



Information Note

Agreement between the United States of America and the European Union on cooperation in the regulation of civil Aviation Safety

Introduction

The Agreement between the United States of America and the European Union in the regulation of civil Aviation Safety entered into force on the 1st of May 2011. This Agreement formalises the mutual trust that was built over the years between the US and the EU in the fields of airworthiness approvals and monitoring of civil aeronautical products; environmental testing and approvals of civil aeronautical products; and approval and monitoring of maintenance facilities.

I. Negotiation of the Agreement

The ratification of the agreement concludes a lengthy process that began formally and in earnest in 2003 where EASA, supporting the European Commission from a technical point of view, played an instrumental role. The Commission requested on 24 November 2003 the authorisation from the Council of the EU to conduct negotiations with the US on the reciprocal acceptance of certification findings in the field of civil aviation safety and environmental compatibility. The Council of the EU granted the authorisation on 9 March 2004 and instructed the European 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. Moreover, EASA, acting within its role of technical agent assisted the European Commission whenever necessary during the negotiation process of the Agreement.

Since the granting of the authorisation to negotiate, besides numerous technical meetings, the two negotiating teams met in Washington and Brussels 9 times. The Special Committee established by the Council on the occasion of the authorisation granted to the Commission met 3 times to review the text.

II. The legal basis of the Agreement

According to the case law of the Court of Justice, the removal of technical barriers to trade in goods falls within the scope of the common commercial policy as defined in Article 133 TEC¹ (Article 207 TFEU²) and thus under the exclusive competence of the EU. With the entry into force in September 2002 of Regulation (EC) No 1592/2002³ the Community achieved internal harmonisation in the fields covered by that Regulation. Moreover, this Regulation was supplemented by a set of Implementing measures (Commission Regulations No 1702/2003 and 2042/2003). Therefore, the EU has exclusive competence to conclude the agreement on the basis of Articles 133 (Article 207 TFEU) and 80 of TEC (Articles 100 TFEU).

¹ Treaty establishing the European Community

² Treaty on the Functioning of the European Union

³ Repealed by Regulation (EC) No 216/2008 of 20 February 2008

III. Structure and Committees established by the Agreement

The Agreement reflects the structure of a “classical” agreement in the areas of aviation safety, a “BASA” as are called the existing Bilateral Aviation Safety Agreements between the US and some EU Member States (EU MS). As in the cases of the BASAs, the Agreement is based on mutual trust of each other’s system and on the comparison of regulatory systems.

Nevertheless, the Agreement differs from the existing BASAs since several provisions regarding its application to specific types of products, establishment of committees/sub-committees, production issues or questions on release certificates (that were usually set out in separate arrangements at civil aviation authority level, e.g. IPA/MIP⁴), are now presented in the Annexes (Annex 1 – Airworthiness and Environmental Certification and Annex 2 - Maintenance) having the binding nature of a Treaty.

Moreover, the FAA and EASA at authority level prepared the so-called 3rd level texts (Technical Implementation Procedures – TIP for Airworthiness and Environmental Certification and the Maintenance Annex Guidance – MAG for Maintenance) that define how the Parties will implement and work in order to achieve the objectives set out in the Agreement and its Annexes.

In addition, it should be highlighted that the Agreement establishes a series of committees/sub-committees ensuring its effective functioning. First of all, a Bilateral Oversight Board (BOB) that will be responsible for the implementation of the agreement, for handling disputes and the amendment and adoption of new annexes, as appropriate. The Union will be represented in the BOB by the European Commission assisted by EASA and accompanied by the Aviation Authorities as representatives of the EU MS. Moreover, the discussions at technical level (FAA-EASA) and the development, approval and amendments of the TIP and MAG will be assured by the Certification Oversight Board (COB) and the Joint Maintenance Coordination Board (JMCB) respectively, being both boards accountable to the BOB.

IV. Purpose and Scope

The main purposes of the agreement are to automatically accept certain approvals issued within the other certification system (an approval issued by one party constitutes a valid approval by the other party) and enable the reciprocal acceptance of findings of compliance during validation processes. Furthermore, the Agreement supports the continuation of high-level regulatory cooperation and thus promotes a uniform high degree of safety in air transport. This will facilitate trade in goods and services covered by its scope and limit as much as possible, the duplication of assessments, tests and controls to significant regulatory differences.

Its scope covers the airworthiness approvals and monitoring of civil aeronautical products, the environmental testing and approvals of civil aeronautical products and the approval and monitoring of maintenance facilities.

Finally, the Agreement gives the possibility that the Parties agree on additional areas of cooperation by amendment of the Agreement.

⁴ Implementation Procedures for Airworthiness/Maintenance Implementation Procedures
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V. What will change and which are the implications on the daily work for EASA and NAAs

Annex 1 (Airworthiness and Environmental Certification)

What will change?

As the new Agreement builds on existing national Agreements between some EU MS and the US, the new agreement constitutes “an evolution rather than a revolution” in the EU-US relations on airworthiness cooperation. The new EU-US Agreement clarifies a number of existing ambiguities and provides a sound legal basis for the reciprocal acceptance of certain approvals and certification findings. Furthermore, the new Agreement eliminates some of the still existing limitations in the fields of Supplemental Type Certificate (STC) validations and facilitates the reciprocal acceptance of used aircraft.

A thorough surveillance process under the responsible Certification Oversight Board (COB) will ensure that validation projects are conducted in a most efficient and cooperative way, avoiding any unnecessary duplication of certification work.

Finally the Agreement opens possibilities for further enhancements and more direct acceptance of certification findings. Based on confidence established via daily cooperation and formal assessments of each other’s certification systems, new elements of mutual acceptance can be added to the Agreement in the future.

Which are the implications on the daily work for EASA and NAAs?

Still existing national export certificates for products, parts & appliances will be replaced by certificates in accordance with the new Agreement. For new and used aircraft EASA Form 27 will replace existing national export certificates.

The Agency will continue its successful technical cooperation with the FAA under well-established communication lines and newly established COB. Technical Implementation Procedures (TIP) will provide detailed instructions and guidance for the daily handling of validation projects. As far as EU MS are affected (e.g.: issuance of export certificates) the Agency will coordinate and support NAAs, including offering technical training, as necessary.

Annex 2 (Maintenance)

What will change?

The new Agreement provides a sound and uniform legal basis for the reciprocal acceptance of findings of compliance, approvals, documentation and technical assistance regarding approvals and monitoring of repair / maintenance organisations.

The most fundamental change in relation to the situation before the Agreement it will be the fact the NAAs of the 17 EU MS covered by Annex 2 of the Agreement will act on behalf of the FAA in what concerns initial, renewal and change or amendment of the FAA certificate of a maintenance organisation located in their respective countries.

A comprehensive surveillance process under the responsibility of the Joint Maintenance Coordination Board (JMCB) will ensure consistent application of Annex 2 (Maintenance) to the Agreement. Detailed instructions and guidance for the implementation of Annex 2 provisions are included in the Maintenance Annex Guidance (MAG) document. The JMCB will also make proposals for the inclusion of new EU NAAs not yet covered by the Agreement based on formal assessments of these NAAs.

Which are the implications on the daily work for EASA and NAAs?

The above mentioned changes will have an impact on both EASA and NAAs of the 17 EU Member States included in Appendix 2 to Annex 2, referred as "directly affected NAAs".

EASA will monitor the directly affected NAAs to ensure compliance with the Agreement, Annex 2 and the MAG. EASA Standardisation department is responsible to perform this activity.

The directly affected NAAs will have to prepare for the transfer of the approvals of FAA repair stations located in their countries. This transfer shall take place within two years of the date of entry into force of the Agreement which means at or before 1st May 2013. The transfer can only occur after the directly affected NAAs have completed training of their personnel regarding procedures relating to the Agreement, Annex 2 (Maintenance) and the FAA Special Conditions.

EASA will continue its cooperation with the FAA under the newly established JMCB. Furthermore, EASA will support NAAs by offering technical training to the inspectors involved in the implementation of the Agreement.

VI. Signature, Termination of other Agreements and Ratification process

The Agreement was signed in Brussels on 30 June 2008 by Mirko Komac, Director General of the Slovenian Civil Aviation Authority representing the EU Presidency, Antonio Tajani, European Commission Vice-President in charge of Transport and Robert A. Sturgell, Acting Administrator of the FAA.

Upon entry into force of the Agreement, the Parties shall take the necessary measures to amend and terminate a series of Bilateral Agreements (listed in Attachment 1 of the Agreement) between the US and several individual EU MS.

The ratification process of this Agreement was delayed on several occasions, for technical, legal or political reasons until the 15 March 2011, when the US Mission to the EU and the Council of the EU exchanged diplomatic notes for the entry into force of the Agreement. According to article 19 of the agreement, the Agreement shall enter into force on the first day of the second month following the date on which the Parties have exchanged diplomatic notes confirming the completion of their respective procedures for entry into force of this Agreement. Therefore, the Agreement entered into force on 1st May, 2011.
