

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Directives of the Permanent Commission -

DIRECTIVE No. 04/66

Relating to the conclusion of a Memorandum of Co-operation between EUROCONTROL and the International Civil Aviation Organisation regarding safety oversight audit and related matters

THE PERMANENT COMMISSION FOR THE SAFETY OF AIR NAVIGATION:

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 7.3 and 13 thereof;

Having regard to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, which was opened for signature on 27 June 1997.

Having regard to Decisions No. 71 and No. 72 of 9 December 1997 on early implementation of certain provisions in the revised Convention, and in particular paragraph 5 of Decision No. 72;

Having regard to Decision No. 92 of 8 November 2002, approving the implementation of the SRC ESARR Implementation Support and Monitoring Programme;

On the proposal of the Provisional Council;

GIVES THE FOLLOWING DIRECTIVE TO THE AGENCY:

The Agency shall conclude, on the Organisation's behalf, a Memorandum of Co-operation with the International Civil Aviation Organisation, the draft text of which is at Annex to this Directive.

Done at Brussels on 5.11.04

For the President of the Commission,

A handwritten signature in black ink, appearing to read 'S. Sciacchitano', with a large, stylized flourish extending to the right.

S. SCIACCHITANO
Vice-President of the Commission

**MEMORANDUM OF COOPERATION (MOC) BETWEEN
THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) AND THE EUROPEAN
ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL) REGARDING
SAFETY OVERSIGHT AUDIT AND RELATED MATTERS**

The International Civil Aviation Organization, with Headquarters in Montreal, Canada, hereinafter referred to as “ICAO”, represented by the President of the Council; and

The European Organization for the Safety of Air Navigation, with Headquarters in Brussels, Belgium, hereinafter referred to as “EUROCONTROL”, acting through its Permanent Commission and represented by its Director General;

Hereinafter referred to as “the Parties”;

Having regard to the *Convention on International Civil Aviation* signed at Chicago on 7 December 1944, hereinafter referred to as the “Chicago Convention”;

Having regard to the EUROCONTROL International Convention relating to the Cooperation for the Safety of Air Navigation of 13 December 1960 as amended by the Protocol signed at Brussels on 12 February 1981, and in particular to its Article 13;

Having regard to Decision No. 71 taken by the Permanent Commission of EUROCONTROL on 9 December 1997 on early implementation of certain provisions in the revised Convention, in particular in respect of the role and duties of the Organization;

Having regard to the Agreement for Cooperation between ICAO and EUROCONTROL of 1996;

Having regard to Directive No. [XX] taken by the Permanent Commission of EUROCONTROL of [...] November 2004 concerning the conclusion of a Memorandum of Cooperation with ICAO regarding safety oversight audit and related matters;

Having regard to the main objectives of the Chicago Convention which are the safe and orderly development of international civil aviation, the fulfilment of the need of the peoples in the world for safe air transport, and the promotion of flight safety in international air navigation;

Having regard to ICAO Assembly Resolution A32-11 of 32nd Session of the Assembly of ICAO, which directed the Council to establish the ICAO Universal Safety Oversight Audit Programme (USOAP), providing for regular, mandatory, systematic and harmonized safety audits to be carried out by ICAO, that such universal safety oversight programme shall apply to all Contracting States, and that greater transparency and increased disclosure be implemented in the release of audits results, to Resolution A35-6 regarding the expansion of the Programme to cover all safety-related Annexes to the Chicago Convention, and to Resolution A35-6 where the Assembly resolved that the ICAO USOAP reports be made available to all ICAO Contracting States;

Having regard to Measure No 92 taken by the Permanent Commission of EUROCONTROL on 8 November 2002 on the establishment of the EUROCONTROL Safety Regulatory Requirements (ESARRs) Implementation Monitoring and Support (ESIMS) Programme;

Having regard to the Memorandum of Understanding signed on 26 May 1999 between ICAO and the European Civil Aviation Conference (ECAC);

Considering that the primary objectives of both audit programmes are to enhance aviation safety by evaluating the implementation of international standards, identifying deficiencies-if any, and providing suitable recommendations for their improvement;

Considering that it is desirable to establish mutual cooperation in the area of Air Traffic Management (ATM) safety oversight audit and related matters in a manner ensuring better use of limited resources and avoiding duplication of efforts while preserving the integrity of both the USOAP and ESIMS Programmes;

Considering that in accordance with the EUROCONTROL revised Convention, adequate separation exists between the service provision functions and the regulatory functions exercised by EUROCONTROL;

AGREED ON THE FOLLOWING:

COOPERATION ON ATM SAFETY AUDITS

1. Exchange of information

- 1.1_ ICAO will transmit to EUROCONTROL the annual schedule of USOAP audits and any amendments thereof as they become available.
- 1.2_ EUROCONTROL will transmit to ICAO the annual schedule of ESIMS audits and any amendments thereof as they become available.
- 1.3_ Any changes to the annual schedule of audits of one party will be communicated to the other party as soon as possible.
- 1.4_ ICAO will keep EUROCONTROL informed on ICAO audit missions completed, dates of issuance of the final audit reports, and dates of reception of the corrective action plans for the State.
- 1.5_ EUROCONTROL will keep ICAO informed on ESIMS audit missions completed, dates of issuance of the final audit reports, and dates of reception of the corrective action plans for the State.
- 1.6_ With regard to any ECAC member State, all information concerning such a State audited by ICAO and/or EUROCONTROL, including information of a confidential nature, subject to its prior consent and approval, will be exchanged between ICAO and EUROCONTROL authorised personnel. Such information will include:
 - 1) State Aviation Activity Questionnaire or equivalent pre-audit questionnaire completed prior to the completion of a safety audit;
 - 2) Compliance Checklist or equivalent, which contains information on the implementation of the specific provisions of, as applicable, the relevant Annexes or the relevant

ESARRs;

- 3) the audit reports produced by one of the parties;
 - 4) State's action plan, where necessary to remedy deficiencies, accepted by, as applicable, ICAO or EUROCONTROL; and
 - 5) any follow up activities conducted by one of the parties.
- 1.7 ICAO and EUROCONTROL will restrict access to confidential information received from the other Party in the context of this cooperation to authorised personnel only. The authorised personnel shall not disclose this information to any third party. The Parties will endeavour to implement any necessary legal and internal mechanisms to protect the confidentiality of the information exchanged.
2. Experts Assistance
- 2.1 Up until six months prior to the commencement of a USOAP audit, ICAO may request the assistance of EUROCONTROL through the participation of EUROCONTROL experts as ICAO audit team members in audits conducted under USOAP, in accordance with the principles and policies as detailed in the *ICAO Safety Oversight Audit Manual*.
- 2.2 Those experts identified by EUROCONTROL will be selected from EUROCONTROL staff and national experts from EUROCONTROL Contracting States selected by EUROCONTROL to conduct the ESIMS audits. EUROCONTROL staff will be selected from an area of the EUROCONTROL Organisation not subject to the authority of the service provision functions of the EUROCONTROL Agency.
- 2.3 Those experts identified by EUROCONTROL in the fields of air traffic management and ground aids, will have expertise in ATM safety regulation and safety management as well as a good command of English and/or French and/or Spanish. They will participate as ICAO audit team members in audits conducted under USOAP in their area of expertise.
- 2.4 In addition to the EUROCONTROL training, and unless the Parties agree otherwise, all experts identified by EUROCONTROL to act as ICAO audit team members will have to be trained by ICAO. Such training will be performed at a place agreed upon between the Parties, preferably in Europe.
- 2.5 With regard to ECAC member States, and subject to the approval of the audited ECAC State, EUROCONTROL may also submit a request to ICAO for its own EUROCONTROL audit team members to be part of any upcoming audit mission under the ICAO umbrella and leadership, as an observer as defined in the *Safety Oversight Audit Manual*.
- 2.6 All experts identified by EUROCONTROL participating as ICAO audit team members will form an integral part of the ICAO audit team and shall keep the information gathered during, or otherwise related to, the audit mission as strictly confidential, in accordance with ICAO regulations.

- 2.7 Further to the agreement of the audited ECAC Member State, EUROCONTROL experts participating in an USOAP audit shall undertake to assess, where appropriate, the effective implementation of the relevant elements of the ESIMS corrective action plan, provided that such a review does not interfere with the ICAO audit. The said expert will report to EUROCONTROL only once the ICAO audit team member is released from the ICAO audit mission.
- 2.8 Without prejudice to other privileges and immunities applicable to ICAO as a Specialized Agency of the United Nations, and its personnel, all audit team members of the ICAO audit team, including EUROCONTROL staff and national experts, shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.
- 2.9 All expenses incurred by experts identified by EUROCONTROL in the framework of this cooperation, including the on-the-job (OJT) training to be provided, will be borne by ICAO, with the exception of salaries. For administrative purposes, EUROCONTROL staff will continue to be subject to the Staff Regulations governing Officials of the EUROCONTROL Agency. As regards their assignment as ICAO auditors, they will be subject to the exclusive authority of the ICAO Secretary General. All expenses related to the participation of EUROCONTROL audit team members in accordance with article 2.5 above shall be covered by EUROCONTROL.
3. Assistance to States
 - 3.1 ICAO and EUROCONTROL may cooperate to provide advice on the preparation and development of the corrective action plan, at the request of the State and during the preparation period.
 - 3.2 At the request of the audited State, and subject to the availability of resources, ICAO and EUROCONTROL may co-operate to assist the audited State in rectifying deficiencies and implementing recommendations on the basis of the corrective action plans produced after an audit.
 - 3.3 Should the need for regional initiatives be identified in the course of a USOAP and/or ESIMS audit(s), ICAO and EUROCONTROL may co-operate to assist the States of the ECAC region with the implementation of their corrective action plans, subject to the availability of the requisite funds.
4. **Dispute Resolution**
 - 4.1 Any difference or dispute concerning the interpretation or the application of this Memorandum of Cooperation will be resolved by negotiation between the Parties concerned.
5. Other Agreements

- 5.1 This Memorandum of Cooperation does not supersede or prejudge other forms of cooperation between the Parties.

**For the European
Organization for the Safety of
Air Navigation**

**For the International Civil
Aviation Organization**

Director General

President of the Council

Date

Date

— END —