

Confidentiality - What does EU376 mean?

Author: Ian Holder, Principal Consultant

BAINES SIMMONS



Confidentiality is an important facet, but an open reporting culture is even better, where people are happy to put their names to reports in a completely transparent manner.

EU376 (The reporting, analysis and follow up of occurrences in Aviation) is a powerful piece of regulation, which supports all organisations in the aviation sector across Europe as a whole in improving safety through reporting and learning. Supported by a foundation of Just Culture, it lays out clear guidelines for regulators and service providers alike, identifying when, where and how reporting should be managed.

Despite the direction given in the regulation, we are experiencing a number of clients (both simple and complex organisations) who are having difficulties in understanding how to implement the requirements for the confidential handling of reports. This is a key part of the regulation that, if not implemented appropriately for your organisation, can undo the good intent of the regulation and your 'just culture', thereby reducing confidence in the act of reporting in the first place.

QUESTIONS AND STATEMENTS WE ARE HEARING INCLUDE:

- The information is confidential and we cannot share it within our group of operators.
- We are a small operator and it is impossible to maintain confidentiality.
- Managers are insisting that they need to know the names of all reporters.
- We cannot investigate reports if we do not know who the reporter is.

We had a good open reporting culture, now everything has to be confidential. The above statements are, in our view, the product of a misinterpretation of EU376 that reads:

(34). In order to ensure the confidence of employees or contracted personnel in the occurrence reporting system of the organisation, the information contained in occurrence reports should be protected appropriately and should not be used for purposes other than maintaining or improving aviation safety. The internal 'just culture' rules adopted by organisations pursuant to this Regulation should contribute in particular to the achievement of this objective. In addition, the limitation of the transmission of personal details, or of information allowing the identification of the reporter or of the other persons mentioned in occurrence reports, by a clear separation between the departments handling occurrence reports and the rest of the organisation, may be an efficient way to achieve this objective.



We have seen strong reporting cultures with significant open reporting, and where the Just Culture is equally as strong.

(40). In order to enhance the confidence of individuals in the system, the handling of occurrence reports should be organised in such a way as to appropriately safeguard the confidentiality of the identity of the reporter and other persons mentioned in occurrence reports with regard to fostering a 'just culture'. The aim, wherever possible, should be to enable an independent occurrence handling system to be established."

This in itself is not wrong and the intent is to be commended, but it is the interpretation of this that is causing the challenge. A number of NAAs and Organisations are interpreting the words above to require all reports to be treated confidentially, so that names are not available to anyone outside of the safety departments. In this take on the regulation, the latitude built into reporting systems to date, that reflects the maturity and nuances of individual organisations' cultures is threatened. This prevents operational departments from following up effectively and openly sharing key learning points for reports that are either:

i) not contentious

or

ii) are contentious, but a mature open reporting culture exists and has led to a point where the matter is reported openly anyway, despite the reporting system offering a confidentiality option.

We have also seen numerous examples where individuals are recognised in reports for positive behaviours, but they cannot be identified to their line managers due to a rigid application of the rule. This is frustrating for both safety departments and operational department managers. How would I

thank a member of my team for a great proactive report for example?

Further to this, the guidance material¹ relating to the regulation states:

"It is notably recognised by Regulation 376/2014 that a clear separation between the department handling occurrence reports and the rest of the organisation may be an efficient way to achieve this objective (Recital 34). This should therefore be encouraged where practicable²."

As with all regulations, the very important intent as amplified via Acceptable Means of Compliance (AMC) or Guidance Material (GM) are key. Here, picking out the words 'may' and 'should' helps to reintroduce the latitude currently enjoyed by many organisations in how they have arranged their reporting systems.

Confidentiality is an important facet, but an open reporting culture is even better, where people are happy to put their names to reports in a completely transparent manner. Knowing how many people report openly, and how many report confidentially, provides a great indicator of the level of trust. Trust in an organisation takes time to develop, and the natural progression is from confidential to open reporting. In order to establish a strong and robust learning culture, follow up and feedback is key, as well as public recognition of positive safety behaviours. How open is your reporting culture? Have you set the default to confidential or is there the option for reporters to be open?

We have seen strong reporting cultures with significant open reporting, and where the Just Culture is equally as strong. The capability for confidential

¹ <http://skybrary.aero/bookshelf/books/3301.pdf>

² Synonyms: workable, achievable, attainable, realisable, viable, realistic, sensible, reasonable, within reason, within the bounds of possibility

(and even anonymous) reporting is still important to have, but should we not be striving towards a healthy and trusting, open reporting culture if we really want to learn from what is truly happening in our organisations, and protecting our organisations from harm?

So what does a good implementation look like? It depends on how strong your just culture is in supporting a reporting culture; the important phrase to understand in the regulation is: *'information contained in occurrence reports should be protected **appropriately** and should not be used for purposes other than maintaining or improving aviation safety.'*

As already said, the most successful reporting cultures default to an open report, where names can be positively shared to demonstrate how all are contributing to safety – promoting further reporting. But it is appropriate for reporters to be able to select a report as confidential, meaning their names will not be shared outside of an independent safety team, unless this is subsequently needed to *'improve aviation safety'* – according to a strict just culture process.

It should be understood that, just because a report is confidential, this does not mean its contents and the lessons learnt cannot be shared as widely as appropriate, it is just the individuals involved who should not be identified.

Some organisations also allow for anonymous reports; i.e. the reporter does not attach their name to the report in the first place. This is not a requirement of EU376 and creates difficulty in investigating reports.

We would contend that anonymous reporting does not facilitate a mature organisation to improve safety internally. However, other legislation requires most organisation to have a 'whistleblowing' policy and this will allow for anonymous reporting where an individual feels there are barriers to improvements being made by internal reports.

Sometimes the identity of reporters may become known to others in an organisation, especially where the organisation is small. This does not necessarily mean confidentiality has been breached, only if the identity of persons is actively sought and/or such knowledge is acted upon with negative intentions, is confidentiality breached – to reassure staff, it should be clear that managers would be disciplined for circumnavigating the established reporting protocols and actively breaching confidentiality.

CONCLUSION

EU376 is well intentioned regulation that, if implemented soundly, can deliver real business performance improvements. It will unlock the safety intelligence that exists in your organisation so that effective, riskbased, decisions can be made by senior leaders. It also promotes safe behaviour and a positive culture amongst staff, furthering capability. Understanding confidentiality is key, but this should not become onerous or crippling. The goal should always be to foster open reporting...

About the Author

Ian Holder,
Principal Consultant, BAINES SIMMONS

Ian's experience as a civil airline pilot and commercial aviation senior manager, combined with a prestigious career in the RAF which culminated in the role of Staneval pilot, makes him highly qualified to lead our flight operations and safety management expertise within our Consulting Practice. Ian brings more than 25 years' of practical risk management skills and experience to bear on major diagnostic consulting programmes for our clients. He has a particular interest in the power of organisational safety culture to drive and deliver enhanced business performance and is passionate about realising the organisational benefits of improved safety risk management.

About Baines Simmons

We are specialists in aviation regulations, compliance and safety management and partner with the world's leading civil and defence aviation organisations to improve safety performance. As trusted advisors to businesses, armed forces, governments and regulators across all sectors of aviation, we help to advance best practice, shape safety thinking and drive continuous improvement to safety performance through our consulting, training and outsourced services.