

# **JUDICIARY and SAFETY INVESTIGATION IN EUROPE: WHERE ARE WE**

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# TWO DOMAINS...

## **SAFETY**

INTERNATIONAL

GLOBAL/REGIONAL RULES

DYNAMIC

SAFETY FIRST

## **JUDICIARY**

SOVEREIGN

NATIONAL CRIMINAL LAW

STATIC

THE RULE OF LAW

# 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

# Criminalisation of Aviation/ATM

## **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**



**Not prosecuted**

**Gross Negligence or Willful Misconduct**



**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

# Reality Check: Existing Legal Framework

- 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