EUROPEAN COMMISSION

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2011/0292 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex XIII (Transport) to the EEA Agreement.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In order to ensure the requisite legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant Community legislation into the EEA Agreement as soon as possible after its adoption.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex XIII (Transport) to the EEA Agreement in order to incorporate into the Agreement Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC.

The EEA/EFTA states issue a declaration attached to the Joint Committee Decision which states that "Regulation (EC) No 216/2008 of the European Parliament and of the Council deals among other things with the authority to impose fines and periodic penalty payments in the area of aviation safety. The incorporation of this Regulation is without prejudice to the institutional solutions with regard to future acts conferring powers to impose sanctions."

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1(3) of Council Regulation (EC) No 2894/94 concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The Commission submits the Draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

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Proposal for a

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on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex XIII (Transport) to the EEA Agreement.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100(2) and 218 (9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area[1], and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Annex XIII to the Agreement on the European Economic Area, (hereinafter referred to as "the EEA Agreement") contains specific provisions and arrangements concerning transport.

(2) Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC[2] has as its principal objective to establish and maintain a high uniform level of civil aviation safety within the Community.

(3) The activities of the European Aviation Safety Agency may affect the level of civil aviation safety within the European Economic Area.

(4) Regulation (EC) No 216/2008 is therefore to be incorporated into the Agreement in order to allow for the full participation of the EFTA States in the European Aviation Safety Agency.

(5) Regulation (EC) No 216/2008 repeals Regulation (EC) No 1592/2002[3] of the European Parliament and of the Council, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement,

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1 OJ L 305, 30.11.1994, p. 6.
2 OJ L 79, 19.3.2008, p. 1.
3 OJ L 240, 7.9.2002, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union in the EEA Joint Committee on an envisaged amendment to Annex XIII (Transport) to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels,

For the Council
The President

ANNEX

Draft

DECISION OF THE EEA JOINT COMMITTEE
No

of

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

(1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No …/… of …[4].

(2) Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC[5] has as its principal objective to establish and maintain a high uniform level of civil aviation safety within the Community.

(3) The activities of the European Aviation Safety Agency may affect the level of civil aviation safety within the European Economic Area.

(4) Regulation (EC) No 216/2008 is therefore to be incorporated into the Agreement in order to allow for the full participation of the EFTA States in the European Aviation Safety Agency.

(5) Regulation (EC) No 216/2008 repeals Regulation (EC) No 1592/2002[6] of the European Parliament and of the Council, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Annex XIII to the Agreement shall be amended as specified in the Annex to this Decision.

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4 OJ L …
5 OJ L 79, 19.3.2008, p. 1.
6 OJ L 240, 7.9.2002, p. 1.

Article 2

The texts of Regulation (EC) No 216/2008 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on , provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee[*].

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union.*

Done at Brussels,

For the EEA Joint Committee

The President

The Secretaries
to the EEA Joint Committee

[*] [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Declaration by the EFTA States

to Decision No […] incorporating Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC into the Agreement

'Regulation (EC) No 216/2008 of the European Parliament and of the Council deals among other things with the authority to impose fines and periodic penalty payments in the area of aviation safety. The incorporation of this Regulation is without prejudice to the institutional solutions with regard to future acts conferring powers to impose sanctions.

ANNEX

to Decision of the EEA Joint Committee No

Annex XIII to the Agreement shall be amended as follows:

1. The following indent shall be added in points 66a (Council Regulation (EEC) No 3922/91) and 66r (Directive 2004/36/EC of the European Parliament and of the Council):

   '- **32008 R 0216**: Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 (OJ L 79, 19.3.2008, p. 1).'

2. The following shall be added in point 68a (Council Directive 91/670/EEC):

   ', as amended by:

   - **32008 R 0216**: Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 (OJ L 79, 19.3.2008, p. 1).'

3. The text of point 66n (Regulation (EC) No 1592/2002 of the European Parliament and of the Council) shall be replaced by the following:

   '**32008 R 0216**: Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1).

   The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

   (a) Unless otherwise stipulated below, and notwithstanding the provisions of Protocol 1 to the Agreement, the term "Member State(s)" contained in the Regulation shall be understood to include, in addition to its meaning in the Regulation, the EFTA States. Paragraph 11 of Protocol 1 shall apply.

   (b) As regards the EFTA States, the Agency shall, as and when appropriate, assist the EFTA Surveillance Authority or the Standing Committee, as the case may be, in the performance of their respective tasks. The Agency and the EFTA Surveillance Authority or the Standing Committee, as the case may be, shall cooperate and exchange information as and when appropriate.

   (c) Nothing in the present Regulation shall be construed so as to transfer to the Agency authority to act on behalf of the EFTA States under international agreements for other purposes than to assist in the performance of their obligations pursuant to such agreements.

   (d) Article 12 shall be amended as follows:

(i) In paragraph 1, the words “or an EFTA State” shall be inserted after the words “the Community”.

(ii) Paragraph 2 shall be replaced by the following:

“Whenever the Community negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issue by the aeronautical authorities of that third country, it shall endeavour to obtain for the EFTA States an offer of a similar agreement with the third country in question. The EFTA States shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Community.”

(e) The following subparagraph shall be added in Article 14(7):

“Without prejudice to paragraph 4(d) of Protocol 1 to the EEA Agreement, when the Commission and the EFTA Surveillance Authority exchange information on a decision taken pursuant to this paragraph, the Commission shall communicate the information received from the EFTA Surveillance Authority to the EU Member States and the EFTA Surveillance Authority shall communicate the information received from the Commission to the EFTA States.”

(f) The following paragraph shall be added to Article 15:

“5. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to any documents of the Agency regarding the EFTA States as well.”

(g) The following shall be added in Article 17(2)(b):

“The Agency shall also assist the EFTA Surveillance Authority and provide it with the same support, where such measures and tasks fall within the competence of the Authority pursuant to the Agreement.”

(h) Article 17(2)(e) shall be replaced by the following:

“in its field of competence carry out functions and tasks ascribed to the Contracting Parties by applicable international Conventions, in particular the Chicago Convention. The national aviation authorities of the EFTA States shall perform such functions and tasks only as foreseen in the present Regulation.”

(i) The first sentence of Article 20 shall be replaced by the following:

“With regard to products, parts and appliances referred to in Article 4(1)(a) and (b), the Agency shall, where applicable and as specified in the Chicago Convention or its annexes, carry out the functions and tasks of the State of design, manufacture or registry when related to design approval. The national aviation authorities of the EFTA States shall perform such functions and tasks only as ascribed to them pursuant to the present Article.”

(j) Article 24 shall be amended as follows:

(i) The following shall be added in paragraph 1:

"The Agency shall report to the EFTA Surveillance Authority on standardisation inspections in an EFTA State."

(ii) The following shall be added in paragraph 4:

"As regards the EFTA States, the Agency shall be consulted by the EFTA Surveillance Authority."

(k) The following shall be added in Article 25(1):

"The power to impose fines and periodic penalty payments on the persons and undertakings to which the Agency has issued a certificate shall in the case where such persons or undertakings are established in an EFTA State be vested in the EFTA Surveillance Authority."

(l) In Article 25(4) the words "The Court of Justice of the European Communities" shall be replaced by "The EFTA Court" and the word "Commission" shall be replaced by "EFTA Surveillance Authority" with regards to the EFTA States.

(m) The following paragraph shall be added to Article 29:

"4. By way of derogation from Article 12(2)(a) of the Conditions of employment of other servants of the European Communities, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency."

(n) The following shall be added in Article 30:

"EFTA States shall apply to the Agency and to its staff the Protocol of Privileges and Immunities of the European Communities and applicable rules adopted pursuant to the Protocol."

(o) The following shall be inserted after the word "Community" in Article 32(1):

", Icelandic and Norwegian:"

(p) The following shall be inserted after Article 33(2)(c):

"(ca) The annual general report and the Agency's programme of work, pursuant to paragraphs (b) and (c) respectively, shall be forwarded to the EFTA Surveillance Authority."

(q) The following paragraph shall be added to Article 34:

"4. The EFTA States shall participate fully in the Management Board and shall within it have the same rights and obligations as EU Member States, except for the right to vote."

(r) The following paragraph shall be added to Article 41:

"6. Nationals of the EFTA States shall be eligible as members, including Chairpersons, of the Boards of Appeal. When the Commission draws up the list of persons referred to in paragraph 3, it shall also consider suitable persons of EFTA States' nationalities."

(s) The following shall be inserted at the end of Article 54(1):

"As regards the EFTA States, the Agency shall assist the EFTA Surveillance Authority in the performance of the aforesaid tasks."

(t) In Article 58(3), the following words shall be added after the word "Treaty":

"or in Icelandic or Norwegian".

(u) The following paragraph shall be added to Article 59:

"12. The EFTA States shall participate in the financial contribution from the Community referred to in paragraph 1(a). For this purpose, the procedures laid down in Article 82(1)(a) of and Protocol 32 to the Agreement shall apply mutatis mutandis."

(v) The following paragraphs shall be added to Article 65:

"8. The EFTA States shall participate fully in the committee established pursuant to paragraph 1 and shall within it have the same rights and obligations as EC Member States, except for the right to vote.

9. Where, in the absence of an agreement between the Commission and the committee, the Council may take a decision on the matter in question, the EFTA States may raise the issue in the EEA Joint Committee in conformity with Article 5 of the Agreement."

(w) Where applicable, and unless otherwise provided, the above adaptations shall apply *mutatis mutandis* to other Community legislation conferring powers on the Agency and incorporated into this Agreement.'