



## STATE ENFORCEMENT POLICY

This enforcement policy is promulgated under the statutory authority of the *Règlement Grand-ducal du 18 juillet 2014 relatif au programme national de sécurité aérienne*.

### 1. PURPOSE

1.1 The enforcement policy of the Direction de l'Aviation Civile (DAC) and the implementation of Safety management Systems (SMS) are aimed at promoting compliance with aviation safety regulations and requirements through enforcement mechanisms applied in an equitable, transparent and non-discriminatory manner.

### 2. POLICY APPLIED TO ORGANISATIONS OPERATING UNDER AN SMS

2.1 This part of the enforcement policy applies to the organisations listed under Art. 3.1 of the *Règlement Grand-ducal du 18 juillet 2014 relatif au programme national de sécurité aérienne*.

All applicable service providers will establish, maintain and adhere to an SMS that is commensurate with the size, nature and complexity of the operations authorised to be conducted under its approval or certificate. DAC's enforcement policies and procedures will allow service providers to deal with, and resolve, certain events involving safety deviations internally, within the context of the service provider's SMS, and to the satisfaction of DAC. Intentional contraventions of the applicable rules and regulations will be investigated and may be subject to conventional enforcement action where appropriate. DAC will establish clear provisions in the enforcement framework for due consideration in order to distinguish between premeditated violations and unintentional errors or deviations.

2.2 No information derived from safety data collection and processing systems (established under an SMS) relating to reports classified as confidential, voluntary or equivalent category shall be used as the basis for enforcement action except in cases of willful misconduct or where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the



circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.

2.3 When a service provider operating under an SMS unintentionally contravenes applicable rules and regulations, specific review procedures will be used. These procedures will allow the DAC inspector responsible for the oversight of the service provider the opportunity to engage in dialogue with the SMS-approved organisation. The objective of this dialogue is to agree on proposed corrective measures and an action plan that adequately addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time to implement them. This approach aims to nurture and sustain effective safety reporting, whereby service providers' employees can report safety deficiencies and hazards without fear of punitive action. A service provider can therefore, without apportioning blame and without fear of enforcement action, analyze the event and the organisational or individual factors that may have led to it, in order to incorporate remedial measures that will best help prevent recurrence.

2.4 DAC will evaluate the corrective measures proposed by the service provider and/or the systems currently in place to address the event underlying the contravention. If the corrective measures proposed (including any appropriate internal disciplinary actions) are considered satisfactory and likely to prevent recurrence and foster future compliance, the review of the violation should then be concluded by DAC with no further punitive enforcement action. In cases where either the corrective measures or the systems in place are considered inappropriate, DAC will continue to interact with the service provider to find a satisfactory resolution that would prevent enforcement action. However, in cases where the service provider refuses to address the event and provide effective corrective measures, DAC will consider taking enforcement action or other administrative action deemed appropriate.

### **3. POLICY APPLIED TO INDIVIDUALS**

3.1 Without prejudice to applicable national criminal law, DAC will refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to its attention only because they have been reported under an occurrence reporting scheme. If disciplinary or administrative proceedings are instituted under national law,



information contained in occurrence reports shall not be used against the reporters or the persons mentioned in occurrence reports. This approach aims to nurture and sustain effective safety reporting, whereby individuals not working under an SMS can report safety deficiencies and hazards to DAC without fear of punitive action.

3.2 The protection foreseen in paragraph 3.1 does not apply in cases of willful misconduct or where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.

#### **4. PROPORTIONALITY OF RESPONSES**

4.1 Breaches of aviation regulations may occur for many different reasons, from a genuine misunderstanding of the regulations, to disregard for aviation safety. DAC has a range of enforcement procedures in order to effectively address its safety obligations in light of different circumstances. These procedures may result in a variety of actions such as:

- counselling;
- remedial training; or
- variation, suspension or cancellation of authorisations.

4.2 Enforcement decisions must not be influenced by:

- personal conflict;
- personal gain;
- considerations such as gender, race, religion, political views or affiliation; or
- personal, political or financial power of those involved.



4.3 Enforcement decisions must be proportional to the identified breaches and the safety risks they underlie, based on three principles:

- DAC will give due and equitable consideration to distinguish premeditated violations from unintentional errors or deviations.
- DAC will seek to educate and promote training or supervision of those who show commitment to resolving safety deficiencies; and
- DAC will take action against those who consistently and deliberately operate outside Civil Aviation Regulations;

## 5. NATURAL JUSTICE AND ACCOUNTABILITY

Enforcement decisions must:

- be fair and follow due process;
- be transparent to those involved;
- take into account the circumstances of the case and the attitude/actions of the service provider or individual when considering action;
- be consistent actions/decisions for like/similar circumstances; and
- allow recourse

## 6. EXCEPTIONS

6.1 This policy is not applicable if there is evidence of a deliberate effort to conceal non-compliance.

This policy is not applicable if the service provider fails to maintain an acceptable SMS.

This policy is not applicable if the service provider or the person is deemed by DAC as a recurrent violator.

In the above circumstances, DAC may deal with such non-compliance or violations according to established enforcement procedures as deemed appropriate.



6.2 In some cases, a risk assessment by DAC may find unacceptable risks and lead to emergency measures such as limitations or operating bans, even in absence of intentional violations. Such emergency measures, whose objective is to maintain air safety, are outside the scope of this enforcement policy and should not be considered as enforcement measures.

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Pierre JAEGER

Director of Civil Aviation