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### **The regulatory framework for the functioning of the international standard of electronic clearance and cargo escorting e-Freight**

*The article considers the legal basis for the functioning of the international standard of electronic clearance and cargo escorting e-Freight, aimed at migrating aviation towards electronic clearance of transport documents under the IATA Simplifying the Business program.*

Since 2004, the aviation industry launched some projects under the IATA Simplifying the Business program (hereinafter referred to as «StB») and presented projects such as E-ticketing (ET), Common Use Self-Service (CUSS) Kiosks, Bar Coded Boarding Pass (BCBP), Automated Carrier Baggage Rules (ACBR) etc., thereby increasing cost savings in the fields of industry.

The e-Freight e-technology initiative, proposed by IATA and implemented in many countries around the world, pursues the same objectives as E-ticketing (ET) that has gained widespread popularity around the world, namely elimination of paper handling, speeding up of workflows and cost reduction.

Since air cargo carriers are affected by rising fuel prices and by the effects of the economic downturn as much as passenger airlines, such a promising initiative as electronic clearance of cargo transportation has attracted the interest of professionals from various spheres of aviation business. Implementation of e-Freight in airlines and airports will replace at least 20 paper documents with electronic ones and will enable the aviation industry to save billions of dollars annually.

In order to implement the e-Freight standard, IATA recommends that two documents be applied as a legal basis, as follows: IATA Resolution 600a «The Air Waybill» – Conditions of contract and Electronic Air Waybill Resolution 672 «Form of multilateral E-air Waybill Agreement». Resolution 672 «Form of multilateral E-air Waybill Agreement» has not been translated into Russian and is presented to the aviation community in English only, making it complicated to apply the Resolution in the CIS countries.

Thus, according to Resolution 672, IATA can act as an agent for carriers in concluding agreements and therefore can offer the consignor a unilateral agreement in the form described in Appendix «A» of Resolution 672, on behalf of all carriers advising IATA.

Resolution 672 refers to the requirements for filling in the air waybill in accordance with Resolution 600a and does not override its requirements, and also refers to Resolution 600i «Carriage concluded and evidenced by electronic means – Conditions of contract».

But still one of the most important steps for states implementing the e-Freight standard for electronic clearance and cargo escorting is ratification of the Montreal Convention 1999 (MC99) and developing and implementing measures to facilitate and harmonize customs procedures resulting from the ratification of the

Kyoto Convention (as amended on 26 June 1999), with respect to e-declaration of goods and cargo.

The Montreal Convention 1999 (MC99):

- is the basic document regulating the relations between market participants of air transport services in much of the world;
- unifies the standards of interaction between market participants of air transport services;
- provide the opportunity for full-fledged work of air carriers in the global market of air transport services.

The Montreal Convention applies to all international carriage of cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking (Paragraph 1 of Article 1) [1].

The Convention's jurisdiction covers any air transportation agreement if one of the two basic conditions is met (Paragraph 2 of Article 1):

- the place of departure and the place of destination are situated within the territories of two States Parties, both of which are parties to the Montreal Convention;
- the place of departure and the place of destination are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party.

The international nature of the contract is based on the fact that, according to the contract, the cargo transported on an aircraft must cross the state border of the country that is a party to the Convention. The Convention is of a “closed” nature, since only the shipments where the place of departure and the place of destination are both situated in the Contracting Parties to the Convention fall within its jurisdiction.

The provisions of the Convention shall not apply to the carriage of postal items (Paragraph 3 of Article 2). Contract of carriage, documentation and duties of the Parties. In respect of the carriage of cargo, an air waybill shall be delivered (Paragraph 1 of Article 4). Instead of the usual air waybill (air waybill) on paper records, the so-called standard of electronic clearance and cargo escorting e-Freight - the “electronic waybill” can be used.

Such a term is not mentioned in the Convention, but indicated that any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt (Paragraph 2 of Article 4). The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein (Paragraph 1 of Article 11).

The Convention does not define the contract of the carriage of cargo, does not indicate the essential aspects of such a contract. The Convention proclaims the freedom of contract (Article 27) - nothing shall prevent the carrier from refusing to enter into any contract of carriage or from laying down conditions which do not conflict with the provisions of this Convention.

The article, however, said nothing about oral or written form of the contract.

There are no attributes that would allow considering the contract of carriage as real or consensual. The obvious is the fact that initially the parties to the contract are the consignor and the carrier.

Paragraph 1 of Article 4 indicates that during the carriage of cargo an air waybill shall be delivered. The Convention does not state that the carrier is one who shall draw up or issue the air waybill. Paragraph 4 of Article 7 clarify this statement. In a conditional form – «... If, at the request of the consignor, the carrier makes out the air waybill...» – information regarding the initial document flow shall be communicated.

The air waybill is generally drawn up by air carrier. But it is considered that he makes this upon request of the consignor and acts in that case on his behalf. The consignor shall be liable to the carrier for the completeness and accuracy of the information entered in the air waybill (Paragraph 1 of Article 10).

The consignor, if necessary, must produce to the air carrier a document indicating the nature of the cargo, if required by customs, police or other state bodies in accordance with established procedures (Article 6). In addition to such a document, the Convention obliges the consignor to attach to the invoice and submit to the carrier other documents that are necessary to perform various kinds of formalities.

The consignor shall be liable for damage caused to the carrier by the incompleteness, insufficiency or incorrectness of the documents and the information contained there (Paragraph 1 of Article 16). In this case, the carrier is not obliged to check the documents and information submitted to him (Paragraph 2 of Article 16).

As a mandatory information, which must be contained in the air waybill or in the receipt for the cargo, three positions are named. These are the places of departure and destination of the cargo, submitting the contract of carriage to the rules and conditions of the Convention and weight of the consignment transported under this invoice.

Kyoto Convention (as amended on 26 June 1999):

- is a basic document in the construction of customs regulations in much of the world;

- aims to stimulate foreign trade by facilitating and accelerating customs clearance and customs control procedures;

- increases the efficiency of the customs authorities activities through the use of controls based on audit and risk management methods.

The purpose of the Convention is to facilitate and harmonize customs procedures and regulations. On the one hand, it is aimed at stimulating foreign trade by facilitating and speeding up customs clearance procedures and customs control, and on the other hand, to ensure that such acceleration and facilitation do not lead to absorption of interests of the state and society.

The provisions of the Convention are formulated not in the form of norms of direct action, but in the form of principles, which, in fact, are the basis for creating specific rules for the regulation of certain customs procedures.

These principles include:

- implementation of programs aimed at continuous improvement and improvement of the efficiency of customs rules and procedures;

- predictability, consistency and openness when applying customs rules and procedures;

- provision to interested parties of all necessary information regarding laws, regulatory legal and administrative acts on customs matters, customs rules and procedures;

- application of modern working methods, such as control based on risk management and audit methods and maximum practical use of information technologies;

- cooperation with other national authorities, customs services of other states and trade communities, in all cases where it is necessary;

- Implementation of relevant international standards;

Ensuring unrestricted access of interested parties to administrative and judicial review procedures.

Structurally, the Convention consists of:

- the Protocol amending the International Convention on the Simplification and Harmonization of Customs Procedures of June 26, 1999;

- the text of the Convention

- Annexes to the Convention - General Annex and Special Annexes, which are devoted to individual customs procedures and regimes.

The General Annex and each of the Special Annexes to this Convention consists, generally, of the Chapters into which the corresponding Annex is divided, and which include:

- definitions of concepts;

- Standard Rules, some of which are Transitional Standard Rules in the General Annex.

Each Special Application also contains Recommended Rules. Each of the Annexes is provided with Recommendations that are not binding on Contracting Parties.

The Kyoto Convention fundamentally changes the philosophy of customs administration. The General Annex to it contains the basic principles of not only customs regulation, but also the relationship between customs and business. The convention calls on state authorities to establish customs regulations in a way that they would be rational both in terms of state and business.

In order to implement the e-Freight IATA standard, airlines should use two documents as a legal basis: Resolution on filling in the air waybill, Resolution 600a «Airway bill» and Resolution 672 «Form of multilateral E-air Waybill Agreement». States, in turn, must ratify the Montreal Convention 1999 (MC99) and develop and implement measures to facilitate and harmonize customs procedures by ratifying the Kyoto Convention (as amended on 26 June 1999), in terms of electronic declaration of goods and cargo.

**Conclusions.** In view of the foregoing, it is feasible to draw conclusions that the IATA resolutions reviewed contain technical aspects of filling out an electronic airway bill and procedures for its application, and the conventions are the legal basis for protecting the consignor's rights to preserve cargo, its timely delivery, insurance, etc. In the part of the Kyoto Convention, states commit themselves to bring national

legislation and facilitate and harmonize customs procedures for the rapid electronic declaration of goods and cargo.

Having fulfilled all the requirements of the above documents, the state and its airlines can claim the successful implementation of the e-Freight standard.

### References

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