COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.6.2008
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2008/0111 (CNS)

Proposal for a

COUNCIL DECISION

on the signature and provisional application of a Memorandum of Cooperation between the International Civil Aviation Organization and the European Community regarding security audits / inspections and related matters

Proposal for a

COUNCIL DECISION

on the conclusion of a Memorandum of Cooperation between the International Civil Aviation Organization and the European Community regarding security audits / inspections and related matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Since 2002, ICAO conducts security audits in all its Contracting States, including the EC Member States, in order to monitor the application of Annex 17 to the Chicago Convention. Since 2004, on the basis of Regulation (EC) No 2320/2002, the Commission conducts security inspections in order to monitor the application by Member States of this Regulation. Annex 17 and Regulation (EC) No 2320/2002 contain, to a large extent, similar standards. As a consequence, Member States are to date confronted with two compliance monitoring systems with the same objective and – broadly – the same scope. Both Member States and ICAO could make better use of limited resources if the ICAO audits in the Community would be significantly reduced.

To that end, on 30 November 2007, the Council adopted the Commission recommendation "to authorise the Commission to open negotiations on an agreement regarding aviation security audits / inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO)".

The objective of the agreement would be a significant reduction of individual audits to be carried out by ICAO under its Universal Security Audit Programme (USAP) within the territory of the European Community by recognising that most standards contained in Annex 17 to the Chicago Convention are also covered by Community legislation (Regulation (EC) No 2320/2002) and that the Commission is required to conduct inspections in order to monitor the application by Member States of this Regulation.

The negotiations for an agreement have been prepared in close cooperation with the Special Committee, which was set up by the Council when approving the Commission's negotiating mandate. The negotiations with ICAO took place on 25 January 2008, and resulted in a draft MoC between ICAO and the European Community regarding security audits / inspections and related matters.

The current proposals aim at a decision by the Council on the signature and provisional application as well as on the conclusion of the MoC.

Existing provisions in the area of the proposal

Annex 17 to the Chicago Convention and Regulation (EC) No 2320/2002 contain standards on civil aviation security with the same objective and broadly the same scope. Both ICAO and the Commission perform audits / inspections in EC Member States to verify compliance with these standards.

Consistency with the other policies and objectives of the Community

In accordance with the aims of the Community civil aviation policy, the MoC will strengthen the relationship between the Community and ICAO, and allow for a better use of limited resources of Member States in the field of compliance monitoring.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The draft MoC was developed in consultation with a Special Committee appointed by the Council. Meetings of the Special Committee were convened on 22 January, 25 January and 11 March.

Since duplication of assessments at airports will be reduced, the whole aviation industry, in particular airports and air carriers in the Community, will benefit from this MoC.

Summary of responses and how they have been taken into account

Comments made by Member States forwarded during meetings of the Special Committee have been taken into account.

3) LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

In accordance with the mandate given to the Commission to open negotiations with ICAO, the draft MoC aims to significantly reduce individual audits by ICAO in Member States. To that end, ICAO will assess the European Commission aviation security inspection system, e.g. the reports of the inspections of the national appropriate authorities together with the data received from the Member State concerned, the inspection methodology and the follow up audits.

In order to ensure the appropriate handling of EU classified information, ICAO is bound to comply with Commission Decision 2001/844/EC, ECSC, Euratom, of 29 November 2001 amending its internal Rules of Procedure. The Commission is authorised to verify in situ which protection measures have been put in place by ICAO.

Legal basis

EC Treaty Art. 80(2), 300 (1)

Subsidiarity principle

Only through an agreement between the Community and ICAO can the burden of duplication of security audits / inspections at Member State level be reduced.

Proportionality principle

The draft MoC covers only those standards of Annex 17 that are also covered by Regulation (EC) No 2320/2002. The draft MoC does in principle not preclude the possibility of ICAO conducting audits in Member States for those parts of Annex 17 not covered by Community legislation; ICAO did however indicate that it will see such audits as no priority, in view of the MoC covering most of the standards of Annex 17. Nevertheless, ICAO will continue to have a direct relationship with Member States.

Choice of instruments

Since the draft MoC contains binding elements for both Parties, an agreement in accordance with Art. 300 of the EC Treaty is required.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Avoiding duplication of work

The proposal aims at significantly reducing the number of individual audits in Member States, at national and at airport level, thereby avoiding duplication of work and allowing for a better use of limited resources. Both Member States and the aviation industry in the Community, in particular airports and airlines, will benefit from this MoC.

Detailed explanation of the proposal

In accordance with the standard procedure for the signature and conclusion of international agreements, the Council is asked to approve the decisions on both the signature and the provisional application as well as the conclusion of the draft MoC between ICAO and the European Community regarding security audits / inspections and related matters, and to designate the persons authorised to sign the MoC on behalf of the Community.

Proposal for a

COUNCIL DECISION

on the signature and provisional application of a Memorandum of Cooperation between the International Civil Aviation Organization and the European Community regarding security audits / inspections and related matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council authorised the Commission on 30 November 2007 to open negotiations on an agreement regarding aviation security audits / inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO)

(2) On behalf of the Community, the Commission has negotiated a Memorandum of Cooperation (MoC) with ICAO regarding security audits / inspections and related matters in accordance with the directives set out in Annex I and the ad hoc procedure set out in Annex II of the Council Decision authorising the Commission to open negotiations

(3) Subject to its possible conclusion at a later date, the MoC negotiated by the Commission should be signed and provisionally applied,

HAS DECIDED AS FOLLOWS:

Sole Article

1. Subject to its conclusion at a later date, the President of the Council is hereby authorised to designate the person or persons empowered to sign on behalf of the Community the Memorandum of Cooperation (MoC) between the International Civil Aviation Organization (ICAO) and the European Community regarding security audits / inspections and related matters.

2. Pending its entry into force, the MoC shall be applied provisionally from the date of signature.

3. The text of the MoC is annexed to this decision.

Done at Brussels,

For the Council
The President

2008/0111 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of a Memorandum of Cooperation between the International Civil Aviation Organization and the European Community regarding security audits / inspections and related matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament[1],

Whereas:

(1) The Council authorised the Commission on 30 November 2007 to open negotiations on an agreement regarding aviation security audits / inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO)

(2) On behalf of the Community, the Commission has negotiated a Memorandum of Cooperation (MoC) with ICAO regarding security audits / inspections and related matters in accordance with the directives set out in Annex I and the ad hoc procedure set out in Annex II of the Council Decision authorising the Commission to open negotiations

(3) The MoC was signed on behalf of the Community subject to its possible conclusion at a later date, in conformity with Decision …/…/EC of the Council on … [2]

(4) The MoC should be approved

(5) Paragraph 6(3) of the MoC provides that the MoC shall enter into force on the first day of the second month following the last of the two notifications through which the parties have informed each other of the termination of their respective internal procedures. Accordingly, the President of the Council should be authorised to make the required notification on behalf of the Community,

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[1] OJ C , , p. .
[2] OJ C , , p. .

HAS DECIDED AS FOLLOWS:

Article 1

1. The Memorandum of Cooperation (MoC) between the European Community and the International Civil Aviation Organization regarding security audits / inspections and related matters is hereby approved on behalf of the Community.

2. The text of the MoC is annexed to this Decision.

Article 2

The President of the Council is authorised to designate the person empowered to make the notification provided in paragraph 6(3) of the MoC.

Done at Brussels,

For the Council
The President

ANNEX

MEMORANDUM OF COOPERATION BETWEEN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION AND THE EUROPEAN COMMUNUTY REGARDING SECURITY AUDITS / INSPECTIONS AND RELATED MATTERS

The International Civil Aviation Organization ("ICAO") and

The European Community ("EC");

Hereinafter referred to as “the Parties”;

Recalling the Convention on International Civil Aviation signed at Chicago on 7 December 1944, hereinafter referred to as the “Chicago Convention”, and in particular Annex 17 thereto, hereinafter referred to as "Annex 17";

Bearing in mind ICAO Assembly Resolution A35-9, which directed the Secretary General to continue the ICAO Universal Security Audit Programme (USAP), comprising regular, mandatory, systematic and harmonized security audits of all Contracting States to the Chicago Convention (hereinafter referred to as the "Contracting States");

Recalling Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security[3], hereinafter referred to as "Regulation 2320/2002", and Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002[4], hereinafter referred to as "Regulation 300/2008" which will replace Regulation 2320/2002 upon the adoption of the necessary implementing measures;

Noting Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security[5], and in particular Article 16 thereof establishing that the European Commission shall take into consideration the planned or recently undertaken security audits of intergovernmental organisations in order to ensure the overall effectiveness of the various security inspection and audit activities;

Taking into account the application of relevant Community law, in particular Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to Parliament, Council and Commission documents[6]; and Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure, hereafter referred to as "Decision 2001/844/EC, ECSC, Euratom", in particular sections 10 and 26 thereof, and its amendments[7].

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3 OJ L355 of 30.12.2002, p.1

4 OJ L97 of 9.4.2008, p.72

5 OJ L213 of 23.8.2003, p.3

6 LJ L145 of 31.5.2001, p.43

7 Commission Decision of 3 February 2005 (2005/94/EC, Euratom), Commission Decision of 31 January 2006 (2006/70/EC, Euratom) and Commission Decision of 2 August 2006 (2006/548/EC, Euratom)

Bearing in mind the fact that most standards contained in Annex 17 are also covered by Regulation 2320/2002 and that the European Commission conducts inspections in Member States of the European Union (hereinafter referred to as the "EU") to monitor the application of this Regulation;

Considering that the primary objectives of the ICAO audit programme and the European Commission's inspection programme are to enhance aviation security by evaluating the implementation of respective standards, identifying deficiencies, if any, and ensuring the rectification of deficiencies, where necessary;

Considering that it is desirable to establish mutual cooperation in the area of aviation security audits / inspections and related matters in a manner ensuring better use of limited resources and avoiding duplication of efforts, while preserving the universality and integrity of the ICAO USAP programme;

Considering that the European Commission has enforcement powers to ensure the implementation of European Community aviation security legislation;

Considering that the Council of ICAO during its 176th Session directed that, wherever possible, ICAO aviation security audits should be focussed on a State's capability to provide appropriate national oversight; and further requested the Secretary General to explore cooperative arrangements and the most effective use of resources in regions where mandatory regional governmental audit programmes exist;

1. General provisions

1.1. Those Standards contained in Annex 17 that are not covered by EC legislation shall fall outside the scope of this Memorandum of Cooperation.

1.2. Regarding Standards contained in Annex 17 which are covered by EC legislation, ICAO shall assess the European Commission inspections of the national appropriate authorities of EU Member States in order to verify compliance with these Standards in accordance with paragraph 3 of this Memorandum of Cooperation, of Contracting States bound by Community legislation on civil aviation security.

1.3. The implementation of ICAO assessments in the European Community shall be discussed at the request of one of the Parties, but at least once a year.

1.4. ICAO auditors may occasionally join the European Commission inspections of EU airports as observers, after an explicit agreement of the EU Member State concerned has been received by the European Commission.

2. Information to be provided to ICAO on European Commission inspections in the European Community

2.1. In accordance with Decision 2001/844/EC, ECSC, Euratom, the following EU classified information at level of 'RESTREINT UE' shall be provided to ICAO authorized personnel:

A. Common rules and standards in the field of aviation security, adopted in accordance with Article 4(2) of Regulation 2320/2002 or Article 4 of Regulation 300/2008; and

B. As regards European Commission inspections of appropriate authorities of the EU Member States:

(a) general information on the planning of European Commission inspections including the schedule of inspections of national appropriate authorities, and any amendment thereof or changes thereto, as soon as they become available;

(b) the status of inspection activities of both national appropriate authorities and airports, dates of issuance of the final inspection reports and dates of reception of the action plans from the State concerned;

(c) the European Commission inspection methodology;

(d) the report of the inspection of the national appropriate authorities together with the action plan received from the State concerned on the inspection of the national appropriate authority, specifying actions and deadlines to remedy any identified deficiencies; and

(e) follow-up actions taken by the European Commission on the inspection of the national appropriate authority.

2.2. ICAO shall restrict access to EU classified information provided by the European Commission in the context of this cooperation to authorized personnel on a need to know basis only. The authorized personnel shall not disclose this information to any third party. ICAO shall implement any necessary legal and internal mechanisms to protect the confidentiality of the information provided by the European Commission.

2.3. The European Commission and ICAO shall agree on further procedures for the protection of classified information provided by the European Commission pursuant to this Memorandum of Cooperation. Such procedures shall include the possibility for the European Commission to verify which protection measures have been put in place by ICAO.

3. ICAO assessments of the European Commission aviation security inspection system

3.1. ICAO assessments of the European Commission aviation security inspection system shall consist of an analysis of European Commission requirements and information provided under paragraph 2. Where necessary, ICAO shall visit the European Commission, Directorate-General for Energy and Transport, at its Headquarters in Brussels, Belgium.

3.2. Specific terms of reference and practical arrangements for ICAO assessments of the European Commission aviation security inspection system shall be agreed upon through an exchange of letters between ICAO and the European Commission.

4. Dispute Resolution

4.1 Any difference or dispute concerning the interpretation or the application of this Memorandum of Cooperation shall be resolved by negotiation between the Parties.

4.2. Nothing in or relating to this Memorandum of Cooperation shall be deemed a waiver of any of the privileges and immunities of the Parties.

5. Other agreements

5.1. This Memorandum of Cooperation does not supersede or prejudge other forms of cooperation between the Parties.

6. Revision – Entry into force

6.1. The parties shall review the implementation of this Memorandum of Cooperation at the end of the current phase of the USAP programme, and earlier, if felt necessary by either of the Parties.

6.2. Pending its entry into force, this Memorandum of Cooperation shall be applied provisionally from the date of signature.

6.3. This Memorandum of Cooperation shall enter into force on the first day of the second month following the last of the two notifications through which the Parties inform each other of the termination of their respective internal procedures.

Done in duplicate, in the English language.

For the International Civil Aviation Organization

Date:

Place:

For the European Community

Date:

Place: