

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 24 July 2008

**on the signing and provisional application of a Memorandum of Cooperation between the International Civil Aviation Organisation and the European Community regarding security audits/inspections and related matters**

(2009/97/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council authorised the Commission on 30 November 2007 to open negotiations on an agreement regarding aviation security audits/inspections and related matters between the European Community and the International Civil Aviation Organisation (ICAO).
- (2) On behalf of the Community, the Commission has negotiated a Memorandum of Cooperation with ICAO regarding security audits/inspections and related matters in accordance with the directives set out in Annex I, and the ad hoc procedure set out in Annex II, of the Council Decision authorising the Commission to open negotiations.
- (3) Subject to its possible conclusion at a later date, the Memorandum should be signed and provisionally applied,

HAS DECIDED AS FOLLOWS:

*Article 1*

The signing of the Memorandum of Cooperation between the International Civil Aviation Organisation and the European Community regarding security audits/inspections and related matters is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Memorandum.

The text of the Memorandum is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Memorandum on behalf of the Community subject to its conclusion.

*Article 3*

Subject to reciprocity, the Memorandum shall be applied on a provisional basis as from the signature thereof, pending the completion of the procedures for its formal conclusion.

Done at Brussels, 24 July 2008.

*For the Council*

*The President*

B. HORTEFEUX

**MEMORANDUM OF COOPERATION****between the European Community and the International Civil Aviation Organisation regarding security audits/inspections and related matters**

THE INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO),

and

THE EUROPEAN COMMUNITY (EC),

hereinafter referred to as 'the Parties',

RECALLING the Convention on International Civil Aviation signed at Chicago on 7 December 1944 (hereinafter referred to as the Chicago Convention) and in particular Annex 17 thereto (hereinafter referred to as Annex 17),

BEARING IN MIND ICAO Assembly Resolution A35-9, which directed the Secretary General to continue the ICAO Universal Security Audit Programme (USAP), comprising regular, mandatory, systematic and harmonised security audits of all Contracting States to the Chicago Convention (hereinafter referred to as the Contracting States),

RECALLING Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security <sup>(1)</sup>, (hereinafter referred to as Regulation (EC) No 2320/2002), and Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 <sup>(2)</sup>, (hereinafter referred to as Regulation (EC) No 300/2008) which will replace Regulation (EC) No 2320/2002 upon the adoption of the necessary implementing measures,

NOTING Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security <sup>(3)</sup>, and in particular Article 16 thereof establishing that the European Commission shall take into consideration the planned or recently undertaken security audits of intergovernmental organisations in order to ensure the overall effectiveness of the various security inspection and audit activities,

TAKING INTO ACCOUNT the application of relevant Community law, in particular Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to Parliament, Council and Commission documents <sup>(4)</sup>; and Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure, (hereinafter referred to as Decision 2001/844/EC, ECSC, Euratom), in particular sections 10 and 26 thereof, and its amendments <sup>(5)</sup>,

BEARING IN MIND the fact that most standards contained in Annex 17 are also covered by Regulation 2320/2002 and that the European Commission conducts inspections in Member States of the European Union (hereinafter referred to as the EU) to monitor the application of this Regulation,

CONSIDERING that the primary objectives of the ICAO audit programme and the European Commission's inspection programme are to enhance aviation security by evaluating the implementation of respective standards, identifying deficiencies, if any, and ensuring the rectification of deficiencies, where necessary,

CONSIDERING that it is desirable to establish mutual cooperation in the area of aviation security audits/inspections and related matters in a manner ensuring better use of limited resources and avoiding duplication of efforts, while preserving the universality and integrity of the ICAO USAP programme,

<sup>(1)</sup> OJ L 355, 30.12.2002, p. 1.

<sup>(2)</sup> OJ L 97, 9.4.2008, p. 72.

<sup>(3)</sup> OJ L 213, 23.8.2003, p. 3.

<sup>(4)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(5)</sup> Decisions 2005/94/EC, Euratom, 2006/70/EC, Euratom and 2006/548/EC, Euratom.

CONSIDERING that the European Commission has enforcement powers to ensure the implementation of Community legislation on civil aviation security,

CONSIDERING that the Council of ICAO during its 176th Session directed that, wherever possible, ICAO aviation security audits should be focussed on a State's capability to provide appropriate national oversight; and further requested the Secretary General to explore cooperative arrangements and the most effective use of resources in regions where mandatory regional governmental audit programmes exist,

1. General provisions

- 1.1. Those Standards contained in Annex 17 that are not covered by EC legislation shall fall outside the scope of this Memorandum of Cooperation.
- 1.2. Regarding Standards contained in Annex 17 which are covered by EC legislation, ICAO shall assess the European Commission inspections of the national appropriate authorities of EU Member States in order to verify compliance with these Standards in accordance with paragraph 3 of this Memorandum of Cooperation, of Contracting States bound by Community legislation on civil aviation security.
- 1.3. The implementation of ICAO assessments in the European Community shall be discussed at the request of one of the Parties, but at least once a year.
- 1.4. ICAO auditors may occasionally join the European Commission inspections of EU airports as observers, after an explicit agreement of the EU Member State concerned has been received by the European Commission.

2. Information to be provided to ICAO on European Commission inspections in the European Community

- 2.1. In accordance with Decision 2001/844/EC, ECSC, Euratom, the following EU classified information at level of 'RESTREINT UE' shall be provided to ICAO authorised personnel:
  - A. Common rules and standards in the field of aviation security, adopted in accordance with Article 4(2) of Regulation (EC) No 2320/2002 or Article 4 of Regulation (EC) No 300/2008; and
  - B. As regards European Commission inspections of appropriate authorities of the EU Member States:
    - (a) general information on the planning of European Commission inspections including the schedule of inspections of national appropriate authorities, and any amendment thereof or changes thereto, as soon as they become available;
    - (b) the status of inspection activities of both national appropriate authorities and airports, dates of issuance of the final inspection reports and dates of reception of the action plans from the State concerned;
    - (c) the European Commission inspection methodology;
    - (d) the report of the inspection of the national appropriate authorities together with the action plan received from the State concerned on the inspection of the national appropriate authority, specifying actions and deadlines to remedy any identified deficiencies; and
    - (e) follow-up actions taken by the European Commission on the inspection of the national appropriate authority.

- 2.2. ICAO shall restrict access to EU classified information provided by the European Commission in the context of this cooperation to authorised personnel on a need to know basis only. The authorised personnel shall not disclose this information to any third party. ICAO shall implement any necessary legal and internal mechanisms to protect the confidentiality of the information provided by the European Commission.

- 2.3. The European Commission and ICAO shall agree on further procedures for the protection of classified information provided by the European Commission pursuant to this Memorandum of Cooperation. Such procedures shall include the possibility for the European Commission to verify which protection measures have been put in place by ICAO.
3. ICAO assessments of the European Commission aviation security inspection system
- 3.1. ICAO assessments of the European Commission aviation security inspection system shall consist of an analysis of European Commission requirements and information provided under paragraph 2. Where necessary, ICAO shall visit the European Commission, Directorate-General for Energy and Transport, at its Headquarters in Brussels, Belgium.
- 3.2. Specific terms of reference and practical arrangements for ICAO assessments of the European Commission aviation security inspection system shall be agreed upon through an Exchange of Letters between ICAO and the European Commission.
4. Dispute Resolution
- 4.1. Any difference or dispute concerning the interpretation or the application of this Memorandum of Cooperation shall be resolved by negotiation between the Parties.
- 4.2. Nothing in or relating to this Memorandum of Cooperation shall be deemed a waiver of any of the privileges and immunities of the Parties.
5. Other agreements
- 5.1. This Memorandum of Cooperation does not supersede or prejudice other forms of cooperation between the Parties.
6. Revision — Entry into force
- 6.1. The parties shall review the implementation of this Memorandum of Cooperation at the end of the current phase of the USAP programme, and earlier, if felt necessary by either of the Parties.
- 6.2. Pending its entry into force, this Memorandum of Cooperation shall be applied provisionally from the date of signature.
- 6.3. This Memorandum of Cooperation shall enter into force on the first day of the second month following the last of the two notifications through which the Parties inform each other of the termination of their respective internal procedures.

Done at Montreal on the seventeenth day of September in the year two thousand and eight, in duplicate, in the English language.

*For the European Community*



Patrick GANDIL

*For the International Civil Aviation Organisation*



Roberto KOBEH GONZÁLEZ



Eckard SEEBOHM

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