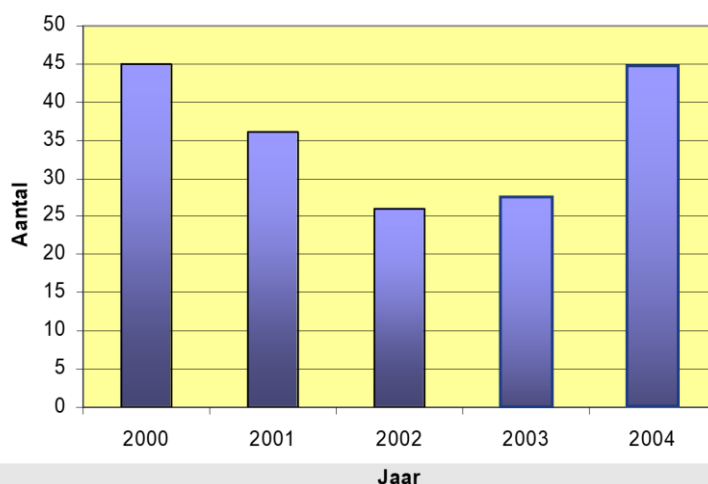


SMS Optimised Practice/Good Practice Submission

ANSP	LVNL	Date of submission	24 th September 2023
Contact Details	Email: j.bruggen@lvnl.nl	Tel: +31 20 406 3739	
SoE Study Area	1.2 A just and open climate for reporting and investigating occurrences		
OP/GP title	Just Culture Application in the Netherlands' Aviation domain and LVNL		
In use since	January 2007		
ANSPs using this practice	The implementation required a change to the penal code in the country of residence, which was and is very hard to achieve. However, the Swiss are now enjoying a revival of Just Culture with their recent parliamentary initiative, for which Dutch documentation was used. Recently Belgium actually changed their laws and is believed now to be similar to Dutch legislation to provide the same protection.		

The Dutch legislation makers, when implementing EU Directive 2003/42 on occurrence reporting in civil aviation in Dutch Aviation law, met severe resistance from the Netherlands' aviation community. After convictions of three air traffic controllers in 2002, based on an incident in 1998, safety reports at LVNL tumbled. To date, this is still one of the only reported cases in ANSPs about the detrimental effect of prosecutions on the impact on the safety management system (reporting of safety events) and thus could numerically be demonstrated to government, European Commission and Eurocontrol.

Aantal gemelde incidenten door ATC fouten



Through extensive negotiations, including discussions in both parliamentary chambers, the following setup was achieved:

1. The State does not institute legal proceedings as a result of an unintentional or non-negligent violation of a legal provision and does not impose an administrative sanction on an administrative body if knowledge of this violation has been obtained through a report from the mandatory reporting system. This does not apply if there is gross negligence or intent with regard to the incident.

2. Data obtained during an internal company safety investigation in the context of a safety management system certified by or pursuant to the Aviation Act cannot be requested for the purpose of a criminal investigation following a mandatory report until after authorization by the judge of instruction at the request of the public prosecutor.

3. The State issued a letter to all prosecution offices, instructing them to:

- In principle, prosecution is only initiated in the event of accidents, serious incidents (near-accidents), serious danger and systematic violations caused by intent or gross negligence.
- No prosecution will be brought against natural persons with regard to violations that have been committed unintentionally or non-negligently and of which the Public Prosecution Service is aware only because it has been reported under Article 7.1 of the (Dutch) Aviation Act. However, in accordance with Article 8, paragraph 3 of Directive 2003/42/EC, criminal action can be taken if there has been intent or gross negligence. Also, if there has been intent or gross negligence, criminal action can be taken if the prosecutor for other reasons, for example by an anonymous tip, became aware of the incident in question. Furthermore, with regard to the prosecution policy described above, the reservation must be made that the competent court may, following a complaint based on Article 12 Dutch Penal Code, order that prosecution be instituted.
- If on the basis of the foregoing it is allowed and possible to prosecute, the limitation is that the report itself may not be used as evidence in a criminal case against the reporter. However, the report may then be used as control information and as evidence in criminal cases against others than the reporter.

4. The public prosecutor sent a letter in 2011 to all aviation parties declaring that:

In the event of accidents, serious incidents (near-accidents), serious danger and systematic violations caused by intent or gross negligence, criminal investigation is initiated. The result can then be that prosecution is started, whereby the general danger setting article (5.3) of the Dutch Aviation Act is the final piece and therefore not the point of departure for the prosecution.

5. Consultation with prosecutor, Aviation Incidents Bureau (ABL) and the aviation sector (4 times per year). In this meeting, discussion takes place on 'Operation' / functioning of the law reporting incidents, many concrete cases are being discussed to interpret whether or not gross negligence or wilful misconduct is suspected and also "peripheral cases" for which it is not immediately clear to the ABL whether they should be reported to the prosecutor.

6. In case of a serious or major safety event, LVNL informs the prosecutor directly (same level as AIB) and explains the event, so the prosecution office is immediately informed. This is followed up with conclusions of the investigations when available.

The overall setup over the last 15 years has resulted in mutual trust between prosecution office and aviation parties. For the last +10 years, no (civil, commercial) aviation prosecutions have been initiated. The prosecution office is convinced that the value of a good working safety management system prevails over the prosecution of individuals connected to an incident where no damage to persons or goods was done. The safety management system of LVNL has since then matured significantly with an excellent reporting culture, feedback to the reporter, open discussions over what happened and why it happened, actually achieving safety improvements.

This Dutch setup was used as an example for the creation of the EU REG 376/2014, replicating some of the elements in the Dutch Aviation Act. The Dutch Aviation Act and Instruction to prosecutor's offices have been brought in line with EU 376/2014, without losing any of their effective meanings or implications.

Many presentations about the setup have been held all through Europe. Most important fora were the Just Culture Task Force of Eurocontrol and associated conferences, but also to the Belgian Administration of Transport, in attention of the unions, where the Dutch Aviation Act was taken as an example. At a symposium in Zürich, the Dutch situation was again set as an example for the Swiss legislation.

Most recently, the situation as seen from the prosecutor was showcased at the Just Culture Conference in Vienna, 2023, which was very well received and generally appreciated as the ideal situation and best practice.

Details:

Please provide some details of the Optimised Practice (OP) or Good Practice (GP) and how it fits the CANSO requirement to be considered to be an OP/GP – Approx. 500 words. Details should include:

1. A brief description of the Safety Management process optimised or good practice being submitting. Optimised practices will be reviewed by the Optimised Practice Review Group;
2. A justification of why the Safety Management process is believed to be an optimised or good practice;
3. A description of the resources required to develop the Safety Management process, for example: how long did the development take, how many people were involved and whether there a significant technology cost;
4. A description of why the Safety Management process was developed (for example: to solve an identified safety problem, improve efficiency or in response to an audit observation etc.);
5. A description of how the Safety Management process has improved safety performance, or, the understanding of safety in the organisation.

By submitting this document, your organisation is willing for the proposed Optimised or Good Practice to be shared with other ANSPs.

For Optimised Practices, this document should be sent together with the SoE in SMS questionnaire, to: soe_2021@eurocontrol.int **by 31st July 2021 at the latest.**

Submissions for consideration as Good Practices may be sent by the above date. They may also be identified during the survey interview sessions with the survey team, following which a Good Practice submission document will be requested.