

Opinion of the European Economic and Social Committee 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 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007’

COM(2012) 776 final — 2012/0361 (COD)

(2013/C 198/12)

Rapporteur: **Mr HENCKS**

On 24 January 2013, the Council and on 17 January 2013, the European Parliament decided to consult the European Economic and Social Committee, under Article 100(2) of the Treaty on the Functioning of the European Union, 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 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007

COM(2012) 776 final — 2012/0361 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 3 April 2013.

At its 489th plenary session, held on 17 and 18 April 2013 (meeting of 17 April), the European Economic and Social Committee adopted the following opinion by 195 votes to 1 with 1 abstention.

1. Conclusions and recommendations

1.1 The Committee congratulates the Commission on the measures to prevent accidents in civil aviation and on strengthening flows of information on occurrences or incidents which endanger or which, if not corrected, would endanger passengers or any other person or an aircraft.

1.2 In order to be able to identify and prevent potential causes of accidents in civil aviation, all those working in the sector must be required to report all occurrences which could represent a safety risk, including mistakes they may have made or contributed to themselves or for which a colleague is responsible.

1.3 This reporting system can only function effectively if:

— the sole objective of occurrence reporting is the prevention of accidents and incidents, and not the attribution of blame or liability, and

— it is implemented in the context of a "Just Culture" which shields the employees concerned from any proceedings brought against them by their employer and protects them from any prejudice or legal action for involuntary errors, except in the case of wilful gross negligence which is clearly identified as such.

1.4 The Committee considers that the existing or additional measures for the protection of information sources provided for in the proposal could be further reinforced or supplemented. To this end, the Committee:

— reiterates its proposal to draw up an EU Charter on Just Culture,

— proposes that it be stated explicitly that in addition to the Member States, organisations in the civil aviation sector shall also 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, and

— recommends that the internal rules describing how Just Culture principles are guaranteed and implemented, to be drawn up by the organisations in the sector, should be approved by the competent public authority before implementation.

1.5 Given the key importance of a Just Culture for the effective protection of reporters, in the clear interest of preventing any risk of accident, the Committee has commissioned an external expert to carry out a study on this subject, and will certainly forward the conclusions to the interested parties.

1.6 The Committee has reservations about the new measure whereby henceforth, reporters will be able to forward their report either to their employer or to the competent public authority, although previously reports were sent only to the public authority. It considers that with a view to ensuring neutrality and avoiding any interference by the employer in the record of facts drawn up by the reporter, it should be mandatory for a copy of the report forwarded directly to the employer to be sent by the reporter to the competent public authority at the same time.

1.7 The Committee regrets that the regulation makes no explicit provision for incident reporting by passengers, although passengers often have a more vigilant approach to safety risks in infrastructure and services and observe failures that, through routine, people working in the sector see differently. This also applies to people with reduced mobility, who are best placed to evaluate risk factors for their specific situation. The Committee therefore proposes that procedures be established to integrate all passengers into the flow of information on occurrences to be reported.

1.8 Lastly, the Committee considers that occurrences or failures observed during embarkation operations, particularly passenger security checks, should be included in the scope of mandatory occurrence reporting.

2. Introduction

2.1 Since the creation of the single aviation market in 1992, compliance with ever stricter regulatory requirements in the area of aviation safety for aircraft registered in a Member State or operated by a company established in a Member State, supported by detailed, independent investigations into accidents, has resulted in a marked and almost continuous drop in the rate of fatal aviation accidents.

2.2 Experience has shown that before an accident takes place, various incidents or failures signal the existence of a safety risk. It quickly became clear that it was increasingly difficult to increase aviation safety solely by means of the "reactive" approach used so far, which consisted of reacting and learning lessons only after accidents had occurred.

2.3 The European Union therefore needed to move beyond concentrating on lawmaking and place equal emphasis on addressing the risks to aviation safety in a systemic fashion. Through Directive 2003/42/EC on occurrence reporting in civil aviation, it adopted a complementary "proactive" approach.

2.4 The reporting system is based on trust between the person reporting these incidents or failures and the body responsible for collecting and evaluating the relevant data.

2.5 In 2007, the EU set up a European Central Repository (ECR) grouping together all civil aviation occurrences collected by Member States; around 600 000 occurrences are currently stored in the ECR.

2.6 Owing to its sensitive nature, the information collected is confidential and can be used solely for the purpose of the activities of participants and addressees. In order to avoid groundless fears and reactions, information made publicly available must be disseminated in aggregate form and generally be limited to an annual report on overall safety in aviation.

2.7 In addition to the system of mandatory reporting, Member States may put in place a system of voluntary reporting to collect and analyse information on observed deficiencies in civil aviation which do not fall within the scope of mandatory reporting.

2.8 The reporting requirement applies to the entire aviation chain, such as aviation operators, certified aerodrome operators and ground-handling companies.

2.9 The various categories of personnel working in civil aviation who observe occurrences of interest for the prevention of accidents are required to report them.

2.10 All the personal details of the reporter as well as technical aspects which could help to identify that person must be deleted from the report. Member States must ensure that workers who report incidents are not subjected to any prejudice by their employer; no administrative, disciplinary or professional penalty may be inflicted on a person who has reported such an occurrence, except in the case of gross negligence or wilful violation.

3. Content of the new regulation

3.1 According to the European Commission, the transmission of occurrence reports in the EU and the use of the ECR are still affected by a number of gaps which limit their usefulness and seriously undermine the ability of experience feedback to prevent accidents. The Commission has proposed the following measures to remedy this situation:

3.1.1 *Better collection of occurrences*

The proposal establishes the environment for ensuring that all occurrences which endanger or would endanger aviation safety are reported. In addition to the mandatory information system, the proposal imposes the establishment of voluntary systems.

The proposal also contains provisions for encouraging aviation professionals to report information without fear of punishment except in cases of gross negligence.

3.1.2 *Clarification of the flow of information*

Every organisation active in the aviation sector will also be required, alongside the public authority, to implement a reporting system.

3.1.3 *Improved quality and completeness of data*

Occurrence reports will have to contain minimum information with set mandatory data fields. Occurrences will have to be classified in terms of risk according to the future European common risk classification scheme. In addition, quality data checking processes will have to be implemented.

3.1.4 *Better exchange of information*

The access by Member States and EASA to the ECR is extended to all information contained in the database. All reports should be compatible with the EU's ECCAIRS software.

3.1.5 *Better protection against inappropriate use of safety information*

Beside the obligation to guarantee the confidentiality of the data collected, it must only be made available and used for the purpose of maintaining or improving aviation safety. Arrangements must be agreed with the judicial authorities to mitigate the negative impact of using this data for legal purposes.

3.1.6 *Better protection of reporters to ensure the continued availability of information (Just Culture)*

The rules on the protection of occurrence reporters are strengthened and the obligation to disidentify occurrence reports and limit access to fully identified data to a restricted circle is reaffirmed. The rule under which employees shall not be subject to prejudice from their employer, except in cases of gross negligence (as defined in Article 2(4) of the proposal), on the basis of the information reported, is reinforced. Organisations active in the civil aviation sector are asked to adopt a policy describing how the employees' protection is guaranteed. In addition, each Member State must establish a body responsible for the implementation of the provisions on the protection of sources, to which reporters can report infringements of the rules. Where appropriate, this body can propose that its Member State adopt penalties against employers which have infringed the rules.

3.1.7 *Introduction of requirements on information analysis and adoption of follow-up actions at national level*

The proposal transposes into EU law the rules on the analysis and follow-up of reported occurrences agreed at international level.

3.1.8 *Stronger analysis at EU level*

The principle that the information contained in the ECR shall be analysed by the EASA and the Member States is reinforced and the ongoing collaboration formalised within a Network of Aviation Safety Analysts chaired by the EASA.

3.1.9 *Improved transparency towards the general public*

With due regard for the necessary confidentiality, the Member States must publish an annual report setting out, in aggregate form, information on measures taken to boost aviation safety.

4. General comments

4.1 The Committee congratulates the Commission on the measures to prevent accidents in civil aviation and on strengthening flows of information on occurrences which endanger or which, if not corrected, would endanger passengers or any other person or an aircraft.

4.2 It also welcomes the move to simplify legislation in this area, as the Commission has united one former directive and two regulations in a single text.

4.3 Given that the Member States regularly exceed the deadlines for transposing directives – this was the case for Directive 2003/42/EC on the subject at hand – and given that identifying any safety problems as rapidly as possible can avoid disasters and save lives, the Committee agrees with the Commission that a legislative act which is directly applicable (a regulation in this case) is the most appropriate legal instrument to achieve the goals set.

4.4 Without casting doubt on the overall approval of the proposal under discussion, the Committee nonetheless wishes to raise a number of points:

4.5 Henceforth, reporters will be able to forward their report either to their employer or to the competent public authority, although previously reports were sent only to the public authority. Where reports are sent directly to the employer, the employer must forward them to the competent public authority. However, Article 7(3) of the proposal stipulates that organisations in the sector "shall establish data quality checking processes notably to ensure consistency between the different data contained in an occurrence report and the initial details on occurrence reported by the reporter".

From this, the Committee concludes that data concerning initial details on occurrences reported by the reporter are not necessarily the same as those sent on to the public authority, and cannot endorse this situation.

It expresses reservations regarding reports forwarded directly to the employer. With a view to ensuring neutrality and avoiding any interference by the employer in the record of facts drawn up by the reporter, a copy of the report should be sent by the reporter to the competent public authority at the same time.

4.6 The Committee notes that the list of incidents to be reported under the mandatory occurrence reporting scheme (Annex 1 of the regulation) does not include incidents regarding pre-embarkation operations. Therefore, any failures during the pre-embarkation security checks must, at most, be reported under the voluntary reporting process. However, such failures can have such disastrous repercussions that the Committee considers that they should be included in the scope of mandatory occurrence reporting.

4.7 Similarly, the proposal does not make explicit provision for incident reporting by passengers although it does not exclude this when it states that the voluntary reporting systems shall allow the collection of details on occurrences by people other than those working in the sector for whom reporting is an obligation.

In fact, passengers often have a more vigilant approach to safety risks in infrastructure and services and observe failures that, through routine or professional habit, people working in the sector see differently. The Committee therefore proposes that procedures be established to integrate passengers into the flow

of information on occurrences to be reported. This also applies to people with reduced mobility who, in Annex I (4.3) of the regulation, are treated on the same footing as the handling of baggage and cargo, despite the fact that the risk factors are completely different.

5. Just Culture

5.1 In order to be able to identify and prevent potential causes of accidents in civil aviation, all those working in the sector must be required to report all occurrences which could represent a safety risk.

5.2 Where appropriate, those concerned must be asked to report mistakes they may have made or contributed to themselves or for which a colleague is responsible.

5.3 Clearly, this reporting system can only function effectively if it is implemented in the context of a "Just Culture" which shields the employees concerned from any proceedings brought against them by their employer and protects them from any prejudice or legal action for involuntary errors, except in the case of wilful gross negligence clearly identified as such.

5.4 The Committee therefore welcomes the emphasis placed on the fact that the sole objective of occurrence reporting is the prevention of accidents and incidents, and not the attribution of blame or liability, and welcomes the proposal's move to reaffirm and complete the measures to protect reporters – although these measures could be made stronger.

5.5 Accordingly, in its opinion on the regulation on investigation and prevention of accidents in civil aviation⁽¹⁾, the Committee stressed that more needed to be done at EU level to guarantee that all Member States amended their national penal systems to develop a Just Culture, and highlighted the importance of drawing up an "EU Charter on Just Culture" in order to avoid punishment for involuntary errors.

5.6 The Committee regrets that this proposal was not taken up in the draft regulation under discussion; the draft regulation does provide for cooperation between safety authorities and judicial authorities in the form of advance arrangements

(Article 15(4): "These advance arrangements shall seek to ensure the correct balance between the need for proper administration of justice on the one hand, and the necessary continued availability of safety information on the other."), which is a step in the right direction, but these arrangements deal only with the "appropriate" confidentiality of the information and do not protect reporters from legal proceedings.

5.7 As regards the protection of reporters, the provision which stipulates that "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" should also apply to the reporter's employer; Article 16(3) of the proposal should be completed accordingly.

5.8 As regards the provision requiring each organisation in the sector to adopt internal rules describing how Just Culture principles are guaranteed and implemented, the Committee proposes that these rules be approved beforehand by the body competent in each Member State for implementing EU provisions on the protection of information sources.

5.9 Although every element of the regulation is mandatory and directly applicable in every Member State on the twentieth day following its publication in the Official Journal of the EU, some of those elements (notably the internal rules describing how Just Culture principles are implemented by the organisations, or the rules applicable in the event of infringement of the regulation) have yet to be drawn up or, where necessary, transposed into national law. The Committee would have preferred that the regulation set a deadline for the implementation of these elements.

5.10 Given the key importance of a Just Culture which protects those concerned effectively, in the clear interest of preventing any risk of accident, the Committee has commissioned an external expert to carry out a study on this subject, and will certainly forward the conclusions to the interested parties.

Brussels, 17 April 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁾ OJ C 21, 21.1.2011, p. 62-65.