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EUROPEAN COMMISSION

Brussels, 3.5.2010
COM(2010)208 final
Vol. II

2010/0112 (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 conclusion of the Protocol to Amend 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**

ANNEX

MEMORANDUM OF CONSULTATIONS

1. Delegations representing the European Union and its Member States and the United States of America met in Brussels 23-25 March 2010 to complete negotiations of a second stage air transport agreement. Delegation lists are appended as Attachment A.
2. The delegations reached *ad referendum* agreement on, and initialled the text of, a 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 (the "Protocol", appended as Attachment B). The delegations intend to submit the draft Protocol to their respective authorities for approval, with the goal of its entry into force in the near future.
3. References in this Memorandum to the Agreement and to articles, paragraphs, and annexes are to the Agreement, as it would be amended by the Protocol.
4. The EU delegation confirmed that as a consequence of the entry into force on 1 December 2009 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, the European Union replaced and succeeded the European Community and that, as of that date, all the rights and obligations of, and all the references to, the European Community in the Agreement refer to the European Union.
5. The delegations affirmed that the procedures for reciprocal recognition of regulatory determinations with regard to airline fitness and citizenship in the new Article 6 *bis* are not intended to modify the conditions prescribed under the laws and regulations normally applied by the Parties to the operation of international air transportation referred to in Article 4 of the Agreement.
6. With respect to Article 9, the delegations expressed their desire to further EU/U.S. cooperation on aviation security, with the aim of achieving, wherever possible, maximum reliance on each other's security measures, consistent with applicable laws and regulations, to reduce unnecessary duplication of such measures.
7. The delegations noted that security cooperation is expected to include regular consultations on amendments to existing requirements, where feasible prior to their implementation; close coordination of airport assessment activities and, where possible and appropriate, air carrier inspections; and exchange of information on new security technologies and procedures.
8. With a view to fostering efficient use of the resources available, enhancing security, and promoting facilitation, the delegations noted the benefit of swift and, wherever possible, coordinated responses to new threats.

9. Both delegations noted that the provisions of the respective conventions in force between a Member State and the United States for the avoidance of double taxation on income and on capital remain unaffected by the Protocol.

10. With respect to paragraph 7 of Article 15, the EU delegation noted that the issues to be addressed by any work in this area would be expected to include, among other things, the environmental effectiveness and technical integrity of the respective measures, the need to avoid competitive distortion and carbon leakage and, where appropriate, whether and how such measures may be linked or integrated with each other. The U.S. delegation noted that in developing recommendations, it would expect to focus, *inter alia*, on consistency with the Chicago Convention and the promotion of the objectives of the Agreement.

11. The two delegations emphasised that nothing in the Agreement affects in any way their respective legal and policy positions on various aviation-related environmental issues.

12. In recognition of shared environmental objectives, the delegations developed a Joint Statement on Environmental Cooperation appended as Attachment C to this Memorandum of Consultations.

13. The EU delegation restated the EU's intention to continue to work through the United Nations Framework Convention on Climate Change to establish global emissions reduction targets for international aviation.

14. The U.S. and EU delegations restated the U.S. and EU intentions to work through the International Civil Aviation Organisation (ICAO) to address greenhouse gas emissions from international aviation. Both delegations also noted the contributions from industry in support of this process.

15. Both delegations noted that the references to the balanced approach in paragraph 4 of Article 15 refer to Resolution A35-5 unanimously adopted at the 35th ICAO Assembly. The delegations emphasised that all aspects of the balanced approach principle established in that Resolution are relevant and important, including the recognition that "States have relevant legal obligations, existing agreements, current laws and established policies which may influence their implementation of the ICAO balanced approach".

16. Both delegations underscored their support for applying ICAO's "Guidance on the Balanced Approach to Aircraft Noise," which is currently published in ICAO Document 9829 (2nd edition).

17. With regard to paragraph 5(a) of Article 15, the EU delegation noted that "interested parties" is defined in Article 2(f) of Directive 2002/30/EC to mean "natural or legal persons affected or likely to be affected by, or having a legitimate interest in the introduction of, noise reduction measures, including operating restrictions." The EU delegation also noted that, under Article 10 of that Directive, Member States must ensure that, for the application of Articles 5 and 6 of that Directive, procedures for consultation of interested parties are established in accordance with applicable national law.

18. Recognising the challenges related to the increasing cross-border mobility of workers and structure of companies, the EU delegation noted that the European Commission is closely monitoring the situation and is considering further initiatives in order to improve implementation, application, and enforcement in this area. The EU delegation also referred to the work being undertaken by the European Commission on transnational company agreements and stated its willingness to inform the Joint Committee about these and other related initiatives, as appropriate.

19. The U.S. delegation noted that, in the United States, the principle that allows for selection of a single representative for a defined class or craft of employees at an airline has helped promote rights for both airline flight and ground workers to organise themselves and to negotiate and enforce collective bargaining agreements.

20. Both delegations noted that, in the event that a Party would take measures contrary to the Agreement, including Article 21, the other Party may avail itself of any appropriate and proportional measures in accordance with international law, including the Agreement.

21. In relation to paragraph 4 of Article 21, the EU delegation noted that the review referred to in that paragraph will be exercised by the European Commission *ex officio* or *ex parte*.

22. The delegations noted that the traffic rights referred to in paragraph 4(a) of Article 21 would be in addition to those granted to the European Union and its Member States in Article 3 of the Agreement.

23. The delegations expressed their satisfaction with the cooperation between the U.S. Department of Transportation and the European Commission, as provided for in the Agreement, with the shared objective of improving each other's understanding of the laws, procedures and practices of each other's competition regimes and the impact that developments in the air transportation industry have had, or are likely to have, on competition in the sector.

24. The delegations affirmed the commitment of the respective competition authorities to dialogue and cooperation and to the principle of transparency, consistent with legal requirements, including the protection of confidential commercial information. The delegations further affirmed the willingness of the respective competition authorities to provide guidance on procedural requirements, where appropriate.

25. The delegations noted that any communication to the Joint Committee or elsewhere relating to the cooperation under Annex 2 must respect the rules governing disclosure of confidential or market-sensitive information.

26. For the purposes of paragraph 4 of Annex 6, the delegations expressed their expectation that the Joint Committee will develop, within one year of signature of the Protocol, appropriate criteria for determining whether countries have established a record of cooperation in air services relations.

27. The delegations welcomed the participation of representatives of Iceland and Norway as observers on the EU delegation and noted that work will continue in the

Joint Committee to develop a proposal regarding conditions and procedures for Iceland and Norway to accede to the Agreement, as amended by the Protocol.

28. Both delegations expressed their expectation that their respective aeronautical authorities would permit operations consistent with the terms of the Agreement, as amended by the Protocol, on the basis of comity and reciprocity, or on an administrative basis, from the date of signature of the Protocol.

For the Delegation of the European Union and its Member States

For the Delegation of the United States of America

Daniel CALLEJA

John BYERLY

ATTACHMENT C

Joint Statement on Environmental Cooperation

The delegations of the United States and the European Union and its Member States reaffirmed the critical importance of addressing the environmental impacts of international aviation. They expressed their shared commitment to the environmental objectives established at the 35th Assembly of the International Civil Aviation Organization (ICAO), namely to strive to:

- a) limit or reduce the number of people affected by significant aircraft noise;
- b) limit or reduce the impact of aviation emissions on local air quality; and
- c) limit or reduce the impact of aviation greenhouse gas emissions on the global climate.

The delegations acknowledged the outcome of the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change and the Copenhagen Accord, including the shared recognition of the scientific view that the increase in global temperature should be below two degrees Celsius.

The delegations confirmed the Parties' strong desire and willingness to work together to build upon the progress achieved by the ICAO High Level Meeting on International Aviation and Climate Change by seeking to join with international partners in a collective effort at ICAO to establish a more ambitious program of action, including robust goals, a framework for market-based measures, and considerations for the special needs of developing countries.

Both sides noted their commitment to cooperate within the ICAO Committee on Aviation Environmental Protection (CAEP) to ensure the timely and effective delivery of its work programme, including adoption of a global aircraft CO₂ standard and other measures on climate change, noise, and air quality.

The delegations emphasized the importance of reducing the environmental impacts of aviation through:

- continuing cooperation on the NextGen and SESAR air traffic management modernization programmes, including the Atlantic Interoperability Initiative to Reduce Emissions (AIRE);
- fostering and accelerating, as appropriate, the development and implementation of new aircraft technologies and sustainable alternative fuels, including through the Clean Sky Joint Technology Initiative, the Continuous Low Energy, Emissions and Noise (CLEEN) Program, the Commercial Aviation Alternative Fuels Initiative (CAAFI), and the Sustainable Way for Alternative Fuel and Energy in Aviation (SWAFEA) initiative; and
- collaborating with the scientific community through, for example, the CAEP Impacts and Science Group to better understand and quantify the effects of aviation on the environment, such as health and non-CO₂ climate impacts.