

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.2.2005
COM(2005) 60 final

2005/0011 (CNS)

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services

(presented by the Commission)

EXPLANATORY MEMORANDUM

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

Following the judgements of the Court of Justice of the European Communities in the cases C-466/98, C-467/98, C-468/98, C-471/98, C-472/98, C-475/98 and C-476/98, the Community has exclusive competence with respect to various aspects of external aviation. The Court of Justice also clarified the right of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access.

Traditional designation clauses in Member States' bilateral air services agreements infringe Community law. 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 43 of the Treaty 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.

Following the Court of Justice judgements, the Council authorised the Commission in June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.[1]

In accordance with the mechanisms and directives in the Annex to the Council's decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement, the Commission has negotiated an agreement with the Republic of Azerbaijan that replaces certain provisions in the existing bilateral air services agreements between Member States and the Republic of Azerbaijan. Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all Community carriers to benefit from the right of establishment. Articles 4 and 5 of the Agreement address two types of clauses concerning matters of Community competence. Article 4 deals with the taxation of aviation fuel, a matter which has been harmonised by Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, particularly Article 14 paragraph 2 thereof. Article 5 (Pricing) resolves conflicts between the existing bilateral air services agreements and Council Regulation No. 2409/92 on fares and rates for air services which prohibits third country carriers from being price leaders on air services for carriage wholly within the Community.

The Council is asked to approve the decisions on the signature and provisional application and on the conclusion of the agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services and to designate the persons authorized to sign the agreement on behalf of the Community.

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[1] Council decision 11323/03 of 5 June 2003 (restricted document)

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80, paragraph 2, in conjunction with Article 300, paragraph 2, first sentence of the first subparagraph thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) The Council has authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement;

(2) The Commission has negotiated on behalf of the Community an agreement with the Republic of Azerbaijan on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council's decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement;

(3) Subject to its possible conclusion at a later date, the agreement negotiated by the Commission should be signed and provisionally applied.

HAS DECIDED AS FOLLOWS:

Sole Article

1. Subject to its subsequent conclusion at a later date, the President of the Council is hereby authorised to designate the person or persons empowered to sign on behalf of the Community the agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services.

2. Pending its entry into force, the agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose. The President

[2] OJ C , , p. .

of the Council is hereby authorised to make the notification provided in Article 8.2 of the agreement.

3. The text of the agreement is annexed to this decision.

Done at Brussels,

For the Council
The President

2005/0011 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80, paragraph 2, in conjunction with Article 300, paragraph 2, first sentence of the first subparagraph thereof and Article 300, paragraph 3, first subparagraph,

Having regard to the proposal from the Commission[3],

Having regard to the opinion of the European Parliament[4],

Whereas:

(1) The Council has authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement;

(2) The Commission has negotiated on behalf of the Community an agreement with the Republic of Azerbaijan on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council's decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement;

(3) This agreement has been signed on behalf of the Community on subject to its possible conclusion at a later date, in conformity with the decision …/…/EC of the Council of [5]

(4) This agreement should be approved.

HAS DECIDED AS FOLLOWS:

Article 1

1. The agreement between the European Community and the Republic of Azerbaijan on certain aspects of air services is approved on behalf of the Community.

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[3] OJ C , , p. .
[4] OJ C , , p. .
[5] OJ C , , p. .

2. The text of the agreement is annexed to this decision.

Article 2

The president of the Council is authorised to designate the person empowered to make the notification provided in Article 8.1 of the Agreement.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT
between the European Community and the government of the Republic of Azerbaijan on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN

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 European Community and the Republic of Azerbaijan containing provisions contrary to Community law,

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

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

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Azerbaijan, which are contrary to European Community law, must be brought into full conformity with it in order to establish a sound legal basis for air services between the European Community and the Republic of Azerbaijan and to preserve the continuity of such air services,

NOTING that provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Azerbaijan, which are not contrary to European Community law, do not need to be amended or replaced,

NOTING that it is not a purpose of the European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and the Republic of Azerbaijan, to affect the balance between Community air carriers and air carriers of the Republic of Azerbaijan, 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 Community.

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 of the European Community.

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.

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 the Republic of Azerbaijan, 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, the Republic of Azerbaijan shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

   i. the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law;

   ii. effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and

   iii. the air carrier is owned and shall continue to be owned directly or through majority ownership 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 states and/or such nationals.

3. The Republic of Azerbaijan may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

   i. the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community law;

ii. effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

iii. 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.

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

Article 3
Rights with regard to regulatory control

1. The provisions in paragraph 2 of this Article shall complement 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 the Republic of Azerbaijan under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of Azerbaijan 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
Taxation of aviation fuel

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

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent a Member State from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Republic of Azerbaijan that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.

3. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent the Republic of Azerbaijan from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of a Member State that operates between a point in the territory of the Republic of Azerbaijan and another point in the territory of the Republic of Azerbaijan.

Article 5
Tariffs for carriage within the European Community

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

2. The tariffs to be charged by the air carrier(s) designated by the Republic of Azerbaijan under an agreement listed in Annex 1 containing a provision listed in Annex 2 (e) for carriage wholly within the European Community shall be subject to European Community law.

Article 6
Annexes to the Agreement
The Annexes to this Agreement shall form an integral part thereof.

Article 7
Revision or amendment
The Parties may, at any time, revise or amend this Agreement by mutual consent.

Article 8
Entry into force and provisional application

1. This Agreement shall enter in 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 first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

3. Agreements and other arrangements between Member States and the Republic of Azerbaijan which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex 1 (b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

Article 9
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 Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish and Azeri languages. In case of divergence the English text shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY: FOR THE REPUBLIC OF AZERBAIJAN:

Annex 1

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the government of the Republic of Azerbaijan and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally

– Agreement between **the Government of Austria and the Government of the Republic of Azerbaijan** relating to Air Services done at Vienna on 04 July 2000, hereinafter referred to "Azerbaijan – Austria Agreement" in Annex 2

– Agreement between **the Government of the Kingdom of Belgium and the Government of the Republic of Azerbaijan** relating to Air Services done at Baku on 13 April 1998, hereinafter referred to "Azerbaijan – Belgium Agreement" in Annex 2;

– Agreement between **the Government of the Kingdom of Denmark and the Government of the Republic of Azerbaijan** relating to Air Services initialled at Copenhagen on 27.04.2000, hereinafter referred to "Azerbaijan – Denmark Agreement" in Annex 2

Last modified by exchange of letters 1 March 2004 and 17 December 2004

– Air Transport Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Azerbaijan done at Baku at 28 July 1995, hereinafter referred to "Azerbaijan – Germany Agreement" in Annex 2;

Last modified by Protocol Correcting and Supplementing the Air Transport Agreement of 28 July 1995 between the Government of the Federal Republic of Germany and the Government of the Azerbaijan Republic done at Baku at 29 June 1998,

– Agreement between the Government of the French Republic and the Government of the Republic of Azerbaijan relating to Air Services done at Paris on 19 June 1997, hereinafter referred to "Azerbaijan – France Agreement" in Annex 2

– Agreement between the Government of the Republic of Finland and the Government of the Republic of Azerbaijan relating to Air Services done at Baku on 29 September 2000, hereinafter referred to "Azerbaijan – Finland Agreement" in Annex 2

– Agreement between the Government of the Hellenic Republic and the Government of the Republic of Azerbaijan relating to Air Services initialled at Athens on 5-6 June 1995, hereinafter referred to "Azerbaijan – Greece Agreement" in Annex 2 ;

– Agreement between the Government of the Italian Republic and the Government of the Republic of Azerbaijan relating to Air Services done at Rome on 24 September 1997, hereinafter referred to "Azerbaijan – Italy Agreement" in Annex 2

– Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Azerbaijan relating to Air Services initialled at Baku on 3 July 2001, hereinafter referred to "Azerbaijan – Luxembourg Agreement" in Annex 2

– Agreement between the Kingdom of the Netherlands and the Republic of Azerbaijan relating to Air Services done at Baku on 11 July 1996, hereinafter referred to "Azerbaijan – Netherlands Agreement" in Annex 2

– Agreement between the Government of the Republic of Poland and the Government of the Republic of Azerbaijan concerning Civil Air Transport done at Warsaw on 26 August 1997, hereinafter referred to "Azerbaijan – Poland Agreement" in Annex 2

– Agreement between the Government of the Slovak Republic and the Government of the Republic of Azerbaijan relating to Air Services initialled at Baku on 27.10.2000, hereinafter referred to "Azerbaijan – Slovak Republic Agreement" in Annex 2

– Agreement between the Kingdom of Spain and Republic of Azerbaijan relating to Air Services initialled at Madrid on 18 November 2004, hereinafter referred to "Azerbaijan – Spain Agreement" in Annex 2

– Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Azerbaijan relating to Air Services initialled at Copenhagen on 27.04.2000, hereinafter referred to "Azerbaijan – Sweden Agreement" in Annex 2

  Last modified by exchange of letters 1 March 2004 and 17 December 2004

– Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Azerbaijan relating to Air Services done at London on 23 February 1994, hereinafter referred to "Azerbaijan – United Kingdom Agreement" in Annex 2

  Amended by Exchange of Notes done at Baku on 20 June and 23 December 1996

  Last modified by Memorandum of Understanding done at Baku on 3-4 July 2000

(b) Air service agreements and other arrangements initialled or signed between the Republic of Azerbaijan and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally

– Agreement between **the Government of the Czech Republic and the Government of the Republic of Azerbaijan** relating to Air Services initialled at Prague on 3 December 1998, hereinafter referred to "Azerbaijan – Czech Republic Agreement" in Annex 2

– Agreement between **the Government of the Republic of Estonia and the Government of the Republic of Azerbaijan** relating to Air Services initialled in Tallinn on 8.11.2002, hereinafter referred to "Azerbaijan – Estonia Agreement" in Annex 2

ANNEX 2

List of articles in the agreements listed in Annex 1 and referred to in Articles 2 to 5 of this Agreement

(a) Designation by a Member State:

– Article 3, Paragraph 5 of the Azerbaijan – Austria Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Czech Republic Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Denmark Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Estonia Agreement;

– Article 3, Paragraph 4, of the Azerbaijan – Germany Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Greece Agreement;

– Article 4, Paragraph 3 of the Azerbaijan – France Agreement;

– Article 4, Paragraph 4 of the Azerbaijan – Italy Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Luxembourg Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Netherlands Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Poland Agreement;

– Article 4, Paragraph 4 of the Azerbaijan – Slovak Republic Agreement;

– Article 3, Paragraph 4 of the Azerbaijan – Sweden Agreement;

– Article 4, Paragraph 4 of the Azerbaijan – United Kingdom Agreement.

(b) Refusal, Revocation, Suspension or Limitation of Authorisations or Permissions:

– Article 4, Paragraph 1 (a) of the Azerbaijan – Austria Agreement;

– Article 5, Paragraph 1 (d) of the Azerbaijan – Belgium Agreement;

– Article 4, Paragraph 1 (b) of the Azerbaijan – Czech Republic Agreement;

– Article 4, Paragraph 1(a) of the Azerbaijan – Denmark Agreement;

– Article 4, Paragraph 1(a) of the Azerbaijan – Estonia Agreement;

– Article 4, Paragraph 1 (b) of the Azerbaijan – Greece Agreement;

– Article 5, Paragraph 1 of the Azerbaijan – France Agreement;

– Article 5, Paragraph 1 (a) of the Azerbaijan – Finland Agreement;

– Article 5, Paragraph 1 (a) of the Azerbaijan – Italy Agreement;

– Article 4, Paragraph 1 (a) of the Azerbaijan – Luxembourg Agreement

– Article 4, Paragraph 1 (c) of the Azerbaijan – Netherlands Agreement;

– Article 4, Paragraph 1 (a) of the Azerbaijan – Poland Agreement;

– Article 5, Paragraph 1 (a) of the Azerbaijan – Slovak Republic Agreement;

– Article 4, Paragraph 1(a) of the Azerbaijan – Sweden Agreement;

– Article 4, Paragraph 1 (a) of the Azerbaijan – United Kingdom Agreement.

(c) Regulatory control:

– Article 6 of the Azerbaijan – Austria Agreement;

– Article 7 of the Azerbaijan – Belgium Agreement;

– Article 7 of the Azerbaijan – Czech Republic Agreement;

– Article 14 of the Azerbaijan – Denmark Agreement;

– Article 15 of the Azerbaijan – Estonia Agreement;

– Article 11a of the Azerbaijan – Germany Agreement;

– Article 6 of the Azerbaijan – Greece Agreement;

– Article 8 of the Azerbaijan – France Agreement;

– Article 13 of the Azerbaijan – Finland Agreement;

– Article 10 of the Azerbaijan – Italy Agreement;

– Article 6 of the Azerbaijan – Luxembourg Agreement

– Article 13 of the Azerbaijan – Netherlands Agreement;

– Article 10 of the Azerbaijan – Slovak Republic Agreement;

– Article 14 of the Azerbaijan – Sweden Agreement.

(d) Taxation of Aviation Fuel:

– Article 7 of the Azerbaijan – Austria Agreement;

– Article 10 of the Azerbaijan – Belgium Agreement;

– Article 8 of the Azerbaijan – Czech Republic Agreement;

– Article 6 of the Azerbaijan – Denmark Agreement

– Article 7 of the Azerbaijan – Estonia Agreement;

– Article 6 of the Azerbaijan – Germany Agreement;

– Article 9 of the Azerbaijan – Greece Agreement;

– Article 11 of the Azerbaijan – France Agreement;

– Article 6 of the Azerbaijan – Finland Agreement;

– Article 6 of the Azerbaijan – Italy Agreement;

– Article 8 of the Azerbaijan – Luxembourg Agreement;

– Article 9 of the Azerbaijan – Netherlands Agreement;

– Article 6 of the Azerbaijan – Poland Agreement;

– Article 5 of the Azerbaijan – Spain Agreement;

– Article 9 of the Azerbaijan – Slovak Republic Agreement;

– Article 6 of the Azerbaijan – Sweden Agreement;

– Article 8 of the Azerbaijan – United Kingdom Agreement

(e) Tariffs for Carriage within the European Community:

– Article 11 of the Azerbaijan – Austria Agreement;

– Article 13 of the Azerbaijan – Belgium Agreement;

– Article 12 of the Azerbaijan – Czech Republic Agreement

– Article 10 of the Azerbaijan – Denmark Agreement;

– Article 13 of the Azerbaijan – Estonia Agreement;

– Article 10 of the Azerbaijan – Germany Agreement;

– Article 12 of the Azerbaijan – Greece Agreement;

– Article 17 of the Azerbaijan – France Agreement;

– Article 10 of the Azerbaijan – Finland Agreement;

– Article 8 of the Azerbaijan – Italy Agreement;

– Article 10 of the Azerbaijan – Luxembourg Agreement;

– Article 5 of the Azerbaijan – Netherlands Agreement;

– Article 10 of the Azerbaijan – Poland Agreement;

– Article 8 of the Azerbaijan – Slovak Republic Agreement;

– Article 10 of the Azerbaijan – Sweden Agreement;

– Article 7 of the Azerbaijan – United Kingdom Agreement.

ANNEX 3

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)