



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION

Agenda Item 28: Regulation and organization of airports and air navigation services

DEBTS RECOVERY FOR AIR NAVIGATION SERVICES

(Presented by Belarus, Georgia, the Republic of Moldova, Ukraine and Uzbekistan)

SUMMARY

Establishment of the international mechanism of debts' recovery under the aegis of ICAO .

Action by the Assembly is in paragraph 3.

1. INTRODUCTION

1.1 According to regulations and documents of ICAO, air traffic service (ATS) providers shall cover their expenses by charging users for provided air navigation services (ANS). In case of user's failure to meet commitments on payment of above mentioned services the burden of costs settlement, as a rule, lays on ATS providers and other users – bona fide payers. Consequences of this may lead to the decline in a pace of development and efficiency of Air Traffic Management (ATM).

1.2 ICAO member States differ from each other in legal standards regulating order of recovery, accounting and writing off debts of legal entities. As a rule, those legal standards leave out of account existing specificity of activity of international airlines and ATS providers.

1.3 Presently the international civil aviation has no clear legal standards that regulate an order of forced debt recovery for air navigation services through legal measures. Within framework of national legislation it is difficult to settle controversies that are out of its competence. Therefore principles of debts recovery settlement might be as follows:

¹ English and Russian versions provided by Belarus, Georgia, the Republic of Moldova, Ukraine and Uzbekistan.

- joint actions of ATS providers on debts' recovery for the provided ATS should be built on the basis of mutual respect and good will with regard to users;
- legal procedures should be used only when application of all possible debts' recovery methods based on good will of ATS providers and users proved to be ineffective.

1.4 As a rule, ATS providers do not have legal documents regulating their relations with particular users. However, such documents are required in some countries upon consideration of suits on debts' recovery. Therefore, it should be pointed out that presently there is no international legal mechanism, which can settle all disputable issues on debt's recovery with appropriate expertise.

2. **RECOMMENDED METHODS OF SOLVING THE PROBLEM**

- 2.1 In order to regulate the debts recovery procedures for the provided ANS it is proposed:
- a) to consider the documents, confirming the actual provision of ANS as documents in support, which regulate the relationship between ANS provider and the definite airspace user (see the list of the above documents in Annex 1);
 - b) to elaborate the International Legal Base, regulating the debts' recovery enforcement for the provided ANS. This Base should include the pre-trial precaution procedure of the reclamation for outstanding and late-paid ANS accounts to airspace user; classification of the debts for ANS and the basis for the debts amortization to the loses of ANS providers (Annex 2, 3). It is also proposed to establish the international mechanism of debts' recovery under the aegis of ICAO.
 - c) to supplement the present order of licensing and issuing the certificate of aircraft operator to the airlines, envisaging the responsibility of the aircraft operators for untimely payment for ANS and the relevant penalties.

3. **ACTION BY THE ASSEMBLY**

- 3.1 The Assembly is invited to entrust the Secretariat to:
- a) develop ICAO's manual on the procedures that will facilitate introduction of forced debt recovery in favor of an ATS provider through application of pre-trial and court procedures and settlement of disputes that could arise in this connection;
 - b) analyse an opportunity of establishment of the international mechanism of debts' recovery under the aegis of ICAO; and
 - c) recommend Contracting States to supplement the present order of licensing and issuing the certificate of aircraft operator to the airlines, envisaging the responsibility of the aircraft operators for untimely payment for ANS and the relevant penalties.

APPENDIX A

**LIST OF DOCUMENTS CONFIRMING AIR NAVIGATION SERVICES
PROVISION**

1. Request for the air space use or flight plan from the aircraft operator submitted according to Doc. ICAO 4444 as well as AIP, AIC and NOTAM.
2. Invoice for the provided air navigation services or financial reports of international operating agencies like EUROCONTROL, IATA or other ones.
3. Register of fulfilled flights.

APPENDIX B

PROCEDURE FOR CLAIM SUBMISSION TO USERS FOR OUTSTANDING BILLS BEFORE COURT DEBT RECOVERY

1. Claims against debtor airlines are submitted by ATS provider or state's authorized body in accordance with a generally accepted legal practice enclosing the documents listed in Annex 1.
2. The order of submission claims for debt recovery before legal procedure carries out by means of:
 - a) submission a claim with indication of a total amount of debt and payment term to the user;
 - b) notice stating that in the case of non-payment outstanding debt in fixed term or non-recognition of it:
 - a suit will be brought to the corresponding arbitration court against debtor airline imposing court's costs on it;
 - information will be sent to the appropriate civil aviation body with the purpose to consider issue on interruption of a license;
 - sanctions will be apply in respect of suspension of air navigation services or arrest of aircraft.

APPENDIX C

CLASSIFICATION OF DEBTS FOR AIR NAVIGATION SERVICES AND ARGUMENTS FOR THEIR WRITING OFF AT THE EXPENSE OF ATS PROVIDERS

1. The debts are considered to be doubtful if there is no any opportunity and perspectives to recover the amounts. Debts of this kind should be those that still have been unpaid by user for 6 months since due date (after billing).
2. Bad debts are the debts of the airlines that have not settled the bills for over 6 months after billing.
3. In financial accounting doubtful and bad debts should be recorded separately.
4. The grounds for writing off bad debts for air navigation services may be as follows:
 - a) come into force court decision on airline's bankruptcy or liquidation;
 - b) documents from civil aviation authorities keeping the airline register on liquidation of the debtor airlines;
 - c) external documentation and suggestions on writing off international operating agencies' debts, a matter of record including correspondence with the debtors, cables, faxes, messages etc.; and
 - d) expiry of legal limitation.

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