EU/Brazil Agreement: civil aviation safety

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PURPOSE: to conclude an Agreement between the EU and Brazil on civil aviation safety.

PROPOSED ACT: Council Decision.

LEGAL BASES: Articles 100(2) and 207(4) in conjunction with Article 218(6)(a) and the first subparagraph of Article 218(8) of the Treaty on the Functioning of the EU.

BACKGROUND: the Council granted the Commission authorisation to conduct negotiations with Brazil on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility on 9 October 2009 and instructed the Commission to carry out these negotiations in accordance with a set of negotiating directives and appointed a special committee to assist it in this task. The authorisation stated that an agreement between the EU and Brazil should ensure that:

(a) 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;

(b) 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 draft agreement and two annexes on certification of airworthiness and on maintenance respectively were agreed ad referendum in Rio de Janeiro in March 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

CONTENT: the content of the Agreement between the EU and Brazil may be summarised as follows:

Clear rights and obligations for the Parties: the applicable law for the EU is Regulation (EC) N° 216 /2008 and its implementing measures. The EU system is fully reflected in the draft text setting out clearly a 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, while Brazil's National Civil Aviation Agency (ANAC) staff qualification process has been found comprehensive, certain processes regarding training remain to be fully implemented. By the same token, the surveillance of maintenance organisations is performed through an extensive yearly audit by two ANAC auditors using detailed checklists. Since ANAC and EASA have only recently started to cooperate in the area of maintenance, in order to provide for a full reassurance of the Brazilian oversight system and to maintain confidence in that system, the Agreement proposes to proceed to full recognition of the certification and oversight carried out by ANAC only when the capability to ensure the oversight of maintenance organisations has been demonstrated. Once such capability has been demonstrated, it is proposed that as in the case of the bilateral agreement between the EU and Canada on civil aviation safety, ANAC will be in a position to issue approvals on behalf of EASA to maintenance organisations located in Brazil 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 ANAC.

This is in line with the European legal requirements set out in Regulation (EC) N° 216/2008 which provides that in the framework of an international agreement certificates "may" be issued by EASA or Member States' authorities on the basis of certificates issued by third country authorities. The Commission considers that these provisions are not an obstacle for the EU to conclude an international agreement whereby certificates issued by the competent authority of the third country are automatically valid in the EU. With this in mind the agreement provides in the area of maintenance for transitional arrangements to build confidence. The parties agree that for the purposes of the Maintenance Procedure:

- compliance with the applicable legislation relating to maintenance of one party and with the regulatory requirements specified in its Appendix B1 amounts to compliance with the applicable legislation of the other Party;
- each Party's Competent Authorities certification practices and procedures provide for an equivalent proof of compliance with the requirements referred to above;
- the respective standards of the Parties pertaining to licensing of maintenance personnel are considered to be equivalent.

Clear means to achieve the objectives of the mandate: the draft Agreement**:**

- 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;
- 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;
- 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.

Increased cooperation on safety policy through transparency and exchange of safety information: it is proposed that the Partiesexchange information and data, and develop joint programmes in order to increase capabilities to mitigate potential risks for civil aviation with a view to implementing an oversight system for all aircraft operating in their territories.

While safeguarding confidentiality of sensitive (proprietary) information, the agreement gives the two sides the possibility

- of providing each other, on request and in a timely manner information and assistance related to accidents, incidents or occurrences related to the matters covered by the agreement, and
- of exchanging other safety information relating to aircraft operations and results of surveillance activities including of ramp inspections on aircraft using the airports of each Party in accordance with procedures developed by ANAC and EASA.

Regular consultations and rapid dispute resolution: aJoint Committee of the Parties is created, as well as sub-committees – the Joint Sectorial 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 as well as the sub-committees has both consultation and mediation functions, so as to ensure the smooth functioning of the agreement by providing a forum for resolving differences between the parties. It is entrusted with 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. In this way, discussions in the areas which are not covered by the two annexes but are covered by EU law (e.g. aircraft operations, licences or synthetic training devices) can be discussed in a constructive manner so as to pave the way for any future modification of the agreement. Consultations can be requested at any time. Nevertheless, the

parties should take all efforts to try to solve technical issues at the lowest possible level before they become disputes.

Maintain a high degree of confidence in each other's system: the two Parties assume certain obligations:

- to notify the other party of the identity of "competent authority"; for the EU this entails a notification to the Brazilian side that a national aviation authority has been successfully audited (by EASA) and that this audit shows that this authority fully complies with the EU legislation, that it is familiar with the requirements of the Brazilian legislation in the relevant areas and that it is capable of carrying out the obligations affecting certification and maintenance stemming from the annexes;
- to ensure through regular audits that national aviation authorities which have been notified as "competent authorities" to the other side remain capable of fulfilling their obligations stemming from the agreement and its annexes;
- to cooperate in quality assurance and permit the participation of each other in standardisation inspections and conformity assessments of each other (authorities and undertakings);
- to exchange safety data – available information on accidents, incidents or occurrences and to ensure appropriate confidentiality when exchanging information;
- to notify each other all applicable requirements and to consult each other on regulatory and organisational changes at an early stage.

Strong safeguard measures: the text willafford the parties the necessary flexibility to react immediately to safety problems or to set up a higher level of protection they consider appropriate for safety. In order to enable the two sides to deal with such situations without putting at risk the validity of the agreement, specific procedures are provided for. However, should the parties be unable to remedy satisfactorily a specific situation, the text provides firstly for the possibility to suspend acceptance of the findings of the contested Competent Authority, and secondly for means and procedures to be followed for the termination of a part of the agreement or of its entirety.

BUDGETARY IMPLICATIONS: this proposal has no implications for the budget of the Union.