



Council of the European Union
General Secretariat

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CM 2480/20

AVIATION
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PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: **Written Procedure with reply by Friday 26 June 2020 at 15:00 P.M. CET (Brussels time) by email to avia-mar@consilium.europa.eu**
COUNCIL DECISION on the conclusion, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part

- Adoption
- = End of the written procedure

Delegations are informed that the written procedure, opened by CM 2460/20 of 24 June 2020, was completed on 26 June 2020 at 15:00.

All delegations voted in favour except for delegations IE and LU that abstained.

The result of the written procedure is that Council adopted the **Council Decision on the conclusion, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part**, as set out, after lawyer-linguistic revision, in document ST 14207/19, in all languages, including in Irish and that the European Parliament is to be informed thusly.

The Council Decision will be published in the *Official Journal of the European Union* in all languages, including in Irish, and the European Parliament will be informed thusly.

The statements by Spain, Ireland, Luxembourg and the Commission are reproduced in the Annex to this CM.

The above statements will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

The Council Secretariat takes this opportunity to thank delegations for their kind cooperation.

Statement by Spain

(Decisiones del Consejo relativas a los Acuerdos de aviación con la República de Moldova, Georgia, Israel, Jordania, y Marruecos)

Declaración de España para ser incorporada a las actas del COREPER I y del Consejo

España declara que la aprobación de esta Decisión no modifica su posición legal en la disputa sobre la soberanía sobre el territorio en el que está situado el Aeropuerto de Gibraltar. España recuerda que el 20 de noviembre de 2012 comunicó a la Comisión que ya no consideraba en vigor la Declaración de Córdoba, por lo que, a partir de esa fecha, no podía considerar aceptable que se siguiera haciendo referencia en la reglamentación de la Unión Europea en materia de aviación civil a la Declaración Ministerial de 18 de septiembre de 2006 sobre el Aeropuerto de Gibraltar (Declaración de Córdoba) y solicitaba, en consecuencia, que en las propuestas de nueva reglamentación se volviese a la situación anterior a 18 de septiembre de 2006.

Statement by Ireland

Ireland abstains on the adoption of the substantive Council Decision on the conclusion of the Euro-Mediterranean Aviation Agreement with Israel, in view of the political context in which this decision is being taken.

In principle Ireland is in favour of such an Agreement between the EU and Israel. We are conscious that it has substantive implications for economic operators and for Member States, and that it has been applied provisionally for some years.

However, Ireland has serious reservations related to the timing of this Decision, due to the Government of Israel's stated intention to press ahead with annexation of occupied Palestinian Territory in July. In that context, we believe that the EU should not be proceeding with business as usual. The process of finalisation of this Agreement offers an opportunity for the EU to signal to Israel what is at stake in relation to annexation.

This Decision could have been deferred by some weeks to give Israel an opportunity to clarify its intentions, and to allow Ministers to debate the issue. By adopting this agreement at this particular time, without such a debate, the EU is failing to signal, as clearly as we should, how serious a violation of international law such a step by Israel would be. We have lost an opportunity to deter Israel from making a mistake which will impact negatively both on Palestinians and Israelis.

Statement by Luxembourg

Compte tenu du contexte politique actuel, le Luxembourg s'abstient sur l'adoption de la décision du Conseil portant sur la conclusion de l'accord euro-méditerranéen relatif aux services aériens entre l'Union européenne et ses Etats membres, d'une part, et le gouvernement de l'Etat d'Israël, d'autre part (doc. 14207/19).

Tout en ayant pleinement conscience de l'importance de cet accord pour les opérateurs économiques ainsi que de son application provisoire depuis 2013, le Luxembourg aurait préféré que cette décision soit reportée afin que l'Union européenne puisse obtenir du gouvernement d'Israël des clarifications concernant son intention déclarée de procéder à l'annexion de Territoire palestinien occupé.

L'annexion par Israël de Territoire palestinien occupé dès le 1^{er} juillet, telle qu'annoncée par le gouvernement d'Israël, représenterait une violation grave du droit international. Elle mettrait en péril la solution des deux Etats. Il incombe à l'Union européenne de faire tout ce qui est en son pouvoir pour dissuader le gouvernement d'Israël de prendre une telle mesure unilatérale, et pour montrer clairement que les relations entre Israël et l'Union européenne ne sauraient rester inchangées en cas d'annexion.

Statement by the Commission

The Commission opposes the amendments made in Article 2 providing that the President of the Council shall give notification that all necessary procedures for entry into force of the Agreement have been completed. Such notification is an act of external representation of the Union and, thus, falls under the prerogatives of the Commission in accordance with Article 17 TEU. In accordance with the Treaties, the President of the Council does not have a role in the external representation of the Union and this provision of the Council Decision violates the distribution of powers between the institutions under the Treaties.

With respect to Article 3 of the Council Decision, which provides that the Commission shall express certain positions of the Union after submitting them to the Council or its preparatory bodies for consultation, the Commission recalls that it proposed to be empowered under Article 218 (7) TFEU to adopt certain positions of the Union's behalf. Since the Council Decision is adopted, *inter alia*, on the basis of Article 218 (7) TFEU, the Commission understands Article 3 of the Council Decision to mean that the Commission will adopt the positions after consulting the Council. Any other interpretation of this Article would make the use of Article 218 (7) TFEU as legal basis for the adoption of the Council Decision unlawful as it would substantively alter its scope. Furthermore, the Commission emphasises that its powers of external representation, which include expressing positions of the Union, stem from Article 17 TEU and cannot be regulated or modified by a Decision of the Council.

The Commission opposes the modification of the Commission proposal with regard to the scope of the repeal of Article 4 of Decision [2013/398/EU](#).

According to Article 17 TEU, the Commission ensures the Union's external representation in all areas of Union competence regardless of their nature. The external representation encompasses matters such as participation in joint bodies under international treaties, chairing of meetings of joint bodies and ensuring the secretariat of those bodies. Furthermore, the principle of unity of representation requires in cases where the subject-matter of an agreement falls partly under Union and partly under Member States competence to ensure close cooperation and speak with one voice (C-246/07, paragraph 73; C-620/16, paragraph 93) and it is for the Commission to represent the unified position of the EU Party externally. The Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part does not cover matters that fall under the sole competence of the Member States.

As regards the procedure preceding the adoption of the Council Decision, the Commission recalls that the adoption of that Decision cannot be conditioned upon the agreement of the Representatives of the Governments of the Member States meeting within the Council (see judgment of the ECJ in case C-28/12). Such an additional procedural step, of intergovernmental nature, is not provided for in Article 218 TFEU and would be incompatible with that provision. However, the Commission understands that such a step is not mentioned in the draft Decision and that it is not part of the present adoption procedure.

The Commission reserves all its rights under the Treaties.