Международная организация гражданской авиации

DGP/26-WP/41*
4/9/17

РАБОЧИЙ ДОКУМЕНТ

ГРУППА ЭКСПЕРТОВ ПО ОПАСНЫМ ГРУЗАМ (DGP)

ДВАДЦАТЬ ШЕСТОЕ СОВЕЩАНИЕ

Монреаль, 16–27 октября 2017 года

Пункт 6 повестки дня. Решение, по возможности, дополнительных рабочих вопросов, определенных Аэронавигационной комиссией или Группой экспертов:
6.4: Сфера применения Приложения 18 ***(Рабочая карточка DGP.004.01)***

ПРЕДЛАГАЕМАЯ ПОПРАВКА К ПРИЛОЖЕНИЮ 18 РИСКИ, ВЫЗВАННЫЕ НЕЗАДЕКЛАРИРОВАННЫМИ ОПАСНЫМИ ГРУЗАМИ

(Представлено секретарем)

АННОТАЦИЯ

В настоящем рабочем документе основное внимание уделяется вопросам, поднятым в ходе обсуждений в Группе экспертов DGP в отношении сферы применения Приложения 18 и предлагаемой поправки к Приложению 18, согласованной на совещании рабочей группы DGP в 2017 году, которая предусматривает проведение обязательной подготовки в области опасных грузов для персонала организаций, которые обычно не занимаются опасными грузами (см. п. 3.5.4.1 доклада DGP-WG/17). В рабочем документе содержатся:

a) рекомендации Юридического управления ИКАО о возможности осуществления поправки с юридической точки зрения;

b) краткое изложение информации, представленной государствами относительно надзора за грузовыми экспедиторами;

c) предлагаемая поправка к Приложению 18 в качестве другого подхода к устранению рисков, связанных с попаданием незадекларированных опасных грузов на воздушный транспорт.

Действия Группы экспертов DGP: Группе экспертов DGP предлагается:

a) принять к сведению содержание настоящего рабочего документа;

b) согласиться с предлагаемой поправкой, содержащейся в добавлении B;

c) создать рабочую группу для разработки вспомогательного инструктивного материала.

* Переведены только аннотация и добавление B.

1. INTRODUCTION

1.1 An amendment to the training requirements in Chapter 10 of Annex 18 — *The Safe Transport of Dangerous Goods by Air* was proposed to the DGP working group meeting held from 24 to 28 April 2017 in Montréal (DGP-WG/17) which mandates dangerous goods training for entities not knowingly handling dangerous goods (see paragraph 3.5.4.1 of the DGP-WG/17 Report provided in DGP/26-WP/3). The amendment is provided in the working paper containing draft amendments to Annex 18 agreed by DGP-WG/17 (DGP/26-WP/10). The majority of panel members strongly supported the amendment, although there were a large number that did not.

1.2 The amendment was developed in follow-up to discussions on whether or not States had oversight authority over entities not knowingly involved with transporting dangerous goods by air (see paragraph 3.2.1.6 of the DGP-WG/17 report and paragraph 1.2 of the DGP/25 Report). Although the existing training requirements in the Technical Instructions mandate training of freight forwarders processing and handling general cargo, some panel members reported that this was not possible within the dangerous goods legal framework of their States. The ICAO Legal Bureau's position provided at DGP/25 was that training for freight forwarders not handling dangerous goods could be recommended but not mandated through Annex 18 (see paragraph 1.2 of the DGP/25 Report). While there were differences of opinion among panel members on what was legally possible, there was recognition that the risk of undeclared dangerous goods entering the air transport stream needed to be mitigated.

2. ADVICE FROM THE ICAO LEGAL BUREAU WITH RESPECT TO THE PROPOSED AMENDMENT TO THE TRAINING REQUIREMENTS IN ANNEX 18

2.1 The Legal Bureau was consulted for advice with respect to the feasibility of implementing the proposed amendment to the training provisions in Annex 18 from a legal perspective. Their opinion remains unchanged from the one given to DGP/25 (see paragraph 1.2 above). Their response is provided in Appendix A.

3. RESPONSES TO STATE LETTER RELATED TO OVERSIGHT AUTHORITY OF FREIGHT FORWARDERS

3.1 A letter was sent to States in May 2016 requesting specific information related to compliance with Annex 18, including an indication of the extent of oversight authority over freight forwarders (State letter AN 11/27-16/46). Sixty-one States responded. A summary of the responses related to freight forwarders is provided below.

3.2 When asked whether there was oversight authority of freight forwarders handling cargo other than dangerous goods within their State:

a) thirty-six States reported that the civil aviation authority (CAA) had oversight authority;

b) nine States reported that other agencies within their States had oversight authority; and

c) sixteen States reported that there was no oversight authority within their State.

3.3 When asked which authority was responsible for oversight of freight forwarders handling dangerous goods within their State:

a) forty-seven States reported it was the CAA;

b) five States reported that it was an agency other than the CAA; and

c) nine States reported that there was no oversight authority within their State.

3.4 When asked whether training programmes of freight forwarders handling cargo other than dangerous goods were subject to approval by the CAA within their State:

a) twenty-six States reported that they were (five under the authority of an agency other than the CAA);

b) twenty-eight States reported that they were not; and

c) seven States did not answer the question.

3.5 When asked whether training programmes of freight forwarders handling dangerous goods as cargo were subject to approval of the CAA within their State:

a) thirty-six States responded that they were (five under the authority of an agency other than the CAA);

b) nineteen States responded that they were not; and

c) six States did not answer the question.

4. CONCLUSION

4.1 There has never been any disagreement during discussions on the scope of Annex 18 as to whether or not the risk of undeclared dangerous goods entering the air transport stream needs to be mitigated. All panel members agree it does. All panel members also agree that entities processing general cargo can play a role in preventing undeclared dangerous goods from entering the air transport stream and that training is one measure that may help in this regard. However, mandating training for entities not performing dangerous goods functions is not legally feasible in the States of some panel members. Additionally, based on responses from States (see paragraph 2), not all States have oversight authority of freight forwarders and not all are mandating training of freight forwarders despite the requirement in the Technical Instructions for all categories of personnel specified in Tables 1-4, 1-5 or 1-6 to be trained. This, combined with the advice from the ICAO Legal Bureau stating that training cannot be mandated, suggests that the amendment proposed will not result in the risk being mitigated globally.

4.2 Even if mandating training for entities not knowingly involved with processing dangerous goods was feasible for all States, this alone would not fully mitigate the risk of undeclared dangerous goods entering the air transport stream. Other measures need to be implemented by both regulators and service providers. These may differ depending on the risk profile within each State. For some States, the risk of undeclared dangerous goods entering the air cargo stream may not justify the cost of mandating training. Other measures may be more effective in mitigating the risk. Currently, the only provisions related to undeclared dangerous goods in Annex 18 are the requirements in Chapter 12 for

States to establish procedures for investigating and compiling information concerning instances of undeclared or misdeclared dangerous goods in cargo. These provisions include a statement that the aim of the requirement is to prevent the recurrence of such instances, which suggests enforcement measures. However, enforcement alone cannot fully mitigate the risk. There is no clear requirement for States to have other measures in place to mitigate against the introduction of undeclared dangerous goods into the air transport stream. Additionally, there are no provisions related to the operator's role in preventing the introduction of undeclared dangerous goods into the air transport stream.

5. PROPOSALS

5.1 Amendment to compliance provisions

5.1.1 Taking the above into account, an amendment to Annex 18 is proposed as shown in Appendix B to this working paper. The amendment adds a requirement for States to:

a) establish a programme aimed at preventing undeclared dangerous goods from entering the air transport stream; and

b) ensure operators establish procedures for preventing undeclared dangerous goods from entering the air transport stream.

5.1.2 The amendment addresses undeclared dangerous goods introduced as cargo and dangerous goods carried by passengers and crew. The provisions are general so as to allow States and operators the flexibility to determine which measures effectively mitigate the risks according to their risk profile and within their regulatory and operational environments. It is proposed that the provisions be added to Chapter 11 (Compliance) at this time, recognizing that work on dangerous goods reporting and clarifying States' responsibilities in Annex 18 is being undertaken under Agenda Items 6.2 and 6.5 which may result in the need to include these provisions elsewhere.

5.1.3 If the panel agrees to this amendment, it is proposed that supporting guidance material be developed.

6. ACTION BY THE DGP

6.1 The DGP is invited to agree to amend Annex 18 as proposed in Appendix B to this working paper and to the establishment of a working group to develop supporting guidance material.

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APPENDIX A

ADVICE FROM LEGAL BUREAU ON FEASIBILITY OF IMPLEMENTING THE AMENDMENT PROPOSED IN DGP/26-WP/10 RELATED TO THE SCOPE OF ANNEX 18

INTER-OFFICE MEMORANDUM

Ref: SP 34/1 - CSS68121 5 September 2017

To: D/ANB

cc: DD/SAF, C/CSS

From: D/LEB

Subject: **Request for Legal Advice with Respect to a Proposed Amendment to Annex 18**

I refer to your IOM, dated 11 August 2017, requesting LEB comments on a proposed Amendment to Annex 18, which mandates dangerous goods training for freight forwarders, notably including those freight forwarders that are not knowingly introducing dangerous goods into the aviation system.

As you have alluded to in your IOM, prior to DGP/25 (19-30 October 2015), you requested our advice as to whether such a mandate was properly within the scope of Annex 18 (reference your IOM of 17 June 2015, enclosed). And, as you have also noted, we advised that although freight forwarders that are not knowingly introducing dangerous goods into the aviation system were not defined in Annex 18, they could nevertheless be considered within its scope by virtue of the surface transport provision in paragraph 2.6. At the same time, however, we averred that insofar as this provision was itself merely a recommendation, any training requirements imposed on these freight forwarders should appropriately likewise take the form of a Recommended Practice as opposed to a Standard (reference LEB e mail dated 9 July 2015, enclosed).

Notwithstanding LEB's the apparent decision of the DGP-WG/17 to proceed with crafting a proposed Standard mandating such training in contravention of LEB's advice in this regard, our view remains unchanged. Accordingly, we refer you to our comments of 9 July 2015 and we believe there is no reason for LEB to opine further on this matter.

For your consideration, please.

John Augustin

Enclosures:
As stated.

ДОБАВЛЕНИЕ B

ПРЕДЛАГАЕМАЯ ПОПРАВКА К ПРИЛОЖЕНИЮ 18

РИСКИ, ВЫЗВАННЫЕ НЕЗАДЕКЛАРИРОВАННЫМИ ОПАСНЫМИ ГРУЗАМИ

ГЛАВА 11. СОБЛЮДЕНИЕ ПРАВИЛ

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11.5 Незадекларированные опасные грузы

11.5.1 Государства создают программу, направленную на:

a) предотвращение предъявления незадекларированных опасных грузов к перевозке;

b) предотвращение проноса пассажирами или членами экипажа на борт воздушного судна опасных грузов, которые им не разрешено перевозить.

11.5.2 Государства обеспечивают, чтобы эксплуатанты устанавливали процедуры для:

a) предотвращения погрузки незадекларированных опасных грузов на воздушное судно;

b) предотвращения проноса пассажирами или членами экипажа на борт воздушного судна опасных грузов, которые им не разрешено перевозить.

— КОНЕЦ —