



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 March 2011  
(OR. en)**

**7702/11**

---

**Interinstitutional File:  
2011/0049 (NLE)**

---

**AVIATION 55  
RELEX 259**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

---

Subject: COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

---

**COUNCIL DECISION**

**of**

**on the signing, on behalf of the Union, and provisional application  
of a Memorandum of Cooperation  
between the European Union  
and the International Civil Aviation Organization  
providing a framework for enhanced cooperation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Commission has negotiated a Memorandum of Cooperation with the International Civil Aviation Organization providing a framework for enhanced cooperation ("Memorandum of Cooperation") in accordance with the mandate adopted by the Council on 17 December 2009 authorising the Commission to open negotiations.
- (2) The Memorandum of Cooperation was initialled by both parties on 27 September 2010 during the course of the 37th Assembly of the International Civil Aviation Organization in Montréal.
- (3) The Memorandum of Cooperation should be signed and applied on a provisional basis, pending the completion of the procedures for its conclusion,

HAS ADOPTED THIS DECISION:

## Article 1

The signing of the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation ("Memorandum of Cooperation") is hereby approved on behalf of the Union, subject to the conclusion of the said Memorandum of Cooperation.

The text of the Memorandum of Cooperation is attached to this Decision.

## Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Memorandum of Cooperation on behalf of the Union.

## Article 3

The Memorandum of Cooperation shall be applied on a provisional basis as from the date of signature thereof pending the completion of the procedures for its conclusion<sup>1</sup>.

---

<sup>1</sup> The date of signature of the Memorandum of Cooperation will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

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

Done at Brussels,

For the Council  
The President

---

MEMORANDUM OF COOPERATION  
BETWEEN  
THE EUROPEAN UNION  
AND THE INTERNATIONAL CIVIL AVIATION ORGANIZATION  
PROVIDING A FRAMEWORK  
FOR ENHANCED COOPERATION

THE EUROPEAN UNION ("EU"),

and

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION ("ICAO"),

hereafter 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 Articles 55 (a) and 65 thereof,

RECALLING the Treaty on the Functioning of the European Union and in particular Articles 218 and 220 thereof,

BEARING IN MIND ICAO Assembly Resolution A1-10, which authorized the ICAO Council to make appropriate arrangements with public international organisations whose activities affect international civil aviation, particularly with regard to technical collaboration, exchange of information and documents, attendance at meetings, and such other matters as may promote effective cooperation,

RECALLING the ICAO Policy and Framework for Cooperation with respect to Regional Civil Aviation Bodies and Regional Organizations aimed at, inter alia, concluding cooperation agreements with such bodies and organisations, as recommended by an EC/ICAO Symposium on regional organisations, which took place on 10-11 April 2008 in Montréal,

TAKING INTO ACCOUNT that most ICAO Standards in the fields of aviation safety, aviation security, air traffic management and environmental protection are addressed in relevant EU law,

TAKING INTO ACCOUNT the Memorandum of Cooperation (MOC) between the European Aviation Safety Agency (EASA) and the International Civil Aviation Organization (ICAO) Regarding Safety Oversight Audit and Related Matters, signed in Montréal on 21 March 2006,

TAKING INTO ACCOUNT the Memorandum of Cooperation between the European Community and the International Civil Aviation Organization Regarding Security Audits/Inspections and Related Matters, signed in Montréal on 17 September 2008,

WHEREAS the European Community and the United Nations signed on 29 April 2003 a new Financial and Administrative Framework Agreement (FAFA) to which ICAO adhered through an Agreement with the European Community signed on 7 December 2004,

WHEREAS this Memorandum of Cooperation does not supersede or prejudice existing forms of cooperation between the Parties as long as they remain in force,

HAVING REGARD to ICAO Assembly Resolution A36-2 which, inter alia, recognises that the establishment of regional and sub-regional safety oversight systems, including regional safety oversight organisations, has great potential to assist States in complying with their obligations under the Chicago Convention through economies of scale and harmonisation on a larger scale, and which also requests the Secretary General to continue to foster coordination and cooperation between ICAO Universal Safety Oversight Audit Programmes (USOAP) and audit programmes of other organizations related to aviation safety, and furthermore directs the Council to promote the concept of regional and sub-regional safety oversight systems, including regional safety oversight organisations,

WHEREAS the Parties share the vision of achieving the highest degree of uniformity of European operational regulations, requirements and procedures with a view to achieving compliance with ICAO standards contained in the Annexes to the Chicago Convention for the sake of aviation safety, aviation security, air traffic management and environmental protection,

WHEREAS each Party plays an important role in achieving this goal,

WHEREAS the Parties wish to engage and communicate with each other on regional cooperation,

WHEREAS the EU has adopted common rules in the fields of aviation safety and aviation security and the European Aviation Safety Agency (EASA) and the European Commission conduct inspections in Member States of the EU to monitor the application of those rules,

CONSIDERING that in the EU, the European Commission has enforcement powers to ensure the implementation of EU legislation in the fields of aviation safety, aviation security, air traffic management and environmental protection,

CONSIDERING that the primary objectives of the ICAO audit programmes and the EU's inspection programmes are to enhance aviation safety and security by evaluating the implementation of respective standards, identifying deficiencies, if any, and ensuring the rectification of deficiencies in the EU, where necessary,

WHEREAS the EU has established an office in Montréal with a view to facilitating the strengthening of relations and cooperation between the EU and ICAO and enabling increased participation and contributions by the EU in ICAO's activities at ICAO Headquarters,

CONSIDERING that, without prejudice to the rights or obligations of EU Member States under the Chicago Convention or to the relationship between EU Member States and ICAO resulting from their membership of ICAO, it is desirable to establish mutual cooperation between the EU and ICAO in the areas of aviation safety, aviation security, air traffic management and environmental protection in a manner ensuring greater harmonisation of standards and closer coordination of respective activities and with a view to achieving better use of limited resources and avoiding duplication of efforts while preserving the integrity of both Parties,

WHEREAS the Parties recognise the necessity to protect, to the extent required under their respective rules, classified information received from the other Party,

HAVE AGREED AS FOLLOWS:

## 1. General provisions

The Parties agree to strengthen their relationship and establish closer cooperation in the fields of aviation safety, aviation security, air traffic management and environmental protection and facilitate, in accordance with established rules of procedure, their participation in activities and attendance at meetings as observer through the signing of this Memorandum of Cooperation (MOC) for the benefit of international civil aviation.

This MOC is without prejudice to the rights or obligations of EU Member States under the Chicago Convention or to the relationship between ICAO and the EU Member States resulting from Member States' membership of ICAO.

This MOC shall not cover or extend to any ICAO or EU decision-making, including on standardisation or rule-making matters, but shall establish regulatory cooperation in the preparation stages of such activities.

The Office of the European Union in Montréal, which represents the EU at ICAO's Headquarters, shall facilitate EU-ICAO relations and serve as the main EU contact point for ICAO in all matters relating to the implementation of this MOC.

## 2. Objectives

2.1. This MOC shall:

- a) establish a framework for enhanced relations between the Parties;

- b) strengthen cooperation between the Parties;
- c) identify areas of mutual cooperation between the Parties; and
- d) establish the terms, conditions and mechanisms for implementing cooperation between the Parties.

### 3. Scope

3.1. This MOC shall establish cooperation between the Parties in the following areas:

- a) aviation safety;
- b) aviation security;
- c) air traffic management; and
- d) environmental protection.

3.2. Each of the areas referred to in paragraph 3.1 of this Article shall be the subject of separate Annexes to the MOC.

3.3. The Parties may establish working arrangements specifying the mutually agreed mechanisms and procedures necessary to effectively implement cooperation activities established in the Annexes to this MOC.

3.4. The Annexes adopted pursuant to this MOC shall form an integral part of this MOC.

#### 4. Forms of cooperation

##### 4.1. The Parties shall:

- a) establish mechanisms for consultation, coordination and cooperation and exchange of information;
- b) facilitate the harmonisation of performance requirements and interoperability of new technologies and systems;
- c) coordinate respective audit and inspection programmes and results and technical assistance activities with a view to making better use of limited resources and avoiding duplication of efforts;
- d) exchange information on compliance with ICAO Standards;
- e) establish arrangements for the EU to offer expertise and resources to ICAO, including in the form of secondments under the exclusive authority of the Secretary General, technical assistance and specialised training, where practicable;

- f) allow participation by one Party in the activities of the other Party relating to audit and inspection programmes and training programmes, as appropriate, while EU observers may participate in ICAO audit missions of EU States only with the consent of the latter, EU experts participating in ICAO audits under secondment as ICAO auditors shall keep any information related to the audit mission as strictly confidential in accordance with applicable ICAO rules; and
- g) without prejudice to non-disclosure obligations of either party and subject to the application of respective confidentiality rules as laid down in Article 6, share electronic information, data and official publications and provide mutual access to databases and strengthen links between them in order to complement each other's existing databases.

## 5. Cooperation activities

5.1. The Parties agree, as specified in the Annexes to this MOC, to jointly execute the following cooperation activities. The Parties shall:

5.1.1. Establish mechanisms for consultation, cooperation and information sharing, including the following:

- a) establish and implement joint mechanisms for regular dialogue, consultation and information sharing;

- b) ensure that each Party is kept informed, in a timely manner, about decisions, activities, initiatives, meetings and events of relevance to this MOC in the areas of aviation safety, aviation security, air traffic management and environmental protection, and receives relevant documentation. Where appropriate, briefings may be conducted;
- c) provide access free of charge to all official documents and publications;
- d) make databases and information on websites available to the other Party; and
- e) ensure that the EU receives and has electronic access to all ICAO State letters whose subject matter is relevant to the scope of this MOC and its Annexes.

5.1.2. Establish cooperative frameworks to better coordinate audit and inspection programmes with a view to making better use of limited resources and avoiding duplication of efforts.

5.1.3. Establish joint mechanisms for close coordination of programme planning and technical assistance.

5.1.4. Cooperate in promoting global interoperability of new technologies and systems and establish joint mechanisms to strengthen cooperation with regard to the use of new technologies.

5.1.5. Ensure timely mutual consultation with a view to achieving improved coordination and coherence between regulations, policies, approaches and ICAO Standards and Recommended Practices (SARPs).

5.1.6. Establish working arrangements to facilitate the exchange of expertise and resources as follows:

- a) ICAO shall provide the EU with expertise and advice on best practices to implement SARPs;
- b) the EU shall provide expertise to ICAO, including in the form of secondments to the ICAO Secretariat;
- c) the EU shall endeavour to provide ICAO with a financial contribution to cover costs incurred pursuant to the implementation of this MOC, including administrative costs, supply of documentation and publications and related services, use of room facilities at ICAO Headquarters and information technology costs;
- d) the EU shall endeavour to provide ICAO with financial contributions for supporting ICAO technical cooperation programmes and for other ICAO activities to be agreed within the Joint Committee, consistent with the Financial and Administrative Framework Agreement (FAFA); and
- e) any new framework and terms and conditions for secondments and financial contributions to ICAO in the framework of this MOC shall be established in working arrangements for that purpose agreed in the Joint Committee. These working arrangements shall include the possibility for the EU to request ICAO for financial information in the framework of those contributions.

5.1.7. Inform each other about any relevant training programmes and facilitate participation by the other Party, as appropriate.

5.1.8. Organise relevant events jointly and coordinate events, where appropriate.

## 6. Confidentiality

6.1. Each Party shall take all reasonable precautions necessary to protect information received under this MOC 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, regulations and legislation, the protection of classified information received from the other Party in application of this MOC and its Annexes.

6.3. In particular, subject to their respective rules, regulations and legislation, the Parties shall not disclose information received from each other under this MOC and its Annexes 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 MOC and its Annexes, 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. Joint Committee of the Parties

- 7.1. A Joint Committee is established, composed of representatives of each Party. The Joint Committee shall be co-chaired by one representative of each Party. The Joint Committee shall be responsible for the effective functioning of the Annexes to this MOC, including the adoption of the Annexes.
- 7.2. A meeting of the Joint Committee shall be convened at least once a year to review the implementation of the Annexes to this MOC 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 the Annexes to this MOC. In particular, it shall be responsible for:
- a) resolving any question relating to the application and implementation of the Annexes to this MOC;
  - b) considering ways to enhance the operation of the Annexes to this MOC and make, as appropriate, recommendations to the Parties for their amendment;
  - c) adopting Annexes to this MOC and working arrangements within the scope of the Annexes or amendments thereto;
  - d) considering financial and resource-related issues related to the implementation of the MOC and its Annexes; and
  - e) resolving any difference or dispute concerning the interpretation or application of this MOC and its Annexes.

7.4. The Joint Committee shall operate on the basis of agreement between the chairpersons of each Party.

8. Dispute resolution

8.1. Either Party may request consultations with the other Party on any matter related to this MOC. The other Party shall reply promptly to such a request and shall enter into consultations at a time agreed by the Parties within 45 days.

8.2. The Parties shall make every effort to resolve any differences between them arising from their cooperation under this MOC at the lowest possible technical level by consultation.

8.3. In the event that any difference is not resolved as provided for in paragraph 8.2 of this Article, either Party may refer the dispute to the Joint Committee, which shall consult on the matter, in accordance with Article 7 of this MOC, with a view to resolving it by negotiation.

8.4. Notwithstanding paragraphs 8.1 to 8.3 of this Article, the dispute resolution provisions of the FAFA shall be applied when addressing any dispute arising from an issue of financial management.

8.5. Nothing in this MOC shall be deemed as a waiver of any privilege or immunity of the Parties.

9. Entry into force, amendments and termination

- 9.1. Pending its entry into force, this MOC shall be applied provisionally from the date of signature.
- 9.2. This MOC 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.
- 9.3. This MOC may be terminated at any time by either Party. Such termination shall be effected by six months' written notice 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.

For The European Union

For The International Civil Aviation Organisation