

COM(2019) 568 final

Information Note

1. Title of Proposal

Amended proposal for a COUNCIL DECISION on the conclusion of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part.

2. Date of Issue

05/11/2019

3. Number of Commission document

COM(2019) 568 final

4. Department with primary responsibility

The Department of Transport, Tourism and Sport

5. Other Department(s) involved

The Department of Foreign Affairs and Trade

6. Short summary and aim of the paper

The EU Council authorised the EU Commission (CION) in June 2011 to negotiate a Common Aviation Area (ECAA) Agreement between the EU and its Member States with the Republic of Moldova.

The negotiated agreement was signed on 26 June 2012 in accordance with EU Council Decision 2012/639/EU concerning the signing and provisional application of the Agreement.

Articles 4 and 5 of Decision 2012/639/EU contain provisions on decision making and representation with regard to various matters set out in the Agreement. In view of the judgment of the European Court of Justice of 28 April 2015 in Case C-28/12, the application of those provisions should be discontinued as they are no longer considered necessary, nor are provisions on information obligations of the Member States, contained in Article 6 of the Decision. Consequently, Articles 4, 5 and 6 of Decision 2012/639/EU should cease to apply at the date of entry into force of this Decision.

The ratification process has been completed by all Member States, except for the Republic of Croatia. The Republic of Croatia accedes to the Agreement in accordance with the procedure provided for in the Act of accession annexed to the Treaty of Accession of 5 December 2011, and the relevant Protocol on the accession of the Republic of Croatia to this Agreement was signed on 22 July 2015.

This proposal for a EU Council Decision modifies the initial version COM/2012/020 final (adopted on 27 January 2012) on the Conclusion of the EU – Moldova ECAA agreement and calls for the abovementioned Articles 4, 5 and 6 of EU Council Decision 2012/639/EU to cease to apply when this proposed Decision enters into force.

The modifications take account of the entry into force of the Treaty of Lisbon, and the judgment of the European Court of Justice of 28 April 2015 in Case C-28/12.

The proposal is a decision on the conclusion of the EU – Moldova ECAA Agreement. It also modifies the initial proposal of the Commission (under COM(2012) 020 final) in response to the entry into force of the Treaty of Lisbon, and the judgment of the European Court of Justice of 28 April 2015 in Case C-28/12.

ECJ CASE C-28/12

This case relates to a proposed decision to sign and provisionally apply the EU-US Open Skies Accession Agreement and Ancillary Agreement. The Commission had sought a EU Council Decision to this effect, however, the EU Council had instead adopted a hybrid decision with the governments of Member States.

The Commission believed that the EU Council had complete competence to make this decision based on Article 100(2) TFEU, in conjunction with Article 218(5) TFEU and that the hybrid decision went against the spirit of the EU treaty, as a result they challenged the EU Council in the ECJ, and the ECJ found in favour of the Commission.

This case, while seeming procedural in nature, touched on issues concerning the exercise of the EUs external competences.

7. Implications for Ireland

None

8. Deadline Set by the Commission for Responses

N/A

9. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Liam Gallagher,

Assistant Principal Officer,
Aviation Services Division,
Department of Transport, Tourism and Sport

01 604 1251

liamgallagher@dtas.gov.ie

03 December 2019



Brussels, 5.11.2019
COM(2019) 568 final

2012/0006 (NLE)

Amended proposal for a

COUNCIL DECISION

on the conclusion of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part has been negotiated by the Commission, as authorised by the Council in June 2011.

The Agreement was signed on 26 June 2012, subject to its conclusion at a later date, in accordance with Decision 2012/639/EU of the Council and the Representatives of the Governments of the Member States, meeting within the Council¹. As regards the EU side, both the Union and its Member States are parties to this Agreement.

The ratification process has been completed by all Member States, except for the Republic of Croatia. The Republic of Croatia accedes to the Agreement in accordance with the procedure provided for in the Act of accession annexed to the Treaty of Accession of 5 December 2011, and the relevant Protocol on the accession of the Republic of Croatia to this Agreements was signed on 22 July 2015².

With a view notably to take account of the entry into force of the Treaty of Lisbon, and following the judgment of the European Court of Justice of 28 April 2015 in Case C-28/12, this proposal modifies the initial proposal of the Commission (under COM/2012/020 final³), which was adopted on 27 January 2012 and subsequently submitted to the Council. In order to ease the examination by the Council, the whole of the relevant text is submitted as an amended proposal.

2. LEGAL BASIS

The legal basis for the proposal is Article 100(2) of the Treaty on the Functioning of the European Union, in conjunction with Article 218(6)(a)(v) and Article 218(7) thereof.

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

Not applicable

4. BUDGETARY IMPLICATIONS

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

¹ Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 June 2012 on the signing, on behalf of the Union, and provisional application of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova (2012/639/EU) *OJ L 292, 20.10.2012, p. 1-2*

² Council Decision (EU) 2015/1389 of 7 May 2015 on the signing, on behalf of the Union and its Member States, and provisional application of a Protocol amending the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova, to take account of the accession to the European Union of the Republic of Croatia *OJ L 215, 14.8.2015, p. 1.*

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0020&from=EN>

5. OTHER ELEMENTS

Summary of the proposed agreement

The Agreement consists of the main body including the core principles, and four annexes: Annex I on agreed services and specified routes; Annex II on transitional provisions, Annex III on the rules applicable to civil aviation and Annex IV with a list of other States referred to in Articles 3 and 4 and Annex I.

Amended proposal for a

COUNCIL DECISION

on the conclusion of the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other 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 (6)(a) (v) and Article 218 (7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁴,

Whereas:

- (1) The Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova was signed on 26 June 2012, subject to its conclusion at a later date, in accordance with Decision 2012/639/EU of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 June 2012 on the signing, on behalf of the Union, and provisional application of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova⁵.
- (2) The Agreement has been ratified by all Member States, except for the Republic of Croatia. The Republic of Croatia accedes to the Agreement in accordance with the procedure provided for in the Act of accession annexed to the Treaty of Accession of 5 December 2011, and the relevant Protocol on the accession of the Republic of Croatia to this Agreement has been signed on 22 July 2015⁶.
- (3) The Agreement should be approved on behalf of the Union.
- (4) Articles 4 and 5 of Decision 2012/639/EU contain provisions on decision making and representation with regard to various matters set out in the Agreement. In view of the judgment of the European Court of Justice of 28 April 2015 in Case C-28/12, the application of those provisions should be discontinued. Having regard to the Treaties, new provisions on those matters are not necessary, nor are provisions on information obligations of the Member States, contained in Article 6 of the Decision. Consequently, Articles 4, 5 and 6 of Decision 2012/639/EU should cease to apply at the date of entry into force of this Decision.

⁴ Consent [date] (not yet published in the Official Journal).

⁵ Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 June 2012 on the signing, on behalf of the Union, and provisional application of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova (2012/639/EU) *OJ L 292, 20.10.2012, p. 1-2*

⁶ Council Decision (EU) 2015/1389 of 7 May 2015 on the signing, on behalf of the Union and its Member States, and provisional application of a Protocol amending the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova, to take account of the accession to the European Union of the Republic of Croatia *OJ L 2015_215_R_0001*

HAS ADOPTED THIS DECISION:

Article 1

The Common Aviation Area Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part, is hereby approved on behalf of the Union⁷.

Article 2

The position to be taken by the Union as regards decisions of the Joint Committee under Article 22 of the Agreement regarding merely the inclusion of Union legislation into Annex III (Rules applicable to civil aviation) to the Agreement, subject to any technical adjustments needed, shall be adopted by the Commission, after consultation of a Special Committee appointed by the Council.

Article 3

Articles 4, 5 and 6 of Decision 2012/639/EU shall cease to apply at the date of entry into force of this Decision.

Article 4

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

Done at Brussels,

For the Council

The President

[...]

⁷ The Agreement has been published in OJ L292, 20.10.2012, p.3 together with the decision on signature.