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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 122 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 addition of an Annex 4 to the Agreement

Delegations will find attached document COM(2019) 122 final.

Encl.: COM(2019) 122 final



Brussels, 7.3.2019
COM(2019) 122 final

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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
addition of an Annex 4 to the Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In 2008, the European Union and the United States of America signed an agreement on cooperation in the regulation of civil aviation safety (hereinafter referred to as 'the Agreement'). The scope of the Agreement, which entered into force on 1 May 2011, was initially limited to airworthiness and environmental testing, approval and monitoring of aeronautical products as well as approval and monitoring of maintenance facilities. The scope of the Agreement was subsequently extended to personnel licensing and training, operation of aircraft, and air traffic services and air traffic management.¹ That extension was effectuated by an amendment signed on 13 December 2017 and is provisionally applied since that date.

Taking into account the extended scope of the Agreement, the Commission, assisted by the European Union Aviation Safety Agency (EASA) developed together with the U.S. Federal Aviation Administration (FAA) a new Annex 4 to the Agreement on monitoring of Flight Simulation Training Devices (FSTD), to reduce redundant regulatory oversight of FSTDs in the Union and the U.S.

The scope of the proposed new FSTD Annex covers recurrent evaluations of Full Flight Simulators (FFS) for aeroplanes.

At present there are 131 active EASA certificates for FFS located in the United States and 34 active FAA certificates for FFS located in EU Member States (UK: 17, The Netherlands: 3, France: 13 and Denmark: 1). Each of these devices holds a double certificate: EASA and FAA certificate in case of devices located in US, and FAA certificate and certificate from a national aviation authority or, in certain cases, EASA in case of devices located in EU Member States.

In order to maintain the validity of their certificates, each of those simulators must be re-evaluated on a periodic basis. This results in double auditing of each of the device, which is causing unnecessary administrative burden, additional costs for a second re-evaluation and is reducing the availability of the devices for training of pilots. For example, in 2017, EASA conducted 132 recurrent evaluations of FFS located in the US. On the other hand in 2017, the FAA conducted 34 recurrent evaluations of FFS located in EU Member States. The FFS is not available for training during the authority evaluation.

Under the proposed new FSTD Annex, the conduct of the recurrent evaluations will be simplified. EASA will rely on the FAA for the recurrent evaluations of the devices located in the US, and the FAA will rely on the national aviation authorities or, in certain cases, EASA for the recurrent evaluation of devices located in EU Member States. This will allow to avoid duplication of audits and as a result will provide cost and productivity savings for the EASA, FAA and industry. FAA estimates that in 2017 it has charged about 170.000 USD to operators of FFS located in EU Member States to recover the costs of on-site recurrent evaluations conducted in Europe. On the EU side in 2017 EASA has charged over 1.1 million EURO to operators of FFS located in the US to recover the travel costs associated with recurrent evaluations conducted in US (in addition to charges for working hours performed on site in US during the evaluations).

¹ COUNCIL DECISION (EU) 2018/61 of 21 March 2017

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

The cooperation between the EU and the United States of America on aviation safety is part of the Aviation Strategy for Europe. The proposed new FSTD Annex is consistent with the general objectives of the Agreement on the regulation of civil aviation safety between the EU and the U.S., which is to ensure a high level of civil aviation safety worldwide and to minimise economic burdens on the aviation industry and operators from redundant regulatory oversight.

- **Consistency with other Union policies**

The Agreement serves a fundamental objective of the external aviation policy of the Union by enhancing civil aviation safety and facilitate trade and investment in aeronautical products. The new FSTD Annex is consistent with the overall aviation policy of the Union by promoting mutual acceptance of certificates and technical findings with key international partners and making more efficient use of resources available at EU and Member State level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Treaty on the Functioning of the European Union, in particular Article 100(2) in conjunction with Article 218(9) thereof. Subsidiarity (for non-exclusive competence)

Not applicable.

- **Proportionality**

Not applicable.

- **Choice of the instrument**

To add a new Annex to the Agreement is the most efficient instrument to achieve the goal of allowing efficient reciprocal acceptance of findings of compliance and documentation for Flight Simulation Training Devices (FSTD).

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

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

Not applicable.

- **Stakeholder consultations**

EU Member States in which FFS (that are certified by the FAA) are located have been involved in the confidence building exercise conducted by EASA and the FAA in 2013 in preparation on establishing this new Annex.

The Commission informed and consulted EU Member States about developing a new FSTD Annex in the Council's Aviation Working Party through reports on the discussions in the Bilateral Oversight Board under the Agreement (to which EU Member States are invited to attend) and (b) in the context of the preparations for the Council Decision (EU) 2018/61 to enlarge the scope of the Agreement, including, among others, personnel licensing and training.

Collection and use of expertise

When developing the new FSTD Annex the European Commission was assisted by EASA. EASA and FAA conducted a regulatory comparison between the EU and U.S. requirements for certification of FSTD. That comparison was finalised in 2014 and allowed to identify also the regulatory differences between the EU and U.S. systems, which are addressed by so called 'special conditions' which are laid down in the proposed FSTD Annex.

EASA also performed an assessment of the FAA's National Simulator Programme (NSP) in order to establish confidence in the U.S. system for oversight of flight simulators. That assessment included an EASA visit to the NSP office located in Atlanta (August 2013), as well as observations of NSP evaluations of EASA certified simulators in Dallas (November 2013) and Miami (December 2013). The scope of the assessment was limited to recurrent evaluations of full flight simulators for aeroplanes, which corresponds to the scope of the proposed FSTD Annex.

On 2 July 2014, EASA together with the FAA reported to the Bilateral Oversight Board (BOB) established under the Agreement that the regulatory comparison as well as the confidence building exercises were successfully completed. That concluded the preparatory technical work for the development of the new FSTD Annex.

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

Not applicable

4. BUDGETARY IMPLICATIONS

No impact on the EU budget

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

On the EU side, EASA will coordinate the implementation of the new FSTD Annex. The detailed procedures concerning the implementation will be defined in the Simulator Implementation Procedures (SIP), which are currently being finalised by the Technical Agents EASA and FAA (in time for the adoption of the new FSTD annex).

The monitoring of the implementation of the FSTD Annex will be performed in the first place by the FSTD Oversight Board (FOB) which will be accountable to the BOB established under the Agreement. The FOB will report to the BOB on a regular basis.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

Section 1 ‘Purpose and scope’

That section of the FSTD Annex explains the purpose of the Annex, which is reciprocal acceptance of findings of compliance and documentation, and the provision of technical assistance regarding recurrent evaluation and qualification of FFS.

The scope of the Annex covers recurrent evaluation and continuing qualification of FFS for airplanes that hold a qualification issued by the FAA and by EASA or an Aviation Authority of an EU Member State.

Section 2 ‘Definitions’

That section of the FSTD Annex defines some of the frequently used technical terms.

Section 3 ‘Joint Coordination Body’

That section establishes the FSTD Oversight Board (FOB), which will be accountable to the BOB and will be responsible for ensuring the effective implementation of the FSTD Annex. The FOB is co-chaired by the EASA and FAA Directors of Flight Standards. The main responsibilities of the FOB include:

- a) Developing, approving, and revising the Simulator Implementation Procedures (SIP)
- b) Sharing information on relevant safety issues and developing action plans to address them;
- c) Ensuring the consistent application of the Annex;
- d) Exchanging information on planned and ongoing rulemaking activities that could affect the basis and the scope of the Annex;
- e) Sharing information on significant changes to the Parties’ FSTD qualification systems that could affect the basis and the scope of the Annex;
- f) Resolving technical issues falling within the responsibilities of the Technical Agents and Aviation Authorities that cannot be solved at lower level; and
- g) Proposing to the BOB amendments to the Annex

Section 4 ‘Implementation’

This section contains detailed conditions for mutual acceptance of evaluation reports between the Parties and for continuation of the FAA and EASA qualifications for FFS under the Agreement. The national aviation authorities of the Member States or, in certain cases, EASA will conduct the evaluations on behalf of the FAA for the devices located in the EU, and the FAA will conduct the evaluations on behalf of EASA for devices located in the US.

That section also contains provisions concerning follow up on evaluation report findings, provision of technical assistance in conducting special evaluations or obtaining and providing data and information upon request, as well as concerning exchange of information on revisions to laws, regulations, procedures, policy, or standards, that may affect the basis upon which the Annex is executed.

Section 5 ‘Communication and cooperation’

This section contains provisions on communication and exchange of information between the FAA, EASA and where applicable the aviation authorities of Member States. This includes provisions for the designation of contact points for the various technical aspects of the FSTD Annex, as well as information about exemptions and derogations granted to FFS.

Section 6 ‘Qualification requirements for the acceptance of findings of compliance’

This section contains the basic requirements for the authorities concerning effectiveness of their respective systems for the regulatory oversight of FSTD, including legal and regulatory structure, resources, training programmes, documentation and records, as well as internal policies, procedures and quality systems.

Furthermore, this section contains provisions concerning the initial and continued demonstration of the effectiveness of those systems, including provisions concerning participation of the Parties in each other’s quality audits and standardization activities, exchange of quality and standardisation reports and other relevant information, which may be necessary to maintain the continued confidence of the Parties in each other’s systems.

It is important to underline that authorities from all EU Member States can perform FFS evaluations on behalf of the FAA as long as they meet the requirements established under the Annex. It will be the responsibility of EASA to monitor that compliance as part of its routine standardisation activities.

Section 7 ‘Investigation and enforcement action’

This section contains provisions concerning cooperation on non-compliance investigations and the taking of enforcement actions. In accordance with the Agreement, both Parties retain the right to take enforcement actions against the operators of FSTDs that have FAA or EASA approvals.

Section 8 ‘Transfer provisions’

This section contains provisions defining the manner in which FFS that are at present under direct oversight of EASA will be handed over to the FAA, as well as the manner in which FFS that are at present under direct oversight of FAA will be handed over to national aviation authorities of EU Member States. At present there are four EU Member States where FFS with FAA approvals are located, that is United Kingdom, Denmark, France and the Netherlands.

The transfers shall take place within 18 months of the date of the entry into force of the Annex and will be synchronised with the dates of recurrent evaluations of the devices.

Section 9 ‘Fees’

The fees for the recurrent evaluations of the devices will be applied in accordance with Article 14 of the Agreement and in accordance with the applicable regulatory requirements, which on the EU side is Commission Regulation (EU) No 319/2014 of 27 March 2014 on the fees and charges levied by the European Aviation Safety Agency.

Appendix 1 ‘Special Conditions’

This Appendix contains the EU special conditions applicable to US based FFS as well as the FAA special conditions applicable to EU based FFS.

These special conditions are the additional regulatory requirements, which will need to be checked during the evaluation audits to account for the differences between the EU and US regulatory systems for flight simulators.

On the EU side, the responsibility for checking the compliance with the FAA special conditions will be with the national authorities of those Member States where the devices with the FAA certificates are located, or in certain circumstance with EASA if the FFS located in the EU is under the oversight of the Agency. The results of the special conditions check will be recorded in a “special conditions report” prepared by the authority after the evaluation.

Appendix 2 ‘Aviation Authority Actions’

This appendix contains the specific actions that the national aviation authorities of EU Member States will carry out when performing the recurrent evaluations of FFS on behalf of FAA. This includes scheduling the recurrent evaluation, preparing the performance of the evaluation, performing the evaluation and post evaluation activities, including the preparation of the evaluation report and special conditions report to be transmitted to the FAA.

Proposal for a

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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 addition of an Annex 4 to the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100 (2) in conjunction with Article 218 (9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety ('the Agreement') entered into force on 1 May 2011².
- (2) One of the main aims of the Agreement is to improve the long-standing cooperative relationship between Europe and the United States to ensure a high level of civil aviation safety worldwide and to minimize economic burdens on the aviation industry and operators from redundant regulatory oversight.
- (3) Amendment 1³ of the Agreement expands the scope of Article 2.B of the Agreement to include, inter alia, personnel licensing and training.
- (4) Article 5 of the Agreement, as amended, provides for the development of new Annexes to the Agreement for matters within the scope of the Agreement.
- (5) Both Technical Agents, i.e. the European Aviation Safety Agency for the EU and the Federal Aviation Administration for the U.S., have made the proposal to the Bilateral Oversight Board that it adopt a Decision to enact a new Annex 4 to the Agreement to cover the reciprocal acceptance of findings of compliance and documentation for Flight Simulation Training Devices ('FSTD').
- (6) Enacting the new Annex will generate savings for both Technical Agents and, at the same time, reduce costs for industry (FSTD operators) and subsequently, air carriers will profit from increased access to FSTD for their pilots.
- (7) Article 19.C of the Agreement provides for newly developed Annexes to enter into force upon a decision of the Bilateral Oversight Board established pursuant to Article 3 of the Agreement.

² OJ L 291, 09/11/2011, p. 3-44

³ OJ L 11, 16/01/2018, p. 3-5

- (8) (8) The new Annex 4 on Flight Simulation Training Devices should be approved on behalf of the European Union.
- (9) (9) Article 4 (3) of 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 safety provides, in accordance with Article 218 (9) of the Treaty on the Functioning of the European Union, that the Council, acting by a qualified majority, on a proposal from the Commission, shall establish the position to be taken by the Union in the Bilateral Oversight Board with respect to the adoption of additional Annexes in accordance with Article 3.C.7 and Article 19.C of the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Bilateral Oversight Board, under Articles 3 and 19 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 Bilateral Oversight Board Decision adopting Annex 4 of the Agreement, shall be based on draft Decision 0011 of the Bilateral Oversight Board, attached to this Decision.

Article 2

The Director responsible for Aviation in the Directorate General for Mobility and Transport, as co-Chair and the Union's representative on the Bilateral Oversight Board, is hereby empowered to sign Decision 0011 of the Bilateral Oversight Board.

Article 3

After its adoption, the Decision of the Bilateral Oversight Board shall be published in the Official Journal of the European Union.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*