

# Comments on the Final Report on the accident of the presidential flight to Smolensk on 10<sup>th</sup> April 2010

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## Conclusions

- The “Miller Report” contains much relevant information and many accurate observations
- However it almost totally omits the most important and hence real cause of the accident
- By doing so it offers ammunition to those wishing to find alternative explanations

## Specifically

- From the information in the Report I conclude that the cause of the accident was the lack of application of the so-called “Approach Ban” which is universally applied in civil aviation and is a legally binding regulation throughout the whole of the European Union
- The purpose and effect of this regulation is precisely: to prevent accidents like the one which occurred in Smolensk on the 10<sup>th</sup> April 2010 (CFIT: Controlled Flight into Terrain)
- This regulation, applied to the conditions which prevailed on that day, unequivocally forbids the pilot to continue the approach below a height of 1000 feet (300 metres) above the airport

**Legal basis of the Approach Ban:** A rule contained in the COMMISSION REGULATION (EC) No. 859/2008 of 20th August 2008 (which is EU law): **EU-OPS 1.405** (“Commencement and continuation of approach”) which is also part of the Polish Minister of Infrastructure’s Directive Dz.U.04.262.2609 of 5<sup>th</sup> November 2004.

Article (a) of this rule places an obligation on the commander of an aircraft that *“the approach shall not be continued beyond the outer marker, or equivalent position, if the reported RVR (=Runway Visual Range) / visibility is less than the applicable minima”*.

## Argumentation

As described in the Miller Report, the Polish Air Force has its own regulation (RL-2006). It contains very different clauses in this subject area, described in the Report as clauses which “give rise to interpretative doubt” and are not “unequivocal” (pages 98 and 99):

“The final decision whether to land must be taken by the pilot at a height determined in item 16, after approach, irrespective of earlier obtained atmospheric conditions for landing”.

and (contradictory, in § 48):

“When an aircraft finds itself in a dangerous weather phenomena area where due to it any continuation of the flight would be hazardous, the mission should be given up and, contingent upon the situation, should fly out of such area and land at one’s own base or on an alternate aerodrome (in terrain in the case of helicopters).”

The concept of the Approach Ban assumes that any kind of “trial approach” to DH/MDH (decision height/minimum descent height) in conditions when the actual visibility is below the minimum are by nature (and by virtue of many years’ experience) very dangerous and should be clearly and specifically forbidden by an unambiguous rule. (The assertions on pages 99 and 224 of the Miller Report negate this presumption).

This principle, invented by the British and adopted by the JAA (Joint Aviation Authority) for civil flights and airports *and military transport flights* when EU aviation regulations were unified, has as its objective the prevention of accidents even when the pilots or controllers make various mistakes or when equipment fails.

It is a regulation that is legally binding on all commercial operators in the EU anywhere in the world and on all aircraft landing on EU territory including, for example, flights with Polish VIPs to Brussels etc. so also binding for at least some flights carried out by the 36<sup>th</sup> Special Airlift Regiment.

The concept of a “trial approach” presumably originates from Russian (probably military) aviation, judging by its frequent mention in the conversations of the Russian air traffic controllers.

So the cause of this accident is very simple and only one:

**The lack of application of EU-OPS 1.405 by the 36th Special Airlift Regiment or its personnel.**

In the case of flight 101 to Smoleńsk, since the commander was informed that the visibility was 400 metres (cockpit voice transcription 6:14:15, 6:24:22, 6:24:40 and 6:24:52), therefore below the minimum required visibility on the runway: 1200 metres (Miller Report, p. 35, section. 1.6.6), this regulation forbade the crew to continue the approach beyond „*the outer marker or equivalent position*”. Since there is no outer marker at Smoleńsk, the equivalent position is defined in article (d) as 1000 feet (300 m) above the aerodrome.

If this single, universally used and legally required (in Europe) principle, was applied, then this accident would certainly not have occurred even with all the mistakes and shortcomings listed in the Miller Report. The elimination of any of the other mistakes mentioned in the Report [for example the use of the wrong altimeter, executing the go-around on autopilot, “on track” calls by the controllers, better training, etc., etc.] may have prevented the accident but applying this regulation would have prevented it for sure.

The Approach Ban was invented *exactly because* pilots have a tendency to make all these mistakes under the most stressful (and dangerous) situation which is being at decision height without seeing the runway. Thanks to the application of the Approach Ban such statistically very risky situations hardly ever occur. Among those that do occur, 9 out of 10 are lucky. Unfortunately for our heroes they belonged to the exception.

In the UK, breaking the Approach Ban results in a mandatory report to the authorities.

Those who would dispute the above arguments should be asked: what, according to them, is the exact meaning and application of the “visibility minimum”? Applying this minimum during flight in any context other than the Approach Ban is completely meaningless or totally illogical.

It should be noted that the Approach Ban concerns the aircraft commander only and not air traffic control.

On page 94 of the Miller Report there is a quote from RL-2006 (§ 1 item 4):

“Personnel Polish Armed Forces is bound to apply air traffic rules, as specified in documents prepared by civilian aviation authority,...”

I reiterate that EU-OPS 1 is part of the legally binding EU civil aviation regulations since 2008.

### **Conclusions**

- The Miller Report (page 322) mentions EU-OPS 1 as a good template for the recommended changes to the polish regulations – but in view of its key relevance to this accident it is perplexing that paragraph 1.405 is not even mentioned (at least as a recommendation)
- Among people there is a general impression that “by common sense” this approach should never have been attempted. The above regulation is the material form of such “common sense”. No pilot can feel pressured to break it.
- Of course, the military will have its own regulations – but surely it is logical that regulations governing the safety of the most important people in the nation should be at least as stringent if not more stringent than those protecting ordinary passengers (not less so as is the case now). It would be equivalent to the President being killed in a car crash because he was not wearing a seat belt – but “in our military, seat belts are not mandatory”. OK, but everywhere else they are so why does the military not ensure the same level of safety for the President?
- In my opinion and in the opinion of many reading the Miller Report the pilots exhibited a very high level of skill considering all the prevailing conditions – despite their lack of training and recency and even despite the mistakes they made. I reject the conclusion (as I am sure many others do) that the cause of the accident could be as banal a mistake as using the wrong altimeter. If my life depended only on that, I would never get into another aeroplane. But I know that the Approach Ban rule (and many similar ones) protects me from something certain: that people who service the aviation industry make mistakes, are sometimes tired and are imperfect, that airlines are under huge commercial pressures and that the military operates under specific conditions.
- So I would turn the conclusion of the Miller Report around: I would say that:

**„The pilots were unable to execute their decisions because these decisions were based on flawed regulations”**

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Internet links to above quoted regulations/directives:

<http://www.transport.gov.pl/files/0/1787261/ust1.pdf>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:254:0001:0238:PL:PDF>