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*Plenary sitting*

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**A9-0041/2019**

4.12.2019

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## **RECOMMENDATION**

on the draft Council decision on the conclusion on behalf of the Union of the Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services (11033/2019 – C9-0049/2019 – 2018/0147(NLE))

Committee on Transport and Tourism

Rapporteur: Tomasz Piotr Poręba

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion on behalf of the Union of the Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services  
(11033/2019 – C9-0049/2019 – 2018/0147(NLE))**

### **(Consent)**

*The European Parliament,*

- having regard to the draft Council decision (11033/2019),
  - having regard to the draft Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services (09685/2018),
  - having regard to the request for consent submitted by the Council in accordance with Articles 100(2) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C9-0049/2019),
  - having regard to Rule 105(1) and (4) and Rule 114(7) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Transport and Tourism (A9-0041/2019),
1. Gives its consent to the conclusion of the agreement;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the People's Republic of China.

## **EXPLANATORY STATEMENT**

### **Background**

Following the judgements of the Court of Justice in the so-called “Open Skies” cases, on 5 June 2003 the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral air services agreements with an agreement at Union level (the “horizontal authorisation”).

The objectives of such agreements are to give all EU air carriers non-discriminatory access to routes between the European Union and third countries, and hence to bring bilateral air services agreements between Member States and third countries in line with Union law.

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 Union 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 EU air 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.

There are further issues, such as obligatory commercial agreements between airlines where compliance with Union law should be ensured through amending or complementing existing provisions in bilateral air services agreements between Member States and third countries.

### **Main provisions of the agreement**

To comply with the ruling of the Court of Justice and in accordance with the mechanisms and directives in the Annex to the “horizontal authorisation”, the Commission has negotiated an agreement (hereafter “the Agreement”) with the People's Republic of China (hereafter “China”) that replaces certain provisions in the existing bilateral air services agreements between Member States and China.

Article 2 of the Agreement replaces the traditional designation clauses with an EU designation clause, permitting all EU carriers to benefit from the right of establishment. Article 4 resolves potential conflicts with the competition rules of the Union.

The Agreement will amend or complement provisions in bilateral air services agreements only to the extent necessary to ensure compliance with Union law. Its provisions supersede or complement the existing provisions in 27 bilateral air services agreements between Member

States and China.

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 Union law.

### **Procedure**

Negotiations are based on the “horizontal authorisation” granted by the Council taking into account the issues covered by Union law and bilateral air services agreements.

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.

The negotiations were successfully concluded in December 2017, the Agreement was signed<sup>1</sup> on 20 May 2019 in Brussels.

In order to conclude, on behalf of the Union, the Agreement between the European Union and the Government of the People’s Republic of China on certain aspects of air services, the Council needs the consent of the European Parliament as required by Article 218 TFEU.

In accordance with Rules 105 and 114(5), (7) and (8) of Parliament’s rules of procedure, the committee responsible shall submit a recommendation for the approval or rejection of the proposed act. Parliament shall then take a decision by means of a single vote, and no amendments to the agreement may be tabled. Amendments in committee shall be admissible only if their aim is to reverse the recommendation proposed by the rapporteur.

### **Rapporteur’s position**

The Agreement is a direct consequence of European Court of Justice case law. It will serve a fundamental objective of the external aviation policy of the Union by bringing existing bilateral air services agreements in line with Union law with a key partner of the European Union.

In the light of the above, your Rapporteur suggests that the TRAN Committee should give a favourable recommendation on the conclusion of the Agreement.

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<sup>1</sup> Council Decision (EU)2018/1152 of 26.06.2018 (OJ L 210, 21.8.2018, p.1)

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Agreement between the European Union and the Government of the People's Republic of China on certain aspects of air services
<b>References</b>	11033/2019 – C9-0049/2019 – 2018/0147(NLE)
<b>Date of consultation / request for consent</b>	18.7.2019
<b>Committee responsible</b> Date announced in plenary	TRAN 16.9.2019
<b>Rapporteurs</b> Date appointed	Tomasz Piotr Poreba 3.9.2019
<b>Date adopted</b>	3.12.2019
<b>Result of final vote</b>	+ :            43 - :            0 0 :            0
<b>Members present for the final vote</b>	Andris Ameriks, José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Massimo Casanova, Ciarán Cuffe, Johan Danielsson, Andor Deli, Karima Delli, Anna Deparnay-Grunenberg, Ismail Ertug, Gheorghe Falcă, Giuseppe Ferrandino, João Ferreira, Mario Furore, Søren Gade, Isabel García Muñoz, Jens Gieseke, Elena Kountoura, Bogusław Liberadzki, Peter Lundgren, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Tilly Metz, Cláudia Monteiro de Aguiar, Caroline Nagtegaal, Jan-Christoph Oetjen, Philippe Olivier, Dominique Riquet, Cristian Terheş, Barbara Thaler, Petar Vitanov, Lucia Vuolo, Roberts Zīle
<b>Substitutes present for the final vote</b>	Clotilde Armand, Tom Berendsen, Paolo Borchia, Carlo Fidanza, Michael Gahler, Ondřej Kovářik, Andrey Novakov, Anne-Sophie Pelletier
<b>Substitutes under Rule 209(7) present for the final vote</b>	Catherine Griset, Agnes Jongerius



## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

43	+
ECR	Carlo Fidanza, Peter Lundgren, Roberts Zile
GUE/NLE	Elena Kountoura, Anne-Sophie Pelletier, João Ferreira
ID	Paolo Borchia, Massimo Casanova, Catherine Griset, Philippe Olivier, Lucia Vuolo
NI	Mario Furore
PPE	Tom Berendsen, Andor Deli, Gheorghe Falcă, Michael Gahler, Jens Gieseke, Marian-Jean Marinescu, Cláudia Monteiro de Aguiar, Andrey Novakov, Barbara Thaler, Elżbieta Katarzyna Lukacijewska
RENEW	Clotilde Armand, José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Søren Gade, Ondřej Kovařík, Caroline Nagtegaal, Jan-Christoph Oetjen, Dominique Riquet
S&D	Andris Ameriks, Johan Danielsson, Ismail Ertug, Giuseppe Ferrandino, Isabel García Muñoz, Agnes Jongerius, Bogusław Liberadzki, Cristian Terheş, Petar Vitanov
VERTS/ALE	Ciarán Cuffe, Karima Delli, Anna Deparnay-Grunenberg, Tilly Metz

0	-

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention