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CONFERENCE ON THE ECONOMICS OF AIRPORTS AND AIR NAVIGATION SERVICES

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Agenda Item 3: Specific issues related to air navigation services economics and management

Agenda Item 3.1: Governance, ownership and control

SEPARATION OF AIR NAVIGATION SERVICES (ANS) PROVISION FROM REGULATORY OVERSIGHT

(Presented by CANSO²)

SUMMARY

Autonomy for the air navigation services provider, and its separation from the regulatory oversight function is well-established in ICAO guidance material. It is evidenced that greater financial and operational autonomy for the ANSP has encouraged a business approach to service delivery and an improved quality of service. Separation of ANS provision from the regulatory oversight function enhances ATM performance, and instils public confidence in the ANSP and the services it provides. Separation of provision from regulation is consistent with principles of good governance; the regulatory oversight function must be seen as independent and transparent. While this guidance material is only supplemental to standards and recommended practices (SARPs), it is of significance to ICAO's strategic objectives of Safety and Efficiency.

Action by the Conference is in paragraph 4.

¹ Language versions provided by CANSO.

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1. INTRODUCTION

1.1 The fundamental purpose of the air navigation service is to ensure safe separation of aircraft in the air and on the ground, and to provide the necessary capacity in a safe, efficient and environmentally responsible manner.

1.2 Political interference in air navigation service provision tends to result in high operating costs, inadequate funding of capacity improvements and decisions that may represent national political interests rather than the best interests of the system and the customers it serves. In other words, political interference can lead to suboptimal performance of the system.

1.3 There is also a need to keep separate the provision of air traffic services from the regulatory function that oversees it. To be effective and maintain the confidence of the travelling public, the ATM regulatory process must be independent and transparent, and seen to be so, performed by a function that is separate from the entity it regulates. Too close a relationship between the provider and the regulatory function can result in conflicts of interest and undermine confidence in the system.

1.4 It is readily accepted that provision and regulation carried out by the same entity is inconsistent with principles of good governance. In some parts of the world separation has become a legal requirement. The framework regulatory package for the creation of the Single European Sky makes separation between regulation and service provision legally binding, and the national supervisory authority is to exercise its powers impartially and transparently³.

2. DISCUSSION

2.1 The desirability for the autonomy and separation of air navigation services provision from the regulatory oversight function is recognised in various ICAO guidance material.

2.2 ICAO has for some time recommended that States establish autonomous entities for ANS provision where this is in the best interest of the provider and users of the services⁴. Autonomy has tended to improve the financial situation and managerial efficiency of the entity as it is empowered to take independent decisions on issues falling within its remit and exercise full control over the revenues generated from operations

2.3 ICAO also recommends in its *Safety Oversight Manual* that “in those States where the State is both the regulatory authority and an air traffic service provider, ..., the requirements of the Convention will be met, and the public interest be best served, by a clear separation of authority and responsibility between the State operating agency and the State regulatory authority.”⁵

2.4 The same manual further proclaims that “when a State has found it necessary to separate service provision functions by the creation of commercial entities outside of the CAA,, a clear division of responsibilities shall be defined between the regulatory functions and service provision functions. Regulatory and safety functions shall remain the responsibility of the State.”⁶

³ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004, Article 4.

⁴ ICAO Policies on Charges for Airports and Air Navigation Services, Doc 9082, para. 11.

⁵ *Safety Oversight Manual*, Doc 9734, paragraph 2.4.9

⁶ *Ibid*, paragraph 3.2.6

2.5 ICAO also notes that, in view of the growing autonomy, commercialisation and corporatisation of air navigation services, there may be a need for appropriate economic oversight, leaving the nature, scope and extent to which such oversight may be required up to the State.⁷

3. CONCLUSION

3.1 Autonomy for the air navigation services provider, and its separation from the regulatory oversight function is well-established in ICAO guidance material. It is evidenced that greater financial and operational autonomy for the ANSP has encouraged a business approach to service delivery and an improved quality of service.

3.2 Separation of ANS provision from the regulatory oversight function enhances ATM performance, and instils public confidence in the ANSP and the services it provides. Separation of provision from regulation is consistent with principles of good governance; the regulatory oversight function must be seen as independent and transparent.

3.3 While this guidance material promoting autonomy for the air navigation services provider, and its separation from the regulatory oversight function, is of significance to ICAO's strategic objectives of Safety and Efficiency, it is only supplemental to standards and recommended practices (SARPs). It is therefore important that attention is drawn to this guidance material and that appropriate measures are taken by States implement it.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to:

- a) note ICAO guidance material currently available that promotes the autonomy and separation of ANS provision from regulatory oversight
- b) recommend that States take appropriate measures to observe this guidance material

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⁷ *Manual on Air Navigation Services Economics*, Doc 9161/4, para. 2.22