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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 237th session of the Council of the International Civil Aviation Organization (ICAO) as regards the envisaged amendment to Annex 13 - *Aircraft Accident and Incident Investigation*

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns:

(i) the position to be taken on the Union's behalf in the 237th session of the Council of the International Civil Aviation Organization (ICAO) for the envisaged Amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation*.

(ii) the position to be taken on the Union's behalf after the ICAO announces the adoption of the Amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation* of the Convention on International Civil Aviation in respective State Letters, 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 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 Contracting States 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 2025-2028, there are six 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 Contracting States are required to comply with those measures or to notify either their disapproval or any differences with these measures 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 act of ICAO and its relationship with the existing Union rules

During its 237th or any consequent session, the ICAO Council is expected to consider and adopt:

– Amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation* as referred to in the State Letter AN 6/1.2.2, AN 11/1.1.36-25/43, and State Letter AN 8/3-23/18, is arising from deliberations at, respectively, the seventh and eighth meetings of the Accident Investigation Panel (AIGP/7 and AIGP/8) and the third meeting of the Safety Information Protection Implementation Group (SIP-IG/3), and from deliberations at the fifth meeting of the Safety Management Panel (SMP/5), the ninth meeting of the Remotely Piloted Aircraft Systems Panel (RPASP/9) and the fifth meeting of the Aerodrome Design and Operations Panel Working Group (ADOP/WG/5).

– It relates to aircraft accident provisions including unlawful interference, investigations in conflict-of-interest scenarios (aircraft downing), evidential material, and accident/incident data reporting (ADREP) requirements. References to Annex 13 appear in the proposed amendments to Annex 6 related to the protection of flight data recordings, with no impact on Annex 13. Finally, it includes a consequential update of Annex 19 as regards the definition of State Safety Programme (SSP) and to a Note related to the Safety Data Collection and Processing System (SDCPS).

– The above Amendment has a potential to influence the EU law as explained more in details below.

The envisaged Amendment covers the following areas:

– In relation to the update on unlawful interference and investigations in conflict-of-interest scenarios, the proposed amendment seeks to clarify and enhance the responsibilities of the State of Occurrence in aircraft accident investigations, particularly concerning instances of unlawful interference. When such interference leads to accidents, some States have terminated safety investigations without issuing a Final Report, which undermines the objectives of identifying lessons to improve aviation safety. The amendment includes a Note to clarify this obligation, ensuring that safety investigations are completed irrespective of the involvement of unlawful acts.

– Additionally, the Amendment addresses potential conflicts of interest that may arise when the State of Occurrence is linked to an act of unlawful interference, which may lead to questioning regarding the impartiality of investigations. To safeguard transparency, independence, credibility and objectivity, the State of Occurrence is encouraged to voluntarily delegate investigations to third-party States or regional organisations, or to involve ICAO as observers. This proposal is documented as guidance in Attachment G to Annex 13, aiming to improve investigation credibility where conflicts of interest might occur.

– With regard to the change of the evidential material, it is proposed to remove the word ‘available’ from the existing text, as it has represented a step backwards for access to evidential material during investigations by accident/incident investigators. It introduces a limitation or a condition and could be misinterpreted when it comes to sharing sensitive data with accident/incident investigators.

– Regarding the removal of the preliminary Accident/incident Data REPorting system (‘ADREP’) report, the aim is to simplify States’ requirements for reporting accidents and incidents to ICAO as part of the ADREP system. Additionally, it is proposed to

lower the maximum mass figure requirement for submitting Final Reports to ICAO from 5 700 kg to 2 250 kg to align with the ADREP reporting requirements and accident/incident notification.

– Finally, with regard to the update of the term “State Safety Programme (SSP),” this implies that its definition in Annex 13 must be changed to reflect the new definition. The proposal also modifies the content of the Note to Section 8.1 of Annex 13 by introducing the term “Safety Data Collection and Processing System (SDCPS)”. In both cases, the proposal seeks to ensure the consistency of Annex 13 with other ICAO Annexes.

The Amendment, if adopted, is envisaged to become applicable from 23 November 2028, except for provisions related to the definitions of State Safety Programme (SSP) and to the Note about the Safety Data Collection and Processing System (SDCPS), which are envisaged for applicability on 26 November 2026.

While some of the proposed amendments correspond to parts of ICAO Annex 13 that have not been introduced in Regulation (EU) 996/2010[1], the rest are already embedded in Regulation (EU) 996/2010 and if adopted as proposed, changes to the Union law stemming from the Amendment are unlikely. Nonetheless, a thorough assessment, including an assessment of a need to notify differences, will have to be done once the Amendment is adopted.

The above assessment has been prepared on the basis of a contribution received from the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA). The Network is set up by Article 7(1) of Regulation (EU) 996/2010 and it is composed of the heads of the Safety Investigation Authorities in each of the Member States and/or, in the case of a multimodal authority, the head of its aviation branch, or their representatives. ENCASIA has the duty, among others, to prepare suggestions, and to advise, Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents.

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

3.1. Proposed Amendment and its relationship with the existing Union rules

Amendment 20 to Annex 13

The proposed Amendment as referred to in the State Letter AN 6/1.2.2, AN 11/1.1.36-25/43 and State Letter AN 8/3-23/18 cover the provisions of Regulation (EU) 996/2010.

The subject matter of the envisioned amendments fall under exclusive Union competence pursuant to the last limb of Article 3(2) TFEU.

The proposed Amendment would contribute to the improvement of aviation safety by ensuring a high level of efficiency, expediency, and quality of civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability. The Union acknowledges the need for improved accident and incident investigations including clarification and enhancing responsibilities of the State of Occurrence in aircraft accident investigations, particularly concerning instances of unlawful interference, clarification of evidential material, simplifications of reporting to

[1] Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, p. 35, ELI: http://data.europa.eu/eli/reg/2010/996/oj

ADREP, lowering the mass threshold for submission of final accident reports to ICAO, and a new definition of State Safety Programme by introducing changes to Annex 13 – *Aircraft Accident and Incident Investigation*.

The proposed amendments aim to address several distinct objectives: They seek to clarify the responsibility of States to complete safety investigations and publish Final Reports even when unlawful interference is involved, thereby enhancing aviation safety by preventing investigations from being prematurely terminated. They also tackle potential conflicts of interest by suggesting that States delegate investigations to third-party entities to ensure impartiality and transparency. Furthermore, it seeks to improve investigators' access to necessary data without limitations. Removal of the ADREP preliminary report and lower maximun mass thresholds for reporting to ICAO aim to simplify procedures and ensure more comprehensive data collection. Lastly, updates to terminology like "State Safety Programme" and the introduction of "Safety Data Collection and Processing System" strive to maintain consistency across ICAO Annexes.

The current EU legislative framework, namely Regulation (EU) No 996/2010, notes that particular account should be taken of Annex 13 to the Chicago Convention and of its subsequent amendments, which lay down international standards and recommended practices for aircraft accident and incident investigation. There is no perceived need to amend Regulation (EU) No 996/2010 or to adopt a new legislative act.

The representatives of EU Member States and the European Union Aviation Safety Agency (EASA) as members and observers of the ENCASIA WG 7 in charge of coordinating the views of the Safety Investigation Authorities (SIA) as regards as ICAO State Letters related to safety investigations, contributed to the development of the proposal related to the Amendment 20.

The proposed position to be taken on behalf of the Union is then to support this Amendment.

Hence, the position to be taken on the Union's behalf, provided the ICAO Council adopts without any substantial change the proposed Amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation*, 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 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. 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[2].

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*'[3]. As explained above, the substance matter of the proposed Amendment falls to an area in which there is Union law (i.e. Regulation (EU) No 996/2010).

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. Indeed, once adopted and effective, Standards and Recommended Practices adopted by ICAO are binding on all ICAO Contracting States pursuant to Article 90(a) of the Chicago Convention, which provides that: *"The adoption by the Council of the Annexes described in Article 54, subparagraph I), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council"*. As explained above, the envisioned Amendment to Annex 13 is capable of decisively influencing the content of Union legislation. Namely, the Amendment would bring need to adapt the current working procedures of the safety investigation authorities regulated by Regulation (EU) No 996/2010.

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

Therefore, the procedural legal basis for the proposed Decision position in respect of such notifications 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 envisaged 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.

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.

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

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

4.3. 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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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 six 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 237th session, is to adopt amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation* to the Chicago Convention.

(5) The main purpose of the Amendment 20 to Annex 13 - *Aircraft Accident and Incident Investigation* to the Chicago Convention is to to improve aviation safety by ensuring a high level of efficiency, expediency, and quality of civil aviation safety investigations.

(6) The proposed changes aim to reach these objectives by clarifying the responsibility of States to complete safety investigations and publish Final Reports, even in cases of unlawful interference, thereby preventing premature termination of investigations. They address potential conflicts of interest by suggesting that investigations be delegated to third-party entities for greater impartiality and transparency. The amendments also improve investigators' access to data by removing limitations. Also, they simplify procedures for submitting reports to ICAO by removing the requirement for a preliminary 'ADREP' report, and lowering aircraft maximum mass thresholds for submitting Final Reports to ICAO. Finally, it updates terminologies to ensure consistency across ICAO Annexes.

(7) The European Network of Civil Aviation Safety Investigation Authorities (ENCASIA) set up by Article 7 of Regulation (EU) No 996/2010[4], which has a duty to advise

[4] Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, p. 35, ELI: http://data.europa.eu/eli/reg/2010/996/oj

Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents, has contributed to the development of the proposal related to the Amendment 20.

(8) It is appropriate to establish the position to be taken on the Union's behalf within the ICAO Council as the Amendment 20 to Annex 13 – *Aircraft Accident and Incident Investigation* to the Chicago Convention will be binding under international law in accordance with Article 90(a) of the Chicago Convention and is capable of decisively influence EU law, in particular Regulation (EU) 996/2010.

(9) The Union's position during the 237th session of the ICAO Council or any consequent session with regard to the adoption of the envisaged Amendment 20 to Annex 13 - *Aircraft Accident and Incident Investigation* to the Chicago Convention should be to support these amendments and comply with these amendments in their entirety.

(10) 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.

(11) 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.

(12) The Union’s position after the adoption of Amendment 20 to Annex 13 - *Aircraft Accident and Incident Investigation* 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 237th session of the ICAO Council, or in one of the consequent sessions, shall be to support the proposed amendment to Annex 13 – *Aircraft Accident and Incident Investigation* to the Chicago Convention in its entirety.

(2) The position to be taken on the Union’s behalf, provided the ICAO Council adopts without any substantial change the proposed amendment to Annex 13 – *Aircraft Accident and Incident Investigation* 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 internatioal 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 the Annex 13 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.

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