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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 238th session of the Council of the International Civil Aviation Organization (ICAO), in respect of amendment 19 of Annex 17 – *Aviation Security*

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns

- (i) the position to be taken on behalf of the Union in the 238th session of the Council of the International Civil Aviation Organization (ICAO), in respect of the proposal for the amendments of Annex 17 – *Aviation Security* to the Convention on International Civil Aviation (‘the Chicago Convention’) concerning Standards and Recommended Practices relating to aviation security.
- (ii) the position to be taken on the Union’s behalf after ICAO announces the adoption of amendment 19 to Annex 17 to the Chicago Convention inviting its Contracting States to notify any differences or compliance with the adopted measures.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on International Civil Aviation

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

All EU Member States are parties to the Chicago Convention.

2.2. The International Civil Aviation Organization

ICAO 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.

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.

The ICAO Council is a permanent body of the ICAO with a membership of 36 contracting States elected by the ICAO Assembly for a period of three years. France, Germany, Italy, Denmark, Spain, Switzerland and Poland are currently represented on the ICAO Council.

The EU has observer status in ICAO.

2.3. The envisaged acts of the Council of the International Civil Aviation Organization

SARPs on aviation security have been adopted as Annex 17 to the Chicago Convention by the ICAO Council.

The ICAO Council should, at its 238th Session in June 2026, consider the proposed amendments to Annex 17. A State Letter¹ was sent to ICAO States on 12 December 2025 with the text proposals for their comments.

¹ AS 8/2.1-25/95 Confidential

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

3.1. Proposed amendments and their relationship with existing Union rules

The proposed amendments, as set out in the above-mentioned State Letter, include new definitions of transfer passengers and baggage, and transit passengers and baggage; a revised definition of human factors; a revised Recommended Practice on human factors; and a revised Standard on aircraft security checks or searches.

The subject matter of the envisaged act concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU as the envisaged acts are liable to affect common rules or alter their scope, namely:

— Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002²,

— Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security³, and

— Commission Implementing Decision C(2015) 8005 of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008⁴.

3.2. Position to be taken on behalf of the Union

Having regard to the relevant Union legislation, the position to be taken on behalf of the Union in the ICAO Council should be to support the proposed amendments to Annex 17.

The proposed amendments represent important progress and improvement of the existing Annex 17 text as they will improve a number of SARPs and their definitions, and will have the effect of aligning some practices more closely with existing approaches in the Union, in particular in the area of aircraft security checks and searches.

The specific proposed amendments are as follows:

- The proposed amendment to the definition of “Human Factors principles” and Recommended Practice (RP) 2.5.2 aims to broaden the scope of the existing RP 2.5.2, which is currently focused on technology development by ensuring that human factors are also considered in the development and implementation of policies, processes and procedures. It recognizes that security personnel have an important role to play through their actions and behaviours in ensuring effective and sustainable security. Accordingly, the definition of “human performance” is proposed for deletion as the new definition of “human factors” replaces the need for such term in Annex 17.
- The proposed new definitions of “transfer passengers and baggage” and “transit passengers and baggage” are intended to bring alignment with the relevant definitions used in the ICAO *Aviation Security Manual* and will thus ensure consistency in terminology across ICAO documents as well as consistent interpretation of the related Standards.

² OJ L 97, 9.4.2008, p. 72, [EUR-Lex - 02008R0300-20100201 - FR - EUR-Lex](#)

³ OJ L 299, 14.11.2015, p. 1, [EUR-Lex - 02015R1998-20260101 - FR - EUR-Lex](#)

⁴ Not published in the OJ.

- Annex 17 Standard 4.4.3 relating to the screening of transfer passengers and their cabin baggage and Standard 4.5.5 relating to the screening of transfer hold baggage establish the possibility to avoid screening on the basis of a One-Stop Security (OSS) arrangement between two or more States. However, no similar provision exists for Standard 4.3.1 relating to aircraft security checks and searches. Since Standard 4.3.1 does not foresee the possibility of foregoing an aircraft security check or search by using an OSS arrangement, for this to work the Standard would need to be amended to allow for a check or search requirement to be waived if a robust OSS system has been established. This proposed amendment would avoid ICAO audit findings to States already implementing effective OSS arrangements that extend to aircraft security checks and searches and is therefore of high importance for the better recognition of Union's internal OSS system in these important areas.

Hence, the position to be taken on the Union's behalf, provided the ICAO Council adopts without any substantial change the proposed amendments to Annex 17, should be to not notify any disapproval, but to comply with the adopted measures in reply to the respective ICAO State Letter. Where Union legislation would deviate from the newly adopted ICAO standards after an envisaged date of application of those standards, the Union position on the differences with those particular standards should be notified to ICAO by Member States, on the basis of a preparatory document submitted in due time by the Commission to the Council for discussion and approval, and setting out the detailed differences for the time necessary to complete the implementation.

4. CONSISTENCY WITH OTHER UNION POLICIES

The proposed Decision is consistent with and complements other policies of the Union, notably transport policies.

5. LEGAL BASIS

5.1. Procedural legal basis

5.1.1. 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 agreement⁵.

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*'⁶.

⁵ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

⁶ 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.

5.1.2 Application to the present case

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

The envisaged acts have legal effects for the purposes of Article 218(9) TFEU. In accordance with Article 54 of the Chicago Convention, the ICAO Council adopts SARPs, designated as Annexes to the Chicago Convention. Such SARPs are binding under international law in accordance with Article 90 of the Chicago Convention in so far as they become binding for all ICAO contracting parties unless a majority of the latter register their disapproval with the ICAO Council.

Further, by potentially leading to amendments, the envisaged acts are capable of decisively influencing the content of EU legislation, namely Regulation (EC) No 300/2008, Commission Implementing Regulation (EU) 2015/1998 and Commission Implementing Decision C(2015) 8005 in so far as they explicitly refer to Annex 17 to the Chicago Convention.

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

Therefore, the adoption of the Union position in respect of such notifications falls within the scope of Article 218(9) of the TFEU.

5.2. Substantive legal basis

5.2.1 Principle

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 envisaged 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.

5.2.2 Application to the present case

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

In accordance with Article 91(1) of the TFEU, the European Union shall lay down (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; (b) the conditions under which non-resident carriers may operate transport services within a Member State; (c) measures to improve transport safety; (d) any other appropriate provision.

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

5.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

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on the position to be taken on behalf of the European Union in the 238th session of the Council of the International Civil Aviation Organization (ICAO), in respect of amendment 19 of Annex 17 – *Aviation Security*

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) All Member States are Contracting States of the Chicago Convention and members of the ICAO, whereas the Union has observer status in certain ICAO bodies. There are six Member States represented on the ICAO Council.
- (3) Pursuant to Article 54 of the Chicago Convention, the ICAO Council may adopt International Standards and Recommended Practices (SARPs).
- (4) The SARPs on aviation security have been adopted as Annex 17 to the Chicago Convention by the ICAO Council.
- (5) The ICAO Council, during its 238th session, is to adopt a number of amendments to Annex 17 to the Chicago Convention. The proposed amendments represent important progress and improvement of the existing Annex 17 text as they will improve a number of SARPs and their definitions, and will have the effect of aligning some practices more closely with existing approaches in the Union, in particular in the area of aircraft security checks and searches.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the ICAO Council as the proposed amendments have legal effect, given that they are binding under international law and are capable of decisively influencing the content of Union law, namely Regulation (EC) No 300/2008⁷, Commission Implementing

⁷ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p. 72)

Regulation (EU) No 2015/1998⁸ and Commission Implementing Decision C(2015) 8005⁹.

- (7) The position to be taken on the Union's behalf should be to support the proposed amendment 19 to Annex 17 to the Chicago Convention.
- (8) The Union's 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.
- (9) The Union's position after the adoption of the proposed amendment 19 to Annex 17 to the Chicago Convention by the ICAO Council, to be announced by the ICAO Secretary General via an ICAO State Letter procedure, should be to not register any disapproval and to comply with the amendments. Where Union legislation would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, a difference with those particular SARPs should be notified to ICAO. The Union position with respect of such difference should be based on a written document submitted by the Commission to the Council for discussion and approval.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The position to be taken on the Union's behalf in the 238th session of the ICAO Council, or in any subsequent session, in respect of amendment 19 of Annex 17 to the Convention on International Civil Aviation, shall be to support the proposed amendments 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 19 of Annex 17 to the Chicago Convention referred to in paragraph 1, shall be to not register any disapproval and to notify compliance with the adopted measure in reply to the respective ICAO State Letter. Where Union legislation would deviate from the newly adopted international standards after the envisaged date of application of those standards, a difference with those particular international standards shall be notified to ICAO, in accordance with Article 38 of the Chicago Convention.

In the event that Union legislation differs from the standards contained in Annex 17 to the Chicago Convention, the Commission shall, in due time and at least two months before any deadline set by the ICAO for the notification of differences, submit to the Council, for discussion and approval, a preparatory document setting out the Union position on the detailed differences to be notified to the ICAO on the Union's behalf by the Member States.

⁸ 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, pp. 1–142)

⁹ Commission Implementing Decision C(2015) 8005 of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008, not published in the OJ.

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 in the interest of the Union.

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President