E U R O P E A N E C O N O M I C A R E A

S T A N D I N G C O M M I T T E E
O F T H E E F T A S T A T E S

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SUBCOMMITTEE II ON THE FREE MOVEMENT OF SERVICES

EEA EFTA Comment

on the 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 – COM(2012) 776

1. GENERAL

1. The EEA EFTA Governments fully support the purpose of the draft regulation and its general approach. We regard the obligation to use the collected reports/ information – by analysing them and implementing the appropriate corrective actions based on their analysis – as the most important step forward compared to Directive 2003/42/EC.

2. JUST CULTURE – NON-PUNITIVE

2. It is not entirely clear whether the proposed regulation would prevent the Member States from introducing or retaining rules protecting sources of information (obligatory or voluntary reports) going further than the provisions proposed in Article 16.

3. In our opinion each Member State should have the right to introduce or retain its rules protecting sources of information. An example: The Norwegian Aviation Act contains a provision prohibiting the Norwegian Civil Aviation Authority (CAA) from withdrawing a licence issued by itself based on information received through the national reporting system (based on Directive 2003/42/EC), unless the licence holder in question is not medically fit or otherwise clearly not fit to retain the certificate. This example concerns administrative reactions, but the principle is equally or even more important when it comes to criminal sanctions.

4. There is no equivalent provision in the draft. We can see no good reason why each Member State should not have the right to maintain such rules. The most important argument in favour of their retention is the fact that they actually go further than the

draft regulation itself in fulfilling the purpose of the regulation. Second, it is not correct to say that such ambitious national protection affects the level playing field. The example referred to is only restricting the freedom of the Member State itself, as opposed to its citizens and undertakings.

5. We fully acknowledge the need to limit the possibility of having stricter national rules to the "Just Culture" or "Non-punitive" provisions of the proposal. By inserting a specific provision at the end of Article 16 this objective is achieved and the effects clearly limited to the subject of protecting sources.

Proposal: "*This Article does not prevent Member States from adopting or retaining rules providing sources for information with stronger protection against negative consequences of reporting.*"

6. The EEA EFTA States support the protective measures proposed in Article 16 (1) to (5). We acknowledge that legal systems vary between the Member States, but the reality is that those parts of Article 16 most directly relevant to the distribution of competence in the Member States' legal systems (Article 16 (3) and (4)) are simply a continuation of Article 8 of Directive 2003/42/EC.

7. We are slightly hesitant about Article 16 (6). On a technical level, the phrase "responsible for the implementation of this Article" is hardly consistent with the fact that someone else (the relevant Member State) shall be competent to adopt penalties (and other enforcement measures?). Is the intention to establish some kind of national ombudsman for "Just Culture"?

8. We agree that it is a dilemma that some of the obligations in Article 16 are directed towards the Member States themselves, and that – unfortunately – it is not a given that they will always be respected, so we acknowledge the intention. However, will the use of resources be proportionate to the results? Would the voluntary reporting system be able to fulfil some of the same functions? We have not reached a conclusion on this, but it is in any case important that the scope of the final solution is clarified.

3. SCOPE – THIRD-COUNTRY OPERATORS, ETC

9. The way we interpret Article 4 (3) (a), pilots of third-country operators experiencing an occurrence on the territory of a Member State (including in the airspace) are not obliged to report under the mandatory reporting system. If this is not the case, the wording should be amended. If it is correct, we disagree with the substance. To obtain a full picture of what has in fact happened, it is essential to receive all relevant information irrespective of the geographical origin of the source. The practical challenges that follow a short stay on the territory of the Member State should be solvable through the help of modern information technology (typically internet portals).

4. QUALITY AND COMPLETENESS

10. We support the ambition to contribute to better quality and completeness of data. At the same time the data checking process proposed in Article 7 (3) is double-edged. As far as data quality checking in the "organisations" is concerned, there is a risk that they will be tempted to paint a more positive picture of what has in fact happened than a more objective approach would seem to justify. If so, the "quality-checked" version forwarded by the relevant organisation to the Member State authority in accordance with Article 4 (3) (first sentence) will in fact be biased.

11. As regards data quality checking at state level it is equally important that conflicting versions of what has in fact happened during an occurrence are respected in the sense that the relevant recipient authority should take into account all versions of the "raw material" received, both during its analysis and when it decides on the appropriate follow-up measures in accordance with Articles 4, 5 and 6.

5. VOLUNTARY REPORTING

12. We know that setting up a voluntary reporting scheme is already an obligation under Annex 13 point 8.2 of the Chicago Convention. Nevertheless, we would like to emphasise that there is a risk that individuals obliged to report will use the mandatory system if it is "less burdensome", or perceived to be so. The consequence may be that relevant information is not received. A mandatory system covering all relevant personnel and all relevant types of information would be preferable.

6. RELATION TO OBLIGATIONS FOLLOWING FROM OTHER EU SAFETY RULES

13. The obligation for organisations in Article 13 (1) and (2) to analyse and identify safety hazards is similar to a "safety management system" (SMS). The obligation to maintain such a system may also follow from other pieces of EU legislation, such as the operational rules for commercial air transporters or common requirements for providers of air traffic services.

14. If this understanding is correct, how should the relationship between the enforcement provisions in Article 13 (6) and Article 21 of the draft proposal and the various enforcement provisions of the legislation referred to above be understood? Should, or could, the enforcement of Article 13 (6) in practice be attached to the oversight of licences issued in accordance with other legislation?