



Council of the
European Union

Brussels, 5 February 2021
(OR. en)

5842/21

Interinstitutional File:
2021/0027(NLE)

AVIATION 30
ICAO 12
RELEX 78

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	5 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2021) 48 final
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the 222 nd session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged adoption of Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 and of the new volume VI to Annex 10 the Convention on International Civil Aviation
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Delegations will find attached document COM(2021) 48 final.

Encl.: COM(2021) 48 final



Brussels, 5.2.2021
COM(2021) 48 final

2021/0027 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 222nd session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged adoption of Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 and of the new volume VI to Annex 10 the Convention on International Civil Aviation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns:

(i) the position to be taken on the Union's behalf in the 222nd session of the Council of the International Civil Aviation Organization (ICAO) for the envisaged adoption of Amendment 177 to Annex 1 – *Personnel Licensing*, Amendment 47 to Annex 2 – *Rules of the Air*, Amendment 108 to Annex 8 – *Airworthiness of Aircraft*, Amendment 90 to Annex 10 – *Aeronautical Telecommunications* and new volume VI to Annex 10 to the Convention on International Civil Aviation, and

(ii) the position to be taken on the Union's behalf after the ICAO announces the adoption of the Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 and the new volume VI to Annex 10 in respective State Letters, inviting its contracting States to either notify their disapproval, to notify any differences or compliance with the adopted measures.

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.

Pursuant to Article 90 of the Chicago Convention, any such Annex or any amendment of an Annex shall become effective within three months after its submission to the ICAO contracting States, or at the end of such longer period of time as the ICAO Council may prescribe, unless in the meantime a majority of contracting ICAO States register their disapproval.

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 ICAO of the differences between its own practice and that established by the international standard.

2.3. The envisaged acts of ICAO and their relationship with the existing Union rules

During its 222nd or any consequent session, the ICAO Council is expected to adopt:

Amendment 177 to Annex 1 - *Personnel Licensing*, which is a consequential amendment relating to C2 Link systems and procedures;

Amendment 47 to Annex 2 - *Rules of the Air*, which relates to remotely piloted aircraft systems (RPAS) requirements for airworthiness certification as a consequence of Amendment 108 to Annex 8;

Amendment 108 to Annex 8 - *Airworthiness of Aircraft*, related to remotely piloted aircraft systems (RPAS);

Amendment 90 to Annex 10 - *Aeronautical Telecommunications*, Volume V related to frequency spectrum for RPAS C2 Links, and

a new Volume VI to Annex 10 related to RPAS C2 Link systems and procedures. ('the envisaged act').

The purposes of the envisaged act are as follows:

to amend existing SARPs in Annex 8 to the Chicago Convention incorporating in Part I of Annex 8 specific definitions and terms that are used in the Standards in new Parts VIII, IX and X. It also includes proposals in Part II of Annex 8 that provide an overview of the general airworthiness procedures for certification and continuing airworthiness applicable to remotely piloted aeroplanes (RPA);

to introduce a new Part VIII to Annex 8 of the Chicago Convention related to RPA;

to introduce a new part IX to Annex 8 of the Chicago Convention related to remotely piloted helicopters;

to introduce a new part X to the Annex 8 of the Chicago Convention related to the Remote Pilot Station (RPS);

to introduce an amendment to the Annex 2, Appendix 4 of the Chicago Convention that is consequential to the amendments to Annex 8;

to amend existing SARPs in Annex 10, Volume V of the Chicago Convention specifying the management of spectrum solely used for the Command and Control Link (C2 Link) or Remotely Piloted Aircraft Systems (RPAS);

to introduce a new Volume VI to Annex 10 – Communication Systems and Procedures relating to Remotely Piloted Aircraft Systems C2 Link;

to introduce amendments to Annexes 1 and 2 that are consequential to the amendment of Annex 10 Volume V and the introduction of a new Volume VI to Annex 10.

The proposed amendments are envisaged to become applicable on 28 November 2024.

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

3.1. Main changes and their relationship with the existing Union rules

The ICAO Remotely Piloted Aircraft Systems Panel (RPASP) has been tasked with the development of SARPs, Manuals and guidance material paving the way for the operation of Remotely Piloted Aircraft across international borders under Instrument Flight Rules. Member States have been consulted on the proposed amendments with ICAO State Letters AN 7/67.1.1-19/52 and AN 3/5.12-19/53, including the proposals for the amendment of Annexes 8 and 10 of the Chicago Convention and consequential changes to Annexes 1 and 2 of the Chicago Convention. These proposals are part of a series of amendments that will be provided in sequence.

The amendments initially proposed in State Letter AN 3/5.12-19/53 relate to the airworthiness of remotely piloted fixed wing aircraft, the airworthiness of remotely piloted helicopters and the remote pilot station (RPS). These SARPs were developed for RPAS which will undergo the type certification process consistent with ICAO Doc 10019, Manual on Remotely Piloted Aircraft Systems (RPAS), and reinforced by the content and assumptions of the ICAO RPAS Concept of Operations (CONOPS).

Due to the integrated nature of RPAS, the RPS may be certificated as part of the Type Certificate (TC) granted to the RPA TC Holder as a result of the RPA type certification process. This does not preclude the possibility that an RPS may be approved separately. The C2 Link is a major component of the RPAS and its airworthy status, consequently it is included as a component in the TC.

The amendments initially proposed in State Letter AN 7/67.1.1-19/52 relate to the Command and Control Link (C2 Link) and include technology neutral SARPs on C2 Link Procedures and C2 Link Systems. The C2 Link, is dedicated to the exchange of information between the two main physical components of the RPAS: the remote pilot station (RPS) and the remotely piloted aircraft (RPA). The C2 Link is therefore the logical connection, however physically realised, for the exchange of information between the RPS and the RPA to enable the remote pilot to safely integrate the RPAS into the global aviation operational environment, in particular communications, navigation and surveillance. These SARPs are the first of two planned C2 Link deliverables.

The RPASP is currently working on the second and more detailed package containing technology-specific SARPs with a projected delivery date of 2022.

Following input by EASA on State Letter AN 3/5.12-19/53, many EU Member States proposed that due to the specific split of responsibilities between the operator and designer, the State Letter consultation should be extended until draft material for the amendment of Annex 6 is available, and that the adoption of Annex 6 and Annex 8 be run in parallel, especially with regard to Remote Pilot Stations (RPS) approval and to responsibilities of Contracting States in respect of continuing airworthiness of the RPS. This proposal was not accepted by ICAO, which risk complicating the transposition of the related ICAO SARPs in Union law, due to the need to address designer and operator responsibilities for RPS.

The envisaged Amendments are capable of decisively influencing the content of EU legislation, namely Commission Regulation (EU) No 748/2012¹, Commission Regulation (EU) No 1321/2014², Commission Regulation (EU) No 1178/2011³, Commission Regulation (EU) No 965/2012⁴, and potentially Commission Regulation (EU) No 452/2014⁵, and Commission Implementing Regulation (EU) 2017/373⁶. New ICAO SARPs will have to be introduced to the EU wide legislation to amend the current legal framework in order to regulate the design, type certification and operation of RPAS operating across international borders and over the high seas.

3.2. Position to be taken on Union's behalf

The Union acknowledges the need to establish a harmonised regulatory framework at international level allowing the design, type certification and operation of Remotely Piloted Aircraft across international borders and over the high seas under Instrument Flight Rules. The amendments proposed in the two ICAO State Letters support this goal.

Therefore, the proposed position to be taken on behalf of the Union is to support the proposed amendments in its entirety.

The position to be taken on the Union's behalf, provided the ICAO Council adopts without any substantial change the proposed Amendments to the Chicago Convention, shall be not to notify disapproval and to notify compliance with the adopted measure in reply to the respective ICAO State Letters. Where Union legislation would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, i.e. 28 November 2024, a difference with those particular SARPs should be notified to ICAO.

¹ Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1–85)

² 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. 1–194)

³ 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. 1–193)

⁴ 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. 1–148)

⁵ Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12–26)

⁶ 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. 1–126)

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 agreement⁷.

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*’⁸.

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 notifications regarding a disapproval and regarding 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.

The envisaged acts are capable of decisively influencing the content of EU legislation, namely Commission Regulation (EU) No 748/2012⁹, Commission Regulation (EU) No 1321/2014¹⁰, Commission Regulation (EU) No 1178/2011¹¹, Commission Regulation (EU) No 965/2012¹², and potentially Commission Regulation (EU) No 452/2014¹³, and Commission Implementing

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

⁸ 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.

⁹ Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1–85)

¹⁰ 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. 1–194)

¹¹ 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. 1–193)

¹² 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. 1–148)

¹³ Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12–26)

Regulation (EU) 2017/373¹⁴. New ICAO SARPs will have to be introduced to the EU wide legislation to amend the current legal framework in order to regulate the design, type certification and operation of RPAS operating across international borders and over the high seas. Therefore, the EU legislation will have to change accordingly.

The main purpose of the amendments proposed is to establish a legal framework for the design, type certification and operation of remotely piloted aircraft operating across international borders and over the high seas under Instrument Flight Rules. In accordance with Article 3(2) of the TFEU, the Union has exclusive external competence in this matter.

The adopted act does not supplement or amend the institutional framework of the agreement.

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

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) TFEU.

¹⁴ 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. 1–126)

Proposal for a

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on the position to be taken on behalf of the European Union in the 222nd session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged adoption of Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 and of the new volume VI to Annex 10 the Convention on International Civil Aviation

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'), and designate them as Annexes to the Chicago Convention.
- (4) The ICAO Council, at its 222nd session, is to adopt Amendment 177 - *Personnel Licensing* to Annex 1, Amendment 47 to Annex 2 - *Rules of the Air*, Amendment 108 to Annex 8 - *Airworthiness of Aircraft*, Amendment 90 to Annex 10 - *Aeronautical Telecommunications*, Volume V to the Chicago Convention on Remotely Piloted Aircraft Systems (RPAS) C2 Link systems and procedures and a new Volume VI to Annex 10.
- (5) The main purpose of the amendments proposed is to establish a legal framework for the design, type certification and operation of remotely piloted aircraft operating across international borders and over the high seas under Instrument Flight Rules. The Union is a strong supporter of the efforts by ICAO to establish this legal framework.
- (6) It is appropriate to establish the position to be taken on the Union's behalf within the ICAO Council as Amendment 177 to Annex 1, Amendment 47 to Annex 2,

Amendment 108 to Annex 8, Amendment 90 to Annex 10 Volume V, and the adoption of a new Volume VI to Annex 10 will be binding on the Union and are capable of decisively influencing the content of Union law, namely Commission Regulation (EU) No 748/2012¹⁵, Commission Regulation (EU) No 1321/2014¹⁶, Commission Regulation (EU) No 1178/2011¹⁷, Commission Regulation (EU) No 965/2012¹⁸, and potentially Commission Regulation (EU) No 452/2014¹⁹, and Commission Implementing Regulation (EU) 2017/373²⁰.

- (7) The Union's position during the 222nd session of the ICAO Council or any consequent session with regard to the adoption of the envisaged Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 Volume V, and the adoption of a new Volume VI to Annex 10 as outlined in the State Letters AN 7/67.1.1-19/52 and AN 3/5.12-19/53 should be to support these amendments in their entirety. This position should be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly on behalf of the Union.
- (8) Once adopted, the Amendments to Annexes 1, 2, 8 and 10 of the Chicago Convention will be binding on all ICAO Member States, including all Member States of the Union, in accordance with and within the limits set out in the Chicago Convention.
- (9) 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.
- (10) Pursuant to Article 90 of the Chicago Convention, any such Annex or any amendment of an Annex shall become effective within three months after its submission to the ICAO contracting States, or at the end of such longer period of time as the ICAO

¹⁵ Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1–85)

¹⁶ 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. 1–194)

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²⁰ 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. 1–126)

Council may prescribe, unless in the meantime a majority of contracting ICAO States register their disapproval.

- (11) The Union's position after the adoption of Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 Volume V, and the adoption of a new Volume VI to Annex 10 by the ICAO Council, to be announced by the ICAO Secretary General via an ICAO State Letter procedure, should be not to register disapproval and to notify compliance. Where Union legislation would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, i.e. 28 November 2024, a difference with those particular SARPs should be notified to ICAO. This position should be expressed by all the Member States of the Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the 222nd session of the ICAO Council, or in one of the consequent sessions, shall be to support the proposed Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 Volume V, and the adoption of a new Volume VI to Annex 10 to the Chicago Convention in their entirety.
2. The position to be taken on the Union's behalf, provided the ICAO Council adopts without any substantial change the proposed Amendment 177 to Annex 1, Amendment 47 to Annex 2, Amendment 108 to Annex 8, Amendment 90 to Annex 10 Volume V, and the adoption of a new Volume VI to Annex 10 to the Chicago Convention referred to in paragraph 1, shall be not to notify disapproval and to notify compliance with the adopted measure in reply to the respective ICAO State Letters. Where Union legislation would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, i.e. 28 November 2024, a difference with those particular SARPs should be notified to ICAO.

Article 2

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

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*