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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 September 2016
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 EU-ICAO Joint Committee on the Decision on the adoption of an annex on Air Traffic Management 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(2016) 621 final.

Encl.: COM(2016) 621 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 on the Decision on the adoption of an annex on Air Traffic Management 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 Air Traffic Management (ATM) 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, of which there are currently 191. Its legal basis is the 1944 Chicago Convention on International Civil Aviation.

The European Union works closely with ICAO, primarily because most aspects of the Chicago Convention come under Union competence - ICAO pursues policies in the fields of safety, security, environment and air traffic management (ATM). Secondly, ICAO standards and requirements form the basis for certain EU legislation. In addition, international standards, for example 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. Other global players are actively involved in ICAO activities for similar reasons.

The EU and ICAO have concluded a Memorandum of Cooperation (MoC) that provides for an enhanced framework for cooperation¹. The MoC identifies ATM as one of the areas for cooperation, to be dealt with in further detail in a specific annex. The annex is to contribute to greater harmonisation of standards, global interoperability of new technologies and systems and closer coordination of ATM activities; to that end, it sets out areas for cooperation in the form, *inter alia*, of a regular exchange of relevant ATM data/information, the possible exchange of technical ATM experts and cooperation in the further development and implementation of the ICAO Global Air Navigation Plan (GANP).

Annexes on Aviation Safety and Aviation Security have already been developed, so the annex on Air Traffic Management is the third annex to the MoC. Its adoption is without prejudice to the rights and obligations of EU Member States under the Chicago Convention or to their relations with ICAO resulting from their membership to the organisation.

1.2. Procedural aspects

On 17 December 2009, The Council authorised the Commission to negotiate the MoC. It entered into force on 29 March 2012, following notification by the parties that they had completed the requisite internal procedures (signature² and conclusion³ in the case of the EU).

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for the Council, on a proposal from the Commission, to adopt a decision 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.

¹ OJ L 232, 9.9.2011, p. 2 and OJ L 121, 8.5.2012, p.16.

² OJ L 232, 9.9.2011, p. 1.

³ OJ L 121, 8.5.2012, p. 16.

Article 3 of Council Decision 2012/243/EU⁴ on the conclusion of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization provides for the Council to determine the position to be taken by the Union in the Joint Committee established under paragraph 7.1 of the MoC as regards the adoption of new Annexes to the MoC and amendments thereto, as referred to in point (c) of paragraph 7.3 of the MoC.

A Council Decision is therefore required on the position to be taken by the EU within the Joint Committee on the decision to adopt an annex on Air Traffic Management.

1.3. Consistency with other policies and objectives of the Union

The annex on Air Traffic Management will serve the fundamental objectives of the Single European Sky and EU external aviation policies through the formalisation of its cooperation with ICAO in this area.

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

At the third meeting of the EU/ICAO MoC Joint Committee (Montréal, 2 February 2015), the parties agreed to proceed with the adoption of an ATM annex to the MoC and to start a dialogue between their respective services to agree on a text, if possible by end of 2015.

Member States were informed of the outcome of the meeting through the Single Sky Committee and the Commission (DG MOVE) produced a draft annex which was reviewed by the European Aviation Safety Agency (EASA) and the Single European Sky ATM Research Joint Undertaking (SJU), and then discussed and agreed with the ICAO Air Navigation Bureau.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The annex on Air Traffic Management will enhance cooperation with ICAO with a view to providing a discussion forum on ATM, to exchanging relevant ATM data/information, to promoting ATM actions and regional cooperation, and the possible posting of experts.

3.2. Legal basis

Article 100(2) TFEU in conjunction with Article 218(9) TFEU.

3.3. Subsidiarity principle

The annex on Air Traffic Management covers issues on which the EU has competence and on which relations with ICAO need to be maintained at the EU level.

⁴ OJ L 121, 8.5.2012, p. 16.

3.4. Proportionality principle

Only on the basis of such an annex will it be possible to pool EU efforts and provide for better coordination between Member States.

4. BUDGETARY IMPLICATIONS

This annex on Air Traffic Management has no budgetary implications.

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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 Memorandum of Cooperation between the European Union and the International Civil Aviation Organization (ICAO) providing a framework for enhanced cooperation⁵ (hereinafter referred to as 'the 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 Air Traffic Management 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 Air Traffic Management to the Memorandum of Cooperation, shall be based on the draft Decision of the EU-ICAO Joint Committee, attached to this Decision.

⁵ 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*