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ASSEMBLY — 36TH SESSION

TECHNICAL COMMISSION

Agenda Item 28: Protection of certain accident and incident records and of safety data collection and processing systems in order to improve aviation safety

IMPLEMENTATION OF A "JUST CULTURE" CONCEPT

(Presented by Portugal on behalf of the European Community and its Member States², other States members of the European Civil Aviation Conference³ and European Organisation for the Safety of Air Navigation)

REVISION NO. 1

EXECUTIVE SUMMARY

Transparency and sharing of information are recognized as cornerstones of aviation safety. The “Just Culture” should create an environment in which the reporting and sharing of information is encouraged and facilitated.

In this context, this paper proposes actions to support the implementation of an adequate “Just Culture” concept in order to address the need for the protection of safety reporting and sharing of information while respecting the principles of administration of justice and freedom of information.

Action: The Assembly is invited to consider the attached suggestions for input into an Assembly Resolution.

Strategic Objectives:

Financial implications:

References:

¹ English, French and Spanish versions provided by Portugal.

² Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. All these 27 States are also Members of the ECAC.

³ Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Moldova, Monaco, Norway, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

1. DEVELOPMENT OF AN ADEQUATE “JUST CULTURE” CONCEPT

1.1 The improvement of aviation safety is based, to a large extent, on the feedback knowledge derived from a systematic accident/incident data collection and analysis allowing the whole industry to adapt by modifying its equipment and procedures. The good functioning of this system is built on the existence of systematic records traceability and active participation and reporting from all the aviation actors involved in safety areas. In Europe, there are well-developed accident prevention processes including mandatory incident reporting systems and independent accident investigation.

1.2 In recent years, there has been a growing concern on the part of aviation professionals (including Air Navigation Service Providers (ANSPs), safety regulators, manufacturers and representative bodies of aviation personnel such as IFATCA (International Federation of Air Traffic Controller’s Associations) and IFALPA (International Federation of Air Line Pilot’s Associations)) about the interpretation of flight safety by the general public and especially by the judicial system. The major concern is associated with the increasing emphasis on legal issues. This causes growing fear of litigations and threat of sanctions against individuals, particularly if they were partly or fully responsible for an accident they are involved in or an incident they reported.

1.3 In addition, some of the media have addressed in great detail, at an early stage and with often unsubstantiated conclusions, alleged breaches of flight safety. These factors have had the cumulative effect of reducing the level of incident reporting and the sharing of safety information by those involved in incidents or accidents. Non-punitive policies, possible adjustment of the laws, regulations and policies at national level, and protection of sources of information are vital if a good level of safety data is to be obtained.

1.4 European aviation safety legislation contains already some provisions to protect confidentiality and avoid blame and liability but they are still felt as too limited by aviation professionals. For this reason, European States and organisations have suggested as a definition of “Just Culture”: "A culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated". They have issued related Guidance Material and initiated a number of steps to improve the data collection environment. The question of legal impediments is being addressed through establishing a dialogue with the judiciary and through ad hoc workshops, but more needs to be done on a global basis.

2. IMPACT OF THE JUDICIAL PROCEEDINGS OVER AVIATION SAFETY

2.1 The judicial proceedings in aviation occurrences have left their marks on the European and international context during recent years. Obviously no one, and particularly not the aviation community, wants to escape from justice or escape responsibility for actions. The question of judicial action lies at the heart of a balance between two fundamentals, societal interests and sovereign functions. Both aim to serve well-recognized public interests: the right of the highest possible safety (through incident and accident investigation and reporting) and the right of independent and impartial administration of justice and freedom of public information through appropriate constitutional and legislative provisions.

2.2 The accident investigation process enables safety experts to collect a large number of factual information from the accident itself but also from manufacturers, operators, service providers and regulators to trace the entire chain of events which contributed to the occurrence. This process requires the participation of advisers from all these entities to bring their specialized knowledge without fear of being subsequently negatively affected. Persons involved (e.g. pilots or controllers) will be asked to explain their actions and behaviours and might not cooperate fully if their testimony may be used against them in court.

2.3 If the accident/incident investigation reports are no more used to find the possible technical causes and as the best way to prevent them from re-happening, as prescribed by ICAO Annex 13 — *Aircraft Accident and Incident Investigation*, but are instead used in the first place to lay down the responsibilities of the intervening parties, the investigation field will be restricted because Contracting States will hesitate to share information and data and people will tend to censor themselves when questioned by investigators. The consequences will be to reduce substantially the lessons gained from such investigations.

2.4 The same will apply to voluntary reporting, which needs to be accepted and supported by the whole aviation community. Without an adequate protection of reporters, the latter would be reluctant to report events, and the drying up of this reporting source would have a very negative effect on aviation safety.

2.5 In this respect, reference should be made to Assembly Resolution A35-17: *Protecting information from safety data collection and processing systems in order to improve aviation safety* and the DGCA/06 Safety Conference Recommendation 2.1 a) 2 of Topic 2.1 "Transparency and sharing of safety information" which states "The "just culture" should create an environment in which the reporting and sharing of information is encouraged and facilitated".

3. PROTECTION OF REPORTERS

3.1 The chain of events leading to an accident is often constituted of individual incidents or occurrences that, combined together, provoke a catastrophic situation. It is therefore very important to gain as much knowledge as possible relevant to these and similar incidents. For this reason, Annex 13 and aviation regulation provide for mandatory incident reporting.

3.2 However, these processes do not collect information on all occurrences. It is therefore necessary to supplement them by establishing harmonized voluntary incident reporting systems to give people the opportunity to provide information on incidents that they perceive as an actual or potential hazard, but which do not fall under the mandatory category.

3.3 The growing tendency to widely and at an early stage publicize incident information in the media or to prosecute reporters/authors of incidents has lead to a situation where companies may tend to discourage people to report incidents to the outside and where individuals may be tempted not to report incidents when they believe it will not be known otherwise. This situation may affect drastically the level of reporting in mandatory scheme and could ruin voluntary reporting schemes. The drying up of such a precious source of safety information would be detrimental to the aviation industry.

APPENDIX

SUGGESTIONS FOR INPUT INTO AN ASSEMBLY RESOLUTION

The Assembly:

- a) *Supports* the definition that “Just Culture is a culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated.”;
- b) *Expresses* concerns regarding this subject and particularly stresses the fact that one predominant risk of criminalisation of aviation accidents is the appearance of obstacles to the sharing of safety oriented information and the refusal of witnesses to cooperate with investigators as individuals invoke rights to protect themselves from criminal prosecution, and choose not to admit mistakes in the spirit of ICAO Annex 13 for the purpose of preventing recurrence;
- c) *Requests* the Secretary General to cooperate with the Contracting States and other appropriate international organizations regarding the provision of legal guidance for the establishment of adequate safety reporting systems and the achievement of a “Just Culture” approach as a condition for obtaining valuable safety information derived from incident reporting systems; and
- d) *Encourages* the Council to continue its work with Contracting States and other relevant actors in order to achieve a proper balance between the objectives of the implementation of effective safety reporting systems, the appropriate protection of aviation professionals when reporting incidents and the sovereign functions of administration of justice and the provision of public information.

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