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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken by the European Union within the Bilateral Oversight Board under the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, concerning the addition of an Annex 3 to the Agreement

Delegations will find attached document COM(2019) 121 final.

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Brussels, 7.3.2019
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Proposal for a

COUNCIL DECISION

**on the position to be taken by the European Union within the Bilateral Oversight Board
under the Agreement between the United States of America and the European
Community on cooperation in the regulation of civil aviation safety, concerning the
addition of an Annex 3 to the Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In 2008, the European Union and the United States of America signed an agreement on cooperation in the regulation of civil aviation safety (hereinafter referred to as 'the Agreement'). The scope of the Agreement, which entered into force on 1 May 2011, was initially limited to airworthiness and environmental testing, approval and monitoring of aeronautical products as well as approval and monitoring of maintenance facilities. The scope of the Agreement was subsequently extended to personnel licensing and training, operation of aircraft, and air traffic services and air traffic management. That extension was effectuated by an amendment signed on 13 December 2017 and is provisionally applied since that date.

Taking into account the extended scope of the Agreement, the Commission, assisted by the European Union Aviation Safety Agency (EASA) developed together with the U.S. Federal Aviation Administration (FAA) a new Annex 3 to the Agreement on pilot licensing (FCL Annex), the adoption of which is the objective of this proposal.

The FCL Annex tackles the situation that a large number of private pilots, residing in the EU, actually hold a license issued by the FAA in accordance with U.S. laws, despite the general rule established by Regulation (EU) 2018/1139 of the European Parliament and of the Council and requiring pilots residing in EU Member States to hold a pilot licence issued in accordance with EU rules.

This situation has led to the need for the European Commission, through the EU aircrew Regulation (EC) No 1178/2011 of 3 November 2011, to granting derogations, permitting pilots residing in the EU and involved in private operations to continue using their FAA pilot certificates (so-called "FCL derogation"). That FCL derogation was supposed to be of a temporary nature, pending the development of a cost effective solution to this issue.

The new FCL Annex is the outcome of a collaborative effort by the respective Parties' Technical Agents, namely EASA on the EU side and the FAA on the U.S. side, allowing efficient conversion of FAA private pilot certificates and ratings into equivalent EU Part-FCL private pilot licences and ratings and vice-versa.

• Consistency with existing policy provisions in the policy area

The cooperation between the EU and the United States of America on aviation safety is part of the Aviation Strategy for Europe. The proposed new FCL Annex will provide the framework to ensure that EU residing pilots fly aircraft based on licences/ratings issued in accordance with EU regulations, that they are under the oversight of EU Member States' authorities and that they maintain and develop their qualifications in EU training organisations.

Upon the adoption of the FCL Annex the continuation of the FCL derogation will no longer be necessary.

• Consistency with other Union policies

The Agreement serves a fundamental objective of the external aviation policy of the Union by enhancing civil aviation safety and facilitate trade and investment in aeronautical products.

The new FCL Annex is consistent with the overall aviation policy of the Union by facilitating appropriate cooperation with third countries and their aviation authorities, and by promoting the mutual acceptance of certificates and other relevant documents.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

Not applicable.

- **Choice of the instrument**

To add a new Annex to the Agreement between the Union and the United States of America is the most efficient instrument to achieve the goal of allowing efficient reciprocal conversion of private pilot licences and ratings.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

EU Member States national aviation authorities were consulted by EASA in 2013 and 2014 on the text of the draft FCL Annex and its implementing procedures. Comments received were taken into account in the discussions with the FAA, which led to the finalisation of the Annex.

The Commission also informed EU Member States about developing this Annex in the Committee established under Regulation (EU) 2018/1139 of the European Parliament and of the Council, as well as in the Council's Aviation Working Party (a) through reports on the discussions that took place on the new Annex in the Bilateral Oversight Board and (b) in the context of the preparations for the Council Decision (EU) 2018/61 to enlarge the scope of the Agreement, including, among others, personnel licensing and training.

- **Collection and use of expertise**

When developing the new FCL Annex the European Commission was assisted by EASA. EASA and FAA conducted a regulatory comparison between the EU and U.S. requirements for private pilot licensing. That comparison was finalised in 2014 and allowed to identify also the regulatory differences between the EU and U.S. systems, which are addressed by so called 'special conditions' which are laid down in the proposed FCL Annex.

EASA also performed an assessment of the FAA in order to establish confidence in the U.S. system for pilot licensing. That assessment included an EASA visit to FAA Headquarters in Washington and Washington Flight Standards District Office as well as two FAA certified

flight training schools (February 2013). EASA also visited the following FAA services, as part of the visit to Mike Monroney Aeronautical Center in Oklahoma City: Airman Testing Standards Branch, Airmen Certification Branch and FAA Academy Regulatory Standards Division (April 2013). The scope of the assessment was limited to private pilot licensing and associated instrument ratings, which corresponds to the scope of the proposed FCL Annex.

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

Not applicable

4. BUDGETARY IMPLICATIONS

No impact on the EU budget

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

On the EU side, EASA will coordinate the implementation of the new FCL Annex. The detailed procedures concerning the implementation will be defined in the Implementing Procedures for Licensing (IPL), which are currently being finalised by the Technical Agents EASA and FAA (in time for the adoption of the new FCL annex).

The monitoring of the implementation of the FCL Annex will be performed in the first place by the Joint Aircrew Coordination Board (JCAB), which will be accountable to the BOB established under the Agreement. The JCAB will report to the BOB on a regular basis.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

Section 1 ‘Purpose and scope’

That section of the FCL Annex explains its scope and purpose, which is reciprocal acceptance of findings of compliance and documentation, and the provision of technical assistance regarding private pilot licensing and compliance monitoring.

The scope of the Annex covers private pilot EU Part-FCL licenses and FAA private pilot certificates, and private pilot privileges included in other EU Part-FCL licenses and FAA pilot certificates, as well as night and instrument ratings, in single engine piston land airplane and multi-engine piston land airplane categories in single-pilot operations, excluding any type ratings.

Section 2 ‘Definitions’

That section of the FCL Annex defines some of the frequently used technical terms.

Section 3 ‘Joint Aircrew Coordination Board’

That section establishes the Joint Aircrew Coordination Board (JCAB), which will be accountable to the BOB and will be responsible for ensuring the effective implementation of the FCL Annex. The JCAB is co-chaired by the EASA and FAA Directors of Flight Standards. The main responsibilities of the JCAB include:

- (a) Developing, approving, and revising the Implementing Procedures for Licensing (IPL);
- (b) Sharing information on relevant safety issues and developing action plans to address them;
- (c) Ensuring the consistent application of the Annex;
- (d) Exchanging information on planned and ongoing rulemaking activities that could affect the basis and scope of the Annex;
- (e) Sharing information on significant changes to the Parties’ pilot licensing systems that could affect the basis and scope of the Annex;
- (f) Resolving technical issues falling within the responsibilities of the Technical Agents and Aviation Authorities that cannot be solved at their level; and
- (g) Proposing to the BOB amendments to this Annex;

Section 4 ‘Implementation’

This section contains detailed conditions for conversion of FAA pilot certificates and ratings into EU Part FCL licenses and ratings as well as conditions for the conversion of EU Part FCL licenses and ratings into FAA pilot certificates and ratings.

That section also contains provisions concerning technical assistance in pilot licensing activities, verification or confirmation of authenticity of the original EU Part-FCL license or FAA pilot certificate, and exchange of information concerning revisions to laws, regulations, procedures, policy, or standards, that may affect the basis upon which the Annex is executed.

Section 5 ‘Communication and cooperation’

This section contains provisions on communication and exchange of information between the FAA, EASA and where applicable the aviation authorities of Member States. This includes provisions for the designation of contact points for the various technical aspects of the FCL Annex.

Section 6 ‘Qualification requirements for the acceptance of findings of compliance’

This section contains the basic requirements for the authorities concerning effectiveness of their respective systems for the regulatory oversight of pilots, including legal and regulatory structure, resources, training programmes, documentation and records, as well as internal policies, procedures and quality systems.

Furthermore, this section contains provisions concerning the initial and continued demonstration of the effectiveness of those systems, including provisions concerning participation of the Parties in each other's quality audits and standardization activities,

exchange of quality and standardisation reports and other relevant information which may be necessary to maintain the continued confidence of the Parties in each other's systems.

Section 7 'Fees'

If applicable, fees for the conversion of pilot licenses and ratings will be applied in accordance with Article 14 of the Agreement and in accordance with the applicable statutory and regulatory requirements.

Appendix 1 'Special Conditions'

This Appendix contains the EU special conditions applicable to the issuance of an EU Part-FCL license or rating, based on an FAA pilot certificate or rating, as well as the FAA special conditions applicable to the issuance of an FAA pilot certificate or rating based on an EU Part-FCL license or rating.

These special conditions are the additional regulatory requirements, which will need to be checked during the conversion process to account for the differences between the EU and US regulatory systems for private pilot licensing.

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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 (9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety ('the Agreement') entered into force on 1 May 2011¹.
- (2) One of the main aims of the Agreement is to improve the long-standing cooperative relationship between Europe and the United States to ensure a high level of civil aviation safety worldwide and to minimize economic burdens on the aviation industry and operators from redundant regulatory oversight.
- (3) Amendment 1² of the Agreement expands the scope of Article 2.B of the Agreement to include, inter alia, personnel licensing and training.
- (4) Article 5 of the Agreement, as amended, provides for the development of new Annexes to the Agreement for matters within the scope of the Agreement.
- (5) Both Technical Agents, i.e. the European Aviation Safety Agency for the EU and the Federal Aviation Administration for the U.S., have made the proposal to the Bilateral Oversight Board that it adopts a Decision to enact a new Annex 3 to the Agreement to cover the reciprocal acceptance of findings of compliance and documentation, and the provision of technical assistance regarding private pilot licensing and compliance monitoring.
- (6) Allowing the simplified conversion of private pilot licenses and certain pilot ratings will provide the framework to ensure that pilots residing in the European Union fly aircraft based on licences/ratings issued in accordance with EU regulations under the oversight of EU Member States' authorities and that they maintain and develop their qualifications in EU training organisations. In addition, it will bring significant

¹ OJ L 291, 09/11/2011, p. 3-44

² OJ L 11, 16/01/2018, p. 3-5

practical benefits to a large number of pilots, residing in the Union and the U.S., without compromising safety.

- (7) Article 19.C of the Agreement provides for individual Annexes to enter into force upon a decision of the Bilateral Oversight Board established pursuant to Article 3 of the Agreement.
- (8) The new Annex 3 on Pilot Licensing should be approved on behalf of the European Union.
- (9) Article 4 (3) of Council Decision 2011/719/EU of 7 March 2011 concerning the conclusion of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety provides, in accordance with Article 218 (9) of the Treaty on the Functioning of the European Union, that the Council, acting by a qualified majority, on a proposal from the Commission, shall establish the position to be taken by the Union in the Bilateral Oversight Board with respect to the adoption of additional Annexes in accordance with Article 3.C.7 and Article 19.C of the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Bilateral Oversight Board, under Articles 3 and 19 of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, with regard to the adoption of a Bilateral Oversight Board Decision adopting Annex 3 of the Agreement, shall be based on draft Decision 0010 of the Bilateral Oversight Board, attached to this Decision.

Article 2

The Director responsible for Aviation in the Directorate General for Mobility and Transport, as co-Chair and the Union's representative on the Bilateral Oversight Board, is hereby empowered to sign Decision 0010 of the Bilateral Oversight Board.

Article 3

After its adoption, the Decision of the Bilateral Oversight Board shall be published in the Official Journal of the European Union.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*