



## **FACILITATION PANEL (FALP)**

### **EIGHTH MEETING**

**Montréal, 24-28 November 2014**

#### **Agenda Item 2: Amendments to Annex 9**

#### **PROPOSALS FOR AMENDING ICAO ANNEX 9 ON AIR CARRIER LIABILITY**

(Presented by the European Civil Aviation Conference)

#### **SUMMARY**

As part of its work programme in the field of Facilitation, the European Civil Aviation Conference (ECAC) discussed the issue of air carrier liability in 2013 and 2014. On the basis of the answers received to the questionnaire that had been sent to all of its 44 Member States in 2013, the ECAC Facilitation Working Group at its 48<sup>th</sup> meeting (FAL/48, 29 April 2014) endorsed two proposals for amending ICAO Annex 9 Standards 3.33 and 5.14.

#### **Action by the FAL Panel:**

The Facilitation Panel is invited to consider the proposed amendments to ICAO Annex 9.

### **1. INTRODUCTION**

1.1 An ECAC Study Group was established to examine the different aspects of air carrier liability, including the current practices in Europe, and ICAO Annex 9 Standards and Recommended Practices (SARPs). With the objective of collecting information about the practices currently applied in ECAC Member States, ECAC circulated a questionnaire addressing the various aspects of air carrier liability. Seventeen countries returned the completed questionnaire.

1.2 The analysis of the responses received indicated that there would be an added value in clarifying two Annex 9 Standards which refer to the term “precaution”. As a consequence, the ECAC Facilitation Working Group adopted some proposals for amending Annex 9 at its April 2014 meeting, and which are presented in this paper.

## 2. DISCUSSION

2.1. Annex 9 refer to the necessary/adequate<sup>1</sup> precautions that aircraft operators shall take, as follows:

- Standard 5.14 states: *“Contracting States shall not fine aircraft operators in the event that arriving and in-transit persons are found to be improperly documented where aircraft operators can demonstrate that they have taken adequate precautions to ensure that these persons had complied with the documentary requirements for entry into the receiving State.”*
- Standard 3.33 states: *“Aircraft operators shall take necessary precautions at the point of embarkation to ensure that passengers are in possession of the documents prescribed by the States of transit and destination for control purposes as described in this chapter.”*

2.2. However, Annex 9 does not specify what measures constitute necessary/adequate precautions. Furthermore, the use of “adequate” in one Standard and “necessary” in another Standard creates some confusion, both terms may refer to different obligations for air carriers. Consequently, there is some legal uncertainty on what is required from air carriers.

## 3. PROPOSALS FOR AMENDING ANNEX 9

3.1 First of all, ECAC would like to propose the introduction of a new definition of ‘necessary precautions’:

“Verifications carried out by adequately trained staff members of the aircraft operator or the company operating on behalf of the aircraft operator, at the point of embarkation, in order to ensure that every person holds a valid travel document and, where applicable, the visa or residence permit required to enter the receiving State. These verifications shall ensure that any obvious irregularity (such as impersonation, counterfeit or forgery), i.e. irregularities through a normally careful examination, is detected.”

3.2 Secondly, ECAC suggests the following amendment to Standard 5.14, which would harmonise the terminology used by replacing “adequate” by “necessary”. This would ensure consistency between Standard 3.33 and Standard 5.14:

“Contracting States shall not fine aircraft operators in the event that arriving and in-transit persons are found to be improperly documented where aircraft operators can demonstrate that they have taken ~~adequate~~ necessary precautions to ensure that these persons had complied with the documentary requirements for entry into the receiving State (e.g. by supplying sufficient evidence that the required documents were presented to it and that they did not show any obvious irregularity). Airlines will not be fined if the impersonation or falsity was only recognizable by using specialized equipment (i.e. other equipment than basic equipment like a simple magnifier) and/or with the in-depth knowledge of document experts.”

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<sup>1</sup> The difference between ‘adequate’ and ‘necessary’ is being discussed in this paper.

3.3 Finally, ECAC proposes to change “passengers” to “persons” in Standard 3.33 and for consistency with Standard 5.14: “Aircraft operators shall take necessary precautions at the point of embarkation to ensure that ~~passengers~~ persons are in possession of the documents prescribed by the States of transit and destination for control purposes as described in this chapter.”

#### 4. ACTION BY THE PANEL

4.1 The Facilitation Panel is invited to consider the proposed amendments to ICAO Annex 9.

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