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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
No. Cion doc.:	14991/15 AVIATION 152 CODEC 1667 RELEX 1014 + ADD 1-5
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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Protokollerklärung der Bundesrepublik Deutschland

Anlässlich des TTE-Rates am 1.12.2016 zum Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates zur Festlegung gemeinsamer Vorschriften für die Zivilluftfahrt und zur Errichtung einer Agentur der Europäischen Union für Flugsicherheit sowie zur Aufhebung der Verordnung (EG) Nr. 216/2008 des Europäischen Parlaments und des Rates

Die Bundesregierung sieht die Zielrichtung des Verordnungsvorschlags und die erreichten Verhandlungsfortschritte grundsätzlich positiv. Dies betrifft sowohl eine bessere Angemessenheit von Vorschriften und damit eine Verbesserung der Wirtschaftlichkeit in den Betrieben und Unternehmen, wie auch die Verbesserung der Flugsicherheit in Europa

Die Bundesregierung lehnt jedoch, wie zuvor bei den anderen EU-Agenturen, die in Art. 92 Abs. 4 vorgesehene Möglichkeit ab, die Amtszeit des Exekutivdirektors um bis zu fünf Jahre zu verlängern. Denn nach einer Amtszeit von mindestens zehn Dienstjahren sind mit Blick auf Art. 77 des EU-Beamtenstatuts erhebliche finanzielle Verpflichtungen für die Agentur verbunden, die auch im Hinblick auf die erheblichen Pensionslasten der EU (2015: 64 Milliarden Euro) vermieden werden sollten. Die Amtszeit eines Exekutivdirektors sollte deshalb einen kürzeren Zeitraum betragen.

In Bezug auf Artikel 109 Abs. 5 des Vorschlags für eine Verordnung des Europäischen Parlaments und des Rates zur Festlegung gemeinsamer Vorschriften für die Zivilluftfahrt und zur Errichtung einer Agentur der Europäischen Union für Flugsicherheit sowie zur Aufhebung der Verordnung (EG) Nr. 216/2008 des Europäischen Parlaments und des Rates, erinnert Deutschland an die Mitteilung der Kommission an das Europäische Parlament und den Rat zur Finanz- und Personalplanung für die dezentralen Agenturen im Zeitraum 2014-2020, mit der eine Entscheidung der Staats- und Regierungschefs vom 7. und 8. Februar 2013 umgesetzt wurde, und nach der nicht zwischen gebührenfinanzierten Tätigkeiten und Stellen und solchen, die aus dem EU-Haushalt finanziert werden, unterschieden wird. Deutschland betrachtet sich als dadurch gebunden, daher sollte seine Zustimmung zur aktuellen Formulierung nicht als Präzedenzfall für die zukünftige Grundlage /Überarbeitung von Gründungsakten der Agenturen angesehen werden. Deutschland bittet die Kommission darum, dies zukünftig bei der Ausarbeitung vergleichbarer Vorschläge in Betracht zu ziehen.

Für Deutschland ist es wichtig, dass bei den Beratungen im Rat zu Art. 76 Konsens erzielt wurde, dass die Tätigkeit der EASA im Bereich Luftsicherheit nur auf die Aspekte der Überlagerung von Luftsicherheit und Flugsicherheit beschränkt ist.

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Declaración del Reino de España en relación con la propuesta de reglamento del Parlamento Europeo y del Consejo sobre reglas comunes en materia de aviación civil y por el que se establece una Agencia Europea de Seguridad Aérea, y se deroga el reglamento (EC) No 216/2008 del Parlamento Europeo y del Consejo

“España recuerda que, efectivamente, la legislación europea se aplica al territorio al que se aplican los Tratados, conforme con los art. 52 TUE y 355 TFUE, pero que en el caso del aeropuerto de Gibraltar existe un conflicto sobre la soberanía del territorio en el que se asienta el aeropuerto (el Istmo, territorio no cedido al Reino Unido en el Tratado de Utrecht). La existencia de este conflicto entre dos Estados miembros, reconocido por el propio Tribunal de Justicia de la Unión Europea, impide determinar cuál es la autoridad legítima responsable de la aplicación de dicha legislación al aeropuerto de Gibraltar y obliga a la suspensión de dicha aplicación hasta que no haya un acuerdo al respecto entre los dos Estados miembros.”

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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."
