



EUROPEAN COMMISSION

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COM(2012) 457 final

2012/0222 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken by the European Union within the EU-ICAO Joint Committee, concerning the Decision on the adoption of an Annex on aviation security to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Objectives of the annex on Aviation Security to the Memorandum of Cooperation**

The International Civil Aviation Organization (ICAO) is a UN specialised agency acting as the global forum for civil aviation. ICAO works to achieve its vision of safe, secure and sustainable development of civil aviation through cooperation among its Member States. The legal basis for ICAO is the Chicago Convention on International Civil Aviation of 1944. Currently ICAO covers 191 countries.

The European Union works closely with ICAO. Firstly, most aspects of the Chicago Convention are Union competence; ICAO is pursuing policies in the fields of safety, security, environment and air traffic management. Secondly, ICAO standards and requirements form the basis for EU legislation. Moreover, international standards, such as in the field of aviation security, are taken over in EU law. For the EU, it is therefore important to engage in ICAO's work and policy-making activities to contribute to sound global aviation policies. Also the competitiveness of the European civil aviation industry is at stake. That is why other global players are also actively involved in ICAO activities.

The EU and ICAO have concluded a Memorandum of Cooperation (MoC) providing for an enhanced framework for cooperation<sup>1</sup>. The MoC identifies security as one of the areas in which cooperation shall be established between the Parties and which shall be developed in a specific annex on Aviation Security to the MoC. The annex should contribute to enhancing security in international aviation and sets out areas of cooperation that will, *inter alia*, take the form of exchanging relevant security information, posting experts and financing specific security actions. An annex on Aviation Safety has already been developed and it is foreseen to also develop annexes on the environment and air traffic management. The annex on Aviation Security is thus the second annex to the MoC.

The adoption of an annex on Aviation Security is without prejudice to the rights or obligations of EU Member States under the Chicago Convention or to the relationship between EU Member States and ICAO resulting from their membership of ICAO.

#### **1.2. Procedural aspects**

The Commission obtained an authorisation from the Council to negotiate the MoC on 17 December 2009. After the signature<sup>2</sup> and conclusion<sup>3</sup> of the MoC by the EU, it entered into force on 29 March 2012 following the notification by the Parties that their respective internal procedures necessary for its entry into force had been completed.

Article 218(9) of the Treaty on the Functioning of the European Union establishes that the Council, on a proposal from the Commission, shall adopt a decision establishing the positions

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<sup>1</sup> OJ L 232, 9.9.2011, p. 2 and OJ L 121, 8.5.2012, p.16.

<sup>2</sup> OJ L 232, 9.9.2011, p. 1.

<sup>3</sup> OJ L 121, 8.5.2012, p. 16.

to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects.

Article 3 of Council Decision 2012/243/EU<sup>1</sup> on the conclusion of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization establishes that the Council shall determine the position to be taken by the Union in the Joint Committee established under paragraph 7.1 of the Memorandum of Cooperation as regards the adoption of new Annexes to the Memorandum and amendments thereto, as referred to in point (c) of paragraph 7.3 of the Memorandum.

As such, a Council Decision on the position to be taken by the EU within the Joint Committee on the decision to adopt an annex on Aviation Security is required.

### **1.3. Consistency with other policies and objectives of the Union**

The Annex on Aviation Security will serve the fundamental objectives of the European external aviation policy through the formalisation of the cooperation in this area between ICAO and the EU.

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

Member States were regularly informed throughout the negotiation process.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.1. Summary of the proposed action**

The annex on Aviation Security will enhance cooperation with ICAO with a view to providing a discussion forum on aviation security, to exchanging relevant security information, to promoting security actions and regional cooperation, and to the posting of experts.

### **3.2. Legal basis**

Article 100(2) in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

### **3.3. Subsidiarity principle**

The agreement covers issues where the EU has competence and where relations with ICAO need to be maintained at the EU level.

### **3.4. Proportionality principle**

Only such an agreement is able to pool EU efforts and provide for better coordination between Member States.

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<sup>1</sup> OJ L 121, 8.5.2012, p. 16.

#### **4. BUDGETARY IMPLICATION**

This Annex on Aviation Security has no budgetary implications<sup>1</sup>.

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<sup>1</sup> The Memorandum of Cooperation was endowed with a budget of €500,000 per year for the period 2011-2013.

Proposal for a

## COUNCIL DECISION

**on the position to be taken by the European Union within the EU-ICAO Joint Committee, concerning the Decision on the adoption of an Annex on aviation security to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation**

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2012/243/EU of 8 March 2012 on the conclusion of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization (ICAO) providing a framework for enhanced cooperation, and laying down procedural arrangements related thereto<sup>1</sup> (hereinafter referred to as 'Memorandum of Cooperation'), entered into force on 29 March 2012.
- (2) Pursuant to Article 7.3(c) of the Memorandum of Cooperation, the Joint Committee established by Article 7.1 of the Memorandum of Cooperation may adopt annexes to the Memorandum of Cooperation.
- (3) It is appropriate to establish the position to be taken by the European Union within the Joint Committee with regard to the adoption of an annex on Aviation Security to be added to the Memorandum of Cooperation,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be taken by the European Union within the EU-ICAO Joint Committee, as referred to in Article 7.3(c) of the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation (the Memorandum of Cooperation), with regard to the adoption of an Annex on aviation security to the Memorandum of Cooperation, shall be based on the draft Decision of the EU-ICAO Joint Committee, attached to this Decision.

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<sup>1</sup> OJ L 121, 8.5.2012, p. 16.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*

## ANNEX 1

DRAFT

### DECISION OF THE EU-ICAO JOINT COMMITTEE

of ...

on the adoption of an annex on aviation security to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

THE EU-ICAO JOINT COMMITTEE,

Having regard to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation (the ICAO MoC), and in particular Article 7.3(c) thereof,

Whereas:

It is appropriate to include an annex on Aviation Security in the ICAO MoC,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to this Decision is hereby adopted and shall form an integral part of the ICAO MoC.

Article 2

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

Done at

For the EU-ICAO Joint Committee

The Chairpersons

**ANNEX 2**  
**'ANNEX II - AVIATION SECURITY**

**1. Objectives**

1.1 The Parties agree to cooperate in the field of aviation security within the framework of the Memorandum of Cooperation (MOC) between the European Union and the International Civil Aviation Organization (ICAO) signed in Montreal on 28 April 2011 and in Brussels on 4 May 2011.

1.2 Consistent with their commitment to achieving an appropriate and sustainable level of aviation security on a global basis, notably through ICAO Standards and Recommended Practices (SARPs), the Parties agree to cooperate closely in the conduct of their aviation security activities.

**2. Scope**

2.1 In pursuit of the objectives specified in paragraph 1, the Parties agree to cooperate by:

- (a) conducting regular dialogue on aviation security matters of mutual interest;
- (b) conducting a regular exchange of relevant aviation security information in accordance with applicable rules;
- (c) participating in aviation security activities;
- (d) analysing, as relevant, States' compliance with ICAO Standards, adherence to Recommended Practices, and effective implementation of an aviation security oversight system;
- (e) monitoring EU States' compliance with ICAO Standards, adherence to Recommended Practices, and effective implementation of an aviation security oversight system;
- (f) continuing cooperation in regulatory and standard-setting matters;
- (g) developing and providing technical assistance;
- (h) promoting regional cooperation;
- (i) exchanging experts; and
- (j) providing aviation security-related training.



### **3. Implementation**

3.1 The Parties may establish working arrangements specifying mutually agreed mechanisms and procedures to effectively implement cooperation in the areas referred to in Article 2.1. These working arrangements shall be adopted by the Joint Committee.

### **4. Dialogue**

4.1 The Parties shall convene meetings and/or teleconferences on a regular basis to discuss aviation security matters of mutual interest and, where appropriate, coordinate activities.

### **5. Sharing of aviation security information, research/studies and analysis**

5.1 Without prejudice to their applicable rules, the Parties shall establish working arrangements specifying what information and analyses can be shared with one another on the basis of information gathered by their respective audit and inspection programmes, as well as the sharing mechanism to guarantee the confidentiality of information received from the other Party in accordance with Article 6 of the MOC.

5.2 The Parties shall collaborate in aviation security activities through the exchange of relevant and appropriate data, research, studies, information and documentation, and by facilitating mutual participation in meetings.

### **6. Participation in aviation security activities**

6.1 For the purpose of implementing this Annex, each Party shall, as appropriate, invite the other Party to participate, in accordance with established rules or procedures, in aviation security-related activities and meetings with a view to ensuring close cooperation and coordination. The modalities for such participation shall be established in working arrangements agreed by the Parties.

### **7. Regulatory matters**

7.1 Each Party shall ensure that the other Party is kept informed of all its relevant laws, regulations, standards, requirements and recommended practices, which may affect the implementation of this Annex, as well as any modification thereof.

7.2 The Parties shall notify each other in a timely manner of any proposed modifications to their relevant laws, regulations, standards, requirements and recommended practices, insofar as these modifications may have an impact on this Annex.

7.3 With a view to the global harmonisation of aviation security regulations and standards, the Parties shall inform each other on technical regulatory matters in the field of aviation security during the different stages of the rule-making or SARP-development processes, and may be invited to participate in the associated technical bodies, when appropriate.

7.4 The Parties shall provide each other with timely information on decisions and recommendations affecting aviation security.

7.5 The EU shall, where appropriate, engage in dialogue with ICAO to provide technical information in instances where issues related to compliance with ICAO Standards and adherence to ICAO Recommended Practices emerge pursuant to the application of EU legislation.

## **8. Technical Assistance**

8.1 The Parties shall coordinate assistance to States in an effort to ensure the effective use of resources and prevent a duplication of effort, and shall exchange information on aviation security-related technical assistance projects and programmes.

8.2 The Parties shall cooperate closely in assisting EU States and other States as deemed necessary in improving their level of effective implementation of the critical elements of State security oversight systems and their level of compliance with ICAO SARPs. Such cooperation shall include but not be limited to the exchange of information, facilitating dialogue between the Parties concerned, and the coordination of any technical assistance activities.

## **9. Regional Cooperation**

9.1 The Parties shall give priority to activities aimed at accelerating implementation of SARPs where the regional approach offers opportunities for improved cost-efficiency, oversight and/or standardisation processes.

## **10. Expert Assistance**

10.1 Without prejudice to expert assistance schemes developed outside the scope of this Annex, the Parties shall endeavour to make experts with technical expertise in relevant fields of aviation security available to each other, upon request, to perform tasks and participate in activities falling within the scope of this Annex. The conditions of such expert assistance shall be specified in a working arrangement between the Parties.

## **11. Training**

11.1 Where appropriate, each Party shall facilitate the participation of staff of the other Party in any aviation security-related training programmes which it provides.

11.2 The Parties shall exchange information on materials relating to aviation security-related training programmes and, where appropriate, coordinate and cooperate in the development of training programmes.

11.3 In the framework of the activities covered in Article 9 of this Annex, the Parties shall cooperate in facilitating and coordinating the participation in training programmes of trainees who come from States or regions to which technical assistance is being provided by either Party.

## **12. Review**

12.1 The Parties shall review the implementation of this Annex on a regular basis and, as necessary, take into account any relevant policy or regulatory developments.

12.2 Any review of this Annex shall be conducted by the Joint Committee established pursuant to Article 7 of the MOC.

## **13. Entry into Force, Amendments and Termination**

13.1 This Annex shall enter into force on the date of its adoption by the Joint Committee and shall remain in force until terminated.

13.2 Working arrangements agreed pursuant to this Annex shall enter into force on the date of their adoption by the Joint Committee.

13.3 Any amendments to, or termination of, working arrangements adopted pursuant to this Annex shall be agreed by the Joint Committee.

13.4 This Annex may be terminated at any time by either Party. Such termination shall be effective 6 months following receipt of written notification of termination by one party from the other party, unless the said notice of termination has been withdrawn by mutual consent of the Parties before the six-month period has expired.

13.5 Notwithstanding any other provision of this Article, if the MOC is terminated, this Annex and any working arrangement adopted pursuant to it shall terminate simultaneously.'