



ECA
Piloting Safety

New Business & Employment Forms in Aviation – ECA Comments on RAG Working Group Report –

General Comments

Representing over 38.000 commercial pilots from 37 European countries, the European Cockpit Association ECA welcomes the report from the RAG Working Group on New Business Models.

To ensure a continuous improvement in Europe's collective safety performance, it is crucial to regularly assess the functioning of the system. This includes the dynamics stemming from new ways operators set up their business and flight operations within Europe's single market, and from new forms of employment and contractual arrangements for safety-critical staff like air crew. Both dynamics can have repercussions for the safety performance of individual operators, individual regions/countries, and Europe's aviation system as a whole. The very fact that the RAG Working Group had been set up is an important recognition of this fact, as is the report presented by the Working Group (WG).

While the report remains general on a number of issues and in terms of some of its recommendations – mainly due to the limited time the WG had at its disposal – ECA notes that the report raises a wide range of pertinent questions that need to be further explored. The challenges identified in the report regarding the ability of today's regulatory and oversight system to ensure highest safety levels within Europe, constitute an important basis for further work. Therefore, ECA supports the recommendation to continue and deepen the work carried out by the WG.

As to the future work, ECA recommends a regular involvement of stakeholders from the industry and air crew. While we do understand that effective work cannot be carried out in a too large and heterogeneous group, both the operators and safety critical staff – i.e. pilots and cabin crew – should be regularly associated to the meetings, or part of the meetings, to provide information and feedback (incl. e.g. through surveys, focus group sampling, etc).

ECA considers that the report's recommendations are a positive step into the right direction. Being aware that this is a *consensus* report, we believe that several of them must be considered as a first step, while more far-reaching steps will be necessary on a number of items. – This will require political will.

Objective of the WG / Core Areas for further Discussion & Research

ECA welcomes that the WG found an “agreed understanding of the associated risks to aviation safety” created by new business and employment forms. Given the different natures, approaches and resources of National Aviation Authorities in Europe, this is an important step forward.

The report states that measures to mitigate safety risks are to be designed “without stifling innovation or competition in the market and to promote and ensure a common regulatory safety level playing field across the EU”.

Guaranteeing a ‘safety level playing field’ is indeed crucial – not least to prevent that certain business set-ups and employment practices result in competitive advantages based on (less) safety, e.g. through ‘rule shopping’ for the most lenient safety oversight regime.

At the same time, certain forms of ‘innovation’ and ‘competition’ have the potential to put the safety of the system under too much strain and too much uncertainty – be it at individual, company, national and/or at European level. Simply allowing them to go ahead, while trying to ‘catch up with the market’ by building a flexible ‘enabling’ regulatory framework around such practices, does not seem a sensible way forward. In this context, the erosion of safety margins has to be a particular focus of concern.

ECA therefore recommends to continue the work with a spirit that goes beyond simply an ‘enabling’ logic, among others by exploring the need for setting limits to – or even prohibiting – certain practices that push the system too far.

As to the identified core areas for further discussion/research, ECA agrees that the applicable rules must be evaluated whether they are still ‘fit for purpose’. This should not exclude the option of possible changes to those rules.

Key Recommendations

ECA welcomes that the WG puts forward several key recommendations – after only a few months of work and 3 meetings. All key recommendations make sense and are worth being taken forward, keeping in mind that this is a first step in a ‘continuous improvement’ process. Further steps – including more far-reaching ones – will need to be contemplated. (detailed comments see below).

Cooperative Oversight & New NAA Skills

While ECA is firmly convinced of the need to increase EASA’s own resources, it has for long been also a firm supporter of cooperative safety oversight, the pooling of NAA’s oversight / inspection resources, and the adaptation of the skills of NAA personnel to assess the actual functioning of Safety Management Systems and to enable them to look beyond the surface of ‘compliant paper work’. The revision of EASA’s Basic Regulation will be an opportunity to formalise this.

Therefore, ECA supports the recommendation made in this respect and recommends that EASA:

- a) makes public the EASA Working Paper on Cooperative Safety Oversight and invites stakeholder comments on the measures contained in that paper;

- b) engages – on an ad-hoc advisory basis – stakeholders (incl. air crew) in the NAA group on cooperative safety oversight and, in particular, when designing the trial project on such oversight, in order to benefit from the experience of ‘front-end’ users, i.e. crews and operators.
- c) examines whether the proposed notification & information sharing system for “new long-term remote operations” is sufficient, and
- d) considers the establishment of a ‘pressure test’ to assess the real operational needs for an operator to set up remote operations – which are by definition more challenging to carry out safely and to oversee by a NAA (e.g. [Primera Air moving from Denmark to Latvia](#) for operations that will rarely touch Latvian soil, or [Avies SA remote operations from Estonia](#) which triggered numerous safety incidents).

Occurrence Reporting, Safety Culture & Just Culture

As ECA has no detailed information on the ‘anonymous survey on occurrence reporting’ carried out by the Network of Analysts, we cannot provide comments. ECA invites EASA to share more information on this survey, to allow stakeholders to understand the rationale behind it and to give advice, if needed.

ECA strongly agrees that there is a need for NAAs to benchmark an operator’s safety culture (in particular in an SMS driven system), as well as a need for European benchmark safety-performance data.

Mandatory and voluntary safety reporting is crucial in this respect, and the existence of a mature safety culture – based on Just Culture principles – is a key prerequisite for such reporting to actually take place. ECA considers that:

- a) Developing guidelines for NAAs on “acceptable levels of reporting” – to serve as a performance indicator for NAAs – can be a good step forward, depending on how and where such levels are set. If not done appropriately, however, such levels & guidelines risk providing a false picture of the real safety performance of an organisation.
- b) Occurrence reports can be a useful performance indicator if a mature safety culture exists in an organisation. If it does not exist, they will be far less useful. The problem is that the maturity of a safety culture is hard to quantify, as it involves individual and collective behaviours and expectations, directly depends on (an equally hard to quantify) Trust, and goes well beyond documented procedures.
- c) To overcome this and to support NAAs in their oversight tasks, EASA and NAAs should explore the development of adequate tools to assess the safety culture in an organisation). Such assessments should be external to and independent from the organisation, i.e. provided by an external (and possibly certified) service provider, and be done on an initial and recurrent basis.
- d) In this respect, a common understanding and implementation of Just Culture¹

¹ See ‘Just Culture’ definition in the EU Occurrence Reporting Regulation [376/2014](#), Art. 2(12): “ ‘just culture’ means a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, willful violations and destructive acts are not tolerated.”

needs to be established, as operators within the EU still use widely differing approaches, varying from non-punitive ones to approaches like “you will be held responsible for your action”. In any case, a high level of trust must exist between management and air crews to achieve a good safety culture. To assess trust and culture within an organisation will require experts from other field (e.g. Psychology/ Sociology) to prevent simple “paper” compliance.

Atypical Employment Forms, SMS, Mobility & Working Environment

ECA welcomes that atypical employment forms, that differ from the traditional open-ended direct employment with an airline, have been assessed by the WG.

The report acknowledges that such “different employment models within one organisation might have a potentially negative impact on the operator’s safety culture and induce a potential risk of an unstable workforce.” It also acknowledges that there can be a “correlation between different employment types [...] within one organisation (AOC holder) and levels of occurrence reporting.”

It is therefore a logical and positive step to issue a short-term recommendation that an operator’s SMS should capture the increased differences in employment forms, i.e. data by type of contract on occurrence reporting, fatigue reporting, sickness reporting, reports on turnover, FDM events etc. However,

- a) Given the nature of operators that usually make extensive use of such ‘atypical’ employment forms – combined with the often immature safety culture within such organisations – this recommendation is unlikely to generate meaningful data (using conventional data gathering approaches) and to help manage employment-status related safety risks.
- b) It will not capture the ‘invisible’ impact of atypical employment forms on a company’s safety culture and on operational safety decisions, i.e. decisions that do not result in any reportable occurrence or any FDM event, but may reduce the safety margins. Cumulatively such incremental reductions may not become visible but may represent an increasing dilution of overall safety. In such cases, the decision-making in the cockpit may not be based solely on safety considerations, but commercial considerations may play a role that overshadows safety considerations. The [Ghent University study on atypical employment forms](#) explains the link – and presents the related survey data – between atypical employment forms and safety decisions by pilots, due to what the report describes as a ‘dependency’ situation such employment forms can create. The study describes that such dependency can lead to crews prioritizing commercial aspects over safety aspects when taking safety critical operational decisions, or when deciding whether they are fit to fly. The study highlights, for example, that close to half of self-employed pilots (46.6%) disagree or strongly disagree with the statement ‘I can amend the instructions of the airline based on e.g. objections regarding flight safety, liability, or regarding health & safety’. – Neither an improved SMS system, nor an occurrence reporting system will be able to capture this ‘invisible’ part of every-day safety decision-making, unless a company has a very mature and robust safety culture in place.

- c) Hence, ECA recommends that further dedicated work and research is carried out on identifying such ‘invisible’ safety impacts of atypical employment forms on safety culture and on operational decision making.
- d) Part of this work should be a periodic and large scale EU-wide survey among pilots and cabin crew on the potential correlation between the crews’ employment / contractual status and their day-to-day operational safety decisions as well as the organisational safety culture. Such a survey – which should be tendered out by the EU Institutions – would aim at gathering more extensive and more detailed / focussed evidence on potential safety implications of different employment models, and at making recommendations for further steps. Periodic sampling would enable progressive comparison to show trends and also the impact of any mitigating actions taken by regulators or operators.
- e) For this, it will be necessary to identify and categorise all different atypical employment forms, including self-employment, bogus self employment, and zero-hour contracts. The RAG report only raises “temporary employment models, employment via employment agencies, pay-to-fly employment schemes”, without mentioning these other employment / contractual formats. This will require the actual contracts and employment set-ups being evaluated in more detail, to assess the potential impact on safety decisions and safety culture..
- f) Improving an operator’s SMS in terms of calibrating it to capture differences by type of employment will – as mentioned above – most likely only be of limited help for NAAs in their safety oversight tasks. ECA therefore recommends that the calibration of the operator’s SMS is complemented by a legal obligation upon the operator to demonstrate to the NAA that its different employment types do not negatively affect the safety culture, day-to-day safety decisions by crews, and occurrence reporting. Such an obligation would not only make the NAA’s oversight task easier, more efficient and reliable, but also provide to operators an incentive to proactively identify, manage and mitigate its hazards & risks (whilst it would not involve any increase in the cost of administering the SMS – it would only involve correlation of data that is already in the possession of the operator).
- g) Such a legal ‘obligation to demonstrate’ should also apply to pilot turnover, where an operator would have to *demonstrate* to the NAA that a high turnover rate does not negatively affect safety culture, day-to-day safety-related operational decision-making, or the frequency of incidents, serious incidents or accidents. The operator would also have to demonstrate that such turnover is effectively mitigated by adequate training (conversion & recurrent) and does not result in a reduction in experience level, both within the company as a whole, and in terms of crew pairings where e.g. inexperienced captains fly with inexperienced first officers. – In this context, ECA welcomes the report’s acknowledgement that different employment models can have an impact on crew turnover and hence on safety relevant experience levels and training needs.
- h) Finally, ECA recommends that the option of banning (or capping) certain types of employment practices should not be a ‘taboo’, such as Pay-to-Fly schemes, zero-hour contracts and (bogus) self-employment of air crew, which – in ECA’s analysis – have a high potential to e.g. distort safety-critical crew decisions and to negatively impact an operator’s overall safety culture.

ECA takes note of the WG's statement that "there is no evidence to this date that there is a direct link between different employment models and occurrence reporting." As explained above, occurrence reporting on its own may not be the best tool and indicator for capturing the 'safety commitment' of atypically employed air crew and/or the safety performance of an organisation.

Governance, Outsourcing, Ticket Sellers, Wet Leasing & Inter-Operability

ECA welcomes the work carried out so far by the WG on this wide range of issues, as well as its initial recommendations.

In particular we welcome the recommendation to carry out more research into the increasingly complex governing structures of operators, including impacts on decision-making chains, the determination of the 'controlling mind' of the operator (incl. ticket sellers) and where actually the true governance takes place. One of the aims should be to create full transparency on these structures, including complex sub-contracting chains, wet-leasing, and employment / outsourcing practices and set-ups. In this context ECA recommends:

- There should be a legal requirement upon operators (and possibly their holding companies) to demonstrate to the NAA(s) that the particular business set-up chosen does not negatively impact upon the safety of the operations.
- There should be a legal requirement upon operators establishing a base (i.e. a permanent and durable establishment where crews and/or other support staff are employed, and from where crews habitually start and end their duties/series of duties and/or where aircraft habitually return before starting a new series of flights) to demonstrate to the 'host' authorities that
 - a) the country issuing the AOC has approved a plan for ensuring full regulatory compliance of its operations in that base, and
 - b) its activities originating from there comply with all local regulations (safety, incl. crew training/ proficiency checks, health & safety at workplace, social/employment, social security etc.).

As regards long-term wet-leasing between EU operators, ECA reminds that leasing arrangements were initially foreseen to enable operators to cater for unforeseen needs, and hence for a limited period of time until a more stable solution is found. The recent emergence of wet-leasing chains, whereby a chain of successive short-term leases results *de facto* in long-term leasing arrangements – as a kind of integrated quasi-permanent part of the lessee's operation – is neither in line with the spirit of EU legislation (Reg. 1008/2008, although the 'unforeseen needs' requirement is not explicitly specified), nor is it helpful in terms of safety oversight. In fact, some operators are setting up such complex leasing and wet-leasing 'cascade' arrangements that only business lawyers are able to understand what is actually happening.

One such complex and in-transparent example is the Norwegian Long Haul (NLH): all aircraft were registered in Ireland, those operating on the Irish AOC (Norwegian Air International, NAI) could not fly to the US because of lack of US traffic permit,

whilst those wet leased back to the AOC in Norway could. Only one aircraft was kept on the Irish AOC and the rest placed at NLH AOC wet leased to Norwegian Air Shuttle (NAS) and later transferred to NAS AOC. Norway's law does not allow foreign registry on a Norwegian AOC after six months. Norwegian operated on this regulation and then applied for a 6 months extension of foreign registry which was granted (= 12 months). After the 12 months maximum period on foreign registry, the aircraft were moved from NHL to NAS. This 'paper exercise' was done to obtain another 12 months delay on the obligation to register the aircraft back on Norwegian registry. In fact, the structure is built on combination of leases and subleases with a mix of wet and dry lease agreements within the Norwegian company structure. The company acknowledged the reason for this, allowing it to use third country employees, in particular Thai cabin crew based in Bangkok. This combined with the pilots on Singaporean agency contacts, operating from and within the EU, raises questions about who is the lessor (e.g. is there a sub-lessor, and who is liable and who is performing the operational control?) and about oversight (as overseeing such a structure is becoming more difficult). The 2nd exemption from Norway's regulation will expire on 12 June for all aircraft, except for two newly arrived aircraft which will operate on an extension until they reach 12 months on Irish registry. This means that third country employees can operate on these two aircraft, but not the ones that will have to be transferred from Irish to Norway's registry in June. The combination of dry lease, sublease, wet-lease, mix of European and third country employees on several AOC's makes this operation far from transparent and reduces the authorities' ability to effective oversight.

Hence, while ECA welcomes the recommendations proposed by the WG on wet-leasing, we question whether the EU regulator and Europe's safety oversight bodies should actually allow and/or encourage such complex and in-transparent leasing set-ups as well as quasi-permanent wet-leasing chains. While cooperative safety oversight is part of the answer, operators should be made to comply with the spirit of the related EU Regulation, and use wet-leasing to cater for unforeseen needs – which, by nature, will be of a limited period of time.

Finally, as regards Inter-operability, ECA is seriously concerned about the establishment and proliferation of 'virtual airlines', whereby a holding company 'streamlines' its operations across several AOC in different countries with unlimited flexibility to exchange and move aircraft and crew around. The legal, liability and oversight challenges are significant – as e.g. the OneAviation project shows – as are the challenges in terms of guaranteeing and managing the safety such highly volatile transnational and interwoven remote operations and crewing arrangements.

ECA strongly recommends that:

- a) EASA and the NAAs should be extremely 'conservative' when it comes to potentially facilitating such virtual airline inter-operability set-ups.
- b) Inter-operability set-ups should be subjected to a 'pressure test' to assess the real operational needs for an operator to go into this direction.
- c) NAAs cooperative oversight arrangements and capabilities should be demonstrated before any such project can be started, be it even on a trial basis;

- d) The challenges to the establishment of a safety culture, which includes a just culture, must be fully assessed and adequate mitigation measures set up in advance.
- e) Cooperation between the NAA and the local Employment Ministries/authorities to be set up, in order to ensure defined borders of responsibility and authority. Combined inspections would be an important element of that.
- f) Language issues need to be kept in mind, especially in combination with the safety critical work on the flight deck.

Conclusion

ECA commends the RAG Working Group for the work carried out within a short period of time, welcomes the WG's consensus recommendations as a first and positive step into the right direction, supports the proposal to continue the WG's work, suggests that stakeholders – in particular air crew representatives – are closely associated to this future work, and considers that further and more far-reaching measures – including legislative ones – will be necessary on a number of issues to ensure that complex business set-ups and atypical employment forms do not undermine aviation safety in Europe.

ECA and its Member Associations are ready and look forward to contributing to this important endeavour.

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