

Despite an 'economic tsunami' and environmental uncertainties,  
Europe's regional airlines commit to 2010 safety initiatives.

# Cautious Optimism

BY WAYNE ROSENKRANS | FROM INTERLAKEN



Ambrose

Enthusiasm about advances in aircraft, engines, maintenance, training and safety technologies counterbalanced subdued talk during the General Assembly of the European Regions Airline Association (ERA) about surviving the current economic crisis and coping with environmentally driven costs. In the safety arena, attendees at the Oct. 7–9 event in Interlaken, Switzerland, caught up on initiatives related to fatigue risk management, aircraft deicing/anti-icing, universal occurrence reporting and expansion of just culture.

Priorities on ERA's agenda for 2010 include lobbying for the European Aviation Safety Agency (EASA) to appropriately translate the existing consensus on flight and duty time limitations into the EU OPS 1 regulatory framework, considering fatigue research and operating experience, said Mike Ambrose, ERA director general. "EASA's crew duty and rest time limitations will be a major 2010 portfolio for many ERA operators ... and rationally based on safety rather than social needs or regulatory perception."

ERA supports the link to fatigue science "in a way that all of us can achieve the efficiency that should be achievable," added Antonis Simigdalas, ERA president and CEO of Olympic Air.

The current EU OPS 1 flight time limitations (FTL) impose "high level" parameters considered equal or superior to those applied for many years by national aviation authorities, Ambrose said. "No European Union [EU] state has a conspicuously poor safety record regarding crew fatigue; indeed, I cannot think of one accident involving an EU airline in which crew fatigue was a significant factor," he said. "Likewise, I expect the 'low level' parameters — for example, split duty and reduced rest — to be subject to the same level of national aviation authority scrutiny and enforcement that has always existed. All operators have always had an obligation to ensure that neither the application of regulations nor the application of local agreements and rostering patterns results in crew fatigue."

While the ERA Board addresses FTL, the ERA Air Safety Group will focus on mitigating risks of frozen residues from thickened fluids

used for aircraft deicing and anti-icing affecting aircraft flight controls (ASW, 10/08, p. 27, and ASW, 11/08, p. 15); regulation of airport deicing/anti-icing service providers; full implementation by states of the European Commission's directive on occurrence reporting; and encouragement of the region's air navigation service providers (ANSPs) to adopt a charter for just culture with guidelines for no-penalty reporting procedures. The group also will advise operators on obtaining funding to acquire datalink and automatic dependent surveillance–broadcast equipment and work with Eurocontrol on identifying suitable airports for regional airlines to implement continuous descent approaches.

Ambrose and Simigdalas also described ongoing vigilance for EU legislative and judicial actions that could adversely affect operational risk. For example, member airlines protested a recent judicial interpretation requiring — without any known consultation with safety specialists — passenger compensation for flight cancellations for technical reasons, he said. "European Court of Justice deliberations and decisions regarding the application of Regulation 261/2004 on passenger compensation and assistance, although no doubt considered with the best of intentions, illustrate how important decisions undertaken by ill-informed decision makers can fail to provide EU citizens with the 'justice' to which they are entitled," Ambrose said.

"They could result in airlines having to pay compensation to passengers on flights cancelled for safety reasons such as equipment failure on the aircraft. The court has decided that such failures are not 'exceptional circumstances.' The result is that someone, somewhere, sooner or later, will accept an aircraft that might be 'legal' to fly but might have a cumulative set of allowable deficiencies that the aircraft commander would otherwise deem unacceptable were it not for the commercial pressures of compensation payments if the flight is cancelled."

### Battling Criminalization

Aviation accident criminalization — the prosecution and punishment of aviation professionals with fines and imprisonment — continues to



Photos: Wayne Rosenkrans

have a “corrosive tendency on safety” in Europe despite alarms raised in an October 2006 joint resolution by the Flight Safety Foundation, Royal Aeronautical Society, Académie Nationale de l’Air et de l’Espace and Civil Air Navigation Services Organisation (ASW, 1/07, p. 13), said Sean Gates, senior partner of Gates and Partners, London.

The practice has a “very chilling” effect on aviation professionals routinely disclosing safety-critical information and discourages some witnesses from cooperating in the safety investigations of crashes, he said. As a result, the careers and even retirements of CEOs, regulators, pilots, maintenance technicians, air traffic controllers and others have become more vulnerable to being destroyed unjustly when the public wants to identify and punish “guilty” parties, he added.

“You may discover that as a consequence of something you have done in your home country, you may be prosecuted in one of the other states of the European Union, in a foreign language with foreign criminal procedures,” Gates said. “You’ve all got plans ready to accommodate years in a foreign country dealing with a set of criminal procedures against you and the possibility of five to 10 years in a foreign slammer [prison], is that right? And do you have a million euros [about \$1.5 million] put by to cover your defense costs?”

Crashes in some countries still lead automatically to a criminal investigation targeting all parts of the aviation industry, with a high probability of prosecution. “The surprising thing to many people — certainly in the United Kingdom — is the power of some countries to issue arrest warrants and initiate extradition processes,” Gates said. “We can no longer just examine the charges against our nationals as to whether they would stand up in a U.K. court. Today, they are automatically obliged to go to whichever European court summoned them.”

Involvement of judicial authorities sometimes generates simultaneous investigations in multiple jurisdictions. “At one airline, the chief flying officer was subpoenaed to attend criminal procedures in two jurisdictions on the same day,” Gates said. “He could only attend one, so the [foreign] court to which he said he couldn’t go

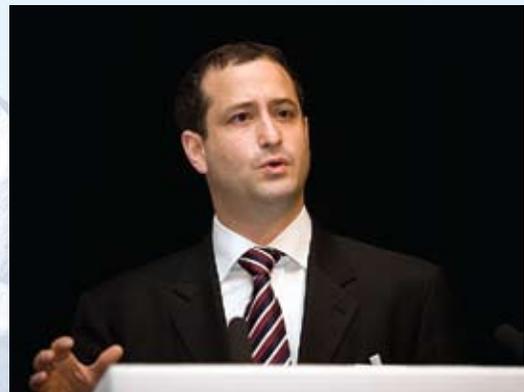
issued an arrest warrant to Scotland Yard, which had to execute the warrant. Fortunately, we were able to intervene. The idea that an airline executive could be arrested and taken to prison as a result of such conflicts is absurd.”

Other trends are the targeting of chief executives and mid-level managers, and misuse of the official report produced by a national safety investigation authority, as has occurred in cases in Greece and Cyprus, he said. “Accident reports also are routinely used in France, Spain and Italy as part of the prosecution process,” Gates noted. “All of these states are signatories to the Chicago Convention [the 1947 Convention on International Civil Aviation that created the International Civil Aviation Organization (ICAO)]. ICAO Annex 13, *Aircraft Accident and Incident Investigation*, sets down what accident reports should be used for and what they should not be used for. This is an international law, which all these countries have signed and all of them continue ignoring.”

Some consequences have been subtler than the argument about impeding the flow of critical safety information. “It is more insidious than that,” Gates said. “Talking to a number of witnesses in connection with an event, I also was told several times that there is a growing tendency when checking out [the crew as a



Photos: Wayne Rosenkrans



From top: Simigdalas, Gates and Stark.

causal factor not to] describe the actual circumstances that could give rise to a critical comment about them.” The reason is that if the airline continued to employ a pilot who received such critical comments, and this becomes evidence in a subsequent criminal investigation, the record very easily could be used against the airline, he said.

He counsels clients to incorporate into their crisis management manuals contingency plans for criminal prosecutions in the home country or foreign countries as applicable, he said. “Stopping accident criminalization only can be addressed at ICAO, but that takes six or seven years. Meanwhile, we need sustained industry attention to this issue, and we need the public to understand it.”

### H1N1 Virus Threat

European regional airlines, like other airlines in the Northern Hemisphere, can take several actions to prepare for the current pandemic caused by the 2009 Type A (H1N1) strain of the influenza virus, according to Craig Stark, a physician and regional medical director of SOS International for Northern Europe and Russia. So far, this flu strain typically has caused mild illness — sometimes resulting in public complacency — but also caused severe respiratory illness and deaths during winter in the Southern Hemisphere.

“No one knows what this virus will do,” Stark said. “In Australia, they have just finished their research, and their newly released reports<sup>1</sup> may give us a preview of what is to come. People over 65 seemed to be protected by natural immunity. Those severely affected were in a 15- to 40-year-old age group; 40 percent of those who died were healthy and under age 65. Australia also identified at-risk groups: pregnant women and patients with chronic medical

conditions such as diabetes, asthma and heart problems.”

The number of patients simultaneously requiring treatment in intensive care units (ICUs) strained health care resources in Australia. Some of the sickest patients survived and some died after undergoing seven to 15 days of extracorporeal membrane oxygenation, which is oxygen treatment of blood outside the body for patients with acute respiratory distress syndrome, he said.

H1N1 has a very high attack rate and very high morbidity. “That means it causes significant illness that may not kill your employees but might make them sick for seven to 10 days, and if you are not careful, you might have all your employees sick at the same time, which obviously could cripple your [operations],” he said. “If an infected person coughs or sneezes, particles of the virus become aerosolized in the air, and if these droplets land on a hard surface they can infect others for up to 48 hours.” Infected people are infectious from one day before until about 14 days after their flu symptoms appear.

Airlines and other aviation organizations already should have a pandemic plan in place to mitigate potential disruptions and operational risks from temporary reductions of the normal contingent of employees. Plans ideally will spell out how to coordinate back-up resources, including assigning people to work from alternative locations, such as by telecommuting, and how to obtain mission-critical products if normal suppliers have closed temporarily. The master plan should be customized for flight operations and safety departments, airline hub offices, call centers, maintenance facilities, airport check-in/gates and categories of critical staff such as aircraft crewmembers who are prone to infection while on duty.

As soon as school closures begin during the pandemic’s typical seven- to eight-week period in a local community, employers typically lose 15 percent of their workforce, Stark said. “Ideally, the company will identify in advance critical people who would not be able to come to work when that happens,” he said. During the three-week peak local period of the pandemic, only 50 to 65 percent of personnel may be available to work.

Therefore, clear policies must be set for how to handle employees who call in sick and how to handle employees who report for duty with flu-like symptoms, he said. The policies may have to be applied for weeks to months because the global crisis can be expected to last from nine to 15 months.

Airline crewmembers who fly international trips especially should be aware of the importance of an H1N1 vaccination — which can safely prevent 70 to 90 percent of influenza-specific illness — and the possible lack of availability of anti-viral medications such as Tamiflu and Relenza or physicians who can prescribe them to crewmembers who are away from home. 🌀

### Note

1. The Australia and New Zealand Extracorporeal Membrane Oxygenation (ANZ ECMO) Influenza Investigators. “Extracorporeal Membrane Oxygenation for 2009 Influenza A (H1N1) Acute Respiratory Distress Syndrome.” *JAMA-EXPRESS*, the online Journal of the American Medical Association. Oct. 12, 2009. Of 68 patients receiving this treatment between June 1 and Aug. 31 in 15 intensive care units (ICUs), 48 survived until ICU discharge, 32 survived until hospital discharge and 14 died. They ranged in age from 26 to 43. Fifty-three had confirmed cases of 2009 H1N1 influenza and eight had Type A influenza not subtyped as H1N1. An additional 133 patients with Type A influenza during the same period only received mechanical ventilation in the same ICUs.