



MH17 Preliminary report & US decision on NAI

by Nico Voorbach

Earlier this week the Dutch Investigation Board presented a preliminary report on the crash of Malaysian Flight MH17. Expectations were high but unfortunately the partial conclusions didn't meet them. While we understand that the work of the investigation team has been challenged and possibly rigged by the tragic ongoing conflict in Ukraine, we also do expect meaningful final conclusions to be drawn up at the end of the process to ensure similar tragedies won't happen again in the future.

The interim report lays down the already suspected causal factors: no technical failure or pilot error but "damage that would be expected from a large number of high-energy objects that penetrated the aircraft from outside" are the cause of the crash. Many questions still remain unanswered: Why was this aircraft overflying this conflict zone? Why many airlines' risk analysis failed to identify the imminent danger? Did something go wrong in the intelligence information exchange?

These very central questions have not been addressed at this stage. But we do hope that the final report – which will probably be published in a year time – will bring clarity. Several international aviation safety organisations, such as ICAO, IATA and IFALPA, have started identifying ways to improve information sharing in the future. ECA hopes that a structural workable solution for intelligence agencies and air transport organisations can be accepted by ICAO Member States and put in place soon. MH17 type of event should never happen again.

On a different note, the U.S. Department of Transport (DOT) took a decision on Norwegian Air International's (NAI) request to get an exemption to allow it to fly to the USA. The DOT refused to grant this exemption. This is good news for pilots and airlines on both sides of the

Atlantic who have joined forces and opposed this unfair business model that NAI attempted to set up under an Irish 'flag of convenience'. It is a first strong signal that NAI's business model affects public interest and is not in line with the spirit of the EU – US Transport Agreement. We hope that the final decision of the DOT on granting a foreign air carrier permit will go in the same direction. The legislator cannot allow an airline to use cheap labour (recruited in Asia) and circumvent EU and US social labour standards to tear pilots' terms and conditions apart. In their competition airlines must respect the legal framework they operate in and act as socially responsible companies. ECA will continue to denounce such unfair practices, require the EU legislators to ensure that companies can compete, but do so in a fair and socially responsible manner!

US DOT reveals EU's inability to prevent flags of convenience in aviation

On 2 September, the US Department of Transportation (DOT) rejected Norwegian Air International (NAI) provisional access to the US market as strongly advocated by ECA and US-ALPA. This decision has provoked a number of political reactions on both sides of the Atlantic. Can the US refuse access to an airline certified by a European Civil Aviation Authority based on competition and public interest ground? The DOT says yes. While this decision is good news for the level playing field in the aviation industry, it only sends a signal to Norwegian and the other airlines – operating under a "flag of convenience" business model and resorting to unfair competitive practices.

The US Transportation Department dismissed NAI's request for an exemption to abide US legislation for foreign air carriers, but it has not definitively thrown out its application for access to the US market. The DOT has yet to reach a decision whether to grant a foreign air carrier permit, allowing the Irish-registered company

to exploit questionable crew bases in Thailand and hire pilots and cabin crew in an obscure manner through temporary employment agencies in Singapore. ECA and US-ALPA will continue working hand in hand to demonstrate to the legislator the failure of the current system and its permissive approach to unfair competition. This collaboration demonstrates the absolute necessity for pilots' group across the globe to remain united and work together towards preserving meaningful terms and conditions.

Meanwhile, NAI uses its mother company – Norwegian Air Shuttle (NAS) – to operate daily flights to multiple destinations in the US. Is NAS model any better? No, but it got its approval before changing its business model. A similar direction is taken by another Nordic company. In the past week the news broke that Finnair will outsource cabin crew on some of its Asian routes. The personnel will be recruited from Hong Kong and Singapore on temporary agency contracts, where wage costs are substantially lower, labour rights – poor, social benefits – inexistent. Finnair announced to carry out the first phase of the outsourcing process by introducing lay-offs of its current staff. This is an unacceptable process. The legislator has to think about whether this is the way European citizen and workers should be treated.

Companies are continuously seeking to cut their charges and their labour costs – one of the few variables they can influence. Some airlines though use questionable, complex and creative set ups on the edge of the law. Airlines relocating their business to 'flags of convenience' countries or using flexible employment contractual set-ups are a few examples of such market distorting practices. The outstanding question – which European Parliamentarians and Member States will have to address – is how to decisively put an end on such practices before they destabilize the entire industry, dislocate European jobs, destroy the National Social models and affect business opportunities for socially responsible airlines. Neither the aviation industry itself, nor Europe's passengers, or the aviation employees will benefit from this race to the bottom.

In the aftermath of MH17: Assessing risk and sharing information

MH17 exposed a significant weakness – if not a failure – of international threat and risk assessment to

determine what is safe & secure and how to effectively exchange such confidential (safety & security) information. How do we close this loophole today?

This very pressing question was repeatedly raised during a 3-hour hearing in the European Parliament Transport Committee last week. The industry experts – present at the hearing – shared their preliminary views on the MH17 downing and the way forward. In a nutshell: an analysis of the industry's approach to risk assessment is needed, a new system for high level international intelligence sharing is in the pipeline and there is a political commitment to take all measures necessary for preventing tragic avoidable events like MH17.

The hearing was one of the first meetings of the new EP Transport Committee and provided an opportunity for stakeholders to shed light on what has been done since the accident in July. EP Members were briefed about the ICAO led Task Force on "Risks to civil aviation arising from conflict zones", which was set up with a key objective to identify solutions in the aftermath of the MH17 downing.

The tragic event placed under scrutiny the exchange of safety critical information and intelligence. This is why one of the key concerns of the ICAO Task Force – where pilots are represented by IFALPA – is to set robust arrangements in place to identify, assess, share information on and respond to risks to civil aviation from activities in conflict zones. In the short run, the Task Force will explore how the NOTAM system can be better used to share conflict zone risk information. In the long run, a new centralised system for the prompt sharing of such information is to be established. This system should ensure the timely consolidation, processing and distribution of the appropriate safety information to all stakeholders.

This would require a significant effort, also in Europe. Patrick Ky, Executive Director of EASA, warned that EU Member States are sometimes reluctant to provide EASA with information and intelligence that might affect the safety of passengers and crew. The information does not reach EASA in all cases in a timely manner – like in the Ukraine case – with the US Federal Aviation Administration being the main source of information...

An airline and its pilots can take all the precautions possible and yet an aircraft can be utterly vulnerable as it flies through an air-corridor deemed to be safe. To make the final call – whether it is truly safe or not – it is crucial that Member States, authorities and airlines share sensitive information that will allow the pilots to bring their passengers safely to their destination.



ECA
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ECA is the representative body of European pilot associations, representing over 38.000 pilots from across Europe

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