

# **Summary of the replies received by the Commission following the public consultation through the web concerning a possible revision of Directive 94/56/EC establishing the fundamental principles governing the investigation of civil aviation accidents and incidents and of Directive 2003/42/EC on occurrence reporting in civil aviation**

*This document does not express the position of the Commission; neither does it commit the Commission, nor should it be assumed that it will be the position taken by the Commission following this consultation process.*

## 1 Introduction

In the frame of the Impact Assessment carried out by the Commission for the possible revision of Directives 94/56/EC and 2003/42/EC, three streams of consultation of stakeholders have been launched:

- A detailed questionnaire directly distributed by an external consultant to a number of aviation stakeholders;
- A limited number of interviews carried out by an external consultant with some key stakeholders;
- A public consultation on the web, based on a shorter questionnaire and open to all citizens, under direct responsibility of the Directorate-General for Energy and Transport of the European Commission (DG TREN).

## 2 Scope of the summary

The present summary presents the analysis of the replies received from the public consultation through the web launched by DG TREN.

The external consultant performing the parallel and in-depth impact assessment on the subject topic will consider the replies to the “full” questionnaire and the results of the interviews in their report, separately from this paper.

### 3 The public consultation and the commenters

In order to assess the possibility for further action at Community level, the Commission has published, on its Internet website “Your voice in Europe”, a consultation paper on the subject, in the form of a short questionnaire, including 5 + 1 questions (the latter for additional comments).

The public consultation was opened on 5 January 2007 and closed on the subsequent 2 March, after 8 weeks.

The Commission received 22 replies, from the following groups of stakeholders:

- 3 Ministries or Aviation Authorities (Ministry of Transport Germany, Civil Aviation Authority from Germany (LBA-GE) and Civil Aviation Authority from Iceland (CAA-IS));
- 2 Accident Investigating Bodies (AIBs) (Iceland and Poland);
- 6 Airline Operators (Air Berlin, KLM, Spanair, Swiss, Transavia and Virgin Atlantic);
- 1 labour Union (Filt-Cgil);
- 1 stakeholder association (European Helicopter Association);
- 1 University (Massey from New Zealand);
- 1 aerodrome operator (Zurich Airport);
- 1 European not-for-profit organisation (Peopil);
- 6 private citizens.

### 4 Analysis of received comments

#### 4.1 Question 1: Need to revise the two Directives

The Commission asked the stakeholders’ opinion on the need to revise the Directives 94/56/EC and 2003/42/EC.

In summary:

- 68% of respondents (i.e. 15) agreed with such a need;
- 18% (i.e. 4) were against;
- Only 2 (i.e. 9%) stated to have no opinion;
- The remaining one has not replied to this question.

The minority opposing the revision included all the 3 replying Authorities and 1 Airline Operator. On the contrary, the significant majority of the stakeholders, including the replying AIBs, were in favour of the revision.

Some stakeholders, as invited by the questionnaire, also added some comments to explain their positions. The most significant comments are summarised in the table below, splitted among those in favour of the revision (YES) and those against (NO):

	Rationale
Yes	<ul style="list-style-type: none"> <li>• Insufficient provisions for implementation of the “just culture”;</li> <li>• Company interests may conflict with an open culture to report to the Authority;</li> <li>• Removal of judicial interference with safety investigations;</li> <li>• Need for more harmonisation in the conduct of investigations;</li> <li>• No possibility for citizens (passengers) to file a safety report;</li> <li>• Too many overlapping rules which operators have to apply: a simplification of the rules is welcomed;</li> <li>• List of examples in Annexes to Directive 2003/42 too large, detailed and cumbersome to be applied and yet not so suited to aerodrome operations or Air Traffic Management;</li> <li>• Bring all States in the European Union (EU) above the minimum level of quality for such activities;</li> <li>• Insufficient visible feedback to reporters (e.g. through Annual Safety Reports).</li> </ul>
No	<ul style="list-style-type: none"> <li>• Too little experience yet on Directive 2003/42: too soon to modify;</li> <li>• The two Directives are already implemented by the majority of Member States.</li> </ul>

## 4.2 Questions 2 and 3: Policy options

The Commission informed the stakeholders, through the questionnaire, that it is considering a number of options to revise Directives 94/56/EC and 2003/42/EC. These options are:

- Option 1: “Do nothing” (i.e. do neither change the present legislation, nor intervention by EC at all);
- Option 2: Positive actions by the Commission for further promotion of voluntary coordination mechanisms among AIBs (e.g. “peer reviews”; exchange of safety data and safety recommendations; joint training; etc.), within the present legislation (i.e. no additional EU regulations or directives);
- Option 3: Modify the two mentioned Directives, possibly including the establishment of some central functions;
- Option 4: Establish a central European body tasked to carry out safety investigations on transport accidents and incidents, thus replacing the national AIBs. Such European ‘Transport Safety Body’ would, among others, contain a European Aviation Safety Board. It would be an independent European body charged with investigating every civil aviation accident in the 27 Member States of the European Union and significant accidents in the other modes of transportation - railroad, highway, marine, inland waterway and pipeline - and issuing safety recommendations aimed at preventing future accidents.

Stakeholders were invited (Question 2) to rank the four policy options according to their preference (1 = lowest preference, 4 = highest preference). The received replies are summarised in the table below:

Option	Rank (1-4) n° and % of stakeholders			
	4 (highest preference)	3 (second option)	2 (barely acceptable)	1 (lowest preference)
Option 1: Retaining of current situation ("do nothing")	2 (9%)	4 (18.1%)	2 (9%)	<b>6 (27.2%)</b>
Option 2: Promotion of voluntary coordination (but no additional EU regulations)	3 (13.6%)	5 (22.7%)	<b>7 (31.8%)</b>	4 (18.1%)
Option 3: Modify the Directives 94/56/EC & 2003/42/EC	<b>7 (31.8%)</b>	3 (13.6%)	2 (9%)	4 (18.1%)
Option 4: Establish a central European body tasked to carry out safety investigations in transport	<b>9 (40.9%)</b>	3 (13.6%)	3 (13.6%)	5 (22.7%)

Some stakeholders did not express a rank for some options, therefore the total of the replies per row can be lower than 22 and the total of the percentages per row lower than 100%.

In conclusion stakeholders did neither significantly support option 1 nor option 2. On the contrary the majority supported either option 3 or 4.

In addition, question 3 asked stakeholders to express a rationale for their reply to previous question 2.

Stakeholders favouring option 1 (i.e. ranking 4 to “do nothing”) explained that in their opinion this was because there is too little experience on both Directives and hence more experience should be acquired before attempting to modify them.

Stakeholders favouring option 2 (i.e. rank 4 to “voluntary arrangements”) argued that in their States the situation is satisfactory and regulatory instability may be detrimental.

Stakeholders favouring option 3 (limited number of central functions) motivated their support mainly by the need to have mandatory rules as well as an easy and accessible repository of information at EU level (statistics, Annual Reports, Summary of accident reports, data base of safety recommendations, etc.), while considering the option for a “centralized body” disproportionate or involving additional bureaucracy and delays if it has to conduct itself the investigations.

On the contrary, supporters of the “centralised body” (i.e. option 4) stressed that voluntary arrangements not always worked in the past, while safety rulemaking has already been centralised at EU level (i.e. establishment of the European Aviation Safety Agency - EASA). Some of them added that this will facilitate the exchange of relevant safety information, make it easier to acquire and maintain proper professional skills as well as to being more independent from local interests.

### 4.3 Question 4: Which central functions

Policy option 3 suggested a number of central functions. Therefore, stakeholders were invited to express to which extent they agree that some functions should be addressed centrally in Europe. This concerns the establishment of some possible central functions, such as:

- Central European filing system of occurrence reports, in the context of a ‘just culture’.
- Common training and competence scheme for investigators;
- European safety data repositories for investigation reports and recommendations serving AIBs, EASA, National Aviation Authorities (NAAs), EUROCONTROL (with reports in a European ICAO language<sup>1</sup> and summaries, conclusions and recommendations possibly in English).
- Central European coordination mechanism that arranges for the quick sharing of available investigators, meaning that member states could make use of the expertise of AIBs in other member states through a central coordination mechanism.
- Central European mechanism that ensures that all safety recommendations, issued by national investigating authorities, are disseminated to all interested parties within Europe.
- Central mechanism that regulates the accountability for the addressees to reply to safety recommendations.
- Central mechanism that monitors the status of implementation.

Stakeholders were invited to state whether they agree, partially agree or do not agree at all with each of the suggested possible central functions. The results of the consultation can be summarised in the following table:

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<sup>1</sup> The European languages used by the International Civil Aviation Organisation (ICAO) are French, English and Spanish

<b>Central functions</b>	<b>Agree</b>	<b>Partially agree</b>	<b>Do not agree</b>	<b>No opinion</b>
Central European filing system of occurrence reports, in the context of a 'just culture'.	<b>14</b> <b>(63.6%)</b>	7 (31.8%)	0	0
Common training and competence scheme for investigators;	<b>15</b> <b>(68.1%)</b>	5 (22.7%)	0	1 (4.5%)
European safety data repositories for investigation reports and recommendations serving AIBs, EASA, NAAs, EUROCONTROL;	<b>16</b> <b>(72.7%)</b>	4 (18.1%)	0	1 (4.5%)
Investigation reports can best be written in a ICAO language (the concerned AIB can choose one of the three EU ICAO languages)	<b>7</b> <b>(31.8%)</b>	5 (22.7%)	<b>7</b> <b>(31.8%)</b>	2 (9%)
Summaries of investigation reports and recommendations can best be written in English.	<b>13</b> <b>(59%)</b>	6 (27.2%)	1 (4.5%)	1 (4.5%)
Central European coordination mechanism that arranges for the sharing of investigators, meaning that member states could make use of the expertise of AIBs in other member states through a central coordination mechanism.	<b>12</b> <b>(54.5%)</b>	5 (22.7%)	2 (9%)	1 (4.5%)
Central European mechanism that ensures that all safety recommendations, issued by national investigating authorities, are disseminated to all interested parties within Europe.	<b>14</b> <b>(63.6%)</b>	4 (18.1%)	1 (4.5%)	2 (9%)
Central mechanism that regulates the accountability for the addressees to reply to safety recommendations	7 (31.8%)	<b>8</b> <b>(36.3%)</b>	5 (22.7%)	1 (4.5%)
Central mechanism that monitors the status of the implementation of safety recommendations.	<b>9</b> <b>(40.9%)</b>	4 (18.1%)	7 (31.8%)	1 (4.5%)
Other functions that need to be organised on a European level, i.e.: ...	6 (27.2%)	1 (4.5%)	2 (9%)	<b>8</b> <b>(36.3%)</b>

From the table above it can be concluded that a clear majority (i.e. > 67%) of respondents were in support (i.e. agree or partially agree) with all the proposed central functions, except for the following ones:

- Investigation reports written in a ICAO language (the concerned AIB can choose one of the three EU ICAO languages);
- Central mechanism that “monitors” the status of the implementation of safety recommendations.

The latter reply seems in contrast with replies to other proposals (e.g. the European safety data repository supported by 90% of the respondents) and central mechanism to disseminate safety recommendations (supported by 80%), maybe due to the interpretation of the word “monitoring”, which could be interpreted as “oversee and enforce implementation of the safety recommendations” (which is not supported) or simply “verify that a response is filed”. The latter could perhaps be acceptable in the light of the replies to the other suggestions.

The comments added by some stakeholders to their replies to question 4 only stress the rationale or force of their statements as presented above.

#### 4.4 Question 5: European Safety Body only for aviation or for all transport modes

Policy option 4 mentioned above addressed a European Transport Safety Body (all transport modes), comparable with the equivalent in the United States (US) of America (called National Transport Safety Board - NTSB). In case this option should be pursued, the Commission asked the stakeholders to express their preference between a safety body including all modes of transport or one limited to Aviation.

10 stakeholders (i.e. 45.4%) supported a European Transport Safety Board, while 8 (36.3%) wished it limited to aviation. It is necessary to note that 2 stakeholders (i.e. 9%) expressed no opinion. Therefore, a clear majority on this topic did not emerge.

Some stakeholders added that a Transport body could be more neutral in the face of competition among different modes, while allowing sharing of lesson learned. Other objected that aviation is very specific and, being an Aviation body already an ambitious objective, it would not be realistic to aim at a body with a wider scope.

Another stakeholder stressed that the aim of a European Transport Safety Board should be to ensure consistently high quality investigations are performed, for example through central training, a competency framework and sharing of investigators, but without performing itself the investigations. According to this stakeholder, the Board could also carry out audits or liaise with non-European air accident investigation teams.

#### 4.5 Question 6: additional remarks

Under this section, one stakeholder questioned the impartiality of the published questionnaire. To this comment, it is necessary to remind that this public questionnaire is only one of the streams contributing to a thorough impact assessment. In parallel, an external consultant will independently produce its report. Both the said report and the present summary will be published on the web to allow citizens to comment. The Commission, if so decided at the light of the results of the complete impact assessment, could decide to prepare in due time a legislative proposal on the topic under subject.

Other stakeholders, as invited by the questionnaire, added other remarks or comments such as:

- There are a number of occurrence reporting requirements in different legal requirements, such as EASA Part-145, Part-M, Part-21, Regulation 1899/2006 (so called “EU-OPS”) and Directive 42/2003. There should be no overlap. There should only be one legal requirement (preferably Community Regulation to avoid national differences) for occurrence reporting in total, with references to this requirement in the other requirements. This would allow companies to have an integrated approach for occurrence reporting, let it be operational, maintenance, design or whatever.
- Industry stakeholders should be provided with access to safety data, the motivation for providing information will increase dramatically when access to data is provided. Thus, open data bases like in the US should be promoted.
- Comments explaining disagreement with the establishment of a European Transport Safety Board (ETSB): an ETSB would limit the power of individual countries to conduct investigations and would jeopardize the relationship that national investigation bodies have with their local aviation community. Such relationships are a result of many years of work and trying to put everyone into the same working environment, with a centralized ETSB, in our opinion is not a good idea. Increased co-operation between national investigation bodies is vital and of great importance but a centralized ETSB is not the solution and will threaten the national trust between national investigation bodies and the aviation industry.
- In the Netherlands, the former aviation accident investigation board was merged into a 'transport investigation board' and then into a 'general investigation board' in an effort to become more effective and efficient. European concentration of aviation investigation expertise COULD improve effectiveness and efficiency as long as the national AIB's disappear.
- The role of any European Transport Safety Board should be regulatory in nature but it should not undertake investigations itself. It should encourage “Best practice” and have an education role as well as the ability to comment on any general or specific concern about the provision of safe transport and the regulation of transport methods within the EU Member States.
- There should be a central European transport safety authority with own investigators in each Member State who have also the right to give orders to the national Authorities and companies of the member states. Passenger rights should be enlarged. If a flight or other journeys are cancelled due to bad maintenance of the transport vehicle, the company should have to pay fully for the damage done and not only reimburse the ticket price. Airlines should give their pilots enough time to check the safety of the aircraft prior to flight. Reports by airline and airport staff should not lead to negative consequences regarding their employment. Aircraft with malfunctions of their electronic equipment should not be allowed to start before an independent and fully responsible supervisor has checked it and allowed the start (this could be done e.g. by the proposed agent of a central European safety agency). Each occurrence which is unusual (like return to airport without landing at the destination or landing elsewhere due to technical problems etc.) should lead to a mandatory independent investigation into the reasons before the aircraft may fly again.
- Security, ground handling, Air Traffic Management and Air Navigation Services are part of aviation as well and as such, they should be taken into account.

In conclusion, the above comments highlight that:

- The issue of a central European Investigating Body is highly controversial.
- Some stakeholders wish to look at the “total aviation system” (i.e. simplified and consistent rules across all domains), while giving more chances to participate even to passengers and ensuring the widest possible dissemination of safety information among industry.

## 5 Conclusions

The Commission is carrying out an impact assessment aiming at the possible revision of Directives 1994/56/EC and 2003/42/EC. The present summary, presenting the results of the public consultation open from 5 January to 2 March 2007 contributes to this assessment. A deeper study has been commissioned to an external consultant. Their report, once accepted by the Commission, will equally be published on the web, probably before end of 2007.

Based on the results of these two studies, the Commission might decide to adopt a legislative proposal for the mentioned revision. In such a case, the proposal will be accompanied by a final impact assessment, also published on the web once adopted.

The initial finding stemming from the present public consultation on the web can be summarised as follows:

- A limited number of stakeholders (i.e. 22) replied to the web questionnaire, also due to the fact that, in parallel, an external consultant carries out additional, deeper, consultation with selected stakeholders on the same matter.
- The sample of replies to the public consultation on the web included respondents from various segments of the aviation community (e.g. National Authorities, Accident Investigators, Airline operators and citizens).
- Two thirds of respondents (including AIBs) stated that the two Directives need to be modernised; the 3 National Authorities disagreed.
- Policy option 3 (i.e. minimum number of central functions) and 4 (European Investigating Bodies) were the most supported ones. However the latter raised also explicit opposition, while there was no clear majority for either a “Transport” or “Aviation” body.
- Most of the suggested central functions were at least partially agreed by the overwhelming majority of stakeholders.
- The need to look at the “total aviation system” (i.e. simplified and consistent rules across all domains) was stressed.
- Some stakeholders asked more chances for passengers to report, and the widest possible dissemination of safety information, among industry.