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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 May 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 193 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the Union, of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States

Delegations will find attached document COM(2022) 193 final.

Encl.: COM(2022) 193 final



Brussels, 6.5.2022
COM(2022) 193 final

2022/0137 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 6 May 2022 the Commission presented a proposal for a Council decision authorising the signing on behalf of the Union of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States, subject to the conclusion of the said Agreement.

The purpose of the present proposal is to approve the conclusion of the Agreement.

- **Consistency with existing policy provisions in the policy area**

In its *Aviation Strategy for Europe*,¹ the Commission highlighted that “by adopting an ambitious external aviation policy through the negotiation of comprehensive aviation agreements, with a clear focus on growth markets, the EU can contribute to improving market access and investment opportunities for European aviation in important overseas markets, increasing Europe's international connectivity and ensuring fair and transparent market conditions for EU airlines”.

The Communication from the Commission on *Sustainable and Smart Mobility Strategy – putting European transport on track for the future* (COM(2020) 789 final) calls for turning the Union into the world's connectivity hub. As explained by the Communication, in order to achieve this objective, “ensuring undistorted international competition, reciprocity and a level playing field is essential”. The Communication announced that “the Commission will also continue to promote the use of European technical, social, environmental and competition standards in [...] relations with individual non-EU countries across transport modes” and “continue to deepen transport relations, including with key strategic partners [...], and will further develop links with new international partners, such as high-growth and emerging economies”.

ASEAN Member States are among the fastest growing economies in the world, and represent together a market of over 650 million people. With 11.2 million passengers in 2019, ASEAN collectively is the 13th biggest aviation partner of the Union, with a strong potential to grow further. Current bilateral aviation agreements between Member States and individual ASEAN Member States provide for some mutual market access, which remain unequal from one country pair to another. Furthermore, those bilateral agreements lack adequate provisions on essential elements to avoid abuses of a liberalised marketplace such as fair competition, transparency or social matters.

The Agreement addresses, vis-à-vis ASEAN, the objective of the Sustainable and Smart Mobility Strategy of turning the Union into the world's connectivity hub.

By facilitating the operation of direct EU-to-ASEAN connections, the Agreement will help reduce the dependance on connecting flights through hubs in third countries. This will not only benefit Union carriers, but also reduce the environmental footprint of individual EU-ASEAN trips, by shortening flight routes and reducing the number of take-off and landing

¹ *An Aviation Strategy for Europe*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 598 final, 7.12.2015.

operations – in line with the objectives of the Sustainable and Smart Mobility Strategy and of the Communication from the Commission on *the European Green Deal* (COM(2019) 640 final).

- **Consistency with other Union policies**

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

Regulation (EU) 2019/712² on safeguarding competition in air transport ensures that any measures adopted on its basis respect international obligations, including those of this Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 100 (2) of the Treaty on the Functioning of the European Union in conjunction with Article 218 (6) (a) thereof.

- **Subsidiarity (for non-exclusive competence)**

The provisions of the Agreement prevail over the relevant provisions of the existing arrangements made between Member States and individual ASEAN 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 Union and the ASEAN Member States 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 ensures the simultaneous application of its terms to the 27 Member States, 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 Union and ASEAN Member States, and between the Union and other destinations, operated via ASEAN Member States. None of the existing bilateral air services agreements of Member States includes comparable provisions.

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 and the possibility to freely establish prices. It also includes provisions on social matters in line with those included in Union 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). Last but not least, it sets up a framework for

² Regulation (EU) 2019/712 Of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004, OJ L 123, 10.5.2019, p. 5.

cooperation between the Union and the ASEAN Member States in minimising the impact of aviation on the environment, and particularly in addressing the greenhouse gas emissions associated with aviation. None of the existing bilateral air services agreements of Member States includes comparable provisions.

- **Proportionality**

The 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**

Not applicable.

- **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

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

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

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

Article 1 approves the Agreement on behalf of the Union.

Article 2 provides for the notification of the Union's consent to be bound by the Agreement.

Article 3 provides for the entry into force of the proposed Decision.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States

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 Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States was signed on XX, subject to its conclusion at a later date.
- (2) The ASEAN Member States are among the fastest growing economies in the world and their markets for air services have strong potential for further growth. The Agreement aims in particular at ensuring between the Union and the ASEAN Member States fair competition, facilitation of gradual market opening, and increase in access to routes and capacity, thereby benefitting consumers and the economy.
- (3) The Agreement should be approved on behalf of the Union.

HAS ADOPTED THIS DECISION:

Article 1

The Comprehensive Air Transport Agreement between the Member States of the Association of Southeast Asian Nations, and the European Union and its Member States is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The Commission shall, on behalf of the Union, give the notification expressing the Union's consent to be bound by the Agreement.

Article 3

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

Done at Brussels,

*For the Council
The President*