



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 May 2013

9475/13

**Interinstitutional File:
2013/0132(NLE)**

**AVIATION 63
USA 12
RELEX 395**

PROPOSAL

from:	European Commission
dated:	2 May 2013
No Cion doc.:	COM(2013) 252 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken by the European Union within the Bilateral Oversight Board under the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, concerning the Decision N° 0004 amending Annex 1 to the Agreement

Delegations will find attached a proposal from the European Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 252 final



EUROPEAN
COMMISSION

Brussels, 2.5.2013
COM(2013) 252 final

2013/0132 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken by the European Union within the Bilateral Oversight Board
under the Agreement between the United States of America and the European
Community on cooperation in the regulation of civil aviation safety, concerning the
Decision N° 0004 amending Annex 1 to the Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Background

In 2007, the U.S. aviation industry raised concerns that the EU rules on the fees and charges levied by the European Aviation Safety Agency (EASA) do not differentiate between European certification projects and EASA validation of Federal Aviation Administration (FAA) approvals of U.S. products.

Following several exchanges on this issue, the European Commission (EC) eventually agreed that EASA fees for validation would be discussed pursuant to the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety (the “Agreement”).

The Bilateral Oversight Board (BOB) agreed at its June 2011 meeting to address the fees charged by EASA to U.S. applicants for validation of FAA approvals under the terms of Annex 1 of the Agreement. Consequently the Terms of Reference establishing the formation of a Validation Fees Team (VFT) was approved at the BOB meeting on December 11, 2011.

The VFT, composed of representation from the FAA, the EC and EASA, was tasked by the BOB to review the current EASA process and methods for setting fees and charges as applied to validation of U.S. products and to develop recommendations regarding amendments to the Agreement which will address the issues associated with EASA fees for validation of U.S. products.

1.2 Understanding the EASA Fees and Charges system

All fees charged by EASA are mandated by Commission Regulation (EC) No. 593/2007 (as amended) that establishes the fees and charges which are to be levied by EASA for all certification tasks.

This Regulation identifies the exact fees that are to be charged for each certificate (annually for multi-year projects) and approval, as well as an hourly rate for certain tasks that are charged by the hour. All tasks related to certification of products, parts and appliances (including approval of data for repairs, etc.) as well as activities related to the approval of organizations (including design organizations, production organizations, maintenance organizations, etc.) must be fully covered from the applicants requesting these certificates/approvals. Additionally, EASA’s costs related to the continued airworthiness of these products, parts and appliances as well as the costs related to the oversight of approved organizations must also be fully covered and are addressed in this same Regulation.

The fees in Regulation (EC) No. 593/2007 are adjusted by a factor on an annual basis to account for inflation. Further, to ensure that fees continue to offset EASA’s costs, those fees are subject to periodic reviews and may be revised as necessary by the Commission in accordance with the regulatory procedure with scrutiny. Fees are developed and updated using a combination of real certification activity data and costs incurred in the past and

business plan data for future developments. Based on these data, hourly rates and applicable flat fees are calculated. This method allows for both increases or reductions of fees if justified by the supporting data.

1.3 Application of a reduction factor in the Agreement

During the VFT discussions, it became apparent that both EASA and the FAA have not fully internalized the Agreement. Even though both Technical Agents are working to a common set of validation principles, which are meant to represent the intent and spirit of the Agreement, it is evident that, in reality, the full benefits of the Agreement are not being realized.

The EASA fee schedules do give special consideration to non-EU certificate activity in some areas. For example, Supplemental Type Certificates (STCs) that are classified as “basic” are charged as simple STCs regardless of the complexity of the design change. Also the fees for activities associated with the continued airworthiness of a non-EU certificate are charged at a reduced rate. In the area of organization approvals accepted, Part 145 approvals are also subject to reduced fees.

Nevertheless, Regulation (EC) No 593/2007 mandates that EASA collect fees that reflect its total certification costs. For certificates and approvals, fees are computed primarily using historical data of resource engagement in similar projects in combination with business plan data. Based on this method, it is not possible for EASA to give any special consideration to its bilateral partners, including the United States, in the fees and charges regulation itself. If there is to be special consideration which transcends this regulation, it must be granted through a superseding regulation or through an international treaty which takes precedence over the regulation.

On this basis, and in order to align more fully with the intent of Article 14 of the Agreement, which states that fees should be just, reasonable and commensurate with the services, the VFT has agreed and recommended a decision from the BOB to apply a reduction factor to the relevant fee tables in Regulation (EC) No 593/2007 to account for the efficiencies of the validation process in the Agreement. This reduction factor would be incorporated into the provisions of Annex 1 to provide the needed derogation from Regulation (EC) No 593/2007 via the Agreement.

1.4 Procedural aspects

The relevant Council Decision and the Agreement entered into force on 1 May 2011 following the notification by the Parties that their respective internal procedures necessary for its entry into force had been completed.

Article 218(9) of the Treaty on the Functioning of the European Union establishes that the Council, on a proposal from the Commission, shall adopt a decision 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.

Article 4.4 of Council Decision 2011/719/EU¹ concerning the conclusion of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety establishes that the Council shall decide on amendments to Annexes to the Agreement when they entail any modification to relevant Union legal acts.

As such, a Council Decision on the position to be taken by the EU within the Bilateral Oversight Board on the Decision to amend Annex 1 to the Agreement as per the draft Decision 0004 annexed to the proposed Council Decision.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Member States were regularly informed throughout progress of the work.

3. LEGAL ELEMENTS OF THE PROPOSAL

1.1. Summary of the proposed action

The proposed amendment of Annex 1 to the Agreement will introduce a reduction factor applicable to EASA levied Fees and Charges in the context of the validation of U.S. (aviation) products, thus reflecting the spirit and benefits to be attained from the Agreement.

1.2. Legal basis

Article 100(2) in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

1.3. Subsidiarity principle

The agreement covers issues where the EU has competence and where relations with United States of America need to be maintained at the EU level.

1.4. Impact on existing EU legislation

Under the current provisions of Regulation (EC) No 593/2007 no distinction is made between EASA Fees and Charges levied for (European) certification projects as opposed to the validation of products emanating from 3rd countries with whom the EU has a bilateral aviation safety agreement. A critical element of these agreements, being the product of mutual trust and recognition of the equivalent level of safety of the respective parties' systems, are the efficiency gains to result from relying on the work processes and outcomes of the other party, the result of which is a decrease in workload and associated costs when carrying out a validation.

The legal impact of introducing the envisaged reduction factor in Annex 1 to the Agreement will, by virtue of the status of the Agreement as an International Treaty, be that such provisions will have precedence over current provisions in Regulation (EC) 593/2007. In order for this provision to become applicable not solely as a result of the (EU/US) Agreement,

¹ OJ L 291, 9.11.2011, p. 1.

a dedicated provision will need to be included in Regulation (EC) 593/2007, a process that is ongoing at the time of writing.

As for likely budgetary implications, please refer to point 4 below.

4. BUDGETARY IMPLICATION

An estimated deficit in EASA Fees and Charges revenue resulting from the entry into force of this amendment to Annex 1 to the Agreement would amount to approximately €450.000 that will fully be covered by redeployment within the Fees and Charges budget of the Agency.

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union within the Bilateral Oversight Board under the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, concerning the Decision N° 0004 amending Annex 1 to the Agreement

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2011/719/EU of 7 March 2011 concerning the conclusion of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety² (hereinafter referred to as 'the Agreement'), entered into force on 1 May 2011.
- (2) Pursuant to Article 3.C.2 of the Agreement, the Bilateral Oversight Board established by Article 3.A of the Agreement may amend the annexes to the Agreement in accordance with Article 19.B of the Agreement.
- (3) It is appropriate to establish the position to be taken by the European Union within the Bilateral Oversight Board in accordance with Article 4.4 of the Council Decision 2011/719/EU as regards this specific Decision to amend Annex 1 of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Bilateral Oversight Board (BOB), as referred to in Article 3.A of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety, with regard to the adoption of a BOB Decision amending Annex 1 of the Agreement, shall be based on the draft Decision 0004 of the Bilateral Oversight Board, attached to this Decision.

² OJ L 291, 9.11.2011, p. 1.

Article 2

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

Article 3

This Decision is addressed to the Member States.

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Done at Brussels,

*For the Council
The President*

ANNEX
BILATERAL OVERSIGHT BOARD
FOR THE AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND THE EUROPEAN UNION
ON COOPERATION IN THE REGULATION OF CIVIL AVIATION
SAFETY

RECORD OF DECISION
DECISION N° 0004

In accordance with Article 19.B of the Agreement between the United States of America and the European Community on Cooperation in the Regulation of Civil Aviation Safety (the “Agreement”), which provides for the amendments to the annexes to the Agreement to be effected by decision of the Bilateral Oversight Board (“BOB”) established pursuant to Article 3 of the Agreement, the BOB hereby decides as follows:

1. To amend Annex 1 to the Agreement by adding a new paragraph 3.2.11 with the following text:

- "3.2.11(a) As of January 1, 2013, fees imposed during any calendar year by a Technical Agent on an applicant or regulated entity for a validation performed by that Technical Agent under 3.2.4 to approve
- (i) the design of an aircraft, aircraft engine, propeller, or appliance;
 - (ii) a supplemental type certificate;
 - (iii) certain major changes to a type design, as defined in the technical implementation procedures; or
 - (iv) acoustical and emissions changes

shall not exceed 95% of the fees that the Technical Agent would have imposed on the applicant or regulated entity during that same calendar year in the issuance of an equivalent approval of a design, supplemental type certificate, major change, or acoustical or emissions change using a certification process.

- (b) Fees imposed during any calendar year by a Technical Agent on an applicant or regulated entity for a validation performed by that Technical Agent under 3.2.4 shall reflect the efficiencies gained by using a validation process instead of a certification process. Such efficiencies and associated fee reductions shall be substantiated by relevant data. Therefore, the BOB shall periodically review, and appropriately adjust by decision, the percentage in (a) above."
2. The periodic review indicated in the new paragraph 3.2.11 (b) shall be undertaken no more frequently than every two years. As provided for in paragraph 2.2.1 of Annex 1 to the Agreement, the BOB shall be assisted by the COB in conducting such reviews and developing any necessary decisions. The review and decision shall be based on data provided by the Technical Agents.

The amendment shall take effect on the date of the last signature below.

For the Bilateral Oversight Board:

FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

EUROPEAN COMMISSION
EUROPEAN UNION

BY: _____

BY: _____

TITLE: Associate Administrator for
Aviation Safety

TITLE: Director, Aviation and
International Transport Affairs,
Directorate-General for Mobility
and Transport

DATE:

DATE:

PLACE: Washington, DC

PLACE: Brussels, Belgium
