



Brussels, 16 October 2024
(OR. en)

14563/24

Interinstitutional File:
2024/0261(NLE)

AVIATION 142
ICAO 46
RELEX 1278

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2024) 477 final
----------------	---------------------

Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the 233rd session of the Council of the International Civil Aviation Organization (ICAO) as regards the proposed amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”) Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”) as included in Amendment 30 of Annex 9 – Facilitation to the Convention on International Civil Aviation (‘the Chicago Convention’)
----------	---

Delegations will find attached document COM(2024) 477 final.

Encl.: COM(2024) 477 final



EUROPEAN
COMMISSION

Brussels, 16.10.2024
COM(2024) 477 final

2024/0261 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 233rd session of the Council of the International Civil Aviation Organization (ICAO) as regards the proposed amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”) Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”) as included in Amendment 30 of Annex 9 – Facilitation to the Convention on International Civil Aviation (‘the Chicago Convention’)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns:

- (i) the position to be taken on the Union's behalf in the 233rd session of the Council of the International Civil Aviation Organization (ICAO) for the proposed amendments to Chapter 1 ("Definitions and general principles"), Chapter 3 ("Entry and Departure of persons and their baggage") Paragraph C ("Security of travel documents"), Paragraph D ("Travel documents"), Paragraph G ("Embarkation/Disembarkation Cards"), Paragraph H ("Inspection of travel documents") and Chapter 8 ("Facilitation provisions covering specific subjects") Paragraph H ("Trafficking in persons") and I ("Wildlife Trafficking") as included in Amendment 30 of Annex 9 – *Facilitation* of the Convention on International Civil Aviation concerning the facilitation of **landside formalities for clearance of aircraft and passengers, goods and mail**, with respect to the requirements of customs, immigration, public health and agriculture authorities. These proposed amendments are contained in Amendment 30 which is included in the State Letter EC 6/3 – 24/67 dated 19 June 2024 and which will be voted at the 233rd session of the Council of the International Civil Aviation Organization (ICAO).
- (ii) the position to be taken on the Union's behalf after the ICAO announces the adoption of the Amendment 30 to Annex 9 *Facilitation* in respective State Letters, inviting its contracting States to notify any differences or compliance with the adopted measures.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on International Civil Aviation

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 International Civil Aviation Organization.

All EU Member States are Parties to the Chicago Convention.

2.2. The International Civil Aviation Organization

The International Civil Aviation Organization is a specialized agency of the United Nations. The aims and objectives of the Organization 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 ICAO with a membership of 36 contracting States elected by the ICAO Assembly for a period of three years. For the period of 2022-2025, there are six EU Member States represented in the ICAO Council namely Austria, France, Germany, Italy, Romania and Spain.

Mandatory functions of the ICAO Council, listed in Article 54 of the Chicago Convention, include the adoption of international standards and recommended practices (SARPs), designated as Annexes to the Chicago Convention.

Pursuant to Article 37 j) of the Chicago Convention, the ICAO shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with customs and immigration procedures.

Pursuant to Article 90 of the Chicago Convention, the adoption by the Council of the Annexes requires the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any

amendment of an Annex shall 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 contracting ICAO States register their disapproval.

Pursuant to Article 38 of the Chicago Convention, any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with respect to any such international standard or procedures or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the ICAO of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standards or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

2.3. The envisaged act of ICAO and its relationship with the existing Union rules

During its 233rd or any consequent session, the ICAO Council is expected to consider and adopt Amendment 30 to Annex 9 – Facilitation as referred to in the State Letter EC 6/3-24/67 arising from the review of Annex 9 – Facilitation conducted by the Facilitation (FAL) Panel during its Thirteenth Meeting which was held from 26 February to 1 March 2024 (FALP/13).

- Annex 9 - *Facilitation* is based on 10 articles of the Chicago Convention which require that the civil aviation community comply with laws governing the inspection of aircraft, cargo and passengers by authorities concerned with customs, immigration, agriculture and public health. Annex 9 pertains specifically to Facilitation of landside formalities for clearance of aircraft and commercial traffic for both passengers and cargo, through the requirements, inter alia of customs, immigration, public health and agriculture authorities.
- Amendment 30 to Annex 9 includes, among others, new and/or revised provisions relating to entry and departure of persons and their baggage, international airports' facilities and services for traffic, passenger name record (PNR) data, advance passenger information (API), trafficking in persons, as well as the relocation of health-related provisions from other chapters to Chapter 10 of the Annex.
- The envisaged Amendment to be adopted by the ICAO Council will be binding under international law in accordance with the procedure and time-line laid down in Article 90(a) of the Chicago Convention, which provides that: *“The adoption by the Council of the Annexes described in Article 54, subparagraph 1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council”*.
- Further, the above Amendment is capable of decisively influencing the content of EU legislation, as explained more in details below.

The proposed Amendment covers the following areas as follows:

- in relation to Chapter 1 (“Definitions and general principles”) and Chapter 3 (“Entry and Departure of persons and their baggage”) Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”), the proposed amendments add SARPs related to the security of the issuance process for electronic Machine Readable Travel Documents (“eMRTD”) and to update the access control protocol and technical standard for encoding the facial image in eMRTDs. The amendments cover subjects that are regulated - under EU law by Council Regulation (EC) No 2252/2004¹ (on travel documents and passports) and Regulation (EC) No 1683/95² (on visa standards) and due to its binding nature are capable of decisively influencing the content of EU legislation.
- with regard to Chapter 8 (“Facilitation provisions covering specific subjects”) former Paragraph J now renumbered to H (“Trafficking in persons”), the proposed Amendments are mainly of linguistics nature but they clarify that the requirements in standards 8.49 and 8.50 are binding for the Contracting States.
- Finally, with regard to Chapter 1 (“Definitions and general principles”) and Chapter 9 (“Passenger Data Systems”) the proposed amendments are largely editorial in nature; additions or rephrasing, mostly under the form of explanatory notes to SARPs, clarifying the conditions of application of API and interactive API systems. The proposed amendment seeks to streamline the use of advance passenger information (API) system and interactive advance passenger information (iAPI) system throughout the text of Annex 9. It aims to provide clarity on the definition of (batch) API system and iAPI system (Chapter 1), with editorial changes in Chapter 9 that consists on repositioning Recommended Practice 9.8 on recommending Contracting States to consider the introduction of an iAPI system earlier in the text of Annex 9. The amendments keeps Standard 9.7 as establishing an obligation on Contracting States to establish an advance passenger information (API) system with a more extensive definition of iAPI system (Note 2 under Standard 9.7). Under Standard 9.7 each Contracting State shall establish an Advance Passenger Information (API) system. On the basis of Notes 1 and 2 to that SARP, such API can take form of a normal API or iAPI. Based on the Recommended Practice under point 9.8. iAPI remains facultative (“Each Contracting state should consider the introduction of an interactive Advanced Passenger Information (iAPI) system.”). With regard to amendments in Chapter 9 on API system, there is no impact on Union law namely Council Directive 2004/82/EC³ of 29 April 2004 on the obligation of carriers to communicate passenger data (API Directive) as ICAO changes are purely editorial.
- As substantiated above, the envisaged act concerns an area which is already largely covered by Union rules and is thus liable to ‘affect common rules or alter their scope’. The envisaged Amendment 30 to Annex 9 therefore concern an area in which

¹ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1–6 ELI: <http://data.europa.eu/eli/reg/2004/2252/oj>).

² Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1–4, ELI: <http://data.europa.eu/eli/reg/1995/1683/oj>).

³ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24–27, ELI: <http://data.europa.eu/eli/dir/2004/82/oj>).

the Union has acquired exclusive external competence by virtue of the last limb of Article 3(2) TFEU on this matter.

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

3.1. Proposed amendments and their relationship with the existing Union rules

Amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”), Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”) included in Amendment 30 to Annex 9 – Facilitation of the Convention on International Civil Aviation

The proposed amendments, included in Amendment 30 to Annex 9 as referred to in the State Letter EC 6/3-24/67, cover subjects that are also regulated by EU legal acts as cited in paragraph 2.3 and are consistent therewith.

The proposed amendments would contribute to the improvement of Annex 9 clarity and efficiency thus better pursuing the aim of allowing that the flow of travellers, baggage, cargo, and mail is efficient and delivered in a healthy, safe, and secure environment on the ground and in the air. The Union acknowledges the need for continuously reviewing Annex 9 in order to keep it updated and able to reflect the evolution of air travel.

The proposed position to be taken on behalf of the Union is then to support these amendments.

Hence, the position to be taken on the Union’s behalf, provided the ICAO Council adopts the proposed Amendment 30 to Annex 9 – *Facilitation*, should be to not notify any disapproval but to comply with the adopted measures in reply to the respective ICAO State Letter.

Where Union legislation would deviate from the newly adopted ICAO Standards after an envisaged date of application of those Standards, the Union position on the differences with those particular Standards should be notified to ICAO by Member States, on the basis of preparatory document submitted in due time by the Commission to the Council for discussion and approval, and setting out the detailed differences for the time necessary to complete the implementation.

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 agreement⁴.

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*’⁵ since several parts of the proposed Amendment fall within Union law namely: Council Regulation (EC) No 2252/2004 and Regulation (EC) No 1683/95.

4.1.2. Application to the present case

The ICAO Council is a body set up by an agreement, namely the Chicago Convention.

In accordance with Article 54(l) of the Chicago Convention, the ICAO Council adopts international SARPs, designated as Annexes to the Chicago Convention. The acts which the ICAO Council is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 90(a) of the Chicago Convention.

Further, as explained above, the envisioned amendments to Annex 9 are capable of decisively influencing the content of Union legislation as they touch upon matters already regulated thereby, namely: Council Regulation (EC) No 2252/2004 and Regulation (EC) No 1683/95.

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

Therefore, the procedural legal basis for the proposed Decision position in respect of such notifications 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. By way of exception, if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure may be founded on the corresponding legal bases.

4.2.2. Application to the present case

The envisaged act although pursues objectives of common transport policy has in its content several predominant components in the areas of border control and migration, including the security of travel documents. At the same time, due to a non-binding and purely editorial nature of relevant ICAO amendments concerning collection and transfer of API data for

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

⁵ 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.

border management purposes the relevant Union rules in that area (namely Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data) are unaffected. Furthermore, ICAO changes (namely Paragraph H in Chapter 8) concerning trafficking in persons are of incidental nature to the predominant content of those amendments, which is international border controls and migration (passports and visas).

Therefore, the substantive legal basis of the proposed decision is Article 77(2) (a) and (b) TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision is Article 77(2) (a) and (b), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

For reasons of transparency and proper reference as the proposed amendments will amend Annex 9 of the Chicago Convention, it is necessary to publish it in the *Official Journal of the European Union* after its adoption indicating the date of its entry into force.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 233rd session of the Council of the International Civil Aviation Organization (ICAO) as regards the proposed amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”) Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”) as included in Amendment 30 of Annex 9 – Facilitation to the Convention on International Civil Aviation (‘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 77(2) (a) and (b), 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) All Member States are Contracting States to the Chicago Convention and members of the ICAO, while the Union has observer status in certain ICAO bodies. For the period 2022-2025, there are six Member States represented in the ICAO Council.
- (3) Pursuant to Article 37 j) of the Chicago Convention, the ICAO shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with customs and immigration procedures. Pursuant to Article 54(l) 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 233rd session, is to adopt Amendment 30 to Annex 9 – *Facilitation* to the Chicago Convention.
- (5) The main purposes of the Amendment 30 to Annex 9 - *Facilitation* to the Chicago Convention included in the State Letter EC 6/3 – 24/67 is to improve the clarity and consequently the consistency and efficiency of Annex 9.
- (6) Amendment 30 to Annex 9 - *Facilitation* to the Chicago Convention includes amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”), Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G

(“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”), Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”).

- (7) It is appropriate to establish the position to be taken on the Union's behalf within the ICAO Council as the Amendment 30 to Annex 9 – *Facilitation* to the Chicago Convention will be binding under international law in accordance with Article 90(a) of the Chicago Convention and is of relevance to Union legislation, namely: Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States⁶ and Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas⁷ Pursuant to Article 38 of the Chicago Convention, any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any such international standard or procedures 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.
- (8) The Union's position during the 233rd session of the ICAO Council or any consequent session with regard to the adoption of the proposed amendments to Chapter 1 (“Definitions and general principles”), Chapter 3 (“Entry and Departure of persons and their baggage”), Paragraph C (“Security of travel documents”), Paragraph D (“Travel documents”), Paragraph G (“Embarkation/Disembarkation Cards”), Paragraph H (“Inspection of travel documents”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph H (“Trafficking in persons”) and I (“Wildlife Trafficking”) contained in Amendment 30 to Annex 9 - *Facilitation* to the Chicago Convention included in the State Letter EC 6/3 – 24/67, should be to vote to support these amendments in their entirety. This position 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.
- (9) The Union's position after the adoption of Amendment 30 to Annex 9 - *Facilitation* to the Chicago Convention by the ICAO Council, to be announced by the ICAO Secretary General via an ICAO State Letter procedure, should be to not register any disapproval and to comply with the amendments. Where Union legislation would deviate from the newly adopted SARPs after an envisaged date of application of those SARPs, a difference with those particular SARPs should be notified to ICAO. The Union position with respect of such 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.
- (10) This Decision does not constitute a development of the provisions of the Schengen *acquis* in which Ireland takes part in accordance with Council Decision

⁶ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1–6 ELI: <http://data.europa.eu/eli/reg/2004/2252/oj>).

⁷ Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1–4, ELI: <http://data.europa.eu/eli/reg/1995/1683/oj>).

2002/192/EC.⁸ Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the 233rd session of the ICAO Council, or in one of the consequent sessions, shall be to vote to support in their entirety the proposed amendments to Chapter 1 ("Definitions and general principles"), Chapter 3 ("Entry and Departure of persons and their baggage") Paragraph C ("Security of travel documents"), Paragraph D ("Travel documents"), Paragraph G ("Embarkation/Disembarkation Cards"), Paragraph H ("Inspection of travel documents"), Chapter 8 ("Facilitation provisions covering specific subjects") and Paragraph H ("Trafficking in persons") and I ("Wildlife Trafficking") contained in Amendment 30 to Annex 9 – *Facilitation* to the Chicago Convention included in the State Letter EC 6/3 – 24/67.
2. The position to be taken on the Union's behalf, provided the ICAO Council adopts without any substantial change the proposed amendment to Annex 9 – Facilitation to the Chicago Convention referred to in paragraph 1, shall be to not register any disapproval and to notify compliance with the adopted measure in reply to the respective ICAO State Letter. Where Union legislation 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.

To this effect, 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 detailed differences to be notified to the ICAO on the Union's behalf by the Member States.

Article 2

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

⁸ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*