



Brussels, 17 May 2017
(OR. en)

7779/10
DCL 1

AVIATION 29
USA 39
RELEX 241

DECLASSIFICATION

of document:	7779/10 RESTREINT UE
dated:	19 March 2010
new status:	Public

Subject:	Draft Council Decision authorising the Commission to open negotiations on a Memorandum of Cooperation in Civil Aviation Research and Development with the Federal Aviation Administration of the United States of America
----------	---

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



COUNCIL OF
THE EUROPEAN UNION

Brussels, 19 March 2010

7779/10

RESTREINT UE

AVIATION 29
USA 39
RELEX 241

NOTE

from : General Secretariat of the Council

to : delegations

No. prev. doc. : 13851/09 AVIATION 151 USA 81 RELEX 846

No. Cion prop. : 10864/09 AVIATION 94 RELEX 558 USA 40 RESTREINT UE

Subject : Draft Council Decision authorising the Commission to open negotiations on a Memorandum of Cooperation in Civil Aviation Research and Development with the Federal Aviation Administration of the United States of America

Delegations will find in Annex US comments on the last versions of the core text of the Memorandum of Cooperation (SESAR-NextGen).

7779/10

DG C I

RESTREINT UE

ML/ne

1
EN

RESTREINT UE

ANNEX

FORMATTING KEY:

Text acceptable to negotiators (ad referendum)

EU proposed text

US proposed text

[] [] indicate alternate language

MEMORANDUM OF COOPERATION

NAT-I-9406 [+ *EU reference*]

BETWEEN THE

UNITED STATES OF AMERICA

AND THE

EUROPEAN UNION

WHEREAS the United States of America and the European Union have as a common purpose the promotion and development of cooperation in civil aviation research and development; and

WHEREAS such cooperation will encourage the development **and safety** of civil aeronautics in the United States and the European Union;

NOW THEREFORE, the United States and the European Union (collectively, the “Parties,” and individually, a “Party”) agree to undertake joint programs in accordance with the following terms and conditions:

ARTICLE I—OBJECTIVE

A. This Memorandum of Cooperation, including its annexes and appendices (the

RESTREINT UE

“Memorandum”), establishes the terms and conditions for mutual cooperation in the promotion and development of civil aviation research and development including validation activities. For this purpose the Parties may, subject to the availability of appropriated funds and other necessary resources, provide personnel, resources, and related services to cooperate to the extent called for in the annexes and appendices to this Memorandum.

B. Subject to applicable laws, regulations and policies, the Parties shall foster, to the fullest extent practicable, the involvement of participants in cooperative activities under this Memorandum in view of providing comparable opportunities for participation in their research, development and validation activities in any of the following forms:

1. The exchange of information regarding programs and projects, research results, or publications;
2. The execution of joint analyses;
3. The coordination of research and development programs and projects, and their execution based on shared effort;
4. The exchange of scientific and technical staff;
5. The exchange of specific equipment, software, and systems for research activities and compatibility studies;
6. The joint organization of symposia or conferences; and
7. Reciprocal consultations with the aim of establishing concerted action in appropriate international bodies.

C. Cooperative activities shall be conducted on a *[reciprocity]***[reciprocal]** basis in accordance with the following principles:

1. Mutual benefit *[based on an overall balance of advantages]***[delete]**;
2. *[Reciprocal]* **[Comparable]** opportunities to engage in cooperative activities;
3. Equitable and fair treatment;
4. Timely exchange of information which may affect cooperative activities
5. **Transparency**

D. Such cooperative activities shall take place pursuant to implementing arrangements defined in Article III **and** concluded between the Parties or the entities they designate for that purpose.

RESTREINT UE

ARTICLE II—DEFINITIONS

For the purpose of this Memorandum, the term:

- B. “Validation” means to confirm, throughout the development lifecycle, that the proposed solution (i.e. concept, system, and procedures) complies with Stakeholders’ needs, *i.e. the right system is being built.* **[delete]**

ARTICLE III—IMPLEMENTATION

- A. This Memorandum shall be implemented through technical annexes and appendices to this Memorandum. These annexes and appendices shall describe, **as appropriate**, the nature and the duration of cooperation for a specific area or purpose, treatment of intellectual property, liability, funding, allocation of costs, and other relevant matters. When signed by the duly authorized representatives of the Parties such annexes and appendices shall become part of this Memorandum. Unless explicitly stated otherwise, in case of an incompatibility between a provision in an annex or appendice and a provision in this Memorandum, the provision in the Memorandum shall have precedence.
- B. Representatives from the United States and the European Union shall meet periodically to:
1. Discuss proposals for new cooperative activities; and
 2. To review the status of ongoing activities that have been undertaken pursuant to an annex or appendix to this Memorandum.
- C. The coordination and facilitation of cooperative activities under this Memorandum shall be accomplished on behalf of the Government of the United States of America by the Federal Aviation Administration and on behalf of the European Union by the European Commission.
- D. The designated offices for the coordination and management of this Memorandum, and where all requests for services under this Memorandum should be made, are:

RESTREINT UE

1. For the United States:

Federal Aviation Administration
Office of International Aviation
Wilbur Wright Bldg., 6th Floor, East
600 Independence Ave., S.W.
Washington, D.C. 20591 - USA

Telephone: +1-202-385-8900

Facsimile: +1-202-267-5032

2. For the European Union:

European Commission
Directorate for Air Transport
1040 Brussels - Belgium

Telephone: +32-2-2968430

Facsimile: +32-2-2968353

Technical program liaison for specific activities shall be established as indicated in the annexes and appendices to this Memorandum.

ARTICLE IV—EXECUTIVE MANAGEMENT

- A. The Parties hereby establish a Joint Committee, which shall be responsible for ensuring the effective functioning of this Agreement and shall meet at regular intervals to evaluate the effectiveness of its implementation.
- B. The Joint Committee shall be composed of representatives of:
1. The United States of America, which shall be the Federal Aviation Administration (FAA, co-chair),
 2. andThe European Union, which shall be the European Commission (co-chair).
- C. The Joint Committee may invite the participation of subject-specific experts on an ad hoc basis. The Joint Committee may establish and oversee the work of technical working groups. The

RESTREINT UE

Joint Committee shall develop and adopt internal governing procedures. All decisions of the Joint Committee shall be taken by consensus with each Party having one vote. These decisions shall be in writing and signed by the Parties' representatives on the Joint Committee.

3. The Joint Committee may consider any matter related to the functioning of this Agreement. In particular it shall be responsible for:
 1. providing a forum for discussion of:
 - a. issues that may arise and changes that may affect the implementation of this Agreement and its Annexes;
 - b. common approaches to the introduction of new technologies and procedures, research and evaluation programs, and other areas of mutual interest; and
 - c. draft regulations and legislation by either Party that could affect the interests of the other Party, within the scope of this Agreement and its Annexes;
 2. as appropriate, adopting additional Annexes and Appendices thereto;
 3. as appropriate, amending Annexes to this Agreement and Appendices thereto, in accordance with the terms of amendment contained therein; and
 4. Making proposals, as appropriate, to the Parties to otherwise amend this Agreement.

ARTICLE IV—EXCHANGE OF PERSONNEL

The Parties may exchange technical personnel as required to pursue the activities described in an annex and appendix to this Memorandum. All such exchanges shall be in accordance with the terms and conditions set forth in the annex and appendix and this Memorandum. Technical personnel exchanged by the Parties shall perform work as specified in the annex or appendix. Such technical personnel may be from United States or European Union agencies or contractors, as mutually agreed.

ARTICLE V—EQUIPMENT LOAN ARRANGEMENTS

Equipment may be loaned by one Party (the “Lending Party”) to the other Party (the “Borrowing Party”) under an annex or appendix to this Memorandum. The following general provisions shall apply to all loans of equipment unless otherwise specified in an annex or appendix:

- A. The Lending Party shall identify the value of the equipment that is to be loaned.

RESTREINT UE

- B. The Borrowing Party shall assume custody and possession of the equipment at the Lending Party's facility as designated by the Parties in the annex or appendix. The equipment shall remain in the custody and possession of the Borrowing Party until it has been returned to the Lending Party in accordance with paragraph H below.
- C. The Borrowing Party shall, at its own expense, transport any equipment to the facility designated by the Parties in the annex or appendix.
- D. The Parties shall cooperate in securing any export licenses and other documents required for the shipment of the equipment.
- E. The Borrowing Party shall be responsible for installing the equipment at the facility designated by the Parties in the annex or appendix. The Lending Party shall, if necessary, provide assistance to the Borrowing Party for installing the equipment that is lent on the basis of terms agreed on by the Parties.
- F. During the period of the loan, the Borrowing Party shall operate and maintain equipment in proper condition, ensure the continued operability of the equipment, and permit inspection by the Lending Party at any reasonable time.
- G. The Lending Party shall assist the Borrowing Party in locating sources of supplies for common items and parts peculiar which are not readily available to the Borrowing Party.
- H. Upon the expiration or termination of the pertinent annex or appendix or this Memorandum, or when the use of the equipment is complete, the Borrowing Party shall return the equipment to the Lending Party at the Borrowing Party's expense.
- I. In the event of loss or damage of any equipment loaned under this Memorandum and for which the Borrowing Party assumed custody and possession, the Borrowing Party, **at the Lending Party's discretion, shall repair or** compensate the Lending Party for the value (as identified by the Lending Party in paragraph A above) of the lost or damaged equipment.
- J. Any equipment exchanged under this Memorandum shall be solely for research, developmental and validation purposes and shall not be used in any way whatsoever for active civil aviation or other operational use.
- K. Any transfers of technology, equipment or other items pursuant to this Memorandum shall be subject to the applicable laws and policies of the Parties.

ARTICLE VI—FUNDING

- A. Unless otherwise specified in an annex or appendix to this Memorandum, each Party shall bear the costs of the activities it performs pursuant to this Memorandum.

RESTREINT UE

B. Memorandum number NAT-I-9406 has been assigned by the United States [+ *EU reference*] to identify this cooperative program and shall be referenced in all correspondence related to this Memorandum.

ARTICLE VII—*INTELLECTUAL PROPERTY RIGHTS*¹

- A. Neither Party shall release any information or material pertinent to the tasks or related to the agreed program to third parties other than contractors or subcontractors engaged in the program except (i) as required by applicable law; or (ii) as agreed to in writing by the Parties.
- B. A Party providing intellectual property (which for purposes of this Memorandum shall include analyses, reports, databases, technical information, data, and records, and associated documentation and materials, in whatever form) to the other Party in accordance with the terms of an annex or appendix to the Memorandum shall retain such proprietary rights in the intellectual property as it had at the time of the exchange. Except as may be specified in an annex or appendix to this Memorandum, the Party receiving intellectual property from the other Party under this Memorandum:
1. Shall not acquire any proprietary rights in the intellectual property by reason of its receipt from the other Party; and
 2. Shall not disclose the intellectual property to a third party other than contractors or subcontractors engaged in the program without the prior written consent of the other Party.
- C. Except as may be specified in an annex or appendix to this Memorandum, the proprietary rights in any intellectual property jointly developed or financed by the Parties pursuant to this Memorandum shall be shared by the Parties.

¹ [*Dedicated "Concept Paper", which could replace paragraphs A, B and C, will follow*](#)

Formatted: English (U.S.)

RESTREINT UE

D. The Parties shall address any specific Intellectual Property issues associated with specific activities under this Memorandum in the relevant annexes or appendices.

ARTICLE VIII—IMMUNITY AND LIABILITY

[The Parties shall address all immunity and liability issues associated with activities under this Memorandum in the relevant annex or appendix.] [FAA prefers first EU proposal]

or

[Each Party shall waive any and all claims against the other Party for all loss, damage or injury resulting from the activities under this MoC, its Annexes or Appendices.

In order to mitigate any potential third party liability, the Parties agree that all activities undertaken pursuant to this MoC, its Annexes or Appendices, shall be undertaken with due professional care and that every reasonable effort shall be made to minimise potential risks and to fulfil all safety and oversight requirements.]

ARTICLE IX—AMENDMENTS

The Parties may amend this Memorandum or its annexes or appendices. The Parties shall document the details of any such amendment in a written agreement signed by both Parties.

ARTICLE X—RESOLUTION OF DISAGREEMENTS

The Parties shall resolve any disagreement regarding the interpretation or application of this Memorandum or its annexes or appendices in consultations between the Parties. The Parties shall not refer any such disagreement to an international tribunal or third party for settlement.

ARTICLE XI—ENTRY INTO FORCE AND TERMINATION

A. This Memorandum shall enter into force on the date of the last signature and shall remain in force until terminated.¹

¹ *[Note: This Article will have to be adapted in accordance with the specific Institutional procedures.](#)*

Formatted: English (U.S.)

RESTREINT UE

B. Either Party may terminate this Memorandum or its annexes or appendices at any time by providing sixty (60) days' notice in writing to the other Party. Termination of this Memorandum shall not affect the obligations of the Parties under **Articles V, VII, VIII**, and IX. Each Party shall have one hundred twenty (120) days to close out its activities following termination of this Memorandum or its annexes or appendices. Termination of this Memorandum also shall terminate all annexes and appendices concluded by the Parties pursuant to this Memorandum.

ARTICLE XII—AUTHORITY

The United States and the European Union agree to the provisions of this Memorandum as indicated by the signatures of their duly authorized representatives.

UNITED STATES OF AMERICA

EUROPEAN UNION

BY: _____

BY: _____

TITLE: Acting Assistant Administrator for
International Aviation
Federal Aviation Administration
Department of Transportation

TITLE: _____

DATE: _____

DATE: _____