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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 1008/2008 on common rules for the operation of air
services in the Community

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal aims to ensure legal consistency of Regulation (EC) No 1008/2008¹ with an international agreement.

Article 13 of Regulation 1008/2008 defines the conditions under which lease arrangements of aircraft registered in third countries, especially wet-lease, are allowed. The possibilities are exceptional circumstances, such as a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation.

The Air Transport Agreement (ATA) between the European Community and its Member States, of the one part, and the United States of America (US), of the other part ("the EU-US Air Transport Agreement") was signed on 25 and 30 April 2007² and amended by a Protocol of 24 June 2010³. The ATA has been applied provisionally since 30 March 2008. The Amending Protocol has been applied provisionally as from 24 June 2010.

The ATA foresees an open wet-lease regime between the parties. In order to bring clarity and certainty to the air carriers, the Commission has recommended the Council to authorise it to negotiate a specific wet-lease agreement with the US, aiming at lifting the time restrictions.

The present proposal aims to adapt the EU regulation accordingly. It is therefore very restricted in scope and will only apply to Article 13(3)(b) of Regulation (EC) No 1008/2008. The other provisions of Article 13 (e.g. on safety standards and rights of the competent authority) will remain unchanged.

In the short term, the derogation from the limitations would be granted to the US which would be the first third Country with which the EU has a wet-lease agreement. Other third countries may line up in the future to seek similar derogations, but each request would be dealt with on a case by case basis and exemptions should be granted only when adequately justified.

Any direct or indirect impact will result from the wet-lease agreements themselves, not from the amendment of the regulation.

• Consistency with existing policy provisions in the policy area

The present initiative builds on the existing Union provisions dealing with air services as currently contained in Regulation (EC) No 1008/2008. It will also be consistent with the envisaged EU-US wet-lease agreement and EU-US ATA.

• Consistency with other Union policies

This initiative is fully consistent with the 2014-2019 strategic objectives of the Commission with respect to the promotion of 'EU as a global actor' and 'Jobs and Growth'.

¹ OJ L 293, 31.10.2008, p.3

² Council Decision of 25 April 2007 on the signature and provisional application of the EU-US Air Transport Agreement (2007/339/EC), OJ L 134, 25.5.2007, p.4.

³ OJ L 223, 25.8.2010, p.3.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 100(2) of the Treaty on the Functioning of the European Union, which is the legal basis for the adoption of Union measures relating to air transport.

- **Subsidiarity (for non-exclusive competence)**

The amendment of the Regulation is the only existing instrument available to address the issue at stake.

- **Proportionality**

The proposal is a technical adaptation of EU legislation to an international agreement. The modification is strictly limited to the time limitation restrictions related to the wet-leasing provisions in the envisaged EU-US wet-lease agreement.

- **Choice of the instrument**

The present proposal does not change the type of instrument used in the initial regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

All EU Member States and industry (including social partners) as well as Norway and Iceland (who are parties to the ATA) have been actively involved in the analysis and the assessment of the case. .

It was understood during these consultations that a wet-lease agreement would trigger an amendment to Regulation 1008/2008.

- **Collection and use of expertise**

This amendment is of a technical and horizontal nature resulting from international agreements. The data collection to assess its impact will be carried out in the framework of the request for negotiating authorisation in view of an agreement between EU and a third country.

It is triggered for the moment only by the envisaged EU-US wet-lease agreement. Data collection and analysis for this agreement is summarised in the associated roadmap and recommendation for a Council decision.

- **Impact assessment**

The initiative has a very specific aim (technical adaptation resulting from an international agreement) and a limited scope (derogation to time limitation restrictions for wet-leasing). As mentioned in the roadmap published on 7 March 2016, it is not proposed to carry out an impact assessment.

Any impacts will result from the wet-lease agreement itself, not from the amendment of the regulation.

- **Regulatory fitness and simplification**

The proposal is a technical adaptation of the EU regulation in order to align it with provisions included in an international agreement.

A comprehensive evaluation of the existing policy has not taken place since the initiative does not foresee a general relaxation of the limitations for all third countries. The initiative would aim to create a "carve out" that would be applicable to US only and would avoid an inconsistency between the regulation and EU's international obligations.

- **Fundamental rights**

Not applicable

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposed regulation does not require any additional implementing measures.

- **Detailed explanation of the specific provisions of the proposal**

The proposal aims to introduce a possibility for derogation from the conditions on wet-leasing set out in Article 13(3)(b) of Regulation (EC) No 1008/2008 through the conclusion of international agreements. This would allow for more flexibility, in so far as the conclusion of such agreements presents economic and social advantages for the EU.

The changes proposed add a reference to international agreements to Article 13(3)(b) of the Regulation where conditions to allow wet leasing (extraordinary circumstances, seasonal needs, operational difficulties) are set out.

The other provisions of Article 13 (e.g. on safety standards and rights of the competent authority) would remain unchanged.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 1008/2008 includes in its Article 13 provisions allowing lease arrangements of aircraft registered in third countries, especially wet-lease arrangements.
- (2) These arrangements are allowed in exceptional circumstances, such as a lack of adequate aircraft in the Union market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of the Union and national legislation.
- (3) An Air Transport Agreement (ATA) between the EU and United States was signed in 2007 and amended by a Protocol of 24 June 2010. The ATA reflects the parties' commitment to the shared goal of continuing to remove market access barriers in order to maximise benefits for consumers, airlines, labour, and communities on both sides of the Atlantic.
- (4) Accordingly, the ATA foresees an open wet-lease regime between the parties. The relevant provisions that are included under Article 10 of the ATA allow wet-lease arrangements for international air transport provided that all participants in such arrangements hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the parties.
- (5) Relevant developments and past discussions at the Joint Committee (JC) established under the ATA have shown that parties would benefit from a dedicated wet-lease agreement which would provide precision to the relevant provisions of the ATA.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

- (6) Since this agreement involves relaxation of the existing time limitations, it has a rippling effect on Article 13(3)(b) of the Regulation 1008/2008, where time limitations are foreseen in cases where Union carriers' wet-lease from third country carriers.
- (7) Article 13(3)(b) therefore needs to be modified to allow for relaxation of time limitations of wet leasing to be agreed in international agreements concluded by the Union with third countries.
- (8) Regulation (EC) No 1008/2008 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 13(3)(b) of Regulation (EC) No 1008/2008, the introductory phrase is replaced by the following:

"unless otherwise provided for in an international agreement concluded by the Union, one of the following conditions is fulfilled"

Article 2

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President