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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and provisional application of the Agreement providing a general framework for enhanced cooperation between the European Union and the European Organisation for the Safety of Air Navigation(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 6 October 2011, the Council granted a mandate to the Commission authorising it to open negotiations with the European Organisation for the Safety of Air Navigation (Eurocontrol) in order to conclude a cooperation agreement between the European Union (EU) and Eurocontrol. The Agreement should acknowledge the principles of the Single European Sky (SES), notably the role of the EU as the single regulator for air traffic management (ATM) and the use of the technical expertise of Eurocontrol to help the EU to deliver ATM improvements in Europe in accordance with the SES legal framework and to support the EU in the implementation and development of the SES and other related policies (environment, climate change and research). The Agreement should also facilitate further institutional reform of Eurocontrol, for example, in establishing a new relationship between Eurocontrol and the European Aviation Safety Agency (EASA), and provide a framework for potentially sensitive issues such as pan-European civil-military cooperation.

Based on the negotiating directives of the mandate, a draft agreement was initialled by the two parties on 24 April 2012.

The proposed draft Agreement defines the terms and conditions of enhanced cooperation between the EU and Eurocontrol to support the EU in the implementation and development of ATM in accordance with the SES legal framework and related EU policies. The objectives are: to contribute to timely and consistent implementation of the SES within the EU and with States that agree to be bound by the SES; to facilitate the necessary civil-military cooperation on ATM in the SES and the use of Eurocontrol expertise in these areas; to facilitate the involvement of non-EU Member States in the SES. In addition, the draft Agreement aims to ensure synergies and avoid duplication of EASA's work in safety-related ATM matters and environmental issues and to consider Eurocontrol's pan-European dimension.

The proposed draft agreement lists the areas of cooperation concerning the implementation of SES, SESAR and other related EU policies that will be defined further in separate annexes to the Agreement.

The proposed draft Agreement defines the forms and mechanisms of cooperation and coordination between the parties including the stakeholder consultation processes. A Joint Committee set up by the agreement will be responsible for its management and functioning. In addition, the funding of the activities is defined in accordance with the rules applicable to the parties' respective budgets.

The Commission proposes to the Council to adopt:

- a decision authorising signature of the Agreement and its provisional application before entry into force;
- once this first decision has been adopted, a further decision to conclude the Agreement with a view to its entry into force based on the consent of the European Parliament.

2. LEGAL ELEMENTS OF THE PROPOSAL

The proposed Council Decisions are both based on Article 100, paragraph 2 of the Treaty on the Functioning of the European Union (TFEU). In addition the Council Decision on the signing and provisional application of the agreement is based on Article 218, paragraph 5 of the TFEU, while the Council Decision on the conclusion is based on Article 218, paragraph 6.

The Agreement on enhanced cooperation between the EU and Eurocontrol is an efficient binding legal instrument that fosters technical cooperation between both parties. It establishes a general framework that allows cooperative activities to be set up in the field of ATM and related policies. The proposed agreement does not impose any additional administrative or financial burden on Member States' authorities.

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COUNCIL DECISION

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(Text with EEA relevance)

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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Commission has negotiated on behalf of the Union an Agreement providing a general framework for enhanced cooperation (hereinafter ‘the Agreement’) between the European Union and the European Organisation for the Safety of Air Navigation, in accordance with the Council Decision of 6 October 2011 authorising the Commission to open negotiations.
- (2) The Agreement was initialled on 24 April 2012.
- (3) The Agreement should be signed and applied provisionally, pending completion of the procedures for the conclusion of the Agreement.
- (4) It is necessary to lay down procedural arrangements for the participation of the Union in the Joint Committee established under the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement providing a general framework for enhanced cooperation between the Union and the European Organisation for the Safety of Air Navigation is hereby approved on behalf of the Union, subject to the conclusion of the Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

The Agreement shall be applied provisionally, in accordance with Article 13.1 of the Agreement, as from the date of its signature, pending its entry into force.

Article 4

1. The Union shall be represented by the Commission in the Joint Committee established under Article 7 of the Agreement.

2. The Commission, after consultation of a Special Committee appointed by the Council, shall determine the position to be taken by the Union in the Joint Committee, including with respect to:

- (a) the adoption of Annexes to the Agreement;
- (b) the adoption of amendments to Annexes to the Agreement.

Article 5

The Commission may take any appropriate action under Articles 5, 6, 8, 9,10 and 11 of the Agreement.

Article 6

The Commission shall regularly inform the Council of the implementation of the Agreement.

Article 7

This Decision shall enter into force on the date following that of its publication in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President

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AGREEMENT
BETWEEN
THE EUROPEAN UNION
AND
THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION
PROVIDING A GENERAL FRAMEWORK FOR ENHANCED COOPERATION

The European Union (EU)

and

The European Organisation for the Safety of Air Navigation (EUROCONTROL)

Hereinafter referred to as ‘the Parties’

HAVING REGARD to the Treaty on the Functioning of the European Union (hereinafter ‘TFEU’), and in particular Articles 218 and 220 thereof;

HAVING REGARD to the EUROCONTROL International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960 as amended by the Protocol signed at Brussels on 12 February 1981 (hereinafter ‘EUROCONTROL Convention’), and in particular Articles 7.2 and 11.3 thereof;

HAVING REGARD to Measure No 11/74 of 12 May 2011 taken by the Permanent Commission of EUROCONTROL delegating authority to the Agency to open negotiations for the conclusion of a High Level Agreement with the EU and Measure No XXX of [date] taken by the Permanent Commission of EUROCONTROL approving the negotiated Agreement;

HAVING REGARD to the respective present legal and institutional contexts of the Parties and their contributions to the implementation of the Single European Sky (SES) within and beyond the EU;

HAVING REGARD to the competence conferred upon the EU in matters related to the SES;

HAVING REGARD to the role of EUROCONTROL as the intergovernmental pan-European civil-military organisation specialised in the field of air traffic management (ATM);

WHEREAS the Parties share the vision of achieving an optimal and integrated European ATM network, offering, through all phases of air transport, and in conjunction with other means of transport, a high degree of safety, cost-efficiency, capacity and environmental protection, for the benefit of passengers and citizens;

WHEREAS EU legislation entrusts the European Commission with a number of tasks related to the implementation of the SES, for which expert support is needed;

WHEREAS EUROCONTROL has evolved, since 1960, into a unique centre of expertise in the domain of ATM, bringing as added value pan-European and military dimensions and assistance to States in the performance of public domain services and functions, and should continue to assist its Member States, including in the implementation of SES and other related EU policies, and to provide a pan-European platform to facilitate the enhancement of military cooperation on ATM;

WHEREAS EU legislation establishes that the European Commission may issue mandates to EUROCONTROL in order to develop implementing rules related to the establishment of the SES;

WHEREAS the EU recognises the essential contribution of EUROCONTROL to support the EU in its role as regulator in order to implement the SES and other related EU policies.

WHEREAS the North Atlantic Treaty Organisation (NATO) and EUROCONTROL concluded, on 8 May 2003, a Memorandum of Cooperation;

WHEREAS the European Commission and EUROCONTROL concluded, on 22 December 2003, a Memorandum concerning a framework for cooperation;

WHEREAS EUROCONTROL was designated by a decision of the European Commission of 29 July 2010 as the Performance Review Body of the SES, in accordance with Regulation (EU) No 691/2010, and EUROCONTROL accepted this designation by Directive No 10/74 of the Permanent Commission of 15 September 2010;

WHEREAS EUROCONTROL was nominated by a decision of the European Commission of 7 July 2011 as the Network Manager for the ATM Network Functions, in accordance with Regulation (EU) No 677/2011, and EUROCONTROL accepted this nomination by Directive No 11/77 of the Permanent Commission of 1 September 2011;

WHEREAS the Parties have a long-standing relationship and history of cooperation in ATM and in the implementation of SES and other related policies, and wish to consolidate this relationship and fully coordinate further actions;

WHEREAS the Parties should ensure synergies and avoid duplication in safety-related ATM matters and environmental issues;

WHEREAS the long-term application of existing arrangements between the European Commission and EUROCONTROL should be assessed in the light of this Agreement and, where appropriate, confirmed and strengthened through this Agreement;

WHEREAS the implementation of this Agreement should not lead to a duplication of funding of the cooperative activities referred to in this Agreement and therefore should not result in a nominal contribution of the EU to the budget of EUROCONTROL;

CONSIDERING that the EU objective is to extend the geographical coverage of the SES beyond the EU;

CONSIDERING that, without prejudice to the relationships between the Parties and their respective membership and to the rights and obligations of the Member States under the EUROCONTROL Convention and the TFEU respectively, it is desirable to establish complementary mutually reinforcing cooperation and coordination mechanisms between the

EU and EUROCONTROL in the implementation of SES and other related policies, in particular in the fields of environment, including climate change, and research and development with a view to making better use of the expertise and support of EUROCONTROL;

CONSIDERING that the support provided by EUROCONTROL to the EU should comply with the principles of transparency, impartiality and independence;

CONSIDERING that the evolution of the EUROCONTROL organisation whereby, in particular, it progressively aligns itself to support the EU in the implementation of the SES with a view to improving the overall performance of the European ATM network should be facilitated;

AGREE ON THE FOLLOWING:

1. GENERAL SCOPE

1.1 The Parties agree to strengthen and consolidate cooperation between the EU and EUROCONTROL in order to enable EUROCONTROL to support the EU in the implementation of SES and related EU policies within the EU, and beyond the EU in those States that agree to be bound thereby.

1.2 The Agreement shall be without prejudice to the rights and obligations of Member States as members of EUROCONTROL or of the EU.

2. OBJECTIVES

The objectives of this Agreement are:

- to establish the main elements for enhanced cooperation between the Parties in order to contribute to timely and consistent implementation of the SES within the EU, and beyond the EU in those States that agree to be bound by the SES, and the establishment of an efficient air transport system through activities reflecting the respective tasks and responsibilities of the Parties;
- to facilitate the necessary civil-military cooperation on ATM in the SES;
- the recognition and utilisation of EUROCONTROL expertise including civil-military cooperation to support the EU in the implementation of SES and other related policies in particular in the fields of environment, including climate change, and research and development, in order to improve the performance of the European ATM network;
- to acknowledge the value of EUROCONTROL continuing to perform, as appropriate, support activities and functions for the implementation of the SES;
- to establish the necessary cooperation to support and facilitate the involvement of non-EU Member States in the SES, with a view to extending the implementation of the SES beyond the EU and to progressively achieving the application of the SES legislative framework by EUROCONTROL's entire membership;
- to ensure synergies and avoid duplication of EASA's work in safety-related ATM matters and environmental issues, including, where appropriate, through the development of

robust cooperation mechanisms between EASA and EUROCONTROL, taking into account EUROCONTROL's pan-European responsibilities .

3. AREAS OF COOPERATION

3.1 The areas of cooperation under this Agreement are those necessary for the implementation of the SES, including SESAR, and other related EU policies, in particular environment, including climate change, and ATM research and development policies.

3.2 The cooperation shall address the following subjects:

- a) Functional Airspace Blocks;
- b) National Supervisory Authorities;
- c) Support in the field of Air Traffic Management and Air Navigation Services (ATM/ANS) safety, including to EASA, as set out in Article 2;
- d) Civil-military cooperation and coordination;
- e) International coordination, in particular towards ICAO and States other than Member States of the Parties;
- f) Air Traffic Management and Communication/Navigation/Surveillance Services (ATM/CNS), including space;
- g) Air transport-related data and statistics;
- h) Aviation environmental issues;
- i) Airport policy.

3.3 Further subjects of cooperation may address in particular:

- a) ATM security;
- b) Spectrum policy;
- c) Unmanned Aircraft Systems (UAS).

3.4 The subjects and modalities of cooperation shall be defined further in separate Annexes to this Agreement.

4. FORMS OF COOPERATION

4.1 The Agreement shall be executed through the following forms of cooperation:

- a) provision of mutual support;
- b) mechanisms for enhanced cooperation, liaison mechanisms and offices, and the coordination of studies and programmes and joint activities;

- c) mechanisms for the collection and mutual exchange of information, data, and statistics, as appropriate;
- d) coordination of cooperation on technical matters at working level in the context of ICAO.

4.2 With regard to military aspects of the SES, the Parties shall ensure the best use of the relevant stakeholder consultation processes.

4.3 The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of EUROCONTROL by its Agency and on behalf of the EU by the European Commission. EUROCONTROL may also support other EU bodies, as appropriate, through specific instruments, with a view to optimising and integrating existing expertise and resources.

5. CONSULTATION AND INFORMATION

5.1 The Parties shall consult each other regularly in order to coordinate to the fullest extent their activities related to this Agreement. Each Party shall inform the other of any initiative pertinent to this Agreement without prejudice to their respective decision-making processes, in the areas of cooperation under Article 3, which may be of interest to the other Party.

5.2 The Parties shall exchange information that may be required for the implementation of this Agreement, subject to their respective rules. Except when otherwise provided, the Parties shall not disclose any information exchanged in connection with this Agreement to any persons other than those employed by them or officially entitled to handle such information nor shall they use it for commercial purposes. Such disclosure shall extend only so far as may be necessary for the purpose of this Agreement and shall be in strict confidence.

5.3 The relevant bodies of the Parties shall convene if necessary to exchange views.

6. CONFIDENTIALITY

6.1 Each Party shall take all reasonable precautions necessary to protect information received under this Agreement and its Annexes from unauthorised disclosure. A Party may, upon providing information to the other Party, designate the portions of the information that it considers to be exempt from disclosure.

6.2 The Parties agree to safeguard, to the extent required under their respective rules, the protection of classified information, if any, received from the other Party in application of this Agreement.

6.3 In particular, subject to their respective rules the Parties shall not disclose information received from each other under this Agreement that is considered proprietary. Such information shall be appropriately marked as such in accordance with their respective rules.

6.4 The Parties shall agree on working arrangements on further procedures for the protection of classified information provided pursuant to this Agreement as required. Such procedures shall include the possibility for each Party to verify which protection measures have been put in place by the other Party.

7. MANAGEMENT OF THE AGREEMENT

7.1 A Joint Committee is established, composed of one representative of each Party, who may be accompanied by observers from Member States of the Parties and experts. The Joint Committee shall be responsible for the effective functioning of this Agreement.

7.2 A meeting of the Joint Committee shall be convened at least once a year to evaluate and review the implementation of this Agreement and shall be organised cost-effectively. Either Party may request a meeting of the Joint Committee at any time.

7.3 The Joint Committee may consider any matter related to the functioning and implementation of this Agreement. In particular, it shall be responsible for:

- a) resolving any question relating to the application and implementation of this Agreement;
- b) considering ways to enhance the implementation of this Agreement and make, as appropriate, recommendations to the Parties for its amendment;
- c) identifying new subjects for cooperation;
- d) adopting and amending Annexes and working arrangements within the scope of this Agreement;
- e) resolving any difference or dispute concerning the interpretation or application of this Agreement.

7.4 The Joint Committee shall operate on the basis of agreement between the representatives of the Parties.

7.5 The Joint Committee shall adopt its rules of procedure.

8. FINANCING

8.21 A Party requesting support activities to be performed under this Agreement by the other Party shall ensure the funding of such activities.

8.12 Financial aspects related to the cooperation under this Agreement shall be defined in accordance with the rules applicable to the Parties' respective budgets. The Parties shall conclude separate arrangements, where appropriate.

9. EXTERNAL RELATIONS AND COOPERATION

9.1 Each Party shall inform the other of its activities of an international dimension pertinent to this Agreement which may be of interest to the other Party.

9.2 Whenever appropriate a Party may, in relation to any matters relevant to its international activities, consult the other Party.

10. DISPUTE RESOLUTION

10.1 The Parties shall make every effort to resolve any differences between them arising from their cooperation under this Agreement.

10.2 In the event that any difference is not resolved, either Party may refer the dispute to the Joint Committee, which shall consult on the matter with a view to resolving it by negotiation.

11 EXCHANGE OF PERSONNEL

Subject to their respective rules and procedures, the Parties may exchange and second personnel as required to pursue the activities described in this Agreement or in Annexes thereto. All such exchanges shall be in accordance with the terms and conditions as agreed between the Parties.

12 ANNEXES

The Annexes to this Agreement shall form an integral part of this Agreement.

13 ENTRY INTO FORCE AND TERMINATION

13.1 Pending its entry into force, this Agreement shall be applied provisionally from the date of signature.

13.2 This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed and shall remain in force until terminated.

13.3 This Agreement may be terminated at any time by either Party. Such termination shall be effected by six months' written notification from one Party to the other Party unless the said notice of termination has been withdrawn by mutual consent of the Parties before the expiry of this period.

Done in Brussels on

For the European Union

For the European Organisation for the Safety of Air Navigation