



WORKING PAPER

LEGAL COMMITTEE – 37th SESSION

(Montréal, 4 to 7 September 2018)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

SAFETY ASPECTS OF ECONOMIC LIBERALIZATION AND ARTICLE 83 *BIS*

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Article 83 *bis* of the *Convention on International Civil Aviation* (the Convention) entered into force on 20 June 1997. The corresponding Protocol to the Convention (Doc 9318) is in force for the 174 States parties to it as of 1 July 2018. Article 83 *bis* makes provision for the transfer of certain functions and duties normally incumbent on the State of Registry to the State of Operator, in the case of lease, charter or interchange of an aircraft or similar arrangement. It also prescribes the limits of the responsibilities which are transferable: the agreement can cover only the duties attached to Articles 12, 30, 31 and 32 a) of the Convention.

2. BACKGROUND

2.1 The Council, at its 199th Session (C-DEC 199/11), endorsed the recommendation of the 35th Session of the Legal Committee that a task force be formed to assist in revising Circular 295 – *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation* (Cir 295 LE/2) and also to better educate Member States on the applicability of 83 *bis* agreements. Following a State Letter (IND/14/9) dated 31 July 2014 seeking the nomination of experts, the Article 83 *bis* Task Force (83 *bis* TF) was established in September 2014, with the following deliverables: (a) recommendations for revisions to ICAO Circular 295; and (b) identification of options to be considered by ICAO as alternatives to the current registration system, possibly web-based.

2.2 At the 36th Session of the Legal Committee the Secretariat introduced a Working Paper on the subject (LC/36-WP/2-3), which reported on the work and recommendations of the 83 *bis* TF. The Working Paper stated that the 83 *bis* TF had opined that Circular 295 should not be replaced by another circular but updated in the form of a Manual, which the 83 *bis* TF had assisted the Secretariat in developing. The salient features of the draft Manual were presented for the information of the Legal Committee. Five recommendations by the 83 *bis* TF for the consideration of the Legal Committee were set out in the Working Paper, which the Committee approved, as amended as regards the first and fourth recommendations (final text at Appendix D to the Report of the 36th Session of the Legal Committee (Doc 10061-LC/36)).

3. CONSIDERATION BY THE COUNCIL

3.1 At the 207th Session of the Council, the Secretary General reported on the outcome of the 36th Session of the Legal Committee (C-WP/14386), including the amended list of five recommendations regarding Article 83 *bis*. The Council accepted the list of recommendations and noted that proposals will be presented by the Secretariat for implementation of the recommendations, as appropriate (C-DEC 207/7).

4. SUBSEQUENT ACTION

4.1 Publication of the Manual on the implementation of Article 83 *bis*

4.1.1 Following last review by the 83 *bis* TF and other peers, the advance English language version of the Manual on the implementation of Article 83 *bis* of the Convention on International Civil Aviation (Doc 10059) (the Manual) was published on 22 June 2017 on the ICAO-NET. After review by the ICAO editorial unit and translation into the other ICAO working languages, formal publication of all the language versions of the Manual took place on 21 March 2018.

4.2 Action on the Five Recommendations

4.2.1 Pursuant to recommendations (a) and (b), a Secretariat team has commenced work on the project for the establishment of an interactive web-based registration and publication system to facilitate timely registration and publication of Article 83 *bis* agreements. The main focus of the work has been on defining the project objectives, scope, constraints, tolerances, users, risks and benefits, as well as the product description, potential interfaces with other ICAO databases and whether there would be efficiencies to extend the system beyond Article 83 *bis* agreements to other aeronautical agreements and arrangements. Consultations with some of the expected major State users of the registration system took place in December 2017 and February 2018. Amendment of the Council's *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685) so as to provide for possible online registration of aeronautical agreements through a web-based system is dependent on the work to design the system. It is anticipated that the proposed main features of the system could be presented to the Council at its 216th Session in February 2019, implementation will be dependent on budget considerations.

4.2.2 A proposal for amendments to Annex 6, Parts I, II and III, developed by the Secretariat in in coordination with the Flight Operations Panel of the Air Navigation Commission, responds to recommendations (c) and (d). The proposals (AN-WP/XXX) were [approved] by the Air Navigation Commission in at its 208th Session in June 2018. The Air Navigation Commission [agreed] to the transmittal of the proposed amendments to Member States and appropriate international organizations for comments, and that the applicability date for the amendments will be 5 November 2020.

4.2.3 In line with recommendation (c), the new Standards and Recommended Practices to be included in Annex 6, Parts I, II and III, will cover the carriage of a certified true copy of the one-page Summary of the Article 83 *bis* Agreement (Agreement Summary) on board the aircraft while the agreement is in force. The format for the one-page Agreement Summary, already described in the Manual, will be included in new Appendices to Parts I, II and III of Annex 6. As concerns recommendation (d), the definition (already contained in the Manual) for the State of the principal location of a general aviation operator will be added to Parts II and III of Annex 6. For remotely piloted aircraft systems, consideration will need to be given to introducing similar Standards for the Agreement

Summary in the new Annex 6 Part IV, which is anticipated to be adopted in March 2022. For aerial work aircraft, there are no related ICAO provisions as such, but these aircraft could be considered to be covered by Annex 6, Part II, with respect to Article 83 *bis*.

4.2.4 In line with recommendation (e), a State Letter to the then 22 ICAO Contracting States not parties to Article 83 *bis* was issued from the Secretary General on 29 July 2016. The letter urged those States to complete any necessary changes in their national law and to ratify the Article 83 *bis* Protocol as soon as possible. Pending such ratification, the States concerned were urged to provide ICAO with relevant information on their policies and practices regarding Article 83 *bis*. A repository of responses has been established and is available in the Treaty Collection page of the ICAO website. Since issuance of the State Letter, four States have become a Party to the Protocol, so reducing the number of non-Parties to [18] (as at 1 August 2018) and two States advised of their policy.

5. ACTION BY THE COMMITTEE

5.1 The Committee is invited to note the decision of the Council, and the subsequent actions taken, on this item.

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