aviation policy of the Union by bringing existing bilateral air services agreements in line with Union law.

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 (TFEU).

• Subsidiarity (for non-exclusive competence)

The proposal is entirely based on the "horizontal authorisation" granted by the Council, taking into account the issues covered by Union law and bilateral air services agreements.

- **Proportionality**

The Agreement will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with Union law.

- **Choice of the instrument**

The Agreement between the Union and Kazakhstan is the most efficient instrument to bring all existing bilateral air services agreements between Member States and Kazakhstan into conformity with Union law.

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. 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**

The proposal provides for simplification of legislation. The relevant provisions of bilateral air services agreements between Member States and Kazakhstan will be superseded or complemented by provisions in one single agreement.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Parties to the Agreement shall notify each other in writing through diplomatic channels about the completion of their respective internal procedures necessary for the entry into force of the Agreement. The Agreement shall enter into force on the date of the later notification.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements between Member States and third countries, the annexes to such agreements and other related bilateral or multilateral arrangements.

However, traditional designation clauses in Member States' bilateral air services agreements infringe Union law. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against EU air carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the European Union which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

In accordance with the mechanisms and directives in the Annex to the "horizontal authorisation", the Commission has negotiated an Agreement with Kazakhstan that replaces certain provisions in the existing bilateral air services agreements between Member States and Kazakhstan. Article 2 of the Agreement replaces the traditional designation clauses with an EU designation clause, permitting all EU carriers to benefit from the right of establishment.

The negotiations on the Agreement having been successfully concluded, it should be signed on behalf of the European Union. A decision to this effect is proposed herewith.

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COUNCIL DECISION

on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services

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 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.

(2) On that basis the Commission has negotiated, on behalf of the Union, an Agreement with the Government of the Republic of Kazakhstan on certain aspects of air services ('the Agreement'). The negotiations were successfully concluded by the initialling of the Agreement on 14 October 2024,

(3) The objective of the Agreement is to bring bilateral air services agreements between 16 Member States and Kazakhstan in line with Union law,

(4) Therefore, the Agreement should be signed.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Government of the Republic of Kazakhstan on certain aspects of air services ('the Agreement') is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement[1].

Article 2

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

Done at Brussels,

For the Council
The President

[1] The text of the Agreement will be published together with the decision on its conclusion.