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FACILITATION (FAL) DIVISION — TWELFTH SESSION

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- Agenda Item 2: Facilitation and security of travel documents and border control formalities**
Agenda Item 3: Implementing modernized provisions for facilitation and security in air cargo service operations
Agenda Item 4: Controlling travel document fraud and illegal migration
Agenda Item 5: Modernizing airport facilities and service delivery systems

IMPROVEMENT OF THE IMPLEMENTATION OF ANNEX 9 BY CREATING A FACILITATION MANUAL

(Presented by the European Civil Aviation Conference (ECAC)²)

SUMMARY

This working paper presents, for consideration and adoption by the ICAO FAL Division, principles and time frames on which the development of an ICAO Facilitation Manual (FAL Manual) should be based in order to ease and improve the comprehension and implementation of the legally binding Standards and Recommended Practices (SARPs) of Annex 9 to the Convention.

The paper is focussed on the current matters of special interest, which are the adoption of the new/revised definitions and Standards and Recommended Practices (SARPs) for Chapters 1, 3 and 5 of Annex 9 as well as issues such as controlling travel document fraud, preventing irregular migration, managing risks, fostering industry/government cooperation as well as cooperative arrangements between Contracting States.

Action by the Division is in paragraph 4.

¹ French version provided by the European Civil Aviation Conference.

² Albania, Armenia, **Austria**, Azerbaijan, **Belgium**, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, **Denmark**, Estonia, **Finland**, **France**, **Germany**, **Greece**, Hungary, Iceland, **Ireland**, **Italy**, Latvia, Lithuania, **Luxembourg**, Malta, Moldova, Monaco, **Netherlands**, Norway, Poland, **Portugal**, Romania, Serbia and Montenegro, Slovakia, Slovenia, **Spain**, **Sweden**, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, **United Kingdom** (the 15 Member States of the European Union (EU) appear in bold).

1. GENERAL

1.1 The Chicago Convention requires the civil aviation community to comply with laws governing inspection of aircraft, cargo and passengers by authorities such as Customs, Immigration, Agriculture, and Public Health, and obligates States to adopt standards and expedite the necessary formalities in order to minimize operational delays. Standards and Recommended Practices (SARPs) designed to put into practice the Convention are developed by ICAO Contracting States and maintained in Annex 9 – *Facilitation* to the Convention.

1.2 In order to foster the implementation of the SARPs of Annex 9, ICAO has set up a Facilitation Programme and a Facilitation Panel (FALP) as a result of Council approval of certain recommendations of the Eleventh Session of the Facilitation Division (FAL/11). ICAO's Facilitation Programme seeks to provide Contracting States with the means of achieving maximum efficiency in their border clearance operations and at the same time attaining and maintaining high-quality security and law enforcement.

1.3 For Contracting States it is most of the time necessary to convert and translate the SARPs of Annex 9 into their national legislation and/or into instructions such as for public authorities (e.g. Immigration, Customs, etc.) operators, airports, and the customers.

1.4 Although the SARPs should be self-explanatory, in practice it is often different. Many Contracting States, when faced with the sometimes complex, ambiguous and abstract nature of the legal text of the SARPs of Annex 9, have difficulties in understanding the purpose of certain provisions. That is expressed by the number of differences lodged by Contracting States and the fact that many differences are more an explanation of their national practice, rather than real differences from the SARPs.

1.5 The development of a comprehensive explanatory Facilitation Manual to Annex 9 could encourage and improve the implementation of the SARPs of Annex 9. The FALP agreed at its second meeting in 1999 to establish a working group to draft guidance material on immigration issues. However, the working group has never met. Nevertheless, drafts of several parts of the guidance material have been prepared (e.g. Chapter 4 on cargo). Other Chapters of Annex 9 were covered by Guidelines developed by WCO, ECAC, IATA/CAWG, etc. All those texts could be used as a basis for the further development of a FAL Manual covering the entire Annex 9.

1.6 With the FAL Manual it will be possible to keep the SARPs themselves short and simple, and to focus them on the essentials. It has also the advantage to deal with issues, for which an adoption of legally binding international provisions is for different reasons neither possible nor opportune nor necessary (e.g. examples of greater facilities going beyond Annex 9, matters of regional interests or on which temporarily no consensus can be reached, etc.). Furthermore, it can offer a bridge in order to better face challenges such as of reconciling the objectives of the Facilitation Standards in Annex 9 with the new security requirements set out in Annex 17, as well as help Contracting States to prepare the necessary national legislation and other instructions for public authorities, operators, airports and customers.

1.7 Furthermore, it is important that the FAL Manual should set out in comprehensive but simple language guidance material, best practice, technical advice, and other comments which indicate for practitioners possible implementations of the SARPs of Annex 9. Such a manual has to be an explanatory, non-binding and living document entailing no legal obligations.

1.8 In order for the Manual to best serve its purpose, it would be helpful for the ICAO Secretariat responsible for the drafting to be able to draw in a formalised way on the expertise of a group of civil aviation, immigration authority, customs and other specialists within Contracting States in respect of the different chapters of Annex 9. These specialists should be competent to contribute draft guidance

material themselves, and/or to comment on material drafted by the ICAO Secretariat or by consultants. In addition, the involvement of such a group of experts in the drafting of the Manual would also help the FALP to address problems, particularly by identifying topics on which improvements and additions might be made to clarify the intentions of the SARPs.

1.9 Finally, the creation of such a FAL Manual is urgent in order to attain the ICAO Facilitation Programme's objectives. This can be jeopardized by the growing challenges of unlawful interference, illegal migration, terrorism, illicit narcotics trafficking, and contagious disease if these everyday realities are not kept under control.

2. ISSUES WITH RESPECT TO THE NEW CHAPTER 5 SARPs OF ANNEX 9

2.1 Facilitation problems with respect to irregular migration, inadmissible persons and deportees are not limited to a small number of Contracting States. They are a growing worldwide challenge and an enormous cost for the international community and the airline industry. They create problems for Facilitation and Security of international civil aviation as well as for international relationships. Therefore, the adaptation of Annex 9 to the changed situation, the development of new SARPs and, especially, a better and more consistent implementation of Annex 9 worldwide are of great importance.

2.2 There has been general consensus in the FALP that Annex 9 should be revised comprehensively, with the objectives of improving the consistency as well as the level of understanding and conformity by Contracting States, in order to remedy problems with implementation of the SARPs. Moreover, concerns have been expressed about the challenges of reconciling the objectives of the Facilitation Standards in Annex 9 with the prevention of illegal migration and the new security requirements set out in Annex 17. The new proposals for Chapters 1, 3 and 5 of Annex 9 developed by the FALP presents a supplementary important step forward in order to achieve these objectives. Other steps such as the development of the FAL Manual as described above are necessary and urgent.

2.3 The FALP has identified a number of topics on which guidelines should be developed for the FAL Manual, together with a number of problems which need to be considered further and on which guidance in the manual may be desirable. These include:

- a) clarifications of the civil and criminal liability regarding officials acting as escorts or Airline Liaison Officers in a foreign airport;
- b) determination of the necessary information to address movements which represent a risk (risk management);
- c) acceptance for examination of a returned inadmissible person (as required by Standard 3.63);
- d) acceptance of the covering or substitute letter which is issued in accordance with Appendix 9 of Annex 9;
- e) confiscation and removal from circulation of fraudulent or counterfeit documents (as required by Standard 3.56);
- f) specific measures that States should take at the origin or at transit States to prevent travel by impostors and persons with fraudulent or counterfeit documents or when such a person is discovered;

- g) support of the public authorities of origin and destination States to use modern technologies to communicate with one another directly; and
- h) provisions for intelligence sharing and technical assistance.

2.4 With respect to the new Chapter 5 of Annex 9, the FAL Manual should contain the necessary guidance material and best practices on:

- a) inspection of travel documents and pre-boarding measures;
- b) handling of inadmissible passengers and deportees, including questions related to escorts;
- c) international cooperation between Immigration Control Authorities, including posting an Immigration Liaison Officer (Airline Liaison Officer) to a foreign country and the working relationship with the airlines and other Liaison Officers posted to that airport; and
- d) risk management in order to prevent irregular movements and preserve the security of the flight.

2.5 Finally, there is an urgent need to develop further the framework for internationally harmonized procedures and practices to prevent the travel by air of improperly documented persons, in so doing promoting the implementation of machine readable travel documents, reading systems, automated controlling systems, and electronic information processing (e.g. Advanced Passenger Information).

3. **RECOMMENDED APPROACH**

3.1 It is recommended that:

- a) a FAL Manual Drafting Group be established under the aegis of the FALP to assist the Secretariat of ICAO in the drafting of the Manual, addressing problems such as those mentioned above and taking into account the status of implementation by Contracting States. In the light of this work the Drafting Group would also, where appropriate, draw the attention of the FALP to topics on which improvements of or additions to the SARPs might be considered in order to clarify their intent;
- b) the FAL Manual mentioned above be developed step by step and placed successively at the interested bodies' disposal by using the Internet;
- c) high priority be given in this topic; and
- d) with respect to Chapter 5 of Annex 9 such a FAL Manual Drafting Group be composed in an equal proportion of experts of Civil Aviation Authorities and Immigration Control Authorities from States to which inadmissible persons are returned or which receive irregular migration movements.

4. **ACTION BY THE DIVISION**

4.1 The Division is invited to:

- a) consider the views presented above; and
- b) in the light thereof, establish a FAL Manual Drafting Group under the aegis of the FAL Panel to further examine the issues and to develop step by step the FAL Manual containing the necessary guidance material.

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