



C-DEC 226/17
29/8/22

COUNCIL — 226TH SESSION

SEVENTEENTH MEETING

**(HYBRID MEETING ON WEDNESDAY, 24 AUGUST 2022, AT 1000 HOURS
AND THURSDAY, 25 AUGUST 2022 AT 1000 HOURS)**

SUMMARY OF DECISIONS

OPEN MEETING

Draft Assembly working paper – Climate Change

1. The Council considered this item on the basis of C-WP/15391 Revision No.1, which pursuant to C-DEC 226/7, presented an updated draft Assembly working paper which reported on the progress made by ICAO since the 40th Session of the Assembly relating to international aviation and climate change, including the outcome of the ICAO High-level Meeting on the Feasibility of a Long-term Aspirational Goal for International Aviation CO₂ Emissions Reductions (HLM-LTAG), which was held from 19 to 21 July 2022.
2. Following consideration, the Council, by a majority decision:
 - a) took note of the information presented in C-WP/15391 Revision No.1, and in doing so, acknowledged the efforts and commitment of the Secretariat to ensure the success of the HLM-LTAG as the Organization's first such hybrid event;
 - b) welcomed the positive results achieved by the HLM-LTAG and the progress made toward fostering greater consensus amongst Member States with respect to an LTAG for the aviation sector, and expressed its appreciation to both the Chairperson of the HLM-LTAG as well as the Chairperson of the Small ad hoc Group on the HLM-LTAG (SGHLM) for their significant contributions in this regard; and
 - c) approved the draft Assembly working paper attached to C-WP/15391 Revision No.1, while noting that the draft Assembly working paper would be published as soon as possible in order to allow Member States sufficient time to submit any comments or views thereon under cover of their own respective working papers to the Assembly, by the deadline of 31 August 2022.
3. It was recorded that one Delegation had expressed a reservation to this decision of the Council.
4. It was understood that the substance of the comments made in the course of the Council's consideration of this item, including the details of the reservation indicated in paragraph 3 above, would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course.

Draft Assembly working paper – Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change

5. The Council considered this item on the basis of C-WP/15392 Revision No.1, which pursuant to C-DEC 226/7, presented an updated draft Assembly working paper containing proposed revisions to Assembly Resolution A40-18: *Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change*.

6. Following consideration, the Council, by a majority decision:

- a) took note of the information presented in C-WP/15392, Revision No.1;
- b) approved the draft Assembly working paper attached to C-WP/15392 Revision No.1, subject to the changes agreed on by the Council in the course of its consideration of this item, including to delete paragraph 9 *bis*, and other amendments of an editorial nature, on the understanding that the text of the draft Resolution should adhere closely to the agreement reached by the HLM-LTAG, and in doing so, delegated authority to the President to thereafter approve the revised working paper on its behalf for subsequent submission to the Assembly;
- c) noted that the draft Assembly working paper would be published as soon as possible in order to allow Member States sufficient time to submit any comments or views thereon under cover of their own respective working papers to the Assembly, by the deadline of 31 August 2022.

7. It was recorded that one Delegation had expressed a reservation to this decision of the Council.

8. It was understood that the substance of the comments made in the course of the Council's consideration of this item, including the details of the reservation indicated in paragraph 7 above, and the proposed amendments to the draft Assembly Resolution, would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course.

Draft Assembly working paper – Consolidated statement of continuing ICAO policies and practices related to environmental protection – Carbon Offsetting and Reductions Scheme for International Aviation (CORSIA)

9. The Council considered this item on the basis of C-WP/15394 Revision No.1, which pursuant to C-DEC 226/13, presented an updated draft Assembly working paper containing proposed revisions to Assembly Resolution A40-19: *Consolidated statement of continuing ICAO policies and practices related to environmental protection – Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)*. The Council also had for consideration a PowerPoint presentation by the Chairperson of the Committee on Aviation Environmental Protection (CAEP) which outlined the key outcomes of the updated analysis undertaken by the CAEP in response to the Council's request (C-DEC 226/13, refers), as well as the related summary of discussions from the Climate and Environment Committee's (CEC) informal meeting of 9 August 2022.

10. Following consideration, the Council, by a majority decision:

- a) took note of the information presented in C-WP/15394, Revision No.1, and in doing so, reiterated its appreciation to the CAEP for having completed the additional analyses requested by the Council in a timely manner, and for consistently delivering a high

standard of work to support the Council's discussions in relation to CORSIA, and other environment-related issues;

- b) approved the draft Assembly working paper attached to C-WP/15394 Revision No.1, subject to the changes agreed on by the Council in the course of its consideration of this item, including the final agreed text of Operative Clauses 5, 11, 12 and 17 of the draft Assembly Resolution, as reflected in the attachment to this C-DEC;
- c) further noted that the approved draft Assembly working paper would be published as soon as possible in order to allow Member States sufficient time to submit any comments or views thereon under cover of their own respective working papers to the Assembly, by the deadline of 31 August 2022;
- d) acknowledged that the impact of the adjusted CORSIA baseline on the performance of CORSIA would need to be monitored closely; and
- e) recalled that pursuant to C-DEC 226/12, C-WP/15393, *Draft Assembly working paper – Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)*, would be adjusted by the Secretariat to take into account the outcome of the Council's consideration of the CORSIA baseline beyond the pilot phase.

11. It was recorded that one Delegation had expressed a reservation to this decision of the Council.

12. It was understood that the substance of the comments made in the course of the Council's consideration of this item, including the details of the reservation indicated in paragraph 11 above, and the proposed amendments to the draft Assembly Resolution would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course.

Information pursuant to Article 54 j) of the Chicago Convention on infractions of the Convention by a group of ICAO Member States

13. The Council considered this item on the basis of C-WP/15429, Revision No.1, presented by the Russian Federation, which referred to provisions of the *Convention on International Civil Aviation* (Chicago Convention), and requested the ICAO Council to take action accordingly.

14. In this connection, the Council recalled that it had commenced consideration of this subject during the 15th meeting of the current session on the basis of a letter from Mr. Alexander Neradko, Head of the Russian Federal Air Transport Agency. It was further recalled that the President of the Council had circulated this letter to all Delegations via e-mail on 5 April 2022, and in having noted the intention of the Russian Federation to submit the present working paper, the Council had agreed to defer its further consideration to a subsequent meeting (C-DEC 226/15, refers).

15. The Russian Federation, as seconded by China, proposed a motion to approve the actions outlined in paragraph 4 of C-WP/15429 Revision No. 1, and to take the vote on that motion by secret ballot. The Council, acting in accordance with Rule 50 of the *Rules of Procedure for the Council*, decided with 22 votes in favour, 4 against and 8 abstentions (2 Representatives being absent), against proceeding to a secret ballot vote. In accordance with rule 40 a) of the *Rules of Procedure for the Council*, a subsequent motion proposed by the Russian Federation to undertake a roll-call vote on the same question, lapsed due to a lack of a seconder.

16. Following consideration, the Council:

- a) acknowledging that there was a lack of consensus amongst the Council Representatives to proceed with the working paper in its current form, decided to forego submitting a working paper to the 41st Assembly; and
- b) requested the Secretariat to undertake a comprehensive analysis of previous decisions that had been taken by the Council pursuant to its consideration of similar or related items, including with reference to applicable legal principles, and to prepare a paper thereon that would be presented at a subsequent session.

17. It was understood that the substance of the comments made in the course of the Council's consideration of this item would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course, prior to the Assembly.

Draft Assembly working paper — Infractions of the Convention of the Chicago Convention by the Russian Federation

18. The Council considered this item on the basis of C-WP/15427, which pursuant to C-DEC 226/14, presented a draft Assembly working paper reporting on infractions of the *Convention on International Civil Aviation* (Chicago Convention) by the Russian Federation, with respect to the violation by the Russian Federation of the exclusive sovereignty of the Ukrainian airspace, as well as the dual registration of aircraft and permitting aircraft to fly without the required documents on board.

19. In accordance with rule 40 a) of the *Rules of Procedure for the Council*, a motion proposed by the Russian Federation that the working paper be withdrawn and re-drafted, lapsed due to a lack of a seconder.

20. Following consideration, the Council by a majority decision, approved the draft Assembly working paper attached thereto, subject to the amendment proposed by the Representative of Mexico to include a new preambular clause in the draft Resolution being reflected, and delegated authority to the President to thereafter approve the revised working paper on its behalf for subsequent submission to the 41st Session of the Assembly.

21. It was recorded that one Delegation had expressed a reservation to this decision of the Council.

22. It was understood that the substance of the comments made in the course of the Council's consideration of this item, including the details of the reservation indicated in paragraph 21 above, and the proposed amendments to the draft Assembly Resolution, would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course.

Draft Assembly Working Paper – Infractions of the Convention on International Civil Aviation by the Republic of Belarus

23. The Council considered this item on the basis of C-WP/15430, which pursuant to C-DEC 226/16, presented a draft Assembly working paper on an infraction of the *Convention on International Civil Aviation* (Chicago Convention) by the Republic of Belarus in connection with the event involving Ryanair Flight FR4978 in Belarus Airspace on 23 May 2021.

24. Following consideration, the Council:
- a) reiterated its appreciation to the members of the ICAO Fact Finding Investigation Team (FFIT) for their professionalism and the high quality of the report that they had produced as a result of their investigative efforts in this matter; and
 - b) approved the draft Assembly working paper attached to C-WP/15430, subject to the amendment proposed by the Representative of France in relation to paragraph 2 of the working paper being reflected, and delegated authority to the President to thereafter approve the revised working paper on its behalf for subsequent submission to the 41st Session of the Assembly.
25. It was recorded that one Delegation had expressed a strong objection to this decision of the Council.
26. It was understood that the substance of the comments made in the course of the Council's consideration of this item, including the details of the reservation indicated in paragraph 24 above, and the proposed amendments to the draft Assembly working paper, would be reflected accordingly in the summary minutes of this meeting (C-MIN 226/17), which would be issued in due course.

Any other business

Request from ICCAIA to be represented as an Observer at meetings of the 227th Session

27. Notwithstanding the objection raised by one Delegation in response to the e-mail circulated by the President of the Council on 5 August 2022, the Council, in accordance with Rule 32 a) of the *Rules of Procedure for the Council*, approved, by a majority decision, the request of ICCAIA to participate as an Observer during the 227th Session of the Council's consideration in closed session, of items related to aviation safety and security, as appropriate.

Requests by international organizations to be invited to the 41st ICAO Assembly

28. The Council took note of an oral report from the President of the Council concerning a request from the Air Transport Action Group (ATAG), to be included in the *List of international organizations that may be invited to attend ICAO meetings*. In this connection, it was noted that the request was pending in light of the current refinement of the process and criteria for the assessment of such requests from international organizations (C-DEC 225/3 refers). Notwithstanding the preceding and without prejudice to any future decision by the Council on the request from ATAG, the Council agreed that ATAG would be added to the List of International Organizations to be invited to attend the 41st Session of the Assembly.

Supplementary Agreement between ICAO and the Government of Canada regarding the Headquarters of ICAO

29. The Council took note of the information provided by Secretary General indicating that the Government of Canada, as the Host State, had agreed to ICAO's request to defer cost recovery for repair projects of a non-capital nature at ICAO Headquarters, by exempting ICAO from reimbursing its portion of these costs to the end of the next budgetary triennium. The Council noted that in light of these developments, among others, the Secretariat would review the regular budget for the next triennium, and would continue to keep the Council apprised in this regard.

227th Session of the Council

30. On the basis of a proposal of the President of the Council, the Council agreed in-principle, that with the exception of all meetings to be held during the Committee phase, meetings of the Council during the 227th Session would be convened in-person in the Council Chamber. It was also understood that the Secretariat would continue to explore solutions to ensure the availability of all operational features of the hybrid meeting option in the Council Chamber.

Farewells to Council Representatives

31. The Council bade farewell to the Representatives of Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Finland, Germany, Greece, the Netherlands, Paraguay, Peru, Tunisia and Zambia.

Settlement of Differences: Australia and the Kingdom of the Netherlands and the Russian Federation (2022)

32. In the absence of comments by 11 August 2022 to the PRES memorandum SS/3359, dated 4 August 2022, the Council noted that a time-limit of 6 weeks had been granted to the Applicants (Australia and the Kingdom of the Netherlands) to submit written comments, if any to the Respondent's (Russian Federation) preliminary objection, and that consistent with its previous decision in this matter (C-DEC 226/5, paragraph 6 d) refers), the 6-week time limit would only begin to run from the date on which an English translation of the preliminary objection was provided to the Applicants.

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ATTACHMENT

Pursuant to paragraph 10 b) of this C-DEC, the Council agreed that the text of this part of the draft Assembly Resolution appended to C-WP/15394 Revision No.1 would read as follows:

The Assembly:

...

5. *Recalls* its decision at the 39th Session to implement a GMBM scheme in the form of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) to address any annual increase in total CO₂ emissions from international civil aviation (i.e. civil aviation flights that depart in one country and arrive in a different country) above the 2020 levels, taking into account special circumstances and respective capabilities; ***{Maintain A40-19 paragraph 5 without any change, as those changes on CORSIA baseline etc. are reflected in paragraphs 11 and 12 below}***

...

11. *Recalls* its decision at the 39th Session **and further decides** that the amount of CO₂ emissions required to be offset by an aeroplane operator in a given year from 2021 is calculated every year as follows:

- a) an aeroplane operator's offset requirement = [% Sectoral × (an aeroplane operator's emissions covered by CORSIA in a given year × the sector's growth factor in the given year)] + [% Individual × (an aeroplane operator's emissions covered by CORSIA in a given year × that aeroplane operator's growth factor in the given year);
- b) where the sector's growth factor **from 2021 through 2023** = (total emissions covered by CORSIA in the given year – ~~average of~~ total emissions covered by CORSIA in 2019 ~~between 2019 and 2020~~) / total emissions covered by CORSIA in the given year, and the sector's growth factor from 2024 through 2035 = (total emissions covered by CORSIA in the given year – 85% of total emissions covered by CORSIA in 2019) / total emissions covered by CORSIA in the given year; ***{2019 emissions as the CORSIA baseline for pilot phase, and 85% of 2019 emissions after pilot phase}***
- c) where the aeroplane operator's growth factor **from 2033 through 2035** = (the aeroplane operator's emissions covered by CORSIA in the given year – ~~average~~ 85% of the aeroplane operator's emissions covered by CORSIA in 2019 ~~between 2019 and 2020~~) / the aeroplane operator's emissions covered by CORSIA in the given year; ***{85% of 2019 emissions as the CORSIA baseline from 2033 to 2035}***
- d) where the % Sectoral = (100% – % Individual) and;
- e) where the % Sectoral and % Individual will be applied as follows:
 - i) from 2021 through 2023, 100% sectoral and 0% individual, though each participating State may choose during this pilot phase whether to apply this to:
 - a) an aeroplane operator's emissions covered by CORSIA in a given year, as stated above, or
 - b) an aeroplane operator's emissions covered by CORSIA in ~~2019~~2020; ***{June 2020 Council decision to replace 2020 with 2019, for CORSIA pilot phase}***

- ii) from 2024 through 2026, 100% sectoral and 0% individual;
- iii) from 2027 through 2029, 100% sectoral and 0% individual;
- iv) from 2030 through 2032, 100% sectoral and 0% individual ~~at least 20% individual, with the Council recommending to the Assembly in 2028 whether and to what extent to adjust the individual percentage; {Change the % of sectoral and individual to 100% and 0% respectively, for 2030 – 2032 period}~~
- v) from 2033 through 2035, 85% sectoral and 15% individual ~~at least 70% individual, with the Council recommending to the Assembly in 2028 whether and to what extent to adjust the individual percentage; {Change the % of sectoral and individual to 85% and 15% respectively, for 2033 – 2035 period}~~
- f) the aeroplane operator's emissions and the total emissions covered by CORSIA in the given year do not include emissions exempted from the scheme in that year;
- g) the scope of emissions in paragraphs 11 b) and 11 c) above will be recalculated at the start of each year to take into account routes to and from all States that will be added due to their voluntary participation or the start of a new phase or compliance cycle;

12. *Recalls* its decision at the 39th Session ~~and further decides~~ that a new entrant¹ is exempted from the application of the CORSIA for three years or until the year in which its annual emissions exceed 0.1 per cent of total emissions in 2019~~2020~~, whichever occurs earlier. From the subsequent year, the new entrant is included in the scheme and treated in the same way as the other aeroplane operators; ***{June 2020 Council decision to replace 2020 with 2019 for pilot phase, and the same new entrant threshold is proposed after pilot phase}***

...

17. *Recalls* its decision at the 39th Session that a periodic review of the CORSIA is undertaken by the Council, with the technical contribution of CAEP, for consideration by the Assembly, every three years from 2022 for the purpose referred to in paragraph 9 g) above and to contribute to the sustainable development of the international aviation sector and the effectiveness of the scheme. This will involve, inter alia: ***{Maintain A40-19 paragraph 17 without any change, as those changes on CORSIA baseline etc. are reflected in paragraphs 11 and 12 above}***

- a) assessment of: progress towards achieving the ICAO's global aspirational goal; the scheme's market and cost impact on States and aeroplane operators and on international aviation; and the functioning of the scheme's design elements;
- b) consideration of the scheme's improvements that would support the purpose of the Paris Agreement, in particular its long-term temperature goals; and update the scheme's design elements to improve implementation, increase effectiveness, and minimize market distortion, taking into account the consequential impact of changing the scheme's design elements, e.g., to MRV requirements; and
- c) a special review by the end of 2032 on termination of the scheme, its extension or any other improvements of the scheme beyond 2035, including consideration of the contribution made by

¹ A new entrant is defined as any aeroplane operator that commences an aviation activity falling within the scope of Annex 16, Volume IV on or after its entry into force and whose activity is not in whole or in part a continuation of an aviation activity previously performed by another aeroplane operator.

aircraft technologies, operational improvements and sustainable aviation fuels towards achieving the ICAO's environmental objectives;

— END —