

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.08.2005
COM(2005) 371 final

2005/0151(CNS)

Proposal for a

**COUNCIL DECISION**

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

(presented by the Commission)

## EXPLANATORY MEMORANDUM

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

Following the judgements of the Court of Justice of the European Communities in 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 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 Moldova that replaces certain provisions in the existing bilateral air services agreements between Member States and the Republic of Moldova. 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, and in particular Article 14 (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 Moldova on certain aspects of air services and to designate the persons authorised 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 Moldova 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(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

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

Whereas:

(1) The Council 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) On behalf of the Community, the Commission has negotiated an Agreement with the Republic of Moldova on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council 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. The President of the Council is hereby authorised to designate the person(s) empowered to sign on behalf of the Community the Agreement between the European Community and the Republic of Moldova on certain aspects of air services subject to its conclusion at a later date.

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 for in Article 8(2) of the Agreement.

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[2] OJ C , , p. .

3. The text of the Agreement is attached to this Decision.

Done at Brussels,

*For the Council*
*The President*

2005/0151(CNS)

Proposal for a

# COUNCIL DECISION

## on the conclusion of the Agreement between the European Community and the Republic of Moldova 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(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

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

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

Whereas:

(1) The Council 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) On behalf of the Community, the Commission has negotiated an Agreement with the Republic of Moldova on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council 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) The Agreement was signed on behalf of the Community on subject to its possible conclusion at a later date, in conformity with Council Decision …/…/EC of [5].

(4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

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

*Article 1*

1. The Agreement between the European Community and the Republic of Moldova on certain aspects of air services is hereby approved on behalf of the Community.

2. The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to make the notification provided for in Article 8(1) of the Agreement.

Done at Brussels,

*For the Council*
*The President*

**ANNEX**

**AGREEMENT**

**between the European Community and the Republic of Moldova**

**on certain aspects of air services**

THE EUROPEAN COMMUNITY

of the one part, and

THE REPUBLIC OF MOLDOVA

(hereinafter referred to as Moldova)

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 Moldova 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 Moldova, 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 Moldova 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 Moldova, to affect the balance between Community air carriers and air carriers of Moldova, 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, definitions are listed in Annex 4.

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 Moldova, 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, Moldova shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

   ii. 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, directly or through majority ownership, and it is 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.

3. Moldova 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, Moldova shall not discriminate between Community air carriers on the grounds of nationality.

*ARTICLE 3*
*Safety*

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 Moldova under the safety provisions of the agreement between the Member State that has designated the air carrier and Moldova 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 Moldova 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 Moldova 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 on the date of the receipt of the latest written notification of the Parties on the completion of their internal procedures necessary for the entry into force of this Agreement.

2. Pending its entry into force in accordance with paragraph 1, the parties shall 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 necessary internal procedures to that effect.

3. Agreements and other arrangements between Member States and Moldova 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 two original copies, 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 Moldovan languages.

FOR THE EUROPEAN COMMUNITY: FOR THE REPUBLIC OF MOLDOVA:

**ANNEX 1**

**List of agreements referred to in Article 1 of this Agreement**

**(a) Air service agreements between Republic of Moldova 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 the Republic of Moldova** signed at Vienna on 20 July 1993, hereinafter referred to "Moldova – Austria Agreement" in Annex 2;

– Last modified by Memorandum of Understanding done at Vienna on 10 October 2002;

– Agreement between the **Government of the Republic of Cyprus and the Government of the Republic of Moldova** concerning air services signed at Chisinau on 15 July 2002 hereinafter referred to "Moldova – Cyprus Agreement" in Annex 2;

– Air Transport Agreement between **the Government of the Czech Republic and the Government of the Republic of Moldova** signed at Chisinau on 24 February 2004, hereinafter referred to "Moldova – Czech Republic Agreement" in Annex 2;

– Air Transport Agreement between **the Government of the Federal Republic of Germany and the Government of the Republic of Moldova** signed at Chisinau on 21 May 1999, hereinafter referred to "Moldova – Germany Agreement" in Annex 2;

– Air Transport Agreement between **the Government of the Hellenic Republic and the Government of the Republic of Moldova** done at Athens on 29 March 2004, hereinafter referred to "Moldova – Greece Agreement" in Annex 2;

– Air Transport Agreement between **the Government of the Republic of Hungary and the Government of the Republic of Moldova** signed at Budapest on 19 April 1995, hereinafter referred to "Moldova – Hungary Agreement" in Annex 2;

– Agreement between **the Government of the Italian Republic and the Government of the Republic of Moldova concerning** air services signed at Rome on 19 September 1997, hereinafter referred to "Moldova – Italy Agreement" in Annex 2;

Last Modified by Memorandum of Understanding signed at Rome on 26 January 2005;

– Air Services Agreement between **the Government of the Republic of Lithuania and the Government of the Republic of Moldova** signed at Vilnius on 5 April 1996, hereinafter referred to "Moldova – Lithuania Agreement" in Annex 2;

Last Amended by Exchange of Notes signed at Chisinau on 8 November 2004;

– Agreement between the Government of the Kingdom of the Netherlands and the Government of the Union of Soviet Socialist Republics concerning air services, signed on 17 June 1958 endorsed through the common declaration regarding bilateral treaties in relations between the **Kingdom of the Netherlands and the Republic of Moldova** signed in Chisinau on 29 October 1996, hereinafter referred to "Moldova – Netherlands Agreement" in Annex 2;

– Agreement between **the Government of the Republic of Poland and the Government of the Republic of Moldova** concerning civil air transport signed at Warsaw on 27 July 1995, hereinafter referred to “Moldova – Poland Agreement” in Annex 2;

– Agreement between **the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Moldova** relating to Air Services initialled at Kishinev on 18 November 1994, hereinafter referred to “Moldova-UK Agreement” in Annex 2;

**(b) Air service agreements and other arrangements initialled or signed between Moldova 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**

– - Air Transport Agreement between **the Government of the Republic of Estonia and the Government of the Republic of Moldova** initialled at Tallin on 23 September 1999, hereinafter referred to “Moldova – Estonia Agreement” in Annex 2;

– Agreement between the **Government of the Republic of France and the Government of the Republic of Moldova** relating to Air Transport initialled at Chisinau on 29 July 1999, hereinafter referred to "Moldova – France Agreement" in Annex 2;

– Air Services Agreement between **the Government of the Republic of Latvia and the Government of the Republic of Moldova**, initialled at Riga on 28 April 2004, hereinafter referred to “Moldova – Latvia Agreement” in Annex 2.

– Agreement between **the Portuguese Republic and the Republic of Moldova** relating to Air Services initialled at Lisbon on 17 February 2005, hereinafter referred to “Moldova – Portugal 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 Moldova – Austria Agreement;

– Article 4, Paragraph 3, of the Moldova – Cyprus Agreement;

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

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

– Article 3, Paragraph 2, of the Moldova – France Agreement;

– Article 3, Paragraph 2 (b), of the Moldova –Greece Agreement;

– Article 3, Paragraph 4, of the Moldova – Hungary Agreement;

– Article 1, Paragraph 2 of the Moldova – Netherlands Agreement;

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

– Article 4, Paragraph 4, of the Moldova – UK Agreement;

**(b) Refusal, revocation, suspension or limitation of authorisations or permissions:**

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

– Article 5, Paragraph 1 (a) of the Moldova – Cyprus Agreement;

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

– Article 4 of the Moldova – Estonia Agreement;

– Article 4, Paragraph 1 of the Moldova – France Agreement;

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

– Article 4, Paragraph 1 (a), of the Moldova – Hungary Agreement;

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

– Article 5, Paragraph 1 (a), of the Moldova – UK Agreement;

**(c) Safety:**

– Article 13 of the Moldova – Cyprus Agreement;

– Article 8 of the Moldova – Czech Republic Agreement;

– Article 12 of the Moldova – Estonia Agreement;

– Article 8 of the Moldova – France Agreement;

– Article 12 of the Moldova – Germany Agreement;

– Article 7 of the Moldova – Greece Agreement;

– Article 16 of the Moldova – Latvia Agreement;

**(d) Taxation of aviation fuel:**

– Article 7 of the Moldova – Austria Agreement;

– Article 7 of the Moldova – Cyprus Agreement;

– Article 9 of the Moldova – Czech Republic Agreement;

– Article 6 of the Moldova – Estonia Agreement;

– Article 10 of the Moldova – France Agreement;

– Article 6 of the Moldova – Germany Agreement;

– Article 10 of the Moldova – Greece Agreement;

– Article 6 of the Moldova – Hungary Agreement;

– Article 7 of the Moldova – Latvia Agreement;

– Article 6 of the Moldova – Lithuania Agreement;

– Article 9 of the Moldova – Poland Agreement;

– Article 8 of the Moldova – UK Agreement;

**(e) Tariffs for carriage within the European Community:**

– Article 11 of the Moldova – Austria Agreement;

– Article 16 of the Moldova – Cyprus Agreement;

– Article 13 of the Moldova – Czech Republic Agreement;

– Article 10 of the Moldova – Estonia Agreement;

– Article 14 of the Moldova – France Agreement;

– Article 10 of the Moldova – Germany Agreement;

– Article 13 of the Moldova – Greece Agreement;

– Article 13 of the Moldova – Hungary Agreement;

– Article 8 of the Moldova – Italy Agreement;

– Article 11 of the Moldova – Latvia Agreement;

– Article 10 of the Moldova – Lithuania Agreement;

– Article 8 of the Moldova – Poland Agreement;

– Article 7 of the Moldova – 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)

**ANNEX 4**

## Definitions

**The expression "Member State"** means any Member State of the European Community.

**The expression "Establishment of a Community air carrier (airline) on the territory of a Member State"** implies the effective and real exercise of air transport activity through stable arrangements. The legal form of such an establishment should not be the determining factor in this respect, whether it is a branch or a subsidiary with legal personality. When an undertaking is established on the territory of several Member States, as defined by the Treaty, it should ensure, in order to avoid any circumvention of national law, that each of the establishments fulfils the obligations which may, in accordance with Community law, be imposed by the national law applicable to its activities.[6]

**The expression "Operating licence**" means an authorisation granted by the Member State responsible to an undertaking, permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating licence, for remuneration and/or hire.

**The expression "Air operator's certificate"** means a document issued to an undertaking or a group of undertakings by the competent authorities which affirms that the operator in question has the professional ability and organisation to secure the safe operation of aircraft for the aviation activities specified in the certificate.

Evidence of **"effective regulatory control"** is predicated upon but is not limited to: the air carrier holds a valid Operating Licence issued by the competent authorities, and meets the criteria for the operation of international air services established by the competent authorities, such as proof of financial fitness, ability to meet, where relevant, public interest requirement, obligations for assurance of service etc., and the licensing Member State has and maintains aviation safety and security oversight programmes in compliance with standards of the International Civil Aviation Organisation at least.

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[6] Corrigendum to Regulation (EC) 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries (OJ L 157, 30.4.2004)