EUROPEAN
COMMISSION

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2026/0319 (NLE)

Proposal for a

COUNCIL DECISION

on the signing of the Agreement between the European Union and the Republic of Peru on certain aspects of air services

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Following the judgments of the Court of Justice in the so-called "Open Skies" cases, on 5 June 2003 the Council authorized the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements between Member States and third countries with an agreement concluded at Union level (the "horizontal authorisation"). The objectives of such "Horizontal Agreements" are to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air service agreements between Member States and third countries in line with the law of the Union.

Negotiations with the Republic of Peru on a "Horizontal Agreement" took place prior to 2013 and led to an agreed text with the Republic of Peru at that time. On the basis of the Commission proposal (COM(2013) 423 final), the Council adopted on 28 January 2014 the Council Decision on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Government of the Republic of Peru on certain aspects of air services (16251/13).

The Commission proposal for the Conclusion of such Agreement (COM(2013) 424 final), was never adopted by the Council since finally the Horizontal Agreement was never signed with the Republic of Peru.

The Commission services engaged again in negotiations with the Republic of Peru in 2025 and renegotiated the Horizontal Agreement.

The current proposal, once adopted by the Council, will repeal the Council Decision on the signature and provisional application.

The updated draft Horizontal Agreement differs considerably from the 2013 version. At the request of the Peruvian side, there is no provisional application and new provisions on the designation by the Republic of Peru have been included. In addition, the list of bilateral Member States' agreements covered by the Horizontal Agreement has been adapted to take into account that the UK is no longer an EU Member State and that Finland and Portugal have negotiated new agreements with the Republic of Peru in the meantime. Various other provisions have been modified to take into account best practices derived from thirteen years' experience of such agreements in the intervening period.

This initiative is outside the scope of the Regulatory Fitness and Performance Programme (REFIT).

• Consistency with existing policy provisions in the policy area

The provisions of the Horizontal Agreement supersede or complement the existing provisions in the 10 bilateral air services agreements between Member States and Peru.

• Consistency with other Union policies

The Agreement will serve a fundamental objective of the external aviation policy of the Union by bringing existing bilateral air services agreements in line with the law of the Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Substantive legal basis**

Given that the main objectives and components of the Agreement between the European Union and the Republic of Peru on certain aspects of air services are to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air service agreements between Member States and third countries in line with the law of the Union, the substantive legal basis is Article 100(2) TFEU.

- **Procedural legal basis**

Article 218(5) TFEU provides that, where the agreement envisaged does not relate exclusively or principally to the common foreign and security policy, the Commission shall submit a proposal to the Council. The Council shall adopt a decision authorising the signing of the agreement.

The Commission proposes to authorise the signing of the Agreement between the European Union and Peru on certain aspects of air services, subject to its conclusion at a later date.

The procedural legal basis for the proposed decision to authorise the signing of the envisaged agreement is Article 218(5) TFEU.

- **Union competence**

As indicated above, in 2003 the Council granted a horizontal authorisation to the Commission to open negotiations with third countries on this type of agreement, with the objective to sign and conclude them. Since then, the Union has signed and concluded several such agreements under exclusive competence.

- **Subsidiarity (for non-exclusive competence)**

The proposal is entirely based on the "horizontal authorisation" granted by the Council, taking into account the issues covered by the law of the Union and bilateral air services agreements.

- **Proportionality**

The Agreement will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with the law of the Union.

- **Choice of the instrument**

This proposal for a Council decision is submitted in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of a decision authorising the signing of the agreement. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

In line with Article 218(4) TFEU, the Commission has conducted the negotiations in consultation with a special committee. Industry has equally been consulted during the negotiations. Comments made in this process have been taken into account. The Member States concerned verified the accuracy of the references to the bilateral air services agreements. Industry underlined the importance of a sound legal basis for their commercial operations.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

In accordance with common practice, the present proposal is not supported by an Impact Assessment, given that its objective is to give all European Union air carriers non-discriminatory access to routes between the European Union and third countries, and to bring bilateral air service agreements between Member States and third countries in line with the law of the Union.

- **Regulatory fitness and simplification**

The proposal provides for simplification of legislation. The relevant provisions of bilateral air services agreements between Member States and Peru will be superseded or complemented by provisions in one single agreement of the Union.

- **Fundamental rights**

Not applicable

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Parties to the Agreement shall notify each other in writing through diplomatic channels about the completion of their respective internal procedures necessary for the entry into force of the Agreement. The Agreement shall enter into force on the date of the later notification.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

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.

However, traditional designation clauses in Member States' bilateral air services agreements infringe the law of the Union. 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 European Union carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 49 of the Treaty on the Functioning of the European Union 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.

In accordance with the mechanisms and directives in the Annex to the "horizontal authorisation", the Commission has negotiated an Agreement with the Republic of Peru that replaces certain provisions in the existing bilateral air services agreements between Member States and the Republic of Peru. Article 2 of the Agreement replaces the traditional designation clauses with an EU designation clause, permitting all EU carriers to benefit from the freedom of establishment.

The negotiations on the Agreement having been successfully concluded, it should be signed on behalf of the European Union. A decision to this effect is proposed herewith.

- **Signing and the text of the Agreement**

The text of the Agreement is submitted to the Council together with this proposal.

In accordance with the Treaties, it is for the Commission to ensure the signing of the Agreement, subject to its conclusion at a later date.

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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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

1. On 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.

2. The Commission has negotiated an Agreement with the Republic of Peru on certain aspects of air services ('the Agreement'). The negotiations were successfully concluded in 2013.

3. The Council adopted on 28 January 2014 the Council Decision on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Government of the Republic of Peru on certain aspects of air services (ST 16251 2013 INIT[1]). However, the Agreement was never signed by the Republic of Peru.

4. An amended version of this agreement was initialled on xxxxx 2026.

5. The objective of the Agreement is to bring bilateral air services agreements between ten Member States and Peru in line with Union law.

6. The Council decision on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Government of the Republic of Peru on certain aspects of air services (ST 16251 2013 INIT) should be repealed.

7. Therefore, the Agreement should be signed.

HAS ADOPTED THIS DECISION:

[1] https://data.consilium.europa.eu/doc/document/ST-16251-2013-INIT/en/pdf

Article 1

The signing of the Agreement between the European Union and the Republic of Peru on certain aspects of air services is hereby authorised, subject to the conclusion of that Agreement[*].

Article 2

Council Decision on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Government of the Republic of Peru on certain aspects of air services (ST 16251 2013 INIT) adopted on 28 January 2014 is repealed.

Article 3

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

Done at Brussels,

For the Council
The President

[*] The text of the Agreement will be published together with the decision on its conclusion.