



# AIR CARGO SECURITY POLICY NEWSLETTER

EU – US Aviation Safety Agreement

Mar 29, 2011

This issue of the newsletter discusses the EU - US agreement on cooperation in the regulation of civil aviation safety.

On March 15<sup>th</sup>, 2011, the Council authorised the conclusion of an agreement between the EU and the US on cooperation in the regulation of civil aviation safety (*originally*) signed in June 2008. This agreement will enter into force on 1<sup>st</sup> May 2011.

*“ The purpose of the agreement is to enable the reciprocal acceptance of findings of compliance and approvals, promote a high degree of safety in air transport and ensure regulatory cooperation and harmonisation between*

*the United States and the EU as regards airworthiness approvals and monitoring of civil aeronautical products, environmental testing and approvals of such products, and approvals and monitoring of maintenance facilities”.*

The above statement was recorded in a press release of the Council of the European Union, entitled: EU and US conclude agreement on civil aviation safety<sup>1</sup>

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<sup>1</sup>[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/trans/119884.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/119884.pdf)



Although not addressing aviation security, this important agreement is an example of reciprocity between EU and US aviation certification agencies, and as such will contribute to the establishment of a “level playing field” for EU and US manufacturers and suppliers of aviation products and maintenance services

A major benefit of this approach is that this agreement has been signed by the US and the EU administrations, each represented by one central aviation agency; the Federal Aviation Administration (FAA) in the US; and, the European Aviation Safety Agency (EASA), representing the aviation safety agencies of all EU Member States.

In addition to highlighting the elegant and straightforward language of this legislation in an Appendix to the newsletter, the editors believe that the establishment of an EU Aviation Security Information Agency could permit the conclusion of security arrangements in a similar manner. Establishing such an agency was recommended in the November 2010 “Study on the Legal Situation Regarding Security of Flights from Third-countries to the EU”<sup>2</sup> prepared by Innovative Compliance and DLA Piper for the EU Directorate General for Mobility and Transport (the third-countries aviation security study), and is surely relevant to the on-going debate on the subject of third-country validations.

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[http://ec.europa.eu/transport/air/studies/doc/security/2010\\_11\\_security\\_flights\\_3rdcountries-eu.pdf](http://ec.europa.eu/transport/air/studies/doc/security/2010_11_security_flights_3rdcountries-eu.pdf)

### **The EU – US Safety Agreement**

The full title of this legislative instrument is:

“Agreement between the United States of America and the European Community on Cooperation in the Regulation of Civil Aviation Safety” (the EU - US safety agreement)

In a press release issued by the United States Mission to the EU<sup>3</sup>

*“On March 15, the United States and the European Union exchanged diplomatic notes bringing into force an agreement on regulatory cooperation in civil aviation safety effective 1 May 2011.*

*This agreement allows the Federal Aviation Administration and European regulators to share aviation safety information and cooperate in the certification of civil aircraft, the US and European market for which is estimated to be worth \$1.5 trillion through 2029.*

*In addition, it allows authorities to rely on each other for inspections and oversight of aeronautical maintenance organizations and can be expanded to include areas such as pilot licensing and training.*

*Welcoming the agreement, Ambassador Kennard said, “This demonstrates our mutual commitment to aviation safety and regulatory cooperation in one of the most important areas of transatlantic trade.”*

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<sup>3</sup>[http://useu.usmission.gov/useu\\_agreement\\_031511.html](http://useu.usmission.gov/useu_agreement_031511.html)



In a related press release issued in Washington DC, on March 15, 2011, The General Aviation Manufacturers Association (GAMA)<sup>4</sup> states “

*“GAMA welcomes the completion of the final step required for implementation of the landmark U.S. - EU Aviation Safety Agreement. Following an exchange of diplomatic notes earlier today in Brussels between the U.S. and the European Commission, the agreement will enter into force on May 1, 2011.*

*GAMA President and CEO Pete Bunce stated, “It has been a long and sometimes challenging road toward implementation, but today is a very good day for the U.S. and European aviation industries. It would be difficult to overstate the importance of this agreement for the continued health and vitality of general aviation and for international aviation safety cooperation between the Federal Aviation Administration and the European Aviation Safety Agency.”*

*Implementation is vitally important to the entire aviation industry. Specifically for manufacturers, it will streamline transatlantic regulatory cooperation on certification, continued airworthiness and maintenance. The agreement creates the ultimate “one-stop shop” by reducing redundant certification activities through validation and acceptance of design approvals and repairs*

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<sup>4</sup> GAMA is an international trade association representing 70 of the world's leading manufacturers of general aviation aircraft, engines, avionics and related equipment. GAMA's members also manage fleets of aircraft, fixed based operations, and pilot training and maintenance training facilities. GAMA is headquartered in Washington, DC, with a European office in Brussels, Belgium. [GAMA Statement]

*between all 27 European Union (EU) member states and the U.S.*

*Moreover, as the European Aviation Safety Agency's (EASA) authority is extended to areas not currently covered under the agreement, the two sides will be able to negotiate new annexes to the bilateral agreement that will cover important areas such as pilot licensing and training. In addition, implementation will provide a mechanism to resolve the long-running dispute over unfair certification fees assessed by EASA on U.S. manufacturers.*

*With this major step completed, GAMA strongly urges the FAA and the European Commission to move promptly on the vital next steps. First and foremost is the establishment of the institutional mechanisms and implementation procedures called for in the agreement, but also a list of priority items for follow-on action, such as a new annex on licensing and training and another on operations.*

*“GAMA congratulates the many dedicated aviation safety professionals from both sides of the Atlantic who worked hard to bring this important agreement to fruition,” added Bunce.”*

The formal decision of the Council of Europe can be viewed at:

<http://register.consilium.europa.eu/pdf/en/11/st06/st06821.en11.pdf>

The full US - EU agreement can be viewed at:

<Http://register.consilium.europa.eu/pdf/en/09/st08/st08312.en09.pdf>



## Applicability of this legislation to Aviation Security

In the above mentioned third-countries aviation security study the relevance and/or equivalence of aviation safety legislation as a model for enhancing aviation security in third-countries was reviewed in Chapter 7 – the Air Safety Framework.

In the conclusion to this chapter the following findings were reported:

*“.....The development of EU air safety regulations, the sharing of safety audit information, the existence of the Community list of air carriers subject to an operating ban (the “black-list”) and the authorisation process under article 9 of Regulation (EC) No. 216/2008<sup>5</sup> governing foreign carriers, are measures that are viewed as having benefited and enhanced the safety of third-country air carriers operating to the EU. This study considered the applicability of such a model to security of flights from third-countries.*

*The ICAO safety model is viewed as having been successful in many ways, and specifically in reducing the rate of safety related accidents involving passenger fatalities in scheduled air transport operations worldwide.....*

*The recognition by ICAO of EASA as a “responsible authority” that requires access to ICAO information in order to act on behalf of Member States that are*

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<sup>5</sup> Regulation (EC) No. 216/2008 of 20 February 2008 on common rules in the field of civil aviation and establishing a European Safety Agency, and repealing Council Directive 91/670/ECC Regulation (EC) No. 1192/2002 and Directive 2004/361EC

*contracting parties to the Chicago Convention provides unofficial direct access to ICAO safety information....”*

A key recommendation of this Study was the establishment of an EU Aviation Security Information Agency as follows:

*“.....To enhance information sharing between Member States about security risks and vulnerabilities, the EU should consider establishing an EU Aviation Security Information Agency, which would serve as centralized body to obtain, receive and analyse information relating to third-country aviation security standards and their enforcement locally. The agency would liaise with Member State authorities and EU agencies as appropriate, for example through providing risk assessment recommendations to the AVSEC committee (regarding airport evaluation and air carrier certification). The new agency could be in addition to, but not in substitution for, Member States national aviation security responsibilities.<sup>6</sup>*

*It envisaged that an EU Aviation Security Information Agency would be in a position to implement the various recommendations contained in this report that relate to establishing additional sources of information (such as Recommendations 3 and 4). In so doing, such an agency may be able to produce a more accurate picture of security compliance in third-countries than would be possible if the different strands of information were not combined, and could, when required, target its information*

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<sup>6</sup> The notion of the European Security Agency was raised during the Austrian EU presidency in 2006.



*gathering activities (such as ex-post security checks) in response to intelligence.*

*An EU Aviation Security Information Agency may also be ideally positioned to undertake, or be responsible for, a number of the other recommendations contained herein relating to the EU taking effective and coordinated remedial action in the event that it has sufficient information about a particular third-country's non-compliance with the requirements of Annex 17 of the Chicago Convention.....”*

### **Implications of the aviation safety approach to the third-country security (and validation) debate.**

The EU – US safety agreement illustrates the benefits associated with one single EU wide-agency negotiating and entering into agreements on behalf of Member States with one or more third countries represented by one national agency. This is evidenced by sophistication of the drafting and the lack of complexity.

Imagine the existence of an EU wide aviation security agency, entering into agreements with the US Transportation Security Administration (TSA) to implement “one stop security”, ensuring mutual recognition of security certifications under the EU known consignor and the US certified cargo screening security regulations, and accepting the equivalence of the security controls performed by EU and US accredited parties.

This approach would also reduce the challenges facing the Community with respect to the validation of air cargo stakeholders in third-countries.

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## Appendix – The EU – US Safety Agreement

To illustrate the powerful, elegant and concise drafting of the EU – US aviation safety agreement and to allow newsletter readers to imagine a similar agreement in the field of aviation security, the editors have extracted a number of elements from the text of the safety agreement:

### *Parties to the agreement:*

THE UNITED STATES OF AMERICA, and  
THE EUROPEAN COMMUNITY hereinafter  
referred to as "the Parties",

### *Preamble:*

DESIRING to build upon decades of trans-Atlantic cooperation in civil aviation safety and environmental testing and approvals;

SEEKING to improve the long-standing cooperative relationship between Europe and the United States to ensure a high level of civil aviation safety worldwide and to minimize economic burdens on the aviation industry and operators from redundant regulatory oversight;

COMMITTED to ensuring the continued operational safety of the civil aviation fleet and the timely exchange of in-service information;

COMMITTED to developing a comprehensive system of regulatory cooperation in civil aviation safety and environmental testing and approvals based on continuous communication and mutual confidence; and

ACKNOWLEDGING the rights and obligations of the United States and Member States of the European Community (the "Member States") under the Convention on International Civil Aviation done at Chicago on 7 December 1944 ("Chicago Convention") and its annexes.

### *Definitions:*

For the purposes of this Agreement, the term:

A. "Airworthiness approval" means a finding that the design or change to a design of a civil aeronautical product meets applicable standards or that an individual product conforms to a design that has been found to meet those standards and is in a condition for safe operation.

B. "Aviation Authority" means a responsible government agency or entity of a European Union Member State that exercises legal oversight on behalf of the European Community over regulated entities and determines their compliance with applicable standards, regulations, and other requirements within the jurisdiction of the European Community.

C. "Civil aeronautical product" means any civil aircraft, aircraft engine, or propeller, or appliance, part, or component to be installed thereon.

D. "Environmental approval" means a finding that the design or change to a design of a civil aeronautical product meets applicable standards concerning noise, fuel venting or exhaust emissions.

E. "Environmental testing" means a process by which the design or change to a design of a civil aeronautical product is evaluated for compliance with applicable standards and procedures concerning noise, fuel venting or exhaust emissions.

F. "Technical Agent" means, for the United States, the Federal Aviation Administration (FAA); and for the European Community, the European Aviation Safety Agency (EASA).



G. "Maintenance" means the performance of any one or more of the following actions: inspection, overhaul, repair, preservation, or the replacement of parts, materials, appliances, or components of a civil aeronautical product to assure the continued airworthiness of such a product; or the installation of previously

approved alterations or modifications carried out in accordance with requirements established by the appropriate Technical Agent.

H. "Monitoring" means the periodic surveillance to determine continuing compliance with the appropriate standards.

I. "Regulated entity" means any natural or legal person whose civil aviation safety and environmental testing and approval activities are subject to the statutory and regulatory jurisdiction of one or both of the Parties.

*Article 2 - Purpose and Scope:*

A. The purposes of this Agreement are to:

- 1) enable the reciprocal acceptance, as provided in the Annexes to this Agreement, of findings of compliance and approvals issued by the Technical Agents and Aviation Authorities;
- 2) promote a high degree of safety in air transport;
- 3) ensure the continuation of the high level of regulatory cooperation and harmonization between the United States and the European Community in the fields covered in paragraph B.

B. The scope of cooperation under this Agreement is:

- 1) airworthiness approvals and monitoring of civil aeronautical products;
- 2) environmental testing and approvals of civil aeronautical products; and

3) approvals and monitoring of maintenance facilities.

C. The Parties may agree to additional areas of cooperation and acceptance by written amendment of this Agreement in accordance with Article 19.

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*Article 4 – General Provisions:*

A. Each Party shall accept findings of compliance and approvals made by the other Party's Technical Agent and, in the case of the United States those made by Aviation Authorities, in accordance with the terms and conditions set forth in the Annexes to this Agreement.

B. Except as specified in the Annexes to this Agreement, this Agreement shall not be construed to entail reciprocal acceptance or recognition of standards or technical regulations of the Parties.

C. The Parties shall recognize each other's systems of delegation to designees or regulated entities existing as of the date of entry into force of this Agreement as equivalent for the purpose of complying with each Party's respective legal requirements. The Parties shall give findings of compliance made by these designees or regulated entities, in accordance with the provisions in the Annexes, the same validity as those made directly by a Technical Agent or Aviation Authority. Delegation systems implemented after the date of entry into force of this Agreement shall be subject to confidence building measures.

D. The Parties shall ensure that their Technical Agents and Aviation Authorities fulfil their responsibilities under this Agreement, including its Annexes.

E, F .....



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*Article 6 - Regulatory Cooperation and Transparency:*

A. The Technical Agents shall develop and adopt procedures for regulatory cooperation in civil aviation safety and environmental testing and approvals, taking into account relevant guidelines on regulatory cooperation between the Parties. Those procedures shall include the opportunity for consultation and participation, whenever possible, of experts from one Party's Technical Agent, Aviation Authorities, and industry in the early stages of drafting civil aviation regulatory materials by the other Party.

B. Subject to the availability of funds, the Parties shall ensure continued trans-Atlantic cooperation on significant aviation safety initiatives, as appropriate.

*Article 7 - Cooperation in Quality Assurance and Standardization Inspection Activities*

To promote the continued understanding of and compatibility between each Party's civil aviation safety regulatory systems, each Technical Agent may participate in the other's internal quality assurance and standardization inspection functions related to accreditation and monitoring, as provided in the Annexes.

*Article 8 - Cooperation in Enforcement Activities:*

The Parties agree, subject to applicable laws and regulations to provide through their Technical Agents or Aviation Authorities as appropriate mutual cooperation and assistance in any investigation or enforcement proceedings of any alleged or suspected

violation of any laws or regulations under the scope of this Agreement. In addition, each Party shall notify the other promptly of any investigation when mutual interests are involved.

*Article 9 – Exchange of Safety Data*

The Parties agree, subject to applicable laws and regulations

A. To provide each other, on request, and in a timely manner, information available to their Technical Agents related to accidents or incidents involving civil aeronautical products or regulated entities, and

B. To exchange other safety information in accordance with procedures developed by the Technical Agents.

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*Article 16 - Other Agreements*

A. Except as otherwise specified in the Annexes to this Agreement, rights and obligations contained in any agreement concluded by either Party with a third party shall have neither force nor effect upon the other Party under this Agreement.

B. In light of and upon entry into force of this Agreement, the United States of America shall take necessary measures, and the European Community shall ensure pursuant to the Treaty establishing the European Community that the Member States of the European Union take necessary measures to amend or terminate, as appropriate, the bilateral agreements listed in Attachment 1 between the United States and individual Member States of the European Union.

