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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of an agreement amending the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Background

Following the Council decision concerning its conclusion¹, the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety² (hereinafter referred to as 'the Agreement') entered into force on 1 May 2011. The Agreement was negotiated on the basis of the Council Decision of 9 March 2004 authorising the Commission to open negotiations.

The purpose of the Agreement is inter alia to ensure the continuation of the high level of cooperation and harmonisation between the United States and the European Union in the fields within the scope of the Agreement.

The current scope of the Agreement, as reflected in its Article 2.B, covers

- Airworthiness approvals and monitoring of civil aeronautical products;
- Environmental testing and approvals of civil aeronautical products; and
- Approvals and monitoring of maintenance facilities.

In the course of the implementation of the Agreement, notably through discussions in the Bilateral Oversight Board (read 'Joint Committee') established under the Agreement, the United States' Federal Aviation Administration (hereinafter referred to as 'the FAA') and the Commission have found that there is a mutual desire to enhance the possibilities for further aviation safety cooperation beyond the current provisions of the Agreement,

Both sides noted that greater cooperation should be developed as a priority in pilot licensing and training, and have tasked experts to examine options and develop technical proposals. In addition, the expert work has confirmed the feasibility and need for extending the Agreement to additional areas of cooperation and acceptance.

Based on the experience and benefits gained over the 3 years since the Agreement entered into force, and with due consideration of the Bilateral Oversight Board's deliberations on the possibilities of further cooperation under an extended scope of the Agreement, the Commission presented on 3 September 2014 a Recommendation for a Council Decision authorising the Commission to negotiate an amendment to the Agreement. On the basis of the corresponding Council decision adopted on 25 September 2014, formal negotiations with the United States have been undertaken. The results of the negotiations are outlined below, and have been incorporated in the draft Amendment 1 to the Agreement annexed to this proposal.

1.2. Scope

According to the text as negotiated, Article 2.B would be replaced so as to encompass the following areas where cooperation could materialise on the basis of corresponding annexes to the agreement:

- (1) Airworthiness approvals and monitoring of civil aeronautical products;
- (2) Environmental testing and approvals of civil aeronautical products;
- (3) Approvals and monitoring of maintenance facilities;

¹ Decision 2011/719/EU, OJ L 291, 9.11.2011, p. 1.

² OJ L 291, 9.11.2011, p. 1.

- (4) Personnel licensing and training;
- (5) Operation of aircraft;
- (6) Aerodromes; and
- (7) Air traffic services and air traffic management.

From a technical point of view, it should be noted that the new text of Article 2.B as proposed leads to a consequential amendment of Article 5. The redrafting of Article 2.B means that the distinction made between the areas under current Article 5.A and Article 5.B is no longer valid. To make Article 5 operate smoothly with the new version of Article 2.B, it is suggested to maintain the substance of Article 5.B only, with adaptations so as to transform it into a general rule. The result would constitute a further simplification of the current provisions, notably by allowing for the consolidation of the Article's paragraphs A and B. Naturally, existing annexes concretising the cooperation would remain unaffected. Article 5.C in turn was no longer considered necessary.

1.3. Timetable for Completion of the Amendment

The timing for the completion of this amendment is of the essence in the context of preliminary work that has been completed for the adoption and incorporation of a new 'Pilot Licensing' Annex to the Agreement.

Under Regulation (EC) 216/2008³, a pilot who is a resident of the European Union must obtain a pilot license that is issued by a Member State. Commission Regulation (EU) 1178/2011⁴ provided for a solution for third country licence holders whereby a pilot could either validate a foreign licence for one year or permanently convert it. However while negotiating Commission Regulation (EU) 1178/2011 it became clear that national rules, although harmonised at a certain level, were quite different when it came to the treatment of third country licences. This could potentially result in a high number of private pilot licence holders (above 10.000) having a foreign licence that would not fit in the European system. It needs to be noted that it is mostly the U.S. private pilot licence (PPL) holders residing in Europe who are potentially affected. Conversion of these licences in line with Commission Regulation (EU) 1178/2011 could lead to additional significant financial and organisational costs for the PPL holders.

Therefore, in agreement with Member States, the European Parliament and industry, a transitional period was introduced in Commission Regulation (EU) 1178/2011 to give time to negotiate an Annex to the BASA, the objective of which to facilitate the conversion of U.S. issued private pilot licenses.

With due consideration for the relevant provisions and deadlines contained in Commission Regulation (EU) No 1178/2011 (8 April 2017), the incorporation of a new Pilot Licensing Annex in the Agreement is considered urgent. As a consequence the Agreement needs to be amended promptly, pending which the Amendment 1 to the Agreement should be applied provisionally.

³ Regulation (EC) No 216/2008 of the European Parliament and the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, OJ, L79/1, 19.03.2008

⁴ Commission Regulation (EU) No 1178/2011 of 3 November 2011 on laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p.1.

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

The Amendment 1 to the Agreement has been negotiated between the Commission and the FAA, against the background of Articles 2.C and 19.B of the Agreement.

The aviation sector in general consistently advocates closer cooperation, recognition and harmonisation between the two largest markets, i.e. the U.S. and EU, in order to reduce unnecessary transaction costs which add little or no safety value but diminish the industry's overall competitiveness. Such benefits are of specific interest at a moment when new market entrants are appearing in other parts of the world.

The comparison of the EU and U.S. regulatory frameworks has suggested that it would be advisable to simplify the regulatory requirements and procedures on both sides of the Atlantic further in the entirety of the areas referred to in point 1.2 above. Bringing the two systems closer together will provide for significant savings as to the organisational structures, resources, training programmes, internal processes as well as oversight programmes.

Additional annexes to the Agreement that are necessary in order for reciprocal acceptance to effectively apply in a given area, will be elaborated and adopted according to the specific procedures provided for in the Agreement and in Decision 2011/719/EU. They will be subject to separate and additional Commission proposals for Council Decisions.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposed Amendment 1 to the Agreement would create the possibility to cooperate in additional areas that both Parties find mutually desirable, subject to the adoption of corresponding annexes by the Bilateral Oversight Board for each new area, in accordance with the revised Article 5 as proposed and Article 19B of the Agreement.

Legal basis

Article 100(2) in conjunction with Article 218(5) of the Treaty on the Functioning of the European Union.

As part of the background, Article 12(1) of Regulation (EC) No 216/2008 of the European Parliament and the Council of 20 February 2008 on common rules in the field of civil aviation and establishing the European Aviation Safety Agency also deserves to be mentioned. It provides for the possibility of recognition agreements between the European Union and third countries under which authorities in the Member State may issue certificates on the basis of certificates issued by aeronautical authorities of a third country.

4. BUDGETARY IMPLICATION

No impact on the EU budget.

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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 25 September 2014 the Council authorised the Commission to open negotiations with the United States of America to amend the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, which entered into force on 1 May 2011. The negotiations were successfully concluded with an exchange of emails between the chief negotiators marking their respective agreement with the negotiated text.
- (2) The negotiated amendment to the Agreement extends the areas of cooperation, where reciprocal acceptance of approvals and findings of compliance can apply, so as to allow for an optimised resource utilisation and commensurate cost savings while maintaining a high degree of safety in air transport.
- (3) Therefore, the Amendment 1 to the Agreement should be signed on behalf of the European Union, subject to its conclusion at a later date.
- (4) In view of enabling the adoption of a new pilot licensing annex under the extended scope of the Agreement, the importance of which is to be considered in the context of the relevant third country pilot licences conversion provisions of Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew, the Amendment 1 to the Agreement should be applied provisionally.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Amendment 1 to the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety is hereby approved on behalf of the Union subject to the conclusion of the Amendment 1.

The text of the Amendment 1 to the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Amendment 1 to the Agreement for the person(s) indicated by the negotiator.

Article 3

The Amendment 1 to the Agreement shall be applied provisionally, in accordance with Article 2 of the Amendment 1 to the Agreement, as from the day of its signature, pending its entry into force.

Article 4

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

Done at Brussels,

*For the Council
The President*