EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT
DIRECTORATE E - Air Transport

E.3 – Aviation safety
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Summary report of the contributions received to the online public consultation on a possible revision of Directive 2003/42/EC on occurrence reporting in civil aviation and its implementing rules

1. INTRODUCTION

The European Commission has organised a public consultation on a possible revision of European legislation on occurrence reporting in civil aviation, which is one of the key initiatives for implementing the Commission Communication on "Setting up a Safety Management System for Europe".

The public consultation was opened on the 24th of June 2011 on "Your Voice in Europe" internet website and closed after 12 weeks on the 15th of September 2011.

This public consultation refers to Directive 2003/42/EC on occurrence reporting in civil aviation, Commission Regulation (EC) No 1321/2007 of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences and Commission Regulation (EC) No 1330/2007 of 24 September 2007 laying down implementing rules for the dissemination to interested parties of information on civil aviation occurrences.

The aim was to collect the views of relevant stakeholders and the general public to feed an Impact Assessment concerning the possibility of revisions to EU legislation on occurrence reporting. The consultation phase of the Impact Assessment was completed by a questionnaire to Member States and the organisation of a Seminar on the specific issue of Just Culture.

The ultimate objective of revising EU legislation would be to improve aviation safety by establishing the context and elements necessary for moving towards an efficient proactive and evidence based aviation safety system.

This consultation has allowed the Commission's services to better understand the shortcomings of the current legislation, the position of stakeholders, public authorities and citizens on available options and also to receive suggestions from the mentioned entities.

This report seeks to provide an overview and to present the responses reflecting the major positions of respondents. However, whilst all contributions have been perused and considered, the report does not summarize all the comments received.

2. RESPONDENTS

61 contributions were received by the European Commission further to this public consultation: 13 by public authorities (21.3%), 37 by organisations (60.7%) and 11 by citizens (18%). All respondents agreed to have their views made public in this summary.

The respondents who have classified themselves as citizens, however, do not represent the proportion of society not professionally involved in aviation as 4 of them are pilots

and 6 are aviation professionals entrusted with tasks related to aviation safety. Only one of the respondents in this category is not part of the aviation community.

This can be explained by the fact that while having direct impact on citizens' safety the issue of occurrence reporting is rather technical for someone not familiar with aviation safety systems.

Regarding respondents within organisations category, they can be classified as following:

Category of organisation	Replies	% age of category's respondents
Aerodrome	1	2.7
National unions or associations for aviation professionals	11	29.7
European or international unions or associations for aviation professionals	5	13.5
Airlines	5	13.5
European or international airlines associations	3	8.1
Air Navigation Service Providers	3	8.1
Manufacturers	2	5.4
Manufacturers association	1	2.7
Legal Counsel or firms	2	5.4
Consultants	4	10.8

The vast majority of the respondents is aviation professionals or has at least a minimum knowledge of the subject discussed. They can have divergent points of interest whether they represent regulators, industry or employees but they all had a legitimate interest to reply to the consultation.

3. CONSULTATION

The questionnaire was divided into 30 questions with subtopics as follows:

 ❖ Respondent information
 ❖ Current functioning of the Directive
 ❖ Collection of civil aviation occurrences and protection of reporters
 ❖ Completeness and quality of the data
 ❖ Analysis of occurrences reported
 ❖ Options for revising the legislation
 ❖ Additional comments

Some questions requested compulsory replies while for others, the most technical ones, there was no obligation to reply. This aimed to allow citizens' participation in the consultation even if they do not have the technical background to reply to each single question.

There were references to the background documents explaining the context and the objectives sought by the Commission.

The comments deviating from the consultation subject have not been taken up in this

note.

The opinions presented in this note do not reflect the Commission's official position.

## 4. PRESENTATIONS OF RESPONSES

4.1. Current functioning of the Directive

✥ The first part of this section focuses on the respondents' assessment of the current European legislation and their opinion on the issues which should be looked at during the revision process.

Most of the respondents are of the opinion that the legislation is incorrectly and ineffectively implemented by most of the Member States and suffers from a number of shortcomings which affect its potential benefit in terms of aviation safety. Some of them also blame the lack of concrete results and of true evidence based approach. They state that the European legislation on occurrence reporting is not working as it was expected. This position is not always shared by public authorities but is widely expressed by stakeholders and citizens.

It can be observed that legislation shortcomings identified by respondents broadly correspond with the list of suggested issues which should be addressed by the review.

The figure below illustrates respondents' assessments of the issues that the revision should look at (the possibility was given to choose more than one issue).
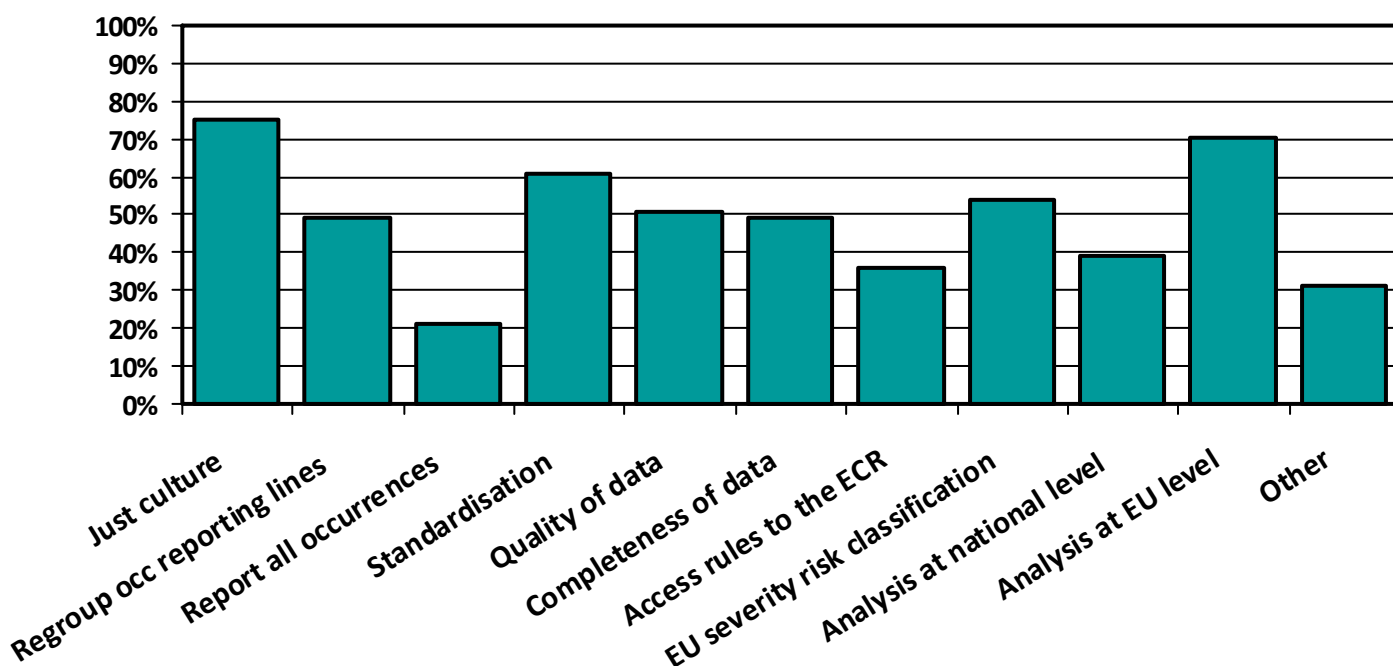
It appears that the issues most frequently mentioned are "Just Culture"[1] and "Analysis of occurrences at EU level" (both 70.5%). The issues related to standardisation of data entry process (60.7%), data quality (50.8%) and completeness (49.2%) are also often pointed out along with the establishment of a European risk classification scheme (54.1%). Regrouping all occurrences reporting lines in a single EU legislation (49.2%) is also an

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[1] Reference to the definition of Just Culture as provided in Regulation (EC) 691/2010 was included in the public consultation: *"Just culture "means 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, willful violations and destructive acts are not tolerated.*

important issue for the respondents.

➢ On the Just culture issue, most of the respondents states that, while the Directive provides some provisions to protect the information and the occurrence reporter, these rules are not correctly applied by Member States or industry. According to their opinion, individuals are afraid to report mistakes as they fear blame or even prosecution. Some of the respondents support their position by giving examples of situation where individuals have been fired following a report they made. This opinion is almost unanimously shared by aviation professionals (pilots, air traffic controllers, technicians) but is also supported by many respondents representing the industry.

Respondents also regret the lack of confidentiality of the data reported and the low level of protection from the judicial authorities. Respondents claim that the Directive provisions regarding the protection of information should be reviewed and notably include elements agreed at international level such as ICAO Annex 13 and its Attachment E in order to create a "no blame" environment to encourage individuals to report safety related deficiencies or mistakes.

➢ Respondents underline that the current legislation is incomplete as it only contains provisions on the collection, storage and dissemination of occurrences but does not explain how safety improvement should be made based on the data collected. It does not contain obligations to analyse and use data collected and therefore is unable to achieve the safety improvement goal. Respondents believe that the revision should go further and introduce a general framework for reporting, collecting, validating, assessing, disseminating, analysing occurrences, taking safety actions and ensuring their follow up to monitor improvements to safety.

➢ The poor data quality is also frequently mentioned and is notably caused, according to respondents, by a lack of standardisation and by the wide variety of data quality between MS. They underline the vital importance of getting reliable data to be able to establish correct safety indicators. They regret the absence of a standard for the content, format or quality of data reported and consider that occurrences data as incomplete, unreliable and unusable. The bad quality of data encoded in national databases subsequently brings about the bad quality of data included in the European Central Repository (ECR - which regroups data contained in all EU MS national databases) and therefore gives a distorted picture of the safety situation. This issue of data quality is also commonly mentioned by public authorities, and many organisations also refer to this problem.

➢ The absence of an obligation to assess occurrence risk level and of a tool allowing this assessment is often evoked by the contributors to the consultation and is considered as a limit to any efficient analysis both at national and European level.

➢ Some respondents consider that the list of occurrences to be reported is incomplete. Suggestions are made to add an obligation to report occurrences related "fatigue" and "contaminated air". Some other respondents, mostly from the air traffic management sector, would like the legislation to impose the reporting of all safety relevant occurrences and also to include safety occurrences detected by automatic tools.

➢ Certain respondents, in particular industry employees, underline that service providers (airlines, ANSP, manufacturer etc…) do not transmit all occurrences collected to the public authorities.

➢ Respondents regret the presence of inconsistent occurrence reporting obligations in several European legislative acts outside of the Directive (mainly EU rules related to EASA competencies) and suggest regrouping them in a single legislation.

➢ Some respondents deplore the lack of data exchange between MS and the absence of full access to the ECR. This creates an incomplete system of safety oversight in some Member States as they only have knowledge of occurrences involving operators registered in their territory but not the ones occurring in their airspace but involving airlines registered in another MS.

In addition to the issues already identified by the Commission and presented above, respondents also raise a number of shortcomings and elements which should, to their opinion, be addressed in the review.

➢ They refer to the important discrepancies and inconsistencies of interpretation and implementation between Member States in the application of the legislation. Respondents suggest that the directive should be replaced by a regulation in order to ensure a better harmonisation in the application of the legislative provisions.

➢ Some respondents, mainly service providers or their representatives, complain about the lack of feedback towards the reporters and the industry on actions taken following an occurrence report. They suggest granting them access to the European Central Repository.

➢ Several respondents, representing the Air Traffic Management (ATM) community, urge the Commission to ensure consistency between the revision of the Directive which covers all operational areas and the work done in the ATM area, notably regarding the list of occurrences to be collected, the risk assessment scheme and the list of mandatory data fields.

➢ Some respondents observe that the European definition of an "occurrence" (safety relevant incident outside of an accident or a serious incident) is not consistent with the international agreed definition of "safety occurrence" contained in ICAO terminology which refers to any event which is or could be significant in the context of aviation safety (including accident and serious incident).

➢ Several respondents, mostly in the organisation or citizens' category, complain about the lack of resources and of expertise within public authorities entrusted with the occurrence reporting responsibility. They consider that MS staff are not trained enough and are not able to correctly assess the occurrence reports they receive.

➢ Finally, certain respondents consider that the directive is becoming outdated by the introduction of certain ICAO obligations such as the State Safety Programme. They also regret that the legislation does not address the operator level and suggest that it should comply with Safety Management System fundamentals as set up by ICAO. According to them the legislation should address each level of the system: service providers, national authorities, European Union.

✧ The second part of this section requests respondents' opinion on whether collection and analysis of occurrences should play a role in the prevention of aircraft accidents. The reply to this question is widely positive as 95% of the respondents support this approach, while 3.3% do not and 1.7% has no opinion on this point.

The consultation also includes a question on whether, in addition to the work done at national level, an analysis of civil aviation occurrences should take place at the EU level. On this issue, the support is almost as large, with 88.5% of positive answers from respondents, 8.2% adverse opinion and 3.3% without opinion.

According to contributors the establishment of an analysis obligation at European level along with the appropriate framework for allowing such a task will notably allow the full

picture of the safety situation in Europe to be obtained through a large database of occurrences. This much broader data set will help to identify hazards and key risks as well as safety trends which are sometimes not identified by a single MS. The respondents also consider that it could help to define a European-wide vision of emerging trends and issues and that it could allow a better sharing of information between MS. Several respondents suggest that it could be a support for Member States with insufficient human resources. Finally, a few respondents mention that it should inform the European Aviation Safety Plan.

4.2. Collection of civil aviation occurrences and protection of reporters

✎ Respondents were asked to assess if the scope of occurrences required to be collected according to the Directive 2003/42/EC was adequate or not. A small majority of them consider the scope as pertinent (56.1%) while 40.4% consider it as not appropriate.

✎ The next question was related to the functioning of the Mandatory Occurrence Reporting Scheme (MORS) as established by the Directive. The replies indicated that 66.7% of the respondents consider this system as inefficient, 20% expressed their satisfaction with the current scheme and 13.3% have no opinion on this issue.

The respondents explained this assessment of the MORS by a number of issues among which: the absence of standardisation in the data entry process, the lack of clarity on what should be reported, an inadequate protection of reporters and the insufficient implementation of Just Culture principles (issue mentioned the most frequently), the lack of data protection rules, the low quality of data, the under allocation of human resources at MS level, the poor level of competencies of persons encoding occurrences reports, the duplication of occurrences, the difficulty in using reporting forms and finally the absence of any feedback.

✎ Participants in the consultation were asked to evaluate whether all reporting obligations should be regrouped in a unique European legislation or if it should remain as it is currently. The vast majority of respondents favour the first option (76.3%); while 13.6% do not wish to change the situation and 10.2% do not have an opinion on this issue.

✎ On the question of the mandatory reported occurrences scope, around 2/3 of the respondents express their satisfaction with the list established within the Directive (65.5%). The rest supported the mandatory reporting of all safety relevant occurrences (31%) or do not expressed their position (3.4%).

✎ Regarding the issue of Just Culture, a wide majority of respondents affirm that occurrence reporters are not sufficiently protected from blame or repressive action in Europe (73.8%) and that Just Culture principles are not correctly implemented and respected in the EU Member States (71.7%). The opinion is notably shared by almost all the respondents from the organisation and citizens categories but not exclusively.

A few respondents, mostly public authorities, affirm that the situation is satisfactory in some MS but the majority of respondents consider that many aviation professionals do not report occurrences as they fear being prosecuted or fired. They considered it is notably due to the fact that Just Culture is a relatively recent concept and that it is still a growing concept, and far from being implemented in all MS.

According to respondents, the situation is very different from one State to an other and there is a very disparate approach of to Just Culture concept across the EU. They regret a lack of protection in some MS which has lead to the transmission of certain occurrence data to Justice in a few cases. In their opinion, the variety of judicial systems and

legislation in European Member States effectively override and challenge the protection from blame or repressive actions. They recognise that some mechanisms have been established but regret that they are ineffective as they have no legal value.

Respondents also consider that the absence of a "gross negligence" definition contributes to the current situation as there is no clear line defining when the reporter has to be protected and when he should be blamed. They would also like the definition of "Just Culture" to be included in the revised legislation. Some respondents suggested that Directive Article 8, related to the protection of information, should be strengthened to ensure reporter protection.

Most of the respondents assess that without an appropriate implementation of the Just Culture concept and protection from blame and prosecution, the goal of the legislation could not be reached as relevant occurrences will not be collected.

✤ In the last part of this section public consultation contributors were asked for their opinion about the potential establishment of a voluntary occurrence reporting scheme managed at European level in order to collect occurrences not included in the list of events to be mandatory reported. 59% of the respondents support this idea and consider that it will bring an added value in terms of safety while 36.1% are opposed to this proposal.

According to some supporters of such a scheme, the European Aviation Safety Agency (EASA) should be entrusted with the responsibility to manage it while some others would prefer an independent body without specifying what this entity should be. Several respondents would support the creation of a European Safety Investigation Authority (or Accident Bureau) to manage the European voluntary occurrence reporting scheme. Finally few respondents would prefer giving this responsibility to the European Commission or to Eurocontrol.

4.3. Completeness and quality of the data

✤ Respondents consider that the quality and completeness of data integrated in national databases as well as in the European Central Repository is insufficient. They believe that formal standardisation would help to address, at least partially, this issue. 80.3% of them support the introduction in European legislation of a minimum content of mandatory information to be contained in an occurrence report.

In addition, only 8.5% of the respondents are opposed to the establishment of mandatory data fields. On defining what mandatory data fields should be included in the legislation, they suggest it should include basic information such as data, location, narrative, occurrence category and then, depending on whether it involves an aircraft, an aerodrome and so on, more specific information. A few respondents suggested that ICAO ADREP core taxonomy or ESARR2 mandatory data fields could be a good starting point for defining the list at EU level.

Some respondents suggested organising training to ensure a better harmonisation and quality of occurrence reports. A few respondents express the view that a single reporting form should be introduced.

According to the respondents' opinion, without any standardisation, data could be wrong and therefore trend or statistics based on this data would be invalid.

✤ Regarding the issue of risk classification, the establishment of a common European risk classification scheme is widely supported by the respondents (73.8% in favour, 13.1% against, 13.1 without opinion).

4.4. Analysis of occurrences reported

✤ Most respondents (78%) consider that the analysis of occurrences at European level should be done in collaboration with the Member States. Some of them also would like the industry associated with this work or even a group of aviation experts.

✤ Respondents expressed that, in the European Union, occurrences should be analysed at national level and then at European level to identify European key risks areas. Some of them consider full access to the ECR as a necessary condition to perform any kind of analysis at EU level.

✤ According to a majority of contributors the coordination and the management of the analysis of occurrences at EU level should be given to the European Aviation Safety Agency (in collaboration with the MS and the European Commission for some of them). Several respondents even refer to the recently created group within EASA: the "Network of Analysts" which regroups safety analysts from Member States, the Commission and Eurocontrol. However a certain number of respondents would still prefer the creation of a European Safety Investigation Authority or a similar independent entity to be entrusted with this task. Finally a few contributors believe that this responsibility should be given to the European Commission or to Eurocontrol.

4.5. Options for revising the legislation

In this part of the questionnaire the Commission has presented different policy options for the revision of the legislation and submitted them to a preference choice in the public consultation.

As described in the document, the following hypotheses are envisaged:

➢ Repeal Directive 2003/42/EC and implementing Regulations (EC) N° 1321/2007 and N° 1330/2007 (option A)

➢ Maintain current legislation and continue to ensure its proper implementation (option B)

➢ Provide additional support for the implementation of current legislation (in particular development of additional functionalities to the "ECCAIRS" reporting system, supporting data quality control and analysis, development of additional guidance material, organisation of workshops for the authorities etc.) (option C)

➢ Launch a substantial revision of the EU legislation on occurrence reporting to address issues such as clarification of the reporting obligations, standardisation of data entry into ECR, more systematic quality assurance processes, revision of the access rules to ECR, the issue of protection and use of sensitive safety information; and establishing a framework and tools for the analysis of occurrences at EU level (option D)

➢ In addition to option (d), create, in an appropriate organisational set-up, a European voluntary occurrence reporting scheme, allowing aviation professionals and organisations to report occurrences directly to an EU-based system on a voluntary basis (option E)

It appears from the replies that option A as been misunderstood by some respondents as they either believe that repealing the legislation means that it will be replaced by a new one, or that this option has to be chosen in coordination with an other one (more often D) to ensure that the two legislations will not coexist. As a consequence that option is partly over ranked in comparison with the presumed real intent of the respondents. The Commission would like to clarify the meaning of this option: repealing existing legislation means that this matter is not regulated anymore by European legislation but by

national rules alone. Revising the existing legislation at EU level will lead to the repealing of this legislation once the new rules are adopted.

The charts below represent, for each option, the percentage of its ranking by respondents. Ranking 1 means it is the favorite option and ranking 5 means it is the least favorite one.

For example, the first table should be read as following: 8.2% of the respondents ranked option A as their favorite option, 14.8% in second position, 11.5% in third, 11.5% in fourth and 54.1% of the respondents ranked it at their least favorite option.
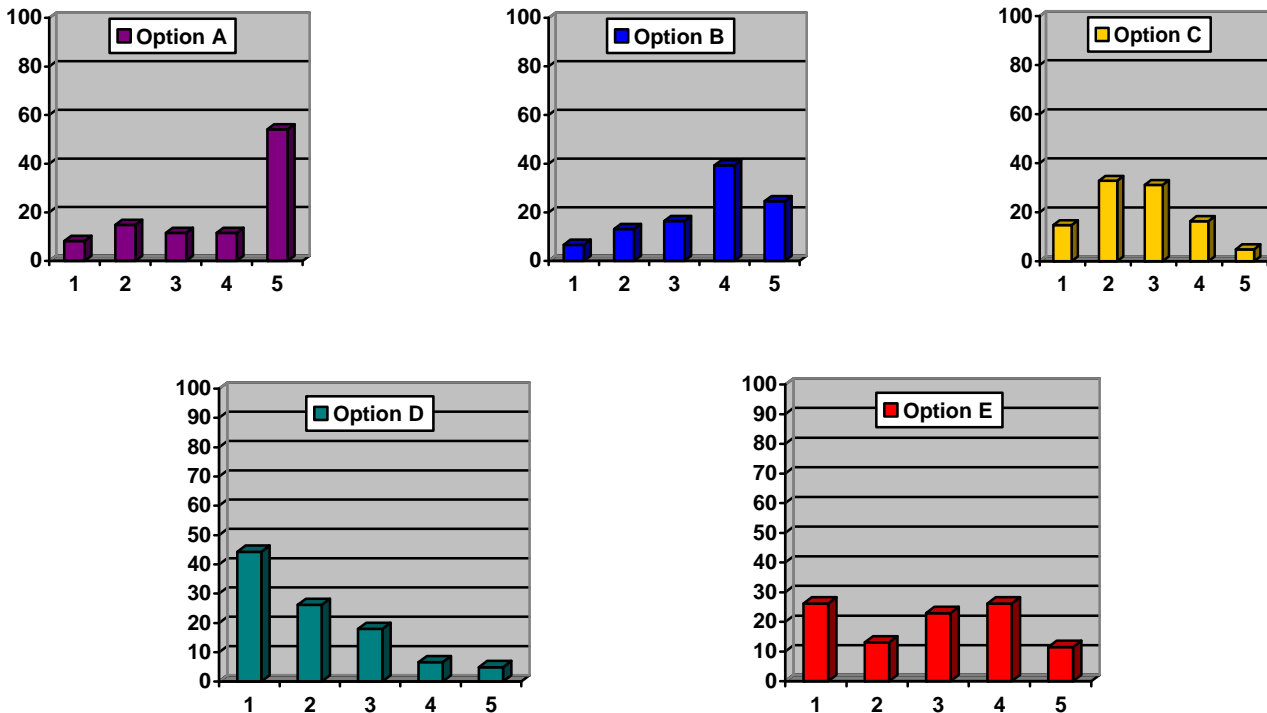
It clearly comes out of the respondents ranking that launching a substantial revision of the EU legislation on occurrence reporting (option D) is the preferred option and that the repealing of the existing legislation (option A) is the one with the lowest respondents preference.

Maintaining the current situation (option B) is ranked 4th in terms of favourite options. Regarding option C and E, the opinion of the respondents is not stated as clearly. Indeed 14.8% ranked the option to provide additional support for the implementation of current legislation as their favourite, 32.8 % in second position and 31.1% in third. The option which combines the substantial revision of the legislation with the establishment of a European voluntary occurrence reporting scheme is ranked first by 26.2% of the respondents, second by 13.1%, third by 23%, fourth by 26.2% and fifth by 11.5%.

Respondents notably vouch their choice by the identification of an important number of shortcomings in the current legislation as presented in section 4.1 of this summary. They consider that the European legislation is not efficient enough and that it should be strengthened and completed. Respondents believe that substantial changes are necessary to allow an improvement of aviation safety.

Respondents consider that an effective occurrence reporting is crucial for the establishment of an evidence based safety system inside a comprehensive safety management system in the European Union and its Member States.