

EVALUATION ROADMAP			
TITLE OF THE EVALUATION	Evaluation of Regulation (EU) No 996/2010 on the investigation and prevention of accidents and incidents in civil aviation		
LEAD DG – RESPONSIBLE UNIT	MOVE E3	DATE OF THIS ROADMAP	09/06/2016
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	06 / 2016
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		PLANNING CALENDAR	<a href="http://ec.europa.eu/smart-regulation/evaluation/index_en.htm">http://ec.europa.eu/smart-regulation/evaluation/index_en.htm</a>
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A. Purpose
(A.1) Purpose
<p>The purpose is to perform an ex-post evaluation of Regulation (EU) No 996/2010 on the investigation and prevention of accidents and incidents in civil aviation (called hereafter Regulation on Safety Investigations)<sup>1</sup> in order to assess whether the main objectives of this regulation have been achieved, in particular further improving aviation safety through prevention of civil aviation accident in Member States.</p> <p>The evaluation will review the objectives of the Regulation, its performance by comparing the initial expectations against the current situation. The following criteria will be taken into account: effectiveness, efficiency, coherence, relevance and the EU added value of the intervention. Based on the evaluation, there will be conclusions on whether improvements can be made as to the application of the regulation, to the obligations of the various parties involved and as regards information and assistance for victims and their relatives.</p>
(A.2) Justification
<p>The Commission in its 2015 Communication "An Aviation Strategy for Europe"<sup>2</sup> highlighted the need to pursue high worldwide safety standards and insists to ensure that the rules on accident investigation deliver the EU objectives in the best possible way. It therefore recommends carrying out an Evaluation of the Regulation on Safety Investigations in 2016-2017.</p> <p>In its Staff Working Document published in April 2016<sup>3</sup>, the Commission describes the achievements made under the Regulation on Safety Investigations and highlights possible weaknesses, which need to be addressed. It identifies the urgent need to establish a high level of accident investigation capability throughout the Union. This would ensure, in case of a major accident, the necessary assistance, such as available human and material resources, which might help in particular smaller Member States having only limited national investigation resources. Other issues addressed in this document refer to the protection of sensitive safety information, the access to passengers' nationality information and the delineation of national responsibilities towards civil aviation accident emergency plans that cover the assistance the victims and their relatives.</p> <p>In its Report on the MH17 accident, the Dutch Safety Board<sup>4</sup> issued recommendations on registration of the nationality of passengers, which is relevant for the swift identification of the victims' nationality through passenger lists, as required under Article 20 of the Regulation on Safety Investigations.</p>

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2010:295:TOC>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0598&from=EN>

<sup>3</sup> <http://www.cc.cec.sg/vista/home?documentDetails&DocRef=SWD/2016/0151&ticket=ST-8767202-IxV2MZa3zGVrcwDw9Rx9JISozZHq0nR5M4cuuwHqGjC2701sYnIMIDJfbq9r3wEviwIzclOP2sSMwh4APMZismG-Jj71zxYb8yyp5o93bPme4K-W7JGEvlUbRekD3n2DXSKJ7ONIAHczkb9hQY1X3fL7IU>

<sup>4</sup> <http://onderzoeksraad.nl/uploads/phase-docs/1006/debcd724fe7breport-mh17-crash.pdf>

Furthermore, a workshop organised by the Commission in January 2014 on Civil Protection and Emergency identified a need for guidance to Member States to develop coherent emergency plans at national level, including assistance to the victims and their relatives. The evaluation will clarify how to address these problems.

In conclusion, the Commission decided to evaluate during 2016/2017 whether or not there is a need for the revision of the existing regulatory framework or for any other additional action.

## B. Content and subject of the evaluation

### (B.1) Subject area

The Convention on International Civil Aviation (the Chicago Convention) imposes conditions on its contracting States to ensure the safe operation of aircraft. It includes detailed provisions on the investigation of accidents and incidents so that the root causes can be identified and the lessons learnt will help in preventing future accidents. These provisions have been reflected in EU law through the adoption of Directive No 94/56/EC and its successor the Regulation on Safety Investigations.

The Regulation emphasises the need to ensure a high level of efficiency, expediency, and quality of European civil aviation safety investigation capability throughout the Union, without apportioning blame or liability. It also includes provisions on information on persons on board as well as the obligation to establish a civil aviation accident emergency plan at national level.

An impact assessment conducted in 2009<sup>5</sup> identified the main problems and needs and supported the proposal and adoption of the Regulation on Safety Investigations. Due to increased divergence in investigating capability in MS (notably after the EU enlargements of 2004 and 2009), the growing complexity of accident investigations and the EU aviation market growth in size and complexity, Directive No 94/56/EC no longer met the requirements of the EU and of the MS.

It was felt that the investigation of air accidents required more diversified expertise and resources. The EU institutional and legal framework had also changed substantially, notably with the European Aviation Safety Agency (EASA) having become responsible for certification of aircraft in the Union since 2003.

The specific problems identified were:

- a) lack of uniform investigation capability,
- b) tensions between safety investigations and other proceedings,
- c) unclear role of the Community (EASA) in safety investigations,
- d) weakness in implementation of safety recommendations,
- e) insufficient assistance to the victims of air accidents and their families, including difficulties to quickly obtain complete passenger lists.

The Regulation on Safety Investigations addressed these problems through the establishment of independent national Civil Aviation Safety Investigation Authorities (SIAs) in every Member State and through support for voluntary cooperation with the establishment of a formal European Network of Civil Aviation Safety Investigation Authorities (ENCASIA), supported by an annual grant and based on the existing informal cooperation and resources of the MS, for sharing of resources, coordinating of training and to facilitate closer cooperation and exchange of data.

The Network has been formally established in 2011 with the adoption of Rules of procedures and the appointment of its chairman. At its biannual meetings held in Brussels, the Network agrees on its annual work programme, which is carried out by 6 working groups that focus on different activities such as training, peer reviews or providing guidance for drafting and monitoring safety recommendations. Since 2015, peer reviews have been organised, training sessions have been held, a website and a data base containing manuals, guidance material, etc. has been created. ENCASIA also produced Opinions as foreseen by the Regulation.

The Regulation on Safety Investigations has some degree of interactions with a number of other regulatory texts, the impact of which shall be assessed in detail in this evaluation, such as the Commission Decision 2012/780/EU on access rights to the European Central Repository of Safety Recommendations and their responses (or its successor); Regulation (EU) No 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation<sup>6</sup>

<sup>5</sup> [http://ec.europa.eu/transport/modes/air/safety/doc/2009\\_10\\_29\\_summary\\_impact\\_assessment\\_en.pdf](http://ec.europa.eu/transport/modes/air/safety/doc/2009_10_29_summary_impact_assessment_en.pdf)

<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0376&from=EN>

<p>and, in relation to civil aviation accident emergency plans, the Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism – 1313/2013/EU<sup>7</sup> and the Commission Implementing Decision No 2014/762/EU laying down rules for the implementation of Decision No 1313/2013 of the European Parliament and of the Council on a Union Civil Protection Mechanism<sup>8</sup>.</p> <p>Currently, airlines have taken very different approaches as regards to their obligation to establish plans for assistance for the victims and their relatives, reaching from detailed company internal procedures and dedicated training of staff to outsourcing the obligation to a service provider.</p> <p>Furthermore, the Regulation on Safety Investigations and Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (the Basic Regulation)<sup>9</sup> should remain aligned, especially if the latter is revised in the coming years, pursuant to the proposal to this effect that is currently pending before the Union legislator.</p> <p>In particular, Article 5 of the Regulation on Safety Investigation mandates the investigation of every accident or serious incident involving aircraft other than specified in Annex II to the Basic Regulation. It is worth noting, for instance, that Annex II at present refers to 'unmanned aircraft with an operating mass of no more than 150 kg'. Consequently, such light drones are currently not subject to mandatory investigations if they are involved in an accident or a serious incident, even of a lethal nature.</p>
<p><b>(B.2) Original objectives of the intervention</b></p> <p>According to the conclusions of the IA (2009), the following general and specific objectives were chosen.</p> <p>The general objective of the intervention is to further enhance civil aviation safety and the prevention of accidents as recalled in the new Aviation Strategy adopted by the European Commission end of 2015.</p> <p>The intervention called for expeditious and efficient conduct of quality investigations of civil aviation accidents and incidents. Therefore the key objectives are (i) ensuring a high level of accident investigation capability in the EU, (ii) clarifying the relationship between national Safety Investigation authorities, EASA and other national instances involved in inquiring the causes of an accident, in particular the judicial environment, (iii) promoting Just Culture principles and (iv) establishing civil accident emergency plans at national level and assistance plans to victims of accidents and their relatives.</p>
<p><b>(B.3) How the objectives were to be achieved</b></p> <p>According to the conclusions of the IA (2009), these objectives were to be achieved through co-regulation and voluntary cooperation. Therefore the Regulation on Safety Investigations established national Civil Aviation Safety Investigation Authorities (SIAs) in every Member State and the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA).</p> <p>The intervention logic presented in the Annex provides a graphical representation of how the intervention is designed and expected to work.</p>

<b>C. Scope of the evaluation/FC</b>
<p><b>(C.1) Topics covered</b></p> <p>The evaluation covers the impact of the Regulation on Safety Investigations with respect to the overall improvement of aviation safety and an appropriate reaction to major air accidents in Europe since its entry into force.</p> <p>The geographical coverage will be limited to EU Member States.</p> <p>The evaluation will focus on the social and political dimensions of the Regulation on Safety Investigations identified in the 2016 Staff Working Document, in particular Art. 20 on the information of passengers and their nationality and Art.21 on the establishment of national civil aviation accident emergency plans, including assistance to victims and their relatives; Art. 14 on the protection of sensitive safety information and Just Culture principles; and Art. 18 on</p>

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013D1313&from=EN>

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014D0762&from=EN>

<sup>9</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008R0216&from=EN>

<p>the Central Repository of Safety Recommendations and responses.</p> <p>The evaluation will also review the coherence and complementarity with other EU aviation safety instruments which address the obligation to report and the handling of information. Finally, it will determine whether or not there are overlaps or possible gaps with other safety regulatory instruments in particular as Regulation (EU) No 216/2008, Regulation (EU) No 376/2014 as well as Member States' obligations under the applicable international rules.</p> <p>The coherence with Regulation (EU) No 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation<sup>10</sup> will also be assessed, in particular to further clarify the definition and classification of an occurrence as "accident" or "serious incident" to ensure alignment between the competent authorities.</p>
<p>(C.2) Issues to be examined</p> <p>On the basis of five criteria (relevance, effectiveness, efficiency, coherence and EU-added value), the evaluation will review the implementation of the Regulation on Safety Investigations and determine to what extent the original objectives of this Regulation have been met.</p> <p><b>Relevance</b></p> <p>1) To what extent are the measures required by the Regulation still relevant and appropriate to the initial needs?</p> <p><b>Effectiveness</b></p> <p>2) To what extent has the Regulation contributed to better coordinate the various investigations (civil, judicial, safety) into the causes of the accident, as well as provide assistance plans?</p> <p><b>Efficiency</b></p> <p>3) Have resources and costs incurred been proportional to the results achieved? 4) Have the attributable costs to different stockholders been proportionate?</p> <p><b>Coherence</b></p> <p>5) To what extent is the intervention coherent with the EU Aviation safety policy?</p> <p><b>EU Added Value</b></p> <p>6) What does the Regulation add to the work being done by the Member States either individually or within the context of the ICAO?</p>

D. Evidence base
<p>(D.1) Evidence from monitoring</p> <p>Taking into account the intervention, through the use of quantitative and qualitative data, an assessment will be made of the measures provided under the Regulation, including the enforcement of these measures. This data will be used to demonstrate how over time the application of the requirements and provisions of the Regulation have evolved.</p> <p>Main data sets:</p> <p><b>The investigation capacity of Member States:</b> The ENCASIA Annual Reports summarize information available on Safety Investigation Authorities (SIAs) <a href="http://ec.europa.eu/transport/modes/air/encasia/activities/index_en.htm">http://ec.europa.eu/transport/modes/air/encasia/activities/index_en.htm</a></p> <p><b>The implementation of safety recommendations (e.g):</b> Safety Recommendations are publicly available on the ECCAIRS Web Portal, managed by the Joint Research Centre (JRC) of the European Commission: <a href="http://eccairs-dds.jrc.ec.europa.eu/pubsr/default.asp">http://eccairs-dds.jrc.ec.europa.eu/pubsr/default.asp</a></p> <p>Data include:</p> <ul style="list-style-type: none"> <li>Number/trend of safety recommendations registered in the EU central database of recommendations,</li> </ul>

<sup>10</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0376&from=EN>

- including Safety Recommendations of Union-wide Relevance (SRUR);
- Number of "closed" safety recommendations registered in the central database of recommendations;
- Number of joint/common safety recommendations (also stemming from safety studies);
- Number of Safety Recommendations received directly or via ICAO from third countries

#### **The relationships between the authorities involved in accident investigations ():**

In order to facilitate the coordination of investigations in case of an accident, most national Safety Investigation Authorities have adopted advance arrangements with other authorities such as judicial, civil aviation and search and rescue. Some Member States have enshrined the contractual arrangements directly in their rules.

#### **Protection of information and persons involved in the accident**

- Jurisprudence (court cases)
- Investigations affected by issues in coordinating between authorities
- Handling of CVR recordings
- Cases of lack of cooperation triggered by the fear of a breach in the protection of sensitive safety information

#### **The performance of ENCASIA**

[http://ec.europa.eu/transport/modes/air/encasia/activities/index\\_en.htm](http://ec.europa.eu/transport/modes/air/encasia/activities/index_en.htm)

#### **The list of passengers**

- Compliance checks of the scheme on with the common requirements during regular inspections;
- Number of lists of passengers non-reconciled properly.

#### **The emergency plans at national level and assistance plans for victims**

The workshop organised by the Commission in January 2014 on Civil Protection and Emergency identified a need for guidance of many Member States to develop coherent plans at national level.

### **(D.2) Previous evaluations and other reports**

Some documents are public, others are not accessible.

#### **ICAO documents:**

The International Civil Aviation Organisation (ICAO) has conducted safety audits amongst its Contracting States under the Universal Safety Oversight Audit Programme (USOAP).

<http://www.icao.int/safety/pages/usoap-results.aspx>

#### **EU documents:**

The 2009 Impact Assessment accompanying the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on investigation and prevention of accidents and incidents in civil aviation

[http://ec.europa.eu/transport/modes/air/safety/doc/2009\\_10\\_29\\_summary\\_impact\\_assessment\\_en.pdf](http://ec.europa.eu/transport/modes/air/safety/doc/2009_10_29_summary_impact_assessment_en.pdf)

The 2016 Commission Staff Working Document on the implementation of the Regulation on Safety Investigation, a targeted consultation of stakeholders, including MS and their SIAs, industry associations and accident victims and their relatives associations.

ENCASIA Annual Reports to the European Parliament and the European Council.

[http://ec.europa.eu/transport/modes/air/encasia/activities/index\\_en.htm](http://ec.europa.eu/transport/modes/air/encasia/activities/index_en.htm)

### **(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)**

Regarding cooperation at national level, the European Commission identified that the provisions of Article 12(3)11 "Advance Arrangements" between safety investigation authorities and judicial authorities were slow to be

<sup>11</sup> Article 12(3) of Regulation (EU) No 996/2010 stipulates: “Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.”

implemented. In 2013, the Commission opened eighteen pre-infringement procedures (EU pilots) regarding questions on the Regulation on Safety Investigations, among which seven were escalated to letters of formal notice on this key issue of cooperation at national level. In the meantime the pilot cases have been closed.

It has also been noticed that some Member States do not or rarely participate in the activities of the European Network of Safety Investigation Authorities. The Commission recalled the obligation of Member States as provided under the Regulation at the meetings of the Network held in September 2015 and in February 2016.

#### (D.4) Consultation

The Roadmap will be open for feedback during a 4-week period, envisaged for May/June 2016. The feedback will be used to revise the Roadmap where appropriate.

Given the scope of the evaluation, in order to collect relevant information about the impact of the Regulation on Safety Investigations, and its implementing act Commission Decision 2012/780/EU, on the investigation and prevention of accidents and incidents in civil aviation, as well as its coherence with other instruments, the following groups of stakeholders will be consulted:

- European Citizens
- European Parliament & the Council
- Safety Investigation Authorities (SIA) (aviation and other modes)
- The European Network of Civil Aviation Safety Investigation Authorities (ENCASIA)
- European Aviation Safety Agency (EASA)
- National Aviation Authorities
- EFTA Surveillance Authority
- EU Air Carriers
- Pilot Associations, e.g. European Cockpit Association (ECA)
- Association of victims and their relatives
- International and regional aviation organisations (ICAO, Eurocontrol, ISASI, etc.)
- Industry associations (IATA, AAPAC, ASD, ECA, etc.)
- Judicial Authorities/Law enforcement authorities
- Air traffic management
- Airports

The tools used will be:

- Public Consultation (On-line Questionnaire, open for 12 weeks)
- Targeted stakeholder questionnaires/surveys
- Workshop
- Records of Focus Group Discussions
- Qualitative and Quantitative data from other sources

#### (D.5) Further evidence to be gathered

Court decisions (in particular from the UK and Spain on the use of final reports in court proceedings)

### E. Other relevant information/ remarks

None