



## فريق خبراء التسهيلات

### الاجتماع السابع

مونتريال، من ٢٢ إلى ٢٦/١٠/٢٠١٢

البند رقم ٥ من جدول الأعمال: تعديلات على الملحق التاسع

### ترحيل الأشخاص ممنوعين من الدخول: مقترحات لتعديل الملحق التاسع - التسهيلات

(ورقة مقدمة من كندا بالنيابة عن فريق العمل المشترك بين الأياتا وسلطات المراقبة)\*

#### الملخص

بالرغم من أن الفصل الخامس من الملحق التاسع يتيح للدول المتعاقدة قواعد وتوصيات دولية ترتبط بترحيل الأشخاص ممنوعين من الدخول، إلا أنه يظل هناك قدر من الصعوبات التشغيلية التي غالباً ما تتجم عن عدم كفاية المعلومات المتاحة وضيق الوقت لاتخاذ الترتيبات الفعالة الخاصة بعمليات الترحيل هذه. وقد تكون الجزاءات في بعض الأحيان شديدة عندما يتعذر على مشغلي الطائرات على الفور ترحيل شخص ممنوع من الدخول. وبالإضافة إلى ذلك، يضطر مشغلو الطائرات في أحيان كثيرة إلى ترحيل أشخاص ممنوعين من الدخول لا تكون وثائق السفر الخاصة بهم والمطلوبة للدخول إلى دولة المقصد أو لعبور دول أخرى متاحة فعلياً. وبناء عليه، فإن كندا تسعى، بالنيابة عن فريق العمل المشترك بين الأياتا وسلطات المراقبة، إلى تعديل بعض أحكام الملحق التاسع المعمول بها حالياً، وذلك لزيادة توضيح الإجراءات اللازمة لتنفيذ عمليات ترحيل الأشخاص ممنوعين من الدخول.

#### الإجراء المعروض على فريق خبراء التسهيلات:

الفريق مدعو إلى النظر في المقترحات الواردة في هذه الورقة والموافقة على تعديل الملحق التاسع على النحو الوارد في المرفق.

## 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.

\* نظراً لنقص الموارد، لم يُترجم سوى الملخص والمرفق.

1.2 Based on analyses conducted, IATA/CAWG determined that, on a global level, there are significant inconsistencies in the approach that individual States take in respect of processes employed to support the removal of inadmissible persons. Accordingly, the group undertook to develop best practice materials, the intent of which was to provide guidance to both Aircraft Operators and Public Authorities based largely upon existing Annex 9 provisions. The document, “*IATA/CAWG Guidelines for the Removal of Inadmissible Persons*” (“Inadmissible Removal Guidelines”), was first adopted in 2004, and has most recently been reviewed and updated with its third revision released on 12 May 2012.

1.3 Although the IATA/CAWG “Inadmissible Removal Guidelines” are largely aligned with existing SARPs, the document makes references to additional processes/concepts that are not contained in Annex 9 (Chapter 5 or elsewhere). While IATA/CAWG is an “informal” body, and its recommendations not binding on any entities, the group, during its 49<sup>th</sup> plenary session, agreed that its work in this critical area should be referred to the 7<sup>th</sup> ICAO Facilitation Panel, for its consideration. Accordingly, a sub-group was selected to conduct a review of the Annex and the IATA/CAWG document, and to develop recommendations for amendment of the Annex<sup>1</sup>. This working paper, and the proposal contained in its Appendix are the result of that work.

1.4 Specifically, this Working Paper asks that the Panel consider 3 issues, including 1) amending text in an existing Standard, 2) elevating an existing Recommended Practice to a Standard and 3) potentially adopting a Type A Resolution relating to acceptance of ICAO-compliant transportation letters issued in lieu of seized and/or missing travel documents.

## 2. DISCUSSION

2.1 The IATA/CAWG’s “Inadmissible Removal Guidelines” recommend that Contracting States should provide the aircraft operator which transported the Inadmissible Person to its territory with a removal order containing sufficient information so as to permit the aircraft operator to confirm that the inadmissible passenger is, in fact, its responsibility and also to investigate the circumstances relating to that arrival. Existing Annex 9 provisions address only that information concerning the inadmissible person as an individual and the destination to which that person is to be removed. IATA/CAWG recommends that in addition to that already specified in the existing provision, information concerning the passenger’s inbound flight should also be included in any Removal Order. The Appendix to this Working Paper contains proposed language to amend existing Standard 5.5.

2.2 The “Inadmissible Removal Guidelines” includes a statement that the Public Authorities in Contracting States should consult with Aircraft Operators regarding the removal of an inadmissible person, and allow the Aircraft Operator reasonable time to effect the removal of that individual. In its document, IATA/CAWG sought to clarify what “reasonable time” might represent, and in doing so, identified that term to normally represent a period of up to 24 hours following receipt of the Removal Order. Annex 9, Recommended Practice 5.4 contains essentially the same concept – but absent any specific time frame defining the term “reasonable time”. Rather than seeking to define a specific time-frame in the existing RP, IATA/CAWG is instead recommending that the current provision be elevated from a Recommended Practice to a Standard, and would entertain additional language that would make compliance with the new Standard subject to compliance with national and/or international laws. The suggested revised language for RP 5.4 is contained in the Appendix to this document.

---

<sup>1</sup> 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

2.3 The IATA/CAWG “Inadmissible Removal Guidelines” supports the concept for the issuance of an ICAO-compliant Covering Letter to facilitate the removal of an inadmissible passenger not holding a valid travel document, or for whom an invalid travel document has been seized. However, when a Covering Letter will not be accepted by the public authorities in the State of final destination (or transit), the aircraft operator should not be required to accept the passenger for removal until suitable alternate arrangements have been agreed between all parties.

2.4 Existing Standards 5.6 and 5.7 speak to the requirement that States ordering the removal of persons found inadmissible and who are not in possession of a required travel document (5.6), or whose travel documents have been seized (5.7) issue the ICAO-compliant Covering Letter. Existing Standard 5.13 mandates that “*Contracting States shall accept the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter*”. Even with these clear and concise Standards, a number of States have long refused to accept individuals transported only with the ICAO-compliant covering letters, even when they are believed to be nationals of that State. In these instances, the aircraft operator is often held responsible – facing potential financial penalties and frequently obliged to return the individual to the State that had ordered that person removed – a requirement that is entirely inconsistent with Standard 5.12.

2.5 As there are already a number of existing Standards that address the issue of States issuing and accepting covering letters issued by another, IATA/CAWG does not believe that additional provisions are required or would resolve the issues relating to non-observance of these provisions by Public Authorities in several Contracting States. Instead, the members of IATA/CAWG would welcome an ICAO Resolution calling upon all Contracting States to observe the obligations as described in those existing Standards (5.6, 5.7, 5.12 and 5.13).

---



## المرفق

يعدل الملحق التاسع كما يلي:

٤-٥ - **توصية** - ينبغي **يجب على** الدول المتعاقدة، من خلال سلطاتها العامة، استشارة مشغل الطائرة بشأن الاطار الزمني لترحيل الشخص الذي وجد أنه ممنوع من الدخول بغية اراحة فترة زمنية معقولة للمشغل يستطيع خلالها ترحيل الشخص على رحلاته أو القيام بترتيبات بديلة للترحيل.

**ملاحظة** - ليس في هذا النص ما يمكن تفسيره بأنه يسمح بإعادة أي شخص يطلب اللجوء في اقليم دولة متعاقدة الى دولة تكون فيها حياته أو حريته مهددة بسبب عرقه أو دينه أو جنسيته أو عضويته في مجموعة اجتماعية أو انتماءه إلى رأي رأيه السياسي.

٥-٥ - يجب أن تكفل الدول المتعاقدة صدور أمر الترحيل إلى المشغل فيما يخص الشخص الذي تبين أنه ممنوع من الدخول. ويجب أن يتضمن أمر الترحيل المعلومات عن الرحلة القادمة (رحلة الوصول) التي تنقل على متنها هذا الشخص والبيانات التالية، إذا كانت معروفة: اسم الشخص وسنه وجنسه وجنسيته.

— انتهى —