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Subject: **Preparation of the Council meeting (Transport, Telecommunication and Energy) on 29 and 30 November 2007:**

Draft Decision by the Council to authorise the Commission to open negotiations on an agreement regarding aviation security audits/inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO)
- Adoption

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

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

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COUNCIL OF
THE EUROPEAN UNION

Brussels, 5 November 2007

14380/07

AVIATION 179
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REPORT

From : Council Secretariat
To: COREPER/Council
No. Cion prop. : 11789/07 AVIATION 128 RELEX 560
No. prev. doc. : 13476/07 AVIATION 168 RELEX 686

Subject : **Preparation of the Council meeting (Transport, Telecommunication and Energy) on 29 and 30 November 2007:**
Draft Decision by the Council to authorise the Commission to open negotiations on an agreement regarding aviation security audits/inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO)
- Adoption

On 13 July 2007, the Commission submitted a Recommendation to the Council in order to authorise the Commission to open negotiations on a an agreement regarding aviation security audits/inspections and related matters between the European Community and the International Civil Aviation Organization (ICAO). The agreement will seek significant reduction of individual audits to be carried out by ICAO under its Universal Security Audit Programme (USAP) within the territory of the European Community by recognising that most standards contained in Annex 17 to the Chicago Convention are also covered by Community legislation (Regulation EC No 2320/2002) and that the Commission has a mandate to conduct inspections in order to monitor the application by EU Member States of this Regulation.

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In light of the above Recommendation, the Working Party on Aviation agreed on a text of a draft Council Decision authorising the Commission to open negotiations with ICAO on the above agreement (see Annex).

FI has a general scrutiny reservation.

Tasks for COREPER/Council

Following the above, COREPER could confirm the agreement reached at the Working Party level and invite the TTE Council, at its meeting on 29/30 November 2007, to adopt the mandate authorising the Commission to open negotiations with ICAO on an agreement regarding aviation security audits/inspections and related matters.

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ANNEX

DRAFT COUNCIL DECISION

authorising the Commission to open negotiations on an agreement regarding
aviation security audits/inspections and related matters between
the European Community and the International Civil Aviation Organization (ICAO)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2),
in conjunction with Article 300(1) thereof,

Having regard to the Recommendation of the Commission,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission is hereby authorised to negotiate a bilateral agreement between the European
Community and the International Civil Aviation Organization (ICAO) regarding aviation security
audits/inspections and related matters.

Article 2

The Commission shall conduct the negotiations in accordance with the directives set out in Annex I
and the ad hoc procedure set out in Annex II of this Decision.

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Article 3

Application of this agreement to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated and to the continuing suspension of Gibraltar Airport from European Community Aviation measures existing as of 18th September 2006 as between Member States in accordance with the terms of the Ministerial Statement on Gibraltar Airport agreed in Cordoba on the 18th September 2006.

Done at Brussels,

*For the Council
The President*

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NEGOTIATING DIRECTIVES

(European Community – ICAO agreement on aviation security audits/inspections
and related matters)

1. Negotiating objectives

The agreement will seek significant reduction of individual audits to be carried out by ICAO under its Universal Security Audit Programme (USAP) within the territory of the European Community by recognising that most standards contained in Annex 17 to the Chicago Convention are also covered by Community legislation, by recognising the role of the Commission in conducting inspections in the Community and by establishing a number of information duties vis-à-vis ICAO on the outcome of Commission inspections.

In order to achieve this objective, the agreement should, in accordance with Commission Decision 2001/844/EC, ECSC, Euratom, of 29 November 2001 amending its internal Rules of Procedure, allow for the submission of classified information to ICAO regarding both the common aviation security standards and compliance monitoring activities within the Community.

2. Management of the agreement

The agreement shall not supersede or prejudice other forms of cooperation between the European Community and ICAO.

The agreement shall provide for an appropriate dispute settlement mechanism.

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3. Conduct of the Negotiations

The Commission shall conduct the negotiations in accordance with these directives and the ad hoc procedure set out in Annex II of this Decision.

The Commission shall recommend the modification or the termination of the mandate, if no progress over a longer period of time is made and no progress can be expected in the near future.

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ANNEX II TO ANNEX

AD HOC PROCEDURE FOR NEGOTIATIONS CONCERNING AN AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ICAO REGARDING AVIATION SECURITY AUDITS/INSPECTIONS AND RELATED MATTERS

I. Procedure

1. The Commission shall conduct the negotiations on behalf of the Community, in consultation with a Special Committee appointed by the Council to assist it in this task.
2. The Commission shall report back regularly to the Council on the progress of the negotiations and on the outcome of these negotiations.

II. Rules of conduct to be observed

1. The authorisation to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question. ¹

To this end, Member States shall notify the Council General Secretariat as soon as possible, in whatever manner they choose, of the names of their representatives on this Committee.

¹ For reasons of confidentiality it seems appropriate to lay down that Member States' representatives are appointed by name and are the sole addressees of the documents relating to the negotiations. This does not mean that they cannot be replaced or accompanied by experts.

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2. The negotiations must be prepared for in good time.

To this end, the Commission departments shall inform the Council General Secretariat of the schedule anticipated and forward the relevant documents as soon as possible.

3. Close coordination shall be maintained between the Commission and the Special Committee.

- (a) Each negotiating session shall be preceded by a meeting within the Special Committee in order to identify the key problems for the Community and its Member States.

The Presidency shall make the arrangements for this meeting in good time, in consultation with the Commission.

- (b) Coordinating meetings shall be held on the spot throughout the negotiations at the initiative of the Commission or the Presidency.

The Presidency shall make arrangements for such meetings and, if necessary, shall draw up documents on the outcome of the discussions held.

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- (c) Members of the Special Committee shall be invited to attend all of the negotiating sessions.

Talks at which the members of the Special Committee are not present should be exceptional and must not take the place of the normal procedure. In any event the Special Committee must be adequately briefed on any such talks.

During such talks the Commission may be accompanied by a limited number of members of the Special Committee acting as experts. In any event, the Chair of the Special Committee may attend these talks at his/hers request.

- (d) The Commission shall be the spokesman for the Community during the negotiations, and the representatives of the Special Committee shall speak only if requested to do so by the Commission. Furthermore, the representatives of the Special Committee must take no action which is likely to handicap the Commission in its work.

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