



International Civil Aviation Organization

Safety Enhancement Implementation

Group Fourth Meeting (SEIG/4)
(Cairo, Egypt, 23-25 October 2022)

Agenda Item 2: Regional Performance Framework for Safety

**PROPOSAL TO DEVELOP MID REGIONAL GUIDANCE MATERIAL
FOR ISSUING AVIATION EXEMPTIONS**

(Presented by State of Qatar)

SUMMARY

The Safety Stream reviewed HLCC 2021-WP/79-SAF/57, presented by Qatar on behalf of the Member States of the Arab Civil Aviation Organization (ACAO), which called for the development of additional guidance material to assist States when considering exemptions. The Safety Stream noted that USOAP data indicated a high level of unsatisfactory Protocol Questions (PQs) on exemptions, which was indicative of States not having the basic capabilities to properly assess and grant exemptions. The Safety Stream agreed that additional support was needed in the area.

This paper focuses on the need for harmonized mechanism to manage the aviation exemption by various CAAs in the ICAO contracting States.

In addition, the paper provides a brief regarding the legal status on global safety obligations in conformance with Article 40 of the Chicago Convention and relevant implications in case of non-adherence/non-compliance activities impacting international navigation.

Action by the meeting is at paragraph 3.

REFERENCES

- Doc 10160, Report of the High-Level Conference on COVID-19 (Montréal, 12 to 22 October 2021). Report
- Doc 9734, Safety Oversight Manual, Part A — The Establishment and Management of a State Safety Oversight System

1. INTRODUCTION

1.1 Over the last Decades, aviation has continued to improve upon an impressive safety harmonization standard due in large part to the increasing reliance on risk-based decision-making, as well as greater partnership between stakeholders. This progress should be continued; however, the international aviation community must remain mindful that future challenges and sustainability will require an even greater degree of cooperation, collaboration, and harmonization to address global safety issues.

2. DISCUSSION

2.1 Aviation Exemption process is a dynamic rather than a static concept, it requires, first and foremost technical expertise. It is not limited to exclusive dimension. It has policy, legal and technical dimension, exemptions are among the topics that the contracting states must be aware of at the minimum how to deal with them, especially because the matter is considered as part of a mechanism of exemption from the application of national civil aviation regulations which in turn may be inspired from the aviation international standards.⁽¹⁾

2.2 Issuance of exemptions must be without prejudice to the obligation of air safety which is considered as an obligation towards the international community, one of the characteristics of such obligation is their universality and non- reciprocity, it is an obligation on each contracting state towards the all contracting states , air safety obligation is the concern of all contacting states, Whereas, the breach of legal obligations may result in harm to the parties in the legal relations, so the process of issuing exemptions must not lead to a breach of those obligations.⁽²⁾

2.3 The difficulties might be faced by States in the process of issuing the exemption in the absence of ICAO guidance materials, where such guidance materials have been made briefly in Document 9734 part A under 3.2.7.1, 3.2.7.2 & 3.2.7.3., As the matter may require more indicative details to assist contracting states in avoiding any strategic risks resulting from the inappropriate issuance of some exemptions that may affect international air navigation.

2.4 Contracting states must have the guidance material that gives everyone the minimum level of know-how, both at the organizational level and managing the process of issuing exemptions, and how to evaluate risks, which is not limited to operational risks but may extend to include strategic risks.

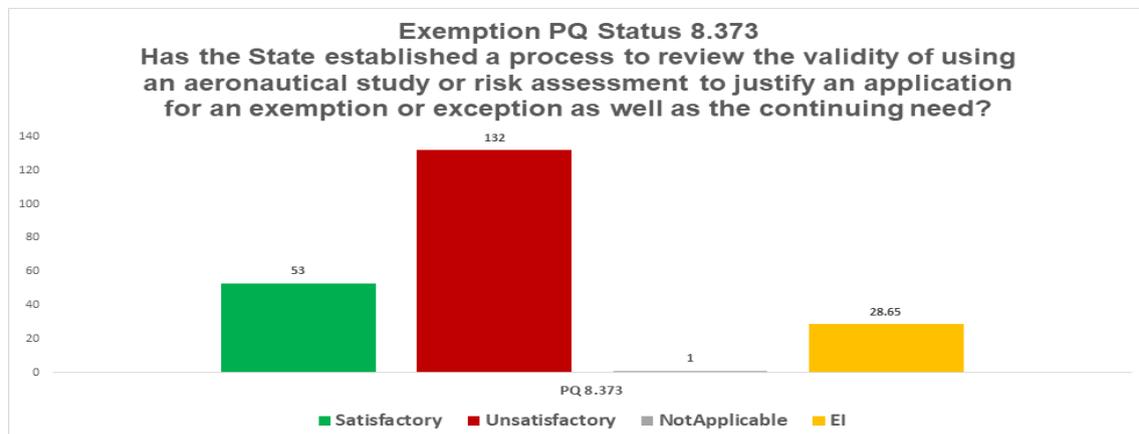
2.5 Fulfilment of the safety obligation is not the only justification for proposing that the International Civil Aviation Organization develop guidance material on how to issue civil aviation exemptions, as this was evident in the great effort made by the International Civil Aviation Organization during the COVID-19 pandemic. It is recalled that States were authorized to temporarily depart from ICAO Standards without compromising safety and security. The process has now been replaced by the targeted exemptions (TEs) which have been introduced on specific ICAO provisions.

2.6 As known the purpose of a TE system is threefold to provide for a structured approach to the notification and dissemination of temporary exemptions to specific Standards relating to the COVID-19 pandemic ,to allow States to review TEs authorized by another State, including those that are associated with Article 40, and determine whether to accept flights using such TEs within their territory ,and to allow for verification by a State's foreign operator inspector that an operator or individual is complying with the conditions of the TE imposed by the State of the Operator.

¹ - see , (Jiefang Huang ,Aviation Safety through the Rule of Law, ICAO Mechanism and Practices, Kluwer law international ,2009) 157-160

² -*Ibid*

2.7 The figure below based on USOAP-CMA data shows the lack of implementation related to the process to review the validity of using an aeronautical study or risk assessment to justify an application for an exemption or exception.



2.8 There is significant concern that any exemption issued in accordance variant process may transfer the risk to others rather than improve aviation safety or achieve the aviation operation sustainability.

3. ACTION BY THE MEETING

3.1 The meeting is invited to establish an Action Group to develop MID- Regional appropriate guidance materials to assist MID Region States in the issuance of exemptions related to temporary deviations from standards impacting Articles 38 and 40 of the Chicago Convention.

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