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Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement

(EASA Regulation)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted on the Union's behalf in the EEA Joint Committee in connection with the envisaged adoption of the Joint Committee Decision concerning an amendment of Annex II (Technical Regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement

2. CONTEXT OF THE PROPOSAL

2.1. The EEA Agreement

The Agreement on the European Economic Area (*'the EEA Agreement'*) guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms throughout the 30 EEA States comprising of EU Member States, Norway, Iceland and Liechtenstein. In addition, the EEA Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as *'flanking and horizontal'* policies. The Agreement entered into force on 1 January 1994. The European Union together with its Member States is a party to the Agreement.

2.2. The EEA Joint Committee

The EEA Joint Committee is responsible for the management of the EEA Agreement. It is a forum for exchanging views linked to functioning of the EEA Agreement. Its decisions are taken by consensus and are binding on the Parties. The responsibility for coordinating EEA matters on the EU side is with the Secretariat General of the European Commission.

2.3. The envisaged act of the EEA Joint Committee

The EEA Joint Committee is expected to adopt the EEA Joint Committee Decision (*'the envisaged act'*) regarding the amendment of Annex II (Technical Regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement.

The purpose of the envisaged act is to incorporate Regulation on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (EASA Regulation)¹ into the EEA Agreement.

The envisaged act will become binding on the parties in accordance with Articles 103 and 104 of the EEA Agreement.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Commission submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The position, once adopted, should be presented in the EEA Joint Committee at the earliest possible opportunity.

¹ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (*'the Agency'*), and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1.

The draft Decision is linked to a package of decisions incorporating around 60 additional related legal acts, which themselves do not go beyond technical adaptations. Once ready, this aviation safety package would be adopted together in one EEA Joint Committee meeting.

An additional aviation safety act - the Helicopter Offshore Operations Regulation² (*the HOFO Regulation*) - is not ready to be incorporated as part of this single aviation safety package. This is due to a disagreement on the territorial scope of the EEA Agreement.

In the interest of overall aviation safety and the level playing field across the EEA, it is recommended to proceed with the incorporation of the EASA Regulation (and related acts) while the EU and EEA EFTA sides seek to resolve the disagreement on the inclusion of the HOFO Regulation. Such a decision does, however, not prejudice the EU's position on the incorporation of the HOFO Regulation and on the territorial scope of the EEA Agreement.

The annexed draft Decision of the EEA Joint Committee introduces participation rights for the EEA EFTA States in the Management Board of the European Union Aviation Safety Agency, which goes beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

The annexed draft Decision of the EEA Joint Committee further contains the following main adaptations for the EEA EFTA States.

The foregoing Regulations (EC) No 1592/2002 and (EC) No 216/2008 were both incorporated into the EEA Agreement with an adaptation ensuring the full participation of the EEA EFTA States in the Management Board of the Agency. This adaptation is retained for the incorporation of the new EASA Regulation. Furthermore, the EFTA Surveillance Authority is also to be admitted to the Management Board as an observer. Similarly, the participation of EEA EFTA States, as well as observer status for the EFTA Surveillance Authority, is to be assured in the Committees established pursuant to Regulation (EU) 2018/1139, Regulation (EC) No 2111/2005, and Regulation (EC) No 1008/2008.

As long as the EFTA Surveillance Authority or the Standing Committee, as the case may be, act within the field of their competence under the EEA Agreement, they have the right to get assistance from the Agency where the Agency should give such assistance to the Commission. No provisions in the Regulation which could be construed to transfer to the Agency any authority to act on behalf of EEA EFTA States under international agreements for other purposes than to assist in the performance of obligations pursuant to such agreements can be considered applicable to the EEA EFTA States.

Relevant Air traffic management/air navigation services requirements in the Regulation, its implementing and delegated acts, which stem from provisions applicable to the International Civil Aviation Organisation (ICAO) European (EUR) and/or Africa-Indian Ocean (AFI) regions should be understood as not being a requirement for Iceland, where Iceland complies with ICAO North Atlantic (NAT) Regional Supplementary Provisions.

The EFTA Surveillance Authority has the task to monitor the fulfilment of obligations of the EEA EFTA States under the EEA Agreement, comparable to the role of the Commission vis-à-vis the Member States. Adaptations are necessary to reflect that role of the EFTA

² Commission Regulation (EU) 2016/1199 amending Regulation (EU) No 965/2012 as regards operational approval of performance-based navigation, certification and oversight of data services providers and helicopter offshore operations.

Surveillance Authority specifically where provisions of an EU act provide for any interaction between the Commission and an EU agency. Adaptations adjust the texts of the relevant provisions to reflect this division of tasks and to ensure that relevant rights and obligations of the Commission towards the Agency are likewise extended to the EFTA Surveillance Authority as regards the EEA EFTA States.

EEA EFTA States shall participate in the financial contribution from the Union to the Agency.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*³.

4.1.2. Application to the present case

The EEA Joint Committee is a body set up by an agreement, namely the EEA Agreement. The act, which the EEA Joint Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 103 and 104 of the EEA Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation No 2894/94 concerning arrangements for implementing the Agreement on the European Economic Area.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation No 2894/94 depends primarily on the substantive legal basis of the EU legal act to be incorporated into the EEA Agreement.

If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

Since the Joint Committee Decision incorporates Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1) into the EEA Agreement, it is appropriate to base this Council decision on the same substantive legal base

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

as the act that is incorporated. Therefore, the substantive legal basis of the proposed decision is Article 100(2) of the Treaty on the Functioning of the European Union.

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU and Article 1(3) of Council Regulation No 2894/94 concerning arrangements for implementing the Agreement on the European Economic Area.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EEA Joint Committee will amend Annex II (Technical Regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100 (2) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area⁴, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁵ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement.
- (3) Regulation (EU) 2018/1139 of the European Parliament and of the Council⁶ should be incorporated into the EEA Agreement.
- (4) Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

⁴ OJ L 305, 30.11.1994, p. 6.

⁵ OJ L 1, 3.1.1994, p. 3.

⁶ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*