



EUROPEAN COMMISSION

Brussels, 13.2.2012
COM(2012) 38 final

2012/0017 (NLE)

Proposal for a

COUNCIL DECISION

**on the signature, on behalf of the European Union, and provisional application of the
Agreement on certain aspects of air services between the European Union and the
Democratic Socialist Republic of Sri Lanka**

EXPLANATORY MEMORANDUM

1. Context of the proposal

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

Following the judgements of the Court of Justice in the so-called “Open Skies” cases, on 5 June 2003 the Council granted the Commission a mandate to open negotiations with third countries on the replacement of certain provisions in existing agreements with an agreement at Union level¹ (the “horizontal mandate”). The objectives of such agreements are to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air service agreements between Member States and third countries in line with the law of the Union.

- **General context**

International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements between Member States and third countries, the Annexes to such agreements and other related bilateral or multilateral arrangements.

Traditional designation clauses in Member States’ bilateral air services agreements infringe the law of the Union. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against Community carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the European Union which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

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

The provisions of the Agreement supersede or complement the existing provisions in the 15 bilateral air services agreements between Member States and the Democratic Socialist Republic of Sri Lanka.

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

The Agreement will serve a fundamental objective of the external aviation policy of the Union by bringing existing bilateral air services agreements in line with the law of the Union.

2. Consultation of interested parties and impact assessment

- **Consultation of interested parties**

¹ Council Decision 11323/03 of 5 June 2003 (restricted document)

Consultation methods, main sectors targeted and general profile of respondents

Member States as well as the industry were consulted throughout the negotiations.

Summary of responses and how they have been taken into account

Comments made by Member States and the industry have been taken into account.

3. Legal elements of the proposal

• Summary of the proposed action

In accordance with the mechanisms and directives in the Annex to the "horizontal mandate", the Commission has negotiated an agreement with the Democratic Socialist Republic of Sri Lanka that replaces certain provisions in the existing bilateral air services agreements between Member States and the Democratic Socialist Republic of Sri Lanka. Article 2 of the Agreement replaces the traditional designation clauses with an EU designation clause, permitting all EU carriers to benefit from the right of establishment. Article 4 resolves potential conflicts with the competition rules of the Union.

• Legal basis

Art. 100(2) in conjunction with 218(5) and (8) TFEU

• Subsidiarity principle

The proposal is entirely based on the "horizontal mandate" granted by the Council taking into account the issues covered by the law of the Union and bilateral air services agreements.

• Proportionality principle

The Agreement will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with the law of the Union.

• Choice of instruments

The Agreement between the Union and the Democratic Socialist Republic of Sri Lanka is the most efficient instrument to bring all existing bilateral air services agreements between Member States and the Democratic Socialist Republic of Sri Lanka into conformity with the law of the Union.

4. Budgetary implication

The proposal has no implication for the budget of the Union.

5. Additional information

• Simplification

The proposal provides for simplification of legislation.

The relevant provisions of bilateral air services agreements between Member States and the Democratic Socialist Republic of Sri Lanka will be superseded or complemented by provisions in one single agreement of the Union.

- **Detailed explanation of the proposal**

In accordance with the standard procedure for the signature and conclusion of international agreements, the Council is asked to approve the decisions on the signature and on the conclusion of the Agreement on certain aspects of air services between the European Union and the Democratic Socialist Republic of Sri Lanka and to designate the persons authorised to sign the Agreement on behalf of the Union.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, and provisional application of the Agreement on certain aspects of air services between the European Union and the Democratic Socialist Republic of Sri Lanka

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 (8), first paragraph thereof,

Having regard to the proposal from the European Commission²,

Whereas:

- (1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level,
- (2) On behalf of the Union, the Commission has negotiated an Agreement on certain aspects of air services with the Democratic Socialist Republic of Sri Lanka (hereinafter "the Agreement") in accordance with the mechanisms and directives in the Annex to the Council Decision of 5 June 2003,
- (3) Subject to its conclusion at a later date, the Agreement should be signed and provisionally applied by the Union.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The signing of the Agreement between the European Union and the Democratic Socialist Republic of Sri Lanka on certain aspects of air services is hereby approved on behalf of the Union, subject to the conclusion of the Agreement.

The text of the Agreement is attached to this Decision.

- (2) The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

² OJ C , , p. .

Article 2

Pending its entry into force, the Agreement shall be applied provisionally, in accordance with Article 7 (2) of the Agreement, as from the day of its signature.

Article 3

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

Article 4

This Decision shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*

ANNEX

AGREEMENT

between the European Union and Government of the Democratic Socialist Republic of Sri Lanka

on certain aspects of air services

THE EUROPEAN UNION,

(hereinafter referred to as "the Union")

of the one part, and

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA,
(hereinafter referred to as "Sri Lanka"),

of the other part,

(hereinafter referred to as 'the Parties')

NOTING that bilateral air service agreements have been concluded between several Member States of the Union and Sri Lanka.

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the Union and Sri Lanka, which are contrary to the law of the Union, must be brought into conformity with the law of the Union in order to establish a sound legal basis for air services between the Union and Sri Lanka and to preserve the continuity of such air services,

NOTING that the Union has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the Union and third countries,

NOTING that under the law of the Union Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the Union and third countries,

HAVING REGARD to the agreements between the Union and certain third countries providing for the possibility for the nationals of such third countries (countries listed under Annex 3) to acquire ownership in air carriers licensed in accordance with the law of the Union,

NOTING that under the law of the Union air carriers may not, in principle, conclude agreements which may affect trade between Member States of the Union and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the Union and Sri Lanka which i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant

routes; or ii) reinforce the effects of any such agreement, decision or concerted practice; or iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes may render ineffective the application of the competition rules applicable to undertakings.

RECOGNISING that where a Member State has designated an air carrier whose regulatory control with regard to safety oversight is exercised and maintained by another Member State, the rights of Sri Lanka under the safety provisions of the agreement between the Member State that has designated the carrier and Sri Lanka should apply equally in relation to that other Member State.

NOTING that the bilateral air services agreements listed in Annex 1 are based on the general principle that the designated airlines of the parties shall have fair and equal opportunities in operating the agreed services on the specified routes.

NOTING that it is not a purpose of this agreement to increase the total volume of air traffic between the Union and Sri Lanka, to affect the balance between Community air carriers and air carriers of Sri Lanka, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

General provisions

- (1) For the purposes of this Agreement, 'Member States' shall mean Member States of the European Union, and 'EU Treaties' shall mean the Treaty on European Union and the Treaty on the functioning of the European Union.
- (2) References in each of the agreements listed in Annex 1 to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States.
- (3) References in each of the agreements listed in Annex 1 to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.
- (4) The granting of traffic rights will continue to be carried out through bilateral arrangements.

ARTICLE 2

Designation by a Member State

- (1) The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Sri Lanka, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

- (2) On receipt of a designation by a Member State, Sri Lanka shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
- (a) the air carrier is established, under the EU Treaties, in the territory of the designating Member State and has a valid Operating Licence in accordance with the law of the Union; and
 - (b) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - (c) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states and shall at all times be effectively controlled by such state and/or such nationals.
- (3) Sri Lanka may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:
- (a) the air carrier is not established, under the EU Treaties, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with the law of the Union; or
 - (b) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
 - (c) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex 3 and/or nationals of such other states; or
 - (d) the air carrier is already authorised to operate under bilateral agreement between Sri Lanka and another Member State and by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement; or
 - (e) the air carrier designated holds an Air Operator's Certificate issued by a Member State with which Sri Lanka does not have a bilateral air services agreement and that Member State has denied traffic rights to Sri Lanka.

In exercising its right under this paragraph, Sri Lanka shall not discriminate between Community air carriers on the grounds of nationality.

ARTICLE 3

Safety

- (1) The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (c).

- (2) Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Sri Lanka under the safety provisions of the agreement between the Member State that has designated the air carrier and Sri Lanka shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

ARTICLE 4

Compatibility with competition rules

- (1) Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.
- (2) The provisions contained in the agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not be applied.

ARTICLE 5

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

ARTICLE 6

Review, Revision or amendment

The Parties may, at any time, review, revise or amend this Agreement by mutual consent.

ARTICLE 7

Entry into force and provisional application

- (1) This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.
- (2) Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the date of signature until it enters into force.
- (3) This Agreement shall apply to all agreements and arrangements listed in Annex 1 including those that, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.

ARTICLE 8

Termination

- (1) In the event that an agreement listed in Annex 1 is terminated, all provisions of this Agreement that relate to the agreement listed in Annex 1 concerned shall terminate at the same time.
- (2) In the event that all agreements listed in Annex 1 are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at [...] in duplicate, on this [...] day of [..., ...] in the Sinhala, Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and languages, all texts being equally authentic.

FOR THE EUROPEAN UNION: FOR THE GOVERNMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA:

List of agreements referred to in Article 1 of this Agreement

Air service agreements and other arrangements between Sri Lanka and Member States as modified or amended which, at the date of signature of this Agreement, have been concluded, signed or initialled;

- Air Transport Agreement between **the Austrian Federal Government and the Government of the Democratic Socialist Republic of Sri Lanka** done in Colombo on 15 February 1978, hereinafter referred to as “Sri Lanka – Austria Agreement” in Annex 2;
- Agreement between **the Government of the Kingdom of Belgium and the Government of the Democratic Socialist Republic of Sri Lanka** on Air Transport done in Brussels on 15 December 1998, hereinafter referred to as “Sri Lanka – Belgium Agreement” in Annex 2;
- Air Transport Agreement between **the Government of the Republic of Cyprus and the Government of the Democratic Socialist Republic of Sri Lanka** initialled in Colombo on 15 November 2002, hereinafter referred to as “Sri Lanka – Cyprus Agreement” in Annex 2;
- Agreement between **the Government of the Czech Republic and the Government of the Democratic Socialist Republic of Sri Lanka** on Air Services done at Prague on 20 April 2004, hereinafter referred to as “Sri Lanka – Czech Republic Agreement” in Annex 2;
- Agreement between **the Government of Denmark and the Government of Ceylon** relating to Air Services done in Colombo on 29 May 1959, hereinafter referred to as “Sri Lanka – Denmark Agreement” in Annex 2;
- Agreement between **the Republic of France and Ceylon** relating to Air Transport done in Colombo on 18 April 1966, hereinafter referred to as “Sri Lanka – France Agreement” in Annex 2;
- Air Transport Agreement between **the Federal Republic of Germany and the Republic of Sri Lanka** done at Colombo on 24 July 1973, hereinafter referred to as “Sri Lanka – Germany Agreement” in Annex 2;
- Air Transport Agreement between the Government of **the Hellenic Republic and the Government of the Democratic Socialist Republic of Sri Lanka** initialled in Athens on 5 November 2002, hereinafter referred to as “Sri Lanka – Greece Agreement” in Annex 2;
- Agreement between the Government of the Italian Republic and the Government of Ceylon relating to Air Services done in Colombo on 1 June 1959, hereinafter referred to as “Sri Lanka – Italy Agreement” in Annex 2;

- Agreement between **the Government of the Kingdom of the Netherlands and the Government of Ceylon** for Air Services between and beyond their respective territories done in Colombo on 14 September 1953, hereinafter referred to as “Sri Lanka – Netherlands Agreement” in Annex 2;
- Agreement between **the Government of the Polish People’s Republic and the Government of the Democratic Socialist Republic of Sri Lanka** for air services between and beyond their respective territories done at Colombo on 26 January 1982 hereinafter referred to as “Sri Lanka – Poland Agreement” in Annex 2;
- Agreement between **the Socialist Republic of Romania and the Government of the Democratic Socialist Republic of Sri Lanka** relating to Air Services done in Colombo on 29th August 1980 hereinafter referred to as “Sri Lanka – Romania Agreement” in Annex 2;
- Agreement between **the Government of Sweden and the Government of Ceylon** relating to Air Services done in Colombo on 29 May 1959, hereinafter referred to as “Sri Lanka – Sweden Agreement” in Annex 2;
- Agreement between **the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Democratic Socialist Republic of Sri Lanka** concerning Air Services done at Colombo on 22 April 1998, as amended, hereinafter referred to as “Sri Lanka – United Kingdom Agreement” in Annex 2.

List of articles in the agreements listed in Annex 1 and referred to in Articles 2 to 4 of this Agreement

- (a) Designation by a Member State:
- Article 3, of the Sri Lanka - Austria Agreement;
 - Article 3, of the Sri Lanka - Belgium Agreement;
 - Article 4, of the Sri Lanka - Cyprus Agreement;
 - Article 3, of the Sri Lanka - Czech Republic Agreement;
 - Article 2, of the Sri Lanka - Denmark Agreement;
 - Article 3, of the Sri Lanka - France Agreement;
 - Article 3, paragraph 4 of the Sri Lanka - Germany Agreement;
 - Article 3, of the Sri Lanka - Greece Agreement;
 - Article 4, Paragraphs 1 to 3 of the Sri Lanka - Italy Agreement;
 - Article 2, of the Sri Lanka - Netherlands Agreement;
 - Article 3, of the Sri Lanka - Poland Agreement;
 - Article 3, of the Sri Lanka - Romania Agreement;
 - Article 2, of the Sri Lanka - Sweden Agreement;
 - Article 4, of the Sri Lanka – United Kingdom Agreement;
- (b) Refusal, revocation, suspension or limitation of authorisations or permissions:
- Article 4, of the Sri Lanka - Austria Agreement;
 - Article 5, of the Sri Lanka - Belgium Agreement;
 - Article 5, of the Sri Lanka - Cyprus Agreement;
 - Article 4, of the Sri Lanka - Czech Republic Agreement;
 - Article 6, of the Sri Lanka - Denmark Agreement;
 - Article 3, paragraph 4 and Article 4, of the Sri Lanka - France Agreement;
 - Article 4, paragraph 1, of the Sri Lanka - Germany Agreement;
 - Article 4, of the Sri Lanka - Greece Agreement;

- Article 4, Paragraphs 4 to 6 of the Sri Lanka - Italy Agreement;
- Article 3, of the Sri Lanka - Netherlands Agreement;
- Article 3, of the Sri Lanka - Romania Agreement;
- Article 6, of the Sri Lanka - Sweden Agreement;
- Article 5, of the Sri Lanka – United Kingdom Agreement;

(c) Safety:

- Article 7, of the Sri Lanka - Austria Agreement;
- Article 7, of the Sri Lanka - Belgium Agreement;
- Article 10, of the Sri Lanka - Cyprus Agreement;
- Article 7, of the Sri Lanka - Czech Republic Agreement;
- Article 4, of the Sri Lanka - Denmark Agreement;
- Article 7, of the Sri Lanka - Greece Agreement;
- Article 7, of the Sri Lanka - Poland Agreement;
- Article 7, of the Sri Lanka - Romania Agreement;
- Article 4, of the Sri Lanka - Sweden Agreement;

List of other states referred to in Article 2 of this Agreement

- (a) **The Republic of Iceland** (under the Agreement on the European Economic Area);
- (b) **The Principality of Liechtenstein** (under the Agreement on the European Economic Area);
- (c) **The Kingdom of Norway** (under the Agreement on the European Economic Area);
- (d) **The Swiss Confederation** (under the Agreement between the European Community and the Swiss Confederation on Air Transport).