EU/Japan Agreement: air services

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PURPOSE: to conclude, on behalf of the European Union, the agreement between the European Union and Japan on certain aspects of air services.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

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.

In accordance with the mechanisms and directives in the Annex to the “horizontal authorisation”, the Commission has negotiated an Agreement with Japan that supersedes certain provisions in the existing bilateral air services agreements between Member States and Japan. The negotiations on the Agreement having been successfully concluded, it is now necessary to approve the Agreement on behalf of the European Union.

CONTENT: The Commission proposes that the Council decide to approve on behalf of the Union the **Agreement between the European Union and Japan** on certain aspects of air services.

The purpose of this Agreement is to bring the bilateral air services agreements between 13 Member States and Japan in line with EU law.

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.

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.