



Council of the European Union
General Secretariat

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CM 1426/21

AVIATION
ICAO
IXIM
RELEX
PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: **Written Procedure with reply by Thursday 28 January 2021 at 17:00 P.M. CET (Brussels time) by email to avia-mar@consilium.europa.eu**

Council Decision on the position to be taken on behalf of the European Union in reply to the International Civil Aviation Organization as regards Amendment 28 to Annex 9 Section D to the Convention on International Civil Aviation

- Adoption
 - = End of the written procedure
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Delegations are informed that the written procedure, opened by [CM 1398/21](#) on 27 January 2021, was completed on 28 January 2021.

All delegations voted in favor.¹ The result of the written procedure is that Council adopted the decision Council Decision on the position to be taken on behalf of the European Union in reply to the International Civil Aviation Organization as regards Amendment 28 to Annex 9 Section D to the Convention on International Civil Aviation, as set out, after lawyer-linguistic revision, in document ST [5386/21](#).

¹ 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.

The European Parliament will be informed about the adoption of the Council Decision.

The statement by Germany, supported by Italy and Malta, is reproduced in the Annex to this CM.

The above statement 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.

Protokollerklärung der Bundesrepublik Deutschland zum Ratsbeschluss zur Annahme der Position, die im Namen der Europäischen Union im Rat der Internationalen Zivilluftfahrt-Organisation in Bezug auf die Überarbeitung von Kapitel 9 des Anhangs 9 ('Facilitation') des Abkommens über die internationale Zivilluftfahrt im Hinblick auf Standards und empfohlene Praktiken für Fluggastdatensätze einzunehmen ist

Die Bundesrepublik Deutschland stimmt dem Kompromissvorschlag der Ratspräsidentschaft zwar zu, weil die in dem Ratsbeschluss vorgesehene Abweichung von Standard 9.34 des Kapitels 9 des Anhangs 9, Abschnitt D, des Abkommens über die internationale Zivilluftfahrt von der Bundesrepublik Deutschland inhaltlich voll unterstützt wird. Auch aus Sicht der Bundesrepublik Deutschland muss sichergestellt werden, dass die EU-Mitgliedstaaten durch die ICAO-Standards nicht gehindert werden, die Übermittlung von PNR-Daten an Drittstaaten von der uneingeschränkten Beachtung der EU-Datenschutzstandards abhängig zu machen.

Die im Anhang zum Ratsbeschluss von der Ratspräsidentschaft vorgeschlagene Position bezieht sich aber nur noch auf die Notifizierung der Abweichung im Hinblick auf Standard 9.34 des Kapitels 9 des Anhangs 9, Abschnitt D, des Abkommens über die internationale Zivilluftfahrt gemäß Artikel 38 dieses Abkommens. Die Bundesrepublik weist daher darauf hin, dass zwischen der Europäischen Kommission und dem Rat noch nicht abschließend geklärt werden konnte, ob für die Meldung von Abweichungen von „Standards and Recommended Practices“ durch die Mitgliedstaaten gegenüber der ICAO ein Ratsbeschluss erforderlich ist. Es ist der Bundesrepublik Deutschland wichtig klarzustellen, dass die Zustimmung zum Kompromissvorschlag der Ratspräsidentschaft keine Positionierung zu dieser ungeklärten Rechtsfrage enthält.

Statement by the Federal Republic of Germany to be recorded in the minutes on the occasion of the adoption of 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 revision of Chapter 9 of Annex 9 ('Facilitation') to the Convention on International Civil Aviation with regard to standards and recommended practices on passenger name record data.

The Federal Republic of Germany agrees to the Council Presidency's compromise proposal, because the substance of the difference in relation to Standard 9.34, Annex 9, Chapter 9, Section D to the Chicago Convention on International Civil Aviation provided for in the Council Decision is fully supported by the Federal Republic Germany. Germany also believes that it must be ensured that the ICAO standards do not hamper EU Member States in making the transfer of PNR data to third states contingent on the unrestricted observance of EU data protection standards.

However, the position proposed by the Council Presidency in the Annex to the Council Decision relates only to the notification of the difference in relation to Standard 9.34, Annex 9, Chapter 9, Section D to the Chicago Convention on International Civil Aviation pursuant to Article 38 of said convention. The Federal Republic of Germany would like to point out that the European Commission and the Council have not yet been able to finally agree on whether a Council decision is required for the notification of differences from Standards and Recommended Practices by Member States to ICAO. The Federal Republic of Germany considers it important to make clear that its agreement to the Council Presidency's compromise proposal does not imply that it has adopted any position on this unresolved legal issue.