



Overview of National Legal Systems in Europe & Implementation

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Common law

- A system of laws – developed from customs and decisions made by judges
- Precedent
- Common law adjudication
- Adversarial approach of the court

Civil law

- Proceeds from abstractions
- Formulates general principles
- Distinguishes substantive rules from procedural rules
- Case law secondary and subordinate to statutory law
- Civil law is often paired with the inquisitorial system

Three differences

- Civil law/common law
 - Codification
 - Different legal structures
 - The role of the courts
- Access to public information
 - The right to know
 - Article 19 of the Universal Declaration of Human Rights (1948)
 - Article 15 of the Treaty on the Functioning of the European Union
 - The Freedom of the Press Act (Sweden)
- Pre-existing national legislation

EU or member state competence?

European union law

- European union law - unanimously agreed on by the governments of 27 member states
- Treaty on European Union
- Treaty on the Functioning of the European Union

EU Regulations

- To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions (Article 288)
- A regulation shall have general application
- It shall be binding in its entirety and directly applicable in all Member States

The right to a national constitutional identity

- Article 4.2 Treaty on European Union
- Lisbon treaty - Protocol (No 25) on the exercise of shared competence
- Case law

However - obligations under Community law

Member State cannot plead

- provisions,
- practices or
- situations

prevailing in its domestic legal order, including those resulting from the constitutional organisation of that State, to justify the failure to observe obligations arising under Community law

Regulation (EU) No 996/2010

One common framework

The development of one common framework on the investigation of accidents and incidents in civil aviation

- ICAO Annex 13
- Directive No 94/56/EC
- Regulation (EU) No 996/2010

The background

- Due to the many different legal systems in Europe, there were significant differences in the way investigators and judicial authorities cooperated with one another throughout an on-going investigation
- One regulation applicable in all member states
- However, the different legal systems may shed a different light on the interpretation of provisions
- Legal basis – Article 100 Treaty on the Functioning of the European Union

Article 14

The balancing test

- a national authority can decide to disclose the records listed in Article 14,
- if it determines that the benefits of the disclosure outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation

The implementation – Phase 2A Peer Review data 2019-2020

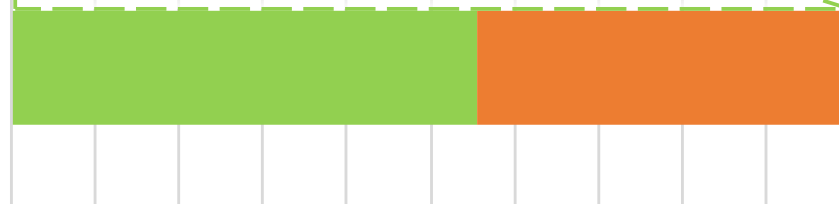
Balance Test

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

H4 - Has your State established the legal basis for the balance test provided for in Article 14(3) of Regulation (EU) 996/2010?



H5 - Does your SIA have national jurisprudence on the balance test to share with other SIAs, whereas it is in favour or against the SIA?



■ Yes ■ No

The implementation

- The legal basis for the balance test is different in each state
- The national legislation and/or advance arrangements of Belgium, Finland, Italy and Poland will be presented in the afternoon
- Are there any differences in the implementation and if so which are the reasons for these differences?
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