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Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the 225<sup>th</sup> session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged adoption of Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to the Convention on International Civil Aviation**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing:

- (i) the position to be taken on the Union's behalf in the 225<sup>th</sup> session of the Council of the International Civil Aviation Organization (ICAO) in connection with the envisaged adoption of Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 of 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 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 of the Convention on International Civil Aviation 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 225<sup>th</sup> or any subsequent session, the ICAO Council is expected to adopt:

- Amendment 178 to Annex 1 relating to global recognition of electronic personnel licences (EPL);
- Amendment 47 to Annex 6 Part I relating to extended diversion time operations (EDTO), infant life jackets, ground proximity warning systems, runway overrun awareness and alerting systems and operational credit;
- Amendment 40 to Annex 6 Part II relating to operational credit and commensurate rescue and firefighting (RFF) provisions for general aviation (GA);
- Amendment 24 to Annex 6 Part III relating to operational credit, offshore alternates for long range helicopter operations and dangerous goods;
- Amendment 7 to Annex 7 relating to registration, deregistration and transfer of registration of aircraft;
- Amendment 109 to Annex 8 relating to State responsibilities in case of third-party modifications and repairs, cargo compartment fire suppression provisions, and maintenance on aircraft not registered in the State that issued the maintenance organization approval;
- Amendment 91 to Annex 10, Vol IV relating to the introduction of Airborne Collision Avoidance System X (ACAS X) and to the reduction of the occurrences of false ACAS alerts on aircraft equipped with current ACAS with hybrid surveillance capability;
- Amendment 17 to Annex 14, Vol I relating to rescue and fire fighting for general aviation;
- Amendment 18 to Annex 17, which arises from the review of Annex 17 by the Thirty-second Meeting of the Aviation Security Panel (AVSECP/32), held from 31 May to 4 June 2021;
- Amendment 29 to Annex 9 relating to health issues outbreaks in aviation and fighting human trafficking, resulting from the recommendations of the Twelfth Meeting of the Facilitation Panel (FALP/12), held from 13 to 23 July 2021

(‘the envisaged acts’).

The purposes of the envisaged acts are as follows:

#### ***Amendment 178 to Annex 1***

To introduce Chapter 5 Specifications for Personnel Licences in Annex 1 regarding the implementation of an electronic personnel licences (EPL) system in order to improve efficiency and global recognition of such licences.

The amendment is envisaged to become applicable on 3 November 2022.

### ***Amendment 47 to Annex 6 Part I***

Concerning extended diversion time operations (EDTO), to amend Chapter 4 and to delete the entire Attachment C. The change is related to EDTO significant systems and intends to clarify that the most limiting restriction on an EDTO diversion length cannot be exceeded, and that this will need to be considered at dispatch. Attachment C being a guidance material is deleted since the EDTO Manual (Doc 10085) contains a full set of guidance on EDTO.

Concerning infant life jackets, to introduce a new Note Annex 6 Part I with additional guidance on the carriage of infant life jackets. There is no legal obligation on contracting States to notify compliance or differences with Notes.

Concerning ground proximity warning systems (GPWS), based on a review of recent accidents, to upgrade the existing recommendation to a standard in Annex 6 Part I regarding GPWS for aircraft with a maximum certified take-off mass (MCTOM) of 5 700 kg or less and authorised to carry more than five but not more than nine passengers.

Concerning runway overrun awareness and alerting systems (ROAAs), to introduce a new Standard, together with new definitions in Chapter 1, requiring the use of ROAAS for commercial air transport aircraft, on a forward-fit basis.

### ***Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II and Amendment 24 to Annex 6 Part III relating to Performance-based aerodrome operating minima (PBAOM) and flight recorders***

Concerning operational credit in the context of PBAOM, the PBAOM concept offers the possibility of operational credit to be given, i.e. to apply lower minima, based on the performance of the ground-based infrastructure and aircraft systems.

One purpose of the amendments to Annex 6 is to avoid references to specific systems – such as enhanced vision systems (EVS) and head-up displays (HUDs) – and to provide more generic, technology-neutral text, to allow for further developments in this area. Another change is the introduction of the definitions of basic and advanced aircraft – advanced aircraft having additional equipment above that required for the operation as compared to a basic aircraft which only has the equipment needed and is, therefore, not eligible for any operational credit. This change is a first stage in introducing the concept of PBAOM into commercial operations, to facilitate the understanding of the concept, and to allow the Standards to be written in a more generic manner.

In addition, Attachment H to Annex 6 Part I is deleted since information on the use of automatic landing systems, head-up displays and vision systems is now contained in the Manual on All-Weather Operations (Doc 9365). There is no legal obligation on contracting States to notify compliance or differences with guidance material.

Concerning flight recorders, to amend existing Standards in Annex 6 to introduce requirements on manufacturers and installers of flight recorder systems to provide the information necessary to maintain the flight recorders serviceable. The requirements also clarify the periodicity of a maintenance task applicable to the flight data recorder.

### ***Amendment 40 to Annex 6 Part II and Amendment 17 to Annex 14 Volume I relating to rescue and firefighting (RFF) provisions for general aviation (GA)***

To introduce a new Recommendation in Annex 6 Part II Section 2 (General Aviation Operations) and new Standards in Annex 6 Part II Section 3 (Large and turbojet aeroplanes) and to Annex 14 Volume I, in Chapter 9.

In relation to Annex 6 Part II Sections 2 and 3, to clearly identify the need for the operator to consider the availability of RFF facilities and services at an aerodrome of intended operation.

The proposed recommendation in Section 2 of Annex 6 Part II allows the affected GA operators (in the EU system, NCO operators), to assess the suitability of the aerodrome of intended operation and to include the availability of RFF facilities in this assessment. In the case of operators covered by Section 3 of Annex 6 Part II (in the EU system, NCC operators), which are required to have a safety management system (SMS) in place, the need to consider adequate RFF facilities when choosing at which aerodrome to operate should be addressed within the operator's SMS.

In addition, ICAO is proposing to exclude GA from the RFF provisions in Annex 14 — Aerodromes, Volume I — Aerodrome Design and Operations. Some States interpret the current text to mean that all aerodromes, regardless of size and type of operations, must have dedicated RFF facilities. For small, exclusively GA aerodromes, this creates a major burden, and it has resulted in the restriction of operating hours or even closure of the aerodrome. The temporary closure or restricted operating hours of airports is in itself a hazard, particularly to GA aircraft, which have a more limited fuel range, are often restricted to daylight operations, and are more constrained by weather conditions. The present RFF requirement is not proportionate, primarily because the low mass, take-off and landing speeds and limited fuel capacity of small GA aircraft are unlikely to yield the type of take-off or landing accident that would require an aerodrome fire brigade.

#### ***Amendment 24 to Annex 6 Part III***

Concerning offshore alternates for long range helicopter operations, changes to Standards and Recommended Practices to remove the current recommended practice to not use offshore alternates in hostile areas. It now requires the operator to consider all the relevant factors when making the determination to use them. The change allows an operator to plan for an offshore alternate in a hostile area, subject to the completion of a risk assessment. The intention is for an operator to safely and efficiently manage optimized payload against fuel, range and diversion requirements, while maintaining at least the equivalent level of safety as stated in the current provision.

Concerning the carriage of dangerous goods by helicopter, to include a new Chapter 12 into Annex 6 Part III. There are currently no adequate Standards in Part III, specifically with regard to provisions related to the responsibilities of the State of the Operator. Such provisions are needed to address the safe oversight of dangerous goods operations and to clarify the requirements for operators not authorised to carry dangerous goods. The provisions are based on those included in Annex 6 Part I and have been adapted for Annex 6 Part III. The provisions are consistent with the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284, Technical Instructions).

The amendments for Annex 6 Parts I, II and III and Annex 14 Vol I are envisaged to become applicable on 3 November 2022.

#### ***Amendment 7 to Annex 7***

To facilitate the transfer of aircraft from one State to another, harmonize the current practice, as well as foster transparency and consistency in the exchange of aircraft ownership data between States.

Concerning aircraft registration, to change the certificate of registration to indicate that it is issued to either the aircraft owner, the aircraft operator or other. This change aims at reflecting current commercial practices in the aviation industry, such as leasing, where the aircraft is operated by a different entity than the aircraft owner.

Concerning deregistration of aircraft, to introduce a requirement to issue a certificate of deregistration of aircraft when an aircraft is deregistered. Currently, the format and information in a notification or certificate of deregistration issued by many States is not standardized, leading to delays in registration.

Amendment 7 to Annex 7 is envisaged to become applicable in 2 November 2023. However, the provisions related to the certificate of registration are envisaged to become applicable on 26 November 2026.

#### ***Amendment 109 to Annex 8***

To amend the SARPs in Annex 8 to improve clarity and ensure that States approving any modification and repair (i.e. the States of Design Modification) have a clear understanding of their continuing airworthiness responsibility and to clarify the design capabilities of cargo compartment fire suppression in large aeroplanes, helicopters and small aeroplanes. Also, a Note is added clarifying that the proposed provisions in Chapter 6 to Part II do not prevent a maintenance organization from carrying out maintenance on aircraft not registered in the State that issued the maintenance organization approval and on aircraft without registration. There is no legal obligation on contracting States to notify compliance or differences with Notes.

The applicability date for Amendment 109 to Annex 8 is 3 November 2022.

#### ***Amendment 91 to Annex 10 Volume IV***

To amend existing SARPS in Annex 10, Vol IV to introduce Airborne Collision Avoidance System X (ACAS X) to improve safety, reduce unnecessary alerts, accommodate new procedures and enable the use of other surveillance sources to support new aircraft types, and to reduce the occurrence of false ACAS alerts. The amendment is envisaged to become applicable on 3 November 2022.

#### ***Amendment 18 to Annex 17***

To introduce new and/or amend existing SARPs in Annex 17 to the Chicago Convention related to security culture; aircraft operator security programmes; methods to detect explosives in hold baggage; and national civil aviation security quality control programmes. Amendment 18 is envisaged to become applicable in November 2022.

#### ***Amendment 29 to Annex 9***

The proposed Amendment 29 to Annex 9 includes, among others, new and/or revised provisions on public health emergencies, security of travel and health-proofs documents, relief and repatriation flights, air transport facilitation of persons with disabilities, assistance to aircraft accident victims and their families, trafficking in persons, and a minor change in a note to Passenger Name Record (PNR) data to specify the term “push”.

Especially about health, on 15 April 2020, the Air Transport Committee (ATC) (C-DEC 219/3) approved the Terms of Reference (ToRs) of a Task Force, with a mandate to review all the health-related Annex 9 SARPs and corresponding guidance material, develop proposals for new and or revised Annex 9 provisions, and draft relevant guidance material. These are designed to provide effective ICAO measures for States to implement through aviation authorities with requirements for aircraft and airport operators as well as for other stakeholders.

The Task Force, in considering the inclusion of new and revised health-related SARPs, has proposed new definitions, and modifications to Chapter 1 (disinsection and disinfection of aircraft), to Chapter 6 (on aerodrome emergency plan to cover health outbreaks), to Chapter 8 (on the collection of health documentation, fostering digital solutions when possible), and

agreed on the establishing of a new Chapter (Chapter 10) in Annex 9 – Facilitation. The new Chapter 10 aims to group new and revised health-related SARPs, including relocating some existing health-related SARPs from other Chapters in Annex 9, to the proposed new Chapter 10. This Chapter will comprise 3 Sections: - A. International Health Regulations and Related Measures; B. Inspection of Health-related documentation; and C. Prevention and Mitigation of Communicable Diseases. However, due to intense work on the new and revised SARPs and time constraints, the Task Force was not able to group the SARPs in order to fully establish a new Chapter 10.

The 12<sup>th</sup> Facilitation Panel has reviewed and integrated in its final report the recommendations of the Task Force and its proposed SARPs with additional notes. Some SARPs have been modified during the Panel, reaching a consensus amongst participants in the end. The discussions covered the contact tracing policy and the status of health documentation on entry or transit. Furthermore, the Panel has agreed to introduce minor changes to the Passenger Locator Form.

Furthermore, the Comprehensive Strategy was developed by ICAO's Facilitation Panel Working Group on Human Trafficking (WGHT). This includes developing guidelines and assisting Member States to:

- a) create and implement a comprehensive facilitation-related strategy to combat human trafficking in civil aviation; and
- b) establish policies and protocols related to responding to a suspected incident(s) of human trafficking that include clear lines of reporting to law enforcement agencies, responding to instances of potential human trafficking and coordinating across State agencies, among States, and with stakeholders (including airports and airlines).

This Comprehensive Strategy complements ICAO's existing counter-trafficking policies, guidance, and other resources that were developed to guide the aviation sector in their counter-trafficking efforts, including a general resolution, two recommended practices, training guidelines, reporting guidelines, a training programme, and a survey of Member States.

These changes outlined in Amendment 29 are envisaged to become applicable in November 2022.

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

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

##### ***Amendment 178 to Annex 1 relating to global recognition of electronic personnel licences (EPL)***

In response to the recommendations made by the 39<sup>th</sup> Session of the ICAO Assembly, the ICAO Secretariat analysed the feasibility of developing Standards in Annex 1 — Personnel Licensing, for implementing an electronic personnel licensing system with the objective to improve safety and efficiency. The analysis indicated that an amendment to Annex 1 enabling the optional use of electronic personnel licences was feasible as long as careful attention was given to avoid imposing undue burden on other States that would need to verify the authenticity and validity of a licence. An Electronic Personnel Licence Task Force (EPL-TF) was established and tasked, inter alia, to review the analysis conducted by the ICAO Secretariat and develop proposed provisions that would carefully consider acceptance of electronic licences by other States.

Member States have been consulted on the proposed amendments with ICAO State Letter AN 12/1.1.25-20/112, including the proposals for the amendment of Annex 1 of the Chicago Convention.

The amendments initially proposed in State Letter AN 12/1.1.25-20/112 relate to the introduction of electronic personnel licences on self-contained mobile visual electronic display devices in addition to the licences issued on first quality paper or other suitable material, including plastic cards.

Following the recommendation of EASA on State Letter AN 12/1.1.25-20/112, many EU Member States recognised the relevant advantages given by an electronic licence and do not foresee any specific drawback.

The envisaged Amendments are capable of decisively influencing the content of EU legislation, namely Commission Regulation (EU) No 1178/2011<sup>1</sup> and Commission Regulation (EU) No 2015/340<sup>2</sup>. New ICAO SARPs will have to be introduced into the EU wide legislation to amend the current legal framework in order to regulate the format, type and certification of self-contained mobile visual electronic display devices, as well as the possibility to access relevant data with and without connection to internet while safeguarding the integrity, privacy and safety of personal data.

***Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III and Amendment 17 to Annex 14, Vol I***

Amendment 47 to Annex 6 Part I on extended diversion time operations (EDTO) should be transposed into Commission Regulation (EU) No 965/2012<sup>3</sup>.

Amendment 47 to Annex 6 Part I relating to infant life jackets corresponds to existing rules in Commission Regulation (EU) No 965/2012, addressing equipage and stowage of life jackets or equivalent flotation devices for infants. The same applies to ground proximity warning systems (GPWS). EASA submitted information to support the cost benefit analysis performed by ICAO. This analysis identified a positive cost/benefit for this change on a forward-fit basis, but not enough to justify a retrofit. No changes to EU rules will be required.

Amendment 47 to Annex 6 Part I relating to runway overrun awareness and alerting systems (ROAAS) corresponds to existing rules in Commission Regulation (EU) No 2015/640<sup>4</sup>. No changes to EU rules will be required.

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<sup>1</sup> 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

<sup>2</sup> 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 805/2011, OJ L 63, 6.3.2015, p. 1–122

<sup>3</sup> 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

<sup>4</sup> Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012, OJ L 106, 24.4.2015, p. 18–22



Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II and Amendment 24 to Annex 6 Part III relating to operational credit in the context of performance-based aerodrome operating minima (PBAOM) corresponds to existing rules in Commission Regulation (EU) No 965/2012. No changes to EU rules will be required.

Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II and Amendment 24 to Annex 6 Part III relating to flight recorders. The investigation of accidents and serious incidents by several States have been hindered because the flight recorder systems (flight data recorder system and/or cockpit voice recorder system) installed on the aircraft concerned had not been maintained serviceable. This resulted in problems in the recording files retrieved from the flight recorders (such as missing information, invalid parameter values or non-intelligible audio recording). One of the contributing factors to this issue is that information to maintain flight recorder systems serviceable is often incomplete. Operators shall ensure the continued serviceability of flight recorder systems, but without the appropriate information they cannot meet this requirement.

The proposals in ICAO State Letter SP 55/4-20/94 amend ICAO Standards in Appendix 8 to Annex 6 Part I, Appendix 2.3 to Annex 6 Part II and Appendix 4 to Annex 6 Part III. These proposals:

1. Amend the ICAO Standards applicable to the flight recorder system manufacturer and introduce ICAO Standards applicable to the flight recorder system installer, with an aim to require that these organizations provide the information sufficient for operators to maintain flight recorders serviceable.
2. Amend the ICAO Standards applicable to a maintenance task of the flight data recorder (so-called 'calibration of the flight data recorder') with a view to clarify its periodicity.

In a recommendation for a reply to this State Letter, which was sent to EU Member States, EASA supported the intent of the proposed amendments described in point 1 but suggested some changes to their wording. Regarding point 2, EASA commented that one of the ICAO Standard proposed to be amended should be removed instead.

Twelve EU Member States repeated the EASA analysis and comments in their reply to ICAO State Letter SP 55/4-20/94. The other EU Member States did not reply to that State Letter.

Following the consultation on State Letter SP 55/4-20/94, the non-editorial changes proposed by EASA and EU Member States were accepted by the ICAO Secretariat, except for the ICAO Standard that EASA had proposed to remove. The envisaged Amendments will not affect EU Regulations but most likely lead to changing some AMC to Air OPS rules and/or minor changes to Certification Specifications (CS-ETSO, CS-25 and CS-29).

Amendment 40 to Annex 6 Part II and Amendment 17 to Annex 14 Vol I relating to rescue and firefighting (RFF) provisions for general aviation (GA) should be transposed into Commission Regulation (EU) No 965/2012 and Commission Regulation (EU) No 139/2014<sup>5</sup> respectively.

Amendment 24 to Annex 6 Part III relating to offshore alternates for long range helicopter operations proposes safety criteria as well as the need for an approval. Those proposals

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<sup>5</sup> 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. 1–34

correspond to rules in Commission Regulation (EU) No 965/2012. No changes to EU regulations will be required.

Amendment 24 to Annex 6 Part III relating to dangerous goods requires no change to EU Regulations since Commission Regulation (EU) No 965/2012 refers to ICAO Annex 18 and the associated Technical Instructions directly.

#### ***Amendment 7 to Annex 7 relating to registration, deregistration and transfer of registration of aircraft***

Amendment 7 to Annex 7 sets out the modalities of implementation of aircraft registration, by adapting the template of the certificate of registration and introducing a template of the certificate of deregistration.

While certificates of aircraft registration or deregistration are currently not regulated by EU law, Amendment 7 to Annex 7 refers to an area covered by Regulation (EC) No 1008/2008<sup>6</sup>, which establishes the general framework of registration of aircraft at EU level. The principle guiding Amendment 7 to Annex 7 to [facilitate of the transfer of aircraft from one State to another corresponds to rules in Regulation \(EC\) No 1008/2008](#).

#### ***Amendment 109 to Annex 8 relating to State responsibilities in case of third-party modifications and repairs***

The amendment to Annex 8, Part I and Part II, Chapter 4 clarifies the responsibilities of the State of Design of Modification and adequately differentiates from the original State of Design or Manufacture of the aircraft, engine or propeller. This includes receiving and evaluating defect information and the development and distribution of mandatory continuing airworthiness information. The new SARPs are limited to clarification of the mandatory continuing airworthiness information responsibilities only since the existing SARPs already require the design and/or manufacture of those modifications and/or repairs to be acceptable to the State of Registry of the affected aircraft.

The system for EASA to fulfil its responsibility (as State of Design or as State of Design of Modification) is already provided for in Commission Regulation (EU) No 748/2012<sup>7</sup>. This system includes the receipt and evaluation of defect information, and the development and distribution of mandatory continuing airworthiness information.

#### ***Amendment 109 to Annex 8 relating to cargo compartment fire suppression provisions***

The amendment clarifies the design capabilities of cargo compartment fire suppression in large aeroplanes. This amendment does not introduce new requirements for the current fleet. Instead, it aligns the language with what is being required in current airworthiness codes of the States of Design that have already been accepted for the existing fleet and applies to new design aircraft.

Commission Regulation (EU) N 748/2012 is not affected by these proposed SARPs as the related requirements are already reflected in the Certification Specification (CS-25 ‘Large

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<sup>6</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community, OJ L293, 31.10.2008, p. 3

<sup>7</sup> 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

Aeroplanes') issued by EASA according to point 3 of Article 76 of Regulation (EU) 2018/1139.

In addition, the amendment introduces new provisions requiring (for large aeroplanes) and recommending (for helicopters and small aeroplanes) the design approval holder to provide to the operator information on cargo compartment fire protection capabilities as certified for new production and new design aircraft. EASA participated in the drafting of these SARPs and considers that they will assist operators in determining the limitations of specific aircraft cargo compartment fire suppression systems.

These new SARPs will affect Commission Regulation (EU) No 2015/640. EASA intends to programme a rulemaking task to transpose these SARPs once adopted by the ICAO Council.

#### ***Amendment 91 to Annex 10, Volume IV***

After the implementation date, there will be a mixed fleet of aircraft ACAS X/TCAS 7.1 equipped, which would need to be accommodated by the ground systems. The impact of such mixed equipped fleet on the ANSPs needs to be further identified and detailed by ICAO. Although the previous State Letter does not capture this, to facilitate the incident investigations, Air Navigation Service Providers would need to update their ground system to extract the ACAS software part number. Additionally, ANSPs using the Resolution Advisories (RA) may need to adapt the RA report decoding, depending on which detailed RA report information is displayed to their controllers. As there are operational differences between ACAS II and ACAS Xa the impact of such differences needs to be detailed in the ACAS Manual (Doc 9863).

For aircraft operators, the impact will be limited, as the ACAS X equipment introduction is optional. ACAS X main differences consist in the collision avoidance logic and the sources of surveillance data. As the avoidance algorithm is transparent for the pilot and considering the reduced probability of a pilot receiving an ACAS II RA, coupled with the procedures remaining the same, it could be argued that training may not be needed. However, during potential conflict situations where an Airborne Collision Avoidance System (ACAS) intervention is necessary, ACAS Xa will provide resolution guidance with similar, but not identical, alert timings, durations, and sequences as TCAS II version 7.1. Since this optimized safety logic is expected to reduce unnecessary alerts in non-conflict situations, ACAS Xa resolution advisories may not be issued under the same conditions as TCAS II version 7.1.

As there are operational differences between ACAS II with collision avoidance logic version 7.1 and ACAS Xa (even if the procedures are the same), differences would need to be captured. In fact the amendment states that the guidance material related to both TCAS 7.1 compliant systems and ACAS X compliant systems are contained in the Airborne Collision Avoidance System (ACAS) Manual (Doc 9863). However, to date, changes to the ACAS Manual (Doc 9863) have not been finalised.

The European regulatory framework would need to be updated to include the use of ACAS X.

The impacted regulations and/or the associated guidance material include Commission Regulation (EU) No 1332/2011<sup>8</sup> - Airspace Usage Requirements and Operating Procedures for Airborne Collision Avoidance and Commission Regulation (EU) No 965/2012- Air Operations. Other regulations and their respective acceptable means of compliance and

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<sup>8</sup> Commission Regulation (EU) No 1332/2011 of 16 December 2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance, OJ L 336, 20.12.2011, p. 20–22

guidance material may be affected. EASA Certification Specification for Airborne Communication Navigation and Surveillance (CS-ACNS) as well as Certification Specifications for European Technical Standard Orders (CS-ETSO) would also require updates.

### ***Amendment 18 to Annex 17***

The ICAO Aviation Security Panel, at its Thirty-second Meeting, which was held virtually from 31 May to 4 June 2021, reviewed Annex 17. The ICAO Council, at the eleventh meeting of its 223<sup>rd</sup> Session on 25 June 2021, considered the proposals put forward to amend Annex 17. The ICAO Secretary General informed States about the proposal for Amendment 18 to Annex 17 through State Letter AS 8/2.1-21/48 Confidential of 20 July 2021.

The proposed amendments introduce new and/or amend existing SARPs in Annex 17 related to security culture; aircraft operator security programmes; methods to detect explosives in hold baggage; and national civil aviation security quality control programmes.

Most new or revised provisions introduced by Amendment 18 to Annex 17 will not require any amendment to Union law as they are already part of it. One new standard introduced in the area of preventive security measures does however require an amendment to Commission Implementing Regulation (EU) 2015/1998<sup>9</sup>. Such an amendment will ensure that procedures established to deal with unidentified baggage will be extended to also cover suspicious objects.

### ***Amendment 29 to Annex 9***

Most of the new or revised provisions proposed by Amendment 29 to Annex 9 do not require any amendment to Union law as Union law already addresses these standards. As regards the human trafficking part, the transportation-related national laws include the 2002 European Union Council Framework Decision on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit, and Residence<sup>10</sup>; the 2005 Council of Europe Convention on Action against Trafficking in Human Beings<sup>11</sup>; and the 2011 European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims<sup>12</sup>. As regards PNR, only an information note to specify the term “push” has been amended. These elements are already covered by Directive 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime<sup>13</sup>.

## **3.2. Position to be taken on Union’s behalf**

The Union acknowledges the need to establish a harmonised regulatory framework at international level.

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<sup>9</sup> Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security, OJ L 299, 14.11.2015, p. 1–142

<sup>10</sup> Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 1–3

<sup>11</sup> Council of Europe Convention on Action Against Trafficking in Human Beings (CETS No. 197), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>.

<sup>12</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1–11

<sup>13</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4.5.2016, p. 132–149

The implementation of an electronic licence system is seen as advantage and should be supported.

The proposed amendments for Annexes 6 and 14 Vol I cover offshore alternates, rescue and fire fighting for general aviation, and several items of guidance arising from the 5<sup>th</sup> and 6<sup>th</sup> meetings of the Flight OPS panel as well as continued serviceability of flight recorders. Since most of the new amendments to Annex 6 correspond to existing EU rules and the others are considered appropriate, the proposed position to be taken on behalf of the Union is to support the amendments.

Since most of the new SARPs in Amendment 109 to Annex 8 correspond to existing EU rules and the others are considered appropriate, the proposed position to be taken on behalf of the Union is to support the proposal.

In addition, the Union recognizes the need to ensure harmonised levels of safety and to implement improved technologies as proposed with the Amendment to Annex 10, Vol IV.

Hence, the position to be taken on the Union's behalf regarding the proposed amendments to the Chicago Convention, provided that the ICAO Council adopts the proposed amendments without any substantial changes, should be to not notify disapproval and to notify compliance with the adopted measures in reply to the respective ICAO State Letters. Where Union legislation would deviate from the newly adopted ICAO Standards after the envisaged date of application of those Standards, i.e. 3 November 2022, a difference with those particular Standards should be notified to ICAO but only for the time necessary to complete their implementation in Union law.

The proposed Amendment 18 to Annex 17 includes, among others, new and/or revised provisions on: a new Recommended Practice on security culture; a new Standard on aircraft operator security programmes; a new Standard on methods to detect explosives in hold baggage; and a new Standard outlining essential elements of a national civil aviation security quality control programme.

All these provisions aim at reinforcing the worldwide aviation security baseline and should therefore be supported in their entirety. Most of the proposed provisions are already part of Union law and thus implemented by Member States.

The aim of Amendment 7 to Annex 7 is to [facilitate of the transfer of aircraft from one State to another. By allowing aircraft registration in another Member State or in a third country, existing EU rules are based on the same principle.](#) This Amendment should therefore be supported.

Amendment 29 to Annex 9 aims at enhancing the preparedness to future pandemics, in learning from the lessons of the COVID-19 pandemic and setting a first adequate health response to any future pandemics, but also to further combat human trafficking in setting up an extensive strategy. Furthermore, this Amendment contains minor but useful amendments to repatriation flights and air transport of passengers with disabilities and a modification of a note in the PNR section. This Amendment should therefore be supported.

## **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<sup>14</sup>.

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’<sup>15</sup>.

#### 4.1.2. Application to the present case

The ICAO Council is a body set up by an agreement, namely the 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.

Most of the envisaged acts are capable of decisively influencing the content of EU legislation, namely Commission Regulation (EU) No 1178/2011, Commission Regulation (EU) No 1139/2018, Commission Regulation (EU) No 965/2012, Commission Regulation (EU) No 2015/640, Regulation (EC) No 1008/2008, Commission Regulation (EU) No 139/2014, Commission Regulation (EU) No 1332/2011 and Commission Regulation (EU) No 2015/1998.

## 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.

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<sup>14</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

<sup>15</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphes 61 to 64.

Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the 225<sup>th</sup> session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged adoption of Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to 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 currently 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 225<sup>th</sup> session, is to adopt Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to the Convention on International Civil Aviation.
- (5) The main purpose of the Amendment to Annex 1 is to enable the implementation of an electronic personnel licensing system with the objective to improve efficiency.
- (6) The main purpose of the Amendments to Annex 6 Parts I, II and III is to strengthen the legal framework for the continued serviceability of flight recorders of the Chicago Convention; to improve clarity on the provisions relating to extended diversion time operations (EDTO) and infant life jackets; to mandate ground proximity warning systems (GPWS) on certain aeroplanes; to add a new Standard to equip aeroplanes under certain conditions with runway overrun awareness and alerting systems (ROAAS); to provide operational credit in the context of performance based

aerodrome operating minima (PBAOM); to ensure that adequate rescue and firefighting (RFF) facilities and services are available at the intended aerodrome of operation; to update the provisions relating to offshore alternates for long-range helicopter operations to determine alternate aerodromes; to add provisions related the transport of Dangerous Good in helicopters and update related training provisions.

- (7) The main purpose of the Amendment to Annex 14, Vol I relating to rescue and firefighting (RFF) for general aviation is to exclude general aviation from the RFF provisions in Annex 14.
- (8) The main purpose of the Amendment to Annex 7 is to facilitate of the transfer of aircraft from one State to another by adapting the template of the certificate of registration and introducing a template of the certificate of deregistration.
- (9) The main purpose of the Amendment to Annex 8 is to improve clarity and ensure that States approving any modification and repair have a clear understanding of their continuing airworthiness responsibility and to clarify the design capabilities of cargo compartment fire suppression in large aeroplanes, helicopters and small aeroplanes.
- (10) The main purpose of the Amendment to Annex 10, Vol IV is to introduce ACAS X and to reduce the occurrence of false ACAS alerts.
- (11) The main purpose of Amendment 18 to Annex 17 is to introduce new and/or amend existing SARPs in Annex 17 related to security culture; aircraft operator security programmes; methods to detect explosives in hold baggage; and national civil aviation security quality control programmes;
- (12) The main purpose of Amendment 29 to Annex 9 is to enhance the preparedness of States for future pandemics, by learning from the lessons of the COVID-19 pandemic and setting out a first adequate health response to future pandemics in Annex 9. The Amendment further addresses the combating of human trafficking in setting up standards for a comprehensive strategy. Furthermore, the Amendment contains minor but useful amendments to repatriation flights and air transport of passengers with disabilities, and the modification of a note in the Passenger Name Record (PNR) data section specifying the term “push”.
- (13) It is appropriate to establish the position to be taken on the Union's behalf within the ICAO Council as Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 of Annex 9 to the Chicago Convention are capable of decisively influencing the content of Union law, namely Commission Regulation (EU) No 1178/2011, Commission Regulation (EU) No 1139/2018, Commission Regulation (EU) No 965/2012, Commission Regulation (EU) No 2015/640, Commission Regulation (EU) No 139/2014, Commission Regulation (EU) No 1332/2011 and Commission Regulation (EU) No 2015/1998.
- (14) The Union's position during the 225<sup>th</sup> session of the ICAO Council or any subsequent session with regard to the adoption of the envisaged Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to the Chicago Convention as outlined in the State Letters AN 12/1.1.25-20/112, AN 11/1.1.34-20/75, AN 3/45-20/85 and



AN 3/1.2-20/76, AN 7/1.3.105-20/42, SP 55/4-20/94, AS 8/2.1-21/48 Confidential, EC 6/3 – 21/67 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.

- (15) The Union's position after the adoption by the ICAO Council of Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to the Chicago Convention, to be announced by the ICAO Secretary General via an ICAO State Letter procedure, should be not to register disapproval and to notify compliance, provided that the Amendments are adopted without substantial changes. Where Union legislation would deviate from the newly adopted SARPs after the envisaged date of application of those SARPs, a difference with those particular SARPs should be notified to ICAO in accordance with Article 38 of the Chicago Convention for the period during which the deviation exists.

- (16) This position should be expressed by all Member States of the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The position to be taken on the Union's behalf in the 225<sup>th</sup> session of the ICAO Council, or in any subsequent session, shall be to support the proposed Amendment 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 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 178 to Annex 1, Amendment 47 to Annex 6 Part I, Amendment 40 to Annex 6 Part II, Amendment 24 to Annex 6 Part III, Amendment 7 to Annex 7, Amendment 109 to Annex 8, Amendment 91 to Annex 10, Vol IV, Amendment 17 to Annex 14, Vol I, Amendment 18 to Annex 17 and Amendment 29 to Annex 9 to the Chicago Convention referred to in paragraph 1, shall be to not notify disapproval and to notify compliance with the adopted measure in reply to the respective ICAO State Letter. Where Union legislation would deviate from the adopted SARPs after the envisaged date of application of those SARPs, a difference with those particular SARPs shall be notified to ICAO.

#### *Article 2*

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

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

#### *Article 3*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*