



Europeiska
unionens råd

Bryssel den 4 november 2019
(OR. en)

13687/19

**Interinstitutionellt ärende:
2019/0249(NLE)**

**AVIATION 210
RELEX 986**

FÖRSLAG

från:	Jordi AYET PUIGARNAU, direktör, för Europeiska kommissionens generalsekreterare
inkom den:	31 oktober 2019
till:	Jeppe TRANHOLM-MIKKELSEN, generalsekreterare för Europeiska unionens råd
Komm. dok. nr:	COM(2019) 577 final
Ärende:	Förslag till RÅDETS BESLUT om den ståndpunkt som på Europeiska unionens vägnar ska intas i Internationella civila luftfartsorganisationen i fråga om översynen av bilaga 17 (Säkerhet) (tillägg 17) till konventionen angående internationell civil luftfart

För delegationerna bifogas dokument – COM(2019) 577 final.

Bilaga: COM(2019) 577 final



EUROPEISKA
KOMMISSIONEN

Bryssel den 31.10.2019
COM(2019) 577 final

2019/0249 (NLE)

Förslag till

RÅDETS BESLUT

om den ståndpunkt som på Europeiska unionens vägnar ska intas i Internationella civila luftfartsorganisationen i fråga om översynen av bilaga 17 (Säkerhet) (tillägg 17) till konventionen angående internationell civil luftfart

MOTIVERING

1. FRÅGA SOM BEHANDLAS I FÖRSLAGET

Detta förslag avser ett beslut om fastställande av den ståndpunkt som ska intas på Europeiska unionens vägnar i Internationella civila luftfartsorganisationen i samband med det planerade antagandet av ändring 17 av bilaga 17 ("Säkerhet") till konventionen angående internationell civil luftfart, som innehåller förslag till ändring av standardbestämmelserna och rekommendationerna.

2. BAKGRUND TILL FÖRSLAGET

2.1. Konventionen angående internationell civil luftfart (Chicagokonventionen)

Chicagokonventionen syftar till att reglera internationell lufttransport. Konventionen trädde i kraft den 4 april 1947 och genom den inrättades Internationella civila luftfartsorganisationen.

Samtliga EU-medlemsstater är parter i Chicagokonventionen.

2.2. Internationella civila luftfartsorganisationen (Icao)

Icao är ett specialiserat organ inom Förenta nationerna. Organisationens mål är att utveckla principerna och tekniken för den internationella luftfarten samt att främja planeringen och utvecklingen av den internationella lufttransporten.

Icao-rådet är ett permanent organ bestående av 36 medlemmar från Icaos avtalsslutande stater som utnämns av Icao-församlingen för en period av tre år. Under perioden 2016–2019 är sju EU-medlemsstater representerade i Icao-rådet.

I Icao-rådets obligatoriska uppgifter, som förtecknas i artikel 54 i Chicagokonventionen, ingår antagandet av internationella standardbestämmelser och rekommendationer, som är utformade som bilagor till Chicagokonventionen.

Icao-rådet sammankallar också församlingen, som är Icaos suveräna organ. Icao-församlingen sammanträder minst vart tredje år och fastställer Icaos politiska riktlinjer för den kommande treårsperioden. Icao-församlingens 40:e session hölls den 24 september–4 oktober 2019 i Montreal, Kanada.

2.3. Akt som planeras av Icao

Icao-rådet ska i enlighet med artikel 54.1 i Chicagokonventionen anta standardbestämmelser och rekommendationer. Standardbestämmelserna och rekommendationerna om ändring av bilaga 17 om säkerhet omfattar flera artiklar som ska ändras, förbättras eller omvandlas från rekommendation till standardbestämmelse.

Den 4 juli 2019 utfärdade Icao en skrivelse AS8/2.1–19/48 för att underrätta sina avtalsslutande stater om att förslaget till ändring 17 av bilaga 17 kommer att läggas fram för rådet för antagande vid dess 218:e möte (18–29 november 2019) och planeras bli tillämpligt i juli 2020. Det omfattar bland annat nya och/eller reviderade bestämmelser om sårbarhetsanalyser, informationsutbyte mellan stater och intressenter, utbildningsprogram och

certifieringssystem, åtkomstkontroll, säkerhetskontroller av personal, och andra redaktionella ändringar. Genom den ovannämnda skrivelsen inledde Icao ett samråd som avslutas den 4 oktober 2019.

Ändringarna av bilaga 17 har utarbetats av Icaos luftfartsskyddspanel (*ICAO Aviation Security Panel*) i vilken experter från åtta EU-medlemsstater är aktiva medlemmar (Belgien, Frankrike, Tyskland, Grekland, Italien, Nederländerna, Spanien och Förenade kungariket), och därefter lagts fram för godkännande vid Icao-rådets 217:e möte. Dessa ändringar, efter det pågående samrådet, kommer sannolikt att godkännas av Icao-rådet vid dess 218:e möte.

När de planerade ändringarna har antagits kommer de att vara bindande för alla Icao-stater, inbegripet alla EU-medlemsstater, i enlighet med och inom de gränser som anges i Chicagokonventionen. Enligt artikel 38 i Chicagokonventionen ska de avtalsslutande staterna underrätta Icao om de har för avsikt att avvika från en standardbestämmelse inom ramen för mekanismen för anmälan av avvikelser.

2.4. EU:s rättsliga ram och de föreslagna ändringarna av bilaga 17

1) Ändring av definitionen av säkerhetsprövning.

Ursprunglig text:

Background check. A check of a person's identity and previous experience, including where legally permissible, any criminal history as part of the assessment of an individual's suitability to implement a security control and/or for unescorted access to a security restricted area.

Ny text:

Background check. A check of a person's identity and previous experience, including criminal history and any other security related information relevant for assessing the person's suitability, in accordance with national legislation.

This proposal addresses the need to include all security-related relevant information in background checks. The EU background check regime has been strengthened through Point 11.1.3 of the Annex to Commission Implementing Regulation (EU) 2019/103 of 23 January 2019 amending Implementing Regulation (EU) 2015/1998 as regards clarification, harmonisation and simplification as well as strengthening of certain specific aviation security measures¹.

2) Högriskfrakt eller högriskpost.

Ursprunglig text:

High-risk cargo or mail. Cargo or mail presented by an unknown entity or showing signs of tampering shall be considered high risk if, in addition, it meets one of the following criteria:

- a) specific intelligence indicates that the cargo or mail poses a threat to civil aviation; or
- b) the cargo or mail shows anomalies that give rise to suspicion; or

¹ OJ L 21 24.1.2019

c) the nature of the cargo or mail is such that baseline security measures alone are unlikely to detect prohibited items that could endanger the aircraft.

Ny text:

High-risk cargo or mail. Cargo or mail shall be considered high risk if

- a) specific intelligence indicates that the cargo or mail poses a threat to civil aviation; or
- b) the cargo or mail shows anomalies or signs of tampering which give rise to suspicion.

Regardless of whether the cargo or mail comes from a known or unknown entity, a State's specific intelligence about a consignment may render it as high risk.

This proposal seeks to provide a clearer definition of high-risk cargo or mail and it is consistent with the European Union definition thereof.

3) Allmänna principer

Ursprunglig text:

2.1 Syfte

2.1.4 Recommendation. – Each Contracting State should ensure appropriate protection of sensitive aviation security information.

Ny text:

2.1 Objectives

2.1.4 Each Contracting State shall ensure appropriate protection of sensitive aviation security information.

This proposal aims to ensure that appropriate mechanisms are put in place for the protection of sensitive aviation security information from unauthorized access or disclosure, including with respect to the threat from insiders obtaining security information to which they are not entitled to have access.

Protection (and dissemination of sensitive aviation security information) is Member States' responsibility. Non-public and classified legislative provisions contained in EU legislation are in any case covered by Article 18 of Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002² and Commission Decision (EU, Euratom) No 2015/444 of 15 March 2015.

4) Internationellt samarbete (2.4.1, 2.4.1 bis)

Ursprunglig text:

2.4 International Cooperation

² OJ L 97, 9.4.2008, p.72.

2.4.1 Each Contracting State shall ensure that requests from other Contracting States for additional security measures in respect of a specific flight(s) by operators of such other States are met, as far as may be practicable. The requesting State shall give consideration to alternative measures of the other State that are equivalent to those requested.

Ny text:

2.4 International Cooperation

2.4.1 Each Contracting State requesting additional security measures for a specific flight(s) shall ensure appropriate consultation and give consideration to alternative measures of the other State that are equivalent to those requested.

2.4.1*bis* Each Contracting State shall ensure that requests from other Contracting States for additional security measures in respect of a specific flight(s) by operators of such other States are met, as far as may be practicable.

The proposals seek to emphasize the importance of appropriate consultation when a State requests additional security measures from another State. The existing Standard has been separated into two Standards in order to highlight the distinct requirements for States requesting additional measures and host States receiving such requests.

Article 7 of Regulation (EC) No 300/2008 establishes provisions with regard to the notification to the Commission of measures required by a third country should these measures differ from the common basic standards. With regard to the mechanism of consultation and the application of alternative measures, this may be covered and regulated within the bilateral EU (or Member State) - Third Country Air Transport Agreements.

- 5) En standardbestämmelse 3.1.4 om informationsutbyte mellan stater och intressenter.

Ursprunglig text:

3.1.4 Each Contracting State shall establish and implement procedures to share, as appropriate, with its airport operators, aircraft operators, air traffic service providers or other entities concerned, in a practical and timely manner, relevant information to assist them to conduct effective security risk assessments relating to their operations.

Ny text:

3.1.4 Each Contracting State shall establish and implement procedures to share, as appropriate, with relevant airport operators, aircraft operators, air traffic service providers or other entities concerned, in a practical and timely manner, relevant information to assist them to conduct effective security risk assessments relating to their operations.

This proposal aims to clarify the Standard so that States have more flexibility to determine the relevant operators to address the information needed to assist the operators in conducting effective risk assessment relating to their operations.

This standard has been introduced into the EU-wide legislation by Commission Implementing Regulation (EU) 2019/1583 amending Implementing Regulation (EU) 2015/1998 of 5

November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security, as regards cybersecurity measures³.

6) 6) En standardbestämmelse 3.1.8 om utveckling och genomförande av utbildningsprogram

Ursprunglig text:

3.1.8 Each Contracting State shall ensure the development and implementation of training programmes and an instructor certification system in accordance with the national civil aviation security programme.

Ny text:

3.1.8 Each Contracting State shall ensure the development and implementation of training programmes and a certification system that ensures that instructors are qualified in the applicable subject matters in accordance with the national civil aviation security programme.

The proposed amendment is intended to focus on the security outcome to be achieved and not on a single method. It recognizes that focus should be on the ‘results’ of training delivered by qualified subject matter experts who possess the knowledge and ability to instruct, and especially the necessary knowledge of the subject matter being taught. The certification, or other alternative applied methods, as such should focus on both elements required.

The principles sought by this amendment (i.e. *the instructors being qualified in the applicable subject matters*) are part of the EU wide legislation and established throughout Chapter 11 of the Annex I of Regulation (EC) 300/2008 and its implementing rules.

7) Omvandling av rekommendation 3.1.11 till standardbestämmelse

Ursprunglig text:

3.1.11 *Recommendation. - Each Contracting State should ensure that personnel of all entities involved with or responsible for the implementation of various aspects of the national civil aviation security programme and those authorized to have unescorted access to airside areas receive periodic security awareness training.*

Ny text:

3.1.11 Each Contracting State shall ensure that personnel of all entities involved with or responsible for the implementation of various aspects of the national civil aviation security programme and those authorized to have unescorted access to airside areas receive initial and recurrent security awareness training.

Recommendation 3.1.11 has been elevated to a Standard, therefore, it shall be legally binding. Each Contracting State shall ensure that personnel of all entities involved with or responsible for the implementation of various aspects of the national civil aviation security programme and those authorized to have unescorted access to airside areas receive periodic initial and recurrent security awareness training. This proposal recognizes the importance of security

³ EUT L 246, 26.9.2019, s. 15.

awareness training, while highlighting the need for both initial and recurrent security awareness training.

Obligations on initial and recurrent training are contained in the EU wide aviation security legislation namely in Points 11.4.1 and 11.4.3 of the Annex to Commission Implementing Regulation (EU) No 2015/1998.

8) 3.4 Kvalitetskontroll och kvalifikationer

Ursprunglig text:

3.4.1 Each Contracting State shall ensure that the persons implementing security controls are subject to background checks and selection procedures.

Ny text:

3.4.1 Each Contracting State shall ensure that:

a) background checks are completed in respect of persons implementing security controls, persons with unescorted access to security restricted areas, and persons with access to sensitive aviation security information prior to their taking up these duties or accessing such areas or information;

b) recurrent background checks are applied to such persons at intervals defined by the appropriate authority; and

c) persons found unsuitable by any background check are immediately denied the ability to implement security controls, unescorted access to security restricted areas, and access to sensitive aviation security information.

This proposal seeks to clarify who should be subjected to background checks, when background checks should be applied, and what should occur if an individual has been found unsuitable by any background check. In particular, the Standard now prescribes the need for recurrent background checks and the actions required when a person is found to be unsuitable for the relevant functions as a result of the background check. Note that reference to “selection procedures” has been incorporated into 3.4.2.

All principles are already contained in the EU wide aviation security legislation, namely in Points 1.2.3.3, 1.2.3.5, 11.1, 11.5.1, and 11.6.3.5(a) of the Annex to Commission Implementing Regulation (EU) No 2015/1998 as amended by Regulation 2019/103 of 23 January 2019.

This proposal is complementary to the amendment of Standard 3.4.1. The original Standard 3.4.1 included both references to background checks and selection procedures. As the proposal for 3.4.1 now includes further elements regarding the scope and regularity of background checks, this proposal adds the element on selection procedures.

Criteria for the selection of personnel implementing security controls and related functions is contained in the EU wide aviation security legislation, namely in Points 11.1.6, 11.1.7, and 11.1.8 of the Annex to Commission Implementing Regulation (EU) No 2015/1998.

9) Omvandling av rekommendation 3.4.9 till standardbestämmelse

Ursprunglig text:

3.4.9 Recommendation. – Each Contracting State should ensure that each entity responsible for the implementation of relevant elements of the national civil aviation security programme periodically verifies that the implementation of security measures outsourced to external service providers is in compliance with the entity's security programme.

Ny text:

3.4.9 Each Contracting State shall ensure that each entity responsible for the implementation of relevant elements of the national civil aviation security programme periodically verifies that the implementation of security measures outsourced to external service providers is in compliance with the entity's security programme.

This Recommendation has been elevated into a legally binding Standard. This proposal seeks to ensure that external service providers are in compliance with the State's aviation security regulations, in order to address the insider threat which may stem from external service providers.

In accordance with the EU wide policy on aviation security as established in Regulation (EC) No 300/2008:

- Every Member State shall draw up, apply and maintain a NCASP defining responsibilities for the implementation of the common basic standards and describing the measures required by operators and entities.
- Operators, airlines and entities covered in the NCASP are required to draw up, apply and maintain a security programme in accordance to the provisions described therein.
- The programme shall describe methods and procedures followed by the operator, airline or entity to comply with the legislation and the security programme itself, including internal quality controls.
- Security measures and operations undertaken by external service providers are expected to be covered within the security programme of the above operator, airline or entity that retains responsibility for those measures and operations, unless the external service provider is itself a regulated or approved entity for the activities it provides, thus required to draw an own security programme.

The Standard is included in the EU wide legislation namely in Articles 10.1, 12.1, 13.1 and 14.1 of Regulation (EC) No 300/2008 and in Points 1.0.1, 3.0.1, 4.0.1, 5.0.1, 6.0.1, 7.0, 8.0.1, 9.0.1, 11.0.1 and 12.0.1 of the Annex to Commission Implementing Regulation (EU) No 2015/1998. Additional provisions are set out in Points 6.3.1.1, 6.3.1.2 (a), 6.4.1.2, 6.6.1.1 (c), 6.8.5.1 (a), 6-E, 8.1.3.2 (a), 8.1.4.1, 8.1.4.2, 8.1.4.3, 8.1.4.5, 8.1.4.6, 8.1.5.2, 9.1.3.1, 9.1.3.2, 9.1.3.3, 9.1.3.5, 9.1.3.6 and 9.1.4.2 of the Annex to Commission Implementing Regulation (EU) No 2015/1998

10) Omvandling av rekommendation 4.1.2 till standardbestämmelse

Ursprunglig text:

4.1.2 Recommendation. Each Contracting State should promote the use of random and unpredictable security measures. Unpredictability could contribute to the deterrent effect of security measures.

Ny text:

4.1.2 Each Contracting State shall ensure the use of randomness and unpredictability in the implementation of security measures, as appropriate.

Recommendation 4.1.2 on the use of randomness and unpredictability has been elevated into a legally binding Standard. The security objective pursued by the new Standard 4.1.2, to enhance the mitigation against insiders, is in line with the European Union policy in the areas of:

- screening of persons other than passengers and their items carried;
- screening of vehicles;
- surveillance and patrols both in landside and in airside/SRA and related measures
- screening of supplies

This principle is reflected within the EU wide legislation, namely in Points 1.3.1, 1.4.1, 1.4.2, 8.1.6 and 9.1.5 of the Annex to Commission Implementing Decision C(2015) 8005.

11) 4.2.3. Åtgärder avseende åtkomstkontroll

Ursprunglig text:

4.2.3 Each Contracting State shall ensure that identification systems are established in respect of persons and vehicles in order to prevent unauthorized access to airside areas and security restricted areas. Identity shall be verified at designated checkpoints before access is allowed to airside areas and security restricted areas.

Ny text:

4.2.3 Each Contracting State shall ensure that identification systems are established and implemented in respect of persons and vehicles in order to prevent unauthorized access to airside areas and security restricted areas. Access shall be granted only to those with an operational need or other legitimate reason to be there. Identity and authorization shall be verified at designated checkpoints before access is allowed to airside areas and security restricted areas.

The Standard 4.2.3 under “Measures relating to access control” is intended to strengthen measures relating to access control to security restricted areas, by introducing a limitation to allow access only to those with an operational or otherwise legitimate need to be there, and extend the scope of verification at access points to authorization along with identity.

In accordance with EU wide legislation, access of persons and vehicles to security restricted areas may only be granted if they have a legitimate reasons. Airport Identification cards shall be checked before a person is granted access to ensure it is valid and corresponds to the holder. Vehicle pass shall be checked before a vehicle is granted access to ensure it is valid

and corresponds to the vehicle. In the EU-wide legislation, it has been reflected in points 1.2.2.1, 1.2.2.4, 1.2.2.5, 1.2.2.6, 1.2.6.1 of the Annex to Commission Implementing Regulation (EU) No 2015/1998.

- 12) Standardbestämmelse 4.2.6 ("100% screening of persons other than passengers")

Ursprunglig text:

4.2.6 Each Contracting State shall establish measures to ensure that persons other than passengers, together with items carried, are screened prior to entry into airport security restricted areas serving international civil aviation operations, are subject to screening and security controls.

Ny text:

4.2.6 Each Contracting State shall establish measures to ensure that persons other than passengers, together with items carried, are screened prior to entry into airport security restricted areas.

This proposal seeks to eliminate any ambiguity and make clear that all persons other than passengers must be screened prior to entry into a security restricted area, in order to address the threat from insiders.

The EU wide legislation is in full compliance with the new formulation of Standard 4.2.6, namely in Points 1.3 of both the Annexes to Commission Implementing Regulation (EU) No 2015/1998 and to Commission Implementing Decision C(2015) 8005.

- 13) Ny standardbestämmelse 4.2.6 bis capability of detecting explosives

Ny text som lagts till efter 4.2.6 enligt följande:

4.2.6bis Each Contracting State shall ensure the use of appropriate screening methods that are capable of detecting the presence of explosives and explosive devices carried by persons other than passengers on their persons or in their items carried. Where these methods are not applied continuously, they shall be used in an unpredictable manner.

This proposal recognizes that the mitigation of threats from insiders requires a balanced and coordinated approach between background check procedures and physical security measures and addresses the need for appropriate screening methods capable of detecting explosives also on persons other than passengers.

The EU wide legislation requires additional continuous random and unpredictable screening in respect of a proportion of persons other than passengers and their items carried both having and not having caused alarm. The security objective of this additional screening is to detect explosives and explosive devices. Such screening shall be performed using means and methods that for their nature identify explosives (Explosive Detection Dogs, Explosive Trace Detection, Shoe Explosive Detection and Security Scanners) or in alternative by hand search. The current methodology required in the EU for the conduction of hand search on persons and items carried is considered as reasonably capable to detect explosive devices concealed on the body and in the items carried. In addition, hand search enhances the likelihood to detect other

non-metallic (and non-explosive) prohibited items. This has been transposed by Point 1.3 of the Annex to Commission Implementing Decision C(2015) 8005.

- 14) Standardbestämmelse 4.6.5 – a reference to a known consignor as an entity in the secure supply chain

Ursprunglig text:

4.6.5 Each Contracting State shall ensure that operators do not accept cargo or mail for carriage on an aircraft engaged in commercial air transport operations unless the application of screening or other security controls is confirmed and accounted for by a regulated agent, or an entity that is approved by an appropriate authority. Cargo and mail which cannot be confirmed and accounted for by a regulated agent, or an entity that is approved by an appropriate authority shall be subjected to screening.

Ny text:

4.6.5 Each Contracting State shall ensure that operators do not accept cargo or mail for carriage on an aircraft engaged in commercial air transport operations unless the application of screening or other security controls is confirmed and accounted for by a regulated agent, a known consignor, or an entity that is approved by an appropriate authority. Cargo and mail which cannot be confirmed and accounted for by a regulated agent, a known consignor, or an entity that is approved by an appropriate authority shall be subjected to screening.

This proposal seeks to align this Standard with Standard 4.6.2 and ensure that both Standards make a clear reference to known consignors as an entity in the secure supply chain.

The EU wide legislation is in full compliance with the new formulation of Standard 4.6.5, namely with reference to Point 6.1.1 of the Annex to Regulation (EC) No 300/2008 and point 6.1.1 of the Annex to Commission Implementing Regulation (EU) No 2015/1998.

3. DEN STÅNDPUNKT SOM SKA INTAS PÅ UNIONENS VÄGNAR

Den fråga som behandlas i den planerade akten rör ett område där unionen har exklusiv extern behörighet genom den sista delen i artikel 3.2 i EUF-fördraget, eftersom den planerade akten kan ”kan påverka de gemensamma reglerna eller ändra räckvidden för dessa”, det vill säga den EU-lagstiftning om luftfartssäkerhet som avses nedan. Det är därför nödvändigt att fastställa en unionsståndpunkt.

I detta avseende är det viktigt att erkänna att ändring 17 av bilaga 17, som lades fram för Icaos avtalsslutande stater och för godkännande vid Icao-rådets 217:e möte (redan) återspeglas fullt ut i den EU-omfattande lagstiftningen om luftfartsskydd. Det är dock önskvärt att dessa förstärkta standardbestämmelser tillämpas globalt.

Unionens ståndpunkt ska definieras i enlighet med gällande EU-lagstiftning om luftfartsskydd, det vill säga Europaparlamentets och rådets förordning (EG) nr 300/2008 av den 11 mars 2008 om gemensamma skyddsregler för den civila luftfarten och om upphävande av förordning (EG) nr 2320/2002, samt kommissionens genomförandeförordning (EU) 2015/1998 av den 5 november 2015 om detaljerade bestämmelser för genomförande av de gemensamma grundläggande standarderna avseende luftfartsskydd.

3.1. Förfarandemässig rättslig grund

3.1.1. Principer

I artikel 218.9 i fördraget om Europeiska unionens funktionssätt (nedan kallat *EUF-fördraget*) föreskrivs att beslut ska antas ”om fastställande av vilka ståndpunkter som på unionens vägnar ska intas i ett organ som inrättas genom ett avtal, om detta organ ska anta akter med rättslig verkan, med undantag av sådana akter som kompletterar eller ändrar avtalets institutionella ram”.

Artikel 218.9 i EUF-fördraget är tillämplig oberoende av om unionen är medlem i organet eller part i avtalet⁴.

Begreppet *akter med rättslig verkan* omfattar akter som har rättslig verkan med stöd av de regler i internationell rätt som tillämpas på organet i fråga. Det omfattar även instrument som inte har bindande verkan enligt internationell rätt, men som är ”ägnade att på ett avgörande sätt påverka innehållet i de bestämmelser som antas av unionslagstiftaren”⁵.

3.1.2. Tillämpning i det aktuella fallet

Icao är ett organ som inrättats genom ett avtal, nämligen Chicagokonventionen.

Varje framtida ändring av bilaga 17 till Chicagokonventionen kommer att utgöra en akt med rättslig verkan.

Den förfarandemässiga rättsliga grunden för det föreslagna beslutet är därför artikel 218.9 i EUF-fördraget.

3.2. Materiell rättslig grund

3.2.1. Principer

Den materiella rättsliga grunden för ett beslut enligt artikel 218.9 i EUF-fördraget är främst beroende av syftet med och innehållet i den planerade akt avseende vilken en ståndpunkt intas på unionens vägnar.

3.2.2. Tillämpning i det aktuella fallet

Den planerade akten har syften och beståndsdelar på området för luftfartsskyddspolitik som antagits av en internationell organisation och påverkar EU:s politik för luftfartsskydd.

Den materiella rättsliga grunden för förslaget till beslut bör därför vara artikel 100.2 i EUF-fördraget.

⁴ Domstolens dom av den 7 oktober 2014, Tyskland/rådet, C-399/12, ECLI:EU:C:2014:2258, punkt 64.

⁵ Domstolens dom av den 7 oktober 2014, Tyskland/rådet, C-399/12, ECLI:EU:C:2014:2258, punkterna 61–64.

3.3. Slutsats

Den rättsliga grunden för det föreslagna beslutet bör vara artikel 100.2 i EUF-fördraget jämförd med artikel 218.9 i EUF-fördraget.

Förslag till

RÅDETS BESLUT

om den ståndpunkt som på Europeiska unionens vägnar ska intas i Internationella civila luftfartsorganisationen i fråga om översynen av bilaga 17 (Säkerhet) (tillägg 17) till konventionen angående internationell civil luftfart

EUROPEISKA UNIONENS RÅD HAR ANTAGIT DETTA BESLUT

med beaktande av fördraget om Europeiska unionens funktionssätt, särskilt artikel 100.2 jämförd med artikel 218.9,

med beaktande av Europeiska kommissionens förslag, och

av följande skäl:

- (1) Konventionen angående internationell civil luftfart (nedan kallad *Chicagokonventionen*), som har till syfte att reglera internationell luftfart, trädde i kraft den 4 april 1947. Genom den inrättades Internationella civila luftfartsorganisationen (Icao).
- (2) Unionens medlemsstater är fördragsslutande stater i Chicagokonventionen och medlemmar av Icao, medan unionen har observatörsstatus i vissa Icao-organ, inbegripet i församlingen och i andra tekniska organ.
- (3) Enligt artikel 54.1 i Chicagokonventionen får Icao-rådet anta internationella standardbestämmelser och rekommendationer.
- (4) Den 4 juli 2019 utfärdade Icao en skrivelse AS8/2.1–19/48 för att underrätta sina avtalsslutande stater om att förslaget till ändring 17 av bilaga 17 kommer att läggas fram för rådet för antagande vid dess 218:e möte (18–29 november 2019) och planeras bli tillämpligt i juli 2020. Det omfattar bland annat nya och/eller reviderade bestämmelser om sårbarhetsanalyser, informationsutbyte mellan stater och intressenter, utbildningsprogram och certifieringssystem, åtkomstkontroll, säkerhetskontroller av personal, och andra redaktionella ändringar. Genom den ovannämnda skrivelsen inledde Icao ett samråd som avslutades den 4 oktober 2019.
- (5) Ändringarna av bilaga 17 har utarbetats av Icaos luftfartsskyddspanel (*ICAO Aviation Security Panel*) i vilken experter från åtta medlemsstater är aktiva medlemmar, och därefter lagts fram för godkännande vid Icao-rådets 217:e möte. Dessa ändringar, efter det pågående samrådet, kommer sannolikt att godkännas av Icao-rådet vid dess 218:e möte.
- (6) När de planerade ändringarna har antagits kommer de att vara bindande för alla Icao-stater, inbegripet alla EU-medlemsstater, i enlighet med och inom de gränser som

anges i Chicagokonventionen. Enligt artikel 38 i Chicagokonventionen ska de avtalsslutande staterna underrätta Icao om de har för avsikt att avvika från en standardbestämmelse inom ramen för mekanismen för anmälan av avvikelser.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

Artikel 1

Den ståndpunkt som ska intas på unionens vägnar i Internationella civila luftfartsorganisationen i fråga om ändring 17 av bilaga 17 (Säkerhet) till Chicagokonventionen återfinns i bilagan.

Artikel 2

Den ståndpunkt som avses i artikel 1 ska uttryckas av de medlemsstater i unionen som är medlemmar i Internationella civila luftfartsorganisationen och som agerar samfällt.

Artikel 3

Detta beslut riktar sig till medlemsstaterna.

Utfärdat i Bryssel den

*På rådets vägnar
Ordförande*
