



A35-WP/315  
EX/117  
6/10/04

## **ASSEMBLY — 35TH SESSION**

### **REPORT OF THE ADMINISTRATIVE COMMISSION ON AGENDA ITEMS 41.1 AND 41.2**

(Presented by the Chairperson of the Administrative Commission)

The attached report on Agenda Items 41.1 and 41.2 has been approved by the Administrative Commission and is submitted for consideration by the Executive Committee.

*Note.— After removal of this covering sheet, this paper should be inserted in the appropriate place in the Report Folder.*

(6 pages)

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**Agenda Item 41: Financial Questions**  
**41.1: Financial aspects of the question of contributions in arrears**  
**41.2: Incentive schemes for settlement of long-outstanding arrears**

41.1:1 At its second meeting, the Commission considered A35-WP/21, EX/5, AD/3, Revision No. 1, and Addenda Nos. 1 and 2, which provide information on the status of contributions in arrears as at 17 September 2004 and the Contracting States that had their voting privileges suspended. The working paper had previously been considered by the Executive Committee at its first meeting, after which the parts relating to the measures in dealing with contributions in arrears was referred to the Commission.

41.1:2 In the presentation to the Administrative Commission, the members were asked to review:

- a) the changes approved by the Council to Financial Regulations 6.5 and 6.7, to refer to payments under terms of agreements and to redefine the due date of contributions, as presented in Appendix C;
- b) the draft Resolution in Appendix E, which consolidates Assembly Resolutions A21-10 and A31-26 and contains substantive changes to the conditions for suspension of voting privileges for Group A States, and introduces new measures to encourage States to pay their contributions promptly; and
- c) the draft Resolution in Appendix F, wherein the Council is recommending a change to the method of allocating receipts of long-outstanding arrears to the incentive scheme referred to in Resolving Clause 3 of Assembly Resolution A33-27.

41.1:3 The Commission, having considered the working paper, recommends the draft Resolutions contained in Appendices D, E, and F of the working paper and reproduced below, for adoption by the Assembly.

**RESOLUTIONS FRAMED BY THE ADMINISTRATIVE COMMISSION  
AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

**Resolution 41.1/1**

**Amendment to the Financial Regulations**

*Whereas* the Council has reported to the Assembly on its experience in applying Financial Regulations 6.5 and 6.7; and

*Whereas* the Council has noted the need to revise Financial Regulations 6.5 and 6.7 for the sake of clarity.

*The Assembly:*

1. *Resolves* that the amendments set out below are confirmed:

### **Financial Regulation 6.5**

6.5 Except as otherwise provided in these Regulations or where the Assembly otherwise determines:

- a) contributions, payments under terms of agreements for settlement of arrears, and advances to the Working Capital Fund, shall be considered as due and payable in full upon the expiry of thirty days from the date that the notification from the Secretary General is dispatched under Regulations 6.4 b) and 7.4 b), or as of the first day of the financial year to which they relate, whichever is the later; and
- b) as of 1 January of the following financial year, any unpaid balance of such contributions, payments under terms of agreements for settlement of arrears, and advances to the Working Capital Fund, shall be considered to be one year in arrears.

### **Financial Regulation 6.7**

6.7 Payments by Contracting States, including those of Contracting States with agreements for settlement of arrears, shall be credited first to advances due to the Working Capital Fund and any balance applied against outstanding amounts relating to agreements and contributions, beginning with the earliest.

### **Resolution 41.1/2 (Consolidation of A21-10 and A31-26)**

#### **Discharge by Contracting States of financial obligations to the Organization and action to be taken in case of their failure to do so**

*Whereas* Article 62 of the Convention on International Civil Aviation provides that the Assembly may suspend the voting power in the Assembly and in the Council of any Contracting State that fails to discharge, within a reasonable period, its financial obligations to the Organization;

*The Assembly:*

*Considering* that Article 6.5 of the ICAO Financial Regulations provides that contributions from Contracting States shall be considered due and payable in full as of the first day of the financial year to which they relate;

*Noting* that in recent years the accumulation of contributions in arrears has increased considerably and has constituted, together with the delays in payment of current year contributions, an obstacle to the implementation of the work programme and created serious cash flow difficulties;

*Urges* that all Contracting States in arrears make suitable arrangements for liquidating their arrears;

*Urges* all Contracting States and in particular, the States elected to the Council, to take all necessary measures to pay their contributions on time;

*Resolves that, with effect from 1 January 2005:*

1. all Contracting States should recognize the necessity to pay their contributions at the beginning of the year in which they fall due, in order to avoid the need for the Organization to draw on the Working Capital Fund to make good the shortfall;
2. the Secretary General be directed to dispatch to all Contracting States, at least three times in the year, schedules showing the current amounts due for the current year and up to 31 December of the previous year;
3. the Council be authorized to discuss and conclude arrangements with Contracting States, whose contributions are in arrears for three or more years, for the settlement of accumulated arrears to the Organization, any such settlements or arrangements to be reported to the next session of the Assembly;
4. all Contracting States which are three years or more in arrears in the payment of their contributions should:
  - a) effect without delay payment of the amounts outstanding with respect to advances to the Working Capital Fund, the current year contribution, and partial settlement of their arrears in the amount of no less than \$ 2 000, such minimum amount to be increased proportionately in cases of States which are assessed at more than the minimum contribution of the ICAO scale;
  - b) conclude within six months of the date of the payment referred to in sub-paragraph a) above, if they have not already done so, an agreement with the Organization for the settlement of the balance of their arrears, such agreement to provide for the payment annually, in full, of their current contributions and the balance of the arrears in instalments over a period of no more than ten years, which period may, at the discretion of the Council, be extended, to a maximum of twenty years in respect of special cases i.e. those Contracting States that are classified as Least Developed Countries by the United Nations;
5. the Council should further intensify the current policy of inviting Contracting States in arrears to make settlement proposals for the liquidation of long outstanding arrears of contributions in accordance with the provisions of Resolving Clause 4 above, taking full account of the economic position of the States concerned including the possibility of accepting other currencies in accordance with the provisions of Article 6.6 of the Financial Regulations, to the extent that the Secretary General can use these currencies;
6. the voting power in the Assembly and the Council be suspended for those Contracting States in arrears for an amount equal to or in excess of the total assessments for the three preceding financial years and of those Contracting States not in compliance with agreements entered into in accordance with Resolving Clause 4 b) above, such suspension to be revoked immediately upon the settlement of outstanding amounts due under agreements; and
7. the voting power of a Contracting State suspended under Resolving Clause 6 may also be restored by action of the Assembly or the Council provided:
  - a) it has already concluded with the Council an agreement that provides for the settlement of its outstanding obligations and for the payment of current contributions and has complied with the terms of that agreement; or

- b) the Assembly is satisfied that the State's willingness to reach an equitable settlement of its financial obligations to the Organization has been demonstrated;
8. any State whose voting power has been suspended by the Assembly under Article 62 of the Convention may have it restored by the Council under the conditions stipulated in Resolving Clause 7 a) above, provided that a willingness on its part to reach an equitable settlement of its financial obligations to the Organization has been demonstrated;
9. the following additional measures be applied to those Contracting States whose voting rights have been suspended under Article 62 of the Convention:
- a) lose eligibility to host meetings, conferences, workshops and seminars which are funded, in whole or in part, by the Regular Programme;
  - b) receive only the same free documentation as that provided to non-Contracting States, including those available in electronic media, and any other documents that are essential for safety, regularity or efficiency of international air navigation;
  - c) Nationals or Representatives lose eligibility for nomination to elected offices;
  - d) for purposes of recruitment to posts in the Secretariat, if all other circumstances are equal, candidates from States in arrears would be considered as having the status of candidates from a State that has already achieved the desired level of representation (under equal geographical representation principles), even if it has not achieved that level; and
  - e) lose the right to participate in the ICAO Familiarization course;
10. only those States that have no outstanding annual assessed contributions except for the current year's assessment will be eligible for election to the Council, Committees, and bodies; and
11. this Resolution supersedes Assembly Resolutions A21-10 and A31-26.

**Resolution 41.2/1** (To supersede A33-27)

**Incentives for the settlement of long-outstanding arrears**

*The Assembly,*

*Recalling* the concern expressed by previous Assemblies at the increase in the contributions in arrears;

*Reiterating* the necessity of all Contracting States to pay their contributions on the date on which they fall due;

*Noting* that a number of States have had their voting power suspended in the Assembly and the Council in accordance with Assembly Resolution [    ];

*Reaffirming* the extreme importance of participation by all States in the activities of the Organization;

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*Noting* that the cash surplus had traditionally been distributed to those Contracting States that have paid their contributions for the financial years for which the surpluses had been determined; and

*Wishing* to encourage States to liquidate their arrears and at the same time provide incentives for doing so;

*Resolves that:*

1. the distribution of cash surpluses be restricted to Contracting States that, at the date of the distribution of the surpluses, have paid their contributions for the financial years for which the surpluses had been determined and that the entitlement to the surpluses be terminated for States which have outstanding contributions for the years concerned, except for those States with agreements and which have complied with the terms of their agreements;

2. Contracting States with arrears of three full years or more and which either have existing agreements or enter into agreements for settlement of long outstanding arrears, and which have complied with the terms of their agreements, shall have their share of cash surplus distributed even though they have not paid the assessments for the financial years for which the surpluses had been determined;

3. with effect from 1 January 2005, only that portion of a payment from a Contracting State that is in excess of the sum of the three preceding years' assessments and all instalments due under agreements entered into under Resolving Clause 4 of Assembly Resolution [ ] shall be retained in a separate account to finance expenditure on aviation security activities, and new and unforeseen projects related to aviation safety, and/or to the enhancement of the efficient delivery of ICAO programmes, such action to be under the control of the Council and reported to the next ordinary session of the Assembly;

4. the Council be requested to closely monitor the question of outstanding contributions, the effects of the incentive schemes on payment of arrears by States, and report to the next ordinary session of the Assembly on the results of their efforts including other measures to be considered; and

5. this Resolution supersedes Assembly Resolution A33-27.

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