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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 649 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Civil Aviation Organization as regards notification of differences to Annexes 1, 3, 4, 6, Parts I, II and III, 10, Volumes I and II, 11, 14, Volumes I and II, 15 and 16, Volumes I, II and III, to the Convention on International Civil Aviation and in the Council of the International Civil Aviation Organization in respect of the adoption of Amendments 46 and 39 to Annex 6, Parts I and II, to that Convention, related to deferral of the future equipage requirement for 25-hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency.

Delegations will find attached document COM(2020) 649 final.

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EUROPEAN
COMMISSION

Brussels, 9.10.2020
COM(2020) 649 final

2020/0290 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Civil Aviation Organization as regards notification of differences to Annexes 1, 3, 4, 6, Parts I, II and III, 10, Volumes I and II, 11, 14, Volumes I and II, 15 and 16, Volumes I, II and III, to the Convention on International Civil Aviation and in the Council of the International Civil Aviation Organization in respect of the adoption of Amendments 46 and 39 to Annex 6, Parts I and II, to that Convention, related to deferral of the future equipage requirement for 25-hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns:

- the position to be taken on the Union's behalf at the International Civil Aviation Organization (ICAO) on the differences to be notified to ICAO regarding the following Amendments to Annexes to the Convention on International Civil Aviation adopted by the ICAO Council in its 219th session and published by:

– ICAO State Letter 20/19 to the Adoption of Amendment 176 to Annex 1

– ICAO State Letter 20/16 to the Adoption of Amendment 79 to Annex 3

– ICAO State Letter 20/23 to the Adoption of Amendment 61 to Annex 4

– ICAO State Letter 20/18 to the Adoption of Amendment 44 to Annex 6, Part I

– ICAO State Letter 20/31 to the Adoption of Amendment 37 to Annex 6, Part II

– ICAO State Letter 20/32 to the Adoption of Amendment 23 to Annex 6, Part III

– ICAO State Letter 20/20 to the Adoption of Amendment 92 to Annex 10, Volume I

– ICAO State Letter 20/21 to the Adoption of Amendment 92 to Annex 10, Volume II

– ICAO State Letter 20/39 to the Adoption of Amendment 52 to Annex 11

– ICAO State Letter 20/35 to the Adoption of Amendment 15 to Annex 14, Volume I

– ICAO State Letter 20/22 to the Adoption of Amendment 9 to Annex 14, Volume II

– ICAO State Letter 20/24 to the Adoption of Amendment 41 to Annex 15

– ICAO State Letter 20/28 to the Adoption of Amendment 13 to Annex 16, Volume I

– ICAO State Letter 20/29 to the Adoption of Amendment 10 to Annex 16, Volume II

– ICAO State Letter 20/30 to the Adoption of Amendment 1 to Annex 16, Volume III

- the position to be taken on the Union's behalf in the 221st session of the Council of ICAO for the envisaged adoption of Amendments 46 and 39 to Annex 6, Parts I and II related to deferral of the future equipage requirement for twenty-five hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency;

– - the position to be taken on the Union's behalf after the ICAO announces the adoption of the Amendments 46 and 39 to Annex 6, Parts I and II in a State Letter, inviting Member States to either notify its disapproval, to notify any differences or its compliance with the adopted measure.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on International Civil Aviation

The Convention on International Civil Aviation ('the Chicago Convention') aims to regulate international air transport. The Chicago Convention entered into force on 4 April 1947 and established the International Civil Aviation Organization.

All EU Member States are Parties to the Chicago Convention.

2.2. The International Civil Aviation Organization

The International Civil Aviation Organization is a specialized agency of the United Nations. The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport.

The ICAO Council is a permanent body of ICAO with a membership of 36 contracting States elected by the ICAO Assembly for a period of three years. For the period of 2019-2022, there are seven EU Member States represented in the ICAO Council.

Mandatory functions of the ICAO Council, listed in Article 54 of the Chicago Convention, include the adoption of international standards and recommended practices (SARPs), designated as Annexes to the Chicago Convention.

Following the adoption of such measures, ICAO States are required to notify either their disapproval, any differences or their compliance with the measure before they enter into force and become legally binding.

Pursuant to Article 38 of the Chicago Convention, any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with respect to any such international standard or procedures or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard.

2.3. The adopted acts during the 219th session of the Council of the International Civil Aviation Organization and their relationship with the existing Union rules

During its 219th session, the ICAO Council has adopted Amendments to Annexes to the Chicago Convention as listed in Section 1 above. The ICAO State Letters informing the ICAO Contracting States about the adoption of the Amendments, remind the States of their obligations under Article 38 of the Chicago Convention to notify ICAO of any differences that may arise.

An overview of the various Amendments to the Annexes, as adopted by the ICAO Council at its 219th session are set out below, with further details set out in the Annex to the Council Decision proposed.

2.3.1. Amendment 176 to Annex 1 on Personnel Licensing

Amendment 176 to ICAO Annex 1 arises from recommendations developed by the ICAO Competency-based Training and Assessment Task Force (CBTA-TF) and the ICAO Secretariat, and concerns alignment with Amendment 5 to the Procedures for Air Navigation Services — Training (PANS-TRG, Doc 9868)/ new definitions, updates the requirements for flight operations officers/flight dispatchers, provides for an amendment to powered-lift aircraft provisions and postponement of their applicability, and introduces air traffic control on-the-job training instructor provisions.

The amendments affect Regulation (EU) 1178/2011 on aircrew[1], Regulation (EU) 1321/2014 on continuing airworthiness[2] and Regulation (EU) 2015/340 on air traffic controllers[3]. The amendments are covered in substance by EU legislation. Some changes are necessary to align the wording of definitions, to reflect editorial amendments and a requirement on the supervision by an appropriate air traffic controller instructor. The latter, as well as the transposition of some definitions into EU rules, requires the filing of differences to ICAO for a limited period of time. It is envisaged that the relevant amendments to the EU rules will be made in 2020 and 2021.

2.3.2. Amendment 79 to Annex 3 on Meteorological Service for International Air Navigation

Following Amendment 79 to ICAO Annex 3, Commission Implementing Regulation (EU) No 2017/373[4] will need to be updated.

The large majority of amendments are considered to be of minimal impact to EU stakeholders and will be of overall benefit to safety and efficiency of operations. In a number of cases software updates will be required, and these are considered to be proportionate to the expected benefits and manageable. As such, it is anticipated that many of the amendments will be incorporated into EU regulations by the third quarter of 2021 without change, following the respective procedures initiated by the EASA. Until the adoption of those regulatory changes many of the amendments have to be notified as a difference.

2.3.3 Amendment 61 to Annex 4 on Aeronautical Charts

Commission Implementing Regulation (EU) 2017/373 in its point AIS.OR.325 'Aeronautical charts' under point (a)(2) and (3) requires that an Aeronautical Information Service (AIS) provider shall ensure that among others, the aerodrome/heliport chart and the aerodrome ground movement chart, where made available, form part of the Aeronautical Information Publication (AIP) or are provided separately to recipients of the AIP. The regulatory framework will be changed during 2020 to accommodate this Amendment. Consequently, no differences should exist on 4 November 2021 between the regulations and/or practices of the Union and the provisions of Annex 4, including all amendments up to and including Amendment 61.

2.3.4. Amendment 44 to Part I of Annex 6 on Operations of Aircraft All weather operations

Until the amendment to Regulation (EU) No 965/2012 reflecting the Amendment 44 to Part I of Annex 6 is done, differences should be notified with respect to Standard 4.2.8.2 and the definitions. To be noted that Member States should have already notified a difference with respect to Standard 4.2.8.1.1, as Regulation (EU) 965/2012 currently only allows operational credits for head-up displays (HUDs) and enhanced vision systems (EVS)[5].

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1 Commission Regulation (EU) No 1178/2011of 3 November 2011laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p. 1.

2 Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, OJ L 362, 17.12.2014, p. 1.

3 Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011OJ L 63, 6.3.2015, p. 1.

4 Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011, OJ L 62, 8.3.2017, p. 1.

5 In a response to Amendment 38 of Annex 6, Part I as announced by the State Letter An 11/1.3.27-14/9

2.3.4.1. Harmonization of terms for authorizations, acceptance and approvals (AAA)

This amendment requires the filing of a difference, although Member States should already have filed a difference against the Standards and Recommended Practices (SARPs) related to extended diversion time operations (EDTO), as this concept is not yet transposed into Regulation (EU) No 965/2012[6] (extended range operations of twin-engined aeroplane (ETOPS) is used instead)[7].

2.3.4.2. Article 83 bis

The change in the Annex requires the carriage on-board of a certified true copy of the summary of the agreement concluded based on Article 83 *bis* of the Chicago Convention. Furthermore, the new Appendix 10 to Annex 6 Part I introduces a standardised form of an agreement summary. It contains all relevant information needed and provides a form for operators to carry for use during ramp inspections or other verification activities in order to mitigate misunderstandings when an Article 83 *bis* agreement is applicable to the aircraft being inspected. It further requires that the agreement summary be transmitted to ICAO when an Article 83 *bis* agreement is submitted for registration.

Under the legal framework established by Regulation (EU) 2018/1139[8] and its implementing and delegated acts, the transfer of the State of Registry (SoR) functions between EU Member States is carried out by the EU regulatory system in a way that fully meets the objectives of Article 83 *bis* of the Chicago Convention. This system is applicable to any aircraft on the register of any EU Member State that is operated by an operator having its principal place of business in another EU Member State that fulfils the responsibilities of the State of the Operator.

It is considered that the newly adopted SARPs will create additional administrative burden for operators to solve a (non-safety) issue for ramp inspectors. Furthermore, ICAO is amending its Rules for Registration to provide for registration of Article 83 *bis* agreements through an interactive web-based system. If such system can be accessed globally, a carriage of the document on board aircraft requirement is even more questionable.

It is not foreseen to amend Regulation (EU) 965/2012 to ensure compliance with this particular standard.

Therefore, a difference with the new ICAO SARPs should be notified.

2.3.4.3. Reliable power source for lightweight flight recorders

Crash protected flight recorders (such as flight data recorder (FDR) or cockpit voice recorder (CVR)) are required to be installed with electrical power from a source that provides maximum reliability for their operation. No such provisions exist for lightweight recorders (such as cockpit audio recording system (CARS) or aircraft data recording systems (ADRS)). A new Standard applicable to aeroplanes with an initial Certificate of Airworthiness issued after 2016 has been

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6 Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1.

7 In a response to Amendment 38 of Annex 6, Part I as announced by the State Letter An 11/1.3.27-14/9

8 Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ l 212, 22.8. 2018, p. 1.

introduced (Standard 1.6 of Annex 6 Part I Appendix 8) for lightweight recorders to be connected to a power source that ensures proper and reliable recording in their operational environment.

Regulation (EU) No 965/2012 requires the carriage of a lightweight flight recorder for some categories of light aeroplanes that are operated for commercial air transport (CAT), if the aircraft concerned is first issued with an individual certificate of airworthiness (CofA) on or after 5 September 2022 (refer to point CAT.IDE.A.191 of Annex IV (Part-CAT) to Regulation (EU) No 965/2012). If the new Standard 1.6 of Annex 6 Part I Appendix 8 is transposed into the EU requirements, it would only be applicable to these categories of light aeroplanes unless a further assessment of the transposition of this standard into the EU rules and expansion of the applicability range would prove to be beneficial for the safety and efficiency of operations. In addition, because the new Standard is located in an Appendix to Annex 6 Part I, a statement of compliance or difference with regard to the Appendix should be made with respect to the Standard prescribing the carriage of a lightweight flight recorder and referring to that Appendix. Therefore a difference should be notified.

2.3.4.4. Recording of data link communications messages

Standard 6.3.3.1.2 of Annex 6 Part I was not transposed into Regulation (EU) No 965/2012. Member States should already have filed a difference with that Standard[9]. With Amendment 44, the difference will be maintained.

2.3.4.5. The location of an aircraft in distress

Provisions regarding the location of an aeroplane in distress were transposed into point CAT.GEN.MPA.210 of Annex IV (Part-CAT) to Regulation (EU) No 965/2012, which is applicable to some categories of aeroplanes first issued with an individual CofA on or after 1 January 2023. The amendment to Standard 6.18.1 will align better this Standard with CAT.GEN.MPA.210 applicable to aeroplanes first issued with an individual CofA on or after 1 January 2023. However, the filed difference with Standard 6.18.1 should remain because the maximum certified take-off mass (MCTOM) and maximum operational passenger seating configuration (MOPSC) criteria are different between Standard 6.18.1 and CAT.GEN.MPA.210.

2.3.5. Amendment 37 to Part II of Annex 6 on Operations of Aircraft

2.3.5.1. All weather operations

Until the amendment to Regulation (EU) No 965/2012 is done, differences should be notified with respect to the definitions. Member States should have already filed a difference against 2.2.2.2.1.1, as Regulation (EU) 965/2012 currently only allows operational credits for HUDs and EVS[10].

Member States should have already filed a difference against 2.2.2.2.1, as in Annex VI (Part-NCC) of Regulation (EU) 965/2012 the rule is addressed to the operator, not the pilot-in-command; for low visibility operations (LVO), it is the competent authority as established by Annex V (Part-SPA) to Regulation (EU) No 965/2012.

2.3.5.2. Article 83 bis

The change in the Annex requires the carriage on-board of a certified true copy of the summary of the agreement concluded based on Article 83 *bis* of the Chicago Convention. Furthermore, the new Appendix 10 to Annex 6 Part I introduces a standardised form of an agreement summary. It contains all relevant information needed and provides a form for operators to carry for use during ramp inspections or other verification activities in order to mitigate misunderstandings when an

9 In a response to Amendment 43 of Annex 6, Part I as announced by the State Letter An 11/1.3.32-18/12

10 See footnotes 9

Article 83 *bis* agreement is applicable to the aircraft being inspected. It further requires that the agreement summary be transmitted to ICAO when an Article 83 *bis* agreement is submitted for registration.

Under the legal framework established by Regulation (EU) 2018/1139 and its implementing and delegated acts, the transfer of the State of Registry (SoR) functions between EU Member States is carried out by the EU regulatory system in a way that fully meets the objectives of Article 83 *bis* of the Chicago Convention. This system is applicable to any aircraft on the register of any EU Member State that is operated by an operator having its principal place of business in another EU Member State that fulfils the responsibilities of the State of the Operator.

It is considered that the new SARPs will create additional administrative burden for operators to solve a (non-safety) issue for ramp inspectors.

Furthermore, ICAO is amending its Rules for Registration to provide for registration of Article 83 *bis* agreements through an interactive web-based system. If such system can be accessed globally, a carriage of the document on board aircraft requirement is even more questionable.

It is not foreseen to amend Regulation (EU) 965/2012 to ensure compliance with this particular standard.

Differences should therefore be notified with respect to the new ICAO SARPs.

2.3.6. Amendment 23 to Part III of Annex 6 on Operations of Aircraft

2.3.6.1. All weather operations

Until the amendment of Regulation (EU) No 965/2012 is done, differences should be filed with respect to Standard 2.2.8.2 and definitions. Member States should already have filed a difference to 2.2.8.1.1, as Regulation (EU) 965/2012 currently only allows operational credits for HUDs and EVS[11].

2.3.6.2. Article 83 bis

The change in in the Annex requires the carriage on-board of a certified true copy of the summary of the agreement concluded based on Article 83 *bis* of the Chicago Convention. Furthermore, the new Appendix 10 to Annex 6 Part I introduces a standardised form of an agreement summary. It contains all relevant information needed and provides a form for operators to carry for use during ramp inspections or other verification activities in order to mitigate misunderstandings when an Article 83 *bis* agreement is applicable to the aircraft being inspected. It further requires that the agreement summary be transmitted to ICAO when an Article 83 *bis* agreement is submitted for registration.

Under the legal framework established by Regulation (EU) 2018/1139 and its implementing and delegated acts, the transfer of the State of Registry (SoR) functions between EU Member States is carried out by the EU regulatory system in a way that fully meets the objectives of Article 83 *bis* of the Chicago Convention. This system is applicable to any aircraft on the register of any EU Member State that is operated by an operator having its principal place of business in another EU Member State that fulfils the responsibilities of the State of the Operator.

It is considered that the newly adopted SARPs will create additional administrative burden for operators to solve a (non-safety) issue for ramp inspectors.

Furthermore, ICAO is amending its Rules for Registration to provide for registration of Article 83 *bis* agreements through an interactive web-based system. If such system can be accessed globally, a carriage of the document on board aircraft requirement is even more questionable.

[11] See footnote 9

At this stage in time it is not foreseen to propose any amendment to Regulation (EU) 965/2012 to ensure compliance with this particular standard.

Differences should therefore be notified with respect to the new ICAO SARPs.

2.3.6.3. Flight recorders

Crash protected flight recorders (such as FDR or CVR) are required to be installed with electrical power from a source that provides maximum reliability for their operation. No such provisions exist for lightweight recorders (such as CARS or ADRS). A new Standard has been introduced (Standard 1.6 of Annex 6 Part III Appendix 4) for lightweight recorders to be connected to a power source that ensures proper and reliable recording in their operational environment.

Regulation (EU) No 965/2012 requires the carriage of a lightweight flight recorder for some categories of light helicopters that are used for CAT operations, if the aircraft concerned is first issued with an individual CofA on or after 5 September 2022 (refer to CAT.IDE.H.191 of Annex IV (Part-CAT) to Regulation (EU) No 965/2012). If the Standard 1.6 of Annex 6 Part III Appendix 4 is transposed into the EU requirements, it would only be applicable to these categories of light helicopters unless a further assessment of the transposition of this standard into the EU rules and expansion of the applicability range would prove to be beneficial for the safety and efficiency of operations. In addition, because the new Standard is located in an Appendix of Annex 6 Part III, a statement of compliance or difference with regard to the Appendix should be made against the Standard prescribing the carriage of a lightweight flight recorder and referring to that appendix. Standard 4.3.1.1.4 prescribes the carriage of a flight recorder for helicopters with MCTOM of less than 3 175 kg, and this recorder may be an ADRS.

There is no CARS carriage requirement in Annex 6 Part III. Therefore a difference should be notified with respect to Standard 4.3.1.2.4, to specify that in the case an ADRS is used, there currently is no EU requirement addressing the reliability of its power source.

2.3.6.4. Recording of data link communications messages

Standards 4.3.3.1.2 and 4.7.3.1.1.1 of Annex 6 Part III were not transposed into Regulation (EU) No 965/2012. Member States should already have filed a difference with that Standard[12]. With amendment 23, the difference will be maintained.

2.3.7. Amendment 92 to Annex 10 Volume I on Aeronautical Telecommunications

ICAO Annex 10, Volume I, up to and including Amendment 89, is referred to in CNS.TR.100 of Subpart B of Annex VIII to Regulation (EU) 2017/373, 'Working methods and operating procedure for providers of communication, navigation or surveillance services'. This provision is intended to be changed to include the amendments up to and including Amendment 92 proposed in ICAO State Letter 20/20 in the previously referred CS.TR.100. Henceforth, for provisions impacted by Amendments up to 92 differences should be notified.

2.3.8. Amendment 92 to Annex 10 Volume II on Aeronautical Telecommunications

This is a consequential amendment resulting from Amendment 79 to Annex 3 (Meteorological Service for International Air Navigation) which affects the aeronautical fixed service (AFS).

ICAO Annex 10, Volume II, up to and including Amendment 89, is referred to in CNS.TR.100 of Subpart B of Annex VIII to Regulation (EU) 2017/373, 'Working methods and operating procedure for providers of communication, navigation or surveillance services'. This provision is intended to be changed to include the amendments up to and including Amendment 92 proposed in ICAO State Letter 20/21 in the previously should be notified with respect to the amended SARPs.referred CS.TR.100. Therefore, differences

[12] See footnote 9

2.3.9. Amendment 56 to Annex 11 on Air Traffic Services

Regarding the coordination of activities potentially hazardous to civil aircraft, as already foreseen in point 2.19.1 of Chapter 2 of Annex 11, Implementing Regulation (EU) 2020/469[13] introduced Article 3c to Regulation (EU) 2017/373 laying down corresponding requirements that will become applicable as of 27 January 2022. The additional requirements introduced by Amendment 52 to Chapter 2 concerning safety risk assessment is expected to be addressed in due time. Until adoption of the corresponding Regulation, differences should be notified.

The newly adopted standards of Chapter 3 of Annex 11 on the requirement for drivers of operational vehicles to read back safety-related parts of the instructions which are transmitted by voice, are already addressed in the proposed amendment to Regulation (EU) No 139/2014[14], that is expected to be published by the end of 2020. In order to align this regulation with Regulation (EU) No 923/2012 (Standardised European Rules of the Air (SERA)), these requirements, as well as the requirement for the air traffic controller to listen to the read-back, is to be addressed in due course. Paragraph (e) of SERA.8015 'Air traffic control clearances' of Regulation (EU) No 923/2012 contains the requirements on read-back of clearances and safety-related information, and mainly considers the communication between flight crew and air traffic controller. The amendment of this point of SERA would allow for the compliance with Amendment 52 of Annex 11 by 2023.

Until adoption of the corresponding Regulation, differences should be notified.

2.3.10. Amendment 15 to Annex 14 Volume I on Aerodromes

The amendments to the provisions of Chapter 3, 5 and 9 would necessitate the amendment of certain EASA certification specifications, which are planned to be adopted by Q3/2021. Until adoption, the filing of differences for these chapters would be necessary. Therefore, differences should be notified with respect to the amended SARPs.

2.3.11. Amendment 9 to Annex 14 Volume II on Aerodromes

The analysis of the changes introduced in Annex 14 Volume II indicates that their transposition would necessitate amendments that are mostly related to the heliport design certification specifications. Such future amendments would address the changes introduced in Chapters 1, 3, 4, and 5 of Annex 14 Volume II. However, in some cases, it is not considered appropriate to amend the current specifications (e.g. specifications for heliport lighting systems), as already indicated in the recommendation to ICAO State Letter A4/1.1.58-18/97.

In other cases, the amendments to the provisions of Annex 14 Volume II (in chapter 2 and 6) would necessitate the amendment of the regulatory framework introduced by Regulation 139/2014 itself.

Thus, relevant differences should be notified until the amendment of the relevant EU regulatory provisions is performed.

2.3.12. Amendment 41 to Annex 15 on Aeronautical Information Services

The amendments aim to improve the information on the hazardous activities to civil aviation promulgated through Notice to Airmen (NOTAM), addressing the specific case of conflict zones.

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13 Commission Implementing Regulation (EU) 2020/469 of 14 February 2020 amending Regulation (EU) No 923/2012, Regulation (EU) No 139/2014 and Regulation (EU) 2017/373 as regards requirements for air traffic management/air navigation services, design of airspace structures and data quality, runway safety and repealing Regulation (EC) No 73/2010, OJ L 104, 3.4.2020, p. 1.

14 Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 44, 14.2.2014, p. 1.

Regulation (EU) 2017/373, as amended by Regulation (EU) 2020/469, includes the latest ICAO Annex 15 SARPs and Procedures for Air Navigation Services — Aeronautical Information Management (PANS-AIM) provisions in Annex VI (Part-AIS). However, there is a need to notify a difference because the amendments adopted by ICAO are not yet included in Annex VI (Part-AIS) to Regulation (EU) 2017/373.

2.3.13. Amendment 13 to Annex 16 Volume I on Environmental Protection

The applicable amendment of Annex 16 is foreseen in the first sub-paragraph of Article 9(2) of Regulation (EU) 2018/1139 and it shall come into force on 1 April 2022.

However, according to the ICAO State Letter 20/28, the date of applicability of Amendment 13 to Annex 16 Volume I is 1 January 2021.

A difference will exist until 31 March 2022 between the EU regulations and/or practices and the provisions of Annex 16, Volume I, including all amendments up to and including Amendment 13. Therefore a difference that will last until 31 March 2022 should be notified.

2.3.14. Amendment 10 to Annex 16 Volume II on Environmental Protection

The applicable amendment to Annex 16 Volume II is foreseen in the first sub-paragraph of Article 9(2) of Regulation (EU) 2018/1139.

According to the ICAO State Letter 20/29, the date of applicability of Amendment 10 to Annex 16 Volume II is 1 January 2021. The relevant amendment through the respective EASA process is foreseen. However, a difference will exist until 31 March 2022 between the EU regulations and/or practices and the provisions of Annex 16, Volume II, including all amendments up to and including Amendment 10. Therefore a difference should be notified.

2.3.15. Amendment 1 to Annex 16 Volume III on Environmental Protection

According to the ICAO State Letter 20/30, the date of applicability of Amendment 1 to Annex 16 Volume III is 1 January 2021. The corresponding amendment of Annex 16 Volume III is foreseen in the first sub-paragraph of Article 9(2) of Regulation (EU) 2018/1139.

A difference will however exist until 1 April 2022 between the EU regulations and/or practices and the provisions of Annex 16, Volume III, including all amendments up to and including Amendment 13.

2.4. The envisaged adoption of Amendments 46 and 39 to Annex 6, Parts I and II by the Council of the International Civil Aviation Organization related to deferral of the future equipage requirement for twenty-five hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency

Amendments 46 and 39 to Annex 6, Parts I and II related to deferral of the future equipage requirement for twenty-five hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency will be put for adoption at the 221st ICAO Council meeting.

The purpose of these Amendments to Annex 6 – *Operation of Aircraft, Part I – International Commercial Air Transport – Aeroplanes and Part II – International General Aviation - Aeroplanes* to the Chicago Convention – is to postpone the new twenty-five hour cockpit voice recorder (CVR) recordings obligation until 1 January 2022 when the envisaged Amendments are to become legally binding on the parties to the Chicago Convention.

The equipage date for the CVR was set for 1 January 2021. The COVID-19 pandemic was declared in early 2020 and has since caused significant disruptions in aircraft manufacturing and supply chains for aircraft manufacturers.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. Differences to be notified

The 219th ICAO Council session held from 2 to 20 March 2020 adopted a number of Amendments to various Annexes of the Chicago Convention, in the areas of safety, environment and air navigation.

For each ICAO Annex, the Annex to the proposal for a Council Decision refers to the relevant Union legislation. All Amendments referred to fall within areas covered by Union law and hence under exclusive external Union competence. In addition, the Annex to the proposal for a Council Decision shows in detail the differences to be notified to ICAO. The list below identifies the need to notify differences to ICAO per Annex:

– State Letter 20/19 to the Adoption of Amendment 176 to Annex 1 – differences to be notified

– State Letter 20/16 to the Adoption of Amendment 79 to Annex 3 – differences to be notified

– State Letter 20/18 to the Adoption of Amendment 44 to Annex 6, Part I – differences to be notified

– State Letter 20/31 to the Adoption of Amendment 37 to Annex 6, Part II – differences to be notified

– State Letter 20/32 to the Adoption of Amendment 23 to Annex 6, Part III – differences to be notified

– State Letter 20/20 to the Adoption of Amendment 92 to Annex 10, Volume I – differences to be notified

– State Letter 20/21 to the Adoption of Amendment 92 to Annex 10, Volume II – differences to be notified

– State Letter 20/39 to the Adoption of Amendment 52 to Annex 11 – differences to be notified

– State Letter 20/35 to the Adoption of Amendment 15 to Annex 14, Volume I – differences to be notified

– State Letter 20/22 to the Adoption of Amendment 9 to Annex 14, Volume II – differences to be notified

– State Letter 20/24 to the Adoption of Amendment 41 to Annex 15 – differences to be notified

In this context, having regard to relevant Union legislation, the position to be taken on the Union's behalf is to notify the differences in accordance with Article 38 of the Chicago Convention as set out in the Annex to the proposal for a Council Decision.

3.2. Amendments 46 and 39 to Annex 6, Parts I and II

The main change to be introduced by the proposal for Amendments 46 and 39 to Annex 6, Parts I and II to the existing Union rules is the postponement of the implementation date of the new twenty-five hour equipage rule originally envisaged for 1 January 2021 to 1 January 2022.

Due to the COVID-pandemic, the implementation of the new twenty-five hour equipage rule originally envisaged for 1 January 2021 is unrealistic also at Union level. The Commission, is in the process of adopting a postponement of that date at Union level, by way of amendments to the

relevant Commission Regulation.[15] Therefore, the proposed deferral by ICAO should be supported. Furthermore, once the ICAO announces the adoption of the Amendments 46 and 39 to Annex 6, Parts I and II in a State Letter inviting Member States to either notify its disapproval, to notify any differences or its compliance with the adopted measure, the position of the Union should be to notify compliance.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[16].

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[17].

4.1.2. Application to the present case

The ICAO Council is a body set up by an agreement, namely the Convention on International Civil Aviation ('Chicago Convention').

In accordance with Article 54 of the Chicago Convention, the ICAO Council adopts international Standards and Recommended Practices, designated as Annexes to the Chicago Convention. These are acts having legal effects. Certain legal effects of these acts could depend on the submission of notification of differences, and on the terms of those notifications. Therefore, the adoption of the Union position in respect of such notifications falls within the scope of Article 218(9) TFEU.

Differences to be notified in reply to ICAO State letters as listed above have an incidence on the legal effects deployed by the standards established under the Chicago Convention.

Those legal effects fall within an area covered by Union rules, namely Regulation (EU) 2018/1139, Regulation (EU) 2017/373, Regulation (EU) 965/2012, Regulation (EU) 2020/469 and Regulation (EU) 139/2014. This entails that, in accordance with Article 3(2) of the TFEU, the Union has exclusive external competence in this matter.

The adopted acts do not supplement or amend the institutional framework of the agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

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15 Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1. See the Air Operations Rule, points CAT.IDE.A.185(c)(1) and NCC.IDE.A.160(b)(1).

16 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

17 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the adopted act in respect of which a position is taken on the Union's behalf. If the adopted act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the adopted act relate to the common transport policy.

Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision is Article 100(2) TFEU, in conjunction with Article 218(9) TFE

2020/0290 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Civil Aviation Organization as regards notification of differences to Annexes 1, 3, 4, 6, Parts I, II and III, 10, Volumes I and II, 11, 14, Volumes I and II, 15 and 16, Volumes I, II and III, to the Convention on International Civil Aviation and in the Council of the International Civil Aviation Organization in respect of the adoption of Amendments 46 and 39 to Annex 6, Parts I and II, to that Convention, related to deferral of the future equipage requirement for 25-hour cockpit voice recorder (CVR) to avoid unintended consequences due to the COVID-19 contingency.

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on International Civil Aviation ('the Chicago Convention') which regulates international air transport, entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO).

(2) The Member States are Contracting States to the Chicago Convention and members of the ICAO, while the Union has observer status in certain ICAO bodies. There are seven Member States represented in the ICAO Council.

(3) Pursuant to Article 54 of the Chicago Convention, the ICAO Council may adopt international Standards and Recommended Practices ('SARPs').

(4) Pursuant to Article 38 of the Chicago Convention, any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any such international standard or procedures or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, should give immediate notification to the ICAO of the differences between its own practice and that established by the international standard.

(5) During its 219th session, held from 2 to 20 March 2020, the ICAO Council adopted Amendments to Annexes 1, 3, 4, 6 (Part I, II and III), 10 (Volume I and II), 11, 14 (Volume I and II), 15, and 16 (Volume I, II and III) to the Chicago Convention, in the areas of safety, environment and air navigation. The corresponding ICAO State Letters informing the ICAO Contracting States about the adoption of the Amendments remind the States of their obligations under Article 38 of the Chicago Convention to notify ICAO of any differences that may arise.

(6) All amendments adopted by the ICAO Council fall within areas covered by Union law and are therefore under exclusive external Union competence. Indeed, the new SARPs are

capable of decisively influencing the content of Union law, namely Regulation (EU) 2018/1139 of the European Parliament and of the Council

(7) [1], Commission Implementing Regulation (EU) 2017/373[2], Commission Regulation (EU) 965/2012[3], Commission Implementing Regulation (EU) 2020/469[4] and Commission Regulation (EU) 139/2014[5].

(8) Several Amendments to the Annexes to the Chicago Convention are already part of the Union-wide legislation while others are in the process of being introduced in Union rules.

(9) For each amended Annex to the Chicago Convention, the Annex to this Decision refers to the relevant Union legislation. In addition, the Annex to this Decision shows in detail the differences to be notified to ICAO.

(10) It is therefore appropriate to establish the position to be taken on the Union's behalf in reply to ICAO State letters, which is to notify compliance, notify differences or disagreement with new SARPs adopted at the 219th session of the ICAO Council with respect to Annexes 1, 3, 4, 6, 1, 10, 11, 14, 15, and 16 to the Chicago Convention.

(11) The COVID-19 global pandemic has negatively impacted aircraft operators, aircraft manufacturers and sub-tier suppliers to equipment manufacturers and have delayed the development of new systems. Aircraft operators are cancelling or deferring aircraft deliveries, resulting in aircraft intended for delivery in 2020 to be deferred to 2021. A newly manufactured aircraft configured for a 2020 delivery which has been delayed until 2021 requires reconfiguration to the applicable provisions after 1 January 2021. Aircraft operators and aircraft manufacturers face undue financial burden if those aircraft need to be retrofitted. Therefore, the Commission is in the process of adopting a postponement of that date at Union level, by way of amendments to Regulation (EU) No 965/2012.The cockpit voice recorder ('CVR') is used in support of accident and incident investigation. A delay in implementation of CVR duration from two hours to twenty-five hours poses no significant safety risk, but does align the safety benefit of a longer duration cockpit voice recording with current realities facing the aviation industry. The Union is a strong supporter of the efforts by ICAO to improve aviation safety. However, considering the unprecedented situation caused by the COVID-19 pandemic and the absence of a significant safety risk, the Union should, therefore, support those Amendments.

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1 Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ l 212, 22.8. 2018, p. 1).

2 Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

3 Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

4 Commission Implementing Regulation (EU) 2020/469 of 14 February 2020 amending Regulation (EU) No 923/2012, Regulation (EU) No 139/2014 and Regulation (EU) 2017/373 as regards requirements for air traffic management/air navigation services, design of airspace structures and data quality, runway safety and repealing Regulation (EC) No 73/2010 (OJ L 104, 3.4.2020, p. 1).

5 Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 44, 14.2.2014, p. 1).

(12) The Union's position during the 221st session of the ICAO Council with regard to the envisaged Amendments 46 and 39 to Annex 6, Parts I and II, should be to support these amendments, to be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly on behalf of the Union.

(13) The Union's position after the adoption of Amendments 46 and 39 to Annex 6, Parts I and II, by the ICAO Council, to be announced by the ICAO Secretary General via an ICAO State Letter procedure, should be to notify compliance with those Amendments and is to be expressed by all the Member States of the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in reply to the:

– ICAO State Letter 20/19 to the Adoption of Amendment 176 to Annex 1,

– ICAO State Letter 20/16 to the Adoption of Amendment 79 to Annex 3,

– ICAO State Letter 20/23 to the Adoption of Amendment 61 to Annex 4 ,

– ICAO State Letter 20/18 to the Adoption of Amendment 44 to Annex 6, Part I,

– ICAO State Letter 20/31 to the Adoption of Amendment 37 to Annex 6, Part II,

– ICAO State Letter 20/32 to the Adoption of Amendment 23 to Annex 6, Part III,

– ICAO State Letter 20/20 to the Adoption of Amendment 92 to Annex 10, Volume I,

– ICAO State Letter 20/21 to the Adoption of Amendment 92 to Annex 10, Volume II,

– ICAO State Letter 20/39 to the Adoption of Amendment 52 to Annex 11,

– ICAO State Letter 20/35 to the Adoption of Amendment 15 to Annex 14, Volume I,

– ICAO State Letter 20/22 to the Adoption of Amendment 9 to Annex 14, Volume II,

– ICAO State Letter 20/24 to the Adoption of Amendment 41 to Annex 15,

– ICAO State Letter 20/28 to the Adoption of Amendment 13 to Annex 16, Volume I,

– ICAO State Letter 20/29 to the Adoption of Amendment 10 to Annex 16, Volume II,

– ICAO State Letter 20/30 to the Adoption of Amendment 1 to Annex 16, Volume III,

issued by the International Civil Aviation Organization (ICAO), is set out in the Annex to this Decision.

Article 2

(1) The position to be taken on the Union's behalf in the 221st session of the ICAO Council shall be to support the proposed Amendments 46 and 39 to Annex 6, Parts I and II, to the Convention on International Civil Aviation ('Chicago Convention') in their entirety.

(2) The position to be taken on the Union's behalf after the adoption by the ICAO Council of Amendments 46 and 39 to Annex 6, Parts I and II, to the Chicago Convention shall be to notify compliance with the adopted measure in reply to the respective ICAO State letter.

Article 3

(1) The position referred to in Article 1 and Article 2(2) shall be expressed by all the Member States of the Union.

(2) The position referred to in Article 2(1) shall be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President