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To the kind attention of

IFATCA President, Alexis Brathwaite  
Deputy President, Patrik Peters  
LO to the EU, Paul Neering

copy to Office Manager, Tatiana Iavorskaja

**Subject:** *Proposal for a Regulation of the European Parliament and of the Council on investigation and prevention of accidents and serious incidents in civil aviation – amendments adopted in W. Doc. 2010/82 - 4th June 2010*

With reference to the subject, ANACNA would like to provide you with the following comments and suggestions.

We are aware about the progresses undertaken with regard to the first Proposal Regulation - W. Doc. 2010/72 REV 1 - Brussels, 19 May 2010 – nevertheless, we feel that some further improvements might be added on the Regulation text as follows:

- 1) **Recital 2a):** *"before 31 December 2011 the Commission should bring forward a proposal to amend Directive 2003/42 on occurrence reporting".* The action is very well welcomed, even though we need to have much more clarifications on the way forward. On one hand we deem that the foreseeable task could be to go in depth in better defining prosecutions vs. honest mistakes, on the other hand and if it was the case, it would be difficult to propose a European law able to overcome each national penal code applicable within a EU Directive. Apparently, the main reason seems to be the necessity to improve the reporting field in terms of reviewing only safety data gathering and sharing processes among Authorities and stakeholders involved;
- 2) **Recital 19a):** *"...Accordingly, the OPTIMI (Oceanic Position Tracking Improvement & Monitoring) project, managed by the SESAR joint undertaking, should be encouraged and adequate funding should be allocated to it".* Even though new and advanced technologies derived mainly from R&D could improve safety investigation activities, we would not be in favor to stress the SESAR-OPTMI Project (Oceanic Position Tracking Improvement & Monitoring) within the text, due to the fact this topic is still in the evolution phase and we do not know when it will be sufficiently mature and validated to be implemented at the worldwide level. Moreover, the aim of the Regulation proposal should be able to clarify only the regulatory approach in the field of flight safety. If this purpose has to be extended to comprehend R&D topics, probably a longer list of further helpful technologies solutions

would deserve to be mentioned in the text with the risk to go out of the real scope and content;

- 3) **Recital 17a)** : “...the accident investigation authority has a responsibility to provide relevant and timely information to the victims' families and the survivors of the accident” and new art. 18, both concerning assistance to victims and related communication information. Although these points are of paramount importance, we do not agree on the inclusion of such topics in the text. The above mentioned foreseeable procedures should be referred to overall consequences of an adverse event having an impact on transportation systems and therefore not only in aviation but also in railways, ships, etc... In our mind, it would be better to transpose these procedures and rules in a different and ad-hoc wider Regulation also in order to avoid any ambiguity and/or new tasks able to compromise functions, independency and roles belonging to safety investigation Authorities in charge;
- 4) **Art.15, paragraph 2a)** -Protection of sensitive safety information: “... When safety data is used as evidence in criminal proceedings pursuant to paragraph 2a, the fundamental rights of the persons involved, notably the rights to privacy and to a fair trial, shall be respected. Only the data strictly necessary for the criminal proceedings shall be disclosed, the rest being preserved by the investigation authority to the maximum extent possible” and moreover,

**art. 15, paragraph 2b):**

“.. When safety data is used as evidence in criminal proceedings pursuant to paragraph 2b, the information provided by a person in the framework of the safety investigation cannot be used against that person. These topics deserve great attention; in fact, in the light of the different penal code applicable at national level , it could be more than difficult to grant the above mentioned right, a common interpretation, as well as the applicability of such rules.

Keeping in mind the overall ATM community as well as the citizens expectations, we hope this contribute will be of some help for you in the way to better shape the text.

Yours Sincerely

Roma, 16th of June 2010

Bruno Barra ANACNA President

