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Germanwings Flight 9525

Rescue workers sift through debris of the Germanwings jet at the crash site near Seyne-les-Alpes, France. Investigators recovering remains from all 150 people aboard the Airbus A320 have accelerated their time frame for identifying and matching the victims' DNA.

A new complication for Europe's 'just culture' safety plans

The crash of Germanwings Flight 9525 is shining fresh light on the European Union's embrace of just culture, a legal and management principle that encourages aviation workers to admit mistakes and report safety concerns. In exchange, they receive confidentiality and protection from civil or criminal prosecution and firing, except in cases of criminal or grossly negligent acts. Proponents want to prevent accidents by feeding these reports into a database of technical issues for access by aircraft engineers and aviation authorities, but not the general public or lawyers.

Just culture advocates are concerned

that French authorities, in a bid to stay ahead of the Germanwings story, may have undermined traditional air crash investigative processes and exacerbated deep tensions among pilots, investigators and judicial leaders about the right balance between confidentiality and transparency. The just culture principle, which is due for a major regulatory expansion in November, was already under fire from some lawyers because of its promise of confidentiality and its shift away from assigning blame.

Pilots in particular are worried that judicial investigators may now bend on the *continued on page 28*

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Whistleblower

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principle's core promise of confidentiality in much the same way they appeared to have brushed aside standard investigative practices in the Germanwings case. One senior pilot notes that just two days after the Germanwings accident, French prosecutor Brice Robin spoke at a press conference and, based on the cockpit voice recordings, declared the co-pilot intended "to destroy the plane." Under the European Union's 2010 regulation governing accident

investigations, cockpit voice recordings "shall not be made available or used for purposes other than safety investigation".

The fear now is that workers might be reluctant to report safety incidents, as aviation safety investigators may come under increasing pressure from government lawyers to release information given in confidence.

"Very often, the judicial authorities with their vast powers show very little sensitivity to the requirements of the safety investigation," says pilot Paul Reuter, technical director of the European Cockpit Association, which represents pilots at European Union discussions on the just culture topic.

"This does of course undermine the trust in just culture principles, especially if cockpit voice recordings leak to the media, or if prosecutors start investigating incidents that have come to their attention only through confidential safety reporting schemes," Reuter says. He worries that safety reporting could "dry up."

Investigators aren't supposed to face judicial surprises when examining an accident. Under a 2010 regulation, all European Union countries are supposed to work out "advance arrangements" whereby judicial authorities and accident investigators work side by side during accident investigations and agree on how the need to improve safety should be balanced with the need for justice.

"The recent Germanwings accident will show how well this arrangement has worked (or not) and what lessons we can learn to improve cooperation and mutual understanding between the judiciary and the safety investigators," Reuter says by email.

All this comes on top of the longstanding, fundamental skepticism of lawyers like Andrew Charlton of the Geneva-based Aviation Advocacy consulting firm.

"At the risk of sounding cynical, just culture practices produce neither justice nor good culture," says Charlton. "The aim of the system is to stop incidents from becoming accidents which is a good thing, but is confidential reporting the way to achieve that? It is only if there is transparency and accountability of the reports," he says.

European lawmakers have tended to favor just culture, but the legal community has been more divided. Here's how Reuter of the pilots' group describes the situation:

Whistleblower protection, *European style*

Eurocontrol, Europe's air traffic control organization, champions the just culture principle in which aviation workers would be protected from civil or criminal prosecution in most cases to encourage them to speak up about safety violations or concerns. Here is how Eurocontrol defines just culture:

"Just Culture is a culture in which front-line operators and others are not punished for actions, omissions or decisions taken by them which are commensurate with their experience and training, but where gross negligence, willful violations and destructive acts are not tolerated. Punishing air traffic controllers and pilots with fines or by suspending their licences can discourage the front-line operators from reporting any kind of mistake, with a consequent reduction in safety information. It is therefore fundamentally important to encourage the development of an environment in which occurrences are reported and the necessary processes for investigating and developing preventive action (such as re-training, improved supervision, etc.) are put in place."

– Eurocontrol, the inter-governmental air traffic control organization

“The judiciary is very reluctant to accept just culture because for them it is a question of giving the industry a get out of jail card — which it is not,” he says. “The biggest current challenge with regard to just culture is to reconcile the need for the administration of justice with the absolute need of the aviation industry to maintain the trust required to promote and encourage open safety reporting by safety professionals like pilots and controllers.”

In November, all European Union countries are required by European law to start enacting a 2014 regulation that will introduce further just culture practices in all aviation industries. The regulation is meant to encourage the confidential reporting of “any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident.”

Some lawyers say there is a fundamental flaw in this process: Confidential reporting might lead to more data but a lot less transparency. Making the reports public but continuing to protect the identity of the worker who reports the concern would be better than keeping the reported incidents confidential, these lawyers say.

“If the intention of the regulation is to encourage whistleblowing, then the solution is to protect the whistleblower, not drive the whistleblower underground,” says Charlton, the Aviation Advocacy lawyer.

Plus, lots of assumptions are at play in just culture, and some of them could prove faulty, critics say. It’s presumed that employers will welcome reports and act appropriately on the information in them; that there is a clear understanding by all parties about the distinctions among honest mistakes, carelessness, negligence, gross negligence and criminal behavior.

The regulation that goes into effect in November “is a major step forward,” a European air traffic controller tells Aerospace America, but this controller offers a major caveat: “To have a just culture reporting environment there is a risk that some of the fundamentals of the balance between administration of justice and safety might be put at risk.”

When it comes to investigations, the need by the judicial authorities for fast identification of the culprit clashes with

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the meticulous, measured nature of a safety investigation that can reveal all the multiple and sometimes complex elements leading to a fatal aircraft accident. This might lead to the judicial investigation taking precedence over the safety investigation, as a result of media or political pressures, experts say.

The International Civil Aviation Organization requires that aviation service providers worldwide develop and maintain a formal process for collecting, recording, acting on and generating feedback about hazards in operations, as part of their safety management systems. Many aviation professionals agree confidential reporting of safety concerns has been a major factor in improving the aviation accident record. But recent events in Europe suggest that if pilots, controllers and other aviation professionals are to continue to have confidence in reporting incidents before they become accidents, more work will need to be done to reconcile the competing aims of national justice systems and aviation safety regulators. 