

COUNCIL DECISION (EU) 2023/568**of 9 March 2023**

on the position to be taken on behalf of the Union in the 228th session of the Council of the International Civil Aviation Organization (ICAO) as regards the adoption of Amendment 93 to Annex 10 – Aeronautical Telecommunications, Volume I – Radio Navigation Aids of the Convention on International Civil Aviation and of the amendment to the Technical instructions for the safe transport of dangerous goods by air to permit active tracking devices powered by small lithium batteries in checked baggage

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 of the Union are Contracting States to the Chicago Convention and members of the ICAO, while the Union has observer status in certain ICAO bodies. Six Member States are currently 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 228th session, is to adopt Amendment 93 to Annex 10, Volume I to the Chicago Convention.
- (5) The main purpose of Amendment 93 to Annex 10, Volume I to the Chicago Convention is to support the introduction of dual-frequency, multi-constellation (DFMC) global navigation satellite system (GNSS) by adding provisions for additional frequencies of operation for the global positioning system (GPS), the global navigation satellite system (GLONASS) and the satellite-based augmentation system (SBAS), and by introducing provisions for the new BeiDou Navigation Satellite System (BDS) and the Galileo system. It is also to support ionospheric gradient mitigation for the ground-based augmentation system (GBAS).
- (6) It is appropriate to establish the position to be taken on behalf of the Union within the ICAO Council, as Amendment 93 to Annex 10, Volume I to the Chicago Convention will be binding under international law and is capable of decisively influencing the content of Union law, namely Commission Implementing Regulation (EU) 2017/373 ⁽¹⁾.
- (7) The position to be taken on behalf of the Union in the 228th session of the ICAO Council or any subsequent session with regard to the adoption of Amendment 93 to Annex 10, Volume I to the Chicago Convention as outlined in State Letter 2021/41 should be to support and to fully comply with this amendment. This position should be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly in the interest of the Union.

⁽¹⁾ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

- (8) Once adopted and effective, Amendment 93 to Annex 10, Volume I to the Chicago Convention will be binding on all ICAO Member States, including all Member States of the Union, in accordance with and within the limits set out in the Chicago Convention.
- (9) Pursuant to Article 38 of the Chicago Convention, any State which finds it impracticable to comply in all respects with any international standard or procedure adopted by ICAO, or to bring its own regulations or practices into full accord with any such international standard or procedure 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.
- (10) Pursuant to Article 90 of the Chicago Convention, any Annex or any amendment of an Annex adopted by the ICAO Council becomes 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 with the ICAO Council.
- (11) The position to be taken on behalf of the Union after the adoption of Amendment 93 to Annex 10, Volume I to the Chicago Convention by the ICAO Council, to be announced by the ICAO Secretary-General by means of an ICAO State-letter procedure, should be not to register disapproval and to notify compliance, provided that that amendment is adopted without any substantial changes. Where Union law would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, any difference with those particular SARPs should be notified to the ICAO. The position to be taken on behalf of the Union with respect to such a difference should be based on a written document submitted by the Commission to the Council for discussion and approval. This position should be expressed by all the Member States of the Union, acting jointly in the interest of the Union.
- (12) The ICAO Council, at its 228th session, is also to adopt an Amendment to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Doc 9284) to permit active tracking devices powered by small lithium batteries in checked baggage. The matter falls under Annex 18 to the Chicago Convention – The Safe Transport of Dangerous Goods by Air.
- (13) The amendment would allow passengers and crew to carry active tracking devices powered by small lithium batteries in their checked baggage, which ICAO Doc 9284 prohibits because of a requirement to have devices containing lithium cells or batteries in checked baggage switched off.
- (14) It is appropriate to establish the position to be taken on behalf of the Union within the ICAO Council as the proposed changes to ICAO Doc 9284 would have a direct impact on the rules for the transport of dangerous goods in Commission Regulation (EU) No 965/2012 ⁽²⁾, which refer expressly to that ICAO document, and are therefore capable of decisively influencing the content of Union law.
- (15) The position to be taken on behalf of the Union during the 228th session of the ICAO Council or any subsequent session with regards to the adoption of the Amendment to ICAO Doc 9284 should be to support this amendment. This position should be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union in the 228th session of the ICAO Council, or in any subsequent sessions, shall be to support Amendment 93 to Annex 10, Volume I to the Chicago Convention.

⁽²⁾ 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).

2. The position to be taken on behalf of the Union, provided the ICAO Council adopts Amendment 93 to Annex 10, Volume I to the Chicago Convention without any substantial changes, shall be not to register disapproval and to notify compliance with that amendment in response to the respective ICAO State-letter.

3. Where Union law would deviate from the newly adopted SARPs after the envisaged date of application of those SARPs, a difference with those particular SARPs shall be notified to ICAO, in accordance with Article 38 of the Chicago Convention. In such a case, 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 position to be taken on behalf of the Union on the detailed differences to be notified to the ICAO.

Article 2

The position to be taken on behalf of the Union in the 228th session of the ICAO Council, or in any subsequent sessions, shall be to support the Amendment to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Doc 9284).

Article 3

The position referred to in Article 1(1) and in Article 2 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) and (3) shall be expressed by all the Member States of the Union, acting jointly in the interest of the Union.

Article 4

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

Done at Brussels, 9 March 2023.

For the Council
The President
G. STRÖMMER