

Civil aviation: reporting, analysis and follow-up of occurrences

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The Council took note of the state of play as regards a revision of the 2003 Directive on the reporting of occurrences which could endanger aviation safety.

Discussion of this proposal in the Council working party started on 10 January 2013. All Member States broadly welcomed the Commission proposal, albeit with some caveats. Some of them expressed concerns about issues such as the potential cost and burden on administrations and industry, in particular on small and medium enterprises, deadlines for the implementation of the Regulation, the protection of employees who report occurrences and the list of types of occurrences that are obligatory to report.

Comments were made on the following specific issues:

1. **Collection of occurrences:** several delegations are of the opinion that a clear delimitation between the mandatory occurrence reporting system (MORS) and the voluntary occurrence reporting system is necessary.

Most delegations consider that, for **legislative certainty**, it would be preferable to have a complete list of incidents under mandatory reporting, all the more as failure to report such occurrences could lead to criminal proceedings. On the other hand, this option would create the risk that an unknown number of occurrences may end up unreported under the voluntary system.

Other delegations prefer an open list of occurrences to be reported under MORS. In this case, the list will be an enumeration of examples of types of occurrences which have to be mandatorily reported.

The Presidency has proposed to set up an *ad-hoc* group of Member States' experts who will examine the content of the annexes and who will make recommendations to the Aviation Working Party.

2. **Potential administrative burden:** the proposal introduces reporting requirements to organisations, which will be required to establish a voluntary occurrence reporting system. Moreover, organisations are also required to analyse the reported occurrences in order to identify possible safety hazards and take, if necessary, appropriate action.

A great number of delegations have expressed concerns about the potential administrative burden created by these requirements as the number of voluntary reports which would have to be recorded, transmitted to Member States' authorities and analysed is significantly higher than the mandatory ones. They consider that the text should be clarified so that the analysis and, if deemed applicable, the follow-up action would reflect the scale of the notified occurrence.

Moreover, these delegations consider it necessary to clarify for which categories of aircraft the mandatory system would apply. Some delegations argue that MORS should be used only for commercial civil aviation. They consider that, taking into account its specific activity, general aviation should not have the same obligations as commercial civil aviation. Others consider that

the level of regulation of general aviation that is proposed would be appropriate and explain that removing the mandatory reporting requirement for general aviation would eliminate a significant source of safety information.

3. **‘Just Culture’ and the definition of ‘gross negligence’:** the Commission proposal establishes a non-punitive environment facilitating the spontaneous reporting of the occurrences based on the principle of ‘Just Culture’.

Concerns were expressed about the **degree of protection that should be given to employees who report occurrences and the necessary administrative arrangements between judicial and safety authorities in order to strike the right balance between the interest of justice and aviation safety.**

Some Member States would prefer total impunity in order to encourage reporting and thus have a better chance to improve aviation safety, others consider that in situations of gross negligence and wilful wrongdoing punitive action is necessary. On the other hand, several delegations consider that the notion of intent or wilfulness should not be included in the definition of 'gross negligence'. They consider that in a situation of wilful wrongdoing, the reporter should not be protected against punitive action.

So far, the term '**gross negligence**' has not been defined in EU legislation. EU Member States have their own definitions in their national law and therefore several delegations would prefer not to include this definition in the Regulation. They have argued that since the definition already exists in the national law of Member States, it is better not to try to define it at EU level because Member States have different interpretations for it. Deleting the definition from the proposal would avoid any possible conflicts between the Regulation and national legislation. Other delegations consider that the definition is essential in order to ensure the uniform application of the Regulation.

Lastly, Member States are divided over the deadlines for the implementation of the Regulation.

The Presidency's aim is to reach a Council position ("general approach", pending the position of the European Parliament) on the proposal at the June Transport Council meeting.