



ENCASIA OPINION
CONCERNING
THE REVISION OF DIRECTIVE 2003/42/EC

Introduction

On 27 June 2011, the European Commission sent a letter to the ENCASIA Chairman to ask for the Network's opinion on the revision of Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation. This revision process will probably lead to a new Regulation of the European Parliament and of the Council on occurrence reporting.

The Network Members went through the same process as ENCASIA stems from the revision of Directive 94/56/EC on accident investigations. This led to Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC. The upcoming revision of Directive 2003/42/EC has been anticipated by Regulation 996 as mentioned in its third recital: *“Reporting, analysis, and dissemination of findings of safety related incidents are fundamentally important to improving air safety. Therefore the Commission should bring forward a proposal to revise Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation before 31 December 2011.”*

Directive 2003/42/EC is referred to several times in Regulation 996, especially through Recitals 11 and 12, which deal with the exchange and analysis of safety information. The Regulation has enlarged the role of safety investigation authorities by defining the concept of safety investigations in Article 2(14). It formally deals with proactive data. It is therefore crucial that safety investigators have access to incidents and occurrence databases to encourage safety action and safety recommendations based on all types of occurrence for the prevention of air accidents. Hence, the right balance must be found so that the future Regulation on occurrence reporting will be complementary in the overall European safety scheme.

The ENCASIA opinion will discuss the following topics that are deemed critical in performing its safety mission: 1) Notification of incidents; 2) Incident selection and investigation; 3) Access to databases; 4) National and European environment.

1) Notification of incidents

Safety investigation authorities are tasked to investigate serious incidents. The guidance to define a serious incident can be summarized in the Appendix of Regulation 996 and in Annex 13, Attachment C, paragraph 2: *“The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance to the definition of serious incident.”*

This important paragraph provides flexibility to safety investigation authorities to select serious incidents. To carry out such a selection, the safety investigation authorities must be aware of all incidents immediately in order to start an investigation and to preserve key evidence.

Article 9 of Regulation 996 already states that: “*Any person involved who has knowledge of the occurrence of an accident or serious incident shall notify without delay the competent safety investigation authority of the State of Occurrence thereof.*” Presently, the notification of incidents is organized at the level of each Member State in line with Articles 4 and 5 of Directive 2003/42/EC. Therefore, the future Regulation on occurrence reporting should ensure that the provisions related to collecting, evaluating, processing and storing occurrences will maintain safety investigation authorities in the loop so that they can start an investigation without delay. It will be necessary to establish a mechanism that will strike a balance between:

- having access to all incidents and
- setting up a selection process at the level of the operators and regulators to avoid data overflow.

It is indeed the prerogative of the safety investigation authority to determine if the incident needs to be investigated or not, in accordance with the Article 5 (4) of Regulation 996 “Safety investigation authorities may decide to investigate incidents other than referred to in paragraphs 1 and 2 in accordance with the national legislation of the Member States, when they expect to draw safety lessons from them”.

2) Incident selection and investigation

The incident selection process is not an easy one, as it can be influenced by other factors such as resources and workload. Regarding the treatment of incidents, the European Civil Aviation Conference will organize a workshop on the treatment of incidents in May 2012 in Denmark. This workshop will mainly deal with the issues around the handling of incidents, including their selection for investigation and the lessons they held. Its outcome should be very useful for guiding the selection process for ENCASIA Members.

The following paragraphs offer brief and provisional guidance on how incidents could be dealt with by being broken down into three levels:

Level 1: Basic

Preliminary evidence shows that the existing safety nets (procedures, systems, etc.) worked as per design. A “basic” incident illustrates successful mitigating actions and provides feedback on previous remedial measures that appeared to be right. A basic investigation can be quickly closed but it is important to store the successful actions in a database in order to have data and some indicators on the resilience of the system. As a matter of fact, the next release of the ECCAIRS database (ECCAIRS 5) will include a new module to code positive factors. This concrete emphasis on what went right should also encourage more reporting.

Level 2 : Standard

A local investigation can be undertaken by industry when:

- deficiencies are identified whilst applying a given procedure,
- an aviation professional works beyond its field of expertise or its prerogatives.

This type of investigation leads to safety measures that improve the safety management system of an operator. A “standard” incident can be disseminated locally through a short report and stored into a database so that the effectiveness of the remedial measures can be evaluated.

Level 3: In-depth investigation (serious incidents)

If the incident meets the criteria of Regulation 996, then a full investigation should be started by the safety investigation authority as “*the difference between an accident and a serious incident lies only in the result*”. We can also say that if the consequences appear to be merely a matter of favorable circumstances, meaning that no safety barriers or mitigations were identified, then the occurrence should be investigated in depth. This loops back with the positive factors that are part of ECCAIRS.

3) Access to Databases

From a technical standpoint, data can be exchanged using the ECCAIRS database. As stated previously, the implementation of release 5 will bring along new modules of high interest for safety investigation authorities such as safety recommendations, positive factors and new features to customize the end-user’s interface. In summary, ECCAIRS represents an effective technical solution that covers all types of occurrences and provides increasing flexibility for civil aviation and safety investigation authorities. The recurrent challenge is related to the extensive resources required to implement the new functionalities and to process vast numbers of occurrences in a consistent way with high quality standards.

The various feedback loops at national levels have been organized in accordance with Article 5 of Directive 2003/42/EC that covers the collection and storage of information. It is crucial that the new legislation will ensure easy legal and practical access to all repositories for safety investigation authorities. Access to the safety recommendation database mentioned in Article 18(5) is already included. As an imperative, ENCASIA needs unconditional access to all incidents and occurrences for more effective safety investigations. This also includes access to the central repository established under Commission Regulation (EC) No 1321/2007 of 12 November 2007.

Accident and incident reports are more effective if they reference similar cases which may then support safety recommendations. This independent compilation of events also provides more validated data for the risk analysis subsequently performed by regulators.

In addition, Regulation 996 (Recital 28; Article 2(15); Article 17(2)) stipulates that safety recommendations can be released after a safety study, thus having a greater evidential basis leading to safety actions.

4) National and European Environment

Regulation 996 already provides a sound environment for independent and effective safety investigations. The revision process that will take place shall strengthen the independence of each national safety investigation authority as well as ENCASIA’s independence. The Regulation also contains important provisions on protection of sensitive safety information (Article 14 and 15).

The protection of safety information from inappropriate use is essential in ensuring its continued availability, as the use of safety information for other than safety-related purposes may inhibit the

future availability of such information, with an adverse effect on safety. ICAO has recently started an ad-hoc task force whose mandate is to enhance guidance on safety information protection. This work will certainly enhance existing ICAO documentation on the protection of sensitive safety information. This could be of interest for the revision process. For ENCASIA, it is important that the revision process as well as the work carried out by the ICAO multidisciplinary taskforce do not blur or bring doubts on the information that is protected under Regulation 996, especially under Article 14(1).

The revision of Directive 2003/42/EC will probably have an effect on the State Safety Programmes (SSPs). An SSP requires the coordination of multiple authorities within a State, to identify safety deficiencies requiring action, to determine mitigation strategies in response to these deficiencies, to implement these strategies and to monitor their implementation and effectiveness. The distribution of those responsibilities, as part of a State Safety Programme, shall maintain the independence of the safety investigation authority with regard to the oversight of NAA functions, as service provider. This shall be the same environment for the European Safety Plan coordinated by EASA.

Conclusions: Opinions of ENCASIA Members

In Article 2(1) of Directive 2003/42/EC, an occurrence means “*an operational interruption, defect, fault or other irregular circumstance that has or may have influenced flight safety and that has not resulted in an accident or serious incident, hereinafter referred to as ‘accident or serious incident’, as defined in Article 3(a) and (k) of Directive 94/56/EC*”. The ICAO definition encompasses accidents, serious incidents, incidents and all types of reportable events. This revision process should also enhance this definition, which is often confusing when the term “occurrence” is mentioned. It is important to better define the scope of the future Regulation on incidents that also deals with safety so that it is complementary with Regulation 996 and both will be well-understood by the civil aviation industry.

From an editorial standpoint, Regulation 996 refers to Directive 2003/42/EC several times through its recitals and articles. There will also be a practical need to update these provisions when Directive 2003/42/EC will be repealed.

In summary, the key aspects for ENCASIA are:

- Unrestricted and straightforward access to data to enlarge the evidential basis.
- Independence of the safety investigation leading to effective safety actions and safety recommendations.

The revision process should take into account the practical experience gained with Directive 2003/42/EC and should aim at setting up a system that would clarify the various reporting channels while producing feedback to encourage more effective safety reporting.

For the reasons previously mentioned, ENCASIA Members strongly support the revision of Directive 2003/42/EC. A new Regulation on incident reporting will complement Regulation 996, which is already a key pillar of the European civil aviation safety system, and will strengthen this system.



Chairman