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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

SUMMARY IMPACT ASSESSMENT

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1. BACKGROUND

This Impact Assessment (IA) analyses different policy options to assist the Commission in the revision of Council Directive 94/56/EC of 21 November 1994¹ and Directive 2003/42/EC².

It results from the recommendations of the "Group of Experts to advise the Commission on a strategy to deal with accidents in the transport sector" (Group of Experts)³, studies and reports, consultations with Member States (MS) and stakeholders, as well as recommendations on the "Action Programme for Reducing Administrative Burdens"⁴.

2. PROBLEM DEFINITION

2.1. Current regulatory framework

Civil aviation has well established traditions in accident investigation and occurrence reporting. The obligation to investigate accidents is enshrined in the Chicago Convention of 1944.

Recognising the importance of accident investigation, the EU adopted Directive 94/56/EC while Directive 2003/42/EC on occurrence reporting was adopted in 2003.

They significantly contributed to harmonisation accident prevention.

2.2. Need for change

The current Community system functions below optimum. Directive 94/56/EC, now 15 years old, no longer meets the requirements of the EU and of the MS:

- (1) There is more divergence in the investigating capacity of the MS than in 1994, notably due to the EU enlargements of 2004 and 2007;
- (2) Aircraft are becoming increasingly complex and accident investigation requires more expertise and resources;
- (3) The EU common aviation market grew both in size and complexity in the last decade;
- (4) This increase in the complexity of the single aviation market also called for increased responsibility of the Community in aviation safety and establishment of EASA;
- (5) The EU and its MS gained significant practical experiences since 1994, which should be used to strengthen the current system;

2.3. Specific problems

Lack of a uniform investigating capacity

¹ OJ L 319, 12.12.1994, p.14.

² OJ L 167, 4.7.2003, p.23.

³ Final report of the Group of experts to advise the Commission on a strategy to deal with accidents in the transport sector, Brussels 3.7.2006; it was established on the basis of the Commission Decision EC/425/2003, OJ L 144, 12.06.2003, p. 10-11.

⁴ The programme was launched in January 2007 as part of the Better Regulation Strategy of the Commission.

Although the EU as a whole has enough investigating capacity, the resources available are not used efficiently. Smaller MS lack appropriate resources and the experience and qualifications of investigators and of the National Safety Investigation Authorities (NSIAs) is also not uniform.

Tensions between safety investigations and other proceedings

Although the principle of independent safety investigations is accepted and recognised in principle, there are tensions between the NSIAs and judicial authorities and the independent status of the investigation and the protection of collected sensitive information cannot be always guaranteed.

Unclear role of the Community in safety investigations

An issue of fundamental importance is the role of the Community in accident investigation. EASA, which carries out on behalf of the MS the functions and tasks of the State of Design, Manufacture and Registry when related to design approval was established in 2002. This increased significantly the role and responsibilities of the Community in aviation safety.

These changes affect the division of responsibilities between the MS and the Community, but their consequences were not reflected so far in the way investigations are organised. As confirmed by a recent audit of the International Civil Aviation Organisation of EASA, this creates unacceptable safety risks, in particular since the Agency is responsible for certifying aircraft.

Weaknesses in implementation of safety recommendations

There is still no consistent approach in the EU to the processing and implementation of safety recommendations resulting from investigations. There is no common requirement for recording the responses and monitoring the progress of the action taken in response to a safety recommendation.

Assistance to the families of the victims of air accidents and their families

While air crashes in commercial aviation are relatively rare, once they occur a large number of victims may be involved. The victims and their families should receive appropriate assistance. Therefore, planning is necessary to ensure that the needed assistance does not overwhelm the available resources.

In addition if proper procedures are not implemented and regularly tested, it may be difficult to ensure rapid availability of lists of "all souls on board", essential in facilitating search and rescue, identification and notification of the families.

3. ANALYSIS OF SUBSIDIARITY

The Community competence to regulate accident investigation and occurrence reporting was established by Directives 94/56/EC and 2003/42/EC. Further intervention would be justified only if the proposed action could not be achieved sufficiently by the MS.

Community action is both necessary and justified to:

- Ensure the necessary uniformity of action needed in aviation safety;
- Allow to address the institutional inefficiencies, i.e. clarification of the role of EASA and the Commission in accident investigation;

3.1. The added value of the Community Action

Community action would bring additional benefits by:

- Increasing the investigation capacity of the EU;
- Reducing tensions between the authorities involved in the investigation;
- Updating the regulatory framework for investigation;
- Strengthening uniform implementation of safety recommendations;
- Strengthening the protection of the rights of victims and their families;

3.2. The proportionality of the Community action

Any Community intervention should be proportionate and addressing only the problems which cannot be adequately solved by the MS.

Given the limitations in the investigating capacity of NSIAs, both Community and national resources should focus on investigation of events from which the biggest safety benefits can be obtained.

4. OBJECTIVES OF THE INITIATIVE

The objective of the presented policy options is the enhancement of aviation safety, in line with the strategic goals set out in the Mid-term review of the EC's 2001 Transport White Paper.

Accident investigation also requires legal certainty. When an accident happens the roles and rights and obligation of all the parties have to be known in advance. One of the important objectives of the Community should be thus to strengthen the required legal certainty.

To reveal all circumstances of an accident, the NSIA must be objective, impartial and able to withstand political or other interference or pressure. Its only objective should be the enhancement of safety, and the investigation should be independent from any other proceedings which could conflict with this objective. Thus, it is important that the principle of independence of investigations is fully respected by all the options analysed in this IA.

5. POLICY OPTIONS

The Impact Assessment analyses four possible options:

Option 1 "Baseline Scenario - Do Nothing"

This option is a reference scenario, whereby no new actions would be taken beyond the already ongoing initiatives. . Based on the evidence available, such a scenario would not allow to meet any of the policy objectives and would not be acceptable from the public safety point of view.

Option 2 "Promotion of voluntary cooperation"

Under this option the Community would promote voluntary cooperation between the NSIAs. This would not involve new legislative action.

It is based on the resources of the MS and the experiences of the informal grouping of the NSIA ("the Council of European Aviation Safety Investigation Authorities"). The Commission would engage in a dialogue with this grouping. Specific support of

the Commission could be provided through an annual grant to manage a number of central functions, e.g. a mechanism for sharing of resources or coordination of training.

Option 3 "European Network of Civil Aviation Safety Investigation Authorities"

This option, similarly to the previous one, would be based on promotion of voluntary cooperation and resources available in the MS. However, in this case the mandate of the grouping of the NSIAs, transformed into a European Network of Civil Aviation Safety Investigation Authorities ("the Network"), would be embedded in a legally binding framework.

"The Network" would contribute to greater uniformity and better implementation of the Community accident investigation legislation. It would retain an independent status and its mandate, strictly described in the Regulation, would be limited to advisory and coordination tasks.

"The Network", would constitute a body pursuing an aim of general European interest, allowing the Community to support its activities with an annual grant awarded subject to an annual work programme agreed with the Commission.

This option would allow addressing the drawbacks of a solution based solely on voluntary cooperation, and notably the lack of legal certainty. This would better protect sensitive safety information, define the mutual rights and obligations of NSIAs and EASA and establish uniform requirements for the processing of safety recommendations.

Option 4 "European Civil Aviation Safety Board"

The last option to address the issues identified in 2 above would be to establish a European Civil Aviation Safety Board ("the ESB").

The ESB would be established as a Community agency for accident investigation, similar to the U.S. National Transportation Safety Board. It would actually conduct investigations in the EU and participate in investigations in third countries.

Under this option the NSIAs would be either replaced by the ESB or the NSIAs would be responsible only for investigation of smaller accidents of private aircraft, and acting as national offices of the ESB, thus providing a link with local authorities.

6. ASSESSMENT OF IMPACTS

Option 2 "Promotion of voluntary cooperation"

This option relies on the existing cooperation between the NSIAs. It does not establish new Community structures and builds on the available resources. The implementation risks and administrative burden of this option is thus expected to be negligible. The mechanism for sharing of resources, or coordination of training on specific issues is expected to bring savings and economies of scale and reduce the overall costs of NSIAs without involving additional costs or administrative burden for the industry.

Option 3 "European Network of Civil Aviation Safety Investigation Authorities"

Similarly to the previous option, the establishment of "the Network", although in this case enshrined in law, would not necessitate establishment of new structures or significant additional administrative burden for the Community, NSIAs or industry.

It would be based on the existing informal cooperation and resources of the MS. The main cost for the Community budget would be the annual grant to support "the Network".

Although some additional costs and administrative burdens are expected as compared to the previous option, its implementation option should result in overall net savings for the MS thanks to the establishment of a central mechanism for sharing of resources, coordination of training and closer cooperation and exchange of data. This option would also provide more legal certainty in issues such as support of MS in accident investigation, access to information and responsibilities of the parties involved in the investigation.

Compared with the previous option, the establishment of "the Network" would provide for additional benefits, by enshrining a number of important principles in a legally binding framework and giving a clear mandate to "the Network".

Option 4 "European Civil Aviation Safety Board"

This scenario would involve the most significant overhaul of the existing system. Investigation of all major accidents would be performed by a single, independent, specialised body. However, it is also characterised by the highest implementation risks and cost for the Community budget. It would necessitate a substantial overhaul of the regulatory framework and establishment of a new Community Agency.

The administrative burden associated with this option would be also substantially higher than for the previous options (obligation to fulfil all the requirements of the EU law related to financial issues, staffing policy, internal audit, procurement policy etc). This option would however offer the biggest savings for the MS.

It is difficult to assess if implementation of this option would not be hampered by the fact that the ESB would have to operate in 27 different jurisdictions, having in mind the close link between judicial procedures and accident investigations and the need for the investigators to work in close cooperation with the local law enforcement authorities.

These risks could be mitigated by having the ESB assisted by NSIAs which would act as its regional offices. This would however increase the costs of this option.

7. COMPARISON OF OPTIONS

7.1. Overview

Option 2 offers moderate safety benefits at a reasonable cost for the Community budget, while offering savings for the MS. The administrative burden of implementation of this option is negligible. It also does not impose additional costs on the industry.

Option 3 offers additional safety benefits as compared to promotion of voluntary cooperation. However it is also characterised by additional implementation risks. The costs of implementation for the Community budget are comparable to "Promotion of Voluntary Cooperation". The administrative burden and the costs for the MS may be however higher than for the previous scenario.

The last option offers the highest safety benefits as compared to the other two options. However, it is characterised by the risks and costs for the Community

budget. Although the administrative burden involved in this option is expected to be the highest, it is also envisaged that it would bring the biggest savings for the MS.

Criteria	Weighting	Criteria	Weighting
Safety impacts	√ = 4 points	Economic, social and environmental impacts	√ = 1 point
Implementation Risks	-√ = - 2 points	Impact on fundamental rights	√ = 1 point

	"Voluntary cooperation"	"the Network"	"ESB"
Safety benefits	√ (4)	√√ (8)	√√√ (12)
Implementation risks	0	- √√ (-4)	- √√√√ (-8)
Economic, social and environmental impacts	√ (1)	√√ (2)	√√√ (3)
Impact on fundamental rights	√ (1)	√√ (2)	√√√ (3)
Annual costs for the Community	600.000€ (small)	600.000€ (small)	around 40 million € (high)
Annual costs for the MS	Expenditures up to 600.000€ for <u>all</u> the MS (co-financing of the grant) √ (net savings)	Expenditures up to 600.000€ for <u>all</u> the MS (co-financing of the grant) √ (net savings)	√√ to √√√ (net savings)
Costs for the industry	0	0	0
Administrative burden	0 (negligible)	√ (small)	√√ (moderate)

7.2. Option with the biggest added value

Option 3, "Establishment of the European Network of Civil Aviation Safety Investigation Authorities" has the biggest added value for the Community. It is the most proportional option, fully respecting the principle of independence of safety investigations and allowing, without establishing new Community structures, to enhance the efficiency of accident investigation in the EU.

This option addresses the problem areas identified, without going beyond what is strictly necessary. It can be implemented with relatively low cost for the Community, and is expected to reduce the costs of the MS while resulting in little additional administrative burden.

By lending supporting to the existing voluntary cooperation between NSIAs, it is also expected to have support from the stakeholders and MS. The regulatory elements of this option, enshrined in the Regulation, were also supported in the public consultations and by the "Group of Experts".

There are limited implementation risks, notably when compared to option 4, not expected to jeopardise the envisaged policy objectives.

This option, by relying on co-regulation and support for voluntary cooperation, is also in line with the EU objectives of "Better Regulation". .

8. MONITORING AND EVALUATION

Indicators and methods allowing to measure progress towards the achievement of the desired objectives under the preferred option will need to be established including indicators such as the level of support provided by the central mechanism for sharing of resources or the number of safety recommendations registered/closed in the central database.

The administrative burden associated with these reporting obligations is not expected to be high. MS already provide to the Commission most of the information, including occurrence reports and final reports from the investigations.