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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union, in respect of the decisions to be adopted by Eurocontrol's Permanent Commission, on Centralised Services

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

General

The Council adopted on 8 December 2015 the Decision (EU) 2015/2394 on the position to be taken by the Member States on behalf of the European Union, concerning the decisions to be adopted by the Permanent Commission of Eurocontrol, with regard to the roles and tasks of Eurocontrol and on centralised services. These decisions were planned to be taken by Eurocontrol's Permanent Commission on 9 December 2015 on Centralised Services, for Eurocontrol to develop financing, procurement arrangements and technical specifications in view of timely deploying new "European Air/Ground Data Communication Services" (EAGDCS).

Since the Union is not admitted in the Permanent Commission, the Council decision was meant to be implemented by the Member States that participate in the Permanent Commission acting jointly in the interest of the Union.

The Council decided that the Union's position should be to postpone the adoption of a decision by Eurocontrol on centralised services, because there was insufficient information available to evaluate the substance of such a decision. In addition, such a decision might have prejudged future activity conducted by Eurocontrol in a manner that would have been detrimental to the Union's activity in this field, notably as regards Single European Sky Air Traffic Management Research (SESAR).

Since Eurocontrol is currently engaged in the development of 18 different Centralised Services, the Union's position covered not only EAGDCS but all Centralised Services potentially being developed for implementation, since all are similarly related to the Union's activity in this field, notably as regards SESAR.

On 9 December 2015, due to the above Union position, Eurocontrol's Permanent Commission did not take a decision on EAGDCS. Instead, it was agreed that Eurocontrol should continue to work on a revised decision on Centralised Services in close cooperation with its stakeholders and should also provide an assessment of the economic impact of implementation and operation of EAGDCS.

On 9 February 2016, the Eurocontrol Agency and the industry stakeholders sent a jointly signed revised proposal for EAGDCS to the Commission, in which both parties indicated that the required economic impact assessment is available within the completed feasibility studies as delivered to the Innovation & Networks Executive Agency (INEA) in late 2015. However, those studies contain only superficial cost benefit analysis, and a full assessment of the economic impact of the centralisation of EAGDCS is still required.

In addition, the Eurocontrol Agency may propose to the Permanent Commission of Eurocontrol to adopt this new decision on EAGDCS in a written procedure.

This proposal for a Council Decision refers to EAGDCS. It is proposed to support, as regards the development of a demonstrator, in principle the continuation of the collaboration between

the Eurocontrol Agency and Air Navigation Service Providers of the Eurocontrol States, as well as with the Network Manager. However, the proposal also defines three important conditions that such decision should contain.

The first condition is that the development of the demonstrator must take full account of technical work performed by the SESAR Joint Undertaking (SJU). The intention is to avoid any misalignment between ongoing and possible future work of the two organisations in the development of the relevant Centralised Services.

Secondly, the involvement of EASA needs to be assured, given that EASA will need to undertake the certification and oversight of any centrally provided service before it can enter into operation. This should avoid potential mismatches in this area and thus ensure that funds, coming from route charges, but also from Union support, are spent most efficiently.

Finally, the terms of this decision should be such that it is without prejudice to any procurement, deployment and operations of such service in the internal market. The application of EU procurement rules in respect of such services, to be provided in the context of the European Single Sky (SES), should thereby be preserved, so as to maximise cost efficiency.

The conditions summarised above are considered essential. Given their nature and scope, they are likely to be relevant also for Union positions in respect of future Eurocontrol decisions in the area of Centralised Services. The Commission will look into these issues in detail each time the need for a new proposal arises.

Background regarding the development of Centralised ATM Services

The work of the Eurocontrol Agency on the subject of Centralised Services has progressed significantly since its inception in late 2012. The Eurocontrol Agency was authorised by its Permanent Commission in February 2014 to initiate a stepwise approach to the assessment and demonstration of the operational, technical and financial feasibility of these potential Centralised Services recognising the varying levels of maturity across those services. Since then, the Eurocontrol Agency has held a series of workshops, and has developed Concepts of Operations (CONOPs) for a number of Centralised Services. It has produced a global Cost Benefit Analysis (CBA) which it has had endorsed by an independent consultant – although the detail within that CBA has not been subject to public scrutiny.

2. LEGAL ELEMENTS OF THE PROPOSAL

Against the background described above, in particular the availability of a revised proposal for EAGDCS and based upon Articles 100(2) and 218(9) TFEU it is proposed to adopt a new position to be taken on behalf of the Union in respect of the decisions to be adopted by Eurocontrol's Permanent Commission on Centralised Services.

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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) and Article 218(9) thereof.

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision (EU) 2015/2394 of 8 December 2015 established a Union position in respect of a decision that was planned to be taken by Eurocontrol's Permanent Commission on 9 December 2015 on Centralised Services, for Eurocontrol to develop financing, procurement arrangements and technical specifications in view of timely deploying a new "European Air/Ground Data Communication Services" (EAGDCS).
- (2) The Union's position was that a decision by Eurocontrol on such services shall be postponed because there was not sufficient information available to evaluate the substance of such decision and because it could have prejudged future activity conducted by Eurocontrol in a manner that would have been detrimental to the Union's activity in this field.
- (3) On 9 December 2015, due to the above Union position, Eurocontrol's Permanent Commission did not take a decision on EAGDCS and asked the Eurocontrol agency to continue working on a revised proposal in close cooperation with the industry stakeholders and to provide an assessment of the economic costs of EAGDCS.
- (4) The Eurocontrol agency and industry stakeholders on 9 February 2016 presented a revised and commonly supported proposal on EAGDCS and ensured the full availability of the assessment of economic costs through existing feasibility studies.
- (5) The Eurocontrol Agency may propose to the Permanent Commission of Eurocontrol to adopt this new decision on EAGDCS in a written procedure.
- (6) The decision concerns the development of a demonstrator for EAGDCS. It has legal effects since it governs situations falling within Union law and, depending on its content, may have concrete incidences on these situations. It may impact the benefits flowing from the technical work on data link services performed by the SESAR Joint Undertaking, the risk of mismatches in the area of certification and oversight, given EASA's role in this area, and thus the risk of ineffective spending of funds stemming from route charges and Union support, as well as the cost-efficiency of relevant deployment activities to be conducted by the Union in the context of the SESAR project.
- (7) Given the advantages that can be expected from the development of a demonstrator, the decision favouring the relevant collaboration should be supported in principle.

However, the decision should display conditions safeguarding the Union's interests on the points referred to above.

- (8) The position to be taken on the Union's behalf in the Permanent Commission of Eurocontrol should therefore be established,

HAS DECIDED AS FOLLOWS

Article 1

The position to be taken by the Member States on behalf of the Union in the Permanent Commission of Eurocontrol is to support that the Eurocontrol Agency shall continue to collaborate with Air Navigation Service Providers of the Eurocontrol States and with the Network Manager in the development of a demonstrator for European Air/Ground Data Communication Services (EAGDCS) in the context of the SESAR project, including the development of appropriate governance and financing, and the development of a comprehensive economic impact assessment. Such decision shall however ensure that

- the outcome of the technical work on data link performed by the SESAR Joint Undertaking are fully taken into account,
- the activities under the decision are conducted in cooperation with EASA in so far as it concerns EASA's preparatory work for future certification and oversight of EAGDCS and
- it remains without prejudice to any procurement in respect of EAGDCS, as well as the deployment and operation thereof.

The Member States shall act jointly in the interest of the Union.

Article 2

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

Done at Brussels,

*For the Council
The President*