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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

REPORT BY THE HIGH LEVEL GROUP

**ESTABLISHED BY THE COUNCIL DECISION OF
11th MARCH 1996**

ADDRESSED TO

**THE EUROPEAN PARLIAMENT
AND TO THE COUNCIL**

**DEFINING A COMMUNITY
AVIATION SAFETY IMPROVEMENT STRATEGY**

Communication from the Commission to the Council and the European Parliament

Although air transport is enjoying a very high level of safety, particularly in Europe which accounts for a third of the world's air traffic but for only 10 percent of the accidents, increasing concern has been expressed about the level of aviation safety in various parts of the world. Recently, Europe was strongly affected by the tragic accident of the 6th February, 1996 near Puerto Plata in the Dominican Republic when 176 passengers were killed.

On 15 February, the European Parliament adopted a Resolution calling on the Commission to take a number of measures to increase safety in aviation and protect the European traveller.

Similarly, the Council of Transport Ministers of 11 March 1996 proposed that the Commission establish a High Level Group of Experts to examine the various relevant issues in the context of aviation safety.

The High Level Group brought together, under the Chairmanship of the Commission, representatives of all the competent authorities concerned, in particular the Member States (principally Directors General of Civil Aviation), the European Civil Aviation Conference (ECAC) and the Joint Aviation Authorities (JAA). The group met twice, in April and May, to examine a draft document containing a number of initiatives aiming at improving safety, addressing particularly the problem of sub-standard carriers from third-countries operating to and from the European Union area.

The final report of the High Level Group is annexed to this communication. A number of measures have been reviewed, to be taken by the Member States individually, ECAC and JAA, and the Commission. The emphasis has been placed on measures which would enable the setting up of an assessment of the safety of individual foreign carriers as well as the capabilities of their State of registration to ensure compliance with international safety standards. In addition to that, longer-term action including pressure on the International Civil Aviation Organization (ICAO) to take a more active stance in safety, modification of bilateral agreements to enclose a safety clause, right to audit foreign carrier contracted by European tour operators, etc have appeared also to be appropriate.

Despite the very high level of safety already achieved in the Community, the report is not only aimed at improvement in safety level of third countries' carriers. Any strategy in this field also needs to consider measures to be taken by the Community to strengthen safety oversight in Europe including the establishment of an Aviation Safety Authority.

On the basis of these considerations, the Commission invites the Council and the European Parliament to examine the initiatives proposed in the report which aims to further improve the protection of EU citizens living around airports or when travelling by air, and to which the Commission gives its support.

List of Members of High Level Group

<u>Name</u>	<u>Organisation/Administration</u>
<i>Manfred Bialonczyk</i>	<i>M.O.T., Austria</i>
<i>André Maenhaut</i>	<i>CAA, Belgium</i>
<i>Jacques Gerkens</i>	<i>CAA, Belgium</i>
<i>Val Eggers</i>	<i>CAA, Denmark</i>
<i>Jan Gabrielsen</i>	<i>CAA, Denmark</i>
<i>Kim Salonen</i>	<i>CAA, Finland</i>
<i>Pekka Hurtola</i>	<i>Ministry of Transport and Communications, Finland</i>
<i>Maxime Coffin</i>	<i>DGAC, France</i>
<i>J.Marc Sansovini</i>	<i>DGAC, France</i>
<i>Dr. Ingomar Joerss</i>	<i>BM Verkehr, Germany</i>
<i>Rainer Müinz</i>	<i>BM Verkehr, Germany</i>
<i>Horst Busacker</i>	<i>BM Verkehr, Germany</i>
<i>John Lumsden</i>	<i>DGCA, Ireland</i>
<i>Emilia Chiavarezzi</i>	<i>DGAC, Italy</i>
<i>Meyer Gilbert</i>	<i>M.O.T., Luxembourg</i>
<i>Klein Henri</i>	<i>M.O.T., Luxembourg</i>
<i>Kees den Braven</i>	<i>DGCA Netherlands</i>
<i>Tom Pieterse</i>	<i>RLD Nederland</i>
<i>Rui Verres</i>	<i>DGAC Portugal</i>
<i>Javier Herrero</i>	<i>DGAC, Spain</i>
<i>Juan Bujia</i>	<i>DGAC, Spain</i>
<i>Arne Axelsson</i>	<i>CAA, Sweden</i>
<i>A.J. Goldman</i>	<i>DGCA UK</i>
<i>Michael Willett</i>	<i>UK CAA & JAA</i>
<i>Mrs P. Ricketts</i>	<i>DOT UK</i>
<i>Marinho Bastos</i>	<i>Secrétariat du Conseil</i>
<i>Raymond Benjamin</i>	<i>ECAC Secretariat, Paris</i>
<i>Gerry Lumsden</i>	<i>ECAC Secretariat, Paris</i>
<i>Kevin Kealy</i>	<i>ECAC Secretariat, Paris</i>
<i>Klaus Koplín</i>	<i>JAA Headquarters, Netherlands</i>
<i>John A. Clarke</i>	<i>DG I</i>
<i>Daniel Bunch</i>	<i>DG III, Commission</i>
<i>Neal MacCall</i>	<i>DG III, Commission</i>
<i>Claude Chêne</i>	<i>DG VII, Commission, Chairman</i>
<i>Claude Probst</i>	<i>DG VII, Commission</i>
<i>Margarida Afonso</i>	<i>DG VII, Commission</i>
<i>Ludolf Van Hasselt</i>	<i>DG VII, Commission</i>
<i>Jean-Pol Henrotte</i>	<i>DG VII, Commission</i>

**REPORT BY THE HIGH LEVEL GROUP
ESTABLISHED ACCORDING TO THE COUNCIL DECISION OF
11th MARCH 1996**

**ADDRESSED TO
THE EUROPEAN PARLIAMENT
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**DEFINING A COMMUNITY
AVIATION SAFETY IMPROVEMENT STRATEGY**

DEFINING A COMMUNITY AVIATION SAFETY IMPROVEMENT STRATEGY

For some time, increasing concern has been expressed about levels of aviation safety in various parts of the world. This has led the Government of the United States of America and the International Civil Aviation Organisation (ICAO) to establish oversight and assistance programmes to identify possible deficiencies and take corrective measures to ensure the safety of the travelling public as well as of people on the ground.

The European civil aviation authorities themselves realized that Europe also had to act in this field and the European Civil Aviation Conference (ECAC) undertook to develop the Safety Assessment of Foreign Aircraft (SAFA) programme. Although the programme in its entirety is still under consideration, ECAC decided to start implementing certain elements provisionally at its meeting on the 27th of March 1996.

Various recent developments - in particular the tragic accident in the Dominican Republic, which affected so many European families; the Resolution adopted by the European Parliament on 15 February calling on the Commission to take a number of measures to increase safety in aviation and protect the European traveller; and the Council conclusion on 11 March asking the Commission to examine further the question of aviation safety in the light of its previous resolutions on 24 October 1994 and 29 June 1995 - all point to the need for the Community to take also a more active stance in this field and develop a strategy to improve the safety of its citizens travelling by air or living near airports.

Accordingly the Commission has established a High Level Group to assist it in considering various relevant issues in the context of aviation safety. The Group met twice in April and May.

This paper by the Commission describes all the steps the participants have considered which should constitute the consistent and comprehensive strategy required to meet the objectives assigned by the Council and the European Parliament. It presents in its conclusion an action plan which both meets the most immediate needs and embraces the more fully developed elements of the strategy. The action plan can therefore be taken forward immediately by the Community and its Member States in co-operation with their international partners without prejudging respective competences of the Community and its Member States nor the outcome of future work to be done on the rest of the strategy.

I. Safety of foreign air carriers

The need to take action with regard to foreign airlines and aircraft arises from the failure by an increasing number of countries to meet their international obligations concerning the implementation and enforcement of international safety standards. This may have an unacceptable impact on the European Union, because EU citizens travel widely all over the world and constitute an important percentage of passengers on international flights. And, of course, the airports of the Community are also major points of destination or stop-over for foreign carriers and aircraft. The safety of their operations is thus a matter of direct and immediate concern to the European Union.

There is an urgent need, therefore, to address the problem of effective compliance with international safety rules by aircraft registered outside the European Union, which the Community must take upon itself in order to ensure that its citizens enjoy a high level of safety when they live near airports or whenever they travel by air, irrespective of the nationality of the carrier they choose or of the aircraft's country of registration.

While the Community and its Member States have to define a safety improvement strategy targeted at third-country carriers and aircraft, this task must, however, be approached in a manner that is compatible with the principles governing international civil aviation as laid down in the Chicago Convention.

According to these principles, it is for each contracting State to issue or render valid certificates of airworthiness and of competency in respect of every aircraft and operating crew registered in that State. Article 33 of the Convention makes the recognition by other contracting States of such certificates subject to the condition that they have been issued or rendered valid under requirements which are equal to or above minimum international standards. There is no specific provision allowing a contracting State to call into question the way in which another country implements or enforces the relevant requirements. Moreover, since the Chicago Convention is based on a strict interpretation of the principle of national sovereignty, no system is set out for carrying out an objective assessment of a contracting State's compliance with its international obligations.

However, under Article 33 of the Convention, a contracting State is not obliged to recognise certificates it considers not to be in compliance with ICAO standards. It can be inferred that where there are grounds to question the ability of a particular country to carry out adequately its safety oversight functions over the airlines and aircraft under its jurisdiction, the other contracting States has the right under the Convention to take unilateral interim measures to protect their own citizens. But the Convention does not provide explicitly for the collective enforcement of such obligations.

Bilateral agreements usually recognise the reciprocal right of each party to designate carriers under its jurisdiction to operate services under certain conditions, provided they meet ICAO standards. They do not usually, however, include explicit provisions for safety oversight, nor for unilateral action which could allow one party to deprive the other of its recognised rights.

All this makes it very difficult, in terms of international aviation law, to establish "black lists" of particular third-country airlines - quite apart from considerations of the inevitable

risks of retaliation or other adverse diplomatic consequences.

Nevertheless, some provisions in the Chicago Convention and in the bilateral Air Services Agreements could arguably be used to assess the safety levels met by foreign carriers, which could in turn lead to the development of "safety improvement programmes" - possibly supported by co-operation programmes to remedy any shortcoming.

In parallel, collective steps could be followed to reinforce the international legal framework in order to allow more decisive action to be taken vis-a-vis non co-operative third countries.

This set of actions could benefit from co-operation with like-minded countries so as to avoid duplication and conflict in some cases; and increase our influence and weight in others.

1.1. Safety assessment

There is a general agreement that the first and most important element of a safety improvement strategy for foreign air carriers is the assessment of their actual level of safety so that, if required, action can be taken vis-a-vis their national authority to ensure they improve their operations to meet at least the minimum ICAO level, or that other interim measures are taken to preserve the safety of our citizens.

But, quite apart from the legal difficulties mentioned earlier, this is a difficult and enormous task because, to be really effective, such assessments ought to involve an in-depth and continuous inspection of the carriers concerned. It might therefore be more efficient and less costly to check whether their national regulatory authorities have the legal means and the resources, workforce and expertise to meet their international safety supervisory responsibilities properly. That is indeed what the American FAA¹ has decided to do with all countries whose carriers fly or intend to fly to the United States of America and is the basis of the ICAO safety oversight programme.

The European Aviation Authorities do not, however, consider this particular approach to be appropriate in the European context. Europe has many more aviation partners than the USA, with nearly all countries in the world having air connections to European airports. Checking them all would be out of proportion to our resources; and certainly wasteful, since there is no doubt that the vast majority of countries do meet their obligations under the Chicago Convention. There would also be the risk of duplicating the work of similar programmes carried out by other countries and international organisations; while, on the other hand, selecting some third countries but not others might appear discriminatory and could create unnecessary diplomatic difficulties.

The Community should, instead, opt for an approach more suited to the European situation, such as the one being worked out by ECAC and its associated body, the JAA. In order to facilitate the gathering of relevant information some additional measures are also planned, as described below.

¹ FAA : United States' Federal Aviation Administration

(a) the SAFA procedure

Given the legal background, if we are to reduce the risk of diplomatic retaliation and yet at the same time still tackle the potential dangers of unsafe third-country aircraft using airports in the Community, it is probably best to follow a "bottom-up" approach. Article 16 of the Chicago Convention allows the authorities of any country to board aircraft in its territory and inspect as a minimum the documents prescribed by the Convention which have to be always carried on board (Article 29). Also, under Article 33 a contracting state is not obliged to recognise certificates where it has grounds to question compliance with ICAO standards and may make such checks on aircraft as it can to satisfy itself about those standards.

If on the basis of such checks, (which must, of course, be sufficiently comprehensive for the purpose), and any other reliable information, evidence of non-compliance, or at least serious doubts, can be established, a formal case can be made to the authorities responsible for the safety of the operator concerned. This would allow consultations to take place to discuss the need for further assessment either of the operator or of the national authority, as appropriate; and any remedial measures deemed necessary.

This should ensure that action is effectively targeted only on instances where there is a real safety risk. By taking action only where strong evidence exists, the risk of third countries complaining of unfair treatment would be reduced.

As suggested by the March Council, such an approach would be even more effective if it were carried out collectively at the level of the Community. This would not only expand the basis for collecting as much information as possible, but would increase the pressure on third countries and diminish the risk of retaliatory action against our own carriers.

To achieve these objectives the Community in co-operation with ECAC and the JAA needs to develop a comprehensive procedure based on four consecutive stages :

1. Assembling complaints from the travelling public or evidence from other sources (systematic checks routinely done by Member States authorities or other competent authorities - US FAA, ICAO, etc) and disseminating the collected results among national aviation authorities. This requires the setting up of a 'focal point' which, as decided by ECAC itself at its last meeting on 27 March, is the JAA for the time being.
2. Carrying out ramp checks at European airports on a more focused and dedicated basis to build up a formal case if initial suspicions prove justified. The results of these checks would be disseminated by the 'focal point'.
3. Holding contacts with the regulatory authorities concerned to discuss the case as appropriate. This should also be done collectively.
4. Carrying out further assessments as agreed with the concerned foreign authorities. Such assessments could be done by joint teams on the model of the JAA standardisation teams.

The results of this procedure would need to be assessed collectively to decide on follow-up measures, be they of a co-operative or an enforcement nature, as suggested in the following paragraphs.

In order to ensure that information is actually collected in a consistent manner and reported to the 'focal point', the Community should adopt a Directive to formalise the above-mentioned procedure, as it did recently for shipping. This directive on "airport's state control" would also set up the necessary co-ordination mechanisms. At this point the Community would have also to address the financial implications of setting up the SAFA procedure, and decide on the sharing of the costs related to its implementation.

In order to avoid duplication and conflict with the parallel activities of the American FAA and ICAO, appropriate co-ordination would need to be established with them. The FAA has investigated 54 countries, while ICAO has received 25 requests for inspection. There is, however, still scope for Community action, particularly vis-a-vis our traditional ACP partners.

(b) "foreign air carriers certificates"

In order to ensure the gathering of information on foreign carriers, the Community should consider establishing "foreign air operators certificates" as has been done in several countries. The JAA are currently working on common rules towards this goal (JAR 129), which could be used by the Community to support its own legislative action.

It must be recognised nevertheless that this would not, and should not, aim at substituting a Community safety oversight responsibility in place of that of the country of registration. Instead, this could open the possibility for the European aviation authorities to establish closer links with their third country counterparts and evaluate their skill and "professionalism", as an input to the SAFA procedure.

(c) clauses in charter contracts

Another way of promoting the assessment of foreign air carriers could be to encourage their agreeing, on a voluntary basis, to *ad hoc* assessment by the safety authorities of the country where they seek traffic rights. In order to ensure that this took place in practice, the Community would need to establish some enforcement mechanism.

Consideration should be given, therefore, to the possibility of expanding the scope of responsibility of tour operators so as to require them to include in their charter contracts an obligation on foreign carriers to accept inspections of their operations by competent authorities if those authorities so decide.

(d) Mutual Recognition Agreements

The Community is presently negotiating with certain third countries agreements on the mutual recognition of aircraft certification and continued airworthiness, building on the basis of existing regulatory cooperation with these countries. Conclusion of mutual recognition agreements with third countries whose technical competence is

assured can make an additional contribution to aviation safety by improving co-operation between regulatory authorities, and facilitating the further harmonisation of Community and third country technical requirements. Moreover, being able to rely on assessments and certifications carried out by competent bodies of the other party, it will contribute to reducing costs and other burdens to regulators whose resources are finite.

1.2. Improvement programmes

It is generally agreed, however, that simply assessing safety deficiencies is not enough by itself, because in many cases the responsible authorities of the third countries concerned will not have the necessary expertise and resources to rectify them. And in some cases the implementation of corrective measures may be expensive and beyond the capabilities of the foreign aeronautical authority. To achieve our goals and effectively improve aviation safety, it will be necessary, therefore, to be able to offer technical assistance, when they are willing to co-operate, to foreign authorities responsible for overseeing operators found not to be complying with international safety standards. Such assistance can also be an effective vehicle to promote the acceptance and use in third countries of Community Standards, technical requirements and regulatory approaches.

Accordingly, the Community needs to develop its own policy in this domain and decide whether - and, if so, how - it is to finance aviation safety improvement programmes.

There is general agreement also on the principle that the Community should contribute to the wider efforts undertaken by its own Member States, other OECD countries and ICAO to improve aviation safety in the world. Such a policy should aim primarily at supporting the actions under way and include proper co-ordination mechanisms to avoid duplication and waste of efforts. There are several possible ways in which this might be done, and these need to be considered further before a policy can be adopted.

a) the ICAO programme

As previously mentioned, ICAO has developed a safety oversight programme based on voluntary participation, which concentrates on the assessment of the oversight capabilities of national authorities. Many Member States are already contributing to this programme. Also, ICAO has a separate programme of Technical Co-operation assistance, from which assessed countries may subsequently benefit.

Many favour the Community simply contributing to the financing of this programme, in the framework of a co-operation agreement between the Commission and ICAO. If the Community were to become a major donor, it would also be in a stronger position to influence the programme in the direction of Community objectives. The American FAA is apparently taking a similar approach.

b) a European co-operation programme

Independently of contributing to the ICAO programme, the Community could also decide to develop a programme of its own.

Any safety improvement programme must be designed to be flexible enough to respond quickly to safety needs. This calls for the establishment of *ad hoc* mechanisms, since current procedures for the co-operation funds - whether national or Community (EDF, TACIS etc) - are probably too ponderous and lengthy to meet these needs, particularly as the travelling public - quite understandably - expects that any suspected shortcomings in aviation safety are put right very quickly; and the third countries concerned would want their traffic rights restored as soon as possible if interim measures had been taken which affected them adversely.

Before the Community can envisage taking any action on its own, therefore, further work must be carried out to identify appropriate mechanisms and resources; and to ensure proper co-ordination with the activities of other bodies in this field.

1.3. Enforcement aspects

Where the relevant foreign authorities are able and willing to co-operate in taking remedial action and in agreeing on interim contingency measures, the two steps described above may be adequate to rectify safety shortcomings.

This, nevertheless, may not always be the case - for instance, when the foreign authorities are unable, or unwilling, to co-operate within a reasonable timeframe; or in cases where safety can only be ensured by taking action immediately.

The response to such situations needs to be considered more thoroughly in the European context. In particular, there may be a need for a common interpretation of those provisions of the Chicago Convention, and bilateral Air Service Agreements made under its terms, which could support effectively our safety objectives ; and, possibly, for joint action to improve these texts in the future. Once again, it seems likely that, in this field too, common action by the Community and its Member States would strengthen their position and diminish the risk of retaliation from affected third parties.

(a) Short term action :

Under Annex 8 of the Chicago Convention, the authorities of the "Airport's State" are entitled to ground any aircraft which has sustained damages. They have to inform immediately the State of registry responsible for issuing or rendering valid the respective airworthiness certificate. It is the responsibility of the latter to take a final decision as to the airworthiness of the aircraft. In this way, Member States can bring considerable pressure to bear on the relevant foreign authorities.

More generally, Annex 8 requires that aircraft must be maintained in an airworthy condition. Where a contracting State has reason to doubt that this is the case, then it can no longer be obliged to accept the validity of the airworthiness certificate, according to the proviso in article 33, and may carry out a check of the aircraft, grounding it if necessary.

There is general agreement that this resort should be used more systematically, even if it is recognised that this would happen only rarely.

To achieve this, the Council Directive formalising the SAFA procedure (see paragraph 1.1.a) should contain provisions to specify the cases when planes should be grounded. It should also recognise an appropriate right of appeal to the operators of aircraft affected by such detention measures.

(b) Medium term action :

As mentioned above, there seems to be little scope in existing conventions - the Chicago Convention and the bilateral Air Services Agreements - for States to take unilateral action on safety issues. Nevertheless, they do include some provisions which might be used as a means of persuading reluctant third countries to co-operate.

• Recourse to the ICAO dispute resolution mechanism

Under Article 33 of the Convention, a contracting State is not obliged to recognise certificates it considers not to be in compliance with ICAO standards. In case of dispute Article 84 provides for a mechanism for arbitration, involving the ICAO Council. Finally, Article 54 specifies that the ICAO Council should notify other contracting States of any infringement, and report to the Assembly accordingly.

All these provisions could, in theory, be used to bring considerable pressure for the improvement of aviation safety - even though, in practice, the ICAO Council has never yet used these powers, and does not seem particularly willing to start doing so now. Nevertheless, there is a strong case for the Community and its Member States to join other like-minded countries in giving appropriate instructions to their representatives in the Council to try to breathe life into these provisions.

Therefore, the EC Council should develop appropriate common positions on collective demarches in the ICAO Council, in support of the application of the SAFA procedure in each case where a country is suspected of not actually applying the minimum ICAO safety standards.

• Enforcement of ICAO standards through the exercise of traffic rights.

Article 5 of the Chicago Convention recognises the right of contracting parties to impose conditions and restrictions on the exercise of commercial activities by non scheduled flights.

Article 6 of the Convention prohibits scheduled services except with, and in accordance with the terms of, special permission or authorisation of a Contracting State

Bilateral Air Services Agreements normally contain a clause which allows each party to require that the carriers designated by the other party meet the same conditions that it imposes on its own carriers to operate the same services.

There seems to be a broad agreement that these provisions can be used to ensure that the carriers which operate such commercial activities meet the ICAO standards, provided this is done in a way which is consistent with the other provisions of the Convention : indeed, some Member States are already using the provisions in this way. There is still a need, however, for further investigation into their precise meaning before proposals can be brought forward by the Commission for developing a common interpretation of these provisions as a basis for joint procedures such as those being considered in the JAR 129 to support the related evaluation of conformity (see also paragraph 1.1.c).

(c) Long term action :

It is recognised that the action described in a) and b) above may give rise to numerous, lengthy legal disputes. This is why the Community, its Member States and other like-minded countries should join together in efforts to improve the international framework.

• Streamlining ICAO's role in aviation safety.

Safety being the primary objective in aviation, ICAO should further develop its activities in this field. This covers continuous standardisation to improve safety; co-operation to assist the actual implementation of these standards; and monitoring and enforcing the application of safety requirements.

There is in particular a general concern about the growing trend by air operators to enter new co-operative arrangements which make it difficult to identify a single authority responsible for the safety of the whole operation. Although the entry into force of Article 83bis seems to be one way to tackle this difficulty, recent developments suggest that this issue may still need further consideration.

If this streamlining of ICAO role results in changes being needed to the ICAO Convention itself, or a reallocation of the organisation's resources, common positions should be elaborated by the EC Council in order to implement, in co-operation with like-minded countries, the necessary changes.

• Developing the possibility for speedy interim remedial measures.

In some cases, when no other solution can be found on a consensus basis, the most effective way of protecting the safety of EU citizens may be to suspend traffic rights altogether.

One way of doing this, which looks particularly attractive, could be to include new safety clauses in bilateral Air Services Agreements which would provide clear rights for either party to seek information from the other party on the level of safety of its designated carriers; and, if necessary, to suspend the operation of carriers whose level of safety were found inadequate.

Some EU Member States have, indeed, already agreed to include such provisions in their relations with the USA. Joint action with other like-minded countries

should help to encourage the widespread adoption of such practices.

Accordingly, the Council could decide to include wherever possible safety clauses in new and existing Air Services Agreements between Member States and third countries on the basis of a standard clause to be further elaborated within the Community and the ICAO frameworks.

II. Safety in the Community

According to figures published by ICAO, Europe has one of the highest level of safety in the world: although the region accounts for a third of the world's air traffic, it has only one tenth of the casualties.

This is no reason, however, to relax efforts to improve safety in Europe itself - particularly since most flying by EU citizens takes place on aircraft registered in the Community.

It would, of course, be entirely wrong to give the impression that Community action concentrates on foreign air carriers, when the primary responsibility of the Community and its Member States is to ensure their own carriers are the safest in the world.

Accordingly any comprehensive aviation safety improvement strategy must address also, and possibly above all, the safety of aircraft and operators registered in the Community itself.

2.1 Existing instruments

The Community has already developed a number of instruments to implement its safety policy :

- A Regulation was adopted in 1991² to harmonise the technical requirements and administrative procedures in civil aviation in order to achieve and maintain a high level of safety and proficiency for the design, manufacture, operation and maintenance of aircraft, as well as the personnel and organisations involved in these tasks. There is concern, however, at the speed of follow-up action: proposals from the Commission to complete the set of applicable rules and update them in the light of the work done by the National Aviation Authorities in their association, the JAA³, have been seriously delayed. It is the Commission's intention, therefore, to bolster the resources available for this, and to catch up the time lost before the end of this year.
- The "third aviation liberalisation package" includes, in Regulation (EEC) No 2407/92⁴, provisions to ensure that Community carriers have to demonstrate their technical fitness, even when they lease foreign registered aircraft. The operational requirements (JAR - OPS) developed by the JAA, which will be proposed for incorporation into Community law on the basis of Regulation (EEC) No 3922/91, will harmonise the various national practices in this field. In particular it will include provisions to facilitate the effective implementation and enforcement of Article 10 of Regulation (EEC) No 2407/92 on wet-leasing, which seems to be particularly essential in the light of recent events.

² Regulation (EEC) No 3922/91 of 16.12.1991 (OJ L 373/4 of 31.12.91)

³ JAA = Joint Aviation Authorities

⁴ Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers (OJ L 240/1 of 24.8.1992)

Nevertheless, as already mentioned, there is a general concern about the increasingly widespread development of co-operative practices between air carriers which make difficult to identify the authority responsible for the safety of operations. The Commission should therefore investigate this issue and present proposals for a policy which, if applicable in a Community context, should be incorporated into Regulation (EEC) No 2407/92 to ensure the safety of operations under Member States jurisdiction.

- A directive adopted in 1994 establishes the principles of accident investigation to prevent recurrence. It is the intention of the Commission to develop a mechanism for the widespread dissemination and effective use of the safety information which arises as a result of the application of this Directive. This will contribute in particular to the safety assessment procedure described in paragraph 1.1.a).

2.2 . Future developments

To complete this set of measures, the Commission is carrying out work in various other areas :

(a) accident prevention

If the analysis of information derived from accident investigation can contribute greatly to improving safety, accidents are fortunately rare and accordingly the database they provide is insufficient to cover all cases effectively. At the same time it would be unacceptable just to wait for accidents to occur and to react after the event. That is why the Aviation Community is developing its activities in the analysis of incidents in order to detect, in advance, malfunctions, failures, shortcomings, weaknesses which could lead to accidents.

In this field the Commission is therefore working on the gathering and treatment of information derived from incidents.

A pilot project recently completed by the Joint Research Center has demonstrated the feasibility of centralised collation of incident information.

In parallel, a study is in progress on the establishment of a European confidential incident reporting system.

Both initiatives will lead to legislative proposals on the gathering and treatment of incident reports, which should make a major contribution to the definition of safety policies both in the field of regulatory action and in Research and Development.

(b) institutional arrangements

In addition, the Commission services are considering whether organisational changes could contribute to an improvement in aviation safety by establishing a clearer delineation of accountability and a better responsiveness to safety issues:

- The Commission has accordingly drafted a working document on the creation of an Aviation Safety Authority which was distributed widely to interested parties on 15 December 1995.

There is a general agreement on the creation of such an Authority, which might also play a major role in the safety programme towards foreign air carriers developed in Chapter 1.

Nevertheless there remain different views as to the scope of such an authority and how roles should be shared between it and its contracting member parties.

In the light of all the comments received the Commission will shortly present a proposal with a view to finding a practical solution which will bring substantial organisational benefits as quickly as possible.

- At the same time, as some Members of the European Parliament have suggested, there could be merit in considering the establishment at Community level of an Aviation Safety Board, whose institutional nature is not prejudged at this stage, with responsibility for independent oversight of Community aviation, possibly using the accident and incident reporting mechanisms referred to above.

If this idea is generally supported, it will need to be studied further in the light of the implementation of the directive on accident investigation and its follow-up initiatives on incident reporting systems.

(c) operational environment

It has been suggested that the Community should envisage developing an assessment programme of facilities used abroad by Community carriers. It is certainly true that whatever precautions are taken in the Community, accidents can happen to Community carriers as a result of deficiencies in airports or Air Navigation Services facilities they use in third countries.

Although interesting, this issue is not considered to have the same priority as some others covered in this paper, although it certainly merits further consideration.

d) compensation in case of accident

And finally - however much we hope to avoid such eventualities at all - in the case of air accidents we must ensure that Community citizens, or their relatives, receive rapid, fair compensation.

Activities currently under way in the Community and ECAC, to achieve these goals need to be speeded up and supported in wider international bodies to obtain the broadest possible coverage.

Insofar as Community action is concerned, the Commission adopted last December a proposal for a Council Regulation on air carrier liability in case of accidents, which is now before the Council and the European Parliament (OJ C 104, 10.4.96, p. 18).

The proposal, which is applicable to Community air carriers in respect of damages suffered by passengers in any of their intra-Community or extra-Community flights, waives the outdated liability limits established by the Warsaw Convention. It also provides for an objective liability of Community air carriers for damages up to the sum of ECU 100 000 and for the payment of a lump sum of up to ECU 50 000 to the victim or to his next-of-kin within ten days, in order to enable him to face immediate needs. Persons entitled to compensation are also given the possibility to bring an action for liability before the courts of the Member State where the passenger has his domicile or permanent residence, in addition to the rights conferred by Article 28 of the Warsaw Convention.

III. An Action Plan to improve Aviation Safety

On the basis of the strategy described above, which has been widely supported by the High Level Group and which the Council may now decide to endorse in principle, there is an urgent need for all parties which have a role to play in its implementation to decide on concrete immediate follow-up measures.

The Commission therefore has looked at the various components of the strategy and has identified those actions which are the more mature and would bring immediate safety benefits if implemented in a parallel and integrated manner by all the Member States.

These short term actions need indeed to be complemented by further decisions for which the Commission shall undertake the necessary preparatory work and present the appropriate proposals.

The Commission therefore recommends the following action plan which is composed of short term actions which can be implemented immediately by pooling and extending what some Member States are already doing, without prejudice to further developments or to complementary initiatives which need to be undertaken to implement the rest of the strategy.

Accordingly, the Member States should :

- immediately take the measures necessary to expand their national safety oversight activities and make them consistent with the collective assessment procedure. They should therefore designate focal points to collect information from all possible sources (passengers, airlines and airport staff, aircrew, etc); proceed with ramp checks as appropriate; and establish procedures for collating the resulting data nationally and

make them available to the other EU partners.

- allocate sufficient human and financial resources to ECAC and the JAA for the urgent completion of the SAFA procedure and its actual implementation;
- both when granting traffic rights, and otherwise by making direct contact over and above the normal, regular permit application by foreign carriers, establish connections with the responsible national authorities in order to obtain all relevant details on the fitness of applicants carriers, as well as testing the responsiveness and professionalism of these authorities;
- report to the Commission the measures adopted nationally to apply the provisions of Article 10 of Regulation (CEE) n° 2407/92 on the wet leasing of foreign aircraft by Community carriers;

The European Civil Aviation Conference and its associated body, the JAA, should be requested to :

- finalise and adopt, within one month, in co-operation with the Commission, a comprehensive and workable Safety Assessment Procedure along the lines of their previous work and as described in this Community Aviation Safety Improvement Strategy;
- establish for the coming summer a co-ordination mechanism for the centralisation and dissemination of information received and prepare syntheses on foreign air carriers whose safety levels do not seem adequate;
- formalise appropriate co-ordination with other expert bodies involved in safety assessment programmes, such as the American FAA and ICAO, to share information and avoid both duplication and inconsistencies;
- set up specialist assessment teams for the audit of foreign air carriers and safety oversight authorities;
- consider the setting up of an European co-operation programme to assist third countries improving their safety oversight capabilities.

The Commission will also play its role and intends to take the following steps before the end of the year :

- present to the Council and the European Parliament a proposal of a Council Directive formalising the SAFA procedure for the assessment of foreign air carriers and the related co-operation mechanism to share and analyse information and draw conclusions. This directive should also include an obligation on Member States to ground aircraft found or suspected to be dangerous;
- consider how to support the implementation of the SAFA procedure
- prepare a number of common positions to be presented to the Council so that Member States adopt in their international relations an attitude consistent with the Community

Aviation Safety Improvement Strategy. This would cover in particular :

- a system whereby formal cases are made to third countries when sufficient evidence of deficiencies is found by means of the assessment procedure;
 - a system for making appeals to the ICAO Council in case of disagreement with a third country on the application of ICAO safety standards;
 - the development by ICAO of standard safety provisions for inclusion in bilateral Air Services Agreements;
 - encouraging the efforts of ICAO to promote aviation safety on a worldwide basis and to focus its activities towards this goal;
 - clarifying responsibilities in the various cases of leasing and joint-venture being developed nowadays by air-operators;
 - developing a common understanding of the safety implications of articles 5 and 6 of the Chicago convention.
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- present to the Council a proposal for the setting up of a European Aviation Safety Authority
 - develop a co-operation policy to assist third countries willing to improve their aviation safety oversight capabilities.
 - accelerate work related to accident prevention and come forward with proposals for setting up at Community level appropriate systems, both mandatory and confidential, for reporting incidents and analysing collectively the resulting data.

Although other elements mentioned in the Community Aviation Safety Improvement Strategy are regarded as being of a lower priority, they will be considered further and suggestions presented to the Council at their meeting in December, as well as a progress report on the implementation of the present action plan.