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Proposal for a

COUNCIL DECISION

**on the conclusion of an agreement between the European Union and the Government of
the People's Republic of China on civil aviation safety**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 March 2016 the Council granted an authorisation to the Commission to conduct negotiations with the Government of the People's Republic of China on civil aviation safety to facilitate trade and investment between the EU and China in aeronautical products, parts and appliances. The Council addressed a set of negotiating directives to the Commission to carry out the negotiations and appointed a special committee to be consulted in this task.

- **Consistency with existing policy provisions in the policy area**

The Agreement reflects the structure of the existing Bilateral Aviation Safety Agreements ("BASAs") between the Union and third countries (USA, Canada and Brazil).

- **Consistency with other Union policies**

The Agreement will serve a fundamental objective of the external aviation policy of the Union by enhancing civil aviation safety and facilitate trade and investment in aeronautical products.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Treaty on the Functioning of the European Union, in particular Article 100(2) in conjunction with Article 218(5).

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

Not applicable.

- **Choice of instrument**

The Agreement between the Union and People's Republic of China is the most efficient instrument to achieve the goal of enabling enhanced cooperation in the area of certification and monitoring of aeronautical products, parts and appliances and the production oversight and environmental certification.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

In line with Article 218(4) TFEU, the Commission has conducted the negotiations in consultation with a special committee. Industry has equally been consulted during the negotiations. Comments made in this process have been taken into account.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanations of the specific provisions of the proposal**

On 29 September 2017, after 4 rounds of negotiations between the Commission (DG MOVE) and the Civil Aviation Authority of China (CAAC), the two negotiating teams agreed on a draft text for the Agreement and its annex on airworthiness and environmental certification. The text was initialled on 8 December 2017.

As in the case of the existing BASAs, the Agreement is based on mutual trust of each other's system and on the comparison of regulatory differences. Hence, it entails obligations and methods to cooperate between the authorities and technical agents so that the latter can issue their own certificate on the aeronautical product, part or appliance without duplicating all the assessments done by the other authority.

The draft stipulates that each party shall accept findings of compliance as results of specified procedures of the other Party's Competent Authority (Article 4.1). The means how to do so, i.e. how to cooperate and mutually accept each other's certification findings in the area of airworthiness and environmental certification (methods, scope in terms of products or services and regulatory differences), are set out in the Annexes to the Agreement.

The draft Agreement also ensures that confidence is maintained in each other through the appropriate mechanism. It provides for a system of continual cooperation and consultation that is put in place by means of enhanced cooperation in the framework of audits, inspections, timely notifications and consultations on all matters falling within its scope (Articles 4.5, 7, 8 and 9).

The draft Agreement also gives the possibility to the Parties to consider ways to further enhance the functioning of the Agreement and make recommendations for modifications including addition of new annexes to the Agreement via the Joint Committee (Article 3).

Key Provisions of the Agreement:

The draft Agreement covers from the outset all aeronautical products. However, a provision in the Annex 1 (paragraph 4.4.2.2.) will ensure, for new Chinese products entering the EU market, that EASA will exercise special procedures and scrutiny during the first validation of a given product category and that any following validation would then follow the 'Level of Involvement' principle. Annex 1 (paragraph 4.4.2.1.) contains a detailed list of factors for how the 'Level of Involvement' should be set.

Regarding the accepting of certificates issued by each party, an Appendix has been added to the Annex 1, which describes and defines the modalities of acceptance and validation of certificates. To take account of the different levels of maturity of the regulatory systems implemented in the EU and in China, the Appendix states that the modalities for EU certificates and for certificates issued by CAAC are different. The provisions in the Appendix are substantially reducing and limiting the involvement of CAAC in the validation of EASA certificates and therefore will save time and costs for European industry. On the other side, for CAAC certificates, there will be a reduction in the Level of Involvement of EASA only for minor changes and repairs (automatic acceptance) and for some Technical Standard Order.

Regarding Chinese production of aeronautical products for export to the EU, it was further agreed that EASA will produce a list of Chinese Production Certificate Holders, whose production is accepted by the European Union (Annex, paragraph 4.5.9.). This list will be published on the EASA website. The CAAC will not be formally involved in the creation or maintenance of this list, nor can CAAC veto the content of the list. This provision was included in the Agreement, due to the findings of the confidence building exercise by EASA, resulting in a number of observations.

Regarding EU manufacturing sites in China, the Agreement foresees that an EASA Production Certificate can be extended to include manufacturing sites in China (Annex, paragraph 4.5.4), which is in particular important for EU industry with production sites in China. Existing arrangements cannot be changed without the approval of both sides (Annex, paragraph 4.5.5.).

In comparison with existing BASAs, the Agreement includes in Article 3 (scope) already a wide scope of cooperation, covering potential future areas of cooperation, in particular on personnel licensing and training, operation of aircraft and air traffic services and air traffic management.

The Agreement further creates the framework for regulatory cooperation, mutual assistance and transparency (Article 7) as well as provisions on the exchange of safety information (Article 8). The Agreement includes specific provisions that reinforce the protection of confidentiality and protection of proprietary data and information (Article 10 and Annex paragraph 4.3) and the possibility of participation of third countries (Article 14.2).

Finally, the Agreement establishes a joint committee for the administration of the Agreement (Article 11) and a first joint sub-committee related to airworthiness and environmental certification (Annex, paragraph 3.1).

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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(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Commission has negotiated on behalf of the European Union an Agreement on civil aviation safety with the People's Republic of China in accordance with the Council Decision authorising the Commission to open negotiations;
- (2) In accordance with Council Decision [] the Agreement was signed on 2018, subject to its conclusion at a later date.
- (3) The Agreement should be approved.
- (4) It is necessary to lay down procedural arrangements for the participation of the Union in the joint bodies established by the Agreement, as well as for the adoption of certain decisions concerning, in particular, the amendment of the Agreement and its Annexes, the addition of new annexes, the termination of individual annexes, consultations and dispute resolution and the adoption of safeguard measures.

HAS ADOPTED THIS DECISION:

Article 1

1. The Agreement between the European Union and the Government of People's Republic of China on civil aviation safety is hereby approved on behalf of the Union.
2. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to give the notification provided for in Article 17.1 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

1. The Union shall be represented in the Joint Committee of the Parties established in Article 11 of the Agreement by the European Commission assisted by the European Aviation

Safety Agency and accompanied by the Aviation Authorities as representatives of the Member States.

2. The Union shall be represented in the Certification Oversight Board established in paragraph 3.1.1 of Annex 1 to the Agreement by the European Aviation Safety Agency assisted by the Aviation Authorities directly concerned by the agenda of each meeting.

Article 4

1. The Commission shall determine the position to be taken by the Union in the Joint Committee of the Parties with respect to the following matters:

– the adoption or amendment of the rules of procedure of the Joint Committee of the Parties provided for in Article 11 of the Agreement.

2. The Commission, after consultation with the special committee appointed by the Council, may take the following action:

– adopt safeguard measures in accordance with Article 5 of the Agreement,

– request consultations in accordance with Article 15 of the Agreement,

– take measures for suspension in accordance with Article 16 of the Agreement,

– any amendments to the annexes to the Agreement in accordance with Article 17.6 of the Agreement in so far as such amendments are consistent with, and do not entail any modification of, relevant Union legal acts,

– any other action to be taken by a Party as provided for in the Agreement, subject to paragraph 3 of this Article and EU law.

3. The Council shall decide, acting by qualified majority, on a proposal from the Commission and in accordance with the provisions of the Treaty, with respect to any other amendments to the Agreement not falling within the scope of paragraph 2 of this Article, including the termination of individual Annexes in accordance with Article 17.4 of the Agreement.

Article 5

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

Done at Brussels,

*For the Council
The President*