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Brussels, 4th March 2013

ETF REQUESTS ON THE PROPOSAL FOR EU REGULATION ON OCCURRENCE REPORTING¹

The ETF welcomes the proposal of the Commission to contribute to the reduction of the number of aircraft accidents and related fatalities. The framework presented by the Commission is consistent to collect data and use them only for safety enhancement purposes.

For the first time, at EU level, there is a proposal which will create an environment leading to Just Culture.

It is not enough but the proposal goes to the right direction.

However, the ETF is not satisfied with the introduction of the concept of "Gross negligence", which will discourage safety professionals to report across Europe.

SPECIFIC ETF REQUESTS:

Subject: Dissemination of information:

Reference

Whereas 22

EC Proposal

Information contained in occurrence reports should be analysed and safety risks identified. As a result, appropriate actions for improving aviation safety should be determined and implemented in a timely manner. Information on the analysis and follow up of occurrences should be disseminated within organisations and Member States authorities as providing feedback on occurrences reported is a good incentive for individuals to report occurrences.

NOTE

The procedures and devices for timely dissemination and feedback are not reported; the Annual Safety Review, even though very useful, has a different purpose from inform professionals about the analysis of reports and the actions taken to prevent reoccurrences.

¹ 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

ETF Proposal

Information contained in occurrence reports should be analysed and safety risks identified. As a result, appropriate actions for improving aviation safety should be determined and implemented in a timely manner. Information on the analysis and follow up of occurrences should be **timely disseminated, through appropriate and efficient devices and procedures**, within organisations and Member States authorities as providing feedback on occurrences reported is a good incentive for individuals to report occurrences.

Subject: Just Culture:

Reference

Article 2, Definition (7)

EC Proposal

'Just culture' means 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

NOTE

The ETF objects this definition as it contains the term "gross negligence". There is no common understanding of the term "gross negligence" in the 27 EU MSs. This ambiguity and discrepancy will jeopardize the improvement of the Safety level across Europe, as foreseen in the "Objectives of the proposal". This definition of "gross negligence" in Article 2 only partially clarified the ambiguity and its semantic is wrong.

ETF Proposal

'Just culture' means 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

Subject: Gross negligence:

Reference

Article 2, Definition (4)

EC Proposal

'Gross negligence' means a manifest and wilful violation of the duty of care directly causing foreseeable damage to a person or to a property, or which seriously lowers the level of aviation safety

NOTE

As the wording 'gross negligence' has been deleted by the definition of 'Just Culture', the definition of 'gross negligence' has to be deleted as well.

Subject: New definition of 'Wilful violation'

Reference

Article 2, Definition (new 4bis)

NOTE

As the definition of 'just culture' includes the term 'wilful violation', an appropriate definition for 'wilful violation' should be included.

ETF Proposal

'Wilful violation' means deliberate action or intent that could be expected to cause harm or injury or damage to persons and / or property

Subject: Protection of the information source

Reference

Article 16, § 3

EC Proposal

Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported in application of Articles 4 and 5. This rule shall not apply in cases of gross negligence.

NOTE 1

The sentence needs clarification. The word 'only' creates confusion. As it is written the article does not protect the reporter from MS to institute proceedings if MSs receive the same information from an alternative source.

NOTE 2

It is necessary a clarification of the passage 'only because they have been reported in application of Articles 4 and 5' (art.4 mandatory reporting, art.5 voluntary reporting). It could mean that an unpremeditated or inadvertent infringement, not reported by the professional violating the rule, will be preceded. It is important to underline that to report an infringement the professional shall be aware of the violation and some unpremeditated or inadvertent infringements happen due to lack or absence of awareness. So the professional can ignore to have done an infringement. If an unusual event comes to the MS attention through another channel of information, the involved professional who has not reported it (because not aware) is subject to proceedings.

NOTE 3

Clarification is required as to whether or not this interpretation is correct: MSs shall not instigate proceedings against someone who fails to comply with articles 4 and 5 if information on an occurrence from a third party comes to light, rather than the whole of the regulation. In other words an individual has to comply with the whole of the regulation, except articles 4 and 5 in the instance of a third party report being received, for which an individual hasn't reported themselves.

ETF Proposal

Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported in application of Articles 4 and 5. This rule shall not apply in cases of **manifest and wilful violation gross negligence**.

Subject: Protection of the information source

Reference

Article 16 § 4

EC Proposal

Employees who report incidents in accordance with articles 4 and 5 shall not be subject to any prejudice by their employer on the basis of the information they have reported, except in cases of gross negligence.

NOTE

As well as for the Just Culture definition the ETF rejects this article containing the term “gross negligence” only partially clarified in the above-mentioned definition

ETF Proposal

Employees who report incidents in accordance with articles 4 and 5 shall not be subject to any prejudice by their employer on the basis of the information they have reported, except in cases of **wilful violation gross negligence**.

Subject: Protection of the information source

Reference

Article 16, § 5

EC Proposal

Each Organisation established in a Member State shall adopt internal rules describing how Just Culture principles, in particular the principle referred to in paragraph 4, are guaranteed and implemented within their organisation.

NOTE

An efficient and effective Just Culture principles implementation needs mutual trust between management and staff; therefore management and staff representatives shall share the adoption of internal rules.

ETF Proposal

After having involved the staff representatives, each Organisation established in a Member State shall adopt, internal rules describing how Just Culture principles, in particular the principle referred to in paragraph 4, are guaranteed and implemented within their organisation.

Subject: Staff representative bodies

Reference

ANNEX III: LIST OF INTERESTED PARTIES, part b, comma (4)

EC Proposal

Professional representative bodies of staff carrying out safety-related tasks

NOTE

The wording 'Professional representative bodies of staff' has different meaning in the 27 EU MSs

ETF Proposal

Staff Professional representative bodies **of staff** carrying out safety-related tasks

Subject: Budgetary implication:

Reference

Explanatory memorandum: 4. BUDGETARY IMPLICATION

EC Proposal

The budgetary implications related by the development of a common EU risk classification scheme and the extension of the budget allocated to the development of ECCAIRS and the management of the European Central Repository are already covered in the Multi-Annual financial framework. The budgetary implication of this proposal is related to additional human resources for the European Aviation Safety Agency (involved by the Network of Analysts) and additional budget for mission and outreach activities. Both additional human resources (2 posts estimated at €300.000 per year) and additional budget (mission and outreach activities estimated at €65.000 per year) will fully be covered by redeployment within the existing resources of the Agency, therefore having an impact on the EU budget which is neutral.

NOTE

Any budgetary implication hasn't been foreseen for MSs and national safety authorities usually affecting lack in terms of human and economic resources

ETF Proposal

*The budgetary implications related by the development of a common EU risk classification scheme and the extension of the budget allocated to the development of ECCAIRS and the management of the European Central Repository are already covered in the Multi-Annual financial framework. **Nevertheless the Multi-Annual financial framework will cover the budgetary implications related to the development and the management of MS and national authorities.** The budgetary implication of this proposal is related to additional human resources for the European Aviation Safety Agency (involved by the Network of Analysts) and additional budget for mission and outreach activities. Both additional human resources (2 posts estimated at €300.000 per year) and additional budget (mission and outreach activities estimated at €65.000 per year) will fully be covered by redeployment within the existing resources of the Agency, therefore having an impact on the EU budget which is neutral.*