

**COUNCIL DECISION (EU) 2023/684****of 20 March 2023****on the signing, on behalf of the Union, and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, and****on the signing, on behalf of the Union, and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part**

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) and Article 218(8), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part <sup>(1)</sup> ('the EU-US Air Transport Agreement') was signed on 25 and 30 April 2007 further to the adoption of Decision 2007/339/EC of the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council <sup>(2)</sup>. It has been applied provisionally since 30 March 2008 and was concluded by means of Council Decision (EU) 2020/1110 <sup>(3)</sup>. It entered into force on 29 June 2020. It was amended by the Protocol to amend the Air Transport Agreement between the United States of America and the European Community and its Member States, signed on 25 and 30 April 2007 <sup>(4)</sup> ('the Protocol'), of 24 June 2010, which entered into force on 5 May 2022. The Protocol provides for the accession of third countries to the EU-US Air Transport Agreement.
- (2) Iceland and Norway are fully integrated members of the single European aviation market through the Agreement on the European Economic Area. They formally requested accession to the EU-US Air Transport Agreement in 2007. In accordance with Article 18(5) of the EU-US Air Transport Agreement, the Joint Committee established thereunder proposed, in its meeting of 16 November 2010, an Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part ('the Accession Agreement').
- (3) The Commission negotiated an Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part ('the Ancillary Agreement').

<sup>(1)</sup> OJ L 134, 25.5.2007, p. 4.

<sup>(2)</sup> Decision 2007/339/EC of the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council of 25 April 2007 on the signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand (OJ L 134, 25.5.2007, p. 1).

<sup>(3)</sup> Council Decision (EU) 2020/1110 of 23 January 2018 on the conclusion on behalf of the European Union of the Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part (OJ L 244, 29.7.2020, p. 6).

<sup>(4)</sup> OJ L 223, 25.8.2010, p. 3.

- (4) On 2 May 2011, the Commission adopted a proposal for a Council decision on the signing, on behalf of the Union, and provisional application of the Accession Agreement and the Ancillary Agreement.
- (5) On 16 June 2011, the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council, adopted Decision 2011/708/EU <sup>(5)</sup> on the signing, on behalf of the Union, and provisional application of the Accession Agreement <sup>(6)</sup> and the Ancillary Agreement <sup>(7)</sup>. Article 3 of that Decision provided for the provisional application of both the Accession Agreement and the Ancillary Agreement from the date of signature which took place on 21 June 2011. Since that date the two agreements are applied provisionally.
- (6) In its judgment of 28 April 2015 in case C-28/12, *Commission v Council* <sup>(8)</sup> ('the judgment'), the Court of Justice annulled Decision 2011/708/EU on the grounds that the Council could not legally authorise the signing and the provisional application of the Accession Agreement and the Ancillary Agreement in an act adopted together with the representatives of the Governments of the Member States meeting within the Council. The Court maintained the effects of Decision 2011/708/EU until the entry into force, within a reasonable period from the delivery of the judgment, of a new decision to be adopted by the Council pursuant to Article 218(5) and (8) of the Treaty on the Functioning of the European Union.
- (7) In order to comply with the judgment, the Council should adopt a new decision on the signing and provisional application of the Accession Agreement and the Ancillary Agreement, subject to their conclusion at a later date,

HAS ADOPTED THIS DECISION:

#### Article 1

The signing on behalf of the Union of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part, and of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part is hereby authorised, subject to the conclusion of the said Agreements <sup>(9)</sup>.

#### Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Accession Agreement and the Ancillary Agreement on behalf of the Union.

<sup>(5)</sup> Decision 2011/708/EU of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council of 16 June 2011 on the signing, on behalf of the Union, and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and on the signing, on behalf of the Union, and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (OJ L 283, 29.10.2011, p. 1).

<sup>(6)</sup> OJ L 283, 29.10.2011, p. 3.

<sup>(7)</sup> OJ L 283, 29.10.2011, p. 16.

<sup>(8)</sup> Judgment of the Court of Justice (Grand Chamber) of 28 April 2015, *European Commission v Council of the European Union*, C-28/12, ECLI:EU:C:2015:282.

<sup>(9)</sup> The text of the Accession Agreement is published in OJ L 283, 29.10.2011, p. 3. The text of the Ancillary Agreement is published in OJ L 283, 29.10.2011, p. 16.

*Article 3*

The Accession Agreement and the Ancillary Agreement shall be applied on a provisional basis from the date of signature thereof, pending the completion of the procedures necessary for their entry into force.

*Article 4*

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

It shall apply from 16 June 2011.

Done at Brussels, 20 March 2023.

*For the Council*  
*The President*  
P. KULLGREN

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