



**WORKING PAPER**

**DANGEROUS GOODS PANEL (DGP)  
MEETING OF THE WORKING GROUP OF THE WHOLE**

**Montréal, 15 to 19 October 2012**

**Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18 — *The Safe Transport of Dangerous Goods by Air***

**STATE OF OVERFLIGHT IN THE EXEMPTION PROCESS**

(Presented by the Secretary)

**SUMMARY**

This working paper invites the working group to continue discussions on ways to address difficulties encountered in obtaining exemptions from States of Overflight which were held at DGP/23 and DGP-WG/LB/1.

Action by the DGP-WG is in paragraph 5.

**1. INTRODUCTION**

1.1 There was much discussion at DGP/23 and at DGP-WG/LB/1 on ways to address difficulties in obtaining exemptions from States of Overflight. Discussions continued after the working group meeting through correspondence. Paragraphs 2, 3 and 4 of this working paper summarize the discussions.

1.2 The subject was also addressed at previous DGP meetings, when removing State of Overflight from the exemption process was considered but not supported in fear that this might infringe on a State's sovereign right over its airspace.

**2. DGP/23 AND ANC DISCUSSIONS**

2.1 An amendment to the general applicability requirements of Annex 18 was proposed at DGP/23 (see Appendix A) which involved an expedited process where State of Overflight was retained, with primary responsibility for the granting of exemptions placed on the States of Origin, Transit, and Destination. States potentially subject to overflight would be provided with a finite period of time to review an exemption request and, in the absence of a reply, overflight permission would be implied. Although there was support for the general philosophy of this proposal, there were concerns raised with whether or not a lack of a response could unequivocally imply that an exemption had been granted. These concerns were also raised by the Air Navigation Commission (ANC) during its review of the DGP/23

Report. The ANC felt that an in-depth legal analysis was needed before any consideration could be given to an amendment.

### **3. DGP-WG/LB/1 DISCUSSIONS**

3.1 A legal officer from the Secretariat drafted text as a basis for discussion at the DGP-WG/LB/1 meeting (see Appendix B). It was stressed that the text was merely demonstrative and intended as a means to suggest a philosophy which should be considered in developing a Standard. The legal officer explained that in order to ensure a State's sovereignty was respected, the Standard would need to be more affirmative and less implied. The draft text would deem an exemption to be automatically granted by the State of Overflight based on a triggering event, such as the receipt of notification of exemptions having been granted by the State of Origin, Operator, Transit and Destination. The State could then be given a predefined time period in which to rescind the exemption. The actual triggering event would need to be determined by the DGP, based on what would be operationally feasible.

3.2 The working group meeting was encouraged by the intent of the Standard but remained concerned with the assumption that the entity receiving the notification of an exemption would be the entity responsible for considering exemptions or even if the notification was received at all. Time for discussion on State of Overflight was limited at DGP-WG/LB, since the goal of the working group was to address safety concerns related to lithium batteries. Panel members were therefore encouraged to continue discussions through correspondence.

### **4. DGP DISCUSSIONS THROUGH CORRESPONDENCE**

4.1 Following DGP-WG/LB/1, panel members were asked to provide comments on the draft Standard prepared at DGP-WG/LB/1 (see Appendix B). Many of the comments received reiterated those voiced at DGP/23 and DGP-WG/LB/1. Concerns expressed/comments raised include:

- a) how to ensure the right entity receives the notification or whether the information was received at all;
- b) waiting a set number of days to determine if an exemption was automatically granted would be inefficient, particularly in cases when a State of Overflight had no plans to amend or revoke the request;
- c) not being able to request exemptions from States of Overflight until after the exemptions from all other States concerned were received would also result in inefficient use of time;
- d) the new text did not address difficulties raised by the DGP related to not knowing which States a flight would overfly, making it difficult to know which States to obtain approval from; and
- e) care was needed to avoid introducing new complications that would hamper the transport of dangerous goods requiring exemptions which, despite difficulties, were nevertheless being transported under the current system.

***Revised proposals***

- 4.2 Two proposals were brought forward through correspondence:
- a) a revision to the DGP-WG/LB/1 text to require the State of Overflight to acknowledge receipt of the exemption to the operator (see Appendix C). This proposal was presented to the group to address concerns outlined in 5.1 b) above; and
  - b) revisiting the possibility of removing State of Overflight from the exemption process. It was argued that concerns related to sovereign rights over a State's airspace could be eliminated by that State filing a difference to the new Standard.

**5. STATE AUTHORITY CONTACT LIST**

5.1 Ensuring that an exemption request is made to the proper authority is not possible without a complete and up-to-date list of appropriate authorities. Many States have yet to notify ICAO of the appropriate authority within their administrations responsible for ensuring compliance with Annex 18 as required by paragraph 2.7 of Annex 18 and detailed in Part S;1.1.1 of the Supplement to the Technical Instructions. In this regard, it is anticipated that ICAO's continuous monitoring approach (CMA) system will support efforts to acquire this information and to keep it up-to-date.

5.2 CMA is a system developed under ICAO's Universal Safety Oversight Audit Programme (USOAP). It provides a mechanism for ICAO to collect safety information from Member States and other stakeholders, to analyse this information using a risk-based approach in identifying and prioritizing appropriate activities to be carried out by ICAO, and to monitor States' corrective actions as they progress towards the achievement of global aviation safety. ICAO's Dangerous Goods Section is working closely with the Continuous Monitoring and Oversight Section to expand the scope of dangerous goods-related information collected from States and to increase the visibility of dangerous goods deficiencies discovered through the USOAP/CMA process.

5.3 Additional information on USOAP/CMA can be found on ICAO's public website at <http://www.icao.int/safety/CMAForum>.

**6. ACTION BY THE DGP-WG**

- 6.1 The DGP-WG is invited to consider whether:
- a) the amendments presented in Appendices A, Appendix B or Appendix C can be used as a basis for amendment to Annex 18; and
  - b) removing State of Overflight from the exemption process should be revisited.

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## APPENDIX A

### DRAFT AMENDMENT TO ANNEX 18 PROPOSED BY DGP/23

#### CHAPTER 2. APPLICABILITY

##### 2.1 General applicability

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See paragraph 1.1 of the DGP/23 report:

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2.1.4 For the State of Overflight, if none of the criteria for granting an exemption are relevant, an exemption may be granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved. The State of Overflight shall initially respond to the request to grant an exemption as soon as practicable but in any event within fourteen calendar days of receipt of the exemption granted by the State of Origin. In the absence of an initial response within that time, the exemption request shall be deemed to have been accepted.

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## APPENDIX B

### DRAFT AMENDMENT TO ANNEX 18 PRESENTED AT DGP-WG/LB/1 (PREPARED BY ICAO'S LEGAL BUREAU AS NOTIONAL TEXT)

#### CHAPTER 2. APPLICABILITY

##### 2.1 General applicability

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See paragraph 3.7 of the DGP-WG/LB/1 Report:

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2.1.4 For the State of Overflight, if none of the criteria for granting an exemption are relevant, an exemption may be granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved. Upon receipt of notification of exemptions having been duly granted by the States of Origin, Operator, transit and destination, the State of Overflight shall automatically grant an exemption based on an equivalent level of safety in air transport having been achieved. In the interests of safety and of minimizing interruptions to the international transport of dangerous goods, the State of Overflight shall notify the operator within fourteen calendar days of receiving said notice if this automatic exemption is subsequently amended or revoked.

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APPENDIX C

DRAFT AMENDMENT TO ANNEX 18 PROPOSED THROUGH CORRESPONDECE  
(FOLLOWING DGP-WG/LB/1)

2.1.4 For the State of Overflight, if none of the criteria for granting an exemption are relevant, an exemption may be granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved. Upon receipt of notification by an operator of exemptions having been duly granted by the States of Origin, Operator, transit and destination, the State of Overflight shall automatically be deemed to have granted an exemption based on an equivalent level of safety in air transport having been achieved. ~~In the interests of safety and of minimizing interruptions to the international transport of dangerous goods, the State of Overflight shall notify the operator within fourteen calendar days of receiving said notice if this automatic exemption is subsequently amended or revoked.~~ Acknowledgment of receipt or notification that the deemed exemption is amended or revoked shall be provided to the operator as soon as practicable.

*Note.— Operators should not fly over States until such time as acknowledgement from that State has been received.*

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