EUROPEAN
COMMISSION

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2023/0420 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union in the GNSS EU/ASECNA Committee set up by the Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation

EXPLANATORY MEMORANDUM

1. SUBJECT OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the Union in the GNSS EU/ASECNA Committee (the 'Joint Committee'), set up by the Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation ('the Agreement'), with regard to the planned adoption of the Joint Committee's rules of procedure.

2. CONTEXT OF THE PROPOSAL

The Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation aims to develop satellite navigation and to provide associated services in ASECNA's area of competence for the benefit of civil aviation by allowing ASECNA to take advantage of European satellite navigation programmes. The Agreement entered into force on 1 November 2018.

The Agreement established the GNSS EU/ASECNA Committee ('Joint Committee') responsible for its management and proper implementation. To this end, the Joint Committee may take decisions within the frameworks provided for in the Agreement or draft recommendations on issues for which it has no decision-making authority. This Joint Committee has to adopt its rules of procedure.

3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

Article 29(1) of the Agreement provides that the Joint Committee establishes its rules of procedure which include, amongst other provisions, the arrangements for convening meetings, designating the chairperson and defining the latter's mandate. The attached draft rules of procedure are the result of negotiations with ASECNA.

In light of these negotiations, the European Commission calls on the Council to adopt the Decision the position to be taken on behalf of the Union in the Joint Committee as regards its rules of procedure.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions 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, with the exception of acts supplementing or amending the institutional framework of the agreement*'.

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[1].

4.1.2. Application to the present case

The Joint Committee is a body created by an agreement, in this case the Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation.

The act which the Joint Committee is called upon to adopt is an act having legal effects. The planned act will be binding under international law in accordance with Article 29 of the Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA).

The planned act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the planned act in respect of which a position is taken on the Union's behalf. If the act envisaged pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the planned act relate to the trans-European networks, in particular those for satellite navigation and more particularly the establishment and operation of the ASECNA SBAS system, based on EGNOS technology, and the use in Africa of the system established under the Galileo programme.

Therefore, the substantive legal basis of the proposed Decision is Article 171(3) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 171(3) TFEU in conjunction with Article 218(9) TFEU.

[1] Judgment of the Court of Justice of 7 October 2014, *Germany* v *Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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 the third subparagraph of Article 171, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation has been in force since 1 November 2018.

(2) Article 29 of the Agreement establishes a Joint Committee, called the 'GNSS EU/ASECNA Committee' ('the Joint Committee'), and provides that the Joint Committee establishes its rules of procedure.

(3) At its meeting on [date to be determined], the Joint Committee must adopt its rules of procedure concerning, amongst other provisions, the arrangements for convening meetings, designating the chairperson, defining the latter's mandate and contacts between the parties.

(4) The position to be taken on the Union's behalf in the Joint Committee should be established, as the Agreement is binding on the Union.

(5) The Joint Committee must adopt its rules of procedure in order to ensure the proper functioning of the Agreement.

(6) The position of the Union with regard to the rules of procedure to be adopted by the Joint Committee must therefore be established.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union in the GNSS EU/ASECNA Committee set up by the Cooperation Agreement between the European Union and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA) on developing satellite navigation and providing associated services in ASECNA's area of competence for the benefit of civil aviation as regards the adoption of this

Committee's rules of procedure shall be based on the draft decision attached to this Decision.

2. The representatives of the Union within the Joint Committee may agree to minor changes to the draft Decision without the need for a new decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President