



Brussels, 4.10.2012
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2012/0275 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union in the Joint EU/Switzerland Air Transport Committee set up under the Agreement between the European Community and the Swiss Confederation on Air Transport concerning an amendment to the Annex thereto

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

With the incorporation of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community into the EC-Switzerland Air Transport Agreement¹, a common regime was established between the EU and Switzerland, allowing air carriers from all EU Member States and Switzerland to operate air services within the whole area of the EU and Switzerland.

The same regime has been established between the European Economic Area (EEA) States, with the inclusion of Regulation (EC) No 1008/2008 into the EEA Agreement², for air carriers from all EEA States.

Through inclusion of Regulation (EC) No 1008/2008 into the Convention establishing the European Free Trade Association (Vaduz Convention)³, the same regime has also been established between Switzerland and the EFTA⁴ States for Swiss and EFTA air carriers.

The EFTA States have raised the concern that despite this, three kinds of air services remain, however, problematic according to the present regimes:

- (i) The operation of air services by an EFTA air carrier from an EU Member State to Switzerland and vice versa;
- (ii) The operation of air services by a Swiss air carrier from an EU Member State to an EFTA State and vice versa;
- (iii) The operation of air services by an EU air carrier from Switzerland to an EFTA State and vice versa.

In order to remove these legal restrictions so as to link the aviation markets established by the three Agreements mentioned above, it is necessary to grant air carriers from a State which is not a Party to the respective agreement the same right to operate air services as air carriers from a Contracting Party to the respective agreement (i.e. EFTA air carriers with respect to the EC-Switzerland Air Transport Agreement, Swiss air carriers with respect to the EEA Agreement and EU air carriers with respect to the Vaduz Convention).

The EEA States and Switzerland therefore agreed to suggest the amendment of the three above mentioned Agreements as follows:

- (i) The Community-Switzerland Air Transport Agreement should be amended to grant EFTA air carriers the right to operate air services from an EU Member State to Switzerland and vice versa.

¹ Joint Committee Decision No 1/2010 of 7.04.2010, OJ L106, 28.4.2010, p. 20.

² EEA Joint Committee Decision No 90/2011 of 19.07.2011, OJ L262, 6.10.2011, p. 62.

³ Decision of the EFTA Council No 1 of 2012 of 22 March 2012 amending the Appendix to Annex Q to the Convention (Air Transport).

⁴ The references to "EFTA" are here in accordance with Article 2(b) of the EEA Agreement, to be read as references to "EEA EFTA".

- (ii) The EEA Agreement should be amended to grant Swiss air carriers the right to operate air services from an EU Member State to an EFTA State and vice versa.
- (iii) The Vaduz Convention should be amended to grant EU air carriers the right to operate air services from Switzerland to an EFTA State and vice versa.

The decisions foreseeing these amendments to the three Agreements should be linked to each other by a reciprocity clause to ensure that the decisions enter into force simultaneously.

It is in the EU interest that air services by an EU air carrier can be operated from Switzerland to EFTA States and vice versa. The envisaged amendments to the three Agreements will create an integrated market for aviation services covering the whole EEA and Switzerland, on the basis of regulation (EC) No 1008/2008.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The EEA States and Switzerland agree with this proposal.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposed amendments to the Annex of the Community-Switzerland Air Transport Agreement are included in the annex to the draft proposal for a Council Decision.

They consist on the addition of an adaptation text under the reference to Regulation (EC) No 1008/2008, adding a new paragraph at the end of Article 15 of the said Regulation 1008/2008 as incorporated into the Agreement, according to which EFTA air carriers will be entitled to operate air services from an EU Member State to Switzerland and vice versa under the same conditions as EU and Swiss air carriers.

This will be subject to the condition that, on the one hand, the European Union and EFTA States grant the Swiss air carriers the right to operate air services from an EU Member State to an EFTA State and vice versa, and, on the other hand, that Switzerland and the EFTA States grant EU air carriers the right to operate air services from Switzerland to an EFTA State and vice versa.

To that end, the entry into force of the Joint Committee decision will be dependent on the entry into force of the necessary amendments to the EEA Agreement and to the Vaduz Convention.

4. BUDGETARY IMPLICATION

The proposal does not have implications for the EU budget.

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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(9) thereof,

Having regard to the Decision of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002, on the conclusion of seven Agreements with the Swiss Confederation (2002/309/EC, Euratom), and in particular Article 3(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community⁵ was incorporated into the Agreement between the European Community and the Swiss Confederation on Air Transport⁶ by Joint Committee Decision No 1-2010⁷.
- (2) Through the inclusion of Regulation (EC) No 1008/2008 into the Agreement on the European Economic Area⁸, the same regime has been established between all EEA States for EEA air carriers.
- (3) Through the inclusion of Regulation (EC) No 1008/2008 into the Convention establishing the European Free Trade Association (Vaduz Convention)⁹, the same regime has also been established between Switzerland and the EEA EFTA States for Swiss and EEA EFTA air carriers.
- (4) Annex to the Air transport Agreement between the European Community and the Swiss Confederation should therefore be amended to grant the EEA EFTA air carriers the right to operate air services from an EU Member State to Switzerland and vice versa.

⁵ OJ L 293, 31.10.2008, p. 3.

⁶ OJ L 114, 30.4.2002, p. 73.

⁷ OJ L 106, 28.4.2010, p. 20.

⁸ EEA Joint Committee Decision No 90/2011 of 19.07.2011, OJ L262, 6.10.2011, p. 62.

⁹ Decision of the EFTA Council No 1/2012 of 22.03.2012.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the European Union/Switzerland Joint Committee on the proposed amendment to the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport shall be based on the draft Decision of the EU/Switzerland Joint Committee attached to this Decision.

Article 2

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

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

DECISION

of the Joint European Union/Switzerland Air Transport Committee set up under the Agreement between the European Community and the Swiss Confederation on Air Transport

No [...] of (...),

amending Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport

THE EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport, hereinafter referred to as "the Agreement", and in particular Article 23(4) thereof,

Whereas:

- (1) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)¹⁰ was incorporated into the Agreement by Joint Committee Decision No 1-2010¹¹.
- (2) The Contracting Parties aim at ensuring that EEA EFTA air carriers are entitled to operate air services from an EU Member State to Switzerland and vice versa.
- (3) The Contracting Parties also aim at ensuring that EU air carriers are entitled to operate air services from an EEA EFTA State to Switzerland and vice versa.
- (4) To this end, the European Union/Switzerland Joint Committee is to grant, subject to the condition of reciprocity, EEA EFTA air carriers the right to operate from an EU Member State to Switzerland and vice versa.
- (5) Annex to the Agreement should therefore be amended accordingly,

HAS DECIDED AS FOLLOWS:

¹⁰ OJ L 293, 31.10.2008, p. 3.

¹¹ OJ L 106, 28.4.2010, p. 20.

Article 1

Annex to the Agreement shall be amended as follows:

The following adaptation text shall be added under reference *No 1008/2008*, Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community:

"The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

(a) In Article 15 the following paragraph is added:

6. Under the same conditions as European Union and Swiss air carriers, EEA EFTA air carriers shall be entitled to operate air services from an EU Member State to Switzerland and vice versa. This shall be subject to the condition that, on the one hand, the European Union and EEA EFTA States grant Swiss air carriers the right to operate air services from an EU Member State to EEA EFTA States and vice versa, and, on the other hand, that Switzerland and the EEA EFTA States grant European Union air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa.

Any restrictions on this arrangement arising from existing bilateral or multilateral agreements binding the European Union, on the one hand, and Switzerland, on the other hand, are hereby superseded."

Article 2

This Decision shall enter into force on the twentieth day following its publication in the Official Journal of the European Union, or on the date of entry into force of the decision amending the EEA Agreement granting Swiss air carriers the right to operate air services from an EU Member State to an EEA EFTA State and vice versa, on the one hand, or of the decision amending the Convention establishing the European Free Trade Association (Vaduz Convention) granting EU air carriers the right to operate air services from Switzerland to an EEA EFTA State and vice versa, on the other hand, whichever is the latest.

Article 3

The Head of the EU Delegation shall notify the President of the EEA Joint Committee of the adoption of this Decision.

Done at Brussels, on ...

For the Joint Committee

The Head of the European Union Delegation

Matthew Baldwin

The Head of the Swiss Delegation

Peter Müller