



Council of the European Union
General Secretariat

Brussels, 26 June 2020

CM 2476/20

AVIATION
RELEX
COEST
NIS
OC
PROCED

COMMUNICATION

WRITTEN PROCEDURE

Contact: godfrey.galea@consilium.europa.eu

Tel./Fax: +32 2 281 2452

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 Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova

- Adoption
- = End of the written procedure

Delegations are informed that the written procedure, opened by [CM 2456/20](#) of 24 June 2020, was completed on 26 June 2020 at 15:00.

All delegations voted in favour.

The result of the written procedure is that Council adopted the **Council Decision on the conclusion, on behalf of the Union, of the Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova**, as set out, after lawyer-linguistic revision, in document ST 14205/19, 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 and by 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 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 [2012/639/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 Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova 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.