Council Decision (EU) 2019/2107 of 28 November 2019 on the position to be taken on behalf of the European Union within the Council of the International Civil Aviation Organization as regards the revision of Chapter 9 of Annex 9 (Facilitation) to the Convention on International Civil Aviation in respect of standards and recommended practices on passenger name record data

COUNCIL DECISION (EU) 2019/2107

of 28 November 2019

on the position to be taken on behalf of the European Union within the Council of the International Civil Aviation Organization as regards the revision of Chapter 9 of Annex 9 (Facilitation) to the Convention on International Civil Aviation in respect of standards and recommended practices on passenger name record data

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2) and point (a) of Article 87(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) The Member States of the Union are contracting parties to the Chicago Convention and ICAO Member States, whereas the Union has observer status in certain ICAO bodies, including in the Assembly and other technical bodies.

(3) Pursuant to point (l) of Article 54 of the Chicago Convention, the ICAO Council is to adopt international standards and recommended practices ('SARP's).

(4) The United Nations (UN) Security Council decided in its resolution 2396 (2017) of 21 December 2017 ('UNSCR 2396 (2017)') that the UN Member States are to develop the capability to collect, process and analyse, in furtherance of ICAO SARPs, passenger name record (PNR) data and to ensure PNR data is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms for the purpose of preventing, detecting and investigating terrorist offences and related travel.

(5) UNSCR 2396 (2017) also urged the ICAO to work with the UN Member States to establish a standard for the collection, use, processing and protection of PNR data.

(6) SARPs on PNR are set out in Parts A and D of Chapter 9 of Annex 9 (Facilitation) to the Chicago Convention. Those SARPs are complemented by additional guidance, in particular ICAO Document 9944 setting out guidelines on PNR data.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/2107. (See end of Document for details)*

(7) In March 2019, the ICAO Air Transport Committee (ATC) established a task force, consisting of experts from those ICAO Member States participating in the ICAO Facilitation Panel, to consider proposals for new SARPs on the collection, use, processing and protection of PNR data in line with UNSCR 2396 (2017) (the 'Task Force'). A number of Member States of the Union are represented in the Task Force. The Commission participates in the Task Force as an observer.

(8) The 40th session of the ICAO Assembly took place from 24 September to 4 October 2019. The results of the ICAO Assembly will define the ICAO's political direction for the coming years, including with respect to the adoption of new SARPs on PNR.

(9) On 16 September 2019, the Council endorsed an information paper on standards and principles on the collection, use, processing and protection of PNR data for submission to the 40th session of the ICAO Assembly (the 'information paper'). The information paper was submitted to the ICAO Assembly by Finland on behalf of the Union and its Member States and the other Member States of the European Civil Aviation Conference.

(10) The information paper sets out the position of the Union on the core principles for compliance which would help to ensure respect for the constitutional and regulatory requirements concerning fundamental rights to privacy and data protection when processing PNR data for the purposes of countering terrorism and serious crime. The ICAO was invited to include such principles in any future standards on PNR as well as in the ICAO's revised Guidelines on PNR data (Doc 9944).

(11) The Union has adopted common rules on PNR data in the form of Directive (EU) 2016/681 of the European Parliament and of the Council[(1)], the scope of which overlaps significantly with the area to be covered by the envisaged new SARPs. Directive (EU) 2016/681 includes, in particular, a comprehensive set of rules to safeguard the fundamental rights to privacy and the protection of personal data, in the context of a transfer of PNR data by air carriers to Member States for the purpose of prevention, detection, investigation and prosecution of terrorist offences and serious crime.

(12) Two international agreements on the processing and transfer of PNR data are currently in force between the Union and third countries, namely Australia[(2)] and the United States[(3)]. On 26 July 2017, the Court of Justice of the European Union gave an Opinion on the envisaged agreement between the Union and Canada, signed on 25 June 2014[(4)] ('Opinion 1/15').

(13) It is appropriate to establish the position to be taken on behalf of the Union within the ICAO Council as any future SARPs in the area of PNR data, in particular amendments to Chapter 9 of Annex 9 (Facilitation) to the Chicago Convention, will decisively influence the content of Union law, namely Directive (EU) 2016/681 and the existing international agreements on PNR data. In accordance with the duty of sincere cooperation, Member States of the Union are to defend this position throughout the work in the ICAO to elaborate the SARPs.

(14) The position of the Union, as set out in the Annex, is established in accordance with the applicable Union legal framework on data protection and PNR data, namely Regulation (EU) 2016/679 of the European Parliament and of the Council[(5)], Directive

(EU) 2016/680 of the European Parliament and of the Council[6] and Directive (EU) 2016/681, as well as the Treaty and the Charter of Fundamental Rights of the European Union as interpreted in the relevant case law of the Court of Justice of the European Union, in particular Opinion 1/15.

(15) The position of the Union should be expressed by its Member States that are members of the ICAO Council, acting jointly.

(16) The United Kingdom and Ireland are bound by Directive (EU) 2016/681 and are therefore taking part in the adoption of this Decision.

(17) 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,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Council of the International Civil Aviation Organization (ICAO) as regards the revision of Chapter 9 of Annex 9 (Facilitation) to the Convention on International Civil Aviation in respect of standards and recommended practices on passenger name record data shall be as set out in the Annex to this Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 28 November 2019.

For the Council

The President

T. HARAKKA

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/2107. (See end of Document for details)*

ANNEX

POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION WITHIN THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION AS REGARDS THE REVISION OF CHAPTER 9 OF ANNEX 9 (FACILITATION) TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION IN RESPECT OF STANDARDS AND RECOMMENDED PRACTICES ON PASSENGER NAME RECORD DATA

General principles

Within the framework of the activities of the International Civil Aviation Organization (ICAO) in respect of the revision of Chapter 9 of Annex 9 (Facilitation) to the Chicago Convention concerning the development of standards and recommended practices (SARPs) on passenger name record (PNR) data, the Member States of the Union, acting jointly in the interests of the Union, shall:

(a) act in accordance with the objectives pursued by the Union within the framework of its PNR policy, in particular to ensure security, to protect the life and safety of persons, and to ensure full respect for fundamental rights, in particular the rights to privacy and the protection of personal data;

(b) raise awareness, among all ICAO Member States, of the Union standards and principles related to the transfer of PNR data, as resulting from the relevant Union law and the case law of the Court of Justice of the European Union;

(c) promote the development of multilateral solutions compliant with fundamental rights concerning the transfer of PNR data by airlines to law enforcement authorities, in the interest of providing legal certainty and respect for fundamental rights and to streamline the obligations imposed on air carriers;

(d) promote the exchange of PNR data and the results of processing those data among the ICAO Member States, where that is deemed necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime, in full respect of fundamental rights and freedoms;

(e) continue to support the development by the ICAO of standards for the collection, use, processing and protection of PNR data, in line with UNSCR 2396 (2017);

(f) continue to support the development, in all ICAO Member States, of the capability to collect, process and analyse, in furtherance of ICAO SARPs, PNR data and to ensure PNR data are used by and shared with all competent national authorities of ICAO Member States, with full respect for human rights and fundamental freedoms for the purpose of preventing, detecting and investigating terrorist offences and related travel, as required by UNSCR 2396 (2017);

(g) use as background information the information paper on standards and principles on the collection, use, processing and protection of PNR data (Doc A40-WP/530), submitted to the 40th session of the ICAO Assembly by Finland on behalf of the European Union and its Member States and the other Member States of the European Civil Aviation Conference;

(h) promote the development of an environment in which international air transport may develop in an open, liberalised and global market and continue to grow without compromising security, while ensuring the introduction of relevant safeguards.

Orientations