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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 211 final
Subject:	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 IV on Capacity Building, Technical Assistance, and Implementation Support" to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

Delegations will find attached document COM(2024) 211 final.

Encl.: COM(2024) 211 final

EUROPEAN
COMMISSION

Brussels, 23.5.2024
COM(2024) 211 final

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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 IV on Capacity Building, Technical Assistance, and Implementation Support" to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken by the European Union within the EU-ICAO Joint Committee, concerning the Decision on the adoption of an "Annex IV on Capacity Building, Technical Assistance, and Implementation Support" to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on International Civil Aviation

The Convention on International Civil Aviation ('the Chicago Convention') aims to regulate international air transport. The Chicago Convention entered into force on 4 April 1947 and established the International Civil Aviation Organization.

All EU Member States are Parties to the Chicago Convention.

2.2. The Memorandum of Cooperation between the EU and ICAO

ICAO is a specialised agency of the United Nations that elaborates global standards, practices, and policies for international civil air transport.

Civil aviation is an area largely covered by Union legislation , and international standards and requirements in this field are largely transposed into Union legislation. The active participation in ICAO's policymaking has therefore a relevant importance for the EU, since it contributes to the formulation of robust global aviation policies.

The EU and ICAO enjoy a long standing and close relationship, formalised also by the adoption of a Memorandum of Cooperation (MoC) in 2011, which entered into force on 29 March 2012 (following its signature[1] and conclusion[2] at EU level). As of today, the MoC is complemented by three annexes, on Air Traffic Management, Air Safety and Air Security.

The body responsible for the effective functioning of the MoC and its implementation is the EU-ICAO Joint Committee, established by Article 7.1 of the MoC. It is the body responsible for the adoption of new Annexes to the MoC and amendments thereto, as referred to in point (c) of Article 7.3 of the MoC. It is usually co-chaired by the ICAO Secretary General and the Director General for Mobility and Transport of the European Commission.

Article 3 of Council Decision 2012/243/EU[3] on the conclusion of the MoC provides that it is for the Council to determine the position to be taken by the Union in the Joint Committee established under Article 7.1 of the MoC.

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1 OJ L 232, 9.9.2011, p. 1.

2 OJ L 121, 8.5.2012, p. 16.

3 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 providing a framework for enhanced cooperation, and laying down procedural arrangements related thereto (OJ L 121, 8.5.2012, p. 16).

2.3. Annex IV on Capacity Building, Technical Assistance, and Implementation Support ('the envisaged act')

In its next meeting, which is expected to take place on 26 June 2024, the EU-ICAO Joint Committee is expected to adopt a decision regarding the adoption of an Annex IV to the MoC, on Capacity Building, Technical Assistance, and Implementation Support ('the envisaged act').

The purpose of the envisaged act is to enhance the cooperation between the Parties regarding capacity building, technical assistance and implementation support in the areas covered by the EU-ICAO MoC, notably via an increase in the sharing of information, by opening the possibility of joint activities, and by an increase in the visibility of EU-funded activities.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The European Union provides technical support, capacity building, and implementation support to third countries in various aviation domains such as safety, security, facilitation, and environmental sustainability, thereby contributing to the sound development of air transport globally.

Technical support and capacity building play pivotal roles to reach a global consensus for the transition towards sustainable aviation practices and to ensure the safety and security of aviation worldwide.

The envisaged act provides for establishing a regular dialogue on capacity building, technical assistance and implementation support activities, including training activities, in the areas covered by the EU-ICAO MoC, namely on aviation safety, aviation security, air traffic management and environmental protection, with a view to achieve synergies and, where appropriate, to coordinate those activities.

The envisaged act is relevant for all areas of cooperation under the MoC, having a particular value in the field of environment protection. With the adoption of the ICAO Assembly Resolution A41-21, establishing a long-term aspirational goal of achieving net zero CO2 emissions from international aviation by 2050, the aviation sector needs to undergo a global energy transition. Achieving this objective necessitates investments across all regions of the world and a coordinated global approach to ensure equitable progress. ICAO developed the ICAO Assistance, Capacity Building and Training for Sustainable Aviation Fuel (ACT-SAF) initiative, and through it the EU has launched a new project to support feasibility studies and capacity building initiatives, partly implemented by ICAO.

Therefore, the proposed position for the EU/ICAO Joint Committee is to endorse the new Annex IV on Technical Support, Capacity Building and Implementation Support, providing a robust legal framework for these essential activities.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions 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, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[4].

4.1.2. Application to the present case

The EU-ICAO Joint Committee is a body set up by an agreement, namely the MoC between the EU and ICAO.

The act which the EU-ICAO Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 3.4 of the MoC which foresee that Annexes adopted pursuant to the MoC shall form an integral part of it. The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

The main objective and content of the envisaged act relate to transport. Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the envisaged act of the EU-ICAO Joint Committee will result in the adoption of a new Annex to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

[4] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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 Convention on International Civil Aviation ('the Chicago Convention') which regulates international air transport, entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO). The Member States are Contracting States to the Chicago Convention and members of the ICAO.

(2) The Memorandum of Cooperation between the European Union and the International Civil Aviation Organization (ICAO) providing a framework for enhanced cooperation[5] (hereinafter referred to as 'the Memorandum of Cooperation') entered into force on 29 March 2012.

(3) Pursuant to Article 7.3(c) of the Memorandum of Cooperation, the Joint Committee established by its Article 7.1 may adopt annexes to the Memorandum of Cooperation.

(4) In its next meeting, the EU-ICAO Joint Committee is expected to adopt a decision on the adoption of an Annex IV to the Memorandum of Cooperation, on capacity building, technical assistance, and implementation support. The Annex provides for the establishment of a regular dialogue on capacity building, technical assistance, and implementation support activities, including training activities, in the areas covered by the Memorandum of Cooperation, with a view to achieve synergies and, where appropriate, to coordinate those activities.

(5) It is appropriate to establish the position to be taken on behalf of the European Union within the Joint Committee with regard to the adoption of an Annex IV on capacity building, technical assistance, and implementation support, by supporting its adoption, as the new Annex will be binding on the Union.

[5] OJ L 121, 8.5.2012, p. 16.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the EU-ICAO Joint Committee, with regard to the adoption of an Annex IV on Capacity Building, Technical Assistance, and Implementation Support to the Memorandum of Cooperation, pursuant to 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), shall be based on the draft Decision of the EU-ICAO Joint Committee, attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President