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Международная  
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منظمة الطيران  
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国际民用  
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17 July 2020

Ref.: EC 6/3-20/71

**Subject:** Adoption of Amendment 28 to Annex 9

**Action Required:** a) Notify any disapproval before 30 October 2020; b) Notify any differences and compliance before 30 January 2021; and c) Consider the use of the Electronic Filing of Differences (EFOD) System for notification of differences and compliance

Sir/Madam,

1. I have the honour to inform you that Amendment 28 to the *International Standards and Recommended Practices, Facilitation* (Annex 9 to the *Convention on International Civil Aviation*) was adopted by the Council at the Tenth Meeting of its 220th Session on 23 June 2020. Copies of the Amendment and the Resolution of Adoption are available as attachments to the electronic version of this State letter on the ICAO-NET (<http://portal.icao.int>) where you can access all other relevant documentation.

2. When adopting the amendment, the Council prescribed 30 October 2020, as the date on which it will become effective, except for any part concerning which a majority of Member States may have registered their disapproval before that date. In addition, the Council resolved that Amendment 28, to the extent it becomes effective, will be applicable on 28 February 2021.

3. Amendment 28 relates to Passenger Name Record (PNR) data, the ICAO Public Key Directory (PKD) and unruly passengers matters.

4. At the Fifth Meeting of its 204th Session, the Council requested that States, when being advised of the adoption of an Annex amendment, be provided with information on implementation and available guidance material, as well as an impact assessment. This is presented for your information in Attachments A and B, respectively.

5. It also should be noted that the ICAO Assembly, at its 39th Session (27 September – 7 October 2016) resolved that Member States should be encouraged to use the Electronic Filing of Differences (EFOD) System when notifying differences (Resolution A39-22, refers). EFOD is currently available on the Universal Safety Oversight Audit Programme (USOAP) restricted website (<http://www.icao.int/usoap>) which is accessible by all Member States. The full tutorial for the EFOD online framework is available at <https://www4.icao.int/olftutorial/usoap/story.html>.

6. In conformity with the Resolution of Adoption and Resolution A39-22, I request that:

- a) before 30 October 2020 you inform me if there is any part of Amendment 28 concerning which your State wishes to register disapproval, using the form at Attachment C for this purpose. Please note that only statements of disapproval need to

be registered and that if no response is submitted, it will be assumed that your State does not disapprove of the amendment;

- b) before 30 January 2021 you inform me of the following, using the form at Attachment D for this purpose and copying the ICAO Regional Office accredited to your State:
  - 1) any differences that will exist on 28 February 2021 between the national regulations or practices of your State and the provisions of the whole of Annex 9, as amended by all amendments up to and including Amendment 28 and thereafter of any further differences that may arise; and
  - 2) the date or dates by which your State will have complied with the provisions of the whole of Annex 9, as amended by all amendments up to and including Amendment 28; and
- c) you consider using the EFOD system for notification of compliance and differences.

7. With reference to the request in paragraph 6 a) above, it should be noted that a registration of disapproval of Amendment 28 or any part thereof in accordance with Article 90 of the Convention does not constitute a notification of differences under Article 38 of the Convention. To comply with the latter provision, a separate statement is necessary if any differences do exist, as requested in paragraph 6 b) 1). It is recalled in this respect that international Standards in Annexes have a conditional binding force, to the extent that the State or States concerned have not notified any differences thereto under Article 38 of the Convention.

8. Guidance on the determination and reporting of differences is given in the note on the notification of differences (Attachment E). Please note that a detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.

9. As soon as practicable after the amendment becomes effective, on 30 October 2020, replacement pages incorporating Amendment 28 will be forwarded to you.

Accept, Sir/Madam, the assurances of my highest consideration.

Fang Liu  
Secretary General

**Enclosures:**

- A — Implementation task list and outline of guidance material in relation to Amendment 28 to Annex 9
- B — Impact assessment in relation to Amendment 28 to Annex 9
- C — Notification of disapproval of all or part of Amendment 28 to Annex 9
- D — Notification of compliance with or differences from Annex 9
- E — Note on the notification of differences

**IMPLEMENTATION TASK LIST AND OUTLINE OF GUIDANCE  
MATERIAL IN RELATION TO AMENDMENT 28 TO ANNEX 9**

**1. IMPLEMENTATION TASK LIST**

**1.1 Essential steps to be followed by a State in order to implement proposed amendments<sup>1</sup>**

**(a) Security of Travel Documents**

1.1.1 For States that are already members of the ICAO PKD and upload their public key data, no action is necessary. For those that do not, the essential steps are the following:

- a) establish relevant national policies, as necessary;
- b) ensure the availability of the Country Signing Certificate Authority (CSCA) Certificate associated with signature of all electronic travel documents (eMRTDs) of the State;
- c) communicate with ICAO at [icao-pkd@icao.int](mailto:icao-pkd@icao.int), to arrange submission of the self-signed CSCA certificate(s) for conformance checks;
- d) arrange a date and time for a key ceremony at ICAO HQ at which the CSCA certificate(s) will be imported into the Hardware Security Module of the ICAO PKD; and
- e) complete its technical connection to the ICAO PKD, if not already established, in order to upload other public key certificates and certificate revocation lists (CRLs).

**(b) Passenger Data Exchange Systems**

1.1.2 For States that have already established in their legal and administrative framework, provisions that do not require aircraft operators to provide non-standard data elements, and the use of the World Customs Organization's Data Maintenance Request, when considering requesting non-standard data elements, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures, as necessary; and
- c) ensure effective communication with relevant national authorities, aircraft operators and World Customs Organization.

1.1.3 For States that already have the capability to collect, use, process and protect Passenger Name Record (PNR) data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;

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<sup>1</sup> Amendment of a format or clarification nature is not allowed in this Appendix.

- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities, and aircraft operators;
- d) consider potential cost for developing the capability to collect, use, process and protect PNR data;
- e) establish a Passenger Data Single Window facility to fulfil regulatory requirements relating to the entry and/or exit of passengers; and
- f) ensure training of relevant personnel.

1.1.4 For States that have already established in their legal and administrative framework, the purposes for which PNR data may be used, including limiting disclosure, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities;
- d) consider training of relevant personnel; and
- e) consider monitoring and supervision.

1.1.5 For States that have already established in their legal and administrative framework, provisions to inter alia, prevent unauthorised use and disclosure of PNR data, and provide for appropriate mechanisms for individuals to obtain access to their PNR data and to request, if necessary, corrections, deletions or notations, including redress, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and other relevant stakeholders;
- d) consider an awareness programme for relevant stakeholders; and
- e) ensure monitoring and supervision.

1.1.6 For States that have already established legislation and/or mechanism for notifying individuals of the processing of their PNR data, including redress, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and aircraft operators; and
- d) consider an awareness programme for relevant stakeholders.

1.1.7 For States that have already established in their legal and administrative framework, provisions relating to unlawful differentiation and significant adverse actions affecting the legal interests of individuals arising from the automated processing of PNR data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure training for relevant personnel; and
- d) consider monitoring and supervision.

1.1.8 For States that have already established in their legal and administrative framework, a designated competent domestic authority(ies) with the power to conduct independent oversight of the protection of PNR data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities;
- d) ensure training for personnel conducting oversight; and
- e) implement effective monitoring and supervision.

1.1.9 For States that have already established in their legal and administrative framework, provisions not requiring aircraft operators to collect PNR data that is not collected as part of their normal business operating procedures, and the use by the State of PNR data, revealing inter alia, racial or ethnic origin, religious or philosophical beliefs and sexual orientation, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities;
- d) ensure training for relevant personnel; and
- e) consider monitoring and supervision.

1.1.10 For States that have already established in their legal and administrative framework, provisions relating to PNR data retention periods, depersonalisation and re-personalisation of PNR data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities; and
- d) consider a monitoring and supervision.

1.1.11 For States that have already established in their legal and administrative framework, provisions relating to PNR data retentions periods, including in case of an investigation, or court proceeding, and depersonalisation periods, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities;
- d) consider training for relevant personnel; and
- e) consider monitoring and supervision.

1.1.12 For States that have already established in their legal and administrative framework, provisions relating to the method of acquiring PNR data from aircraft operators, minimizing the operational and administrative burdens and not imposing penalties for unavoidable errors caused by system failures, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and aircraft operators;
- d) consider training of relevant personnel; and
- e) consider monitoring and supervision.

1.1.13 For States that have already established in their legal and administrative framework, provisions relating to inter alia, not inhibiting or preventing the transfer of PNR data by an aircraft operator or other relevant other party, and retaining the State's ability to introduce or maintain higher levels of protection of PNR data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities, Member States and aircraft operators; and
- d) consider additional arrangements with relevant Member States.

1.1.14 For States that have already established in their legal and administrative framework, provisions relating to demonstrating compliance upon the request of another State, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and Member States; and

- d) consider additional arrangements with relevant Member States.

1.1.15 For States that have already established in their legal and administrative framework, provisions that allow the transfer of data, at least provisionally, between States during consultations, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and Member States; and
- d) consider additional arrangements with relevant Member States.

1.1.16 For States that have already established in their legal and administrative framework, provisions relating to the inhibition or prevention of the transfer of PNR data, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures; and
- c) ensure effective communication with relevant national authorities and aircraft operators.

1.1.17 For States that have already established in their legal and administrative framework, provisions relating to notification to other Member States, when making significant changes to their existing PNR program, no action may be necessary. For those that do not, the essential steps are the following:

- a) establish legislation and regulations, as necessary;
- b) develop relevant national policies and procedures;
- c) ensure effective communication with relevant national authorities and aircraft operators; and
- d) ensure effective communication with relevant Member States.

## 2. **STANDARDIZATION PROCESS**

2.1 Effective date: 30 October 2020

2.2 Applicability date: 28 February 2021

## 3. **SUPPORTING DOCUMENTATION**

3.1 ICAO documentation:

<b>Title</b>	<b>Type</b>	<b>Publication date</b>
Annex 9 - <i>Facilitation</i> to the Convention on International Civil Aviation	Regulatory	07 October 2016

Doc 9944, Guidelines on Passenger Name Record (PNR)	Guidelines	2010
API Guidelines and PNR Reporting Standards <a href="https://www.icao.int/Security/FAL/SitePages/API%20Guidelines%20and%20PNR%20Reporting%20Standards.aspx">https://www.icao.int/Security/FAL/SitePages/API%20Guidelines%20and%20PNR%20Reporting%20Standards.aspx</a>	Web page	

## 3.2 External documentation:

<b>Title</b>	<b>External Organization</b>	<b>Publication Date</b>
Passenger Data Toolkit	WCO/IATA/ICAO	
WCO Data Model <a href="http://www.wcoomd.org/">http://www.wcoomd.org/</a>	WCO	
Business Guide on the WCO Data Model (which includes guidance on the DMR process) <a href="http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/data-model/dm_technicalbrochure_en.pdf">http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/data-model/dm_technicalbrochure_en.pdf</a>	WCO	

4. **IMPLEMENTATION ASSISTANCE TASKS**

<b>Type</b>	<b>Global</b>	<b>Regional</b>
Implementation Seminars		Regional
Workshops		Regional
Symposium	TRIP Symposium and Exhibition- ICAO HQ, Montréal, Canada	

5. **UNIVERSAL SECURITY AUDIT PROGRAMME CONTINUOUS MONITORING APPROACH (USAP-CMA)**

5.1 Protocol questions will need to be drafted/revised under USAP-CMA with regard to new/revised Annex 9 Standards.

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**ATTACHMENT B** to State letter EC 6/3-20/71

**IMPACT ASSESSMENT IN RELATION TO  
AMENDMENT 28 TO ANNEX 9**

**1. INTRODUCTION**

1.1 Amendment 28 to Annex 9 is intended, inter alia, to enhance security and facilitation by: a) allowing States joining the ICAO Public Key Directory (PKD) to access the certificates and other information necessary for authentication of electronic passports quickly at numerous touchpoints in the aviation travel continuum, in a secure environment; b) addressing non-adherence to international agreed standards for the processing, formatting, communication and transfer of Advance Passenger Information (API), Interactive Advance Passenger Information (iAPI) and Passenger Name Record (PNR) data, improving the security of data and privacy when using standardised format and transmission protocols; c) assisting States to establish a capability to collect, use and process PNR data to prevent, detect, investigate and prosecute terrorist offenses and serious crimes; and d) providing guidance material on the legal aspects of unruly/disruptive passengers.

**2. IMPACT ASSESSMENT**

2.1 The Annex 9 amendments resulting from Amendment 28 indicate a positive impact on the enhancement of aviation facilitation and security, as well as on the sustainable development of air transport.

2.2 *Impact on Aviation Facilitation and Security:*

a) Joining the ICAO Public Key Directory allows States to access the certificates and other information necessary for authentication of electronic passports. Reading of validated passport data and authentication of electronic documents is particularly valuable, given that it can be undertaken quickly at numerous touchpoints in the aviation travel continuum and executed by non-specialist staff; also taking into account, a key tenet of aviation security is assurance of passenger identity;

b) With regard to unruly/disruptive passengers incidents, Doc 10117 – *Manual on the Legal Aspects of Unruly/Disruptive Passengers* updates ICAO Circular 288 – *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, as a result of the Montréal Protocol of 2014, and contains guidance on legislation covering acts and offences, as well as elements of an administrative sanction regime, which will assist States in implementing the appropriate legal measures to prevent and deal with unruly/disruptive passenger incidents;

c) Implementing the provision on non-standard data elements will address the issue of non-adherence to international agreed standards for the processing, formatting, communication and transfer of API, iAPI and PNR data, and ensure a harmonized system between States and airlines. Implementation will improve the security of data, privacy, and facilitation, including alleviating pressure on the border control system;

d) Implementing the provisions on Passenger Name Record data will assist States in establishing a capability to collect, use and process PNR data to prevent, detect, investigate and prosecute terrorist offenses and serious crimes, supported by appropriate legal and administrative framework. It allows various Government agencies with legal remit to access passenger data to make use of the data in

an efficient manner, and to focus resources on higher risk individuals and facilitate legitimate travel. Implementing this provision will thereby improve aviation security and facilitate travel with respect to human rights, including privacy. The effective processing and use of PNR data as part of wider border security and facilitation measures can support the prevention of acts of unlawful interference and other threats to civil aviation security as well as improving passenger flow and experience.

2.3 *Impact on Aviation Efficiency and Economy:*

- a) Participating in the ICAO PKD facilitates a better-functioning e-passport authentication infrastructure at global scale and could boost the attractiveness of industry solutions based on such authentication. With market growth, industry should be able to take advantage of economies of scale to offer improved products at lower prices;
- b) Implementing the guidelines contained in ICAO Doc 10117 - *Manual on the Legal Aspects of Unruly/Disruptive Passengers*, inter alia, may bring about reduction in costly disruption to air travel when aircraft are diverted to disembark unruly and disruptive passengers;
- c) Implementing the provision not to 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 corrupt PNR data could result in reduced or sustained airfares for the travelling public; and
- d) While the implementation of a Passenger Name Record (PNR) system can be costly, several avenues exist through bilateral and multilateral initiatives to assist States with implementing a PNR system and may reduce costs and the impact on the economic viability of the civil aviation system.

2.4 *Impact on Aviation Safety and the Environment:*

Amendment 28 will have minimum or no impact on aviation safety or the environment.

2.5 *Expected Implementation Times: 1-5 years*

- a) States joining the ICAO PKD should provide their Country Signing Certificate Authority within 15 months as prescribed by the PKD rules. There is no impact on industry in terms of implementation obligations;
- b) With regard to the guidance material contained in ICAO Doc 10117 - *Manual on the Legal Aspects of Unruly/Disruptive Passengers*, States may already have in place, practices, policies and measures. In some cases, States may require 1 year to implement the provision properly;
- c) With regard to implementing the provision to not require aircraft operators to provide non-standard data elements as part of API, iAPI and/or PNR provisions, States may require 1 year to implement; and
- d) While establishing a capability to collect, use, process and protect PNR data can be initiated quite quickly, its full and effective operation may take approximately 2-5 years, including training of staff.

2.6 *Financial implications:*

- a) With regard to joining the ICAO PKD, the cost impact would include an annual membership fee, which decreases with an increase in the number of PKD members;

b) With regard to guidance material contained in ICAO Doc 10117 - *Manual on the Legal Aspects of Unruly/Disruptive Passengers*, the cost impact for a State may include public awareness measures, while for industry, it would include public awareness measures and training for their staff;

c) With regard to the provision to not require aircraft operators to provide non-standard data elements as part of API, iAPI and/or PNR provisions, this will decrease manual intervention and the reduction of additional IT development, and minimize duplicative costs for airlines; and

d) With regard to the development of a capability to collect, use, process and protect PNR data, the costs of development and operation of a full and effective PNR system on the State may be quite considerable and would include: a) development of legal framework; b) system development and maintenance; c) recruitment and training; d) carrier connection and data transmission costs; e) operational costs; f) human resources; and g) advocacy.

e) The costs of development and operation of a full and effective PNR system on Industry may be quite considerable and would include: a) system development and maintenance; b) recruitment and training; c) data transmission costs; d) advocacy; and e) passenger fees.

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ATTACHMENT C to State letter EC 6/3-20/71

NOTIFICATION OF DISAPPROVAL OF ALL OR PART OF  
AMENDMENT 28 TO ANNEX 9

To: The Secretary General  
International Civil Aviation Organization  
999 Robert-Bourassa Blvd.  
Montréal, Québec  
Canada H3C 5H7

(State) \_\_\_\_\_ hereby wishes to disapprove the following parts  
of Amendment 28 to Annex 9 (please use extra sheets as required):

Signature \_\_\_\_\_ Date \_\_\_\_\_

- Notes. —
- 1) If you wish to disapprove all or part of Amendment 28 to Annex 9, please dispatch this notification of disapproval to reach ICAO Headquarters by 30 October 2020. If it has not been received by that date, it will be assumed that you do not disapprove of the amendment. **If you approve of all parts of Amendment 28, it is not necessary to return this notification of disapproval.**
  - 2) This notification should not be considered a notification of compliance with or differences from Annex 9. Separate notifications on this are necessary. (see Attachment D).

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**ATTACHMENT D** to State letter EC 6/3-20/71

**NOTIFICATION OF COMPLIANCE WITH OR DIFFERENCES FROM  
ANNEX 9 (INCLUDING ALL AMENDMENTS UP TO AND INCLUDING  
AMENDMENT 28)**

To: The Secretary General  
International Civil Aviation Organization  
999 Robert-Bourassa Blvd.  
Montréal, Québec  
Canada H3C 5H7

1. No differences will exist on \_\_\_\_\_ between the national regulations and/or practices of (State) \_\_\_\_\_ and the provisions of Annex 9, including all amendments up to and including Amendment 28.

2. The following differences will exist on \_\_\_\_\_ between the regulations and/or practices of (State) \_\_\_\_\_ and the provisions of Annex 9, including Amendment 28. (Please see Note 3 below.)

**a) Annex Provision**  
(Please give exact paragraph reference)

**b) Details of Difference**  
(Please describe the difference precisely)

**c) Remarks**  
(Please indicate reasons for the difference)

(Please use extra sheets as required)

(cont'd)

3. By the dates indicated below, (State) \_\_\_\_\_ will have complied with the provisions of Annex 9, including all amendments up to and including Amendment 28 for which differences have been notified in 2 above.

a) **Annex Provision**b) **Date**c) **Comments**

(Please use extra sheets as required)

Signature \_\_\_\_\_

Date \_\_\_\_\_

- Notes. —
- 1) If paragraph 1 above is applicable to you, please complete paragraph 1 and return this form to ICAO Headquarters. If paragraph 2 is applicable to you, please complete paragraphs 2 and 3 and return the form to ICAO Headquarters.
  - 2) Please dispatch the form to reach ICAO Headquarters by 30 January 2021.
  - 3) A detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.
  - 4) Guidance on the notification of differences is provided in the Note on Notification of Differences at Attachment E.
  - 5) Please send a copy of this notification to the ICAO Regional Office accredited to your State.

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**NOTE ON THE NOTIFICATION OF DIFFERENCES**  
(Prepared and issued in accordance with instructions of the Council)

1. *Introduction*

1.1 Article 38 of the *Convention on International Civil Aviation* (“Convention”) requires that a Contracting State notify ICAO any time it does not comply with a Standard in all respects, it does not bring its regulations or practices into full accord with any Standard, or it adopts regulations or practices differing in any particular respect from the Standard.

1.2 The Assembly and the Council, when reviewing the notification of differences by Contracting States in compliance with Article 38 of the Convention, have repeatedly noted that the timeliness and currency of such notifications is not entirely satisfactory. Therefore, this note is issued to reiterate the primary purpose of Article 38 of the Convention and to facilitate the determination and notification of differences.

1.3 The primary purpose of the notification of differences is to promote safety, regularity and efficiency in air navigation by ensuring that governmental and other agencies, including operators and service providers, concerned with international civil aviation are made aware of all national regulations and practices in so far as they differ from those prescribed in the Standards contained in Annexes to the Convention.

1.4 Contracting States are, therefore, requested to give particular attention to the notification of differences with respect to Standards in all Annexes, as described in paragraph 4 b) 1) of the Resolution of Adoption.

1.5 Although differences from Recommended Practices are not notifiable under Article 38 of the Convention, the Assembly has urged Contracting States to extend the above considerations to Recommended Practices contained in Annexes to the Convention, as well.

2. *Notification of differences from Standards and Recommended Practices (SARPs)*

2.1 Guidance to Contracting States in the notification of differences to Standards and Recommended Practices (SARPs) can only be given in very general terms. Contracting States are further reminded that compliance with SARPs generally extends beyond the issuance of national regulations and requires establishment of practical arrangements for implementation, such as the provision of facilities, personnel and equipment and effective enforcement mechanisms. Contracting States should take those elements into account when determining their compliance and differences. The following categories of differences are provided as a guide in determining whether a notifiable difference exists:

- a) *A Contracting State’s requirement is more exacting or exceeds a SARP (Category A).* This category applies when the national regulation and practices are more demanding than the corresponding SARP, or impose an obligation within the scope of the Annex which is not covered by the SARP. This is of particular

importance where a Contracting State requires a higher standard which affects the operation of aircraft of other Contracting States in and above its territory;

- b) *A Contracting State's requirement is different in character or the Contracting State has established other means of compliance (Category B)\**. This category applies, in particular, when the national regulation and practices are different in character from the corresponding SARP, or when the national regulation and practices differ in principle, type or system from the corresponding SARP, without necessarily imposing an additional obligation; and
- c) *A Contracting State's requirement is less protective, partially implemented or not implemented (Category C)*. This category applies when the national regulation and practices are less protective than the corresponding SARP; when no national regulation has been promulgated to address the corresponding SARP, in whole or in part; or when the Contracting State has not brought its practices into full accord with the corresponding SARP.

These categories do not apply to Not Applicable SARP. Please see the paragraph below.

**2.2 Not Applicable SARP.** When a Contracting State deems a SARP concerning aircraft, operations, equipment, personnel, or air navigation facilities or services to be not applicable to the existing aviation activities of the State, notification of a difference is not required. For example, a Contracting State that is not a State of Design or Manufacture and that does not have any national regulations on the subject, would not be required to notify differences from Annex 8 provisions related to the design and construction of an aircraft.

**2.3 Differences from appendices, tables and figures.** The material comprising a SARP includes not only the SARP itself, but also the appendices, tables and figures associated with the SARP. Therefore, differences from appendices, tables and figures are notifiable under Article 38. In order to file a difference against an appendix, table or figure, States should file a difference against the SARP that makes reference to the appendix, table or figure.

**2.4 Differences from definitions.** Contracting States should notify differences from definitions. The definition of a term used in a SARP does not have independent status but is an essential part of each SARP in which the term is used. Therefore, a difference from the definition of the term may result in there being a difference from any SARP in which the term is used. To this end, Contracting States should take into consideration differences from definitions when determining compliance or differences to SARPs in which the terms are used.

**2.5** The notification of differences should be not only to the latest amendment but to the whole Annex, including the amendment. In other words, Contracting States that have already notified differences are requested to provide regular updates of the differences previously notified until the difference no longer exists.

**2.6** Further guidance on the identification and notification of differences, examples of well-defined differences and examples of model processes and procedures for management of the

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\* The expression "different in character or other means of compliance" in b) would be applied to a national regulation and practice which achieve, by other means, the same objective as that of the corresponding SARPs or for other substantive reasons, therefore cannot be classified under a) or c).



notification of differences can be found in the *Manual on Notification and Publication of Differences* (Doc 10055).

3. *Form of notification of differences*

3.1 Differences can be notified:

- a) by sending to ICAO Headquarters a form on notification of compliance or differences; or
- b) through the Electronic Filing of Differences (EFOD) System at [www.icao.int/usoap](http://www.icao.int/usoap).

3.2 When notifying differences, the following information should be provided:

- a) the number of the paragraph or subparagraph which contains the SARP to which the difference relates<sup>1</sup>;
- b) the reasons why the State does not comply with the SARP, or considers it necessary to adopt different regulations or practices;
- c) a clear and concise description of the difference; and
- d) intentions for future compliance and any date by which your Government plans to confirm compliance with and remove its difference from the SARP for which the difference has been notified.

3.3 The differences notified will be made available to other Contracting States, normally in the terms used by the Contracting State when making the notification. In the interest of making the information as useful as possible, Contracting States are requested to ensure that:

- a) statements be as clear and concise as possible and be confined to essential points;
- b) the provision of extracts from national regulations not be considered as sufficient to satisfy the obligation to notify differences; and
- c) general comments, unclear acronyms and references be avoided.

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<sup>1</sup> This applies only when the notification is made under 3.1 a).

**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.

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**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:

<del>text to be deleted is shown with a line through it</del> 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
<del>text to be deleted is shown with a line through it</del>	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<sub>CSCA</sub>) 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.*

— END —