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Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union within the International Civil Aviation Organization as regards the notification of differences with respect to Annexes 1 and 6 to the Convention on International Civil Aviation due to the temporary measures related to the COVID-19 pandemic

COUNCIL DECISION (EU) 2020/...

of ...

**on the position to be taken on behalf of the European Union
within the International Civil Aviation Organization
as regards the notification of differences with respect to Annexes 1 and 6
to the Convention on International Civil Aviation due to the temporary measures
related to the COVID-19 pandemic**

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, which was signed in Chicago on 7 December 1944 and regulates international air transport (the 'Chicago Convention'), entered into force on 4 April 1947. It established the International Civil Aviation Organization ('ICAO').
- (2) The Member States are Contracting States of the Chicago Convention and members of ICAO, while the Union has observer status in certain ICAO bodies.
- (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 international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard or procedure, is to give immediate notification to ICAO of the differences between its own regulations or practices and those established by the international standard or procedure.

- (5) Pursuant to Article 39 of the Chicago Convention, where the medical certificate for personnel participating in international air navigation does not meet the minimum standards, it must be accompanied by a complete enumeration of the particulars in which the person concerned does not satisfy those standards. In that case, the particulars would need to address the specific differences related to the validity period of the medical certificate.
- (6) Furthermore, pursuant to Article 40 of the Chicago Convention, no personnel having such a medical certificate would be allowed to participate in international air navigation, except with the permission of the State or States whose territory is entered.
- (7) In view of the COVID-19 pandemic, ICAO has created an ICAO COVID-19 Contingency-Related Differences ('CCRD') sub-system of the Electronic Filing of Differences ('EFOD') system, which allows States to notify a temporary difference to Annexes 1 and 6 to the Chicago Convention and at the same time to indicate what kind of standard or procedure they find acceptable to facilitate international operations and to meet the obligations under Article 40 of the Chicago Convention.
- (8) Annex 1 entitled 'Personnel Licensing' to the Chicago Convention ('Annex 1 to the Chicago Convention') provides SARPs for the licensing of flight crew members, air traffic controllers, aeronautical station operators, maintenance technicians and flight dispatchers. Under those rules, an applicant for a licence must meet certain requirements within prescribed deadlines, proportional to the complexities of the task to be performed.

- (9) At Union level, the requirements set out in Annex 1 to the Chicago Convention are reflected in Regulation (EU) 2018/1139 of the European Parliament and of the Council¹ and in related implementing and delegated acts. In particular, Commission Regulation (EU) No 1178/2011² lays down in its Annexes specific requirements and procedures related to civil aviation aircrew and sets the limits and deadlines for personnel licensing and aero and medical fitness checks. Commission Regulation (EU) No 1321/2014³ lays down rules on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in those tasks.

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 Regulation (EU) No 1178/2011 of 3 November 2011 laying 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).

³ Commission 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).

- (10) Due to the serious implications of the COVID-19 pandemic, such as a limited or no possibility to access aero medical examiners or aero medical centers, a temporary extension of validity of medical certificates has been granted by several Member States for a period of four months, by derogation from the relevant ICAO SARPs. The validity of pilot licences has also been extended by some Member States by a period of between four and eight months if pilots are not able to reach or gain access to flight simulators in time to complete the necessary training and checking. Those extensions apply to licences expiring within a reference period from 1 March to 31 October 2020 (the 'reference period').
- (11) Annex 6 entitled 'Operation of Aircraft' to the Chicago Convention ('Annex 6 to the Chicago Convention') provides for standardised operational requirements for aircraft engaged in international air transport ensuring the highest levels of safety and efficiency. At Union level, those international requirements are reflected in Regulations (EU) 2018/1139 and (EU) No 1178/2011 and in Commission Regulation (EU) No 965/2012¹.

¹ 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).

- (12) The COVID-19 pandemic has resulted in the significant reduction of commercial air transport operations, leading to difficulties in reaching the locations where suitable flight simulators are available. The serious operational impediments caused by the COVID-19 pandemic limit the possibilities for pilots and crews to meet ICAO requirements of recent experience. Therefore, in order to enable pilots and crews to fly when the aviation activities resume, Member States apply exemptions from the relevant requirements of recent experience by allowing operations under certain operational conditions and with appropriate mitigation measures established on the basis of a risk assessment. Those exemptions apply to operations taking place within the reference period and for a maximum period of eight months.
- (13) Those national measures, which differ from Annexes 1 and 6 to the Chicago Convention, have been adopted on the basis of Article 71 of Regulation (EU) 2018/1139. Under that Article, Member States may grant exemptions to any natural or legal person from the Union requirements applicable to that person, other than the essential requirements, in the event of urgent unforeseeable circumstances affecting those persons or in the event of urgent operational needs of those persons, provided that all the conditions laid down in Article 71 of Regulation (EU) 2018/1139 are complied with. Pursuant to that Article, and in view of the consequences entailed by the COVID-19 pandemic, several Member States apply or will apply exemptions from Union rules laid down in Regulations (EU) 2018/1139, (EU) No 1178/2011, (EU) No 1321/2014 and (EU) No 965/2012.

- (14) Since the notification of differences with respect to Annexes 1 and 6 to the Chicago Convention has an impact on the legal effects of the standards established under the Chicago Convention, the adoption of a Union position in respect of such notification falls within the scope of Article 218(9) of the Treaty on the Functioning of the European Union.
- (15) It is appropriate to establish the position to be taken on the Union's behalf as regards the notification of differences with respect to Annexes 1 and 6 to the Chicago Convention due to the temporary operational measures applied by Member States in relation to the COVID-19 pandemic in reply to the State letter AN 11/55-20/50 issued by ICAO on 3 April 2020 on operational measures to ensure safe operations during the COVID-19 pandemic (the 'ICAO State letter AN 11/55-20/50').
- (16) The position of the Union within ICAO should be based on the information provided by the European Union Aviation Safety Agency and Member States' experts and on the table attached to the COVID-19 notification of temporary differences form provided by ICAO, which is to be completed and notified by each notifying Member State in line with the individual exemptions it has granted under Article 71 of Regulation (EU) 2018/1139. That position should be expressed by the Member States that are members of ICAO and that have granted individual exemptions pursuant to Article 71 of Regulation (EU) 2018/1139 leading to differences, which are to be notified pursuant to the ICAO State letter AN 11/55-20/50,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the International Civil Aviation Organization ('ICAO') as regards the notification of differences with respect to Annexes 1 and 6 to the Convention on International Civil Aviation due to the temporary measures related to the COVID-19 pandemic in reply to the ICAO State letter AN 11/55-20/50 shall be based on the table attached to the COVID-19 notification of temporary differences form¹, which is to be completed and notified by each notifying Member State in line with the individual exemptions it has granted under Article 71 of Regulation (EU) 2018/1139.

Article 2

The position referred to in Article 1 shall be expressed by the Member States that are members of ICAO and that have granted individual exemptions pursuant to Article 71 of Regulation (EU) 2018/1139 leading to the differences, which are to be notified pursuant to the ICAO State letter AN 11/55-20/50.

¹ See document ST 8916/20 on <http://register.consilium.europa.eu>.

Article 3

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

Done at ...,

For the Council

The President
