EUROPEAN
COMMISSION

Brussels, 14.11.2019
COM(2019) 587 final

2019/0260 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on Air Transport between Canada and the European Community and its Member States

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee established by the Agreement on Air Transport between Canada and the European Community and its Member States ('the Agreement')[1].

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on Air Transport between Canada and the European Community and its Member States

The Agreement represents a comprehensive agreement that supersedes the relevant provisions of the existing bilateral agreements concluded by Member States with Canada. The Agreement removes all existing restrictions on the rights of both Union air carriers and Canadian air carriers to operate between points in the European Union and points in Canada. In this respect, the Agreement removes the obstacles to the ability of Union air carriers to benefit from the right of establishment within the Union, including the right to non-discriminatory market access, in relation to the provision of air services to and from Canada.

The Agreement entered into force on 16 May 2019.

2.2. The Joint Committee

The Joint Committee is set up by Article 17 of the Agreement. Its main tasks are to foster cooperation between the Parties and consider any matter related to the operation or implementation of this Agreement, including, but not limited to: (a) reviewing market conditions affecting air services under this Agreement; (b) exchanging information, including advising as to changes to domestic law and policies, which affect the Agreement; (c) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement; (d) recommending conditions, procedures, and amendments required for new Member States to become Parties to this Agreement; and (e) discussing issues related to investment, ownership and control, and confirming when the conditions for the progressive opening of traffic rights as set out in Annex 2 to this Agreement are met. The Joint Committee shall also develop cooperation and foster expert-level exchanges on new legislative or regulatory initiatives.

The Joint Committee shall adopt decisions where expressly provided by the Agreement and all decisions shall be made by consensus. The Joint Committee shall adopt, by decision, its rules of procedure.

2.3. The envisaged act of the Joint Committee

During its first meeting, the Joint Committee is to adopt a decision regarding the adoption of the Rules of procedure of the Joint Committee ('the envisaged act').

The purpose of the envisaged act is to adopt, in accordance with Article 17(8) of the Agreement, the Rules of procedure underpinning the organisation of the Joint Committee to allow for the implementation of the Agreement.

---

[1] Council Decision (EU) 2019/702 of 15 April 2019 on the conclusion, on behalf of the Union, of the Air Transport Agreement between the European Community and its Member States, of the one part, and Canada, of the other part. *OJ L 120, 8.5.2019, p. 1–2.*

3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should aim at the adoption of the Rules of procedure of the Canada – EU Joint Committee. The position should be based on the draft decision of the Joint Committee.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Agreement on Air Transport between Canada and the European Community and its Member States.

The act which the Joint Committee is called upon to adopt is an act having legal effects, since it imposes obligations under international law on the Parties.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

In the light of that, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to air transport.

Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will set out its Rules of procedure, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

2019/0260 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on Air Transport between Canada and the European Community and its Member States

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on Air Transport between Canada and the European Community and its Member States ('the Agreement') was concluded by the Union by Council Decision (EU) 2019/702[2] and entered into force on 16 May 2019.

(2) Article 17 of the Agreement establishes a Joint Committee to ensure the proper functioning and implementation of the Agreement.

(3) Article 17(8) of the Agreement provides that the Joint Committee is to adopt its Rules of procedure.

(4) In order to ensure the effective implementation of the Agreement, the Joint Committee's Rules of procedure should be adopted.

(5) The position of the Union within the Joint Committee should therefore be based on the attached draft Joint Committee Decision.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the first meeting of the Joint Committee set up by Article 17 of the Agreement on Air Transport between Canada and the European Community and its Member States, in relation to the adoption of the Rules of procedure of the Joint Committee, shall be based on the draft Decision of the Joint Committee attached to this Decision.

[2] OJ L 120, 8.5.2019, p.1.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President