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INFORMATION NOTE

From: General Secretariat of the Council

To: Council

Subject: **Any other business**

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council

– Information from the Presidency on the state of play

On 7 December 2015, the Commission adopted the above-mentioned proposal, part of European Commission's '*Aviation Strategy for Europe*'. Its objective is to prepare the EU aviation safety regulatory framework for the challenges of the next ten to fifteen years.

The Council reached a General Approach on the proposal on 1 December 2016. The Maltese Presidency initiated negotiations with the European Parliament in early January 2017. The Working Party examined the EP amendments between January and April 2017, in preparation for the informal trilogues. Following a series of technical meetings, the first informal trilogue took place on 21 March and covered Articles 1-2, 4-8, 64-108, 110-127. The second trilogue was held on 2 May 2017 and covered Articles 51-63.

A. Areas of tentative agreement

The technical meetings and the first two trilogues have resulted in a number of areas where - with the exception of the issue of delegated/vs/ implementing acts - now there is tentative agreement between the Council and the European Parliament, or where work at technical level is close to finding a commonly accepted solution, such as:

- ✓ Article 1 '*Subject matter and objectives*', with the exception of the name of the Agency;
- ✓ Article 2 '*Scope*', which the Council agreed to restructure at the request of the Parliament; the outstanding issues still to be solved in Article 2 concern wording on the opt-outs, a few details in paragraph 1 and the terminology issues related to the use of 'as far as practicable' and 'public use', (Article 2(3)(d) and Art 2(5));
- ✓ Article 4 '*Principles for measures under this Regulation*';
- ✓ Article 5 '*European Aviation Safety Programme*' ;
- ✓ Article 6 '*European Plan for Aviation Safety*'; the outstanding issue still to be solved in Article 6 concerns the 'acceptable' /vs/ 'a high uniform level of safety' in Article 6(3);
- ✓ Article 7 '*State Safety Programme*';
- ✓ Article 51 '*Certification, oversight and enforcement*'. The outstanding issues still to be solved in Article 51 concern the independence and resources needed by the national competent authorities (NCAs) for the exercise of their tasks (Article 51(2a new)) and the NCAs' accreditation by the Agency (AM 185, Article 51(10)(ha (new)));
- ✓ Article 52 '*Pool of European aviation inspectors*', nearly entirely agreed;
- ✓ Article 53 '*Reallocation of responsibility for the performance of the tasks related to certification, oversight and enforcement*', also nearly entirely agreed, only with a few technical details still to be clarified;
- ✓ Article 56 '*Validity and recognition of certificates and declarations*';

- ✓ Article 57 ' *Acceptance of third-country certification* ' , which is close to an agreed compromise, pending a common legal solution to be found by the Legal Services of the Parliament, Council and Commission ;
- ✓ Article 58 ' *Qualified entities* ' , also close to agreement, pending confirmation at technical level;
- ✓ Article 59 ' *Safeguard provisions* ' , close to agreement, pending confirmation at technical level;
- ✓ Article 60 ' *Flexibility provisions* ' ;
- ✓ Article 61 ' *Information gathering, exchange and analysis* ' close to agreement, pending confirmation at technical level;
- ✓ Article 62 ' *Protection of the source of information* ' , close to an agreed compromise, pending a common legal solution to be found by the Legal Services of the Parliament, Council and Commission;
- ✓ Article 63 ' *Repository of information* ' , with the exception of AM 233, on data on general aviation (part of compromise on Annex I proposed in the package for trilogue 3);
- ✓ Article 64 ' *Establishment and functions of the Agency* ' with the exception of the name of the Agency (part of the trilogue 3 package);
- ✓ Article 65 ' *Agency measures* ' , with the exception of the binding directives and corrective action in Amendment 242 (Article 65(5a) new), also part of the trilogue 3 package;
- ✓ Article 66 ' *Airworthiness and environmental certification* ' , where alignment with the newly restructured Article 2 is still necessary and where some provisions depend on the future discussions on Chapter III;
- ✓ Article 67 ' *Aircrew certification* ' - except some provisions which depend on the future discussions on Chapter III;

- ✓ Article 67a '*Safety-Related Aerodrome Equipment*', where the only issue to be solved is the delegated/implementing acts;
- ✓ Article 68 '*ATM/ANS*', except the certification of ANSPs and the continuity of ATM/ANS (part of the trilogue 3 package);
- ✓ Article 69 '*Air traffic controller training organisations certification*' ;
- ✓ Article 70 '*Third-country aircraft operators and international safety oversight*';
- ✓ Article 71 '*Investigations by the Agency*'
- ✓ Article 72 '*Fines and periodic penalty payments*', with the exception of paragraph 2, where there is agreement, in principle, on the content, but the wording to reflect it is still under consideration;
- ✓ Article 73 '*Monitoring of Member States*';
- ✓ Article 74 '*Research and innovation*';
- ✓ Article 75 '*Environmental protection*';
- ✓ Articles 78- 84;
- ✓ Article 85 '*Functions of the Management Board*', except the immunity waiver in paragraph 2(ua) and (ub) - (part of the trilogue 3 package);
- ✓ Article 86 – 88 are mostly agreed except for a few final issues
- ✓ Article 89 '*Voting rules of the Management Board*';
- ✓ Article 91 '*Responsibilities of the Executive Director*', except paragraph 1, which depends on discussions on Article 90 'Executive Board';
- ✓ Article 92 '*Executive Director*', except the midterm assessment of the Executive Director in paragraph 3;
- ✓ Articles 93-112 - except Article 109 '*Budget*';

- ✓ Article 113 '*Evaluation*', except the duration between the periodic evaluations of the implementation of the Regulation and its secondary legislation in paragraph 1;
- ✓ Article 114 '*Financial rules*';
- ✓ Parts of Articles 115 - 117, with the exception of those paragraphs containing delegated/implementing acts;
- ✓ Articles 118 - 122;
- ✓ Articles 124, 125, 125a, 126 - except Amendment 338 on guidance material for Annex I aircraft (part of trilogue 3 package).

B. Main outstanding issues

The third trilogue took place on 6 June 2017, and covered a package of compromise proposals on the main outstanding issues of the previous two trilogues, organised as follows:

- ✓ Section I: Article 53a on '*Joint Responsibility between Member States*', Article 54 '*Reallocation of responsibility upon request from organisations operating in more than one Member State*', Article 67b (*Air Operators Certification*) and Pan-European ANSPs' certification (Article 68(1(b)));
- ✓ Section II: Article 55 on the '*Emergency Oversight Mechanism*';
- ✓ Section III: Article 76 on '*Interdependencies between civil aviation safety and security*' (including the issue of binding directives in paragraph 3) and Article 76a on '*Interdependencies between civil aviation safety and socio-economic factors*';
- ✓ Section IV: Continuity of ATM/ANS (Amendments 242, 257 and 365) and flight recorder data (Amendments 135, 137, 228 and 346)
- ✓ Section V: Annex I;

- ✓ Section VI: Governance of the European Aviation Safety Agency, which includes the name of the Agency, the immunity waiver in Article 85 and Article 90 '*Executive Board*';
- ✓ Section VII: Article 2 '*Scope*', the terminology issues “*acceptable level of safety*”, “*public use*” and “*as far as practicable*”, as well as the amendment of Regulation 1008/2008 regarding wet-lease.

The intention of the MT Presidency was to propose a balanced and fair compromise for the above-mentioned main outstanding issues, so that the upcoming Estonian Presidency could have an easier task and thus need to concentrate only on the remaining part of the proposal.

Unfortunately, the package was not acceptable for the European Parliament. On 1 June 2017, the European Parliament sent the Presidency a counter-proposal containing new compromises covering the whole Regulation and its annexes. On 6 June, in the third trilogue, the Presidency thanked the Rapporteur for his proposals, which would serve as a useful basis for the preparation of the negotiations to be continued under the Estonian Presidency. However, the Presidency pointed out that, having examined the EP counter-proposal document, it was clear that the positions of the co-legislators on the core issues of the proposal were wide apart and that the Presidency's best option at that stage would be to revert to the Member States in order to discuss the new EP compromise proposals.

Therefore, even if without concrete results, the third trilogue was used by the co-legislators to present and explain each other's positions on the core issues included in the Council compromise package, in the hope that these explanations would help later in the process of negotiations.
