

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 29.03.1994

Amended proposal for a

COUNCIL DIRECTIVE

**ESTABLISHING THE FUNDAMENTAL PRINCIPLES GOVERNING THE
INVESTIGATION OF CIVIL AVIATION ACCIDENTS AND INCIDENTS**

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ESTABLISHING THE
FUNDAMENTAL PRINCIPLES GOVERNING THE INVESTIGATION OF CIVIL
AVIATION ACCIDENTS AND INCIDENTS

EXPLANATORY MEMORANDUM

On the first of September 1993 the Commission adopted a proposal for a directive establishing the fundamental principles governing the investigation of civil aviation accidents and incidents.

The European Parliament approved that proposal on 9 March 1994 subject to a number of amendments.

The Commission decided to take up amendments 1, 2, 4, 5, 6, 7 and 10 adopted by the European Parliament where they do not change the objective of the proposed Regulation, i.e. the improvement of air safety by facilitating the investigation of civil aviation accidents and incidents, but which essentially set out to specify a number of details in the investigation procedures and to commit the Commission to submit later on other proposals in the same field.

The Commission was unable, however, to take account of amendment 3 and 12 which set out to impose a mandatory time limit for the publication of investigation reports because of the fact that the time needed to complete an investigation depends on the complexity of the relevant accident. In the event of a complex investigation, such a mandatory time limit could even be counter-productive with regard to the objective of this Directive.

It also did not take into account amendment 8 because it would modify an internationally accepted civil aviation definition, or amendments 9 and 11 that it considers as redundant.

New Recital

Whereas Member States should endeavour to achieve the closest possible cooperation between the technical enquiry and the judicial enquiry, to ensure that those responsible for both procedures can accomplish their tasks;

Article 2, paragraph 2

2. This Directive shall also apply outside the territory of the European Community to investigations of serious incidents involving aircraft registered in a Member State or operated by an undertaking established in a Member State, when such an investigation is not carried out by another State.

2. This Directive shall also apply outside the territory of the European Community to investigations of incidents involving aircraft registered in a Member State or operated by an undertaking established in a Member State, when such an investigation is not carried out by another State.

Article 5, paragraph 2, first indent

- unimpaired access to the site of the accident or incident as well as to the aircraft or its wreckage;

- unimpaired access to the site of the accident or incident as well as to the aircraft, its wreckage and cargo, including baggage;

Article 7, paragraph 4 (new)

4. The Member States shall take the necessary measures in order to ensure the publication of the report.

Article 9, paragraph 2

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| 2. The Member States shall take the necessary measures in order to ensure that the safety recommendations from the investigation body are duly taken into consideration and acted upon where appropriate without prejudice to the Community law and in particular that concerning <u>the functioning of the internal market.</u> | 2. The Member States shall take the necessary measures in order to ensure that the safety recommendations from the investigation body are duly taken into consideration and acted upon where appropriate without prejudice to Community law. |
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Article 10

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| 1. <u>The analysis and conclusions drawn from the investigation or arising from it shall not be used to apportion blame or within the context of proceedings to determine liability.</u> | 1. <u>Only the factual information collected shall be allowed to be used to assist any other enquiries or actions resulting from the specific accident or incident.</u> |
| 2. A safety recommendation does not by itself create a presumption of blame or liability for an accident or incident. | 2. A safety recommendation does not by itself create a presumption of blame or liability for an accident or incident. |
| 3. <u>Investigation reports shall not be used for disciplinary action.</u> | 3. <u>Deleted</u> |
| 4. <u>The Member States shall, in the context of Articles 5 and 6, take the necessary measures to protect investigators from involvement in litigation proceedings intended to apportion blame or liability arising from an accident or incident.</u> | 4. <u>Deleted</u> |

Article 12a (new)

1. No later than 31 December 1995, the Commission shall submit to the European Parliament and the Council proposals for:
 - (a) the setting up of mandatory incident reporting systems in each Member State and a Community system coordinating these national data bases;
 - (b) the establishment of a confidential system of voluntary incident reporting;
 - (c) compensation for victims of air transport accidents;
2. the Council shall take a decision on these proposals not later than 30 June 1996.

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