EC/Canada agreement: civil aviation safety

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PURPOSE: to conclude an Agreement between the EC and Canada on civil aviation safety.

PROPOSED ACT: Council Decision.

BACKGROUND: the Council granted the Commission authorisation to conduct negotiations with Canada on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility on 21 April 2004. The authorisation envisaged an agreement on the reciprocal acceptance of findings focusing mainly on two aspects:

1. products designed, manufactured, modified, or repaired under the regulatory control of one party to be easily issued the necessary approvals to be registered or operated under the regulatory control of the other party;
2. aircraft registered or operated under the regulatory control of one party to be maintained by organisations under the regulatory control of the other party.

The primary objectives of the negotiating directives were to facilitate trade in goods and services covered by the agreement, to limit as much as possible the duplication of assessments, tests and controls to significant regulatory differences and to rely on the certification system of either party to check conformity with the requirements of the other party.

CONTENT: the negotiated Agreement reflects by and large the structure of a "classical" agreement in the area of aviation safety, a "BASA" as are called the existing Bilateral Aviation Safety Agreements between Member States and Canada.

As in the case of the BASAs, **the agreement is based on mutual trust of each other's system and on the comparison of regulatory differences**. Hence, it entails obligations and methods to cooperate between exporting and importing authority so that the latter can issue its own certificate on the aeronautical product without duplicating all the assessments done by the exporting authority as well as dispute resolution procedures for amending the agreement. The means to do so, i.e. to cooperate and mutually accept each other's certification findings in the area of airworthiness and maintenance (methods, scope in terms of products or services, regulatory differences) are set out in the Annexes to the Agreement. These Annexes are binding on both sides and are integral parts of the Agreement. The draft agreement permits the Parties to consider ways to enhance the functioning of the agreement and make recommendations for modifications including addition of new annexes to the agreement via the Joint Committee. It constitutes a net benefit for the Community given that it will establish mutual acceptance of certification findings in all areas of airworthiness for all Member States. It should be noted that currently, only 6 Member States have a bilateral agreement with Canada covering product certification.

Clear rights and obligations for both Parties: the applicable law for the EC is Regulation (EC) N° 216 /2008 which replaced Regulation (EC) N° 1592/2002 and its implementing measures. The Community system is fully reflected in the draft text setting out clearly separation of tasks with regard to certification of aeronautical products and components and organisations involved in the design and manufacture of such products and components.

With regard to **maintenance**, Canada proposed going beyond the remit of article 12(1) of Regulation (EC) N° 216/2008 and issuing approvals on behalf of EASA maintenance organisations located in Canada carrying out maintenance on aircraft and parts designed in the EC, without the need for the Agency to

issue its own certificates/approvals on the basis of certificates/approvals issued by Transport Canada. The Commission considers that the provisions of article 12(1) of Regulation (EC) N° 216/2008 is not an obstacle for the Community to conclude an international agreement whereby certificates issued by the competent authority of the third country are automatically valid in the Community.

Provisions are made to this effect in the Agreement.

- **Clear means to achieve the objectives of the mandate**: the draft stipulates that each party shall accept findings of compliance as results of specified procedures of the other party when these are made according to the provisions of the annexes. It recognises the right of either party's regulatory authority to issue certificates attesting conformity with the system of the other party on behalf of that other party. The Agreement ensures that confidence is maintained in each other through the appropriate mechanism – it provides for a system of continual cooperation and consultation that is put in place by means of enhanced cooperation in the framework of audits, inspections, timely notifications and consultations on all matters falling within its scope.
- **Regular consultations and rapid dispute resolution**: the draft agreement is designed to work smoothly on a daily basis so as to solve technical issues arising from its implementation as quickly as possible. To that end a Joint Committee of the Parties is created, as well as sub-committees – the Joint Sectoral Committee on Certification and the Joint Sectoral Committee on Maintenance – reporting to the Joint Committee of the Parties and monitoring the application of the Annexes. The Joint Committee is entrusted with discussing and recommending to the Parties any amendments to the agreement and its annexes and with developing working procedures on regulatory cooperation and transparency for all activities which are not developed by the sub-committees.
- **Maintain a high degree of confidence in each other's system**: the Parties will ensure through regular audits that national aviation authorities which have been notified as "competent authorities" remain capable of fulfilling their obligations stemming from the agreement and its annexes. Parties will also cooperate on quality assurance, standardised inspections and conformity assessments, as well as exchange safety data. Unlike the USA, Canada has not insisted on a confidence building process consisting of inspections of EASA or the national aviation authorities.
- **Strong safeguard measures**: the Agreement makes provision for special procedures to enable the Parties to react immediately to safety problems or to set up a higher level of protection they consider appropriate for safety.