



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.8.2009
SEC(2009) 1097 final

Recommendation for a

COUNCIL DECISION

authorising the Commission to negotiate a bilateral agreement between the European Community and Brazil on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility

EXPLANATORY MEMORANDUM

1. THE INTERNATIONAL BACKGROUND

1. As it is widely acknowledged, civil aviation is a heavily regulated activity because of its potential impact on the safety of passengers and people on the ground. This is particularly true for the regulation of the airworthiness and continued oversight of aircraft and components fitted thereon, including that of organisations and personnel involved in their design, manufacture, maintenance and operation. In these fields, States have developed comprehensive systems of regulations and certification such that no aircraft can fly (including its pilot), no component can be fitted on them unless they have been certified and traceability is ensured to follow their continued airworthiness and aptitude for the persons operating such aircraft. In the same vein, organisations in charge of the design, manufacture, maintenance and operation of such products are subject to approval or inspection. Maintenance personnel are required to be licensed and organisations involved in their training are subject to oversight, more or less stringent, depending upon the State where they are established. Similar principles and processes apply to the operation of aircraft and to organisations and crew involved in such operations and their training including the training devices (simulators) used for that purpose, as well as to the environmental certification of aeronautical products.
2. It is also widely known, that trade in aeronautical products - aircraft engines, propellers, parts and appliances, needs a minimum of harmonisation to avoid that operators engaged in commercial or non commercial operations are subject to conflicting requirements when flying from one State to another. International co-operation has therefore been organised, to allow States to recognise each other's systems of certification and exercise of oversight when minimum standards and recommended practices established in the Annexes to the 1944 Chicago Convention applicable to aircraft, operators and crew are complied with. Conversely, compliance entitles the holders of appropriate certificates issued by a Contracting State to that Convention to fly over the territory of any other Contracting State. Such harmonisation however only provides for the interoperability of the international civil aviation system and falls short of allowing the free movement of products, services and personnel.
3. The system put in place by the Chicago Convention recognises indeed the right of each Contracting State to be more demanding as far as its own operators, including products they use and personnel they employ are concerned. That allows States in particular to adjust the level of protection to the expectations of their citizens. In addition ICAO standards set general objectives but leave a large margin of discretion to its Contracting States as to the detailed regulatory means to implement to meet the minimum standards and recommended practices. Altogether that has had for consequence over the years that States have relatively different regulatory systems and that certificates, approvals and licences issued by one State are not automatically showing compliance with the requirements of another State.

2. THE COMMUNITY FRAMEWORK

4. The European Community introduced in 2002 a set of common rules for the civil aviation and created the European Aviation Safety Agency¹. These rules established the framework and the essential requirements for a high and uniform level of protection for European citizens and ensured through the adoption of implementing measures² that products, persons and organisations in the Community comply with such rules and those adopted to protect the environment. These rules were designed to facilitate the free movement of goods, persons and organisations in the internal market. The framework established in 2002 was modernised and extended in 2008³ to encompass aeronautical products, parts and appliances, operators involved in commercial air transport, as well as pilots and persons, products and organisations involved in their training and medical examination and to require their certification or licensing once they have been found to comply with essential requirements in line with standards and recommended practices set by the Chicago Convention.
5. Since 2002 the common rules on safety explicitly promote the cooperation with third countries with a view to achieving efficiently the objectives of the European safety system. Accordingly, Regulation (EC) N° 216/2008 also allows for the recognition by the Community of approvals granted to foreign products, parts and appliances, organisations and personnel by a third country subject to appropriate Community control. In absence of such an agreement, Member States are allowed to recognise though agreements concluded at their level the approvals granted to foreign products, parts and appliances, organisations and personnel by a third country.
6. The removal of technical obstacles to trade is an objective of the common commercial policy, and thus falls under the exclusive competence of the Community. Moreover, with the adoption of the common rules on civil aviation and the establishment of a European Aviation Safety Agency (EASA) the Community has achieved internal harmonisation in the fields covered by them.
7. This is clearly acknowledged in Regulation (EC) N° 216/2008 whose article 12(1) stipulates:
"By way of derogation from the provisions of this Regulation and the rules adopted for its implementation, the Agency or the aviation authorities in the Member State may issue certificates on the basis of certificates issued by aeronautical authorities of a third country, as provided for in recognition agreements between the Community and that third country."

¹ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, OJ L 240, 07/09/2002, p. 1 - 21

² Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ L 243, 27/09/2003, p. 6 – 79 and Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, OJ L 315, 28/11/2003 p. 1 - 165

³ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC, OJ L 079, 19/03/2008 p. 1 - 49

3. RELATIONS WITH BRAZIL

8. To facilitate the issuance of certificates and approvals, national regulators have for years developed various types of arrangements among themselves. They range from “outsourcing contracts” whereby the exporting state accepts to conduct defined certification and continued oversight tasks on behalf of importing States so as to facilitate their issuing and maintaining certificates or approvals, to full bilateral commitments covering the reciprocal acceptance of certification findings for some or all possible certification tasks in the field of airworthiness. Such scope depends of the trade needs and the level of reciprocal trust and confidence of the parties.
9. To date, one Member State (UK) has been cooperating with Brazil de facto through a working arrangement since though without formalising such arrangement for the import of certain products manufactured outside the UK. Another Member State (Italy) concluded in May 2000 a memorandum of understanding for airworthiness with Brazil. However, there are no bilateral agreements between Member States and the Government of Brazil providing for the mutual recognition of certification findings in the area of initial and continued airworthiness or of maintenance.
10. The European Aviation Safety Agency has been cooperating since February 2004 by means of a working arrangement concluded in accordance with article 27 of Regulation (EC) N° 216/2008 with the National Agency for Civil Aviation (ANAC) of Brazil.
11. The working arrangement provides for the export to the Community of certain aeroplanes, parts and appliances designed and manufactured by Embraer Empresa Brasileira de Aeronáutica S.A (Embraer) where ANAC accepts EASA as the airworthiness authority of the importing Member States of the Community. The benefit of this Arrangement lies in the elimination of redundant review of reports, duplication of inspections, tests and test demonstrations, evaluations and approvals, thereby enabling maximum acceptance of ANAC findings by EASA. Thanks to confidence building visits and comparison of certification procedures and requirements, EASA has accepted to recognise the ANAC designee approval system as part of the overall aircraft certification system for specific aeroplanes types, parts and appliances set out in the working arrangement. Findings made pursuant to this arrangement by the designee approval system are given the same validity as those made directly by ANAC. However, nothing prevents EASA from directly interacting with an individual designee. Indeed, ANAC and EASA have been smoothly cooperating to also allow Brazilian designees to make findings of compliance and/or perform conformity inspections in the EC.
12. This Arrangement covers: a) the acceptance of new and used aeroplanes produced by Embraer for which EASA has issued a Type Certificate or recognised a Type Certificate issued previously under JAA procedures, b) aeroplane types/models for which EASA Type Certification has been applied for, c) new parts and appliances for these aeroplanes and d) the approval of Supplemental Type Certificates issued in the name of Embraer for specific (listed) aeroplane types.
13. This working arrangement reflects the principal policy of ANAC which is to take no technical decisions affecting foreign state of design products without prior coordination with the responsible State of Design Authority.

14. Currently the working arrangement is limited to Embraer aeroplanes and parts and appliances for these aeroplanes. However, the actual present of European products in Brazil in terms of commercial aviation products totals approximately 100 Airbus aircraft, 10 Fokker aircraft, 38 Dassault aircraft, 150 Eurocopter helicopters and 50 Augusta helicopters. ANAC spends 95% of its efforts on Brazilian products, 2% for product validation and the rest for various continuing airworthiness activities of foreign products in Brazil.

The overall assessment by EASA of the Brazilian system throughout the last five years of cooperation has led to the conclusion that there are sufficient similarities between the certification and oversight systems applicable on one hand in the Community and on the other hand in Brazil, facilitating the acceptance of certification findings made by ANAC for Brazilian products, parts and appliances. Nevertheless, there are also differences in several areas which need to be further examined and evaluated by the Agency.

4. THE NEED FOR A COMMUNITY AGREEMENT

15. The mutual acceptance of new and used aeroplanes parts and appliances designed and manufactured in the Community and Brazil going well beyond the scope and limitations of the current level of cooperation between ANAC and EASA cannot be accommodated in a working arrangement but necessitates an agreement at Community level.
16. From a legal point of view such agreement is necessary for the acceptance by both EASA and the Member States of certification findings for products (new and used) which have not been previously certified under the JAA system. Also, it is needed to establish the appropriate high level of mutual trust and confidence in each other's system to allow for the two sides to be able to be satisfied that bodies involved in the regulatory process of the other party, are able to conduct in a satisfactory way conformity assessments and regulatory oversight as necessary to issue its own certificates and approvals. Thirdly, such agreement is necessary for setting up the framework within which the two systems in various areas of safety as these are covered by Regulation (EC) N° 216/2008 can be compared and certification and oversight activities can consequently be limited to the significant differences thus reducing considerably the amount of work and cost for regulators and businesses. Finally, this agreement is necessary to ensure that confidence built can be appropriately maintained and enhanced so as to ensure a seamless safety system for all concerned – the authorities, the manufacturing industry, the airline industry and the travelling public.
17. Since there are no formal agreements between Member States and Brazil to permit such acceptance, an agreement between the European Community and Brazil is absolutely necessary to allow for the smooth development of relations in the area of safety with Brazil with a view to achieve, where possible, mutual recognition of certification findings and standards.
18. From an economic point of view, an agreement on aviation safety would in the first place strengthen existing trade relations between the Community and Brazil in the aeronautical sector - EU exports to Brazil in aeronautical products represent currently

33% of Brazil's total imports⁴ in this sector. Indeed, since 2004 Community exports to Brazil in aeronautical products have been steadily growing – from 293 million € in 2004 they reached 390 million € in 2007. The value of imports in this sector however, has been decreasing significantly since 2005. Trade flows since 2004 indicate that aircraft (aeroplanes and helicopters) represent an important asset of the trade between EU and Brazil. In terms of export value of aircraft Brazil ranks at 8th position among EU's trade partners, placing Brazil among the best partners of EU27 in terms of import value in the aeronautical sector after US and Canada, with which the Community has also signed agreements on civil aviation safety (EU-US 30-06-2008 and EU-Canada 6-05-2009).

19. Furthermore, an agreement on aviation safety between the Community and Brazil would also permit to expand cooperation in areas beyond airworthiness (initial and continued) of aeronautical products and maintenance services, as it would give the opportunity to the Community to reflect in the agreement the full scope of areas covered by Regulation (EC) N° 216/2008 and thus further facilitate the smooth operation of air services between the Community and Brazil.
20. Besides, this agreement would give the opportunity to the two sides to also engage in a broader cooperation in the regulation of aviation safety by allowing them to exchange safety important information regarding accidents and incidents and pave the way for a close cooperation in the investigation or enforcement of any violation of any safety requirements contained in Regulation (EC) N° 216/2008 and its implementing rules.
21. This is also recognised by the Brazilian authorities who have expressed interest in, and willingness to, entering into such an agreement with the Community with the view to establishing a clear framework ensuring the continued smooth flow of aeronautical products and services.
22. Commission staff has undertaken with the assistance of EASA exploratory talks with ANAC and the Government of Brazil in the last quarter of 2008 with a view to establishing a good mutual understanding on how both systems work. On this basis, EASA has already indicated where it considers necessary to agree and initiate a confidence building process to allow for rapid negotiations and conclusion having full knowledge and confidence in the certification and oversight system of Brazil.
23. Taking into account that, at a first stage, an agreement between the Community and Brazil should build upon the experience gained from the application of cooperation at authority level in the framework of the working arrangement between EASA and ANAC, EASA has identified the following areas where confidence building measures would need to be agreed with Brazil along with certification projects to be followed as “shadow projects” by EASA on relevant types of products:
 - (a) the Brazilian certification system - including Design Organisation Approval (DOA) aspects or equivalent means need to be fully assessed;

⁴ Source of data: Eurostat and ISDB consultation tool – DG TRADE statistics

- (b) the Brazilian production system - including Production Organisation Approval (POA) aspects or equivalent means needs to be fully assessed.
- 24. Accordingly, a bilateral agreement between the Community and Brazil would concentrate initially on airworthiness approvals and monitoring of civil aeronautical products, parts and appliances; environmental approval and environmental testing of civil aeronautical products as well as the continuing airworthiness aspects linked to the design of aeronautical products.
- 25. With regard to maintenance, at present, there are seven EASA Part-145 organisations located in Brazil directly approved and monitored by EASA (or by a national aviation authority on behalf of EASA and under EASA oversight). For the agreement to permit the broadening of the cooperation in this area too, a confidence building process is considered necessary to allow the Community and in particular EASA to familiarise itself with the Brazilian approval and oversight system in this domain and the applicable Brazilian regulations. Once a confidence building process is clearly established, an annex regarding the approval and monitoring of maintenance facilities could be added to the bilateral agreement between the Community and Brazil.
- 26. Other areas of cooperation covered by Regulation (EC) N° 216/2008 such as aircraft operations, including the safety authorisation of Brazilian carriers to operate air services into the Community, pilot licensing and training including simulators, environmental approval of products should be considered reflecting Community requirements set out in detailed implementing rules and following successful regulatory comparison and satisfactory confidence building. Finally, at a later stage such cooperation should also be possible in other safety areas soon within the EASA safety system - Air Traffic Management (ATM), Air Navigation Services (ANS) and aerodromes.
- 27. In order to achieve its objectives an agreement between the Community and Brazil on civil aviation safety would contain the following main features:
 - (a) Progressive approximation of the requirements and regulatory processes of both parties;
 - (b) Confidence building in the certification systems of both parties so as to permit Brazilian competent authorities to execute on behalf of the Community, in a reasonable time frame, the tasks it has to execute for the implementation of Regulation (EC) N° 216/2008;
 - (c) Confidence building in oversight to allow any party to be satisfied that bodies involved in the regulatory process of the other party, are able to conduct in a satisfactory way conformity assessments and regulatory oversight as necessary to issue its own approvals;
 - (d) Enhanced cooperation by providing for regular consultations between the parties to ensure that the agreement operates satisfactorily in particular by introducing the appropriate co-operation mechanisms to verify on a reciprocal

basis the continued fitness and ability of the regulatory bodies involved in the implementation of the agreement;

- (e) A system of continuous monitoring of the functioning of the agreement including any annexes whereby it is efficiently managed by a joint committee composed of representatives of both parties, entrusted to find and propose solutions timely to any problem raising from the implementation of the agreement.

5. RECOMMENDATION

28. In the light of the above, the Commission recommends:

- (a) that the Council authorise the Commission to negotiate a bilateral agreement between the European Community and Brazil on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility;
- (b) that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task, and
- (c) that the Council issues the appended negotiating directives.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(1) thereof,

Having regard to the recommendation from the Commission⁵,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission is hereby authorised to negotiate a bilateral agreement between the European Community and Brazil on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility.

Article 2

The Commission shall conduct these negotiations on behalf of the European Community with the assistance of a special committee, which is hereby appointed.

Article 3

The Commission shall conduct the negotiations in accordance with the appended negotiating directives.

Done at Brussels,

*For the Council
The President*

⁵ OJ C , , p . .

ANNEX

NEGOTIATING DIRECTIVES

BILATERAL AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND BRAZIL ON THE RECIPROCAL ACCEPTANCE OF CERTIFICATION FINDINGS IN THE FIELD OF CIVIL AVIATION SAFETY AND ENVIRONMENTAL COMPATIBILITY

The Commission shall conduct negotiations with the view to concluding an agreement between the European Community and Brazil on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility, covering in a first instance the certification of aeronautical products, parts and appliances.

In a reasonable time and following a confidence building process, it may also cover the approval and oversight of organisations and personnel involved in the maintenance of such aeronautical products, parts and appliances.

This agreement shall facilitate trade in aeronautical products, parts and appliances, and in services relating to the maintenance of aircraft.

Such agreement shall in particular allow:

- 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,
- aircraft registered or operated under the regulatory control of one party to be maintained by organisations under the regulatory control of the other party,

thereby limiting as much as possible the duplication of assessments, tests and controls to significant regulatory differences and relying on the certification system of either party to check conformity with the requirements of the other party. To that end the agreement may recognise the right of either party's regulatory authorities to issue certificates attesting such conformity on behalf of the other party.

To facilitate the achievement of the objective set here above, the agreement may provide for regulatory co-operation with the aim of progressively approximating the requirements and regulatory processes of both parties.

Such agreement may also include confidence building processes, as appropriate in all areas of its scope to allow any party to be satisfied that bodies involved in the regulatory process of the other party, are able to conduct in a satisfactory way conformity assessments and regulatory oversight as necessary to issue its own approvals. Such confidence building processes shall have for objective to permit all Member States competent authorities to execute on behalf of Brazil, in a reasonable time frame, the tasks they have to execute for the implementation of Regulation (EC) N° 216/2008 and its implementing rules.

It may also include appropriate co-operation mechanisms to verify on a reciprocal basis the continued fitness and ability of the regulatory bodies involved in its implementation by providing for joint audits, inspections and investigations of authorities and entities under the regulatory control of the parties.

The agreement shall provide for the holding of regular consultations between the parties to ensure that the agreement operates satisfactorily.

The administration of the agreement may be entrusted, where appropriate, to a joint committee composed of representatives of both parties. The agreement may also provide for the establishment of joint sub-committees in the areas of its scope of application to monitor its functioning in those areas, as well as to propose solutions to resolve any problem raised in the area in question.

The agreement shall include procedures for its extension to the environmental approval of products, air operations including the authorisation of aircraft used by operators of the parties to operate into the airspace and territory of the parties, flight crew licensing and the approval of synthetic training devices, as jointly determined by the parties and, at a later stage, to air navigation services.