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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 October 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 620 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union

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Delegations will find attached document COM(2017) 620 final.

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Brussels, 19.10.2017  
COM(2017) 620 final

2017/0271 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the signing, on behalf of the Union, and provisional application 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**

In 2011, the Union and the USA signed the Memorandum of Cooperation between the United States of America and the European Union in civil aviation research and development (MoC)<sup>1</sup>. The cooperative activities carried out so far under the MoC mainly address air traffic management (ATM), in particular cooperation in the field of research and development between the parties' ATM modernisation programmes SESAR (EU) and NextGen (USA).

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 global interoperability of ATM systems. This led the two parties to explore the potential for extending the scope of cooperation also 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 Federal Aviation Administration (FAA) of the USA an amendment to the MoC to extend its scope to the field of 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) addressing also 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; based on experience under the current MoC, both parties concluded that the management process should be made leaner and more effective at the high level and that the operational services dealing with the technical topics of cooperation should be better involved.
- (3) To negotiate specific arrangements for cooperation on ATM deployment, while maintaining the existing arrangements on “SESAR-NextGen cooperation on global interoperability” and on “Collaboration on ATM performance measurements”, duly adapted to the new framework.

Pending the consent of the European Parliament and the Council's decision on the conclusion of the proposed amendment to the MoC, the Commission proposes to the Council to adopt a decision authorising its signature and provisional application.

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

The proposed amendment of the MoC is fully consistent with the Aviation Strategy for the Union, 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

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<sup>1</sup> OJ L89 of 5.4.2011

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 EU as a global actor. Moreover, the proposal 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, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the present proposal is Article 100(2) in conjunction with Article 218(5) of the Treaty on the Functioning of the EU.

- **Subsidiarity (for non-exclusive competence)**

Not applicable

- **Proportionality**

The proposed amendment to the MoC will not impose any additional administrative or financial burden either on Member States authorities or on the industry.

- **Choice of the instrument**

Not applicable

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Commission has involved the SESAR Joint Undertaking and the SESAR Deployment Manager in the negotiation process who have endorsed the results of the negotiations. These entities represent a wide aviation stakeholder platform potentially benefitting from the amended MoC. Moreover, the Commission also consulted the Member States, through the Special Committee, established by the Council for the MoC, prior to initialling the draft texts. Spain, Poland and Cyprus requested clarifications on the structure of the modified agreement, the governance arrangements and the need to involve Eurocontrol in the area of cooperation concerning performance review. In the Special Committee, Member States expressed their support to the text of the modified agreement, following the clarifications provided by the Commission.

- **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 Council authorised the Commission to negotiate an amendment to the MoC based on three objectives: extension of the scope of the MoC to the full cycle of ATM modernisation, review of governance arrangements to make them more efficient and practical and inclusion of specific arrangements on ATM deployment. These three objectives have been fully met. While the proposal builds entirely on the same aims and principles underlying the existing MoC, it extends the scope of cooperation between the Union and the USA to all phases of ATM modernisation including deployment. This change is a natural evolution of the work successfully carried out under the current agreement. Moreover, the governance under the modified agreement ensures a leaner, more efficient and more effective management at the high level (executive management) that affords appropriate representation of the two parties at meetings and the right place for more strategic discussions.

However, the initiative does not aim to set up new programmes or new funding mechanisms. Therefore, as indicated in the roadmap, an impact assessment has not been performed.

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 and preserve the already negotiated binding cooperative framework with the USA.

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not have any additional budgetary implication. The activities that will be carried under the modified agreement 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.

### • **Explanatory documents (for directives)**

Not applicable

### • **Detailed explanation of the specific provisions of the proposal**

The Commission has fulfilled the directives and objectives of the Council's authorisation to negotiate with the FAA a proposal for an amendment to the MoC. The amendment includes, as an Addendum, the revised main text of the MoC and a revised Annex 1 on "ATM modernisation and global interoperability", which comprises three appendixes and five attachments. This new structure of the MoC allows for full flexibility and adaptability in the performance of the cooperative activities in consistency with the revised leaner and more effective governance of the MoC.

In particular:

- With regard to the revised main text of the MoC, the Joint Committee is replaced by a simpler arrangement involving a representative from each party for the purpose of overseeing the functioning of the entire MoC and to take decisions at a policy level (Article III of the MoC). Now the text also indicates that the Commission's Director-General of the Directorate General for Mobility and Transport (DG MOVE) and the Federal Aviation Administration (FAA) administrator will represent the two parties, thus bringing the supervision of the entire MoC under the authority of the highest management level of the FAA and the relevant Commission service. Moreover the amended MoC establishes a "management process" under the responsibility of the representatives of the parties. This process replaces the "MoC approval process" referred to in the Council's authorisation. During the negotiations, it emerged that a reference to an "approval process" was not properly reflecting the actual scope of the process, which in fact is addressing the management of the MoC. This process ensures supervision and steering of the MoC at a high level and the link with the parties' respective political authorities to which they shall report. Through this process the parties' representatives may adopt new Annexes or propose modifications to the MoC. In light of these considerations, the parties agreed to replace the term "approval process" by "management process".
- The thematic Annexes are managed by executive committees composed of representatives of the parties that are closer to the operational level for the specific topics they address. In particular, for Annex 1, the FAA's Chief NextGen Officer and the Commission's Head of the Single Sky unit shall represent their respective parties (Article IV of Annex 1). The executive committees will report to the representatives

of the parties. Annex 1 addresses the extension of the scope of the MoC to all ATM deployment (Articles I and III of Annex 1).

- Appendix 3 describes the cooperative arrangements in the field of ATM deployment.
- Each Attachment will be managed by a dedicated committee that will oversee the implementation of the cooperative activities. These committees will report to their respective executive committees (Article V of Appendix 1 and Article IV of Appendices 2 and 3).
- In the light of the above changes, the parties agreed that the most appropriate and clearest form to amend the MoC was to replace all the existing texts with new versions that incorporate all the agreed changes and to add a new cooperative arrangement for deployment rather than modifying each individual document. The original versions of Annex 1 and of its 5 appendices and of Annex 2 have been adapted to ensure coherence with the extended scope and new structure of the MoC, to streamline governance and to harmonise their format. The original Annex 1 has become Appendix 1 and its five Appendices have become Attachments; and the original Annex 2 has become Appendix 2. In sum the new structure of the MoC includes Appendix 1 on "SESAR-NextGen cooperation for research, development, validation and global interoperability", which also comprises 5 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".

The parties will only be required to sign the new agreement which consists of the amendment to the MoC covering all the other documents, namely Annex I, the three Appendices and the five Attachments to Appendix 1.

The European Union will be represented by the European Commission in the MoC and all the related implementing arrangements (Annexes and Appendices). The Commission and the FAA may however delegate the implementation of the cooperative activities to or may be assisted by other entities, such as the SESAR Joint Undertaking, the SESAR Deployment Manager or Eurocontrol, for the EU side, depending on the area of competence required. The

Commission intends to involve the SESAR Joint Undertaking in Appendix 1, Eurocontrol in Appendix 2 and the SESAR Deployment Manager in Appendix 3.

The proposed amendment preserves the original role of the Special Committee in the governance of the MoC. The proposed decision on the signing and provisional application of the amended MoC defines the tasks that require the prior consultation of the Special Committee and the tasks - mainly administrative or for implementing the MoC - that the Commission can implement under its own responsibility.

Proposal for a

## **COUNCIL DECISION**

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

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 Commission has negotiated on behalf of the Union an amendment to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union, in accordance with the Council Decision of 8 May 2017 authorising the Commission to open negotiations.
- (2) The agreement was initialled on 28 July 2017.
- (3) The agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (4) The agreement, including its addendum, should be applied provisionally, in accordance with Article II.A of the agreement, from the date of signature, pending its entry into force.
- (5) It is necessary to lay down procedural arrangements for the participation of the Union in the executive management of the Memorandum of Cooperation.

HAS ADOPTED THIS DECISION:

### *Article 1*

The signing of Amendment 1 to Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union is hereby approved on behalf of the Union, subject to the conclusion of the said agreement.

The text of the agreement to be signed 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 indicated by the negotiator of the agreement.

### *Article 3*

The agreement, including its addendum, shall be applied provisionally, in accordance with Article II.A of the agreement, from the date of signature, pending its entry into force.

### *Article 4*

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:

- (a) the adoption of additional Annexes to the Memorandum of Cooperation and Appendices thereto;
- (b) the adoption of amendments to Annexes to the Memorandum of Cooperation and Appendices thereto;
- (c) the adoption of proposals to otherwise amend the Memorandum of Cooperation.

### *Article 5*

Without prejudice to Article 4, the Commission may take any appropriate action under Articles III, IV, V, VII and VIII of the Memorandum of Cooperation.

### *Article 6*

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

### *Article 7*

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

*Article 8*

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

Done at Brussels,

*For the Council  
The President*