JUDICIARY and SAFETY INVESTIGATION IN EUROPE:
WHERE ARE WE

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TWO DOMAINS…

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Liability of Pilots and Controllers

BASICALLY GOVERNED BY NATIONAL LAW

- Criminal Liability: Criminal Law
- Civil Liability: Private Law
- Administrative Sanctions: Public Law/Admin Law
- Corporate Sanctions: Private/Public Law

International Criminal law – Int Criminal Court – Crimes against Humanity
Trends towards (modest) harmonisation at European level
A few Conventions have created International Crimes in the Aviation Security Domain
In Europe, the Administration of Justice in the criminal law domain is still with the National Sovereign States

- Enforcement tool:
  - National laws
  - International obligations
- National Criminal legislation
- National Criminal Procedural and Organisational legislation
Concept of Just Culture

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

Gross Negligence or Willful Misconduct

Not prosecuted

Not tolerated

BUT WHO DRAWS THE LINE?
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?

- General support for the generic concepts of “Wilful Misconduct” and “Gross Negligence” - Need to “translate” these in the different National Criminal Legislations
- The responsibility for “drawing that line” and the related processes must be explicitly recognised as remaining with the Judiciary
- Model for National Aviation Prosecution Policy
- Education and Support
Most (but not all) of the European States have formally established in their applicable legislation a priority for the Judiciary (Police and Prosecutorial Officials) in the investigation of accidents and incidents;

Most States (but not all) have legislation that prevents use by the Judiciary of the evidence the investigator has collected and collated.

The vast majority of national, regional and global legislation in force on the protection of safety data and of the findings of investigations make an exception for the representatives of the Judiciary in the exercise of the (proper) administration of Justice.
WAY FORWARD

- Full recognition that safety and judiciary both will profit from a well established equilibrium between equally important goals

- Incident reporting first goal for harmonised national aviation prosecution policies

- Strong emphasis on support and dialogue to foster further mutual education and prevent misuse of judiciary and safety processes

- Continued and institutionalized joint efforts at regional and global level

- No more criminalisation one-liners as excuse for non-punitive protection – active lobby against misuse of criminal process