

# The JUST CULTURE Deliverables: Model Prosecution Policy, Support and Communication

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# Balancing Public Interests



Aviation Safety

Incident reporting

Accident & Incident Investigation

Protection

Aviation Safety

Prosecution of criminal offences

Freedom of Information

Freedom of the press

Disclosure/  
Dissemination

# Just Culture

- Just Culture – Balancing Safety and Accountability
- Trigger - perceived “Criminalisation” of aviation accidents/incidents and effects on safety reporting
- Evolved from “confrontational” concepts such as punitive-free reporting, blame free reporting
- Objective - To safeguard and increase incident reporting levels, not to justify absence of reporting
- Balance between administration of justice and safety

# JUST CULTURE – MAIN ELEMENTS

**Actions, omissions and decisions expected from someone with your level of training and experience**



**Not prosecuted**

**Gross Negligence or Wilful Misconduct**



**Not tolerated**

**BUT WHO DRAWS THE LINE ?**

## DELIVERABLES

- Model for a National Aviation Prosecution Policy
- To be discussed and implemented at National or Regional level
  
- Support to the Judiciary:
  - Dedicated experts course for assisting Judiciary
  - European initiatives for establishing a dialogue between safety and judicial experts
  
- Coordination for Just Culture and related activities:
  - In Europe with EU, EASA, ECAC
  - In ICAO and global regions

## How to Implement Just Culture (3)

- EUROCONTROL Just Culture Task Force since 2007
  - Aviation safety and legal experts from Member States, ANSPs, associations, EC - Identification and promotion of existing best practice
- “Model Policy” addressed to national prosecutors
  - Coordination
  - Evidence - Protection of witness statements/incident reports
  - Only “Gross Negligence & Wilful Misconduct” prosecuted
  - Full respect for powers of prosecution
- EUROCONTROL/IFATCA Training course
  - Train dedicated experts as Judiciary (Prosecutor) support experts and educate judiciary in basic aviation knowledge
- NB: “Model Policy” and “Prosecution support” are complementary activities

# Model Prosecution Policy

Inspired by current practices in the Netherlands and the UK

Main objective: *“to provide directions regarding the criminal investigation and prosecution of potential criminal offences resulting from aviation accidents or incidents that come to the attention of prosecutors through the reporting of civil aviation incidents.”*

A model text that can be implemented and adapted to reflect national specificities or requirements

National implementation based on a unilateral decision by the State concerned, in particular the national judiciary authorities

# Main features

- Coordination between safety investigators and judiciary authorities
- Recognises the need to protect accidents and incidents reports done under ICAO Annex 13 including witness declarations in the context of those reports; not to be used by a prosecutor as evidence.
- Criminal prosecution in cases of gross negligence and wilful misconduct
- NO prosecution for actions, omissions or decisions of a reasonable person, even when these could have lead to an unpremeditated or inadvertent infringement of the law



# Main Features

## Prosecution:

- Nothing should prevent criminal prosecutions in the event of intentional wrongdoing or gross negligence.
- BUT also instructs prosecutors that no prosecution will be brought against individuals for actions, omissions or decisions which reflect the conduct of a reasonable person under the same circumstances, even when those actions, omissions or decisions may have lead to an unpremeditated or inadvertent infringement of the law.

# Way Forward

- Endorsed by EUROCONTROL member States and the EU in May 2012
- In line with EU Regulation No 996/2010 – notion of “advance arrangements”
- Relevant in context of Just Culture Key Performance Indicators (Performance Regulation).
- Voluntary implementation at national level

# Support and Dialogue

Development of EUROCONTROL/IFATCA Training course to train & educate aviation experts as prosecution/court experts – but also judicial staff in basic aviation system knowledge

Pilot courses and try-outs have started

“Show and Sell” at regional level

Identification and promotion of existing best practices  
Institutionalised dialogue between Safety and Judiciary

# ICAO Developments

- ICAO High Level Safety Conference 2010
- ICAO Assembly Resolutions A37-1, A37-2, A37-3
- “Code of Conduct on the sharing and use of Safety Information” approved by ICAO Council in June 2011
- Establishment of ICAO “Protection of Safety Information Task Force” (SIP TF) – 3 meetings 2011/12, final report January 2013 ; Europe represented by EU, EASA and EUROCONTROL
- ANNEX 19 - Safety Management Systems (SMS)

# Who draws the line?

- Who makes the first assessment whether an action is still tolerable or must be punished?
  - Safety managers / CAA/ ANSP ?
    - “In House” or to be reported to the Prosecutor ?
    - Sufficient legal insight?
  - Prosecutors ?
    - Should they receive all reports?
    - Sufficient “technical” understanding of incidents and impact of criminal investigation on aviation safety?
- The responsibility for “drawing that line” should remain by the national judiciary and recognised at regulatory and organisational level

# Next Steps

- “Criminalisation of Aviation” trend
- ICAO SIPTF and new Occurrence Reporting Regulation
- Upcoming ANNEX 19 ( Safety Management Systems)
- Regional (European) proliferation of Model Prosecution Policy
  - Possibilities and Pitfalls
  - Legal Impediments

# Next Steps

- What is being done?
  - Common Aviation Prosecution Policy in Europe
  - HLSC and follow-up in and by ICAO
  - IFATCA /EUROCONTROL Pilot Project on Prosecution Expert Pool
- Ongoing EUROCONTROL input
  - SKYBRARY
  - European JC Task Force
  - Education and Support
- Finally:

# Criminalisation of Aviation/ATM

**IT TAKES TWO TO TANGO !**