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EUROPEAN COMMISSION

Brussels, 28.6.2010
COM(2010)338 final

2010/0184 (NLE)

Proposal for a

Decision of the Council and the representatives of the Governments of the Member States of the European Union, meeting within the Council

On the signature and provisional application of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part

EXPLANATORY MEMORANDUM

1. Context of the proposal

- Grounds for and objectives of the proposal

The Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part has been negotiated under a mandate received from the Council in June 2009. Air services between the EU and Georgia presently operate on the basis of bilateral agreements between individual Member States and Georgia. It is part of the EU neighbourhood policy to replace this network of bilateral agreements through the establishment of a Common Aviation Area between the EU and its neighbours. The Agreement aims at:

- gradual market opening in terms of access to routes and capacity on a reciprocal basis;
- non-discrimination and level playing field for economic operators based on the principles of the EU Treaties;
- Alignment of the Georgian aviation legislation with EU legislation on issues such as safety, security and air traffic management.

The Agreement provides for the possibility for Georgia to join the main multilateral aviation agreement with European countries, the European Common Aviation Area (ECAA) signed in 2006.

- **General context**

The negotiating mandate set the objective of establishing an Common Aviation Area (CAA) between the EU and Georgia. This would extend the rules and provisions of the single market for air transport in the EU to a large extent to Georgia in which European and Georgian airlines would be able to provide air services without any restriction.

Based on the negotiating directives of the mandate, a draft Agreement with Georgia was initialled by the two sides on 5 March 2010.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement supersede the existing bilateral air services agreements between Member States and Georgia.

- **Consistency with the other policies and objectives of the Union**

The conclusion of an Common Aviation Area Agreement with Georgia has been a priority for the EU and is an important element in the development of the European Neighbourhood Policy, as identified in Commission Communication COM(2005) 79 final "Developing the agenda for the Community's external aviation policy" and the Communication COM (2008) 596 final "Common Aviation Area with the Neighbouring Countries by 2010 – Progress report" .

2. Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Throughout the negotiating process, the Commission has consulted with stakeholders, in particular via regular meetings of the Special Committee and the Consultative Forum comprising representatives of air carriers, airports, and labour organisations.

Summary of responses and how they have been taken into account

All comments from stakeholders were duly taken into consideration in the preparation of the Union's negotiating position.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Agreement ensures the gradual establishment of an EU/Georgia Common Aviation Area. A report prepared for the Commission in 2008 by consultants, estimated that an EU/Georgia Common Aviation Area would generate 25,000 extra passengers and consumer benefits of up to 17 million € in the first effective year of market opening. The report has been made available to Member States and stakeholders via the CIRCA database.

The Agreement establishes a Joint Committee which will be responsible for reviewing the implementation of the Agreement and its effects.

3. Legal elements of the proposal

- **Summary of the proposed action**

The Agreement consists of the main body including the main principles, and three annexes: Annex 1 on traffic rights, Annex 2 on transitional provisions and Annex 3 including the EU aviation legislation to be taken over by Georgia.

- **Legal basis**

Article 207 (5), in conjunction with Article 218 paragraphs (2), (5) and (7) of the Treaty on the Functioning of the European Union

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

By establishing a Common Aviation Area, the Agreement will expand EU legislation in the field of aviation to Georgia. In particular, Georgia will take over EU legislation

in important fields such as safety, security and air traffic management. The Agreement will replace the existing arrangements made by individual Member States. The Agreement creates simultaneously for all Union air carriers uniform conditions for market access, and establishes new arrangements for regulatory co-operation between the European Union and Georgia 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 can now operate freely from any point in the European Union to any point in Georgia which is currently not the case.

Removal of all market access restrictions between the EU and Georgia 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 possibility to freely establish prices. One further objective of the mandate is to create a level playing field between all EU and Georgian air carriers, and this requires strong regulatory co-operation which can only be delivered at Union level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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 instruments**

Proposed instruments: international agreement

Other means would not be adequate for the following reason(s).

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

4. Budgetary implication

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL

Having regard to the Treaty on the Functioning of the European Union and in particular Article 207 (5), in conjunction with Article 218 paragraphs (2), (5) and (7) thereof

Whereas

- (1) the Commission has negotiated on behalf of the Union and of the Member States an Common Aviation Area Agreement with Georgia (hereinafter, the “Agreement”) in accordance with the Council Decision authorising the Commission to open negotiations;
- (2) the Agreement was initialled on 5 March 2010;
- (3) the Agreement negotiated by the Commission should be signed and applied provisionally by the Union and the Member States, subject to its possible conclusion at a later date;
- (4) it is necessary to lay down procedural arrangements for deciding, if appropriate, how to discontinue the provisional application of the Agreement. It is also necessary to lay down appropriate procedural arrangements for the participation of the Union and the Member States in the Joint Committee set up under Article 22 of the Agreement and in the dispute settlement procedures provided in Article 23 of the Agreement, as well as for implementing certain provisions of the Agreement concerning security and safety.

HAVE DECIDED AS FOLLOWS:

Article 1 (Signature)

1. The signing of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part, (hereinafter the Agreement), is hereby approved on behalf of the Union, subject to a Council Decision concerning the conclusion of the Agreement. The text of the agreement is attached to this Decision.

2. The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union, subject to its conclusion.

Article 2 (Provisional application)

Pending its entry into force, the Agreement shall be applied on a provisional basis by the Union and by the Member States, in accordance with the application of national law, from the first day of the month following the date of the latest note of which the Parties have notified each other of the completion of the procedures necessary to provisionally apply the Agreement.

Article 3 (Joint Committee)

1. The European Union and the Member States will be represented in the Joint Committee established under Article 22 of the Agreement by representatives of the European Commission and the Member States.
2. The position to be taken by the European Union and its Member States within the Joint Committee with respect to matters of exclusive competence of the EU that do not require the adoption of a decision having legal effect will be established by the European Commission and will be notified in advance to the Council and the Member States.
3. For Joint Committee decisions concerning matters that fall within the competence of the EU, the position to be taken by the European Union and its Member States will be adopted by the Council, acting by qualified majority on a proposal from the European Commission, unless the applicable voting procedures set down in the EU Treaties provide otherwise.
4. For Joint Committee decisions concerning matters that fall within Member States' competence, the position to be taken by the European Union and its Member States will be adopted by the Council, acting by unanimity, on a proposal from the European Commission or from Member States, unless a Member State has informed the General Secretariat of the Council within one month of the adoption of that position that it can only consent to the decision to be taken by the Joint Committee with the agreement of its legislative bodies.

Article 4 (Settlement of Disputes)

1. The Commission shall represent the Union and the Member States in dispute settlement proceedings under Article 23 of the Agreement.
2. The decision to suspend the application of benefits pursuant to Article 23 of the Agreement shall be taken by the Council on the basis of a Commission proposal. The Council shall decide by qualified majority.

3. Any other appropriate action to be taken under Article 23 of the Agreement on matters which fall within the EU competence shall be decided upon by the Commission, with the assistance of a Special Committee of representatives of the Member States appointed by the Council.

Article 5 (Information to the Commission)

1. Member States shall inform in advance the Commission of any decision to refuse, revoke, suspend or limit the authorisation of an airline of Georgia that they intend to adopt under Article 5 of the Agreement.
2. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 14 (Aviation safety) of the Agreement.
3. Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 15 (Aviation security) of the Agreement.

Done at Brussels, [...]

For the Council
The President
[...]