



Council of the European Union
General Secretariat

Brussels, 26 June 2020

CM 2480/20

AVIATION
RELEX
ISR
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 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 <ul style="list-style-type: none">• 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

(Council Decisions on the Aviation Agreements with the Republic of Moldova, Georgia, Israel, Jordan and Morocco)

Statement by Spain to be added to the minutes of the Coreper I and Council meetings

Spain hereby declares that the adoption of this Decision does not affect its legal position on the sovereignty dispute concerning the territory in which Gibraltar Airport is situated. Spain notes that on 20 November 2012 it informed the Commission that it no longer considered the Córdoba Statement to be in force and therefore, as from that date, it did not consider it acceptable to continue making reference to the Ministerial Statement of 18 September 2006 on Gibraltar Airport (Córdoba Statement) in European Union civil aviation legislation and accordingly requested a return to the situation prior to 18 September 2006 in any proposals for new legislation.

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

Given the current political context, Luxembourg is abstaining on the adoption of the Council Decision on the conclusion 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 (14207/19).

While fully aware of the importance of this agreement for economic operators and of its provisional application since 2013, Luxembourg would have preferred this decision to have been postponed until the European Union was able to obtain clarification from the government of Israel as to its stated intention to press ahead with the annexation of occupied Palestinian Territory.

The annexation by Israel of the occupied Palestinian Territory as of 1 July, as announced by the government of Israel, would be a serious violation of international law. It would jeopardise the two-state solution. It is the responsibility of the European Union to do everything in its power to dissuade the government of Israel from taking such a unilateral measure, and to make clear that relations between Israel and the European Union cannot remain unchanged in the event of annexation.

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.
