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**To European Commission Directorate General for Energy and Transport F - Air Transport  
European Aviation Safety Agency (EASA)**

Roma, 01.15.2010

Ref. Bruxelles, 10.29.2009 - COM(2009)611 final - 2009/0170 (COD)

**Subject: Amendment proposals on the draft Regulation of the European Parliament and the Council on investigation and prevention of accidents and incidents in civil aviation.**

With reference to the subject you will find, herewith, the amendment proposals suggested by ANACNA (Italian Air Traffic Controllers' Association- Member of IFATCA).

Moreover, we take also this opportunity to add some more general comments on the subject, aimed at stressing a well known, but still pending, issue felt as a priority by aviation front line operators. In particular, the draft regulation background is obviously unable to go into the national codes details applicable in each country; that means we have a "no-fly area" within which is quite difficult to perceive an harmonised and effective application.

As a consequence, the juridical inquiry action might be seen, sometime, as an overlap or an interference with the Safety Investigation Authority set up in accordance with the Directive 94/56/CE. Therefore, it would be of paramount importance to propose a different approach; for instance, instead of proposing the setting-up of new rules that could be felt as an infringement/ derogation by each State, we should strive to suggest proposals to recommend the States to adopt appropriate procedures that could be assigned to the above mentioned Safety Investigation Authority aimed at stressing the evaluation of "unintentional/honest mistakes" within their own investigation functions, provided that Investigation Authority is empowered to undertake such functions with competent experts . Such proposal would have the benefit to put in evidence the right interpretation of unintentional mistakes competence without preventing juridical inquiry autonomy.

Nevertheless, it is quite obvious that the above said evaluation – officially assigned by the State for safety investigation purposes - could pave the way in counterbalancing liability in case it was recognized by juridical inquiry authority. The proposed procedures shouldn't be seen as a conflict area between Safety Investigation Authority and the Juridical Inquiry, vice-versa these should be seen as a different approach used in a different context in which both Authorities are called on two perspective paths belonging to the same field.

If the competent juridical inquiry - provided that juridical inquiry does not request the appointment of an expert coming from the safety investigation authority or obliging the Authority to do that - wanted acquire (at its own discretion) safety investigation interpretations no one would be in disagreement.

Best Regards

Bruno Barra – ANACNA President



**Annex: list of ANACNA amendments proposals**

**Regulation of the European Parliament and the Council on investigation and prevention of accidents and incidents**

**-ANACNA amendments proposals -**

<p><b>Under preliminary remarks to the text, whereas:</b></p> <p>(15) The Member States should, in compliance with the legislation in force as regards the powers of the authorities responsible for the judicial inquiry and, where appropriate, in close collaboration with those authorities, ensure that the authorities responsible for safety investigations of civil aviation accidents and incidents are allowed to carry out their tasks in the best possible conditions; the objectives of a judicial inquiry should not be compromised either.</p>	<p>Amendments should be replaced on full text as follows  <b>The Members States are strongly required to review their own applicable legislation allowing authorities responsible for safety investigations of civil accidents and incidents to manage and to preserve the autonomy of their own investigations without any impediments and/or prejudice especially in the case in which investigations are simultaneously matter of interest by the authorities responsible for the juridical inquiry</b></p>
<p><b>Article 2, paragraph (9)</b></p> <p>'investigator-in-charge' means a person charged, on the basis of his or her qualifications, with responsibility for the organization, conduct and control of a safety investigation</p>	<p>Amendments - remove “ <i>conduct and control of a safety investigation</i>” and replace the text as follows:  <b>To collect and to analyze safety investigation data and any potential clues</b></p>
<p><b>Article 2, paragraph (12)</b></p> <p>'safety investigation' means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and/or <u>contributing factors</u> and, when appropriate, the making of safety recommendations;</p>	<p>Amendments - to add before “contributing factors” the sentence as follow:  <b>direct and/or indirect..</b></p>
<p><b>Article 4, paragraph 4</b></p> <p>Safety investigations referred to in paragraph 1 and 3 shall in no case be concerned with apportioning blame or liability. They shall be separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...In any case the adoption of appropriated procedures, actually assigned to the Authorities responsible for safety investigation by the State Authority, can encompass – without any limitation to independency – the right interpretation of any honest/unintentional mistakes revealed and analyzed during the safety investigation and therefore providing the</b></p>

	<p><b>juridical or administrative proceedings with a useful scientific reference</b></p>
<p><b>Article 5, paragraph 5 (a)</b></p> <p>the head of the safety investigation authority shall be experienced and competent in civil aviation safety and, if possible, in safety investigation...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Required competence in the investigation field shouldn't be confined at the operative and technical knowledge, foreseeing a wider knowledge based on systems components and interdisciplinary issues referred to system aviation peculiarities and processes</b></p>
<p><b>Article 5, paragraph 5 (b)</b></p> <p>the investigators shall be afforded status giving them the necessary guarantees of independence...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Investigators in charge are not allowed to be appointed as expert or consultant in civil or penal juridical inquiry, directly or indirectly linked at their own investigation</b></p>
<p><b>Article 6, paragraph 1</b></p> <p>A safety investigation authority from one Member State may request the assistance of safety investigation authorities from other Member States. When available, such assistance shall, as far as possible, be free of charge...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Assistance may require mutual recognition on investigation procedures and/or any possible applicable derogation</b></p>
<p><b>Article 7, paragraph 2</b></p> <p>The Network shall coordinate and strengthen cooperation and exchange of information among the safety investigation authorities of the Member States, and facilitate cooperation between them and the Commission and the European Aviation Safety Agency (hereinafter 'EASA'), including through the establishment of a number of central functions...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Co-operation and information exchange must foresee the adoption of a common agreement on principles to be applied with special regard to data and information confidentiality combined with accountable persons authorized to be in charge in managing such data. The above mentioned agreement should be approved by the Commission and should be made executive by EASA</b></p>
<p><b>Article 8, paragraph 1</b></p> <p>The work of the Network shall be organized according to its rules of <u>procedure</u>. The Network shall elect a chairperson from among its members, for a period <u>no longer than</u> five years. The term of the office of the chairperson shall be renewable.</p>	<p>1) Amendments – insert after the word “procedure” the following text:  <b>..written taking into account EASA opinion in terms of general compatibility on their feasibility</b></p> <p>2) Amendments – after “no longer than” remove “five years” and replace it as follows:  <b>three (3) years, renewable only once</b></p>
<p><b>Art. 8, paragraph 9</b></p> <p>The rules of procedure of the Network and its work programme shall be decided in</p>	<p>Amendments - to add at the end of the text the following period:  <b>...and to EASA in order to evaluate the general feasibility</b></p>

<p>accordance with the procedure referred to in Article 24. The chairperson of the Network shall present the draft of the rules of procedure and of the work programme to the Commission...</p>	
<p><b>Article 11, paragraph 2</b></p> <p>The safety investigation authority shall notify without delay the Commission, EASA and the Member States concerned of the occurrence of all accidents and <u>serious incident</u> of which it has been notified...</p>	<p>1)Amendments – after “serious incident” insert the following text:  <b>up to dated list - highlighting only those still in progress - ...</b></p> <p>2) Amendments - to add at the end of the text the following period:  <b>...Accident and serious incident lists should be filled in accordance with an agreed international format</b></p>
<p><b>Article 12, paragraph 3</b></p> <p>The investigator-in-charge shall extend to its experts and advisers as well as to the accredited representatives, their experts and advisers the entitlements listed in paragraph 2, to the extent necessary to enable them effective participation in the safety investigation. This is without prejudice to the rights of the investigators and experts designated by the authority in charge of the judicial inquiry...</p>	<p>Amendments - to add at the end of the text the following period:  <b>...And in any case provided that there are not overlaps and/or interferences that could paved the way in jeopardizing roles, functions, inter-relationship clarity and transparency among stakeholders/actors involved that could be helpful in gathering safety investigation data and/or clues</b></p>
<p><b>Article 13, paragraph 1</b></p> <p>If a judicial inquiry into the accident is instituted, the investigator-in-charge shall ensure custody of flight recorders and any evidence material by requesting that an official of the judicial authority accompany the flight recorders or material to the place of the read-out or <u>treatment</u>. If examination or analysis of such material may modify, alter or destroy them, prior agreement from the judicial authorities will be required.</p>	<p>Amendments - to insert after the word “treatment” the following text:  <b>At the safety investigator in charge request the accountable juridical inquiry representative may authorize the presence of the investigator in charge during the hardcopy data reading such as individual evidences minutes, or transcript reading, or during the flight data/ATC records listening deemed as a fundamental clue. In this context it is not allowed to the juridical inquiry to collect opinions by the investigator in charge, written and/or verbal, even if in informal manner. The investigator in charge presence will have the only technical intent to supervise and to verify that all data, including records, area properly managed without any damage or no-intentional forced operations able to jeopardize their future re-utilization for safety investigation</b></p>

	<b>purposes.</b>
<p><b>Article 15, paragraph 1 (c)</b></p> <p>information collected by the safety investigation authority and relating to persons involved in an accident or incident which is of a particularly sensitive and private nature, including information concerning their health...;</p>	<p>Amendments - to add at the end of the text the following period:  <b>...In any case information and/or outcomes derived by CISM (Critical Incident Stress Management) Techniques, even if unintentional acquired, are excluded to the investigation authority scope and therefore are deemed protected</b></p>
<p><b>Article 15, paragraph 2 (b)</b></p> <p>recordings and transcriptions of recordings from air traffic control units...;</p>	<p>Amendments - to add at the end of the text the following period:  <b>...including interviews outcomes conducted with the intent to go into or to clarify accident/serious incident operative dynamics</b></p>
<p><b>Article 15, paragraph 2 (d)</b></p> <p>occurrence reports filed under Directive 2003/42/EC of the European Parliament and of the Council <sup>16</sup>;</p> <p>However, the competent authority for the administration of justice in a Member State may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweighs the adverse domestic and international impact that such action may have on that or any future investigation and on the management of civil aviation safety and that there is an overriding public interest in their disclosure....</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Except occurrences reporting released within voluntary/confidential reporting system procedures</b></p>
<p><b>Article 19, paragraph (6)</b></p> <p>If the report cannot be released within twelve months, the safety investigation authority shall release an interim report at least at each anniversary of the accident, detailing the progress of the investigation and any safety issues raised....</p>	<p>Amendments - to add at the end of the text the following period:  <b>...Nevertheless, within twelve months from the occurrences, it is suggested the publication of one or more interim report in order to grant any safety prevention action as required</b></p>
<p><b>Article 20, paragraph 1</b></p> <p>At any stage of the safety investigation, the safety investigation authority shall recommend in a dated transmittal letter to the undertakings <u>concerned</u>, including those in other Member States or third countries, any preventive action that it considers necessary to be taken promptly</p>	<p>Amendments – to insert after “concerned” the following sentence:  <b>or aeronautical organization providing data and/or air navigation services</b></p>