



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Transport and Tourism

12.2.2010

WORKING DOCUMENT

on investigation and prevention of accidents and incidents in civil aviation

Committee on Transport and Tourism

Rapporteur: Christine De Veyrac

1. Background

Air traffic has steadily increased in recent years.

Despite significant improvements in safety standards, this increase tends to bring with it a greater risk of air accidents.

It is therefore essential that independent investigations be conducted into such accidents to detect any safety flaws and enable measures to be taken to remedy the problems.

The European legislation which currently governs accident investigations is a 1994 directive¹.

The aviation market has significantly evolved and become more complex since this text was introduced.

The emergence of new bodies, such as the European Aviation Safety Agency (EASA), responsible for aircraft certification in the EU, and the disparities in the Member States' investigating capacities has made it necessary to bring forward new legislation².

2. The network of safety investigation authorities

The establishment of a network of national investigation offices should make it possible to reduce current disparities in investigating capacities in the EU.

It could also help to improve the quality of investigations and provide a legal framework for cooperation between national safety investigation authorities.

This should, as a result, contribute to improving aviation safety.

While the establishment of a European safety investigation office would not appear to be feasible under the present circumstances, your rapporteur nevertheless wishes to go further than the Commission proposal: the network's tasks³ would need to be defined, thus providing the safety plan with a genuine added value.

Its tasks could include:

- providing a framework for and facilitating the sharing of resources between investigation offices and the supply of inspectors⁴;

¹ Council Directive 94/56/EC.

² Account should also be taken of new aspects in Annex 13 ('Aircraft accident and incident investigation') to the Chicago Convention on International Civil Aviation (7300/9), which sets out the international rules governing aircraft accident and incident investigation.

³ These tasks could be defined on the basis of the proposals contained in the Commission's impact assessment (SEC(2009)1477, p. 43) and the existing maritime transport provisions under the permanent cooperation framework (Article 10 of Directive 2009/18/EC).

⁴ One example of a measure to facilitate exchanges would be the establishment of a register of facilities and equipment available to each national investigation authority and, where necessary, accident inspectors

- promoting the sharing of information useful to the improvement of safety standards;
- setting up training courses for investigators;
- establishing a register of good practice and developing a European accident investigation methodology;
- organising audits of safety investigation authorities.

Consideration should also be given to the appropriate framework for implementing at European level any proposals made by the network with a view to improving aviation safety or investigation procedures.

3. The European Aviation Safety Agency (EASA)

EASA⁵ is responsible, on behalf of the Member States, for certifying aircraft in the Community. It plays a major role in aviation safety.

Directive 94/56/EC⁶ could not take account of EASA since it was adopted before the Agency's establishment. This is creating unacceptable safety risks⁷.

It is therefore justified for the new regulation to provide for a clear legal framework for the Agency's involvement in safety investigations.

Your rapporteur wishes to address two specific issues:

(a) Independence of safety investigations

The regulation should under no circumstances allow EASA the possibility of influencing a safety investigation or conducting another inquiry alongside that investigation. As the body responsible for aircraft certification, the Agency cannot be both judge and party. There should be no leeway for ambiguity in the text.

(b) Designation

As air transport is often international, a safety investigation may involve non-European states. Bearing this in mind and with a view to ensuring legal certainty, it is important that the term used to define EASA's role in investigations be clearly set out in Annex 13 to the Convention on International Civil Aviation⁸, which governs international investigations.

Given that the term 'expert' used in the proposal for a regulation⁹ does not meet this criterion,

specialised in specific areas (sea, mountain, etc.).

⁵ Established by Regulation (EC) No 216/2008.

⁶ As referred to above.

⁷ As confirmed by an audit of EASA by the International Civil Aviation Organisation (ICAO).

⁸ As referred to above.

⁹ In Article 9(1) of the proposal for a regulation (COM(2009)611). The term 'expert' appears twice in Annex 13 to the ICAO Convention, but is not defined.

there is a risk of uncertainty arising. It would therefore be preferable to use a clear designation, ensuring that the Agency's involvement in investigations cannot be called into question. 'Adviser'¹⁰ is the term commonly used to refer to the certification authority¹¹.

Your rapporteur therefore proposes that EASA be defined in the regulation as 'adviser' with regard to its involvement in safety investigations and that it enjoy the rights conferred on advisers under Annex 13.

(c) EASA access to safety information

With a view to ensuring air safety, the Agency should have access throughout investigations to any relevant information and safety recommendations which will allow it to establish airworthiness directives with delay¹².

However, information is not forwarded as systematically to EASA as to national civil aviation authorities.

Rules are therefore required for this flow of information and as a means of encouraging investigation authorities to cooperate more closely with the Agency.

4. Coordination between investigations

In many cases, one or more legal actions are in progress at the same time as the safety investigations¹³.

(a) Independence

Steps must be taken to ensure that those responsible for safety investigations are allowed to do their work without having to ask the courts for authorisation to have access to or to examine evidence.

Obviously, in the case of an unlawful act, the circumstances are different and judicial investigations must be given precedence¹⁴.

(b) Access to sensitive information

It is essential that persons involved in an accident¹⁵ cooperate with the safety investigation in order to establish the causes of the accident.

¹⁰ Chapter 1 of Annex 13 to the Chicago Convention on International Civil Aviation.

¹¹ This is the case in the United States, where the Federal Aviation Administration (FAA) is 'advisor' to the National Transportation Safety Board (NTSB), pursuant to Annex 13 of the Chicago Convention, on safety investigations relating to aviation accidents.

¹² Article 20 of Regulation (EC) No 216/2008.

¹³ Such inquiries are independent of one another. However, although technical investigations are only concerned with safety aspects and do not seek to establish who was responsible, the facts established by technical investigation authorities and their findings do have a major impact on judicial inquiries.

¹⁴ Article 13(2) of the proposal for a regulation.

¹⁵ Surviving personnel, air traffic controllers, aircraft operators, etc.

Any refusal by such persons to reply to the safety investigation for fear of seeing their testimony transferred to the courts without their consent creates an air safety risk.

On the other hand, the courts must be allowed to do their work and families have a right to expect the courts to establish who was responsible. To do this, the judicial authorities must have access to the relevant information.

The Commission is proposing that certain records be protected, but that the judicial authorities may be allowed access to them where this is justified by '*an overriding public interest*'¹⁶.

However, the concept of 'an overriding public interest' is fairly vague and may differ from one Member State to another. Moreover, an accident which causes a person's death is often considered as a case of overriding public interest. Sensitive information is therefore no longer protected in such cases.

Your rapporteur is proposing that any information relating to the establishment of the facts and analysis of the evidence be forwarded to the courts, but that any other information remain confidential.

5. Rights of victims and their families

(a) Passenger lists

The Commission is proposing that airlines be required to be able to produce the list within an hour of the notification of an accident.

Your rapporteur endorses this idea. However, he believes that, if an airline produces such a passenger list, this list should be checked and that the mechanism to be set up must be realistic. This may prove difficulty in some situations¹⁷.

Your rapporteur is considering two options:

- using as a basis the obligation under Article 29(f) of the Chicago Convention¹⁸ in order to require that the passenger list be sent by the airline prior to take-off. In the event of an accident, it can then compile it with the crew manifest and produce a checked list within the hour;
- establishing two different deadlines for flights in respect of which an advance passenger information system is in place¹⁹ (list of passengers on board available prior to take-off)

¹⁶ Article 15(2) of the proposal for a regulation.

¹⁷ Airlines do not necessarily have personnel permanently based at the airport from which the aircraft left. Furthermore, some airports close at night-time. In such cases, it is not realistic to expect passenger lists to be available within the hour.

¹⁸ '*Every aircraft (...) shall carry the following documents in conformity with the conditions prescribed in this Convention: (...) If it carries passengers, a list of their names and places of embarkation and destination*'.

¹⁹ APIS (Advance Passenger Information System) destinations. Compulsory in particular for flights to the United States, Canada, Mexico and Australia. Details regarding the passenger's full identity, nationality and passport

and for other flights²⁰.

(b) Information on the death of a passenger

When accidents occur, airlines receive thousands of calls²¹ and it often takes a long time to identify the appropriate person to be informed of a passenger's death. This period of uncertainty is extremely distressing for the victims' families.

Your rapporteur wishes to introduce an obligation on airlines²² to ask passengers to provide details, at the time of booking a flight, of a person to be contacted in the event of an accident²³.

(c) Assistance to families

The Commission's proposal states that *'the Member States shall ensure that a plan for the assistance of the victims of civil aviation accidents and their families is set up at national level'*²⁴.

However, when an accident occurs, the airline is the first contact that passengers' families turn to. Your rapporteur therefore considers that Member States should be required, in addition, to check that airlines established on their territory also have their own an emergency plan.²⁵

The State responsible for the safety investigation should also be required to appoint a main contact person for the families of passengers. The contact person could coordinate the information obtained from the different bodies involved, forward it to passengers' families and also inform them of the various procedures which would follow²⁶.

This would provide important support for families of victims, who often feel lost when faced with a huge number of contacts and procedures, whereas they are already having to cope with the loss of a loved one.

Moreover, steps should be taken to enable families to have special access to information on the progress of the safety investigation, and in particular to receive interim reports and the final investigation report before they are made public.

(d) Montreal Convention²⁷

number must be included.

²⁰ The deadline could be brought forward to 30 minutes in the case of the former and extended to two hours for the latter.

²¹ Air France received over 20 000 calls in one day, following the disappearance of flight AF 447 from Rio to Paris, on 31 May 2009.

²² As is already the case in the United States.

²³ This information would be distinct from the details of the person to be contacted in the event of a change of flight schedule or of flight cancellation.

²⁴ Article 23 of the proposal for a regulation.

²⁵ Such emergency plans could be based on ICAO circular 285/AN/166 and should be audited.

²⁶ Safety investigation, possibly judicial inquiry, compensation payments, identification of bodies, etc.

²⁷ The Montreal Convention for the Unification of Certain Rules for International Carriage, which entered into force on 28 June 2004, lays down rules governing the civil liability of air carriers in respect of victims of aviation accidents and their families. 93 states are currently parties to the Convention.

Your rapporteur considers that European travellers should be protected by these rules, irrespective of the company they fly with, and that the regulation should make it compulsory to ratify the Montreal Convention for all airlines wishing to provide services in the European Union.

6. Civil aviation occurrence reports

The Commission has decided not to revise Directive 2003/42/EC²⁸ because it considers that such a change would be premature. However, the proposal for a regulation does refer to the matter²⁹.

It must be said that the way in which the occurrence report system works is far from ideal.

Only half the Member States feed data into the ECCAIRS central repository³⁰, which is intended to group together all events which occur in the EU. Moreover, nobody is responsible for analysing the data contained in ECCAIRS.

An analysis of this information would surely be extremely useful to aviation safety³¹.

Your rapporteur would like to expand the provisions in the present proposal for a regulation, in particular to ask EASA, in cooperation with states, to analyse and classify the information contained in ECCAIRS.

²⁸ Directive 2003/42/EC.

²⁹ Article 15(3) of the proposal for a regulation.

³⁰ Established by Regulation (EC) No 1321/2007.

³¹ This would make it to detect the recurrence of incidents and to reduce the risk of accidents by establishing safety recommendations to remedy the shortcomings identified.

ANNEXE - REFERENCE DES TEXTES CITES

1. Directive 94/56/CE du Conseil, du 21 novembre 1994, établissant les principes fondamentaux régissant les enquêtes sur les accidents et les incidents dans l'aviation civile (*JO L 319 du 12.12.1994, p.14*).

3. Directive 2009/18/CE du Parlement européen et du Conseil du 23 avril 2009 établissant les principes fondamentaux régissant les enquêtes sur les accidents dans le secteur des transports maritimes et modifiant la directive 1999/35/CE du Conseil et la directive 2002/59/CE du Parlement européen et du Conseil (*JO L 131 du 28.5.2009, p. 114*).

5. Règlement (CE) n° 216/2008 du Parlement européen et du Conseil du 20 février 2008 concernant des règles communes dans le domaine de l'aviation civile et instituant une Agence européenne de la sécurité aérienne, et abrogeant la directive 91/670/CEE du Conseil, le règlement (CE) n° 1592/2002 et la directive 2004/36/CE (*JO L 79 du 19.3.2008, p. 1*).

28. Directive 2003/42/CE du Parlement européen et du Conseil du 13 juin 2003 concernant les comptes rendus d'événements dans l'aviation civile (*Journal officiel n° L 167 du 4/07/2003 p. 23*)

30. Règlement(CE) No 1321/2007 de la Commission du 12 novembre 2007 fixant les modalités d'application pour l'enregistrement, dans un répertoire central, d'informations relatives aux événements de l'aviation civile échangées conformément à la directive 2003/42/CE du Parlement européen et du Conseil (*Journal officiel n° L 294 du 13/11/2007, p. 3*).