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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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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 conclusion, on behalf of the European Union, of Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union

Delegations will find attached document COM(2018) 27 final.

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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Air transport is a priority for the European Union's transport policy. The Commission's objective is to achieve a high-performing air transport system that provides seamless, safe and efficient mobility of passengers and goods, for the benefit of citizens and industry. This requires highly performing air traffic management (ATM) systems capable of addressing the present and future challenges of air transport in terms of increasing capacity and safety, while reducing the environmental impact of flights and the costs for the provision of air navigation services.

Since 2004, the European Union has set out to improve the performance of ATM in Europe by reforming the way air traffic is managed and organised and also by modernising and harmonising the European ATM infrastructure through the Single European Sky (SES)[1] initiative. The completion of the SES is a major objective of the Aviation Strategy for Europe adopted by the Commission on 7.12.2015[2], indicating it as one of the most fundamental challenges affecting the performance and competitiveness of the European Union's aviation system today. The SESAR (Single European Sky ATM Research) project is the technological component of the SES. It aims to define, develop, validate and deploy new technologies and operational procedures that contribute to enhancing the performance of ATM systems in Europe.

Air transport is a global business that strongly relies on global interoperability of ATM systems that ensures safe, efficient and cost effective flights across and between different regions of the world. Global interoperability can only be achieved through effective and continued cooperation with other regions. The USA is also addressing ATM modernisation, in particular through the NextGen programme managed by the Federal Aviation Administration (FAA). SESAR and NextGen are today the main worldwide references in ATM modernisation. Both initiatives aim to improve the capacity of their current systems through the increased use of automation, increased sharing of information, new approaches to flight plans and flight routings, new methods of separation and extensive use of satellite technology. In this context, global interoperability is an essential goal when planning the development of ATM systems and is consequently one of the key requirements of both SESAR and NextGen.

Sharing the common goal to develop safer and more efficient air transport, in 2011, the European Union and the United States of America signed the Memorandum of Cooperation between the United States of America and the European Union in civil aviation research and development (MoC). The cooperative activities carried out so far under the MoC mainly address ATM particularly cooperation in the field of research and development (R&D) between SESAR and NextGen.

At that time, these two programmes were both in their research and development phases, which justified the initial focus of cooperation on research, development and validation activities. Cooperation under the MoC, in particular between SESAR and NextGen, has reached a high level of maturity and has delivered important results in terms of promoting

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[1] Regulations (EC) No 549, 550, 551 and 552 of the European Parliament and of the Council, of 10.3.2004 (OJ L 96, 31.3.2004), pages 1, 10, 20 and 26, amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21.10.2009 (OJ L 300, of 14.11.2009, p. 34).

[2] COM(2015) 598 of 7.12.2015.

global interoperability of ATM systems. This led the two parties to explore the potential for extending the scope of cooperation to topics relating to the deployment of ATM systems. On this basis, the Council authorised the Commission on 8 May 2017 to negotiate with the FAA concerning an amendment to the MoC to extend its scope to cover deployment. The three main negotiating objectives were:

(1) to expand the scope of the existing MoC for civil aviation R&D to include the full scope of ATM modernisation (i.e. R&D, validation, demonstration, deployment) including emerging aviation areas and other ATM domains of the Single European Sky beyond technology;

(2) to streamline and optimise the governance arrangements of the MoC and its Annexes and Appendices;

(3) to negotiate specific arrangements for cooperation on ATM deployment while maintaining the existing arrangements on "SESAR-NextGen cooperation on global interoperability" and "Collaboration on ATM performance measurements", duly adapted to the new framework.

The amendment to the MoC was negotiated between the Commission and the FAA and, on the basis of a corresponding Council Decision, has been signed on behalf of the Union while the present Decision follows its adoption process.

- **Consistency with existing policy provisions in the policy area**

The proposed Amendment to the MoC is fully consistent with the Aviation Strategy for Europe, the Single European Sky policy, the SESAR project and the related legislation. The strategy stresses the importance of completing the Single European Sky through the implementation of a fully optimised European air traffic management system that reduces the costs stemming from inefficiencies (delays and longer routes etc.). The implementation of the SESAR project plays a fundamental role in that implementation as well as a strong and efficient cooperation with the USA in order to ensure that the respective air traffic management systems are aligned and interoperable.

- **Consistency with other Union policies**

This initiative complies with the Commission's political priorities with regards to the internal market, growth and jobs and the European Union as a global actor. The recommendation is consistent with the EU's Research and Innovation policy and the Trans-European Networks policy on which the SESAR research and development and deployment frameworks are based.

2. LEGAL BASIS

- **Legal basis**

The legal basis for the present proposal is Article 100(2) and in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Commission has involved the SESAR Joint Undertaking and the SESAR Deployment Manager in the negotiation process, and they have endorsed the results of the negotiations.

These entities represent a wide aviation stakeholder platform potentially benefitting from the amended MoC. The Commisison also consulted the Member States, through the Special Committee established by the Council for the MoC, prior to initialling the draft texts.

- **Collection and use of expertise**

Technical expertise during the negotiations was provided by the SESAR Joint Undertaking, the SESAR Deployment Manager and Eurocontrol. Legal expertise was provided by the Commission's Legal Service. There was no need for any other external expertise.

- **Impact assessment**

The proposal builds entirely on the same objectives and principles that underlie the existing MoC. The extension of the scope of cooperation between the Union and the USA to all phases of ATM modernisation including deployment represents the natural evolution of the work successfully carried out under the current MoC. The initiative does not aim to set up new programmes or funding mechanisms, so no impact assessment was performed as indicated in the roadmap.

As indicated in the Commission's proposal to open negotiations to amend the MoC, the best option was to amend the scope of the existing MoC to encompass all phases of ATM modernisation, including deployment, within the scope of the Single European Sky policy, while limiting the scope of cooperation on non-ATM civil aviation topics to the field of research and development. The advantage of this approach is that the MoC would continue to cater for cooperation on any non-ATM civil aviation research and development topic while preserving the already negotiated binding cooperative framework with the USA.

- **4. BUDGETARY IMPLICATIONS**

The proposal does not have any additional budgetary implication. The activities that will be carried out under the modified MoC will be conducted under existing instruments and their respective financing envelopes and work programmes, such as the SESAR Joint Undertaking’s SESAR 2020 multi-annual work programme and the framework partnership agreement with the SESAR Deployment Manager.

5. OTHER ELEMENTS

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

The research, development and validation activities related to the MoC will continue to be planned and monitored by the SESAR Joint Undertaking. The deployment activities will be planned and monitored by the SESAR Deployment Manager under the specific grant agreements signed with the Commission. The Commission will monitor and supervise the overall progress of the MoC’s implementation through the established reporting mechanisms of these two entities in accordance with the underlying legal and contractual frameworks and those of the MoC governance.

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

The proposed Decision aims to authorise the entry into force of Amendment 1 to the MoC signed by the representatives of the Union and of the United States on the basis of a corresponding Council Decision. The amendment includes the revised main text of the MoC and a revised Annex 1 on "ATM modernisation and global interoperability", which comprises:

– Appendix 1 on "SESAR-NextGen cooperation for research, development, validation and global interoperability", which also comprises five Attachments:

  (1) "SESAR-NextGen cooperation on transversal activities for global interoperability";

  (2) "SESAR-NextGen cooperation on information management for global interoperability";

  (3) "SESAR-NextGen cooperation on trajectory management for global interoperability";

  (4) "SESAR-NextGen cooperation on CNS and airborne interoperability for global interoperability";

  (5) "SESAR-NextGen cooperation on collaboration projects for global interoperability";

– Appendix 2 on "Collaboration on air traffic management performance measurement";

– Appendix 3 on "SESAR-NextGen cooperation for deployment activities and global interoperability".

Annex 1 and Appendix 3 are completely new documents. Annex 1 addresses the extension of the scope of the MoC to all ATM deployment and modifies the governance mechanisms while Appendix 3 describes the cooperative arrangements in the field of ATM deployment.

The present proposal also sets out the role of the European Commission in the governance of the MoC. The European Union is represented by the European Commission in the MoC and all the related implementing arrangements (Annexes and Appendices).

The proposed amendment does not alter the original role of the Special Committee in the governance of the MoC. The proposed Decision on the conclusion of Amendment 1 to the MoC defines which tasks require the prior consultation of the Special Committee and those - mainly administrative tasks or tasks implementing the MoC - which the Commission can implement under its own responsibility.

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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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision [XXX] of [XXXXX], the Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union was signed on 13 December 2017, subject to its conclusion at a later date.

(2) The Amendment 1 to the Memorandum of Cooperation extends the scope of cooperation between the Parties to all phases of air traffic management modernisation, including deployment activities, with the goal of ensuring global interoperability and modifies the structure and governance of the Memorandum so as to optimise the implementation and management of the cooperative activities carried out thereunder.

(3) It is necessary to lay down procedural arrangements for the participation of the Union in the executive management of the Memorandum of Cooperation.

(4) Therefore, the Amendment 1 to the Memorandum of Cooperation should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Amendment 1 to the Memorandum of Cooperation NAT-I-9406A between the United States of America and the European Union is hereby approved on behalf of the Union.

The Amendment 1 to the Memorandum of Cooperation is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, with the exchange of the diplomatic notes provided for in Article II.B. of Amendment 1 to the Memorandum of Cooperation, in order to express the consent of the Union to be bound by the Amendment1 to the Memorandum of Cooperation.

Article 3

The Commission, after consultation with a Special Committee appointed by the Council, shall determine the position to be taken by the Union in the executive management of the Memorandum of Cooperation and the Annexes thereto established under Article III of the Memorandum of Cooperation, with respect to:

(1) the adoption of additional Annexes to the Memorandum of Cooperation and Appendices thereto;

(2) the adoption of amendments to Annexes to the Memorandum of Cooperation and Appendices thereto.

Article 4

Without prejudice to Article 3, the Commission may take any appropriate action under Articles III, IV, V, VII and VIII of the Memorandum of Cooperation.

Article 5

The Commission shall represent the Union in consultations under Article XI of the Memorandum of Cooperation.

Article 6

The Commission shall regularly inform the Council of the implementation of the Memorandum of Cooperation.

Article 7

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President