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*Committee on Transport and Tourism*

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## **WORKING DOCUMENT**

on a proposal for a Regulation of the European Parliament and of the Council on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007

Committee on Transport and Tourism

Rapporteur: Christine De Veyrac

## **Background**

As forecasts point to an upsurge in air traffic by 2030, it would be wise to tighten up preventive air safety procedures with a view to avoiding a commensurate rise in the number of accidents.

Although the effectiveness of current accident investigation systems in the EU<sup>1</sup> is to be applauded, major efforts are required in respect of data collection and the proactive analysis of incidents.

While accident investigations involve analysing the causes of a crash, the occurrence reporting system attempts to identify situations that, if not brought to light and rectified, could lead to a disaster.

Directive 2003/42/EC and its implementing regulations<sup>2</sup> set out the principles of a system for incident data collection, and paved the way for a system for the regional exchange of incident data, as recommended by the ICAO<sup>3</sup>. It is now accepted that this EU legislation has proven to be limited, particularly owing to the differences in interpretation and implementation from Member State to Member State.

The Commission's proposal for a regulation seeks to strengthen and deepen the EU's proactive accident prevention system by improving arrangements for the analysis and rapid exchange of information, thus helping achieve the goals set in the 2011 White Paper on Transport<sup>4</sup>.

The only way we can tighten up safety is by implementing a system that enables us to clearly identify potential vulnerabilities and take prompt corrective action.

As the entire proactive system is based on aviation sector staff taking it upon themselves to report events, it is essential to ensure that a climate of trust, or 'just culture' reigns in the industry.

## **Initial remarks**

### **(1) Scope of the Regulation**

As the regulation aims to tighten up aviation safety arrangements by better defining and improving systems for the collection and analysis of events, the rapporteur is in favour of applying these measures in the entire commercial air travel sector, and in aviation in general.

### **(2) Ensuring the introduction of a genuinely 'just culture'**

A study commissioned in 2010 by Parliament's Committee on Transport and Tourism<sup>5</sup> concluded that *'the current level of protection for individuals making reports is considered weak by some authorities, especially in relation to protecting personnel from prejudice within their organisations'*.

There are still fears among staff in the aviation sector of legal action or punishment from their employers in certain Member States which provide insufficient protection for whistleblowers. As reporting systems, whether mandatory or voluntary, are entirely dependent on trusting the individual reporting the incident, the regulation should ensure that a genuine climate of trust, or 'just culture', is

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<sup>1</sup> Regulation (EU) 996/2010.

<sup>2</sup> Regulations (EC) No 1321/2007 and (EC) No 1330/2007

<sup>3</sup> Recommendation 8.5, footnote 2 and Recommendation 8.9 of Annex 13 to the Convention on International Civil Aviation

<sup>4</sup> Goal No 17 of COM(2011)144, of March 2011

<sup>5</sup> IP/B/TRAN/IC/2009/024, point 2.5.1, page 71

in place so as to allay any fears of self-incrimination such individuals may have.

With a view to underpinning this trust, the rapporteur wonders whether such protection for whistleblowers should not also be extended to cover anyone involved in the incident being reported, rather than merely the individual reporting it.

The rapporteur is also of the opinion that the discrepancies observed in the interpretation of terminology could be attributable to the problem of under-reporting of events in some Member States.

The rapporteur therefore welcomes the introduction of the concept of ‘gross negligence’, but stresses the need to shed further light on what constitutes it, particularly by clarifying the notion of ‘wilful misconduct’. It would appear essential for all staff in the aviation sector to be able to count on a uniform interpretation of legislation by all competent national courts so as to enjoy the same level of protection throughout the EU.

The rapporteur would like to see the Member States given the chance to further strengthen this ‘just culture’ by providing a higher level of protection, if they so wish.

In its proposal for a regulation<sup>1</sup>, the Commission proposes establishing a complaints procedure enabling individuals to report breaches of the rules concerning the protection of sources. The rapporteur welcomes this procedure, and calls for new ways of strengthening it to be explored, with a view to providing staff with an adequate level of protection.

### **(3) Towards a more proactive system and more effective cooperation**

With a view to preventing accidents in the future, the Member States should now identify priority initiatives and take action to address the needs that have been identified. More effective arrangements for the sharing between Member States of information gathered at national level should enable us to establish whether trends observed nationally by organisations or countries are Europe-wide.

All stakeholders have stressed the need to improve the quality of data collected and to ensure that such data can be accessed and understood by all authorities. The rapporteur therefore supports the legislative initiative to establish a common data classification scheme, which would meet both these requirements and the recommendations of the ICAO<sup>2</sup>.

Better arrangements for the collection of incident data would make the results of analyses more pertinent. The rapporteur would like to stress the importance of ensuring that analysis arrangements in place within organisations and Member States identify problems which can and must be addressed with a view to improving the safety of users. The forthcoming regulation could include provisions on analysis arrangements.

The rapporteur welcomes the establishment of the Network of Analysts, whose task is to analyse data at European level, and wonders whether the network’s experts should be urged to invite representatives of industry players and/or whistleblowers to participate in its work, while ensuring their anonymity.

More effective arrangements for the exchange of information between Member States are required so

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<sup>1</sup> Article 16(6)

<sup>2</sup> Recommendation 8.5 and footnote to recommendation 8.9 of Annex 13 to the Convention on International Civil Aviation

that each Member State can be kept abreast of events in its national airspace. Under current legislation, national air safety authorities in one Member State are neither alerted of nor provided exact information on incidents in their national airspace concerning aircraft belonging to an airline certified in another Member State. Since an airline may, for example, become the number one operator in a Member State but have no reporting obligation there, it would seem essential for the authorities of that country to be made aware of events taking place in their airspace.

The future regulation must close this loophole and provide for transparency in the exchange of information on safety between different Member States.

#### **(4) The roles of the various stakeholders in the system for reporting incidents**

The various studies conducted and consultations held on the current system point to the need to place the individuals reporting incidents and the aviation industry operators in the heart of the system.

It seems important to allow all stakeholders, including individuals reporting incidents, to be provided with sufficient feedback to enable them to fully appreciate the benefit that their notifying an incident has on both aviation safety and their personal safety.

The rapporteur wonders whether it might be possible to ask organisations and the Member States to raise the awareness of aviation sector employees of the measures adopted.

The European Aviation Safety Agency (EASA) should play a key role, alongside the Member States, in coordinating analysis and implementation of meaningful corrective measures taken by the various stakeholders. The EASA must therefore be given full access to the European Central Repository with a view to facilitating the exchange of information in Europe.

The rapporteur believes that the EU's lawmakers must provide the EASA with all the tools necessary to achieve the objectives set by European law.

It should thus guaranteed sufficient resources to implement the measures provided for in this proposal. The rapporteur therefore wonders whether the future legislation's financial statement does not need to be amended accordingly.

#### **(5) List of incidents to be reported under the mandatory reporting scheme**

Studies have shown that a significant proportion of events currently go unreported as a result of discrepancies in the implementation of legislation between Member States. This regulation should, therefore, unambiguously state which incidents should be reported as part of a mandatory system.

It should be stressed that delegated acts may be used to provide the necessary flexibility to list such events that must be reported in the annex to the forthcoming regulation.

The rapporteur suggests that the Network of Analysts should be consulted each time a delegated act is proposed with a view to amending the annexes.

The mandatory introduction of a voluntary reporting system, which would share all of its information with the European Central Repository, would most likely enable the Network of Analysts to clearly identify all events that should be listed in the annexes.

## **(6) Legal form of the act**

Directive 2003/42/EC (Articles 4 and 5) states that Member States must report occurrences which, if not corrected, would endanger an aircraft, its occupants or any other person. However, although all stakeholders agree that incidents must be reported, the directive's effectiveness has been considerably undermined by the failure to implement a harmonised incident-reporting system. Enacting a new regulation would appear to address the limitations highlighted by the various studies, and to meet the need to strengthen aviation security in the EU, without breaching the principle of subsidiarity or undermining the powers of the Member States.