



NOTE DE TRAVAIL

GROUPE D'EXPERTS DE LA FACILITATION (FALP)

SEPTIÈME RÉUNION

Montréal, 22 – 26 octobre 2012

Point 5 : Amendement de l'Annexe 9

**EXPULSION DE PERSONNES : PROPOSITIONS D'AMENDEMENT
DE L'ANNEXE 9 — FACILITATION**

(Note présentée par le Canada au nom du CAWG de l'IATA)

(Faute de ressources, seuls le sommaire et l'appendice ont été traduits.)

SOMMAIRE

Bien que l'Annexe 9, Chapitre 5, contienne des normes et pratiques recommandées sur les dispositions que les États doivent prendre pour expulser une personne, les exploitants d'aéronefs continuent de rencontrer des difficultés quand ils doivent en expulser, si bien que ces personnes se voient refuser l'entrée dans le ou les États de correspondance et/ou de destination finale. C'est pourquoi le Groupe de travail des services de contrôle de l'IATA (IATA/CAWG) souhaite amender l'Annexe 9 pour améliorer les communications entre les pouvoirs publics et les exploitants d'aéronefs, souligner la responsabilité qu'ont les États contractants de prévenir le ou les États de correspondance et/ou de destination des mouvements des personnes expulsées et reconnaître le droit qu'ont les exploitants d'aéronefs de refuser de transporter une personne expulsée sur un vol particulier pour des raisons de sécurité et de sûreté.

Conscient de l'importance de satisfaisantes communications entre les pouvoirs publics et les exploitants d'aéroport, qui ne se limitent pas seulement au traitement des personnes expulsées, le CAWG invite aussi le Groupe d'experts FAL à envisager d'insérer au Chapitre 1, Principes généraux, de l'Annexe 9, un texte supplémentaire qui encouragerait les exploitants d'aéronefs et les pouvoirs publics à échanger des renseignements sur leurs points de contact pour régler tous les problèmes de facilitation.

Suite à donner par le Groupe d'experts FAL :

Le Groupe d'experts FAL est invité à examiner les propositions de la présente note et à convenir que l'Annexe 9 soit modifiée de la manière décrite dans son appendice.

1. INTRODUCTION

1.1 The IATA Control Authorities Working Group (IATA/CAWG) was established in 1987, primarily as a forum for on-going dialogue between Airlines and Immigration officials in respect of the control of illegal migration. Whilst the original focus was on inadmissible passengers, IATA/CAWG now deals with many key areas of passenger facilitation. Twenty-one (21) Contracting States, along with a representative from a national airline from each State are presently represented on the IATA/CAWG.

1.2 Based on analysis of existing national policies relating to deportation and removal processes adopted by the various Contracting States that began in 1998, IATA/CAWG identified significant inconsistencies in the processes employed to support deportee removals. In an effort to respond to these inconsistencies, and to provide best practice guidance to both aircraft operators and public authorities, IATA/CAWG developed and adopted its Guidelines for the Removal of Deportees (“Removal Guidelines”) in October, 1999. This document has been periodically reviewed to ensure continued relevance, with the third revision agreed in May, 2010.

1.3 IATA/CAWG believes that existing provisions within Annex 9 that pertain to deportees and their removal are no longer entirely sufficient, and that additions to and modifications of those provisions is warranted as to address process inconsistencies identified at the national level. Accordingly, IATA/CAWG approved the creation of a working group, comprised of both government agency and aircraft operator representatives¹.

1.4 The working group initially evaluated the Removal Guidelines to determine which of its principles were not adequately represented in Annex 9, Chapter 5, and which might therefore be recommended for incorporation into the Annex as standards or recommended practices.

1.5 The working group subsequently has agreed that the following provisions contained in IATA/CAWG’s Removal Guidelines should form the basis for changes to Annex 9 that are being recommended in Annex 1.

- a) Definition: Escort means a person authorised by the departing State to accompany a deportee (DEPA) during the removal. [APPENDIX Chapter 1 - Definitions and General Principles – Escorts]
- b) Aircraft operators should establish and provide contact numbers for arrangements and policy questions relating to the removal of deportees, both at headquarters and local or regional offices. Departing States agree to direct any matters regarding deportation arrangements to these contact numbers wherever possible.[APPENDIX 5.XX.1 -New Recommended Practice] & [APPENDIX Chapter 1 General Principles - 1.xx.x]
- c) The departing State should provide a 24-hour contact concerning deportee situations. Departing States should also provide contact information for an official or office to which questions of policy interpretation can be addressed. [APPENDIX 5.XX.1 -New Recommended Practice]

¹ The working group was comprised of representatives from Austrian Federal Minister of the Interior, Australia Department of Immigration and Citizenship, Canada Border Service Agency, Netherlands Immigration and Naturalization Service, Swedish National Police Board and the UK Border Agency, Air Canada, Austrian Airlines, QANTAS, KLM, Scandinavian Airlines and the National Airlines Council of Canada.

- d) The departing State should inform the aircraft operator, to the extent legally allowed, of the results of its risk assessment to facilitate the aircraft operator's own evaluation and notification process. [APPENDIX 5.19.XX – New Standard]

2. DISCUSSION

2.1 The “Removal Guidelines” contain a recommendation that, when official en-route supervision of a deportee is warranted based on the results of risk assessment, the departing State should ensure that the escort(s) travelling with the deportee possess all travel documents required by destination and transit States, unless alternative arrangements have been approved by those States. The group determined that Annex 9 sufficiently reflects this obligation. However, the term “Escort” is not defined in Chapter 1 of the Annex. The group recognized that an escort may be used for the removal of both inadmissible passengers and deportees, and that aircraft operators may employ, or require the use of an escort depending on the situation, and therefore decided to expand the definition found in the “Removal Guidelines” to more accurately reflect the circumstances where use of an escort might be warranted.

2.2 The group discussed the two provisions contained in the “Removal Guidelines” relating to the need for exchange of contact information between aircraft operators and Deportee States, particularly as relates to deportees and their transportation. Based on those discussions, the Working Group is proposing a new recommended practice to be added to Chapter 5, C. Deportees.

2.3 The group also discussed the relevance of a provision in Chapter 1, General addressing the need for Aircraft Operators and Public Authorities to exchange appropriate contact information in order to facilitate more effective communication and coordination in all matters relating to Facilitation. This suggested provision is broader than that addressed in 2.2 above. The proposed text for this new provision is reflected in the Appendix to this Working Paper.

2.4 The group then addressed the issue of Contracting States providing aircraft operators with risk assessments for the acceptance of a deportee, comparing provisions contained in the “Removal Guidelines and those found in Annex 9. While Annex 9 does contain have specific provisions speaking to this issue, the Working Group determined that more specific language, particularly addressing the aircraft operator's right to refuse transport based on perceived threats to the safe operation of the flight or when such transport is contrary to the aircraft operator's policies, was warranted. A new standard is being proposed in the Appendix to this paper (5.19) that specifically addresses this point, and additionally, speaks to the need for cooperation in determining appropriate alternative flights and/or acceptable methods for transportation of the person in question.

APPENDICE

Amender l'Annexe 9 comme suit :

Chapitre 1 – Définitions et Principes généraux

A. Définitions

Agent d'escorte – *Un agent d'escorte est une personne qu'un État contractant ou un exploitant d'aéronefs autorise à accompagner des personnes non admissibles ou d'autres personnes qui sont expulsées de cet État contractant.*

B. Principes généraux

1.6 Pratique recommandée.— Il est recommandé que les États contractants et les exploitants d'aéronefs s'échangent des renseignements sur le ou les points de contact appropriés auxquels les services de contrôle frontalier et les douanes devraient adresser leurs questions.

Chapitre 5. Personnes inadmissibles et personnes expulsées

C. Personnes expulsées

5.XX.1 Pratique recommandée.— Il est recommandé que les États contractants et les exploitants d'aéronefs s'échangent, lorsque c'est possible, des renseignements sur leur ou leurs points de contact compétents, disponibles 24 heures sur 24, auxquels ils devraient adresser leurs questions concernant les personnes expulsées.

5.19.XX L'exploitant d'aéronef et/ou le pilote-commandant de bord aura le droit de refuser de transporter une personne expulsée sur un vol particulier quand il a des doutes raisonnables concernant la sécurité et la sûreté du vol, ou quand la politique de l'exploitant d'aéronefs relative au nombre de personnes expulsées qui peuvent être transportées sur ce vol n'est pas respectée.

Note 1 : — L'État contractant consultera l'exploitant d'aéronefs au sujet du vol le plus approprié ou d'un autre mode de transport.

Note 2 : — Voir les § 12.2.1.3 et 12.1.2.6 du Doc 8973, Manuel AVSEC de l'OACI.