



Brussels, 16.10.2024
COM(2024) 478 final

2024/0262 (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 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of persons with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”) 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 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, in particular the amendments to: Chapter 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of person with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”). 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, as well as the relocation of health-related provisions from other chapters to the new 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 l), 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 amendments are 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 2 (“Entry and departure of aircraft”), Chapter 6 (“International Airports – Facilities and services for traffic”), Chapter 8, Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”), Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of person with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”) the proposals are to amend, reposition, or delete obsolete recommended practices (SARPs) as well as to clarify or simplify some SARPs (e.g. SARPs addressed to aircraft operators or airport operators are amended so that they are now properly addressed to the Contracting States). With reference to the amendments to Standard 6.3 and Recommended practice 6.4 in Chapter 6, they concern matters that are regulated by Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges¹. With reference to the amendments to Chapter 8, they are related to air accident safety investigation subject to Regulation (EU) No 996/2010² of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation. Those proposed amendments would not require any change to the cited Regulation and Directive as Union law is already reflecting them.
- in relation to Chapter 3 (“Entry and Departure of persons and their baggage”) the proposed amendments add SARPs related to the security of the issuance process for electronic Machine Readable Travel Documents (“eMRTD”) and update the access control protocol and technical standard for encoding the facial image in eMRTDs. The amendments cover subjects that under EU law are regulated by several instruments, including Directive (EU) 2019/997³ (on EU Emergency Travel Documents). Those amendments would not require any change to the cited Directive as Union law is already reflecting them.
- in relation to the health related SARPs included in Annex 9, the proposed amendments relocate them from different chapters of Annex 9 into one chapter (new “Chapter 10”). The proposed amendments are largely editorial in nature and streamline the health related SARPs into a more logical order within the new Chapter 10. The subject matters covered by the SARPs forming the new Chapter 10 of Annex 9 are regulated by Regulation (EU) 2022/2371⁴ of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health. Those amendments would not affect the cited Regulation as they are of purely editorial nature with no legal effects.

¹ Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11–16, ELI: <http://data.europa.eu/eli/dir/2009/12/oj>).

² Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35–50, ELI: <http://data.europa.eu/eli/reg/2010/996/oj>).

³ Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP (OJ L 163, 20.6.2019, p. 1, ELI <http://data.europa.eu/eli/dir/2019/997/oj>).

⁴ Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU (OJ L 314, 6.12.2022, p. 26–63, ELI: <http://data.europa.eu/eli/reg/2022/2371/oj>).

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 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 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of person with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”) as included in Amendment 30 of 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.

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

Hence, the position to be taken on the Union’s behalf, provided the ICAO Council adopts the proposed amendments 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 agreement⁵.

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*’⁶ since several parts of the proposed Amendment fall within Union law namely: Directive 2009/12/EC and Regulation (EU) No 996/2010.

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: Directive 2009/12/EC and Regulation (EU) No 996/2010.

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 pursues objectives of common transport policy and at the same by means of its specific content, such as the amended rules on the Machine Readable Travel Documents, it concerns the area of protection of EU citizens, in particular Union rules on the issuance of EU emergency travel documents. However, the ICAO amendments are primarily concerning travel documents such as visas and passports and therefore the impact on the Union rules concerning EU emergency travel documents is ancillary.

⁵ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

⁶ 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.

Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision is Article 100(2) TFEU, 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.

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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 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of persons with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”) 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 100(2), 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 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation

and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of person with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”). In particular, the proposals are to amend, reposition, or delete obsolete SARPs as well as to amend SARPs addressed to aircraft operators or airport operators so that they are now properly addressed to the Contracting States. The amendments to Standard 6.3 and Recommended practice 6.4 in Chapter 6 concern matters regulated by Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges⁷. With reference to Chapter 3 (“Entry and Departure of persons and their baggage”) the proposed amendments add SARPs related to the security of the issuance process for electronic Machine Readable Travel Documents (“eMRTD”) and update the access control protocol and technical standard for encoding the facial image in eMRTDs. Those amendments incidentally cover also subjects that under Union law are regulated by Directive (EU) 2019/997⁸. Finally, with reference to the amendments to Chapter 8, ICAO amendments are related to air accident safety investigation covered by Regulation (EU) No 996/2010⁹ of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation. Those amendments would not require any change to Union law as it is already reflecting them.

- (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 it is of relevance to Union legislation, namely: Directive 2009/12/EC and Regulation (EU) No 996/2010.
- (8) 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.
- (9) 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 2 (“Entry and Departure of aircraft”), Chapter 3 (“Entry and Departure of persons and their baggage”), Chapter 6 (“International airports – Facilities and services for traffic”) and Chapter 8 (“Facilitation provisions covering specific subjects”) Paragraph C (“Facilitation of search, rescue, accident investigation and salvage”) Paragraph E (“Establishment of national facilitation programmes”), Paragraph F (“Facilitation of transport of person with disabilities”) and Paragraph G (“Assistance to aircraft accident victims and their families”) contained in Amendment 30 to Annex 9 - *Facilitation* to the Chicago Convention included in the State Letter EC 6/3 – 24/67

⁷ Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11–16, ELI: <http://data.europa.eu/eli/dir/2009/12/oj>).

⁸ Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP (OJ L 163, 20.6.2019, p. 1, ELI <http://data.europa.eu/eli/dir/2019/997/oj>).

⁹ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35–50, ELI: <http://data.europa.eu/eli/reg/2010/996/oj>).

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.

- (10) 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.

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 2 ("Entry and Departure of aircraft"), Chapter 3 ("Entry and Departure of persons and their baggage"), Chapter 6 ("International airports – Facilities and services for traffic") and Chapter 8 ("Facilitation provisions covering specific subjects") Paragraph C ("Facilitation of search, rescue, accident investigation and salvage") Paragraph E ("Establishment of national facilitation programmes"), Paragraph F ("Facilitation of transport of person with disabilities") and Paragraph G ("Assistance to aircraft accident victims and their families") 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.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*