

AMENDMENT No. 28

TO THE

**INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

FACILITATION

ANNEX 9

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The amendment to Annex 9 contained in this document was adopted by the Council of ICAO on **23 June 2020**. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before **30 October 2020** will become effective on that date and will become applicable on **28 February 2021** as specified in the Resolution of Adoption. (State letter EC 6/3-20/71 refers.)

June 2020

INTERNATIONAL CIVIL AVIATION ORGANIZATION

**AMENDMENT 28 TO THE INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

ANNEX 9 – FACILITATION

RESOLUTION OF ADOPTION

The Council

Acting in accordance with the *Convention on International Civil Aviation*, and particularly with the provisions of Articles 37, 54 and 90 thereof,

1. *Hereby adopts* on 23 June 2020 Amendment 28 to the International Standards and Recommended Practices contained in the document entitled *International Standards and Recommended Practices, Facilitation* which for convenience is designated Annex 9 to the Convention;
2. *Prescribes* 30 October 2020 as the date upon which the said Amendment shall become effective, except for any part thereof in respect of which a majority of the Contracting States have registered their disapproval with the Council before that date;
3. *Resolves* that the said Amendment or such parts thereof as have become effective shall become applicable on 28 February 2021;
4. *Requests the Secretary General:*
 - a) to notify each Contracting State immediately of the above action and immediately after 30 October 2020 of those parts of the Amendment which have become effective;
 - b) to request each Contracting State:
 - 1) to notify the Organization (in accordance with the obligation imposed by Article 38 of the Convention) of the differences that will exist on 28 February 2021 between its national regulations or practices and the provisions of the Standards in the Annex as hereby amended, such notification to be made before 30 January 2021, and thereafter to notify the Organization of any further differences that arise;
 - 2) to notify the Organization before 30 January 2021 of the date or dates by which it will have complied with the provisions of the Standards in the Annex as hereby amended;
 - c) to invite each Contracting State to notify additionally any differences between its own practices and those established by the Recommended Practices contained in the Annex as hereby amended, following the procedure specified in sub-paragraph b) above with respect to differences from Standards.

NOTES ON THE PRESENTATION OF THE PROPOSED AMENDMENT

The text of the Amendment is arranged to show deleted text with a line through it and new text highlighted with grey shading. The following illustrates the various amending methods:

~~text to be deleted is shown with a line through it~~
followed by the new text which is highlighted with grey shading

new text to replace existing text

new text to be inserted is highlighted with grey shading

new text to be inserted

~~text to be deleted is shown with a line through it~~

existing text to be deleted

**TEXT OF AMENDMENT 28 TO THE
INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES
FACILITATION**

**ANNEX 9
TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

Amend Annex 9 as follows:

**CHAPTER 1. DEFINITIONS AND GENERAL PRINCIPLES
A. Definitions**

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Border integrity security. The enforcement, by a State, of its laws and/or regulations concerning the movement of goods and/or persons across its borders.

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CHAPTER 3. ENTRY AND DEPARTURE OF PERSONS AND THEIR BAGGAGE

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3.9.1 *Recommended Practice — Contracting States issuing or intending to issue eMRTDs should join the ICAO Public Key Directory (PKD) and upload their information to the PKD.*

3.9.2. Contracting States that participate in the ICAO PKD shall upload the public key data necessary for authentication of all electronic passports that they issue to the PKD.

Note.—The provision of the Contracting State’s Country-Signing Public Key Certificate Authority Certificates (C_{CSCA}) at the time of first use is considered the minimum level of data provision sufficient to fulfil this standard. Upload of certificate revocation lists (CRLs) is highly recommended.

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**CHAPTER 6. INTERNATIONAL AIRPORTS —
FACILITIES AND SERVICES FOR TRAFFIC**

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E. Unruly passengers

6.44 Each Contracting State shall take measures to ensure that relevant personnel are provided training to identify and manage unruly passenger situations.

Note.— Guidance material on the legal aspects of unruly/disruptive passengers can be found in Circular 288—Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers and Doc 10117, Manual on the Legal Aspects of Unruly/Disruptive Passengers

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CHAPTER 9. PASSENGER DATA EXCHANGE SYSTEMS

A. General

9. X Contracting States shall not require aircraft operators to provide non-standard data elements as part of API, iAPI and / or PNR provisions.

9. XX Contracting States shall, when considering requiring elements that deviate from the standard, submit a request to the WCO/IATA/ICAO Contact Committee in conjunction with the WCO's Data Maintenance Request (DMR) process via a review and endorsement process for inclusion of the data element in the guidelines.

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~~9.10 When seeking to implement a national API programme, Contracting States that are unable to comply fully with the provisions contained in 9.8 with respect to data element requirements shall ensure that only those data elements that have been defined for incorporation into the UN/EDIFACT PAXLST message are included in the national programme's requirement or follow the WCO's Data Maintenance Request (DMR) process for any deviation from the standard.~~

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D. Passenger Name Record (PNR) Data

9.23 Each Contracting State ~~requiring Passenger Name Record (PNR) data shall:~~

- (a) develop a capability to collect, use, process and protect Passenger Name Record (PNR) data for flights to and from its territory supported by appropriate legal and administrative framework (such as, inter alia, legislation, regulation or decree), and be consistent with all Standards contained in Section D, Chapter 9, Annex 9;
- (b) align its PNR data requirements and its handling of such data with the guidelines contained in ICAO Doc 9944, *Guidelines on Passenger Name Record (PNR) Data*, and in PNRGOV message implementation guidance materials published and updated by the WCO and endorsed by ICAO and IATA; and

9.23.1 ~~Contracting States requiring the transfer of PNR data shall~~

- (c) adopt and implement the ~~EDIFACT-based~~ PNRGOV message ~~as the primary method~~ for airline-to-government PNR data transferal to ensure global interoperability.

Note 1.— UN Security Council, in Resolution 2396 (2017) at paragraph 12, decided that Member States shall develop the capability to collect, process and analyse, in furtherance of ICAO standards and recommended practices, 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 offenses and related travel.

Note 1 2.— The PNRGOV message is a standard electronic message format endorsed jointly by WCO/ICAO/IATA. Depending on the specific aircraft operator's Reservation and Departure Control Systems, specific data elements which have been collected and stored by the aircraft operator for their own operational and commercial purposes and can be efficiently transmitted via this standardized message structure.

Note 2. This provision is not intended to replace or supersede any messages exchanged between aircraft operators and customs administrations to support local airport operations.

Note 3.— In addition to the mandatory EDIFACT based PNRGOV message, Contracting States may also, optionally, consider implementation of the XML PNRGOV message format as a supplemental method of PNR data transfer, thereby allowing those aircraft operators with XML capability a choice of format for the transmission of PNR data.

9.24 Recommended Practice.— Contracting States shall, with full respect for human rights and fundamental freedoms: ~~requiring PNR data should consider the data privacy impact of PNR data collection and electronic transfer, within their own national systems and also in other States. Where necessary, Contracting States requiring PNR data and those States restricting such data exchange should engage in early cooperation to align legal requirements.~~

- (a) clearly identify in their legal and administrative framework the PNR data to be used in their operations;
- (b) clearly set the purposes for which PNR data may be used by the authorities which should be no wider than what is necessary in view of the aims to be achieved, including in particular border security purposes to fight terrorism and serious crime; and
- (c) limit the disclosure of PNR data to other authorities in the same State or in other Contracting States that exercise functions related to the purpose for which PNR data are processed, including in particular border security purposes, and ensure comparable protections as those afforded by the disclosing authority.

9.25 Contracting States shall:

- (a) prevent unauthorised access, disclosure and use of PNR data and their legal framework shall provide penalties for misuse, unauthorised access, and unauthorised disclosure;
- (b) ensure the safeguards applied to their collection, use, processing and protection of PNR data apply to all individuals without unlawful differentiation;
- (c) take measures to ensure individuals are informed about the collection , use, processing and protection of PNR data and related privacy standards employed;
- (d) take measures to ensure that aircraft operators inform their customers about the transfer of PNR data;
- (e) provide for administrative and judicial redress mechanisms to enable individuals to seek a remedy for the unlawful processing of their PNR data by public authorities; and

- (f) provide for appropriate mechanisms, established by their legal and administrative framework, for individuals to obtain access to their PNR data and to request, if necessary, corrections, deletions or notations.

9.26 Recommended Practice.— *Subject to necessary and proportionate restrictions, Contracting States should notify individuals of the processing of their PNR data and inform them about the rights and means of redress afforded to them as defined in their legal and administrative framework.*

9.27 Contracting States shall:

- (a) base the automated processing of PNR data on objective, precise and reliable criteria that effectively indicate the existence of a risk, without leading to unlawful differentiation ; and
- (b) not make decisions that produce significant adverse actions affecting the legal interests of individuals based solely on the automated processing of PNR data.

9.28 Contracting States shall designate one (or more) competent domestic authority(ies) as defined in their legal and administrative framework with the power to conduct independent oversight of the protection of PNR data and determine whether PNR data are being collected, used, processed and protected with full respect for human rights and fundamental freedoms.

9.29 Contracting States shall:

- (a) not require aircraft operators to collect PNR data that is not required as part of their normal business operating procedures nor to filter the data prior to transmission; and
- (b) not use PNR data revealing an individual's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or data concerning their health, sexual life or sexual orientation other than in exceptional and immediate circumstances to protect the vital interests of the data subject or of another natural person. In circumstances where such information is transferred, Contracting States shall delete such data as soon as practicable.

9.30 Contracting States shall:

- (a) retain PNR data for a set period as defined in their legal and administrative framework which shall be that period necessary and proportionate for the purposes for which the PNR data is used;
- (b) depersonalise retained PNR data, which enable direct identification of the data subject, after set periods, which do not exceed what is necessary as defined in their national laws and policies, except when used in connection with an identifiable ongoing case, threat or risk related to the purposes identified in 9.24b;
- (c) only re-personalise or unmask PNR data when used in connection with an identifiable case, threat or risk for the purposes identified in 9.24b; and
- (d) delete or anonymise PNR data at the end of the retention period except when used in connection with an identifiable ongoing case, threat or risk purposes identified in 9.24 (b).

Note 1. – Depersonalization of PNR data is the masking of information which enables direct identification of an individual, without hindering law enforcement use of PNR data, whereas PNR data anonymization is the permanent removal of identity information of a person from the PNR record.

Note 2. — This standard is not intended to restrict criminal justice proceedings in Contracting States, such as investigation, prosecution and criminal trials, related to the purposes identified in 9.24 (b).

9.31 Recommended Practice.— *Contracting States should retain PNR data for a maximum period of five years after the transfer of PNR data, except when required in the course of an investigation, prosecution, or court proceeding.*

9.32 Recommended Practice.— *Contracting States should depersonalise PNR data within six months of and no later than two years after the transfer of PNR data.*

9.33 Contracting States shall:

- (a) as a rule acquire PNR data using the 'push' method in order to protect the personal data that is contained in the operators' systems and that operators remain in control of their systems;
- (b) seek, to the greatest extent possible, to limit the operational and administrative burdens on aircraft operators, while enhancing passenger facilitation;
- (c) not impose fines and penalties on aircraft operators for any unavoidable errors caused by a systems failure which may have resulted in the transmission of no, or corrupted, PNR data; and
- (d) minimise the number of times the same PNR data is transmitted for a specific flight.

Note.— In exceptional circumstances and when a PNR 'push' transfer method is not feasible, such as when an aircraft makes an emergency landing, alternative means of PNR data acquisition can be used by a Contracting State in order to maintain operational continuity.

9.34 Contracting States shall:

- (a) not inhibit or prevent the transfer of PNR data by an aircraft operator or other relevant party, nor sanction, impose penalties or create unreasonable obstacles on aircraft operators or other relevant parties that transfer PNR data to another Contracting State provided that Contracting States' PNR data system is compliant with the Standards contained in Section D, Chapter 9 of Annex 9; and
- (b) equally, retain the ability to introduce or maintain higher levels of protection of PNR data, in accordance with their legal and administrative framework and to enter into additional arrangements with other Contracting States in particular to: promote collective security; achieve higher levels of protection of PNR data, including on data retention; or establish more detailed provisions relating to the transfer of PNR data, provided those measures do not otherwise conflict with the Standards contained in Section D, Chapter 9 of Annex 9.

Note 1. - The term "other relevant parties" refers to entities that are transferring PNR data to Contracting States, such as tour operators and travel agencies.

9.35 Contracting States shall demonstrate, to any requesting Contracting State, their compliance with the Standards contained in Section D Chapter 9 of Annex 9. A demonstration of compliance with the PNR Standards, upon request, shall take place as soon as possible. Contracting States shall work through this process in good faith and in a timely manner.

Note 1. - Demonstration of compliance can occur, among other things, based on bilateral consultations and/or the information in the ICAO online compliance checklist for Annex 9 – Facilitation contained in the Electronic Filing of Differences (EFOD) system.

9.35 bis Recommended Practice.— *Contracting States should allow other Contracting States compliant with the PNR Standards to receive PNR data, at least provisionally, while engaging in consultations, as necessary.*

9.36 Where Contracting States have determined they must inhibit, prevent or otherwise obstruct the transfer of PNR data or might penalize an aircraft operator, they shall do so with transparency and with the intent of resolving the situation which caused that determination.

9.37 Recommended Practice.— *Contracting States establishing a PNR program, or making significant changes to an existing program, pursuant to these SARPs should proactively notify other Contracting States maintaining air travel between them prior to receiving data, including whether they are complying with these SARPs, to encourage or facilitate rapid consultation where appropriate.*

9.38 Recommended Practice.— *While attempting to resolve PNR data transfer disputes Contracting States should not penalize aircraft operators.*

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