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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. prev. doc.:	13505/1/16 REV 1 AVIATION 215 CODEC 1490 RELEX 867
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council – General approach

Delegations will find in the Annex a revised version of the statements made by BE, DE, ES, UK and Commission in the COREPER meeting of 16 November 2016, to be entered into the minutes of COREPER/Council.

A. Article 123-2-4 : Amendments to Regulation (EC) N° 1008/2008

'BE may support the intent for clarification made by the proposal to Art 123 of the revision of the BR to make the (EC) 1008/2008 more understandable regarding the operation of a third country registered aircraft. But considering the too heavy requirements on the European applicants and additional workload on the National Aviation Authorities (NAA) of the MS in case of the complex and unfeasible approval of the wet-lease-in of an aircraft of third country operator as laid down in the current Implementation Rules IR OPS (EU) 965/2012 ORO.AOC.110 (c) (2) 'Leasing agreement', BE proposes a wet-lease-in of a third country aircraft be addressed and assessed by a NAA only when an international agreement has been concluded between the Union and that third country. **BE takes note of Commission's explanations that the measures envisaged under Article 57(1)(b) could cover acceptance of 3rd country certificates and other relevant documentation for the purpose of wet lease involving 3rd country air operators.'**

B. Annex 1 : Aircraft referred to in Article 2(3)(d)

BE doesn't support the following specific modification of Annex 1 : (e) MTOM 350kg/500kg for Landplane and (f) Helicopters linked to Gyroplanes, as laid down in Council Doc Ref : 13505/16 ADD 2, 9 November 2016 (BE was against the introduction of Gyroplanes 560kg in the current Annex 2 of (EU) 216/2008).

Indeed, there exists no objective argued impact assessment with regards to safety (this is contrary to recitals (1)-(3)-(4)) to support this modification originally proposed by four MS without any added value on safety-wise. In addition this modification will have a negative impact such as an increasing of workload for the National Aviation Authorities (NAAs), a negative impact on the level playing field in EU with the implementation of 28 different national regulations, and a negative effect on the survivability of passengers in case of accident or hard landing, ... According respectively to the agreed principle of 'declaration' and to the Article 2-4-(a), there exists a tool in the BR for a MS to accept a declaration or to request EASA to certify an aircraft above 450kg on the basis of the existing implementing rules (IR) CS-VLA or CS-LSA, and new Art 126-2a (supported by BE) foresees an updating of these IR for sports and recreational rules within two years after the entry into force of this Regulation. Regarding the Helicopters/Gyroplanes, it has to be noted that the respective mechanics of flight are different and therefore these two types of aircraft may not be jointly assimilated each other in the Regulation.

BE supports the consolidated version of Annex 1 as laid down in the Council document 13219/16 ADD 1 Rev 1 (Aviation 206, Codec 1435, Relex 835) dated 28 October 2016 (Interinstitutional file 2015/0277 (COD)): (e) MTOM 300kg/450kg for Landplane/helicopter/powered parachute/powered sailplanes,(f)gyroplanes560kg.'

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Statement for the minutes by the Federal Republic of Germany

on the occasion of the TTE Council on 1 December 2016 on the proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council

In principle, the Federal Government welcomes the objective of the proposal for a Regulation and the progress made so far in the negotiations. This refers both to greater adequacy of provisions and thus improved economic efficiency in businesses and undertakings, and to the improvement of aviation safety in Europe.

However, as before with the other EU agencies, the Federal Government rejects the option of extending the term of office of the Executive Director by up to five years, as provided for in Article 92(4). This is because serving a term of office of at least ten years would entail considerable financial obligations for the agency in accordance with Article 77 of the Staff Regulations of Officials of the European Union, which should be avoided, also with regard to the substantial retirement pension costs the EU has to bear (in 2015: EUR 64 billion). The term of office of an Executive Director should therefore be shorter.

With regard to Article 109(5) of the proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council, Germany recalls the communication from the Commission to the European Parliament and the Council, on the programming of human and financial resources for the decentralised agencies 2014-2020, implementing a decision of the Heads of State and Government of 7 and 8 February 2013, according to which no distinction is made between activities and posts financed by fees and those financed from the EU budget. Germany considers itself bound by this, so its agreement to the current wording should therefore not be seen as a precedent for the future foundation/revision of the founding acts of agencies, and it requests the Commission to take this into account in the future when preparing comparable proposals.

For Germany, it is important that in the discussions in the Council on Article 76, consensus was reached that the EASA's activities in the area of aviation security should be limited to issues concerning the overlap between aviation security and flight safety.

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Statement by Spain in connection with the proposal for a Regulation of the European Union and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council

‘Spain recalls that European legislation is indeed applied to the territory to which the Treaties apply, pursuant to Article 52 TEU and Article 355 TFEU, but that in the case of Gibraltar airport there is a conflict over the sovereignty of the territory on which the airport is located (the isthmus, a territory not ceded to the United Kingdom in the Treaty of Utrecht). The existence of this conflict between two Member States, recognised by the European Court of Justice itself, makes it impossible to determine which is the legitimate authority responsible for applying said legislation to Gibraltar airport, and makes it obligatory to suspend the application thereof until there is an agreement in this regard between the two Member States.’

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UK minute statement

'The UK would like to thank the Presidency for its hard work on this file. This is a matter of the application of EU law to Gibraltar. The United Kingdom notes that Article 355(3) of the Treaty on the Functioning of the European Union provides that 'The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible', and that such territories include Gibraltar. Since aviation legislation does not fall within one of the exclusions to the application of EU law in Gibraltar provided for in the UK's Act of Accession of 1972, the UK considers that there is currently no basis in law to allow for the exclusion or suspension of the application of aviation legislation to Gibraltar.

This position was recognised by the Cordoba Agreement of 2006 between the UK, Gibraltar and Spain in which Spain (without prejudice to its position on the sovereignty of Gibraltar) committed to cease to seek the suspension of Gibraltar Airport from EU aviation legislation. The United Kingdom and Gibraltar continue to uphold this agreement.

The UK continues to be constructive but would not be able to accept a text which went against the EU Treaties and suspended application to Gibraltar.

The UK Government is confident of UK sovereignty over the whole of Gibraltar.'

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Commission statement on the applicability to the Gibraltar airport of the Proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008

'On the question whether this proposal establishes an obligation for a public authority that is responsible for activities taking place in or over the airport of Gibraltar the Commission wishes to stress that the current Council text for a Proposal for a Regulation on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council would not alter the scope of the relevant rules, compared to what was the case under Regulation (EC) No 216/2008, in as far as the airport of Gibraltar is concerned. It therefore would not establish any new obligation for a public authority that is responsible for activities taking place in or over that airport.

The Commission also recalls its neutrality in the dispute between the UK and Spain over the sovereignty issue on the territory on which the Gibraltar airport is situated and regrets that this issue delays progress on various aviation files in the Council.'
