DECISIONS

COUNCIL DECISION (EU) 2021/1092

of 11 June 2021

establishing the criteria and procedure for the notification of differences with respect to international standards adopted by the International Civil Aviation Organization in the field of aviation safety

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on International Civil Aviation, which was signed in Chicago on 7 December 1944 and regulates international air transport (the 'Chicago Convention'), entered into force on 4 April 1947. It established the International Civil Aviation Organization ('ICAO').

(2) The Member States of the Union are Contracting Parties to the Chicago Convention and ICAO Contracting States, while the Union has observer status in certain ICAO bodies.

(3) Pursuant to Article 54 of the Chicago Convention, the ICAO Council may adopt international standards ('standards') and recommended practices for aviation and designate them as Annexes to the Chicago Convention ('ICAO Annexes'), in particular as regards civil aviation safety.

(4) Pursuant to Article 90 of the Chicago Convention, any ICAO Annex or any amendment to an ICAO Annex is to 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 ICAO Contracting States register their disapproval.

(5) Once adopted and effective, standards are binding on all ICAO Contracting States, including all Member States of the Union, in accordance with and within the limits set out in the Chicago Convention.

(6) Pursuant to Article 38 of the Chicago Convention, any ICAO Contracting State which finds it impracticable to comply in all respects with any standard or to bring its own regulations or practices into full accord with any standard after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by a standard, is to give immediate notification to ICAO of the differences between its own regulations or practices and those established by the standard. In the case of amendments to standards, any State which does not make the appropriate amendments to its own regulations or practices is to give notice to the ICAO Council within sixty days of the adoption of the amendment to the standard, or indicate the action which it proposes to take.

(7) The internal rules of ICAO, in particular the deadlines set by ICAO for ICAO Contracting States to notify differences with respect to standards, as well as the number of differences in the field of aviation safety to be notified each year, make it difficult to establish the position to be adopted on behalf of the Union in a Council Decision based on Article 218(9) of the Treaty in a timely manner for each difference to be notified. Moreover, the standards adopted by the ICAO Council in the field of aviation safety concern to a large extent matters of Union exclusive competence. It is therefore efficient and appropriate to establish a framework for the criteria and procedure to be followed for the notification of differences with respect to standards in the field of aviation safety falling within Union exclusive competence, without prejudice to the rights and obligations of Member States under the Chicago Convention.

(8) Given the specificity of the aviation safety sector compared to other sectors dealt with by ICAO, in particular the high number of standards adopted in that sector by the ICAO Council and the number of differences to be notified every year, this Decision relates solely to the aviation safety domain in order to streamline processes and deal with numerous notifications in an efficient way. At ICAO level, aviation safety standards are mainly contained in ICAO Annexes 1, 6, 8, 14, 18 and 19. At Union level, the requirements contained in those standards are mainly reflected in Regulation (EU) 2018/1139 of the European Parliament and of the Council ([1]) and in the implementing and delegated acts adopted on the basis thereof, in particular Commission Regulations (EU) No 1178/2011 ([2]), (EU) No 748/2012 ([3]), (EU) No 965/2012 ([4]), (EU) No 139/2014 ([5]), (EU) No 452/2014 ([6]), (EU) No 1321/2014 ([7]) and (EU) 2015/640 ([8]), as well as in Regulations (EC) No 2111/2005 ([9]) and (EU) No 376/2014 ([10]) of the European Parliament and of the Council.

(9) This Decision should moreover be limited to the positions to be taken on behalf of the Union within ICAO in areas of Union exclusive competence.

(10) Differences to standards adopted by the ICAO Council may stem from Union law due to the adoption of a new or amended standard by that Council or due to a modification of Union law. In relation to such differences, the position to be adopted on behalf of the Union should be based on a written document submitted by the Commission in due time to the Council for discussion and approval.

(11) Differences to standards adopted by the ICAO Council in the field of aviation safety may also stem from national measures adopted pursuant to Article 71 of Regulation (EU) 2018/1139 in the event of urgent unforeseeable circumstances, where those measures differ from standards and therefore require the notification of differences to ICAO pursuant to Article 38 of the Chicago Convention. It is therefore also appropriate to define in this Decision the procedure to be followed for the definition of such differences. That procedure should depend on the scope and

([1]) Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

([2]) Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 311, 25.11.2011, p. 1).

([3]) Commission Regulation (EU) No 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).

([4]) Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

([5]) 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).

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

([7]) Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 362, 17.12.2014, p. 1).

([8]) 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).

([9]) Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15).

([10]) Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ L 122, 24.4.2014, p. 18).

duration of the national measures adopted, in accordance with the principles of subsidiarity and proportionality, and should enable Member States to comply without delay with their international obligations under Article 38 of the Chicago Convention. That procedure should be without prejudice to the conditions and procedure laid down in Article 71 of Regulation (EU) 2018/1139.

(12) The differences to be notified to ICAO should be based in particular on the information provided by the European Union Aviation Safety Agency in accordance with Article 90(4) of Regulation (EU) 2018/1139, where applicable. Differences should follow the format defined by ICAO in its Form on Notification of Compliance With or Differences or in the Electronic Filing of Differences system, where required by ICAO. Where, pursuant to this Decision, the position to be adopted on behalf of the Union is established in a written document submitted by the Commission to the Council for discussion and approval, such document should, where appropriate and on a case-by-case basis, indicate whether flexibility should be granted to Member States for the notification of the differences in question. Moreover, the Commission should endeavour to start preparing such document as soon as possible in order to allow for sufficient time for such preparation, including any appropriate consultation to be conducted at experts' level.

(13) The implementation of this Decision should not entail a breach of Member States' obligations under Union law or their international obligations under the Chicago Convention, in particular with respect to compliance with the deadline for the notification of differences to ICAO.

(14) This Decision should apply for a limited period of time, namely until after the ICAO Council session following the next Assembly of the ICAO, in order to allow the Council to assess the effectiveness of this Decision and to decide, based on a Commission proposal, whether or not to extend its application or otherwise amend it,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union in the International Civil Aviation Organization ('ICAO') as regards the notification of differences with respect to standards contained in Annexes 1, 6, 8, 14, 18 and 19 to the Convention on International Civil Aviation (the 'Chicago Convention') in the field of aviation safety, insofar as such standards fall within Union exclusive competence, shall be established according to the criteria and procedure set out in Articles 2 and 3 of this Decision.

Article 2

Where Union law differs from the standards referred to in Article 1 of this Decision and the notification to ICAO of differences with respect to those standards is therefore required in accordance with Article 38 of the Chicago Convention, the Commission shall, in due time and at least two months before any deadline set by ICAO for the notification of differences, submit to the Council, for discussion and approval, a written document, based in particular on the information provided by the European Union Aviation Safety Agency (EASA) in accordance with Article 90(4) of Regulation (EU) 2018/1139, where applicable, setting out the detailed differences to be notified to ICAO.

Article 3

1. Where a Member State adopts, in accordance with Article 71 of Regulation (EU) 2018/1139, national measures granting exemptions concerning individual natural or legal persons or with a total duration not exceeding eight months, and where those national measures differ from the standards referred to in Article 1 of this Decision and require the notification of differences to those standards in accordance with Article 38 of the Chicago Convention, that Member State shall immediately inform the Commission of any difference notified.

2. Where the exemptions granted in accordance with Article 71 of Regulation (EU) 2018/1139 are of general application and their total duration exceeds eight months, the Commission shall, no later than two weeks after the Member State concerned notified it of those exemptions in accordance with Article 71(1) of Regulation (EU) 2018/1139, submit to the Council, for discussion and approval, a written document, based in particular on the information provided by EASA in accordance with Article 90(4) of that Regulation as well as information provided by Member States under Article 71 of that Regulation, setting out the detailed differences to be notified to ICAO.

Article 4

The implementation of this Decision shall not entail a breach of Member States' obligations under Union law or their international obligations under Article 38 of the Chicago Convention.

Article 5

The position to be adopted on behalf of the Union within ICAO shall be expressed by the Member States.

Article 6

This Decision applies until 30 November 2022. On a proposal from the Commission, the Council may extend its application or otherwise amend it.

Article 7

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

Done at Luxembourg, 11 June 2021.

For the Council
The President
J. P. MATOS FERNANDES