



**MODEL FOR A POLICY REGARDING
CRIMINAL INVESTIGATION AND
PROSECUTION OF AVIATION AND
RAILWAY INCIDENTS AND ACCIDENTS**



Objective

After an accident or incident within civil aviation or railways, it is normal for a safety investigation authority¹ to launch a safety investigation. The purpose of this investigation is only for the improvement of safety with a view to preventing a recurrence. A safety investigation will not apportion blame or liability and is independent of any other investigation.

The objective of this Model Policy is to provide directions regarding the criminal investigation and prosecution of potential criminal offences resulting from aviation and railway incidents or accidents that come to the attention of prosecutors so that both the safety investigation and judicial process can progress in parallel without either party acting in a manner prejudicial to the interests of the other.

Those directions are warranted by the recognition that safety is paramount to aviation and railway transportation and that preserving safety is in the public interest. Ensuring a process in the aftermath of incidents or accidents that achieves a balance between the administration of justice and the safety requirements is essential and will maintain public confidence.

The directions in this Model Policy largely build on the legal obligations in EU Regulation 996/2010, 376/2014 (aviation), EU Directive 2016/798 (railways) and the International Convention on International Civil Aviation, Chicago 1944 (ICAO Annex 13 and Annex 19).

Scope of Application

This Policy applies to the criminal investigation and prosecution of criminal offences resulting from incidents and/or accidents.

Contact with investigation bodies/safety managers

Serious Accidents are rare and most prosecutors are unlikely to be exposed to one during their career. However, when one does occur it usually attracts significant political and media attention. Apart from judicial authorities, other bodies or organisations will have a legitimate interest. Foremost amongst these is the safety investigation authority. Once an accident occurs urgent action is required to protect the accident site and any associated evidence. Predetermined agreed procedures will significantly ease the administrative pressures in the immediate aftermath of the occurrence to the significant benefit of all parties involved.

¹ For civil aviation the Safety Investigation Authority (SIA) and for railways the National Investigation Body (NIB)

For incidents or accidents, the representatives of the judicial authorities (police, prosecutors etc.) should have in place a procedure whereby contact will be made with the safety investigation authority in charge of the safety investigation with a view to coordinating positions and priorities. Such procedures should include details of agreements for such matters as access to accident sites and handling of “hard evidence”. It would also be beneficial to include procedures for contacts coordination information exchange with the safety managers of the operators² and their respective regulators.

This should be done with due respect for and recognition of the responsibilities and independence of each entity and the applicable laws. The objective is to ensure effective investigation and decision making processes in order to maintain and improve public safety as well as the administration of justice.

Protection of information and of individuals

Under International Rules (Annexes 13 and 19 of the Chicago Convention) and the equivalent EU regulation, incident or accident reports filed under an occurrence reporting scheme, as well as reports prepared or issued by investigating bodies or by the operators should not be used as evidence in criminal proceedings against individuals. Similar provisions should apply for rail or other transport areas.

Prosecutors and other judicial authorities considering an investigation into an accident or incident should take steps to gather evidence to support their own investigations rather than attempt to use that obtained by the safety investigation.

Witness declarations received in the context of a safety investigation are not to be used as evidence in criminal proceedings against the person having made that declaration. Should any witness declaration be required in the interests of justice they should be obtained independently of the safety investigation and in accordance with the Member States’ Penal Code and associated procedures.

Occurrence reports, safety investigations and witness declarations are all made with the sole purpose of improving public transport safety. Deviating from this purpose and using such information in the interest of the administration of justice will harm future safety improvements. However, nothing in the Convention or Regulations mentioned, nor in this Policy, shall prevent enquiries or evidence gathering, including the taking of statements from witnesses or personnel involved in an incident or accident, by police or judicial authorities in the pursuit of their duties in the detection or prosecution of crime.

² E.g. Aircraft Operators, Air Navigation Service Providers, Aerodrome Operators, Aviation Maintenance Organisations, Manufacturers, Railway Undertakings, Infrastructure Managers, Railway Entities in charge of Maintenance (ECMs) as appropriate.



Prosecution

Both rail and civil aviation have built an enviable reputation as safe and efficient methods of transport. Within all high risk industries a large contributor to this achievement is the ability of practitioners to report errors that have led to, or could have led to, incidents or accidents, in the interests of safety, without the fear of prosecution action resulting from actions, omissions or decisions taken by them which are commensurate with their experience and training. Gross negligence, wilful violations and destructive acts are, of course, not tolerated.

Where possible under national criminal law, the policy foresees that no prosecution be brought against individuals for actions, omissions or decisions which reflect the conduct of a reasonable person under the same circumstances, even when those actions, omissions or decisions may have lead to an unpremeditated or inadvertent infringement of the law.

Nothing in this Policy should prevent criminal prosecutions in the event of intentional wrongdoing or gross negligence³.

Expert support

Due to the complexities of modern aviation, rail or other public transport systems, prosecutors should avail themselves of the necessary expert support from the respective transport domain. EUROCONTROL, an intergovernmental aviation organization, maintains a list of suitably qualified, disinterested experts who are able to provide such expert support where required. A similar scheme is currently being considered by the European Agency for Railways.

³ Gross Negligence is referred to in a number of EC instruments, but there does not seem to be a commonly agreed definition of gross negligence in Europe. It seems to be, however, generally agreed that gross negligence implies a degree of severity, serious disregard to an obvious risk, and profound failure to take such care that is evidently required in the circumstances. Although a number of States assimilate gross negligence and intentional harm/wrongdoing, it is not always the case. Hence the proposal to add intentional wrongdoing in the list of cases that should be subject of prosecution – it will ultimately be up to each State implementing the Model Policy to refer or not to intentional wrongdoing in view of its national legal framework.

Criteria for prosecutor expert List of EUROCONTROL

- Minimum 10 years operational experience (ATCO, pilot), current licence holder (active ATCO/pilot) and not more than 3 years after retirement (stop of active practice – flying/controlling) to allow currency in the job (endorsement and type rating); aim for variety in terms of type of operation. i.e. jet, turboprop, heli. , TWR, APP ACC etc). After retirement the currency is understood to be maintained through active involvement in various cases or through participation in different refresher courses/events;
- Independence (of any union and management/employer activities), impartiality and integrity; Peer recognition through recommendation and endorsement by the national professional association. EUROCONTROL Member States “spread” (aimed to avoid black spots on the map as well as language issues) should be kept in mind. The final decision for selection will be taken by EUROCONTROL in conjunction with IFATCA and ECA;
- Attended the EUROCONTROL – IFATCA – ECA Prosecutor Expert Course (Basic followed by the Advanced course); Attended regularly (cannot miss e.g. 2 consecutive events) the EUROCONTROL – IFATCA – ECA Just Culture refresher periodic conferences/events;
- Effective communication skills (verbal/oral and writing) (observed/assessed during the PeC); i.e. the ability to express in a objective and neutral manner the technical and operational aspects and context of an occurrence;
- Demonstrable motivation to engage in Just Culture related national and European activities –; (e.g. Motivational Letter). Submit an annual report on personal JC activities to EUROCONTROL – IFATCA – ECA (can be very brief and via email);
- Demonstrated technical, operational knowledge and experience as well as demonstrated applied knowledge or experience in the field of safety and human factors;
- Basic knowledge of the national prosecution function or previous experience with judiciary in a Just Culture context would be an advantage.



Just Culture task force

Objectives and tasks

The Just Culture Task Force will:

- Promote debate and discussion on the legal issues that relate to safety and justice, in particular Just Culture;
- Foster and support dialogue between safety and judicial experts;
- Develop guidance material and policies in order to support the implementation and dissemination of Just Culture;
- Develop proposals for consideration by relevant bodies (EUROCONTROL Permanent Commission, European Commission and its relevant agencies, and within relevant Member States Ministries);
- Any other tasks considered necessary to meet the above objectives.

Reporting

The Task Force reports to the EUROCONTROL Director General.

Practical arrangements

The members of the Just Culture Task Force are the representatives of, inter alia, States (Justice and Transport Ministries, Prosecutors office), ANSPs, Professional Associations, Aviation Trade Associations, EASA, ICAO, the European Commission, EUROCONTROL Agency, European Union Agency for Railways, Healthcare Agencies and Associations who have an interest in furthering the objectives of the Task Force.

The EUROCONTROL Agency nominates the Chair of the Task Force and provides secretarial support. Meetings will be convened as necessary (usually 2 times per year).

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