



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

**Agenda Item 2: Examination of Key Issues and Related Regulatory Framework
2.8: Implementation of ICAO policies and guidance**

STATUS OF ICAO POLICIES ON AIR TRANSPORT REGULATION

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This working paper addresses the relevance and effectiveness of existing ICAO policies and guidance on the economic regulation of international air transport. It discusses State application and implementation of ICAO policies and guidance and proposes possible measures to promote use and obtain the broadest possible adherence so as to create a more favourable and harmonized regulatory environment for air transport development.

Action: The Conference is invited to:

- a) review the information and assessment presented in this paper;
- b) endorse the conclusions presented in paragraph 4; and
- c) adopt the recommendations presented in paragraph 5.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 ICAO has developed extensive policy and guidance material on air transport regulation and liberalization for use by States, including *Policies on Taxation in the Field of International Air Transport* (Doc 8632) and *Policies on Charges for Airports and Air Navigation Services* (Doc 9082). While many States followed these ICAO policies, in some cases the policies are not properly applied or implemented. It should be noted that the policies and guidance are of a recommendatory nature for optional use by States.

2. ICAO WORK AND RELATED POLICY AND GUIDANCE

2.1 Member States are expected to comply with ICAO Standards and Recommended Practices (SARPs) where States cannot comply, the State must file a difference before the effective date of compliance with the SARPs. However, ICAO policies in the field of economic regulation are adopted at a global level by ICAO Member States and while these policies are agreed upon by the international aviation community and, as such, imply a moral obligation for State compliance, the policies are not mandatory; application, implementation or compliance are at the States' discretion.

2.2 Over the years, the ICAO Assembly recognized the importance of such policies and, in Assembly Resolution A37-20 – *Consolidated statement of continuing ICAO policies in the air transport field*, urged States to give due regard to the policies and guidance material developed by ICAO on economic regulation of international air transport. Accordingly, the emphasis of the Secretariat work pursuant to the 1994 and 2003 Air Transport Conferences was on promoting and assisting States in implementing a range of ICAO policy and guidance on economic regulation.

2.3 Existing ICAO policy and guidance material on the regulation of international air transport is contained mainly in two publications: Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*, and Doc 9626, *Manual on the Regulation of International Air Transport*.

2.4 Doc 9587 is a comprehensive document of all formal policies and guidance material adopted by ICAO concerning the economic aspects of international air transport regulation. In addition to relevant Articles of the *Convention on International Civil Aviation* (Chicago Convention), the International Air Services Transit Agreement, Doc 9587 also contains relevant Assembly and Council resolutions, decisions, as well as conclusions, recommendations and declarations of air transport conferences. It also contains Council endorsed guidance material, such as the ICAO Template Air Services Agreements (TASA), and recommendations adopted by the Air Transport Regulation Panel (ATRP). The present version of Doc 9587 is the third edition, published in 2008.

2.5 Doc 9626 both complements and supplements Doc 9587. It contains descriptive and analytical material on existing regulatory processes and structure at the national, bilateral and multilateral levels, as well as regulatory content and key issues. Doc 9626 provides a comprehensive and objective source of information regarding the many facets of international air transport regulation. It provides useful reference material for regulatory practitioners, and for training purposes. The current version is the second edition published in 2004.

2.6 Information on the adherence of States to the ICAO policies on taxation is made available to States in the Supplement to Doc 8632. As for ICAO policies on charges, information is made available through a report on the implementation of the recommendations of the 2008 ICAO Conference on the Economics of Airports and Air Navigation Services (CEANS), Doc 9908. Both policies and supplementary information are made available on the ICAO public website. It is to be noted that more than half of the Member States do not provide ICAO with information on adherence to the policies. While the majority of States reporting such information adhere to the policies, some reported partial adherence, and others did not indicate the level of implementation.

2.7 With regard to the importance and use of ICAO guidance material by States, the ICAO Secretariat often receives positive feedback from States through the ICAO Regional Offices or at workshops and seminars. Some States have reported the incorporation of ICAO model clauses in bilateral air services agreements. However, the extent of the reporting has not been quantified in a systematic

manner. Likewise, some industry organizations also supported and promoted the use of ICAO policies and guidance.

3. DISCUSSION

3.1 As outlined above, ICAO addressed many of the regulatory issues and produced a wide range of policies and guidance material to ensure the safe and orderly growth of international air transport. As recommended by ATRP/11, a survey of States on the relevance and use of ICAO policies and guidance was conducted in October 2012 and revealed that over 95 per cent of the responding States (58 out of 61) were aware of the existing policies and guidance material and over 83 per cent (51 out of 61) considered the documentation relevant. Some States suggested that ICAO should review and update the guidance material to take into account new developments in regulatory practices.

3.2 The survey demonstrates that the main problem is not a lack of awareness of ICAO policies and guidance or their relevance but rather a lack of implementation, probably due to their non-binding nature. Such policies were developed to promote common interest for the international aviation community. Adherence to the policies is in the best interest of States, promotes the efficient and orderly development of international air transport, and is contributing effectively to trade and economic development. The lack of implementation indicates a compelling need to find ways by which to give more “teeth” to the ICAO policies, and increase efforts to encourage State implementation. Hence, the access to, and promotion of, the policies is an issue that requires particular attention if the policies are to remain of relevance and value.

3.3 It is worth noting that the 2008, CEANS considered a similar agenda item regarding the implementation of ICAO policies on charges and the need for States to be “morally committed” to the policies. The Conference concluded, *inter alia*, to encourage States to adopt the principles contained in Doc 9082 in national legislation, regulation or policies and to incorporate them into future air services agreements so as to ensure compliance by airports and ANSPs. These conclusions have also been considered as important measures to enhance adherence to, and implementation of, the ICAO policies on taxation (see ATConf/6-WP/10).

3.4 With respect to ways to promote the policies and guidance material, regional workshops and seminars are effective tools not only for States to learn about the ICAO policies and guidance, but also for the ICAO Secretariat to obtain feedback on the policies and on State needs. These events also provide an excellent opportunity for States to exchange information on how to best implement the policy guidance and how to overcome implementation difficulties. It should be noted, however, that the reduced number of workshops/seminars may impact the ability of States to implement ICAO policies and guidance material.

3.5 In addition to workshops and seminars, the Secretariat has been exploring, with partners in the industry, the development of a series of appropriate training courses to promote the use and implementation of ICAO policies and guidance in the air transport field. In that context, ICAO is currently developing with CAE¹ e-learning courses on air transport regulation. Electronic dissemination has become an important means by which to provide information and also an easier means for States and users to report to ICAO on implementation of the policies by States, and other users. ICAO could improve its use of these measures as possible means to promote awareness and understanding of the relevant policies and guidance.

¹ CAE is a global leader in modelling, simulation and training for civil aviation

3.6 It is essential that ICAO policies in the economic field be given more “teeth”, as this will support the role ICAO is to play for the sustained economic development of the air transport system. In this context, re-affirming this role is imperative so that ICAO can continue to assist its Member States in developing policies and practices that facilitate the globalization, commercialization and liberalization of air transport.

4. **CONCLUSIONS**

4.1 In light of the discussion above, the following may be concluded:

- a) the leadership role of ICAO in economic regulation of international air transport, and in the development of comprehensive policy guidance to assist States in the creation of a favourable regulatory environment for the sustainable development of air transport and the benefit of all stakeholders, is indisputable;
- b) ICAO policies and guidance material on the economic aspects of international air transport regulation remain relevant but need to be kept current and responsive to changing situations and the needs of States and aviation stakeholders; and
- c) there is a need for ICAO, in cooperation with the industry, to ensure widespread awareness and improved implementation of its policies as well as use of its guidance material on economic regulation.

5. **RECOMMENDATIONS**

5.1 The following recommendations are proposed for consideration by the Conference:

- a) States should recognize the importance and relevance of ICAO policies and guidance and give due regard to them in regulatory practices;
- b) States should exert all effort to ensure adherence to commitments relating to provisions of Assembly Resolutions in the air transport field;
- c) ICAO should encourage States to incorporate ICAO principles, policies and guidance in national legislations, rules and regulations, and in air services agreements;
- d) ICAO should continue to promote its policy guidance on the economic regulation of international air transport, and encourage States to use ICAO guidance in their regulatory practice;
- e) ICAO should ensure that policies, guidance and other material related to economic regulation remain relevant, current, and responsive to changing situations and requirements of States; and
- f) ICAO should continue to consider additional ways and means by which to enhance the status of its policies for the sustained development of the air transport system.