COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.7.2005
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2005/0140(CNS)

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and Bosnia and Herzegovina on certain aspects of air services

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and Bosnia and Herzegovina 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 Bosnia and Herzegovina that replaces certain provisions in the existing bilateral air services agreements between Member States and Bosnia and Herzegovina. 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina on certain aspects of air services.

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[2] OJ C , , p. .

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 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

2005/0140(CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 on[5]

(4) This agreement should be approved.

HAS DECIDED AS FOLLOWS:

Article 1

1. The agreement between the European Community and Bosnia and Herzegovina 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 Bosnia and Herzegovina
on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

BOSNIA AND HERZEGOVINA

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

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 Bosnia and Herzegovina, to affect the balance between Community air carriers and air carriers of Bosnia and Herzegovina, 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 Bosnia and Herzegovina, 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, Bosnia and Herzegovina 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. Bosnia and Herzegovina 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, Bosnia and Herzegovina 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 Bosnia and Herzegovina under the safety provisions of the agreement between the Member State that has designated the air carrier and Bosnia and Herzegovina 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 taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of Bosnia and Herzegovina 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.

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 Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 languages and the official languages of Bosnia and Herzegovina. In case of divergence the English text shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY: FOR BOSNIA AND HERZEGOVINA:

ANNEX 1

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between Bosnia and Herzegovina 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

– Air Transport Agreement between **the Austrian Federal Government and the Government of Bosnia and Herzegovina** signed at Sarajevo on 21 August 1998, hereinafter referred to "Bosnia and Herzegovina – Austria Agreement" in Annex 2 ;

Last modified by the Memorandum of Understanding done at Vienna on 23 January 1996.

– Air Transport Agreement between **the Government of the Federal Republic of Germany and the Government of the Republic of Bosnia and Herzegovina** signed at Bonn on 10 May 1995, hereinafter referred to "Bosnia and Herzegovina – Germany Agreement" in Annex 2 ;

– Air Transport Agreement between **the Government of the Hellenic Republic and the Council of Ministers of Bosnia and Herzegovina** signed at Athens on 2 December 2004, hereinafter referred to "Bosnia and Herzegovina – Greece Agreement" in Annex 2 ;

– Air Services Agreement between **the Government of the Republic of Hungary and the Council of Ministers of Bosnia and Herzegovina** signed at Budapest on 27 April 2004, hereinafter referred to "Bosnia and Herzegovina – Hungary Agreement" in Annex 2 ;

– Agreement between **the Kingdom of the Netherlands and the Federative People's Republic of Yugoslavia** on regular air services, signed at Belgrade on 13 March 1957, hereinafter referred to "Bosnia and Herzegovina – Netherlands Agreement" in Annex 2 ;

– Air Transport Agreement between **the Polish People's Republic and the Federative People's Republic of Yugoslavia** signed at Warsaw on 14 November 1955, hereinafter referred to "Bosnia and Herzegovina – Poland Agreement" in Annex 2 ;

– Agreement between **the Republic of Slovenia and the Republic of Bosnia and Herzegovina** relating to Scheduled Air Services signed at Sarajevo on 19 January 1996, hereinafter referred to "Bosnia and Herzegovina – Slovenia Agreement" in Annex 2.

(b) Air service agreements and other arrangements initialled or signed between the Government of Bosnia and Herzegovina 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 United Kingdom of Great Britain and Northern Ireland and the Council of Ministers of Bosnia and Herzegovina** concerning Air Services initialled at London on 14 March 2003, hereinafter referred to "Bosnia and Herzegovina – UK Agreement" in Annex 2 ;

To be read together with the Memorandum of Understanding done at London on 14 March 2003 and at Sarajevo on 21 March 2003.

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 Bosnia and Herzegovina – Austria Agreement;

– Article 3, Paragraph 4 of the Bosnia and Herzegovina – Germany Agreement;

– Article 3, Paragraph 2 of the Bosnia and Herzegovina – Greece Agreement;

– Article 4, Paragraph 4 (a) of the Bosnia and Herzegovina – Hungary Agreement;

– Article 2 of the Bosnia and Herzegovina – Poland Agreement;

– Article 3, Paragraph 4 of the Bosnia and Herzegovina – Slovenia Agreement;

– Article 4 of the Bosnia and Herzegovina – UK Agreement;

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

– Article 4, Paragraph 1 (a) of the Bosnia and Herzegovina – Austria Agreement;

– Article 4 of the Bosnia and Herzegovina – Germany Agreement;

– Article 4, Paragraph 1 (a) of the Bosnia and Herzegovina – Greece Agreement;

– Article 5, Paragraph 1 (a) (i) of the Bosnia and Herzegovina – Hungary Agreement;

– Article 3, paragraph 1 of the Bosnia and Herzegovina – Netherlands Agreement;

– Article 4, Paragraph 1 (a) of the Bosnia and Herzegovina – Slovenia Agreement;

– Article 5 of the Bosnia and Herzegovina – UK Agreement;

(c) Regulatory control:

– Article 7 of the Bosnia and Herzegovina – Greece Agreement;

– Article 16 of the Bosnia and Herzegovina – Hungary Agreement;

– Article 14 of the Bosnia and Herzegovina – UK Agreement;

(d) Taxation of Aviation Fuel:

– Article 7 of the Bosnia and Herzegovina – Austria Agreement;

– Article 6 of the Bosnia and Herzegovina – Germany Agreement;

– Article 10 of the Bosnia and Herzegovina – Greece Agreement;

– Article 8 of the Bosnia and Herzegovina – Hungary Agreement;

– Article 9 of the Bosnia and Herzegovina – Netherlands Agreement;

– Article 6 of the Bosnia and Herzegovina – Poland Agreement;

– Article 6 of the Bosnia and Herzegovina – Slovenia Agreement;

– Article 8 of the Bosnia and Herzegovina – UK Agreement;

(e) Tariffs for Carriage within the European Community:

– Article 11 of the Bosnia and Herzegovina – Austria Agreement;

– Article 10 of the Bosnia and Herzegovina – Germany Agreement;

– Article 13 of the Bosnia and Herzegovina – Greece Agreement;

– Article 11 of the Bosnia and Herzegovina – Hungary Agreement;

– Article 7 of the Bosnia and Herzegovina – Netherlands Agreement;

– Article 7 of the Bosnia and Herzegovina – Poland Agreement;

– Article 13 of the Bosnia and Herzegovina – Slovenia Agreement;

– Article 7 of the Bosnia and Herzegovina – UK 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)