EUROPEAN
COMMISSION

Brussels, 12.2.2020
COM(2020) 59 final

2020/0027 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organization, in respect of the adoption of Amendments to a number of Annexes to the Chicago Convention

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Council of the International Civil Aviation Organization (ICAO) in connection with the envisaged adoption of the following Amendments to Annexes to the Convention on International Civil Aviation ('the Chicago Convention') by the ICAO Council in its 219th session listed below:

– Adoption of Amendment 176 to Annex 1
– Adoption of Amendment 79 to Annex 3
– Adoption of Amendment 61 to Annex 4
– Adoption of Amendment 44 to Annex 6, Part I
– Adoption of Amendment 37 to Annex 6, Part II
– Adoption of Amendment 23 to Annex 6, Part III
– Adoption of Amendment 92 to Annex 10, Volume I
– Adoption of Amendment 92 to Annex 10, Volume II
– Adoption of Amendment 52 to Annex 11
– Adoption of Amendment 18 to Annex 13
– Adoption of Amendment 15 to Annex 14, Volume I
– Adoption of Amendment 9 to Annex 14, Volume II
– Adoption of Amendment 41 to Annex 15
– Adoption of Amendment 13 to Annex 16, Volume I
– Adoption of Amendment 10 to Annex 16, Volume II
– Adoption of Amendment 1 to Annex 16, Volume III
– Adoption of Amendment 13 to Annex 18

2. CONTEXT OF THE PROPOSAL

2.1. 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 ICAO.

All Member States are Parties to the Chicago Convention.

2.2. The Council of the International Civil Aviation Organization

The ICAO is a specialized agency of the United Nations. The aims and objectives of the ICAO 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 the 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, a number of Member States are 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, designated as Annexes to the Chicago Convention.

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

During its 219th session, the ICAO Council is to adopt Amendments to Annexes to the Chicago Convention ('the envisaged acts'). Details are set out in the Annex to the Council decision proposed.

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

The ICAO Council during its 219th session, starting on 2 March 2020, is to adopt a number of Amendments to various Annexes of the Chicago Convention, in the areas of safety, environment and air navigation. Details are set out in the Annex to the Council decision proposed.

For each point, the Annex also refers to the relevant Union legislation. It follows that all Amendments referred to fall into areas largely covered by Union law and hence under exclusive external Union competence.

In this context, having regard to relevant Union legislation, the position to be taken on the Union's behalf in the 219th session of the ICAO Council is to support the proposed amendments. In some cases, such support is qualified by comments concerning details but which do not affect the broad principles underlying the suggested Amendments. All details are set out in the Annex to the Council decision proposed.

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[1].

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*'[2].

4.1.2. Application to the present case

The Council of the International Civil Aviation Organization is a body set up by an agreement, namely the Convention on International Civil Aviation.

---

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

[2] 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.

The acts which the Council of the International Civil Aviation Organization is called upon to adopt constitute acts having legal effects. The envisaged acts have legal effects because they will change a number of standards, which are capable of creating a binding legal obligation under Article 37 and 38 of the Chicago Convention.

Furthermore, the Amendments introduce a number of changes designated as "recommendations". Despite their denomination, those "recommendations" are of a nature that alters the legal situation existing under the pre-existing standards.

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

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

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the 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 envisaged acts relate to a 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 decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

2020/0027 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organization, in respect of the adoption of Amendments to a number of Annexes to the Chicago Convention

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 of the Chicago Convention and members of the ICAO, 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 and recommended practices.

(4) The ICAO Council, during its 219th session starting on 2 March 2020, is to adopt a number of Amendments to various Annexes to the Chicago Convention, in the areas of safety, environment and air navigation.Those concern Annexes 1, 3, 4, 6, 10, 11, 13, 14, 15, 16 and 18.

(5) 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 in whole or in part capable of decisively influencing the content of Union law, as referred to in the Annex to this Decision. Once adopted, the envisaged Amendments will be binding on all ICAO States, including all Member States, in accordance with and within the limits set out in the Chicago Convention. Article 38 of the Chicago Convention requires contracting States to notify ICAO if they intend to deviate from a standard, under the notification of differences mechanism.

(6) The Union supports the policies expressed in the Amendments since they contribute to improving aviation safetyand environmental standards.

(7) The Union's position is to be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 219th session of the ICAO Council is set out in the Annex.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President