



AIR CARGO SECURITY POLICY NEWSLETTER

EU – ICAO Memorandum of Cooperation

with related decision by UK House of Commons Select Committee on European Scrutiny

Apr 4, 2011

This issue of the newsletter follows the EU-US Aviation Security Agreement discussion in a previous edition with a review of the *“Council Decision on the signing, on behalf of the Union, and provisional application of a Memorandum of Cooperation (MOC) between the European Union and the International Civil Aviation Organisation (ICAO) providing a framework for enhanced cooperation”*.

The inclusion in the newsletter of a UK Parliament Select Committee assessment and decision on the draft of this MOC provides insight into the challenges the

Commission faces from major EU Member State Governments’ when drafting legislation to enhance the security of all of its citizens.

Member State reservations notwithstanding, the success of DG- MOVE in establishing the ICAO MOC is significant, as it provides the Commission with direct access to ICAO security information relating to third-countries.

This Council decision further indicates that over time, EU industry stakeholders could obtain security benefits relating to standards and mutual recognition, similar to those incorporated in EU third-country aviation safety agreements.



Highlights from the EU-ICAO MOC

At the 3080th Council meeting on Transport, Telecommunications and Energy held in Brussels, on 31 March 2011, the Council authorised the signing and provisional application of the MOC which provides a framework for enhanced cooperation in the areas of aviation safety and security, air traffic management, and environmental protection.

It includes provisions for on-going dialogue, consultation, exchange of information and expertise, and participation in audit and inspection programmes.

Financing by the EU of specific actions and posting of experts to the ICAO secretariat are authorised.

With the signature of the MOC the Commission will obtain formal access to ICAO third-country security findings, information previously only available to sovereign (EU) State signatories to the Chicago Convention that established ICAO.

Enhancing cooperation between ICAO and the EU was proposed in the November 2010 'Study on the Legal Situation Regarding Security of Flights from Third-countries to the EU'

¹prepared by Innovative Compliance and DLA Piper for DG-MOVE, also described in the March 29 newsletter, as follows: *"The report therefore recommends that, in addition to establishing and coordinating its own sources of information, the EU should continue to seek to establish a mechanism by which it is able to access ICAO information, for example through enhanced engagement with ICAO (Recommendation 2)".*

A press release issued by the Council commented *"Close cooperation with ICAO is essential, as the standards and requirements adopted by this UN agency also form the basis for EU legislation"*.

"The memorandum of cooperation is the result of negotiations led by the Commission in accordance with a mandate granted by the Council in December 2009. It will be provisionally applied as from the date of the signing, which is expected to take place in early May"

The EU-ICAO MOC establishes cooperation between the parties in the areas of aviation safety; aviation security; air traffic management; and environmental protection. It provides for the following forms of cooperation:

- establishing mechanisms for consultation, coordination and cooperation and exchange of information;
- facilitating the harmonisation of performance requirements and interoperability of new technologies and systems;
- coordinating respective audit and inspection programmes and results and technical assistance activities with a view to making better use of limited resources and avoiding duplication of efforts;
- exchange information on compliance with ICAO standards;
- establish arrangements for the EU to offer expertise and resources to ICAO, including in the form of secondments under the exclusive authority of the Secretary General, technical assistance and specialised training, where practicable;

¹http://ec.europa.eu/transport/air/studies/doc/security/2010_11_security_flights_3rdcountries-eu.pdf



- allow participation by one Party in the activities of the other Party relating to audit and inspection programmes and training programmes, as appropriate, while EU observers may participate in ICAO audit missions of EU States only with the consent of the latter, EU experts participating in ICAO audits under secondment as ICAO auditors shall keep any information related to the audit mission as strictly confidential in accordance with applicable ICAO rules; and
- without prejudice to non-disclosure obligations of either party and subject to the application of respective confidentiality rules as laid down in Article 6, share electronic information, data and official publications and provide mutual access to databases and strengthen links between them in order to complement each other's existing databases.

The full text of the EU-ICAO Memorandum of Cooperation can be viewed at:
<http://register.consilium.europa.eu/pdf/en/11/st07/st07702.en11.pdf>

UK House of Commons Select Committee on European Scrutiny

Assessment and decision relating to the draft EU-ICAO MOC 23 March 2011 [*Verbatim text*]

“ *Committee's assessment* *Politically important*
Committee's decision *Not cleared; further information requested*

Background

3.1 *The International Civil Aviation Organization (ICAO), a UN Specialised Agency, is tasked with achieving the safe, secure and sustainable development of civil aviation through cooperation amongst its 190 member states. The ICAO's chief means of pursuing its goals is through the development of standards in such areas as safety, security, environment and air traffic management. These ICAO standards form the basis for EU aviation legislation and some standards, such as environmental standards for aircraft, are taken into EU law without amendment. The Commission therefore regards it as essential to engage closely in the work of ICAO in order to contribute to sound global aviation policies and to protect EU interests.*



3.2 In December 2009 the Council gave the Commission a mandate to negotiate a Memorandum of Cooperation between the EU and the ICAO. The negotiations were carried through during the course of 2010 and the Memorandum of Cooperation was initialled on 27 September 2010 during the opening of the 37th ICAO Assembly.

The documents

3.3 These documents are a Council Decision to formally approve signature of the Memorandum of Cooperation and make it provisionally applicable, triggering the creation of a joint committee, document (a), and one to conclude it, document (b).

3.4 The Memorandum of Cooperation is intended to be a framework for an enhanced cooperation between the EU and ICAO in the key areas of aviation safety, aviation security, air traffic management and environmental protection. Each of these areas will form a specific annex to the Memorandum. So far only the safety annex has been agreed. The others will be adopted progressively by the joint committee.

The Government's view

3.5 The Minister of State, Department for Transport (Mrs Theresa Villiers), first commenting on subsidiarity, says that:

- the Commission's explanatory memorandum states that the Memorandum of Cooperation covers issues where the EU has competence and where relations with ICAO need to be maintained at the EU level;

- the Government accepts that aviation safety, security, environmental protection and air traffic management contain elements where EU competence has been established;
- nonetheless it is clear that the Memorandum would expand the role of the Commission at the ICAO to a considerable degree and could therefore be viewed as a step towards the Commission supplanting the role of Member States in what is an international body constitutionally made up of sovereign states; and
- this is an important point of principle which is a concern to the Government.

3.6 The Minister comments further that:

- the Government accepts that there are areas of aviation policy where enhanced cooperation between the EU and ICAO could bring benefits;
- it believes, however, that the important principle, preservation of the position of Member States at the ICAO, is at stake;
- it considers that an effect of this agreement could be to undermine that position, which could eventually lead to the Commission securing overall competence in ICAO matters through full membership of the organisation;
- the Government considers that this aim would be detrimental to EU interests at the ICAO and to the interests of individual Member States;



- *it does not consider that the statements made by the Commission during the negotiations on the mandate, that the proposal was not intended to affect relations between individual Member States and ICAO nor to affect the arrangements for preparing EU positions for meetings of the ICAO Council (repeated in paragraph 2 of the Memorandum), give complete reassurance that the agreement implies no significant transfer of influence between Member States and the Commission at the ICAO; and*
- *on the basis of this assessment of the potential impact of the Memorandum of Cooperation on the position of Member States at the ICAO the Government proposes to abstain from supporting the draft Decisions when they are discussed at Transport Council.*

3.7 Turning to the financial implications of the proposals the Minister says that:

- *support for this cooperation, of €500,000 (£426,000) per year for an initial period of three years is envisaged within the framework of the Financial and Administrative Framework Agreement between the EU and the United Nations;*
- *the Commission's explanatory memorandum leaves open the possibility that this budget could be complemented by financial support from Member States or the European Aviation Safety Agency; but*
- *there are no financial commitments imposed on the UK.*

3.8 Finally, the Minister, noting that the Hungarian Presidency intends to seek adoption of the draft Decision on the signature and provisional application of the Memorandum of Cooperation, document (a), at the Transport Council on 31 March 2011, says that it will then, in April 2011, continue work on the Council Decision on the Memorandum's conclusion, document (b). She comments that this will allow time for in-depth discussion of the inclusion of more detailed rules as regards the procedure to follow concerning the EU position to be taken in the joint committee”.

“Committee Conclusion

3.9 Although we can see the utility of the Memorandum of Cooperation, we note the important subsidiarity issue raised by the Minister and the Government's intention to abstain from support for the draft Decisions. However, given the subsidiarity point, we do not understand why the Government does not intend to vote against the proposals — we should be grateful for an explanation of this intention. Meanwhile the documents remain under scrutiny. “

The full text of the Committee's assessment and decision can be viewed at:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428-xxi/42805.htm>

