



Council of the
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Brussels, 8 December 2023
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AVIATION 101
RELEX 388
ASIE 29

DECLASSIFICATION

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



Council of the
European Union

Brussels, 30 May 2016
(OR. en)

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ADD 1 REV 1

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AVIATION 101
RELEX 388
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REPORT

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1) / Council /
Representatives of the Governments of the Member States, meeting within
the Council

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Subject: Draft Council Decision authorising the Commission to open negotiations on
a comprehensive air transport agreement between the European Union
and its Member States and the Association of Southeast Asian Nations
(ASEAN) Member States as regards matters falling within the exclusive
Union competence
- Adoption

Delegations will find attached the above draft Council Decision, as proposed by the Presidency.

DECLASSIFIED

DRAFT
COUNCIL DECISION

Authorising the Commission to open negotiations on a comprehensive air transport agreement between the European Union and its Member States and the Association of Southeast Asian Nations (ASEAN) Member States as regards matters falling within the exclusive Union competence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100(2) and 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to concluding a comprehensive air transport agreement with the Association of Southeast Asian Nations (ASEAN) Member States.
- (2) The Commission should be designated as negotiator.
- (3) The negotiations should be conducted by the Commission in consultation with the special committee and in accordance with the respective roles of the institutions set out in Article 13(2) of the Treaty on European Union and in Article 218 of the Treaty on the Functioning of the European Union, as interpreted by the Court of Justice of the European Union.

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- (4) In order to respond best to the interests of the Union external aviation policy, the authorisation to negotiate should be limited in time with the possibility of extension. Before the expiry period, the Council should assess, on the basis of a Recommendation from the Commission, if it is within the Union interest to continue the negotiations, taking into account the position of the ASEAN Member States, the progress of the negotiations as well as other factors relevant for this assessment. Such time-limited authorisation with the possibility of extension should not have the impact of restricting the power of the Union negotiator while negotiating with the ASEAN Member States.

HAS ADOPTED THIS DECISION:

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Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, a comprehensive air transport agreement with the Association of Southeast Asian Nations (ASEAN) Member States, as regards matters falling under the exclusive Union competence.

Article 2

The Commission shall conduct the negotiations in accordance with the negotiating directives set out in the Annex to this Decision. The negotiating directives cannot be read as affecting in any way the respective competences of the Union and the Member States.

Article 3

The negotiations shall be conducted in consultation with the Special Committee and in accordance with the procedure laid down in Section 2 of the Annex to this Decision.

Article 3a

This Decision shall be valid for a period of four years from the date of its adoption. At the latest six months before the expiry of the validity of the Decision, the Commission may present to the Council a Recommendation to extend the period of validity of this Decision. The Council may decide to extend the validity period after an assessment taking into account the progress of the negotiations, the position of ASEAN Member States, as well as other factors relevant for this assessment.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President

NEGOTIATING DIRECTIVES

for

**a comprehensive air transport agreement with the
Association of Southeast Asian Nations (ASEAN) Member States**

SECTION 1

1. NEGOTIATING OBJECTIVES

Based on the close political and economic relations between the European Union (hereafter "EU") and the Association of Southeast Asian Nations (hereafter "ASEAN") Member States, the agreement will need to cover a range of issues which aim essentially at market opening between the EU and ASEAN so that carriers of both sides will gradually be able to freely provide their services on the basis of commercial principles and be able to compete on a fair and equal basis and subject to harmonised regulatory conditions.

The aim of the negotiations with ASEAN Member States should be to gradually and reciprocally open market access and enhance regulatory cooperation and convergence. The objective of these negotiations should be the conclusion of a full bloc-to-bloc agreement, including as a means to contribute to the strengthening of EU-ASEAN relations in a strategic sector.

The agreement should provide for equal conditions of access for all EU air carriers to the ASEAN market.

2. SCOPE OF THE AGREEMENT

A comprehensive air transport agreement would allow the Parties to establish a clear and coherent framework in which they can constructively develop their future aviation relations.

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The framework would be based on a global package of rights and obligations to ensure and promote, *inter alia* and to the extent possible, the approximation of aviation laws in accordance with relevant EU standards and legislation in the areas of security, safety, air traffic management, aviation infrastructure, environmental standards, competition, consumer protection, computer reservation systems and social aspects. The agreement would cover a number of issues, with the aim of ensuring a gradual, reciprocal, sustainable and balanced opening of markets accompanied by a process of regulatory co-operation towards convergence, while providing for an appropriate level of flexibility (e.g. in relation to transitional periods). The agreement shall not reduce the level of market access created by existing bilateral agreements between EU Member States and ASEAN Member States.

- (1) The Commission shall ensure that the agreement is consistent with the Treaty and relevant EU legislation.
- (2) The agreement should ensure that all EU air carriers are treated equally and in a non-discriminatory manner, regardless of nationality, in all matters covered by the agreement and any reservations made in this respect by any of the Parties to the agreement should be null and void.
- (3) The agreement should provide for adequate mechanisms for verification and information exchange, with the aim of ensuring mutual confidence in the fulfilment of obligations entered into, in order to ensure a level playing field.
- (4) The agreement should include a provision related to applications from air carriers for operating authorisation. The provision should be based on procedures with minimum delay and should for EU air carriers reflect the provision of the EU Treaties and EU law on licensing.
- (5) A provision allowing for the prospect of a further or full liberalisation of ownership and control of air carriers should be considered based on the principles of reciprocity and equal opportunities.

- (6) The agreement should aim at the liberalisation of the air transport market between the EU and ASEAN and provide the basis for fair and open competition subject to regulatory conditions that apply equally to EU and ASEAN carriers. Otherwise the important objective of creating a level playing field would not be achieved. It is therefore important to identify the main areas for which a level playing field must be achieved, taking into account the interests of consumers and air carriers. Potential discrepancies between EU and ASEAN rules in these areas should be identified and assessed. This would prepare the grounds for developing the regulatory framework for such an agreement.

The liberalisation of the air transport market between the EU and ASEAN should on a reciprocal basis encompass - for passenger and combination services - the third and fourth freedom traffic rights, and the fifth freedom traffic rights for intra-EU and intra-ASEAN services; for all-cargo services, it should encompass third, fourth, and fifth freedom traffic rights.

- (7) The agreement should provide for air safety and security provisions which are as stringent as possible. The objective should be to achieve levels which are comparable to those reached within the Union and, where applicable, in accordance with internationally recognised Standards And Recommended Practices and Procedures for Air Navigation Services.
- (8) The agreement should include robust provisions on fair competition and on State aids in order to ensure a level playing field for all market operators. The European template on fair competition, the so-called "fair competition clause", should be used as a basis for negotiations, and all its principles should be embraced in the agreement.

The agreement should include provisions ensuring transparency, in particular concerning financial and accounting information, in order to guarantee compliance with the requirements of the agreement.

- (9) The agreement should cover operational and commercial flexibility provisions (e.g. intermodality aspects between different modes of transport).

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- (10) The agreement should include provisions ensuring that the Parties' respective policies and laws promote high levels of protection in the labour and social domain and should include provisions ensuring that the opportunities created by the agreement do not undermine domestic labour legislation and standards and their enforcement. The agreement should also aim at promoting internationally agreed standards and agreements in the labour and social area, which are of relevance for the aviation sector, in particular those defined by the International Labour Organisation (ILO) Core Conventions, and their effective implementation.
- (11) The agreement should recall the importance and urgency of climate action and of the importance to be attached to relevant environmental standards for aviation. While allowing for closer dialogue on global measures, it should also promote relevant EU standards and legislation, and fully preserve each Party's regulatory autonomy to develop and maintain adequate legislation to address climate and environmental matters.
- (12) The agreement should not prohibit taxation on a non-discriminatory basis of aircraft fuel supplied to aircraft for flights between two points in the territory of a Party, including flights between two Member States of the European Union.
- (13) Particular emphasis should be put on solving "doing business" issues.
- (14) The agreement should not affect the field of VAT. Furthermore, the agreement should not affect the provisions of the respective agreements in force between an EU Member State and an ASEAN Member State for the avoidance of double taxation with respect to taxes on income and capital.
- (15) The agreement should ensure that all carriers are free to remit locally-earned funds without restrictions, to the country or countries of their choice, promptly, in freely convertible currency at the market rate of exchange.

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- (16) The agreement should provide the possibility for a future accession of Norway and Iceland and potentially other third countries.
- (17) The agreement, which should be equally authentic in all official EU languages, should include a language clause to that effect.

3. STRUCTURE OF THE AGREEMENT

Upon its entry into force, the final agreement will prevail over the relevant provisions of the existing bilateral air services agreements between EU Member States and ASEAN Member States, taking into account the Horizontal Air Transport Agreements between the EU and Singapore, Malaysia, Vietnam and Indonesia.

It may be proposed to implement certain elements of a final agreement in a phased approach, especially, the liberalisation of the air transport market between the EU and ASEAN.

The Commission should negotiate appropriate clauses in order to apply provisionally the agreement between its signature and its entry into force.

4. MANAGEMENT OF THE AGREEMENT

Each Party will be responsible for the enforcement of the agreement on its territory and with regard to its nationals and air carriers.

A Joint Committee of representatives of the Parties shall be established, which shall be responsible for the administration of the agreement and for its proper implementation.

The agreement should include a speedy, effective and binding dispute settlement mechanism, which will ensure that the agreement can be properly applied.

Notwithstanding the dispute settlement mechanism, the Agreement should include provisions to be applied in case of non-fulfilment of obligations of the Agreement, such as the possibility of adopting appropriate safeguard measures or of suspending fully or partially the rights or privileges granted under the terms of the Agreement.

5. CONDUCT OF THE NEGOTIATIONS

The Commission shall conduct the negotiations in accordance with these directives and ensure proper coordination with ongoing and future negotiations in other relevant areas.

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SECTION 2

PROCEDURE FOR NEGOTIATIONS

The Aviation Working Party is designated as the Special Committee to assist the Commission with the negotiations.

The negotiations shall be prepared for well in advance. To this end, the Commission shall, as soon as possible, inform the Special Committee of the schedule anticipated and the issues to be negotiated and shall forward to the Special Committee all relevant documents.

The negotiations shall be conducted in a way that will ensure full and timely consultation of all relevant stakeholders throughout the negotiations.

Each negotiating session shall be preceded by a meeting of the Special Committee in order to allow the Special Committee to formulate opinions and advice relating to the negotiations. The Commission shall provide the Committee with all the information necessary for it to monitor the progress of the negotiations.

The Commission shall report in writing to the Special Committee on the outcome and the progress of the negotiations after each negotiating session, in case of any new development and, in any event at least quarterly.

Without prejudice to Article 17 TEU, the Commission may invite the members of the Special Committee to assist it as experts during the negotiations.