

Title and reference

Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, 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

COM/2016/0694 final – 2016/0343 (NLE)

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EUROPEAN COMMISSION

Brussels, 28.10.2016
COM(2016) 694 final
2016/0343(NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, 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 initial 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 the pilot licensing and training domain, and have tasked experts to examine options and develop technical proposals. The results of this initiative have confirmed the feasibility and need for extending the Agreement to additional areas of cooperation and acceptance.

On 25 September 2014, the Council authorised the Commission to negotiate an amendment to the Agreement, so as to provide for additional areas of cooperation. The agreement amending the Agreement was subsequently negotiated between the Commission and the FAA. On the basis of a corresponding Council Decision, the agreement amending the Agreement was meanwhile signed on behalf of the Union. The agreement amending the Agreement should now be approved on the basis of Articles 100(2) and 218(6)(a) of the Treaty on the Functioning of the European Union,

1.2. Scope

Article 2.B of the initial agreement has been replaced so as to encompass the following areas where cooperation may be concretised 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;
- (4) Personnel licensing and training;
- (5) Operation of aircraft;
- (6) Aerodromes; and
- (7) Air traffic services and air traffic management.

Consequential amendments have been made in Article 5.

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 European citizens holding a U.S. issued private pilot licence (PPL) 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 Agreement, 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.

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

The agreement amending 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

The proposed agreement amending the Agreement, once in force, 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 and Article 19B of the Agreement.

Legal basis

Article 100(2) in conjunction with Article 218(6)(a) 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 States 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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [XXX] of [??] ⁵, 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 was signed on [DATE], subject to its conclusion at a later date.
- (2) The Amendment 1 to the Agreement extends the areas of cooperation between the Parties, 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 approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

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.

The Amendment 1 to the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, with the exchange of the diplomatic notes provided for in Article 19.B. of the Agreement, in order to express the consent of the European Union to be bound by the Amendment 1 to the Agreement.

Article 3

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

Done at Brussels,

*For the Council
The President*

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- (1) Decision 2011/719/EU, OJ L 291, 9.11.2011, p. 1.
 - (2) OJ L 291, 9.11.2011, p. 1.
 - (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.

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**ANNEX
to the**

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AMENDMENT 1

TO

THE AGREEMENT ON COOPERATION IN THE REGULATION

OF CIVIL AVIATION SAFETY

BETWEEN THE

UNITED STATES OF AMERICA

AND THE

EUROPEAN COMMUNITY

ARTICLE 1 – GENERAL

Pursuant to the terms of Article 19.B of the Agreement on Cooperation in the Regulation of Civil Aviation Safety (the “Agreement”) between the United States of America (“United States”) and the European Community (collectively, “the Parties,” and individually, a “Party”), the Parties agree to amend the Agreement as follows:

- (1) Article 2.B shall be deleted in its entirety and replaced with the following:

"The scope of cooperation under this Agreement includes the following areas:

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

- (2) Article 5 shall be deleted in its entirety and replaced with the following:

"ARTICLE 5

Annexes

For matters within the scope of this Agreement, the Parties or their representatives on the Board shall develop Annexes describing the terms and conditions for reciprocal acceptance of findings of compliance and approvals, when they agree that each Party’s civil aviation standards, rules, practices and procedures are sufficiently compatible to permit acceptance of approvals and findings of compliance with agreed upon standards made by one Party on behalf of the other. The Parties also agree that technical differences between their civil aviation systems shall be addressed in the Annexes."

ARTICLE 2 – PROVISIONAL APPLICATION

Pending its entry into force, the Parties agree to provisionally apply this amendment from the date of signature.

ARTICLE 3 – ENTRY INTO FORCE

This amendment shall enter into force on the first day of the second month following the date of the last note of the exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

UNITED STATES OF AMERICA

EUROPEAN UNION

BY: _____ BY: _____

TITLE: Administrator, Federal Aviation Administration TITLE:

DATE: _____ DATE: _____

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