



European Economic and Social Committee

TEN/416
Investigation and
prevention of accidents and
incidents in civil aviation

Brussels, 27 May 2010

OPINION

of the

European Economic and Social Committee

on the

Proposal for a regulation of the European Parliament and of the Council
on investigation and prevention of accidents and incidents in civil aviation

COM(2009) 611 final – 2009/0170 (COD)

Rapporteur-General: **Mr Krawczyk**

On 20 November 2009, the Council decided to consult the European Economic and Social Committee, under Article 80, paragraph 2 of the Treaty establishing the European Community, on the

Proposal for a regulation of the European Parliament and of the Council on investigation and prevention of accidents and incidents in civil aviation
COM(2009) 611 final – 2009/0170 (COD).

On 15 December 2009, the Bureau of the European Economic and Social Committee instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work (Art. 59(1) of the Rules of Procedure), the European Economic and Social Committee appointed **Mr Krawczyk** as rapporteur-general at its 463rd plenary session, (meeting of 27 May 2010), and adopted the following opinion by 157 votes with 2 abstentions.

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1. **Conclusions and recommendations**

- 1.1 The current Community system for civil aviation accident investigation and occurrence reporting functions below optimum efficiency. It does not take into account the significant progress towards creating a single aviation market, in particular through the creation of the European Aviation Safety Agency.
- 1.2 The EESC welcomes the European Commission's proposal as a step in the right direction to overcome the shortcomings related to current fragmented accident investigation in the EU.
- 1.3 The Commission's proposal sets out the promotion of voluntary cooperation through a European Network of Civil Aviation Safety Investigation Authorities. The EESC agrees with the Commission's assessment that the establishment of a European Agency for civil aviation accident investigation would be premature.
- 1.4 The EESC would like to emphasise that the sole objective of accident and incident investigation shall be to prevent accidents and incidents and not to apportion blame and shame. The EESC therefore finds it essential to further improve the wording of Article 15 in order to ensure that it is fully in line with the provisions of the ICAO's Annex 13.
- 1.5 The EESC stresses the utmost importance for aviation safety of a truly independent accident investigation process free from interference from the affected parties as well as from the public, politics, media and judicial Authorities.

- 1.6 The EESC would like to stress the importance of a "safety culture" and for all EU Member States to ensure the implementation of a "just culture" within their national penal systems. More action is required at the EU level to ensure that all Member States amend their national legal penal system ensuring a just culture.
- 1.7 In particular the EESC stresses the importance to develop together with other relevant stakeholders an EU Charter on Just Culture.
- 1.8 The EESC underlines the importance to guarantee full independence of the accident investigation process from all affected parties including the European Aviation Safety Agency. It is therefore important to include more safeguards into the legislation to ensure that the accident investigation bodies remain in the lead.
- 1.9 The EESC underlines, that timely availability of the passenger list is very important for the families of the victims. However, the EESC feels that it is equally important that the colist available is the correct one.

2. **Introduction**

- 2.1 Flying is one of the safest forms of transportation. The statistics show that - despite a massive growth in air traffic since the creation of the single aviation market in 1992 - the European Union has succeeded in increasing the level of aviation safety resulting in the EU airlines being amongst the safest worldwide.
- 2.2 However safety can never be taken for granted and constant efforts are needed to improve the level of aviation safety. No matter how safe the EU aviation sector is, accidents or serious incidents can never be excluded. Independent investigations of those accidents or incidents are thus essential. Analysis of the accident's circumstances leads to recommendations being made to prevent these accidents from re-occurring in the future.
- 2.3 The obligation to investigate accidents in civil aviation is enshrined in the Convention on International Civil Aviation to which all Member States are Parties. Detailed standards and recommended practices are found in the Annex 13 to the ICAO Chicago Convention.
- 2.4 Recognising the importance of accident and incident investigation, the European Community already in 1980 adopted a Directive 80/1266/EEC on cooperation and mutual assistance between the Member States in the field of air accident investigation¹. The 1980 Directive was subsequently replaced by Directive 94/56/EC². In addition Directive 2003/42/EC³ on occurrence reporting in civil aviation was adopted in 2003.

1 OJ L 375, 31. 12. 1980, p. 32.

2 OJ L 319, 12. 12. 1994, p. 14.

3 OJ L 167, 4. 7. 2003, p. 23.

2.5 The Community system for civil aviation accident investigation and occurrence reporting as currently established, functions below optimum efficiency as result of its fragmentation. It does not adequately take into account the significant progress towards creating a single aviation market which has increased the EU's power in the field of aviation safety, in particular through the creation of the European Aviation Safety Agency. As a consequence the Commission adopted on 29 October 2009 a proposal for a Regulation of the European Parliament and the Council on the investigation and prevention of accidents and incidents in civil aviation, which would repeal the existing legislation in those fields.

3. **Commission's proposal**

3.1 The Commission's proposal sets out the promotion of voluntary cooperation i.e. under the proposed Regulation, the existing informal cooperation will be transformed into a European Network of Civil Aviation Safety Investigation Authorities (the network). The network will have no legal personality identity and its mandate will be limited to advisory and coordination tasks.

3.2 In addition the proposal complements the voluntary cooperation by a number of obligations enshrined in law such as:

- implementation into the Community law of the international standards and recommended practices related to protection of evidence and sensitive safety information, in accordance with the ICAO's Annex 13;
- establishing common requirements in terms of organisation of national Safety Investigation Authorities and strengthening the independent status of safety investigations;
- better coordination of various inquiries into the causes of accidents and incidents;
- clarifying the mutual rights and obligations of the European Aviation Safety Agency (EASA) and national Safety Investigation Authorities without compromising the independence of safety investigations;
- specifying the criteria on the basis of which Safety Investigation Authorities would appoint accredited representatives for the State of Design;
- cater for Just Culture by drawing the lines for the non-punitive reporting system;
- establishing common requirements for Community airlines regarding passenger lists and the protection of data contained therein (i.e. art 23 of the proposed Regulation);

- strengthening the rights of the victims of air accidents and of their families;
- better protection of anonymity of persons involved in accidents;
- establishing a common repository for the safety recommendations and the status of their follow up.

4. **Specific comments**

- 4.1 The EESC welcomes the European Commission's proposal as a step in the right direction to overcome the shortcomings related to current fragmented accident investigation in the EU. The EESC nevertheless stresses the importance to monitor the effectiveness of the proposal taking into account the fact that some smaller Member States lack expertise and/or resources in the field of accident investigation. The EESC therefore encourages the Commission to define criteria on the minimum required level of technical competencies of Accident Investigation Bodies as well as for investigators - and encourage Member States in their commitment hereto.
- 4.2 The EESC in particular welcomes the Commission's pragmatic approach based on subsidiarity and proportionality. The EESC agrees with the Commission's assessment that the establishment of a European Agency for civil aviation accident investigation would be premature although it should not be excluded in the longer term. The EESC also stresses the importance to ensure that the network is open to those non-EU countries at the boundaries of the EU and who are closely cooperating with the EU in particular those States who are member of the European Civil Aviation Conference (ECAC).
- 4.3 The EESC stresses the utmost importance for aviation safety of a truly independent accident investigation process free from interference from the affected parties as well as from the public, politics, media and judicial Authorities.
- 4.4 The EESC would like to emphasise the fact that the sole objective of accident and incident investigation shall be to prevent accidents and incidents and not to apportion blame and shame. The EESC therefore finds it essential to further improve the wording of Article 15 in order to ensure that it is fully in line with the provisions of the ICAO's Annex 13. In particular the suggestion to give more rights to judicial authorities and public interest for other purposes than accident investigation would be counter-productive and would hamper voluntary reporting of occurrences or incidents. The EESC feels it essential to keep the accident investigation process strictly separated from any judicial procedures. As such it would have a potential adverse impact on collection of safety information and could therefore potentially lead to worsening of aviation safety within the EU. The EESC stresses that this will not affect the right of victims to get compensation through independent proceedings separated from the accident investigation processes. The EESC stresses the importance of the protection of sensitive safety data as well as the protection of employees reporting safety events.

- 4.4.1 The EESC acknowledges the importance of the Declaration of the Organisations in the Air Transport Sector on EU Air Accident Investigation Regulation from 26 April 2010, which raises serious concern on the proposal of the Commission (supported by the Transport Council on 11th March 2010), with regards to what they define as primacy of judicial investigation over the safety investigation. According to the signatory Organisations this would seriously jeopardise the ability of accident investigators to obtain in confidence the information necessary to find the factors which contribute to accidents and therefore will prevent them from making well-informed safety recommendations needed to improve aviation safety and avoid future accidents, thus would not be in the interest of Europe's flying public.
- 4.5 The EESC would like to stress the importance of a "safety culture" and for all EU Member States to ensure the implementation of a "just culture" within their national penal systems. In interest of aviation safety, it is essential that results of accident investigations are used to prevent future accidents rather than to punish unintentional mistakes which would hamper a proper accident investigation. The EESC feels that the regulation should provide a framework in which all parties involved in accidents can share information and speak freely and in confidence. Legal certainty, i.e. a strong set of legal rules that define unambiguously when safety information can or cannot be used outside the accident investigation is necessary to ensure open communication in confidence. Without such certainty the persons involved would be afraid to contribute to the investigation. The EESC stresses that more action is required at the EU level to ensure that all Member States amend their national legal penal system ensuring a just culture. In particular the EESC stresses the importance to develop an EU Charter on Just Culture. EESC welcomes "Charter for just culture" agreed by the European civil aviation social partners on 31 March 2009.
- 4.6 According to the EESC the timely availability of the passenger list is important for the families of the victims. However, the EESC feels that it is equally important that the correct list is available. The EESC therefore feels that a 1h deadline for submitting the passenger list could be maintained provided a few exceptions are granted where it would not be technical feasible, in particular for long-haul flights departing from third countries. An airline could easily pull out an unverified list within 1 hour but a verified list is essential, in particular for long haul flights departing from non-EU destinations. The EESC also stresses the importance of privacy and data protection and therefore feels that the passenger lists that airlines are able to provide from check-in and booking systems should be sufficient for this purpose.
- 4.7 The EESC underlines the importance to guarantee full independence of the accident investigation process from all affected parties including the European Aviation Safety Agency. It is therefore important to include more safeguards into the legislation to ensure that the accident investigation bodies remain in the lead. Instead EASA could become a party (advisor) to investigation along other affected parties (airline, manufacturer etc.) but should not be allowed to influence the course or the outcome of the investigation. The EESC in

particular would like to point out the fact that EASA should not be allowed to act as accredited accident investigator since this would lead to conflict of interest with EASA's role as safety regulator and would as such not be in line with the spirit of the ICAO Annex 13. Nevertheless, the EESC also would like to stress the importance of investigation recommendations being sent to EASA, where appropriate and needed for EASA to act on immediate safety concerns.

- 4.8 The EESC welcomes the proposal to create a central database of accident investigation recommendations including the status of their follow up. Nevertheless – mirroring the US system of FAA review of recommendations coming from the US National Transport Safety Board (NTSB) - the EESC finds it essential for the European Aviation Safety Agency (EASA) to have a careful evaluation of the added safety benefit and regulatory impact of any safety recommendations before proceeding with any rulemaking.
- 4.8.1 The EESC encourages further EU action to ensure a proper in-depth analysis of incident reports and to improve a European wide pooling of resources in this context.
- 4.9 The EESC stresses the importance, in the interest of safety, for all EU (and non-EU) Member States to understand clearly the content of the accident investigation report (article 19). It often happens that National Civil Investigation Authorities are only producing reports in their national language, even if foreign parties are involved. The EESC recommends that at least an English translation is provided for each accident investigation report.
- 4.10 The EESC notes that safety will always have priority on other requirements such as protection of intellectual property. On the other hand it is important to provide more safeguards to protect intellectual property (article 15). Commercial sensitive information should only be shared with the Authorities but should be protected from being released to competitors. Original Equipment Manufacturers (OEMs) should not get all information on Supplemental Type Certificates (STCs) or other changes or repairs and vice versa (since those may contain commercially relevant intellectual property of the design organisation (DOA) that has nothing to do with a given accident/incident).

Brussels, 27 May 2010.

The president
of the
European Economic and Social Committee

Mario Sepi
