

# Report by the Social Dialogue ATM Work Group on the implications of FABs



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# INTRODUCTION

In September 2004 the European Social Partners (CANSO and ETF) jointly hosted a conference in Palermo on the subject of Functional Airspace Blocks (FABs), bringing together 150 participants representing Air Navigation Service Providers (ANSP) and the Trade Unions and Professional Organisations. This conference was a unique occasion that allowed employers, trade union and other representatives to discuss the possible impact of FABs, and to look at some of the opportunities and threats posed by their development. It allowed the social partners to begin to define what they meant by the “bottom up approach” to the development of the Single European Sky.

As a result of the Palermo conference, the social partners created four sub groups, three to consider some of the key aspects of the introduction of FABs, and the fourth to provide impetus to work identified in the Air Traffic Management Working Group (ATMWG) but not yet actioned. These sub groups were:

- 1 Common Understanding on FABs
- 2 Institutional Roles in FABs
- 3 Consultation on FABs
- 4 Just Culture

The sub group reports were adopted by the ATM Working group in February 2006.

Some complementary documents are available on the ETF and CANSO websites.

The Joint ETF-CANSO statement from the Palermo Conference has been included as an Appendix.

## EXECUTIVE SUMMARY

The Air Traffic Management Work Group (ATMWG) welcomed the publication of the four reports and noted that they demonstrated that the social partners are working together to develop joint solutions to the problems facing ATM in Europe.

Two common themes emerge from the FAB reports: firstly, that if FABs are to lead to improvements in safety, capacity and efficiency, it is essential that ANSPs play a central role in every stage of their development, and secondly, that staff need to be consulted at every stage. Key points from the reports are:

- One model of Functional Airspace Block does not fit all circumstances.
- FABs are much more than airspace design projects.
- The creation of FABs will involve complex processes, on a phased and step by step approach, with associated outputs identified and added-value to be assessed and confirmed through this process.
- The bottom up approach implies that ANSPs have the right and obligation of initiative, with the appropriate involvement of staff and users (civil and military) from the beginning of the process.
- There are five different phases of development – initiation, feasibility, planning, decision and implementation.
- Early consultation between Social Partners, and involvement in the decision making process, is central to the development of FABs.
- ANSPs and their respective employee representatives should agree consultative arrangements that provide for involvement at such a stage that influence on the decision making process is secured.
- Where the implementation of a FAB could in principle lead to a significant change in the roles and/or locations of workers in more than one country, Social Partners will wish to consider how to handle the resulting social impact.
- There is no legal requirement in Single Sky regulations for FABs to address consolidation of service provision. Furthermore, it is widely recognised that a FAB does not require the concentration of all Air Navigation Services (ANS) functions on one site. Several Area Control Centers (ACC) from several ANSPs can contribute to one FAB.

The message coming from the Just Culture report is that whilst those within the ATM industry generally agree that the interests of aviation safety, and the wider public interest, are best served by maximising the reporting of safety occurrences, progress towards a Just Culture reporting environment has been slow. Key points from the report are:

- Just Culture does not equate to immunity, but it implies that disciplinary or criminal sanctions will only be taken in event of proven culpability.
- The success of a Just Culture reporting and investigation scheme relies on trust and requires ANSP management and staff to establish and maintain the necessary confidence.
- The Social Partners should seek the support of the European Commission (EC) to hold a seminar on Just Culture, with the intention of raising understanding and gathering support for the implementation of a Europe-wide Just Culture within ATM.
- The Social Partners should give a clear commitment to a sustained, long term campaign for the Europe-wide establishment of Just Culture within ATM.

# 1 Common Understanding on FABs

## 1.1 Introduction

**One of the general principles jointly set out by ETF and CANSO at the Palermo Conference was to promote the bottom-up approach.**

The “bottom-up approach” means, from a methodological point of view, that future possible general principles for FABs shall be based on the initiatives from the stakeholders, and that in a “life-cycle” approach of FAB projects, the current relevant new projects should start by appropriate “feasibility studies”.

Therefore, while recognising that the bottom-up approach is consistent with a “non-uniformity” principle in developing FABs (“one model does not fit all”) the focus of this subgroup has been:

- to develop and review the critical operational & technical issues relevant when developing a FAB, on the basis of the conclusions of the “Palermo Conference”.
- to promote best practices based on current initiatives towards the establishment of FABs,
- to develop, in a position paper, a common understanding between social partners on FAB common general principles **or guidelines**
- to contribute to the promotion of this common understanding in the discussions with the relevant institutional parties, in particular Eurocontrol and the European Commission.

Accordingly, this working paper will be structured in two parts:

- A) Common understanding on some general guidelines/principles
- B) Tentative best practices for bottom-up approach compliant feasibility studies

## 1.2 Common understanding on some general guidelines/principles

### 1.2.1 Development of guidance material to assist the harmonised design and implementation of Functional Airspace Blocks

One model of FABs would not fit all: different models of FABs will have to be developed on a European-wide basis, reflecting different regional characteristics (traffic flows, airport density, institutional or legal constraints, or even social, cultural and environmental specificities).

FABs are much more than airspace design and may encompass enhanced cross-border cooperation which would have to deal with the following issues :

- Safety and performance management
- Air Traffic Flow Capacity Management (ATFCM) Flexible Use of Airspace (FUA) and functional integration
- Civil/military cooperation & joint planning
- Common planning and design criteria for airspace and sectorisation
- Human resources management and training

- Interoperability, which could include a joint system for development and procurement
- Organisation, management and financing of services.

In the view of developing FABs, a **clear distinction should be made between:**

- **Common principles or guidelines which are not specific to FABs** and should be taken into account for **each domain** (airspace design, FUA, interoperability, etc...),
- **Guidance material which can support the establishment of FABs according to the “bottom-up approach” principle.** The present CANSO/ETF initiative towards developing “common understanding on the bottom-up approach for FABs” shall be considered as such guidance material for the benefit of Single Sky implementation.

## 1.2.2 The process for implementing FABs

The creation of FABs will involve complex processes, on a phased and step by step approach with associated outputs identified and added-value to be assessed and confirmed through this process

The bottom-up approach implies that ANSPs have the right (and obligation) of initiative, with the involvement of staff and consultation with users (civil and military) from the beginning of the process.

The development and implementation of a FAB should be managed under a **formal project management perspective, in a step by step approach considering the incremental and evolutionary aspects** of such an initiative.

The ANSPs, once they develop and submit to their respective National Supervisory Authorities (NSAs) some elements of concept of operation for the development of a FAB should also give the evidence of appropriate involvement and consultation of the relevant unions.

The ANSPs and their Member States will manage these global projects commencing by sound **feasibility studies for assessing added-value expectations in the long term**, encompassing all relevant aspects, from operational considerations to legal and institutional requirements.

Considering the life-span of a FAB, it is important for all stakeholders to understand and endorse upon the long-term goals as many of the benefits may not be obviously realised in the early stages following initial implementation.

## 1.2.3 FABs and consolidation of service provision

There is no legal requirement in Single sky regulations for FABs to address consolidation of service provision. Furthermore, it is widely recognised that a FAB does not require the concentration of all ANS functions on one site. **Several ACCs from several ANSPs can contribute to one FAB.** In this view, it is the responsibility of ANSPs to consider whether any consolidation of ANS elements may provide operational or cost benefits for the network. If this is the case, clarity of timing of such an initiative is important as an output of a FAB feasibility study.

On a pure operational point of view, it is also recognized that the key issue when several operational units are contributing to one FAB is developing a **common operational concept** applicable for the FAB and then to develop common requirements to support that concept in order to improve ATM performance for the benefit of the overall

network.

This “multiple operational units” perspective may be of crucial interest when addressing the upper–lower airspace compatibility. As FL 285 is a ‘legal level’ not necessarily consistent with operational requirements in every area, **global projects encompassing upper and lower airspace** may be consistent with a performance-oriented concept of operations for a FAB, although there might not be any operational requirement for providing en-route services in upper and lower airspace from a single unit.

Nevertheless, a **Cooperative Functional Airspace Block Project** may identify some synergies in order to improve the cost-efficiency of the involved ANSPs operation, in a **global win-win cooperative framework** (encompassing operational, technical, social, legal and financial aspects without any unacceptable consequence for any party involved in the FAB).

### 1.2.4 Requirements for Cost Benefit Analysis (CBA)

The first criterion for a FAB is to be supported by a strong safety case. Furthermore, the benefits expected from a FAB (and to be asserted in any CBA) should include some **added-value as regards safety**, in particular in terms of harmonization of safety management issues, including the application of the principles of an open just culture environment in safety reporting.

Considering that the Aviation industry is one of the drivers for economic growth in all industrial sectors in the European Union, it is expected that one of the main purposes of FABs is to **increase capacity in the ATM system to meet the long term demand**.

Thus, as the primary aim of a FAB is to provide added-value in ATM performance, to be demonstrated by a sound CBA, it should be kept in mind that **ATM performance** is a global concept encompassing **safety, capacity, flight efficiency and cost-effectiveness**.

FABs will involve complex processes, in a phased and step by step approach with associated outputs identified and added-value to be assessed and confirmed. In this view, appropriate consideration of adequate financing of development costs towards the achievement of **long term sustainable benefits** must be carefully addressed.

### 1.2.5 The pan-European perspective in a regional FAB development

Pan-European perspective does not mean “centralised perspective”. It means that a network management perspective should address **at which level operational responsibilities** are best addressed for the benefit of the overall network performance.

The FAB level should not be considered as an unnecessary added layer between local, national or centralised level, but as an evolution of the current organisation creating value for the **benefit of the network as whole**. The benefits will be achieved by intensive discussion and exchange of information between FAB initiatives. As “functional” in FAB is intended to develop and improve cross-border, or “inter-State” ATM, it is expected that the focus should be on a **trans-national extension of the current national level application of service provision**.



Nevertheless, European diversity and complexity implies ‘one model does not fit all’ and it is assumed that different processes and priorities will drive such transition from a national to a trans-national perspective.

As the global objective encompasses harmonisation of the European ATM system, it then could be considered that **FABs are a new managerial level** to be taken into account in the on-going development of European ATM planning.

### 1.2.6 Optimization of lateral and vertical dimensions of a FAB

It is accepted that different models of FABs will have to be developed on a European-wide basis, reflecting **different regional characteristics** (traffic flows, airport density, institutional or legal constraints, or even social, cultural and environmental specificities).

In general terms, the larger the block of airspace, the greater the potential for improving the route network and its management through better accommodation of particular airspace requirements. On the vertical dimension the compatibility between upper and lower airspace could be achieved by the development of FABs in a consistent, holistic approach encompassing both upper and lower airspace, with a strong emphasis on the connectivity with major airport traffic flows.

Nevertheless, a **balance shall be kept between the “operational” and “manageable”** dimension of a FAB. This is clearly the substance of the “bottom-up approach” to balance these two aspects, and the feasibility of different options shall be assessed taking into account all the relevant operational and non-operational aspects.

### 1.2.7 Involvement of civil and military users in FAB developments

From an operational perspective, any bottom-up approach should begin by an appropriate consideration of civil and military needs. The question is how to involve civil and military users in expressing and validating these needs.

‘Functional’ in FAB implies, as established in the SES regulation, to develop and improve cross border integrated management of airspace. In particular, special attention must be paid to the development of international civil-military coordinated airspace design and the flexible use of airspace

It is recognised that civil and military perspectives are not the same in FAB development:

- civil users consider Single Sky as primarily oriented towards the development of their needs, while military users might not directly see the Single Sky and FABs as providing added-value from their specific perspective, but will nonetheless expect to protect their access arrangements to airspace,
- military users are represented by State authorities with specific responsibilities in maximising airspace efficiency, and promoting FAB development.

These differences in civil and military perspectives imply that their respective involvement in FAB development might not be aligned:

- **civil users** needs are clearly addressed by current performance reviews, and their position towards FAB feasibility studies will be from a **“customer” perspective**, requiring added-value to be demonstrated by ANSPs,
- **military users are also actors of the network development**, and their role in FAB development should be proactive, in actively participating in the FAB feasibility studies in **strong cooperation with the ANSPs**.

Whilst openness and transparency are important first steps in generating dialogue between civil and military stakeholders, it should be appreciated that longer-term benefit is likely to feature a more holistic ‘multi-State’ view when planning civil and military use of airspace structure as well as management processes.

### 1.2.8 Impact of FAB development on ATFCM processes

The main objective of SES is to support the development of increased capacity in the ATM system towards sustainable air transport growth. In that perspective, the ANSPs are responsible for capacity planning, both at strategic and at tactical level, in accordance with their safety management responsibilities.

FABs should bring added-value to the pan-European network as a whole, not creating any new unnecessary added layer in the Air Traffic Flow Capacity Management (ATFCM) process. Nevertheless, FABs could create opportunities for enhancing ATFCM at a sub-regional level, for example with enhanced **cross-border integration of Airspace Management (ASM) and Air Traffic Flow Management (ATFM)**, or by enhancing **tactical ATFM between adjacent Area Control Centres (ACCs)**.

The evolutionary level between adjacent FABs might not be totally homogenous, as *“one model does not fit all”*. It thus should be recognised that ATFCM processes might not be strictly seamless between adjacent FABs, provided this does not create **any regression from the situation “before FABs”**.

### 1.2.9 Technical requirements for FAB development

As for interoperability, single sky requirements shall apply which are not specific to FABs. As such there is no “legal technical requirement” for development of FABs. Considering the full life-cycle of a FAB, technical cooperation could be considered as:

- technical consequences of the development of a common concept of operation within a FAB,
- opportunities for enhanced cost-effective cooperation in specification, development and/or procurement of technical systems.

Technical harmonisation within a FAB is then more a question of cooperation opportunities than prerequisites, and should not block the development of FABs.

## 1.3 Tentative best practices for bottom-up approach compliant feasibility studies

The Palermo conference agreed that FABs may encompass enhanced cross-border cooperation but would have to deal with the following issues:

- Safety and performance management
- ATFCM and FUA functional integration
- Civil/military cooperation & joint planning
- Common planning and design criteria for airspace and sectorisation
- Human resources management and training
- Interoperability, systems development and procurement
- Organisation, management and financing of services

**Accordingly, it is widely accepted that “a FAB is more than an airspace project. The term “functional” indicates the strong cooperation aspect and the consideration of all relevant ANS functions and organizational aspects within a “Cooperative functional airspace block project”.**

Considering that:

- the creation of FABs will involve complex processes, on a phased and step by step approach with associated outputs identified and added-value to be assessed and confirmed through this process,
- the bottom-up approach implies that ANSPs have the right (and obligation) of initiative, with the appropriate involvement of staff and users (civil and military) from the beginning of the process,

**...the issue for the ANSPs is to start the process by launching feasibility studies for these Cooperative functional airspace block projects”.**

## 2 Institutional Roles in FABs

### 2.1 Introduction

The focus of the parties in this subgroup has been to develop a common understanding about the role of the various players involved in the planning and implementation of Functional Airspace Blocks.

### 2.2 Institutional players

In examining the different roles that different organisations will play in the development of Functional Airspace Blocks (FABs) the sub group has identified that some organisations will play different roles at different phases. The sub group has identified the following organisations and entities as having some role to play in the development of a functional airspace block.

- **ANSPs**

The States are the owners of the airspace. The air navigation service providers are designated for guaranteeing the safety and performance of the air traffic network. They are therefore the managers of the network and will play different roles at different phases of the process.

- **National Trade Unions/Employee representative Organisations**

The sub group has defined this player as any trade union or employee representative organisation. In some member states it will be appropriate to work with national trade union representatives. In other states it will be appropriate to work with only trade union representatives who are working with ANS employers. In other member states it will be appropriate to work with employee representatives.

- **International Trade Union Organisations**

This player is defined as the international trade union organisation designated as a Social Partner by the European Union (EU).

- **International Employers Associations**

The CANSO Social Dialogue Partnership is the acknowledged representative of the ANSPs. It is open to all ANSPs within the European Community as well as the accession States to ensure a consolidated input from the employers of the ANS sector regarding the related sectoral social dialogue.

- **European Social Partners**

Canso and ETF are the recognised Social Partners by the EU

- a) ETF has signed cooperation agreements with the International Professional Organisations IFATCA and IFATSEA and with ATCEUC. The ETF delegations comprise members of these 4 organisations.
- b) The CANSO Social Dialogue Partnership is the acknowledged representative of the ANSPs

- **Customers**

This player is defined as the ANS customer who uses and pays for the air navigation services (e.g. commercial airlines, general aviation, etc.).

- **Airspace Users**

This takes account of all airspace users and would cover general aviation, military users, search and rescue organisations and others.

- **Airports**

This entity needs no explanation.

- **Member States (Government level)**

Different State entities will have different roles to play at different phases. Under this heading the sub group is dealing with the role of the government, generally the ministry of transport or aviation and defence. It is much more the political level than the operational level.

- **Member States NSA**

The National Supervisory Authorities (NSA) are defined in the Single European Sky (SES) regulations. However in some states there may be different State entities that will play a role. This might include safety regulators, economic regulators and airspace authorities where they exist separately.

- **Military**

The sub group defines 3 roles for the military:

- a) the military user of airspace;
- b) the military as service provider;
- c) the role for the military as responsible for state security.

- **SES Committee**

This entity needs no explanation.

- **European Commission**

This entity needs no explanation.

- **ICAO**

This entity needs no explanation.

- **Eurocontrol**

This entity needs no explanation.

- **EASA**

This entity needs no explanation.

- **NATO**

This entity needs no explanation.

- **Neighbouring States**

The sub group defines neighbouring States as States who are not part of a FAB but whose airspace is adjacent to the airspace of a specific FAB project.

## 2.3 Definition of the different roles in the development of a FAB

The sub group has identified the following roles that would be involved in the development of a FAB.

### a) Formal Role

The sub group defines the formal role as the role defined by the Single European Sky regulations and any formal role that might be set out in national legislation. This includes the supervisory functions to be performed by States.

### b) Decision process

#### b.1) *Being informed*

The sub group defines being informed as the passing of information from one party to another. It does not constitute consultation.

#### b.2) *Advising*

The sub group defines this role as providing advice. Different kinds of advice will be required at different phases of the creation of an FAB.

#### b.3) *Being consulted*

The sub group defines this role as the formal process of consultation that can lead to negotiation with interested parties. It will be conducted in different ways at different phases of the process.

#### b.4) *Deciding*

This needs no definition.

### c) Preparatory process

#### c.1) *Simulating*

The sub group defines this as the simulation of the operation of FABs e.g. traffic flows, ATC procedures, etc.

#### c.2) *Analysing*

The sub group refers to assessing in all areas not covered by simulating, such as safety case, economic and social studies, financial ...

### d) Financing

This needs no definition.

### e) Coordination

This is the support and general overview of the overall process.

## 2.4 Phases of FAB development

The sub group identified five different phases of development of a FAB. It should be emphasised that the sub group does not believe that each phase is separate or that one phase is concluded before the next phase begins. It should also be understood that the sub group does not see these as project management phases. It may be the case that some FABs will not go through every phase. It will be governed by national circumstances and the number of States covered by an FAB.

### 1. Initiation Phase

States with or without their ANSPs initiate first ideas and begin exploratory talks with potential partners about the development of a FAB.

## 2. Feasibility Phase

ANSPs and/or States pursue a high level feasibility study about a potential FAB identifying major aspects to be considered, issues to be resolved etc.

## 3. Creation/ Planning/ Preparatory Phase

Detailed planning for the creation of a FAB resulting in a proposal for implementation. This would probably include issues like sectorisation, simulation of traffic flows, safety studies, economical, social and financial studies etc. During this stage the initial boundary of the FAB would be identified.

## 4. Formal Decision

Based on the proposal developed in phase 3, a formal and binding decision for the implementation is taken.

## 5. Implementation Phase

Comprises the implementation of the proposed FAB development based on the formal decision.

## 2.5 Role of the players in the different phases

The group developed the following matrix to show the different roles for each of the players. The figures in the boxes refer to the phases identified in the preceding chapter 2.4

	formal role	being informed	advising	being consulted	deciding	simulating	supporting	financing	co-ordinating	supervising
ANSPs	2	1, 2, 3	1, 2, 3	1, 2, 3	3	3	2, 3	2, 3	2, 3	2
National Trade Unions/ Employee rep. Organisations		1, 2, 3	2, 3	2, 3			3			
International TU Organisations/ Social Partners		3							3	
Customers		2, 3		2, 3						
Airspace Users		2, 3		2, 3						
Airports		2, 3		2, 3						
Member States (Government level)	1, 2, 3				1			2	2	2
Member States NSA		2, 3		2, 3	3		3			
Military		2, 3	3	2, 3						
SES Committee		3								
European Commission		3						3		
ICAO		2, 3								
Eurocontrol				3		3	3		3	
EASA										
NATO		2, 3								
Neighboring States		2, 3		2, 3						

Figure 1: Roles of the players

## 1. Initiation Phase

It is quite clear that the intention of the Single European Sky Legislation is to ensure that member states will take the initiative. They will therefore play the formal role at this stage and indeed in the first three phases. This would be the decision in principal to identify an area of airspace that could be formed into an airspace block. This would be the decision in principal to identify an area of airspace that could be formed into a Functional Airspace Block. Notwithstanding the legal responsibilities of the States, the ANSPs are expected to pro-actively take the initiative for the initiation of FAB projects as part of their responsibility to optimise the management and operation of the airspace.

Given that decisions on airspace design could have a major impact on the business of ANSPs, the subgroup recommends that it would be good practice to consult with the ANSPs concerned before any initial decision is taken. This consultation would probably be restricted at this stage to the senior levels.

If the process is to be credible, the sub group believes that it is important that information is given to the employees representatives of ANSPs concerned at this stage. The sub group also recommends that ANSPs would have an advisory role at this phase. After all it is the ANSPs who have all of the expertise that will be required in the development of a FAB.

## 2. Feasibility Phase

This may take the route of a formal feasibility study or it may take the form of joint work between governments or ANSPs or both. As much information as possible should be gathered in this phase. The sub group also suggests that the costs associated with the conduct of the feasibility study should be recovered through users charges unless other funds are available. Depending on the specific arrangements, Governments and the ANSPs will take a lead on co-ordinating in this phase.

It is the view of the subgroup that the ANSPs controlling the airspace identified in phase 1 should play a major role in this phase. Clearly the ANSP would provide technical advice to a government but they also need to be formally consulted. This is particularly true for those ANSPs who are clearly not part of the State apparatus. ANSPs will play a number of roles at this phase. They will provide technical advice on operational issues that need to be considered. They will need to be consulted because the creation of any FAB will have a major impact on the ANSP's business.

The sub group has also suggested that trade unions and employee representative organisations should be consulted and will have an advisory role. The subgroup sees the advisory role in the context of identifying employment issues and specific legal issues that might need to be dealt with. As can be seen from the chart the sub group has suggested that customers, airspace users and airports need to be consulted at this phase if appropriate. The sub group does not see this as the definitive consultation stage but it is important that initial ideas and views are fed in to the process. In our view it is also important to ensure that neighbouring States not directly involved are consulted early so as to ensure that their views can be accommodated. It may well be that creating a FAB in one area can simply transfer a bottleneck to another country.

It is also important to involve the Military organisations at this point. As with ANSPs they will have a variety of roles. In some cases it will be sufficient to inform the military organisations. However where a FAB could have an impact on military airspace it will be important to formally consult the appropriate authorities.

ICAO and NATO might need to be brought in at this stage, if there is a possibility that a FAB could have an impact on their roles.



### **3. Creation/ Planning/ Preparatory Phase**

Clearly ANSPs would take a lead in this phase. As far as information is concerned the sub group is suggesting that in addition to those informed at the earlier phase there would be a requirement to inform the SES Committee, the European Commission. Furthermore information of the International Organisations of Social Partners, i.e. international Trade Unions' and employers' organisations, in the ATM sector is recommended in this phase.

As regards consultation the sub group is suggesting that Eurocontrol should also be consulted during this phase. The sub group also suggests that the nature of the consultation process is different in this phase. At this point there is a need to consult on the details of a FAB. For example it will be necessary to consult with airlines on possible route structures. It will be necessary to examine the employment consequences with employee representatives. It should be the aim of the process to create the widest possible consensus on the creation of a FAB.

During this phase it will be important to simulate the operational details of any proposals for FABs. This requires involvement of the operational expertise of the ANSPs and possibly the military. On request of the ANSPs involved, Eurocontrol may support simulations.

Financing will also be an important element in this phase. The sub group accepts that the major proportion of costs will be born by the ANSPs involved, recovered through users' charges. EU funding for the partial financing of the studies might be available.

It is vitally important that a proper co-ordination mechanism is established. All of the ANSPs involved in a particular FAB will need to co-ordinate together and with neighbouring States. Co-ordination between the ANSPs and employees' representatives affected by the implementation of the FAB is also an important activity in this phase, depending on the specific circumstances. This could take the form of a joint board or a joint committee. International trade unions may have a role in supporting the co-ordination across national borders.

### **4. Formal Decision**

Whilst the formal decision to go ahead with a FAB must rest with the Member State, the sub group recommends that it should be a joint decision between Member States and the ANSPs involved.

### **5. Implementation Phase**

The subgroup recommends that there should be a clear implementation plan which sets out a definitive timetable.

## 2.6 Conclusions and recommendations

- ETF and CANSO are committed to provide European Air Transport with the safest and most efficient Air Navigation Services.
- If FABs are to operate successfully, it must be recognized that safety is paramount and that one size of FAB does not fit all.

The European social partners agree that the future challenges can only be met and overcome by employees and employers working together to find solutions. The involvement and the participation of the Trade Unions during the whole process of establishing FABs are key tools for the success of the project.

Jointly CANSO and ETF promote the information and the consultation between the national social partners at the different phases of establishing FABs, including the information of the employee representatives during the initial phase. As appropriate in Phase 3 (creation/planning/preparatory), this dialogue can lead to negotiations on the social impact of FABs at national level and / or at multinational level between ANSPs and trade unions.

1. Social partners are committed to the establishment of Functional Airspace Blocks in the spirit of the “bottom up approach”.
2. States as the owners of the airspace and the ANSPs as the managers of the airspace have a joint responsibility in initiating and steering the process of establishment of a FAB.
3. The subgroup recommends that it would be good practice for the States to consult with the ANSPs before any initial decision on creating a FAB is taken.
4. The subgroup recommends that it would be good practice to inform the employee representatives during the initial phase (phase 1).
5. The subgroup recommends that it would be a key tool for success to have a formal consultation process of key stakeholders during the feasibility phase (phase 2)
6. The subgroup recommends that consultation of all parties concerned will be an important part of Phase 3 (Creation, planning and preparatory phase). Depending on the social impact of the project, negotiations between social partners should be initiated in Phase 3 (Creation, planning and preparatory phase).
7. The subgroup recommends that whole or partial EU and / or State funding in financing studies and / or implementation of FABs should be pursued.
8. The subgroup recommends that the international trade union organisations can be given, on request, a role in co-ordination across national borders.

## 3 Consultation on FABs

### 3.1 Introduction

#### **Single European Sky**

Single European Sky (SES) legislation came into force in April 2004 and included a wide range of measures designed to improve efficiency in European air traffic management. The Airspace Regulation mandates a single European Upper Flight Information Region (EUIR) covering all airspace above 28,500ft., across all Member States. It requires that the airspace in this new EUIR should be organized into Functional Airspace blocks (FABs).

#### **Palermo Conference**

The EC sponsored a Joint CANSO/ETF conference in Palermo on 17/18 September 2004, addressed issues associated with the establishment of FABs and reached a number of conclusions on human resources matters. Among the agreed general principles was the acceptance that:

- ***“Consultation between workers and employers on the development of FABs is essential”***
- ***“Consultation and negotiations on FABs at national level between the ANSPs and Trade Unions remains vital”***

There was particular emphasis on the need to gather and share information on best practice in the employee consultative process and the Conference identified:

- ***“...the need for the very early involvement of ANSPs and Trade Unions in the construction of FABs”***
- ***“... need to have cross border legal arrangements arrived at within existing legal frameworks”***

The conference identified the usefulness of establishing specialist sub-groups to examine various issues. The aim of the Consultation Sub- Group was:

- **To examine and develop the consultation arrangements between ANSPs and Unions in order to facilitate the process of creating FABs**
- **To promote best practice/guidelines on consultation arrangements.**

The Sub-Group identified the purpose of Dialogue between Social Partners in the FAB context “as being shared visions of success” and “value adding”. This document sets out the consideration and recommendations of the CANSO/ETF Sub-Group established to examine ‘Consultation on Functional Airspace Blocks’ (FABs).

#### **General**

Active trade union/employee representative participation may be broadly interpreted as the key element in the development of a FAB incorporating any mechanisms designed to increase employee input into the decision making process. Essentially, those who are involved in an organization may quite legitimately argue for entitlement to share in decisions that affect them. Employee input into decisions which affect their working lives is an essential goal.

All parties involved in consultation mechanisms can benefit from increased employee participation. FABs will need motivated employees who can respond to change and perform at high levels of commitment. Management and staff will benefit from positive workplace relations that are based on trust and transparency in the decision making process.

Effective consultation mechanisms are recognized as critical to the successful establishment of FABs. Though the Sub-Group makes recommendations on the principles of the consultation arrangements it is recognised that with cultural, industrial and legal diversity prevalent across the EU 'one size will not necessarily fit all'.

The imperative in establishing consultation on FABs is to build trust and understanding between all parties so that discussions can take place constructively to prevent conflict and to enable agreements between the social partners to be reached at national level and European level.

Though the report concentrates on the consultation arrangements between social partners, all parties must be mindful of the impact on the development and formation of FABs by National Supervisory Authorities, Government Departments of Transport, etc.

### **Consultation in Context of this Report**

Before considering aspects of consultation it is worth identifying what consultation means in the context of this report. Consultation may be regarded as a partnership between employers and trade unions/ employee representatives. It involves a continuing commitment by employees to improvements in quality and efficiency and the acceptance by employers of employees as stakeholders with rights and interests to be considered in the context of major decisions affecting them. It involves common ownership of the resolution of issues, involving the direct participation of employee representatives in decision making and in problem solving. The consultative process is regarded as an employer/ employee representative partnership approach to resolving issues and challenges in general.

It is important to recognise that consultation does not replace formal negotiating processes where they are required.

### **Legal Issues**

European Community legal requirements should be seen as the minimum standard for consultation. The aim should be to apply consultation arrangements that are better than any legal minimum. This is to set a high level of consultation, recognised by the European Commission and by the ANSPs/Trade Unions involved, as the best way to develop any integration project.

While the engagement in the consultative process between social partners is regarded as the norm, the EU applies minimum rules and regulations to both employers and employees on how they are expected to behave during the process. This report considers the legal requirement for consultation within the EU in the context of EU Directives and Rules and will also consider the non-legal framework.

While legal requirements determine the minimum consultation standard, circumstances may permit the application of superior consultation mechanisms. Recognising that there may be particular national legal requirements to be considered within individual States engaged in the establishment of a FAB, the report does not address these individual national requirements.

A full legal analysis is given under point 3.6

### **Current Practices**

This report attempts to analyse current consultation practices in countries/ANSPs and to identify whether there are best practices which can be recommended.

In researching industries or organisations throughout European ATM, we have not yet discovered arrangements that could easily be used as direct models. We considered a number of examples but rejected them as the basis of models for us. There are many agreements between employers and unions on consultation and negotiation, but they are designed with their particular circumstances, industry or company in mind. From the examples that we have reviewed however, it is perceived that there is definite value in having effective and productive consultation arrangements. There are also underlying principles of trust, openness and involvement that appear to form the basis in all agreements.

In order to understand current consultation practices in ANSPs across Europe the Sub-Group issued a Questionnaire to ANSPs and trade unions. An analysis of the returns is addressed at para. 3.2.

### **Best Practice and Development of Consultation Arrangements**

The objective for determining “best practice” is to identify methods or processes that from experience are effective, or give more options, for consultation. The starting point for the Sub-Group were the principles agreed at the Palermo conference and European and/or national legal requirements.

Best practice seems to indicate that trade unions/employees should be involved in the decision making process as management thinking is in the course of being structured.

The scope of each FAB development (from operational co-operation to full corporate merger) will determine the extent and depth of consultation and is addressed in reports of other Sub-Groups.

### **Other Stakeholders**

While the report concentrates on consultation arrangements between social partners some consideration outside of this report must also be given to the involvement of other parties who have an impact on the development and establishment of FABs. These would include National Supervisory Authorities, National Regulatory Authorities and Government Departments.

## **3.2 Current practices in ANSPs - analysis of questionnaire**

The group, building upon our research and the ‘analysis of data on current practices’ *within* European ATM, did identify current practices and agreements within ANSPs. The Sub-Group does not expect a model to be applicable to all the countries in all aspects but involving unions early and in all stages is considered as a key tool. In another hand, application of best practice can be the ability to choose from a list of options.

- The Sub-Group sent a Questionnaire on industrial relations practices to both providers and trade unions. Twelve ANSPs replied along with twenty four unions. Overall, this represented coverage in twenty two States.
- On the question of whether a representative body existed there was a fair degree of unanimity. Of the respondents all had some form of consultative body that met on a regular, or as required basis.

- Unions and providers agreed that the unions could influence the decision making process with only three dissenters.
- The consultation process was described as effective or adequate by the majority of respondents.
- Where change is being introduced the majority view was that consultation began either at the planning stage or when the management had reached conclusions but the decision could still be changed. Nine respondents reported that consultation would start when ideas are being formed.
- On the particular issue of FAB consultation there were twelve formal agreements reported. Twenty two had no formal procedures in place.
- From this short study it would appear that the respondents have a fairly robust industrial relations framework in place.

### 3.3 Best practice and development of consultation arrangements

ATM provision has not historically been a competitive industry, with some localised exceptions. Safety and operational efficiency have been the primary drivers. As a consequence the development and application of harmonised best practices has always been an objective and this should continue.

It is a well worn *cliché* but worth repeating in the context of consultation arrangements – “a company’s greatest asset is its employees”. This asset should be protected and nourished through ANSPs embracing best practice in the FAB consultative process.

It is recognised that there is not a single union/management consultation process that could be applied to all FAB consultation situations - “one size does not fit all”. Individual ANSPs/Unions can develop customised arrangements that best meet their individual circumstances and indeed their individual cultures for the delivery of best results. This may require significant upgrading of existing employment relations activities in order to meet acceptable standards.

Best practice to secure the fullest co-operation between management and employee representatives demands the establishment of a means acceptable to both for dealing with issues that impact on the working lives of employees. Appropriate mechanisms/structures that allow for regular dialogue are regarded as fundamental.

One of the greatest obstacles to the ongoing involvement of employee representatives in the consultative process is insufficient support facilities. Consultation structures must provide that employee representatives have adequate time to carry out their consultation activities. Reasonable support for employee representatives preparing for discussions with management is critical to the development of *bona fide* consultation arrangements.

Principles of good consultation practice have been identified in many disparate sectors and may include:

- The earliest possible engagement between ANSP management and staff representatives is essential
- Adherence to the spirit of current EU legislative requirements to ensure the implementation of arrangements that enable consultation and improve decision making
- Recognition that the key to best practice lies in the development and customization of practical arrangements that meet the needs and culture of those participating in the FAB

- Where possible benchmarks of good practice in the development of a consultation strategy should be adopted
- Commitment to openness and transparency
- Fostering a culture of joint problem solving and consultation
- Recognition that a key to more effective consultation also lies in the manner and spirit in which consultation arrangements are introduced and progressed
- Enabling employee representatives to have the skills and facilities necessary to engage in consultation activities on behalf of employees
- The alignment of consultation activities with FAB strategy and business plans.

A FAB consultation framework of good practice might be built upon:

- written and agreed terms of reference
- business and employee focused agenda
- promotion of employee representative dialogue and participation
- the need to develop and evolve consultation practices and procedures
- mutual trust
- agreed calendar for regular consultation
- review and troubleshooting mechanisms
- regular feedback opportunities outside of the agreed calendar of meetings.

**In all cases, the group wished to seek improvement, and not to settle for the minimum.**

## 3.4 Conclusion

Consultation between Social Partners and involvement in the decision making process are central to the development of FABs. The establishment of FABs involving change is more likely to be accepted by employees if they are involved in arriving at agreed decisions. Employee commitment to change is best achieved through involvement, where employees know what the FAB is attempting to achieve and how decisions can be influenced by them.

Good consultation practices will assist in the development of trust thereby improving the management/employee relationship. Openness and transparency are among the keys to successful consultation.

Consultation means management commitment to seeking and taking account of the views of employees before reaching a decision. It is recognized that it is the ANSP responsibility to plan, organize and manage the company.

Consultation arrangements in any organisation are those that suit the needs and circumstances of the individual FAB. Proper consultation is vital to ensuring the long-term success of a FAB and can be seen to be more effective at improving efficiency than mere cost cutting measures.

Good consultation arrangements make invalid the old way of “management leads and unions react”.

The early involvement of employee representatives in the consultative process can turn the perception of threat to recognition of opportunity. Among the benefits to management and employee representatives engaged in a culture of consultation are:

- improved understanding of organizational goals and performance
- understanding of employee/ trade union aspirations
- better informed decisions being made
- more joint problem solving and innovation
- openness to change from management and employees
- greater employee involvement
- better management/employee relations
- increased employee commitment
- increased trust and openness
- increased employee voice

## 3.5 Recommendation

It is recommended that;

- The early involvement of employee representatives in the decision making process is vital. Management should seek and take account of the views of employees before making a decision on a FAB.
- ANSPs and their respective employee representatives should agree consultative arrangements that provide for involvement at such a stage that influence on the decision making process is secured.
- ANSPs should establish an ethos of early/timely consultation thereby avoiding difficulties at a later stage of establishing a FAB. There should be an ethos of “no surprises” as the FAB arrangements evolve.



- ANSPs and employee representatives should foster a culture of information sharing and joint problem solving.
- All issues regarding the formation of a FAB could be open for discussion in the appropriate forum
- Issues are subject to consultation/negotiation within other ANSP fora, for example, terms and conditions of employment, or that some issues need other industry players.
- Where the views of employees are not accepted the reasons should be set out clearly by management.
- Where the views of employees are accepted they should be recognized.
- Employee representatives are given the opportunity to acquire the skills and support services needed to engage in the consultative process. Employee representatives are allowed paid leave to attend consultation meetings.
- ANSPs must allow sufficient time for the FAB consultative process to be completed in a satisfactory manner.
- Currently applied decision making and consultation practices where appropriate are adjusted to reflect the specific issues of individual FAB projects. The “bottom up” approach as defined in the Palermo Statement is implemented.
- At the beginning of the consultation process the parties will wish to consider how to protect the process from strikes, lockouts or other action designed to bring pressure to bear on either party.
- While every effort should be made towards greater convergence of consultation arrangements, in line with the “bottom up” approach it is recognised that “one size does not fit all” and that flexibility to reflect different cultures needs to be accommodated.
- Where the implementation of a FAB leads to change in the roles and/or locations of workers in more than one country, social partners will wish to consider how to handle the resulting social impact, particularly as it affects jobs and terms of conditions of all workers involved. Subject to applicable national and European legal requirements, and in the spirit of the Directive 94/45 EC, social partners will wish to consider:
  - The setting up of a trans-national consultation body to involve all social partners directly concerned with the FAB
  - The use of existing national consultation frameworks
  - Social Partners involved in the FAB may agree other arrangements”

## 3.6 Legal considerations

Regulation 549/2004 laying down the framework for the creation of the single European Sky in article 10 provides that “Member States, acting with their national legislation, and the Commission have to establish consultation mechanisms for appropriate involvement of stakeholders in the implementation of the single European sky. Such stakeholders may include ANSPs and professional staff representative bodies. This obligation is the bases for consultation of social partners within the social dialogue.

*In this chapter, an overview on existing legal provisions is provided.*

### **DIRECTIVES ON CONSULTATIONS OF EMPLOYEES**

Directive 94/45/EC deals with consultations in Community-scale undertakings and Community-scale groups of undertakings while Directive 2002/14/EC establishes a general framework for informing and consulting employees in the European Community. Directive 2002/14/EC is a minimum-standard to be transformed into national law. The recital of Directive 2002/14/EC (18) provides that: “The purpose of this general framework is to establish minimum requirements applicable throughout the Community while not preventing Member States from laying down provisions more favourable to employees”. Directive 94/45/EC is more specific and doesn’t give Member States a lot room to add additional rules.

### **DIRECTIVE 2002/14/EC**

The purpose of Directive 2002/14/EC is “to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments in the Community”. Article 3 provides that “When defining or implementing practical arrangements for information and consultation, the employer and the employees representatives shall work in a spirit of co-operation”. The Directive applies to public and private undertakings carrying out an economic activity, whether or not operating for gain. For the purpose of this report ATM is considered as an economic activity.

In Article 2 of the Directive there is a definition of consultation: “‘consultation’ means the exchange of views and establishment of dialogue between the employees representatives and the employer”. The Directive applies to undertakings employing at least 50 employees in any one Member State or establishments employing at least 20 employees in any one Member Stat and covers:

- The recent and probable development of undertakings or the establishments activities and economic situation;
- The situation, structure and probable development of employment in the undertaking, in particular where there is a threat to employment;
- Decisions likely to lead to substantial changes in work organisation or in contractual relations;

“The information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees representatives to conduct an adequate study, and where necessary, prepare for consultation”. Article 4.4 says that consultation shall take place “in such a way as to enable employees representatives to meet the employer and obtain response, and the reasons for that response, to any opinion they might formulate” and “with a view to reaching agreement on decisions within the scope of the employers powers”.

The Directive should not affect the provisions, where these are more specific, like directive 98/59/EC and directive 2001/23/EC.

## **DIRECTIVE 94/45/EC**

On the basis of the Protocol on Social Policy annexed to the EC treaty, Member States agreed that one particular objective of the Community and the Member States is to promote dialogue between management and labour. The reasons to draw up Directive 94/95/EC were:

- That procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees;
- That this may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings;
- That appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings are properly informed and consulted when decisions which are taken in a Member State other than that in which they are employed.

The Directive is not specific on the issues that should be subject of information and consultation. In the recital it is said “decisions that have a significant effect on the interests of employees”. At a local level in the Member State and in the undertakings itself this has to be further defined.

The Directive is applicable when a Community-scale undertaking has at least 1000 employees within a Member State and at least 150 employees in each of at least two Member States. The central management of the Community Scale undertaking is responsible for the establishment of a European Works Council or an employee information and consultation procedure.

A special negotiating body must be created where management negotiates with employee representatives about:

- Which undertakings are covered by the agreement on the establishment of a European Works Council;
- The composition of the Council;
- The functions and the procedure for information and consultation;
- The venue, frequency and duration of meetings.

It is also possible to decide on establishing one or more information and consultations procedures, without creating a European Works Council.

Of course information and consultation shall relate in particular to transnational questions which significantly affect workers interests.

## **DIRECTIVE 2001/86/EC**

Directive 2001/86/EC is a supplement of Regulation 2157/2001 on the Statute for a European Company (SE – Société Européenne). “The regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from disparity and the limited territorial application of the national company law.”<sup>1</sup>

Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their European Company.

As with other Directives on consultation arrangements are always subject to national law. Other Directives address give rights on consultation in an already existing company. This Directive is therefore of particular interest where consultation mechanisms of employee organisations on functional airspace blocks are concerned. Directive 2001/86/

1 Recital (7), Council Regulation no 2157/2001, 8 October 2001 on the Statute for a European Company

EC provides for particular consultation mechanisms in the context of forming a European company.

The Directive in the recital says: “The great diversity of rules and practices existing in the Member States as regards the matter in which employee representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE. Information and consultation procedures at transnational level should nevertheless be insured in all cases of creation of an SE”.

What this actually means is that the EC does not want to prescribe on what issues employee representatives have to be consulted. This can differ between Member States. But there always has to be some kind of consultation.

“The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules”.

Essentially, it is up to the social parties to decide in which way consultations should take place with management informing representatives of employees about the plan to form an SE and start negotiations with them on arrangements for involvement of employees in the SE.

## **NON LEGAL FRAMEWORK ON CONSULTATIONS**

The process of regulation within the European Union (EU) can be time-consuming. In a situation where there is a need for quick action, the use of non-legal instruments can be a good solution.

In the Commission’s white paper on European Governance there are some methods described which can be used. The white paper defines the principles of good governance in Europe. There are five principles: openness, participation, accountability, effectiveness and coherence. Each principle is important for establishing more democratic governance.

In the context of this report the principle of participation is a central issue. “Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies”.

The Commission encourages social partners to use the powers given under the Treaty to conclude voluntary agreements. The Commission’s June 2002 communication on the social dialogue stresses the important contribution of the social dialogue to better governance and makes various recommendations for improving the involvement of the social partners. The ways in which this can be done are recommended in the Commissions August 2004 communication.

This can be done in a traditional way (Regulations, Directives) but also in other ways such as co-regulation and the use of the open method of co-ordination. The open method of co-ordination is used on a case by case basis. It is a way of encouraging co-operation, the exchange of best practices and agreeing common targets and guidelines for social partners. It relies on regular monitoring of progress to meet those targets, allowing social partners to compare their efforts and learn from the experience of others.

Within the Social Dialogue there is an evolution when it comes to adopt joint statements. There is a tendency in using the open method of co-ordination more in this area. Recently the social partners have begun to adopt an increasing number of “new generation” texts (autonomous agreements, guidelines, codes of conduct, policy orientations) with commitments or recommendations directed at their members and which they undertake follow-up themselves.<sup>2</sup>

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2 Industrial Relations in Europe 2004, European Commission, DG Employment & Social Affairs, p. 73.

The open method of co-ordination could be useful for the social partners because it provides a pragmatic way of making progress in areas in which the policy space is already densely occupied, and responds effectively to the growing view that the European level should serve to facilitate the effective exchange of best practice between national, local and enterprise level and thereby promote mutual learning. For this to work, however, commitment is necessary among the parties concerned.

## **INVOLVEMENT OF EMPLOYEE REPRESENTATIVES**

When it comes to involvement of employee representatives there are currently two levels of involvement.

- On a national scale employee involvement is regulated through national law. This national law is based on Directive 2002/14/EC.<sup>3</sup> Since this Directive only sets minimum standards on consultation the employee involvement might differ very much between countries. All States are obliged to have rules on consultation and information. Some States are even going further by having the method of codetermination on some subjects in their laws. This is the case in Sweden, Denmark, Finland, Germany, the Netherlands, Austria, Slovenia, Hungary and Slovakia. When organisations are going to co-operate the rights of employee-representatives on consultations will be different.
- On a European scale we have the Social Dialogue on the base of article 138 of the EC Treaty. This article gives an opportunity to social partners to make agreements or make proposals for Community-law. Also article 10 of Regulation 2004/549 gives the social partners rights to be involved in the SES process. The Social Dialogue does not have the right to provide consultation-rights when it comes to transnational co-operation. Only when a transnational undertaking is created consultation-rights are granted, depending on the factual situation. The undertaking might be forced to create a European Workers Council (Directive 94/95/EC) or if there is a merger the rules in Directive 2001/23/EC might be applicable. But in this case there is not a transnational consultation-process. Although the merger is on a transnational base the consultation rights are based on the national law in each of the States where the undertakings are based. In the case of ANSPs cross border co-operation might happen between providers that have a completely different institutional environment. For example, a private Provider will merge with a public Provider. Employee representatives will have consultation rights in the private organisation on the base of this directive, unless this is provided for in national law. However, Regulation 2004/495 makes no distinction between private and public ANSPs. Since this Regulation is automatically applicable in all the Member-States, consultation rights are guaranteed.

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3 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

## 4 Just Culture

### 4.1 Introduction

#### Objectives of the subgroup

The ATM sector will undergo structural change, initiated by the Single European Sky regulations proposed by the Commission. Therefore, the focus of the parties in this sub group has been:

- to develop a common understanding of the meaning of 'Just Culture'
- to review existing occurrence reporting systems and processes
- to identify and, if possible, examine barriers to 'Just Culture'
- to propose guidelines for best practice
- to propose a possible legislative framework to permit the implementation of Europe-wide Just Culture within ATM

#### Safety incident reporting, an integral part of a safety management system

For many years the aviation industry has agreed that learning from safety occurrences is an essential component of improved aviation safety. It is self evident that the more occurrences that are reported and investigated, the better the learning process, and the greater the contribution to aviation safety and it is on this basis that ANSPs have worked to become learning organisations. The members of the sub group unanimously agreed that current reporting was not sufficient for this, and that a Just Culture environment encouraging increased reporting was fundamental to maximising lesson learning. Professor James Reason has defined Just Culture as *"an atmosphere of trust in which people are encouraged for providing essential safety-related information, but in which they are also clear about where the line must be drawn between acceptable and unacceptable behaviour."*

However, it quickly became apparent that whilst there was widespread support for the concept throughout the ATM industry, the effective implementation of reporting systems and associated investigation environments that encouraged individuals to report their errors was quite limited.

This report seeks to identify reasons for this lack of progress towards Europe-wide Just Culture within ATM, and to propose some joint actions for CANSO and ETF.

## 4.2 Obstacles to progress

There appear to be four main reasons why Just Culture, and the voluntary reporting of safety occurrences, is not more widespread:

- National law in some Member States prohibits adequate legal protection for occurrence reporting.
- There is no European requirement for Member States to set up voluntary reporting schemes which protect the reporter.
- There is a lack of understanding on the part of the judicial authorities and the wider public.
- There is a lack of trust between staff and management in some ANSPs.

### 4.2.1 National Law

In Annex 13 ICAO state that “it is not the purpose of this activity to apportion blame or liability”, and also that “the State conducting the investigation ... shall not make ... records available for purposes other than accident or incident investigation ...”. However, domestic legislation, which often overrides ICAO regulations irrespective of whether a State has notified a difference from Standards and Recommended practices, through such vehicles as Freedom of Information legislation, may place significant constraints on any form of protection for ATM personnel reporting safety occurrences.

Moreover, the domestic laws of some States mandate a criminal enquiry into safety occurrences, and encourage the apportionment of blame in the event of any breach of operational procedures. Added to this is an apparent trend, possibly in response to public and political pressure, to move from criminal enquiry into criminal prosecution. The inevitable result is that some ATM personnel will deliberately fail to report safety critical occurrences for fear of criminal enquiry or prosecution, even though they believe they have done nothing wrong.

- **Solution:** the barriers to Just Culture within some national legislation need to be removed, so that criminal prosecution focuses strictly on culpability based on consciousness and wilfulness. This will require the involvement of judicial authorities as well as aviation authorities in order to ensure that the application of the law supports the strengthening of aviation safety.

### 4.2.2 No European Requirement

Council Directive 94/56/EC of 21 November 1994, establishing the fundamental principles governing the investigation of civil aviation accidents and incidents, effectively transposed ICAO Annex 13 into Community law, although practically this is only effective when transposed into national law. They are both focused on aircraft occurrences, and associated cases, including ATM, are only involved indirectly. Directive 2003/42/EC of 13 June 2003, on occurrence reporting in civil aviation, continues beyond the context of Annex 13 and Directive 94/56/EC, specifically including air traffic controllers in the requirements for mandatory reporting, and addressing the ATM world.

However, whilst none of these instruments form obstacles to Just Culture, neither do they encourage it. Directive 2003/42/EC goes further than the other two, in as much as Article 9 says that “Member States may ... put in place a system of voluntary reporting”, but there is no requirement to do so. Consequently, some States provide no mechanism for ATM personnel to voluntarily report safety occurrences.

- **Solution:** there is no need to modify ICAO Annex 13, but it would be helpful if Directive 2003/42/EC encouraged the establishment of voluntary occurrence reporting systems.

### 4.2.3 Lack of understanding

For anyone not directly involved in it, knowledge of ATM is superficial and public perceptions are often based more on myth than reality. In particular, there is little understanding of the fact that the ATM system is a complex, multi-actor environment, where error influences are shared. It is the complex nature of that environment that drives the need for ANSPs to be learning organisations, with both the will and the knowledge to change processes, procedures and behaviour in pursuit of enhanced aviation safety.

Until there is wide understanding of the importance of a culture in which frontline operators are not punished for actions or decisions that are commensurate with their experience and training, but also a culture in which violations and wilful destructive acts by frontline operators or others are not tolerated, national legislators will see no requirement to make any sort of “special case” for the ATM industry. Furthermore, until there is sufficient public appreciation of the benefits that Just Culture brings to aviation safety, and the risks that arise from existing discouragements to reporting, public opinion will not be applied to change the views of those national legislators.

- **Solution:** there should be a concerted effort on the part of all involved in ATM to raise the level of understanding of the public, national legislators and opinion formers, regarding ATM. There should be a particular focus on the multi-actor environment and the importance of informed, learning organisations for the continuance and enhancement of aviation safety.

### 4.2.4 Need for mutual trust

Although in some ANSPs management and staff have evolved a way of working together that makes for a degree of mutual trust, this is by no means universal. Even where relationships are generally good, ill-considered or inadequately explained management actions can quickly erode trust.

It follows that in order to encourage reporting, the process of reporting and investigating safety occurrences should be transparent and rigorously followed, and that the treatment by management of those involved in safety occurrences should be humane and non-judgemental. It equally follows that where proper processes and treatment exist, staff do not attempt to conceal their involvement in safety occurrences.

- **Solution:** the process and procedures for reporting and investigating safety occurrences should be agreed between ANSP management and staff. They should be easy to understand, easy to follow, and explicitly avoid the apportionment of blame or liability. Social Dialogue has a role to play in achieving this, as process resolution, and the consequent improved levels of trust, lies in the hands of the Social Partners.



## 4.2.5 Analysis: Slow progress towards Just Culture

As stated earlier, the concept of maximising the reporting of safety occurrences through a Just Culture environment has for some years enjoyed wide spread support within the ATM industry. The fact that nothing much appears to have happened cannot, therefore, be blamed on the worth of the Just Culture concept, but is more likely to be due to the difficulties surrounding the introduction. Persuading national aviation authorities to amend existing rules or to introduce new rules to support Just Culture will often not be easy, but getting national judicial authorities to change domestic legislation may well be seen as almost impossible. As a consequence, supporters of Just Culture are likely to have felt disinclined to expend time and effort on a mission that seems to have almost no chance of succeeding.

Nevertheless, however long and difficult the road, unless a start is made the destination will never be reached. Supporters of Just Culture, delivering a consistent, common message on the importance of a Just Culture environment to aviation safety, would be a good way to make that start, and focusing on a wider audience - politicians, press, aviation industry opinion formers, and the general public – may add weight compared with the current approach of influence through bureaucratic channels. That should then be followed by a sustained campaign in support of Just Culture and increased safety occurrence reporting, generating momentum in support of the necessary changes to regulation and legislation.

## 4.3 Conclusions

- The interests of aviation safety, and the wider public interest, are best served by maximising the reporting of safety occurrences.
- Safety reporting and investigation processes should be based on the notion of Just Culture.
- The success of a Just Culture reporting and investigation scheme relies on trust and requires ANSP management and staff to establish and maintain the necessary confidence.
- Just Culture does not equate to immunity, but it implies that disciplinary or criminal sanctions will only be taken in event of proven culpability.
- Directive 2003/42/EC does not go far enough in support of the establishment of a Just Culture.
- National legislation, and the application thereof, must not be allowed to inhibit safety occurrence reporting.

## 4.4 Recommendations

**a)** CANSO and ETF should seek the support of the EC to hold a seminar on Just Culture, with the intention of raising understanding and gathering support for the implementation of Europe-wide Just Culture within ATM. Representation should be invited from all European stakeholders, including the EC, Eurocontrol, airline operators, and aircrew unions/ staff associations, as well as Social Dialogue partners.

- a.1) If Recommendation 1 is accepted, the ATMWG should create a new sub-group to organise the Just Culture seminar, develop the agenda and seminar objectives, and prepare briefing and position material.
- a.2) The output of the seminar should include a joint statement from the Social Dialogue partners calling for the establishment of Europe-wide Just Culture within ATM, including recommendations, guidance material and examples.
- a.3) The joint statement should explain and highlight the fact that a Just Culture reporting environment would promote increased aviation safety and would be in the interests of the wider public as well as the aviation industry.
- a.4) The joint statement should be used by the Social Dialogue partners to lobby national aviation authorities and national judicial authorities for the necessary changes in regulation and legislation to support Just Culture, and to mobilise public opinion.

**b)** Both CANSO and ETF should give a clear commitment to a sustained, long term, campaign for the Europe-wide establishment of Just Culture within ATM.

**c)** Through Social Dialogue, CANSO and ETF should work together to develop recommended best practice processes and procedures for reporting and investigating safety occurrences.

Joint CANSO - ETF Conference  
"FUNCTIONAL AIRSPACE BLOCKS"  
Palermo, Italy, 17-18 September, 2004

# JOINT STATEMENT FROM THE PALERMO CONFERENCE

## SOCIAL PARTNERS: KEY PLAYERS IN THE FABs

### GENERAL PRINCIPLES

1. The conference considers that safety is paramount. Any changes to the airspace structure will have to be supported by a safety case.
2. The conference recognises that the Aviation industry is one of the drivers for economic growth in all industrial sectors in the European Union, and accepts that there will be a need to develop increased capacity in the ATM system to meet these requirements.
3. The conference recognises that the people best qualified to ensure that ATM capacity is increased whilst maintaining safety are the ANSPs with their highly qualified staff.
4. The conference agrees that it is essential that unions and employers should work together to minimise safety risks, to maximise efficiency and to identify barriers to improvement in capacity.
5. Conference agreed that one model of FABs would not fit all.
6. Due to the changes with SES, the conference identified the need for review of the role of Eurocontrol.
7. The conference accepted that consultation between workers and employers on the development of FABs was essential.
8. Consultation and negotiations on FABs at national level between the ANSPs and trade unions remains vital.
9. European social partners will discuss the development of additional guidelines for consultation according to best practices.

## OPERATIONAL & TECHNICAL ISSUES

1. The conference agreed that FABs alone would not deliver the required capacity. The conference recognised that Flexible use of airspace needs to be enhanced and developed.
2. The conference accepted that the primary aim of a FAB is to increase ATM performance and specifically safety, capacity, efficiency and cost effectiveness.
3. The conference agreed that FABs may encompass enhanced cross-border cooperation but would have to deal with the following issues:
  - Safety and performance management
  - ATFCM and FUA functional integration
  - Civil/military cooperation & joint planning
  - Common planning and design criteria for airspace and sectorisation
  - Human resources management and training
  - Interoperability, systems development and procurement
  - Organisation, management and financing of services
4. The conference accepted that a FAB does not require the concentration of all ANS functions on one site. Several ACCs from several ANSPs can contribute to one FAB.
5. The conference accepted that different models of FABs will have to be developed on a European-wide basis, reflecting different regional characteristics (traffic flows, airport density, institutional or legal constraints, or even social, cultural and environmental specificities)
6. Taking due account of the contributions made during the proceedings, the conference agreed that further discussions at technical level could help in developing common general principles for FABs towards the harmonisation of the European ATM system.

## HUMAN RESOURCES ISSUES

1. The conference recognised the importance of the social dialogue in the future progress of the FABs. The social dialogue can have a dynamic role in order to give a framework of the next development.
2. The conference agreed that the ETF and CANSO should adopt joint framework agreements or joint recommendations in the European ATM working Group of the Civil Aviation Sectoral Committee on the following issues:
  - Education, Training and Licensing;
  - Work Organisation;
  - Safety and Just culture;
  - Mobility of ATM staff;
  - Impact on Technology;
  - Attracting and retaining staff;
  - Support exchange of information and consultation at national level

3. The conference noted that there would be a number of issues that would need to be clarified. These includes:
  - Terms and conditions of employment that would be applied in the new FABs
  - Legal status of ATM staff
  - Laws applicable to ATM personnel in the FAB
  - Transfers of personnel
  - Resolution of conflict
4. Looking for best practices and using the findings of the study on Impact of SES, social partners are committed to explore best practices with a view wherever possible to avoid enforced redundancies

## ECONOMICAL & FINANCIAL ISSUES

1. The conference agreed that FABs should only be established where there was a clear operational advantage.
2. The conference endorsed the cost efficiency through co-operation approach in line with the Lisbon declaration.
3. The conference supported the concept that FABs could be run by one or more ANSPs.
4. The conference agreed that a pragmatic approach to each FAB was more likely to produce sustainable improvements.

## ACTION PLAN

Social partners will develop an action plan to take forward the conclusions of the conference.