



Position Paper of the European Transport Safety Council (ETSC) on the Proposal for a Regulation on investigation and prevention of accidents and incidents in civil aviation

A. General remarks

The European Transport Safety Council (ETSC)¹ welcomes the publication of a Proposal for a Regulation on aviation accident investigation from the European Commission². The regulatory framework should be promptly updated taking into consideration the institutional changes introduced after the adoption of Directive 94/56/EC³, notably the creation of the European Aviation Safety Agency (EASA), and the expected growth in aviation traffic flows foreseen by international forecasts.

Nowadays civil aviation is one of the safest modes of transport where accidents occur relatively rarely. The average rate of fatal accidents between 2001 and 2008 has decreased but the year 2008 has also witnessed a tragic accident in Spain involving 154 deaths alone⁴. More recently, in June 2009, the worst accident in the history of Air France involving 228 deaths occurred⁵.

As the volume of air traffic in Europe is expected to double by 2030 and the sector needs to cope with increased complexity including the revision of Air Traffic Management Systems currently under implementation, the European Union is called on to promote world-wide accepted standards and best practices in accident investigation in order to preserve and even improve aviation safety records in the near future.

¹ The European Transport Safety Council (ETSC), founded in 1993, is a Brussels-based independent non-profit making organisation dedicated to the reduction of the number and severity of transport crashes in Europe. ETSC seeks to identify and promote research-based measures with a high safety potential. It brings together 41 national and international organisations concerned with transport safety from across Europe. <http://www.etsc.eu/home.php>

² COM (2009) 611 final.

³ Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents.

⁴ EASA Annual Safety Review 2008.

⁵ Air France A330 Flying from Rio de Janeiro to Paris, accident of 1st June 2009.

B. The Principle underpinning the future regulatory framework

Independency of accident investigation is the principle that should inspire and underpin any revision of the existing legislative and institutional framework. The role of the European Aviation Safety Agency (EASA) as advisory and regulatory body established under European law and its remit in accident investigations should be clearly defined. Although it is envisaged that EASA would be invited to advise in accident investigation, the independence of the investigation itself must be guaranteed. It is of utmost importance to keep roles of regulator and investigator separate.

It is also essential that an open and honest reporting system is established and main actors are encouraged to report without fearing that blame or liability are apportioned during the accident investigation. ETSC stresses the importance to keep accident and judicial or administrative investigations separate whenever a serious incident, accident, or disaster occurs.

In some cases Member States already have a legal framework providing a strict separation of procedures. In a criminal procedure people do not have to incriminate themselves and can remain silent, whereas it is necessary that people are able to tell everything in a safety investigation. The Regulation should guarantee that these national provisions precede if, regarding the separation of procedures and the protection of safety information, they go beyond the provisions of the Regulation. Otherwise it will result in lower standards in these Member States which cannot be the intention of the Proposal.

The Independence of the Civil Aviation Safety Investigation Authorities should be pursued to the highest quality standard on the model of the US National Safety Transportation Board (NSTB). Potential conflict of interests, including governmental ones, should be separated from accident investigations.

C. The European Network of Safety Investigation Authorities

The structure and functioning of the proposed European Network of Civil Aviation Safety Investigation Authorities should be designed and governed in order to ensure transparency of proceedings. Investigations should be appropriately mandated with the sole purpose of looking at underlying causes of accidents and incidents and the evidence gathered should not subsequently be used to blame professionals. Courts should not be able to



consider information provided in the course of accident investigations as legally admissible evidence without having to prove it.

ETSC foresees the proposed Network as an opportunity to ensure uniformity of standards concerning training and qualifications of investigators and to increase uniformity in the investigating capacity across the European Union by sharing knowledge between different Member States.

The functioning of the European Network of Civil Aviation Safety Investigation Authorities is a prerequisite for creating a community of highly skilled and experienced safety investigators. Such a community could be the benchmark for training and accreditation of safety investigation professionals.

The network should be supported through a number of domains (engineering design, natural sciences/humanities and forensic sciences) to ensure high quality performance and uniformity of standards concerning training and qualifications of investigative staff. ETSC stresses the need to develop training courses, properly accredited, and to establish resources for basic courses on a multi-modal basis, with dedicated follow-up courses on specific modes and subjects. To this purpose ETSC recommends linking the Network to academia, professional organisations, such as the International Society of Air safety Investigators (ISASI), and scientific research institutes to support its development.

In order to guarantee the quality and continuity of high performance, the network should address the issues of the investigation methodology and investigation process management. Uniformity of accident investigation across the EU is a key issue in case the lessons learnt are going to be universally applicable and acceptable. If the methodology is not clear and accepted by all, conclusions and/or assumptions in one Member State might be considered illogical in another Member State.

To improve uniformity the European Commission in 2004 invited 12 experts to advise on a strategy for dealing with accidents in the transport sector. This Group of Experts delivered in 2006 to the Commission its recommendations on legislative work and suggestions for future actions. Moreover, the Group of Experts developed a common European Methodology on safety investigations. The Methodology establishes the principles, standards and powers that are vital to pursue safety investigations in an independent, effective and competent way and forms a basis for uniformity in this field within the European Union.



ETSC calls for the promotion of the European strategy and methodology as developed in 2006 by the Commission Advisory Group of Expert.

The Network could advocate as guiding notions for improvements the Just Culture concept⁶ aimed at accident prevention by learning from errors that are not due to negligence or carelessness and other interrelated principles⁷.

D. Protection of safety information

ETSC urges sensitive safety information to be protected from unauthorised disclosure or use for non-safety related purposes. Inappropriate use of sensitive information might compromise its future availability for safety-oriented investigations as aviation professionals may be reluctant to report without the confidence that such evidence would not be later used to blame them.

E. Assuring a proper follow-up to safety recommendations

In order to overcome weaknesses in the implementation of safety recommendations ETSC encourages Member States to go beyond what is proposed in the regulation and set up an accountability system ensuring that principles underlined in the revised legislation are effectively transposed into practice and that a proper follow-up in a defined time period is given to recommendations included in accident reports carried out by independent investigative bodies. ETSC encourages to carefully explore the reasons why recommendations were not followed-up.

F. Priority of safety investigations and code of conduct between different authorities

Article 12 confers on the Investigator in Charge and the Safety Investigation Authority the powers to take control of the accident site and to take the necessary measures to meet the requirements of the safety investigation. ETSC stresses the importance of granting priority to safety investigations to investigations undertaken for other purposes unless there is clear evidence

⁶ Eurocontrol/IFATCA/CANSO define just culture as "A culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated".

⁷ Resilience Engineering (dealing with organizational learning and change), human centred design (focusing on the role of the human operators at all systems levels) and forensic systems engineering (identification of systemic and knowledge deficiencies).



of a serious criminal act. However, a better clarification of the role and authority conferred on safety investigators in relation to the authority of police forces or local authorities on the same accident scene ought to be provided. Consequences of what could happen in case other authorities refuse to act in conformity with instructions given by safety investigators are not defined. ETSC envisages the development of a code of conduct in each Member State to determine relationships between different authorities.

G. Strengthening rights of victims and their families

ETSC stresses that improving the quality and independence of accident investigation is of the utmost importance as independent investigations looking into underlying causes of accidents and incidents can also be of help for the victims and their families to come to terms with what has happened to them.

ETSC welcomes the proposal of introducing a provision for making the list of passengers available within an hour in case of an accident. The passenger manifest is essential for investigation authorities and should be processed in line with data protection rules and not be disclosed without consent of victims and families concerned. Appropriate assistance should be granted to victims and their families.

H. Alignment with the international framework

Annex 13 of the 1951 Chicago Convention is laying down international standards and practices in the area of accident and incident investigation in aviation and reference to it has been already made in Directive 94/56/EC.

ETSC recommends that the new tabled regulation fully incorporates provisions of Annex 13 and its subsequent amendments.

ETSC encourages taking inspiration from recent experience in other transport sectors. The new Directive 2009/18/EC dealing with accident investigations in the maritime sector has been mostly inspired by Annex 13. Furthermore, in the road sector, the EU legislative framework concerning type approval requirements for the general safety of motor vehicles has been also recently revised in order to put it in line with the international standards of UNECE. A regulatory alignment with ICAO provisions would certainly avoid duplications at international level and improve uniformity between Member States and between transport modes within the European Union.



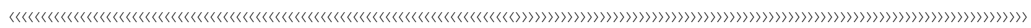
For more information:

" INDEPENDENT ACCIDENT INVESTIGATION: EVERY CITIZEN'S RIGHT, SOCIETY'S DUTY" , Lecture of Prof. Pieter van Vollenhoven, 23rd January 2001, ETSL.

TRANSPORT ACCIDENT AND INCIDENT INVESTIGATION IN THE EUROPEAN UNION, ETSC 2001.

FINAL REPORT ON A STRATEGY TO DEAL WITH ACCIDENTS IN THE TRANSPORT SECTOR, 2006 (http://ec.europa.eu/transport/safety_investigation/)

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