

EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT:
7975/20 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
envisaged adoption of Amendment 91 to Annex 10, Volume III
and on the notification of difference from the date of application
of Amendment 13 to Annex 14, Volume 1, Amendment 40C to
Annex 6, Amendment 77B to Annex 3 and Amendment 39 to
Annex 15.**

Submitted by the Department for Transport

11 June 2020

SUBJECT MATTER

1. The Document seeks the Council's approval for the proposed position to be taken by EU Member States within the Council of the International Civil Aviation Organisation (ICAO) on Amendments to ICAO Standards and Recommended Practices (SARPs) relating to improvements in aircraft communications and runway safety requirements. The Council's approval is also sought for the proposed actions to be taken by Member States if and when the amendments are adopted as well as their response to a number of other amendments which have already been adopted by ICAO.

The Amendments concerned are:

- a) Amendment 91 to Annex 10, Volume III which introduces changes to the requirements for communication systems in aircraft to reduce the incidence of false reporting. If adopted by the Council the Amendment will become applicable to states on 5 November 2022.

The main purpose of this amendment is to make technical improvements to the radio selective calling system (SELCAL) codes which are assigned to aircraft and aims to mitigate the current shortage of these codes by expanding the list of tones available. This change is designed to improve safety in communications between aircraft thereby reducing false alerts of incoming communications from ground stations. The Commission notes that SELCAL is not significant for the European region's air navigation services as it is rarely used but recognises that it is a viable method of communication and therefore it proposes that EU Member States support the adoption of the Amendment in the Council of ICAO and notify their compliance with the Amendment following its adoption.

- b) Amendment 13 to Annex 14, Volume 1, Amendment 40C to Annex 6, Amendment 77B to Annex 3 and Amendment 39 to Annex 15 all relate to improvements in runway safety. These requirements have been previously adopted by the Council of ICAO and are due to become applicable from 5 November 2020.

The amendments relate to ICAO's new methodology for the Global Reporting Format on Runway Safety Conditions which was adopted in 2016 and is due to become applicable on 5 November 2020. The purpose is to introduce a harmonised approach amongst states for the assessment and reporting of runway surface conditions and in doing so reduce the number of incidents and accidents caused by runway conditions particularly in adverse weather. The Commission acknowledges that due to the impact of the COVID-19 crisis, the deadline for applicability of these SARPs is likely to be delayed by the Council of ICAO.

Furthermore, the Document proposes that if the matter of postponement of applicability of these SARPs is not on the Agenda of the Council of ICAO's 220th or 221st session, or if the applicability of the Amendments is not delayed by six months, then Member States should notify differences to ICAO if the deadline of the corresponding EU legislation is delayed by six months. Member States in this case should also inform ICAO that the implementation of the measure will be delayed by six months.

SCRUTINY HISTORY

2. The matter has not previously been subject to parliamentary scrutiny.

MINISTERIAL RESPONSIBILITY

3. The Secretary of State for Transport has overall responsibility for matters relating to aviation safety.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

4. Aviation safety regulation is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have, however, been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

5. *Legal basis*

The proposal has been brought forward under Article 100(2) and Article 218(9) of the Treaty on the Functioning of the European Union.

European Parliament Procedure

None. In this instance, the European Parliament has no function.

Voting procedure

Qualified Majority Voting.

Impact on United Kingdom Law

This proposal has no direct impact on UK law.

Application to Gibraltar

The amended Standards and Recommended Practices will apply to Gibraltar to the same extent as they apply to the UK.

Fundamental rights analysis

This proposal has no direct impact on fundamental rights.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

6. The Council Decision will not apply to the European Economic Area.

SUBSIDIARITY

7. Subsidiarity does not apply as this falls into an area of exclusive EU competence.

POLICY IMPLICATIONS; IMPACT ON THE TRANSITION PERIOD AND THE NORTHERN IRELAND PROTOCOL

8. Aviation safety is a reserved matter and therefore this has no impact on the Northern Ireland protocol.

9. ICAO's Standards and Recommended Practices (SARPs) are set out in annexes to the Convention on International Civil Aviation. Changes and updates to the Annexes are known as 'Amendments' and will normally introduce new SARPs or changes to existing SARPs. The Convention is legally binding and States are expected to comply with the Standards and are required to notify ICAO of their approval, disapproval, compliance or differences with the Amendments following their adoption by the Council of ICAO before the Standards enter into force.

10. The 36-member ICAO Council is the body responsible for the adoption of SARPs for aviation, which must then be implemented by all of ICAO's 193 Contracting States. The ICAO Council includes 7 EU Member States, and also includes the UK. The Council of ICAO will formally adopt Amendments following a consultation process with its Member States. In practice, most states will have already put forward substantive comments on Amendments before adoption by the Council and these will have been considered by ICAO's Working Groups. The

European Commission has set out the common position it proposes EU Member States take on each of the Amendments cited in Paragraph 1 above.

11. Amendment 91 to Annex 10, Volume III is non-controversial and is already mentioned in the European Aviation Safety Agency (EASA) guidance.

12. The EU's position on ICAO's Amendment 13 to Annex 14, Volume 1, Amendment 40C to Annex 6, Amendment 77B to Annex 3 and Amendment 39 to Annex 15 is currently in line with the approach taken by ICAO and EU Member States on reducing the regulatory burden on the aviation sector during the COVID emergency. These SARPs have already been incorporated into EU legislation through Implementing and Delegated Acts and the Commission has noted its intention to delay the applicability of the legislation by six months.

13. The Government supports the Amendments and the proposals put forward by the Council Document on the position that Member States should take within the Council of ICAO and the proposed action to be taken following adoption or before applicability for those Amendments that have already been adopted. The Amendments have been considered by the Air Navigation Commission (ANC) of ICAO which considers proposals for new or existing SARPs. The UK is a Member of the Air Navigation Commission, and the EU Council position reflects the ANC's views.

14. During the Transition Period, the UK continues to be bound by EU law, as well as continuing to be bound to follow EU Decisions, per the sincere duty of cooperation.

CONSULTATION

15. No consultation is planned on this proposal.

IMPACT ASSESSMENT

16. No impact assessment has been undertaken as this measure does not amend or introduce new requirements on business practice.

FINANCIAL IMPLICATIONS

17. There are no financial implications relating to this proposal concerned in the Document, although there may be minimal financial implications associated with the subsequent adoption of the Amendment on SELCAL (where fitted) but ICAO has provided a low-cost route for operators.

TIMETABLE

18. It is not known when the Council will reach its Decision. Amendment 91 to Annex 10, Volume III is proposed to be adopted by the Council of ICAO and if so, will become applicable on 5 November 2022.

19. Amendments 13 to Annex 14, Volume 1, Amendment 40C to Annex 6, Amendment 77B to Annex 3 and Amendment 39 to Annex 15 were proposed to become applicable on 5 November 2020 but the date of applicability is likely to be delayed.



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