

An abstract geometric design featuring large, overlapping shapes in orange, grey, and white. The shapes are defined by smooth, curved lines and sharp angles, creating a sense of depth and movement. The design is framed by a thin orange border.

BEA

REGULATORY TEXTS

December 2018

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Annex 13 to the convention on international civil aviation - 11th edition



ICAO

International Standards
and Recommended Practices

Annex 13 to the Convention on International Civil Aviation

Aircraft Accident and Incident Investigation

Eleventh Edition, July 2016



This edition supersedes, on 10 November 2016, all previous editions of Annex 13.

For information regarding the applicability of the Standards and Recommended Practices, see Chapter 2 and the Foreword.

INTERNATIONAL CIVIL AVIATION ORGANIZATION



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AMENDMENTS

Amendments are announced in the supplements to the *Products and Services Catalogue*; the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

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FOREWORD

Historical background

Standards and Recommended Practices for Aircraft Accident Inquiries were first adopted by the Council on 11 April 1951 pursuant to Article 37 of the Convention on International Civil Aviation (Chicago, 1944) and were designated as Annex 13 to the Convention. The Standards and Recommended Practices were based on recommendations of the Accident Investigation Division at its First Session in February 1946 which were further developed at the Second Session of the Division in February 1947.

The Fourteenth Session of the Assembly (Rome, August–September 1962) considered the subject of aircraft accident investigation and adopted Resolutions A14-22 and A14-27, Appendix P.* The first of these:

1) *directed* “the Council to:

“a) study the possibility of initiating a uniform procedure to be used by States to make available promptly the reports of aircraft accident investigations and inquiries, particularly when related to large modern transport aircraft, so that the dissemination of such reports by all Contracting States may be improved;

“b) study whether it is practicable to establish procedures by which the State of Manufacture or the State that first certificated the aircraft type, would, in appropriate cases and upon invitation, make available competent experts for advice or consultation in the investigation of accidents, and in the light of the results of such study:

“i) determine the most practicable means of ensuring that the fullest possible advantage will be taken of the specialized knowledge of such experts and notify all Contracting States accordingly, and

“ii) urge all Contracting States to co-operate in the use of such experts so as to contribute to the safety of air navigation;”

and

2) *urged* “all Contracting States to provide timely notification of aircraft accidents, especially those involving large modern transport aircraft, to the State of Manufacture or the State that first certificated the aircraft type, whenever it is considered that such action would be appropriate.”

In addition, by Resolution A14-27, Appendix P, the Assembly resolved that, “in respect of accident investigation, that it is of great importance for the general improvement of the safety of air navigation that, to the greatest practicable extent, a Contracting State in which an accident has occurred involving aircraft other than of its manufacture communicate to the State of Manufacture as soon as possible any pertinent information which results from the inquiry and which may reflect on the airworthiness of the aircraft type or its equipment, or which might be used to effect improvement in safety.”

Table A shows the origin of subsequent amendments together with a list of the principal subjects involved and the dates on which the Annex and the amendments were adopted by the Council, when they became effective and when they became applicable.

* The Fifteenth Session of the Assembly (Montreal, June–July 1965) subsequently adopted Resolution A15-8, Appendix P, which consolidated and superseded resolving clause 2 of Resolution A14-22 and Resolution A14-27, Appendix P.

Applicability

While the Annex has been adopted pursuant to the provisions of Article 37 of the Convention, Aircraft Accident Inquiry is itself the subject of Article 26 of the Convention. This Article imposes an obligation on the State in which the aircraft accident occurs to institute an inquiry in certain circumstances and, as far as its laws permit, to conduct the inquiry in accordance with ICAO procedure. However, Article 26 does not preclude the taking of further action in the field of aircraft accident investigation and the procedures set forth in this Annex are not limited solely to an inquiry instituted under the requirements of Article 26, but under prescribed circumstances apply in the event of an inquiry into any “aircraft accident” within the terms of the definition herein. In order to maintain the correct relationship between the provisions of Article 26 and those of the Annex, the following principles have been observed:

- a) Article 37 of the Convention is the Controlling Article in the development of an Aircraft Accident Inquiry Annex, but nothing in the Annex must contravene the express terms of Article 26, or any other Article of the Convention, nor should it contain any provision which would do violence to the spirit and intent of the Convention.
- b) Subject to a) the Annex may deal with any relevant matter whether or not expressly dealt with by Article 26 or by any other Article of the Convention. For instance it is not a contravention of the Convention for the Annex to deal with the rights or obligations of States other than the State of Registry and the State in which the accident occurred; similarly the Annex may deal with the privileges to be accorded to observers entitled by Article 26 to be “present” at the inquiry. These are matters upon which Article 26 is silent. The Annex may also deal with accidents of a kind which do not fall within the provisions of Article 26.

Relationship between Annex 13 and Article 26 of the Convention

In order to clarify the relationship between the provisions of Article 26 and those of the present Annex the Council, at the 20th meeting of its Twelfth Session on 13 April 1951, adopted the following additional resolution:

“Whereas Article 26 of the Convention provides that a State in which an accident to an aircraft occurs within the terms of the Article, ‘will institute an inquiry into the circumstances of the accident in accordance, in so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization’; and

“Whereas the Council, at the 18th meeting of its Twelfth Session on 11 April 1951, adopted Annex 13 on Aircraft Accident Inquiry;

“The Council recommends the Standards and Recommended Practices for Aircraft Accident Inquiry contained in Annex 13 to the Convention, as the procedure to be followed by Contracting States for inquiries into accidents involving death or serious injury and instituted in accordance with the provisions of Article 26;

“It being understood:

- “1) that States may in accordance with Article 38 of the Convention, deviate from any provision of Annex 13, except that, with respect to accidents covered by terms of Article 26 of the Convention and pursuant to this Article, ‘the State in which the accident occurs will institute an inquiry’, ‘the State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry’ and ‘the State holding the inquiry shall communicate the report and findings in the matter to that State’; and
- “2) that the procedure here recommended is not applicable when an accident to an aircraft not involving death or serious injury ‘indicates serious technical defect in the aircraft or air navigation facilities’, in which cases and until ICAO recommends a procedure to this effect, the inquiry shall be conducted in accordance with the national procedure of the State concerned, subject to the obligations deriving from the provisions of Article 26.”

The accredited representative and the advisers referred to in the Annex together comprise the observers that are given the right to be present at an inquiry under Article 26.

Action by Contracting States

Notification of differences. The attention of Contracting States is drawn to the obligation imposed by Article 38 of the Convention by which Contracting States are required to notify the Organization of any differences between their national regulations and practices and the International Standards contained in this Annex and any amendments thereto. Contracting States are invited to extend such notification to any differences from the Recommended Practices contained in this Annex and any amendments thereto, when the notification of such differences is important for the safety of air navigation. Further, Contracting States are invited to keep the Organization currently informed of any differences which may subsequently occur, or of the withdrawal of any differences previously notified. A specific request for notification of differences will be sent to Contracting States immediately after the adoption of each amendment to this Annex.

Attention of States is also drawn to the provisions of Annex 15 related to the publication of differences between their national regulations and practices and the related ICAO Standards and Recommended Practices through the Aeronautical Information Service, in addition to the obligation of States under Article 38 of the Convention.

Use of the text of the Annex in national regulations. The Council, on 13 April 1948, adopted a resolution inviting the attention of Contracting States to the desirability of using in their own national regulations, as far as is practicable, the precise language of those ICAO Standards that are of a regulatory character and also of indicating departures from the Standards, including any additional national regulations that were important for the safety or regularity of air navigation. However, the Standards and Recommended Practices of Annex 13 while of general applicability will, in many cases, require amplification in order to enable a complete national code to be formulated.

Status of Annex components

An Annex is made up of the following component parts, not all of which, however, are necessarily found in every Annex; they have the status indicated:

1.— *Material comprising the Annex proper:*

- a) *Standards and Recommended Practices* adopted by the Council under the provisions of the Convention. They are defined as follows:

Standard: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.

Recommended Practice: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interests of safety, regularity or efficiency of international air navigation, and to which Contracting States will endeavour to conform in accordance with the Convention.

- b) *Appendices* comprising material grouped separately for convenience but forming part of the Standards and Recommended Practices adopted by the Council.
- c) *Provisions* governing the applicability of the Standards and Recommended Practices.

- d) *Definitions* of terms used in the Standards and Recommended Practices which are not self-explanatory in that they do not have accepted dictionary meanings. A definition does not have an independent status but is an essential part of each Standard and Recommended Practice in which the term is used, since a change in the meaning of the term would affect the specification.

2.— *Material approved by the Council for publication in association with the Standards and Recommended Practices:*

- a) *Forewords* comprising historical and explanatory material based on the action of the Council and including an explanation of the obligations of States with regard to the application of the Standards and Recommended Practices ensuing from the Convention and the Resolution of Adoption.
- b) *Introductions* comprising explanatory material introduced at the beginning of parts, chapters or sections of the Annex to assist in the understanding of the application of the text.
- c) *Notes* included in the text, where appropriate, to give factual information or references bearing on the Standards or Recommended Practices in question, but not constituting part of the Standards or Recommended Practices.
- d) *Attachments* comprising material supplementary to the Standards and Recommended Practices, or included as a guide to their application.

Selection of language

This Annex has been adopted in six languages — English, Arabic, Chinese, French, Russian and Spanish. Each Contracting State is requested to select one of those texts for the purpose of national implementation and for other effects provided for in the Convention, either through direct use or through translation into its own national language, and to notify the Organization accordingly.

Editorial practices

The following practice has been adhered to in order to indicate at a glance the status of each statement: *Standards* have been printed in light face roman; *Recommended Practices* have been printed in light face italics, the status being indicated by the prefix **Recommendation**; *Notes* have been printed in light face italics, the status being indicated by the prefix *Note*.

The following editorial practice has been followed in the writing of specifications: for Standards the operative verb “shall” is used, and for Recommended Practices the operative verb “should” is used.

Any reference to a portion of this document which is identified by a number includes all subdivisions of that portion.

Throughout this Annex, the use of the male gender should be understood to include male and female persons.

Table A. Amendments to Annex 13

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject(s)</i>	<i>Adopted Effective Applicable</i>
1st Edition	First and Second Sessions of the Accident Investigation Division	—	11 April 1951 1 September 1951 1 December 1951
1 (2nd Edition)	Assembly Resolutions A14-22 and A14-27, Appendix P Third Session of the Accident Investigation Division	New definitions; rights and obligations of the State of Manufacture; initial and subsequent notification of an accident; attendance of representatives of the operator; report on the inquiry; summary of the Report and its format.	24 November 1965 24 March 1966 25 August 1966
2	Third Session of the Accident Investigation Division	Communication procedures for sending aircraft accident notification.	5 December 1966 5 April 1967 24 August 1967
3	Personnel Licensing/Training Practices/Medical Divisional Meeting (1970)	Autopsy of victims of aircraft accidents and reporting of the results.	27 March 1972 27 July 1972 7 December 1972
4 (3rd Edition)	Air Navigation Commission study	Notification of all accidents to multi-engined aircraft of over 2 250 kg (5 000 lb); notification and exchange of information on incidents.	12 December 1972 12 April 1973 16 August 1973
5 (4th Edition)	Accident Investigation and Prevention Divisional Meeting (AIG/1974) Committee on Unlawful Interference	Change of title; deletion and addition of definitions; objective of an investigation; use of flight recorders and privileged status to be granted to certain investigation records; action to be taken by a State receiving safety recommendations; responsibility of the State of Registry to participate in the investigation of certain accidents when requested, to provide flight recorders under certain circumstances and to request participation of the State of Manufacture when the former State conducts the investigation and matters of airworthiness are involved; rights and obligations of the State of Manufacture to participate in certain investigations; rights and entitlement of the State having special interest in an accident by virtue of fatalities to its citizens; the Accident/Incident Data Reporting (ADREP) system; Investigator-in-charge to inform aviation security authorities, when necessary.	18 December 1975 18 April 1976 12 August 1976
6 (5th Edition)	Accident Investigation and Prevention Divisional Meeting (AIG/1974)	Addition of the words “on the basis of his qualifications” in the definitions of accredited representative, adviser and investigator-in-charge; new definition and specifications regarding the State of the Operator in the case of aircraft leased, chartered or interchanged; responsibility of the State of Registry for sending accident notification any time that State institutes the investigation; coordination between investigator-in-charge and judicial authorities; elimination of reference to number of engines; new specification for publication of the Final Report.	24 November 1978 24 March 1979 29 November 1979
7 (6th Edition)	Accident Investigation and Prevention Divisional Meeting (AIG/1979)	Addition, in the definition of accident, of injuries inflicted by parts of an aircraft or by jet blast; strengthening of the general specification concerning the conduct of the investigation; strengthening of the specification regarding disclosure of records; strengthening of the specification for consultation on the Final Report; deletion of the specifications regarding a “Summary of the Final Report” and references thereto; change of the specification concerning the forwarding to ICAO of the Final Report; expansion of the specification on publication of the Final Report or related documents; new chapter on accident prevention measures; new attachment regarding exchange of Final Reports between States and a list of Final Reports available in States.	24 November 1980 24 March 1981 26 November 1981

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject(s)</i>	<i>Adopted Effective Applicable</i>
8 (7th Edition)	Air Navigation Commission	Addition, in the definition of serious injury, of exposure to infectious substances and injurious radiation; new attachment regarding disclosure of records; editorial changes.	22 January 1988 22 May 1988 17 November 1988
9 (8th Edition)	Accident Investigation Divisional Meeting (AIG/1992)	Change of title; new or revised definitions of causes, investigation, serious incident, State of Design, State of Manufacture, and State of the Operator; strengthening of the specifications concerning applicability and the objective of the investigation; strengthening of the specifications concerning the responsibilities, rights and entitlements of the State of Design and the State of Manufacture; new specifications concerning the notification and investigation of serious incidents; strengthening of the specifications concerning notification of accidents and serious incidents; new specification concerning assistance by States nearest to an accident in international waters; new specification concerning the separation of any judicial or administrative proceedings to apportion blame or liability from an accident investigation; strengthening of the specifications concerning the use and read-out of the flight recorders; strengthening of the specifications concerning autopsy examinations and coordination with the judicial authorities; strengthening of the specifications concerning disclosure of records and deletion of the related attachment; strengthening of the specifications concerning the responsibility of other States to provide information and their rights of participation; new specification concerning organizational information and strengthening of the specifications concerning the participation of the operator; strengthening of the specifications concerning the entitlement of accredited representatives and a new specification concerning their obligations; strengthening of the specification concerning participation of States having suffered fatalities or serious injuries to its citizens; strengthening of the specifications concerning the ADREP preliminary report and the accident/incident data report; strengthening of the specifications concerning consultation, publication and dissemination of the Final Report; new and strengthened specifications concerning accident prevention measures; new subparagraph and changes to the format of the Final Report in the Appendix; updated notification and reporting checklist in Attachment B; list of examples of serious incidents as a new Attachment D.	23 March 1994 25 July 1994 10 November 1994
10 (9th Edition)	Accident Investigation and Prevention (AIG) Divisional Meeting (1999)	Changes to the notification of an accident or serious incident and new provisions to acknowledge receipt of the notification; new provisions to provide details of dangerous goods; widening the provisions for responsibility to initiate, conduct and delegate the investigation; new provisions for medical examinations; aligning the rights and obligations of the State of Registry and the State of the Operator with those of the State of Design and the State of Manufacture; strengthening of the provisions of participation of States having suffered fatalities to its citizens; new title for Chapter 6 which contains the provisions related to the Final Report; strengthening of the consultation procedure and inclusion of the operator and the manufacturer; new provision for interim reports; new title for Chapter 7 which contains the provisions for ADREP reporting; strengthening of the provisions on mandatory incident reporting systems; new provisions on voluntary incident reporting systems and non-punitive environment; strengthening of the provisions on database systems, analysis of data and preventive actions; new provision on exchange of safety information; updating of Attachment B; deletion of Attachment C; new Attachment on guidelines for flight recorder read-out and analysis.	26 February 2001 16 July 2001 1 November 2001

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject(s)</i>	<i>Adopted Effective Applicable</i>
11	Accident Investigation and Prevention (AIG) Divisional Meeting (1999); Air Navigation Commission; Assembly Resolution A35-17	a) participation of other States in investigations; b) non-disclosure of recordings and transcripts of recordings from air traffic control units; and c) legal guidance for the protection of information from safety data collection and processing systems.	3 March 2006 17 July 2006 23 November 2006
12-A	Air Navigation Commission	Expansion of some examples and the addition of runway incursion severity A in the list of serious incidents in Attachment C.	2 March 2009 20 July 2009 19 November 2009
12-B	Air Navigation Commission	Addition of a definition of a State safety programme; new specification concerning the establishment by States of a State safety programme; strengthening of specifications regarding the establishment of a voluntary incident reporting system, and an accident and incident database; new recommendation addressing the monitoring of preventive actions which have been implemented; and the framework for a State safety programme as a new Attachment F.	2 March 2009 20 July 2009 18 November 2010
13 (10th Edition)	Accident Investigation and Prevention (AIG) Divisional Meeting (2008)	Revised definitions of accident (to accommodate unmanned aircraft systems), accredited representative, causes, investigation, safety recommendation, serious incident; new specification on the notification to ICAO of accidents and serious incidents to turbojet-powered aeroplanes of a maximum mass equal to or below 2 250 kg; deletion of reference to the name of the pilot in the notification of accidents and serious incidents; inclusion of the possibility to delegate investigations to regional accident investigation organizations; new provision concerning the investigation of serious incidents to aircraft of a maximum mass of over 2 250 kg; expansion of provision concerning the extension of investigations based on lessons expected; strengthening of provision concerning the separation of investigation from any judicial or administrative proceedings to apportion blame or liability; new provision concerning the development of documented policies and procedures for investigations; new provision to ensure that investigations are not impeded by administrative or judicial investigations; widening the specification concerning the disclosure of records to address cockpit airborne image recordings and their transcripts; new provision to avoid disclosure of the names of the persons involved in accidents and incidents; revised provision addressing participation of States which suffered fatalities or serious injuries to its citizens; new specification regarding the release of information and progress of the investigation; revised provision concerning the need to make the Final Report publicly available; strengthening the provision on the release of an interim statement on each anniversary of the occurrence; revised provisions addressing safety recommendations to include a time frame for actions to be taken; new provisions on the control of responses to safety recommendations as well as monitoring of actions taken; revised specifications in the Appendix concerning the use of “causes” and/or “contributing factors”; updated notification and reporting checklist in Attachment B; inclusion of uncontained turbine engine failure as a serious incident in Attachment C; new Attachment G on guidance for the determination of aircraft damage.	22 February 2010 12 July 2010 18 November 2010
14	Accident Investigation and Prevention (AIG) Divisional Meeting (2008); Safety Management Panel (SMP)	New definition for “contributing factors” and amendment to the definition of State safety programme (SSP); transfer to Annex 19 of the following: SSP-related Standard in Chapter 3; overarching safety management provisions in Chapter 8 and Attachment F, framework for SSP; amendment to Standard on the establishment of database, and new provision on assessment of accident and incident database in Chapter 8; expansion of Attachment C, list of serious incidents.	25 February 2013 15 July 2013 14 November 2013

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject(s)</i>	<i>Adopted Effective Applicable</i>
15 (11th Edition)	Safety Management Panel (SMP); Group of Experts on Protection of Accident and Incident Records (GEPAIR); Safety Information Protection Task Force (SIP TF)	New definition for “accident investigation authority”; Standard on establishment of independent accident investigation authority; new provision on cooperation between investigation authorities and judicial authorities; enhanced protection of investigation records in 5.12; new Appendix 2 on protection of investigation records.	22 February 2016 11 July 2016 10 November 2016
16	Accident Investigation Panel (AIGP)	Upgrading of Recommendations relating to access to evidential material during investigations, and monitoring the progress of safety recommendations to Standards.	8 March 2018 16 July 2018 8 November 2018

INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES

CHAPTER 1. DEFINITIONS

When the following terms are used in the Standards and Recommended Practices for Aircraft Accident and Incident Investigation, they have the following meanings:

Accident. An occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

- a) a person is fatally or seriously injured as a result of:
 - being in the aircraft, or
 - direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or
 - direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

- b) the aircraft sustains damage or structural failure which:
 - adversely affects the structural strength, performance or flight characteristics of the aircraft, and
 - would normally require major repair or replacement of the affected component,

except for engine failure or damage, when the damage is limited to a single engine (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windcreens, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or

- c) the aircraft is missing or is completely inaccessible.

Note 1.— For statistical uniformity only, an injury resulting in death within thirty days of the date of the accident is classified, by ICAO, as a fatal injury.

Note 2.— An aircraft is considered to be missing when the official search has been terminated and the wreckage has not been located.

Note 3.— The type of unmanned aircraft system to be investigated is addressed in 5.1.

Note 4.— Guidance for the determination of aircraft damage can be found in Attachment E.

Accident investigation authority. The authority designated by a State as responsible for aircraft accident and incident investigations within the context of this Annex.

Accredited representative. A person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State. Where the State has established an accident investigation authority, the designated accredited representative would normally be from that authority.

Adviser. A person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation.

Aircraft. Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface.

Causes. Actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident. The identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability.

Contributing factors. Actions, omissions, events, conditions, or a combination thereof, which, if eliminated, avoided or absent, would have reduced the probability of the accident or incident occurring, or mitigated the severity of the consequences of the accident or incident. The identification of contributing factors does not imply the assignment of fault or the determination of administrative, civil or criminal liability.

Flight recorder. Any type of recorder installed in the aircraft for the purpose of complementing accident/incident investigation.

Automatic deployable flight recorder (ADFR). A combination flight recorder installed on the aircraft which is capable of automatically deploying from the aircraft.

Note.— See Annex 6 — Operation of Aircraft, Parts I, II and III, for specifications relating to flight recorders.

Incident. An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.

Note.— The types of incidents which are of main interest to the International Civil Aviation Organization for accident prevention studies are listed in Attachment C.

Investigation. A process conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and/or contributing factors and, when appropriate, the making of safety recommendations.

Investigator-in-charge. A person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation.

Note.— Nothing in the above definition is intended to preclude the functions of an investigator-in-charge being assigned to a commission or other body.

Maximum mass. Maximum certificated take-off mass.

Operator. The person, organization or enterprise engaged in or offering to engage in an aircraft operation.

Preliminary Report. The communication used for the prompt dissemination of data obtained during the early stages of the investigation.

Safety recommendation. A proposal of an accident investigation authority based on information derived from an investigation, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident. In addition to safety recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies.

Serious incident. An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down.

Note 1.— The difference between an accident and a serious incident lies only in the result.

Note 2.— Examples of serious incidents can be found in Attachment C.

Serious injury. An injury which is sustained by a person in an accident and which:

- a) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received; or
- b) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or
- c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or
- d) involves injury to any internal organ; or
- e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or
- f) involves verified exposure to infectious substances or injurious radiation.

State of Design. The State having jurisdiction over the organization responsible for the type design.

State of Manufacture. The State having jurisdiction over the organization responsible for the final assembly of the aircraft, engine or propeller.

State of Occurrence. The State in the territory of which an accident or incident occurs.

State of the Operator. The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

State of Registry. The State on whose register the aircraft is entered.

Note.— In the case of the registration of aircraft of an international operating agency on other than a national basis, the States constituting the agency are jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of Registry. See, in this regard, the Council Resolution of 14 December 1967 on Nationality and Registration of Aircraft Operated by International Operating Agencies which can be found in Policy and Guidance Material on the Economic Regulation of International Air Transport (Doc 9587).

State safety programme (SSP). An integrated set of regulations and activities aimed at improving safety.

CHAPTER 2. APPLICABILITY

2.1 Unless otherwise stated, the specifications in this Annex apply to activities following accidents and incidents wherever they occurred.

Note.— The application of this specification with respect to accidents or serious incidents occurring in the territory of a non-Contracting State, in an area of undetermined sovereignty or on the high seas is addressed in 5.2 and 5.3.

2.2 In this Annex the specifications concerning the State of the Operator apply only when an aircraft is leased, chartered or interchanged and when that State is not the State of Registry and if it discharges, in respect of this Annex, in part or in whole, the functions and obligations of the State of Registry.

CHAPTER 3. GENERAL

Note.— Guidance material relating to the rights and obligations of the State of the Operator in respect of accidents and incidents involving leased, chartered or interchanged aircraft is provided in Attachment A.

OBJECTIVE OF THE INVESTIGATION

3.1 The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability.

INDEPENDENCE OF INVESTIGATIONS

3.2 A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

Note.— Guidance on the independence of an accident investigation authority is contained in the Manual of Aircraft Accident and Incident Investigation (Doc 9756), Part I — Organization and Planning and the Manual on Accident and Incident Investigation Policies and Procedures (Doc 9962).

PROTECTION OF EVIDENCE, CUSTODY AND REMOVAL OF AIRCRAFT

RESPONSIBILITY OF THE STATE OF OCCURRENCE

General

3.3 The State of Occurrence shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation. Protection of evidence shall include the preservation, by photographic or other means, of any evidence which might be removed, effaced, lost or destroyed. Safe custody shall include protection against further damage, access by unauthorized persons, pilfering and deterioration.

Note 1.— Control over the wreckage is dealt with in 5.6.

Note 2.— Protection of flight recorder evidence requires that the recovery and handling of the recorder and its recordings be assigned only to qualified personnel.

***Request from State of Registry, State of the Operator,
State of Design or State of Manufacture***

3.4 If a request is received from the State of Registry, the State of the Operator, the State of Design or the State of Manufacture that the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative of the requesting State, the State of Occurrence shall take all necessary steps to comply with such request, so far as this is reasonably practicable and compatible with the proper conduct of the investigation; provided that the aircraft may be moved to the extent necessary to extricate persons, animals, mail and valuables, to prevent destruction by fire or other causes, or to eliminate any danger or obstruction to air navigation, to other transport or to the public, and provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

Release from custody

3.5 Subject to the provisions of 3.3 and 3.4, the State of Occurrence shall release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required in the investigation, to any person or persons duly designated by the State of Registry or the State of the Operator, as applicable. For this purpose the State of Occurrence shall facilitate access to the aircraft, its contents or any parts thereof, provided that, if the aircraft, its contents, or any parts thereof lie in an area within which the State finds it impracticable to grant such access, it shall itself effect removal to a point where access can be given.

CHAPTER 4. NOTIFICATION

Note 1.— Attachment B provides a notification and reporting checklist.

Note 2.— A list of addresses of aircraft accident investigation authorities can be found in the Manual of Aircraft Accident and Incident Investigation (Doc 9756), Part I — Organization and Planning and on the ICAO Accident Investigation website.

ACCIDENTS OR SERIOUS INCIDENTS IN THE TERRITORY OF A CONTRACTING STATE TO AIRCRAFT OF ANOTHER CONTRACTING STATE

RESPONSIBILITY OF THE STATE OF OCCURRENCE

Forwarding

4.1 The State of Occurrence shall forward a notification of an accident or serious incident, with a minimum of delay and by the most suitable and quickest means available, to:

- a) the State of Registry;
- b) the State of the Operator;
- c) the State of Design;
- d) the State of Manufacture; and
- e) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2 250 kg or is a turbojet-powered aeroplane.

However, when the State of Occurrence is not aware of a serious incident, the State of Registry or the State of the Operator, as appropriate, shall forward a notification of such an incident to the State of Design, the State of Manufacture and the State of Occurrence.

Note 1.— Telephone, facsimile, e-mail or the Aeronautical Fixed Telecommunication Network (AFTN) will in most cases constitute “the most suitable and quickest means available”. More than one means of communication may be appropriate.

Note 2.— Provision for the notification of a distress phase to the State of Registry by the rescue coordination centre is contained in Annex 12 — Search and Rescue.

Format and content

4.2 The notification shall be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information:

- a) for accidents the identifying abbreviation ACCID, for serious incidents INCID;
- b) manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- c) name of owner, operator and hirer, if any, of the aircraft;
- d) qualification of the pilot-in-command, and nationality of crew and passengers;
- e) date and time (local time or UTC) of the accident or serious incident;
- f) last point of departure and point of intended landing of the aircraft;
- g) position of the aircraft with reference to some easily defined geographical point and latitude and longitude;
- h) number of crew and passengers; aboard, killed and seriously injured; others, killed and seriously injured;
- i) description of the accident or serious incident and the extent of damage to the aircraft so far as is known;
- j) an indication to what extent the investigation will be conducted or is proposed to be delegated by the State of Occurrence;
- k) physical characteristics of the accident or serious incident area, as well as an indication of access difficulties or special requirements to reach the site;
- l) identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of the State of Occurrence at any time; and
- m) presence and description of dangerous goods on board the aircraft.

Note 1.— The 4-letter designator “YLYX” in association with an ICAO 4-letter location indicator forms the 8-letter addressee indicator for messages sent over the AFTN to authorities responsible for aircraft accident and serious incident investigations. For messages sent over the public telecommunication service the addressee indicator cannot be used and a postal or telegraphic address must be substituted.

The 8-letter addressee indicators and the corresponding postal and telecommunications addresses, when notified to ICAO, are published in the Designators for Aircraft Operating Agencies, Aeronautical Authorities and Services (Doc 8585).

Note 2.— The Manual of Aircraft Accident and Incident Investigation (Doc 9756), Part I — Organization and Planning contains guidance material concerning the preparation of notification messages and the arrangements to be made for their prompt delivery to the addressee.

Language

4.3 The notification shall be prepared in one of the working languages of ICAO, taking into account the language of the recipient(s), whenever it is possible to do so without causing undue delay.

Additional information

4.4 As soon as it is possible to do so, the State of Occurrence shall dispatch the details omitted from the notification as well as other known relevant information.

RESPONSIBILITY OF THE STATE OF REGISTRY,
THE STATE OF THE OPERATOR, THE STATE OF DESIGN AND
THE STATE OF MANUFACTURE

Information — Participation

4.5 Recommendation.— *The State of Registry, the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident (4.1 refers).*

4.6 Upon receipt of the notification, the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, provide the State of Occurrence with any relevant information available to them regarding the aircraft and flight crew involved in the accident or serious incident. Each State shall also inform the State of Occurrence whether it intends to appoint an accredited representative and if such an accredited representative is appointed, the name and contact details; as well as the expected date of arrival if the accredited representative will travel to the State of Occurrence.

Note 1.— In accordance with 5.18, the State of Registry, the State of the Operator, the State of Design and the State of Manufacture have the right to appoint an accredited representative to participate in the investigation.

Note 2.— In accordance with 5.22, the attention of the State of Registry, the State of the Operator, the State of Design and the State of Manufacture is drawn to their obligation to appoint an accredited representative when specifically requested to do so by the State conducting the investigation of an accident to an aircraft over 2 250 kg. Their attention is also drawn to the usefulness of their presence and participation in the investigation.

4.7 Upon receipt of the notification, the State of the Operator shall, with a minimum of delay and by the most suitable and quickest means available, provide the State of Occurrence with details of dangerous goods on board the aircraft.

**ACCIDENTS OR SERIOUS INCIDENTS IN THE TERRITORY OF
THE STATE OF REGISTRY, IN A NON-CONTRACTING STATE OR
OUTSIDE THE TERRITORY OF ANY STATE**

RESPONSIBILITY OF THE STATE OF REGISTRY

Forwarding

4.8 When the State of Registry institutes the investigation of an accident or serious incident, that State shall forward a notification, in accordance with 4.2 and 4.3 above, with a minimum of delay and by the most suitable and quickest means available, to:

- a) the State of the Operator;
- b) the State of Design;
- c) the State of Manufacture; and
- d) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2 250 kg or is a turbojet-powered aeroplane.

Note 1.— Telephone, facsimile, e-mail or the Aeronautical Fixed Telecommunication Network (AFTN) will in most cases constitute “the most suitable and quickest means available”. More than one means of communication may be appropriate.

Note 2.— Provision for the notification of a distress phase to the State of Registry by the rescue coordination centre is contained in Annex 12 — Search and Rescue.

RESPONSIBILITY OF THE STATE OF THE OPERATOR, THE STATE OF DESIGN AND THE STATE OF MANUFACTURE

Information — Participation

4.9 Recommendation.— *The State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident (4.1 refers).*

4.10 Upon receipt of the notification, the State of the Operator, the State of Design and the State of Manufacture shall, upon request, provide the State of Registry with any relevant information available to them regarding the flight crew and the aircraft involved in the accident or serious incident. Each State shall also inform the State of Registry whether it intends to appoint an accredited representative, and if such an accredited representative is appointed, the name and contact details; as well as the expected date of arrival if the accredited representative will be present at the investigation.

Note 1.— In accordance with 5.18, the State of the Operator, the State of Design and the State of Manufacture have the right to appoint an accredited representative to participate in the investigation.

Note 2.— In accordance with 5.22, the attention of the State of the Operator, the State of Design and the State of Manufacture is drawn to their obligation to appoint an accredited representative when specifically requested to do so by the State conducting the investigation of an accident to an aircraft over 2 250 kg. Their attention is also drawn to the usefulness of their presence and participation in the investigation.

4.11 Upon receipt of the notification, the State of the Operator shall, with a minimum of delay and by the most suitable and quickest means available, provide the State of Registry with details of dangerous goods on board the aircraft.

CHAPTER 5. INVESTIGATION

RESPONSIBILITY FOR INSTITUTING AND CONDUCTING THE INVESTIGATION

ACCIDENTS OR INCIDENTS IN THE TERRITORY OF A CONTRACTING STATE

State of Occurrence

5.1 The State of Occurrence shall institute an investigation into the circumstances of the accident and be responsible for the conduct of the investigation, but it may delegate the whole or any part of the conducting of such investigation to another State or a regional accident and incident investigation organization (RAIO) by mutual arrangement and consent. In any event, the State of Occurrence shall use every means to facilitate the investigation.

5.1.1 **Recommendation.**— *The State of Occurrence should institute an investigation into the circumstances of a serious incident. Such a State may delegate the whole or any part of the conducting of such investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent. In any event the State of Occurrence should use every means to facilitate the investigation.*

5.1.2 The State of Occurrence shall institute an investigation into the circumstances of a serious incident when the aircraft is of a maximum mass of over 2 250 kg. Such a State may delegate the whole or any part of the conducting of such investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent. In any event the State of Occurrence shall use every means to facilitate the investigation.

Note 1.— The investigation of a serious incident does not exclude other already existing types of investigation of incidents (serious or not) by other organizations.

Note 2.— When the whole investigation is delegated to another State or a regional accident and incident investigation organization, such a State is expected to be responsible for the conduct of the investigation, including the issuance of the Final Report and the ADREP reporting. When a part of the investigation is delegated, the State of Occurrence usually retains the responsibility for the conduct of the investigation.

Note 3.— In the case of investigation of an unmanned aircraft system, only aircraft with a design and/or operational approval are to be considered.

Note 4.— In the case of serious incidents, the State of Occurrence may consider delegating the investigation to the State of Registry or the State of the Operator, in particular those involving occurrences in which it might be beneficial or more practical for one of these States to conduct the investigation.

Note 5.— Guidance related to the establishment and management of an RAIO is contained in the Manual on Regional Accident and Incident Investigation Organization (Doc 9946).

ACCIDENTS OR INCIDENTS IN THE TERRITORY
OF A NON-CONTRACTING STATE*State of Registry*

5.2 Recommendation.— *When the accident or the serious incident has occurred in the territory of a non-Contracting State which does not intend to conduct an investigation in accordance with Annex 13, the State of Registry or, failing that, the State of the Operator, the State of Design or the State of Manufacture should endeavour to institute and conduct an investigation in cooperation with the State of Occurrence but, failing such cooperation, should itself conduct an investigation with such information as is available.*

ACCIDENTS OR INCIDENTS
OUTSIDE THE TERRITORY OF ANY STATE*State of Registry*

5.3 When the location of the accident or the serious incident cannot definitely be established as being in the territory of any State, the State of Registry shall institute and conduct any necessary investigation of the accident or serious incident. However, it may delegate the whole or any part of the investigation to another State by mutual arrangement and consent.

5.3.1 States nearest the scene of an accident in international waters shall provide such assistance as they are able and shall, likewise, respond to requests by the State of Registry.

5.3.2 Recommendation.— *If the State of Registry is a non-Contracting State which does not intend to conduct an investigation in accordance with Annex 13, the State of the Operator or, failing that, the State of Design or the State of Manufacture should endeavour to institute and conduct an investigation. However, such a State may delegate the whole or any part of the investigation to another State by mutual arrangement and consent.*

ORGANIZATION AND CONDUCT
OF THE INVESTIGATION

Note.— *The Manual of Aircraft Accident and Incident Investigation (Doc 9756) contains guidance material for the organization, conduct and control of an investigation.*

RESPONSIBILITY OF THE STATE
CONDUCTING THE INVESTIGATION

Note.— *Nothing in the following provisions is intended to preclude the State conducting the investigation from calling upon the best technical expertise from any source.*

General

5.4 The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of this Annex. The investigation shall normally include:

- a) the gathering, recording and analysis of all relevant information on that accident or incident;

- b) the protection of certain accident and incident investigation records in accordance with 5.12;
- c) if appropriate, the issuance of safety recommendations;
- d) if possible, the determination of the causes and/or contributing factors; and
- e) the completion of the Final Report.

Where feasible, the scene of the accident shall be visited, the wreckage examined and statements taken from witnesses. The extent of the investigation and the procedure to be followed in carrying out such an investigation shall be determined by the accident investigation authority, depending on the lessons it expects to draw from the investigation for the improvement of safety.

5.4.1 Any investigation conducted in accordance with the provisions of this Annex shall be separate from any judicial or administrative proceedings to apportion blame or liability.

Note.— Separation can be achieved by the investigation being conducted by State accident investigation authority experts, and any judicial or administrative proceedings being conducted by other appropriate experts. Coordination, as per 5.10, between the two processes would likely be required at the accident site and in the gathering of factual information, with due consideration to the provisions in 5.12.

5.4.2 **Recommendation.**— *The accident investigation authority should develop documented policies and procedures detailing its accident investigation duties. These should include: organization and planning; investigation; and reporting.*

Note.— Guidance related to policies and procedures for investigations is provided in the Manual on Accident and Incident Investigation Policies and Procedures (Doc 9962).

5.4.3 A State shall ensure that any investigations conducted under the provisions of this Annex have unrestricted access to all evidential material without delay.

5.4.4 **Recommendation.**— *A State should ensure cooperation between its accident investigation authority and judicial authorities so that an investigation is not impeded by administrative or judicial investigations or proceedings.*

Note.— Cooperation may be achieved by legislation, protocols, agreements or other arrangements, and may cover the following subjects: access to the site of the accident; preservation of and access to evidence; initial and ongoing debriefings of the status of each process; exchange of information; appropriate use of safety information; and resolution of conflicts.

Investigator-in-charge — Designation

5.5 The State conducting the investigation shall designate the investigator-in-charge of the investigation and shall initiate the investigation immediately.

Investigator-in-charge — Access and control

5.6 The investigator-in-charge shall have unhampered access to the wreckage and all relevant material, including flight recorders and ATS records, and shall have unrestricted control over it to ensure that a detailed examination can be made without delay by authorized personnel participating in the investigation.

Flight recorders — Accidents and incidents

5.7 Effective use shall be made of flight recorders in the investigation of an accident or an incident. The State conducting the investigation shall arrange for the read-out of the flight recorders without delay.

5.8 **Recommendation.**— *In the event that the State conducting the investigation of an accident or an incident does not have adequate facilities to read out the flight recorders, it should use the facilities made available to it by other States, giving consideration to the following:*

- a) the capabilities of the read-out facility;*
- b) the timeliness of the read-out; and*
- c) the location of the read-out facility.*

Note.— *The requirements for the recording of radar data and ATS communications are contained in Annex 11 — Air Traffic Services, Chapter 6.*

Autopsy examinations

5.9 The State conducting the investigation into a fatal accident shall arrange for complete autopsy examination of fatally injured flight crew and, subject to the particular circumstances, of fatally injured passengers and cabin attendants, by a pathologist, preferably experienced in accident investigation. These examinations shall be expeditious and complete.

Note.— *Guidance material related to autopsies is provided in detail in the Manual of Civil Aviation Medicine (Doc 8984) and the Manual of Aircraft Accident and Incident Investigation (Doc 9756), the former containing detailed guidance on toxicological testing.*

Medical examinations

5.9.1 **Recommendation.**— *When appropriate, the State conducting the investigation should arrange for medical examination of the crew, passengers and involved aviation personnel, by a physician, preferably experienced in accident investigation. These examinations should be expeditious.*

Note 1.— *Such examinations may also determine whether the level of physical and psychological fitness of flight crew and other personnel directly involved in the occurrence is sufficient for them to contribute to the investigation.*

Note 2.— *The Manual of Civil Aviation Medicine (Doc 8984) contains guidance on medical examinations.*

Coordination — Judicial authorities

5.10 The State conducting the investigation shall recognize the need for coordination between the investigator-in-charge and the judicial authorities. Particular attention shall be given to evidence which requires prompt recording and analysis for the investigation to be successful, such as the examination and identification of victims and read-outs of flight recorder recordings.

Note 1.— *The responsibility of the State of Occurrence for such coordination is set out in 5.1.*

Note 2.— *Possible conflicts between investigating and judicial authorities regarding the custody of flight recorders and their recordings may be resolved by an official of the judicial authority carrying the recordings to the place of read-out, thus maintaining custody.*

Note 3.— Possible conflicts between investigating and judicial authorities regarding the custody of the wreckage may be resolved by an official of the judicial authority accompanying the wreckage to the place of examination and being present at such examination when a modification of the condition of the wreckage is required, thus maintaining custody.

Informing aviation security authorities

5.11 If, in the course of an investigation it becomes known, or it is suspected, that an act of unlawful interference was involved, the investigator-in-charge shall immediately initiate action to ensure that the aviation security authorities of the State(s) concerned are so informed.

Protection of accident and incident investigation records

5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

- a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and
- b) records in the custody or control of the accident investigation authority being:
 - 1) all statements taken from persons by the accident investigation authority in the course of their investigation;
 - 2) all communications between persons having been involved in the operation of the aircraft;
 - 3) medical or private information regarding persons involved in the accident or incident;
 - 4) recordings and transcripts of recordings from air traffic control units;
 - 5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
 - 6) the draft Final Report of an accident or incident investigation.

5.12.1 **Recommendation.**— *States should determine whether any other records obtained or generated by the accident investigation authority, as a part of an accident or incident investigation, need to be protected in the same way as the records listed in 5.12.*

5.12.2 The records listed in 5.12 shall be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.

Note.— The records listed in 5.12 include information relating to an accident or incident. The disclosure or use of such information for purposes where the disclosure or use is not necessary in the interest of safety may mean that, in the future, the information will no longer be openly disclosed to investigators. Lack of access to such information would impede the investigation process and seriously affect aviation safety.

5.12.3 The names of the persons involved in the accident or incident shall not be disclosed to the public by the accident investigation authority.

5.12.4 States shall ensure that requests for records in the custody or control of the accident investigation authority are directed to the original source of the information, where available.

5.12.4.1 **Recommendation.**— *The accident investigation authority should retain, where possible, only copies of records obtained in the course of an investigation.*

5.12.5 States shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.

5.12.6 States issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.

Note.— *Appendix 2 contains additional provisions on the protection of accident and incident investigation records. These provisions appear separately for convenience but form part of the SARPs.*

Reopening of investigation

5.13 If, after the investigation has been closed, new and significant evidence becomes available, the State which conducted the investigation shall reopen it. However, when the State which conducted the investigation did not institute it, that State shall first obtain the consent of the State which instituted the investigation.

Note.— *Where an aircraft which was considered missing following an official search is subsequently located, consideration may be given to reopening the investigation.*

RESPONSIBILITY OF ANY OTHER STATE

Information — Accidents and incidents

5.14 Any State shall, on request from the State conducting the investigation of an accident or an incident, provide that State with all the relevant information available to it.

Note.— *See also 5.16.*

5.14.1 **Recommendation.**— *States should cooperate to determine the limitations on disclosure or use that will apply to information before it is exchanged between them for the purposes of an accident or incident investigation.*

5.15 Any State, the facilities or services of which have been, or would normally have been, used by an aircraft prior to an accident or an incident, and which has information pertinent to the investigation, shall provide such information to the State conducting the investigation.

RESPONSIBILITY OF THE STATE OF REGISTRY AND THE STATE OF THE OPERATOR

Flight recorders — Accidents and serious incidents

5.16 When an aircraft involved in an accident or a serious incident lands in a State other than the State of Occurrence, the State of Registry or the State of the Operator shall, on request from the State conducting the investigation, furnish the latter State with the flight recorder records and, if necessary, the associated flight recorders.

Note.— *In implementing 5.16, the State of Registry or the State of the Operator may request the cooperation of any other State in the retrieval of the flight recorder records.*

Organizational information

5.17 The State of Registry and the State of the Operator, on request from the State conducting the investigation, shall provide pertinent information on any organization whose activities may have directly or indirectly influenced the operation of the aircraft.

PARTICIPATION IN THE INVESTIGATION

Note.— Nothing in this Annex is intended to imply that the accredited representative and advisers of a State have to be always present in the State in which the investigation is conducted.

PARTICIPATION OF THE STATE OF REGISTRY, THE STATE OF THE OPERATOR, THE STATE OF DESIGN AND THE STATE OF MANUFACTURE

Rights

5.18 The State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall each be entitled to appoint an accredited representative to participate in the investigation.

Note.— Nothing in this Standard is intended to preclude the State that designed or manufactured the powerplant or major components of the aircraft from requesting participation in the investigation of an accident.

5.19 The State of Registry or the State of the Operator shall appoint one or more advisers, proposed by the operator, to assist its accredited representative.

5.19.1 **Recommendation.**— *When neither the State of Registry, nor the State of the Operator appoint an accredited representative, the State conducting the investigation should invite the operator to participate, subject to the procedures of the State conducting the investigation.*

5.20 The State of Design and the State of Manufacture shall be entitled to appoint one or more advisers, proposed by the organizations responsible for the type design and the final assembly of the aircraft, to assist their accredited representatives.

5.21 **Recommendation.**— *When neither the State of Design nor the State of Manufacture appoint an accredited representative, the State conducting the investigation should invite the organizations responsible for the type design and the final assembly of the aircraft to participate, subject to the procedures of the State conducting the investigation.*

Obligations

5.22 When the State conducting an investigation of an accident to an aircraft of a maximum mass of over 2 250 kg specifically requests participation by the State of Registry, the State of the Operator, the State of Design or the State of Manufacture, the State(s) concerned shall each appoint an accredited representative.

Note 1.— Nothing in 5.22 is intended to preclude the State conducting an investigation from requesting the State that designed or manufactured the powerplant or major components of the aircraft to appoint an accredited representative whenever the former State believes that a useful contribution can be made to the investigation or when such participation might result in increased safety.

Note 2.— Nothing in 5.22 is intended to preclude the State conducting an investigation from requesting the State of Design and the State of Manufacture to give assistance in the investigation of accidents other than those in 5.22.

PARTICIPATION OF OTHER STATES

Rights

5.23 Any State which on request provides information, facilities or experts to the State conducting the investigation shall be entitled to appoint an accredited representative to participate in the investigation.

Note.— Any State that provides an operational base for field investigations, or is involved in search and rescue or wreckage recovery operations, or is involved as a State of a code-share or alliance partner of the operator, may also be invited to appoint an accredited representative to participate in the investigation.

ENTITLEMENT OF ACCREDITED REPRESENTATIVES

Advisers

5.24 A State entitled to appoint an accredited representative shall also be entitled to appoint one or more advisers to assist the accredited representative in the investigation.

Note 1.— Nothing in the above provisions is intended to preclude a State participating in an investigation from calling upon the best technical experts from any source and appointing such experts as advisers to its accredited representative.

Note 2.— Facilitation of the entry of the accredited representatives, their advisers and equipment is covered in Annex 9 — Facilitation. The carriage of an official or service passport may expedite the entry.

5.24.1 Advisers assisting accredited representatives shall be permitted, under the accredited representatives' supervision, to participate in the investigation to the extent necessary to enable the accredited representatives to make their participation effective.

Participation

5.25 Participation in the investigation shall confer entitlement to participate in all aspects of the investigation, under the control of the investigator-in-charge, in particular to:

- a) visit the scene of the accident;
- b) examine the wreckage;
- c) obtain witness information and suggest areas of questioning;
- d) have full access to all relevant evidence as soon as possible;
- e) receive copies of all pertinent documents;
- f) participate in read-outs of recorded media;

- g) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
- h) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
- i) make submissions in respect of the various elements of the investigation.

However, participation of States other than the State of Registry, the State of the Operator, the State of Design and the State of Manufacture may be limited to those matters which entitled such States to participation under 5.23.

Note 1.— It is recognized that the form of participation would be subject to the procedures of the State in which the investigation, or part thereof, is being conducted.

Note 2.— The collection and recording of information need not be delayed to await the arrival of an accredited representative.

Note 3.— Nothing in this Standard precludes the State conducting the investigation from extending participation beyond the entitlement enumerated.

Note 4.— The pertinent documents referred to in subparagraph e) also include documents such as the reports on examinations of components or studies performed within the framework of the investigation.

Obligations

5.26 Accredited representatives and their advisers:

- a) shall provide the State conducting the investigation with all relevant information available to them; and
- b) shall not divulge information on the progress and the findings of the investigation without the express consent of the State conducting the investigation.

Note.— Nothing in this Standard precludes prompt release of facts when authorized by the State conducting the investigation, nor does this Standard preclude accredited representatives from reporting to their respective States in order to facilitate appropriate safety actions.

PARTICIPATION OF STATES HAVING SUFFERED FATALITIES OR SERIOUS INJURIES TO THEIR CITIZENS

Rights and entitlement

5.27 A State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall be entitled to appoint an expert who shall be entitled to:

- a) visit the scene of the accident;
- b) have access to the relevant factual information which is approved for public release by the State conducting the investigation, and information on the progress of the investigation; and
- c) receive a copy of the Final Report.

This will not preclude the State from also assisting in the identification of victims and in meetings with survivors from that State.

Note.— Guidance related to assistance to aircraft accident victims and their families is provided in the Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973).

5.28 Recommendation.— *The State conducting the investigation should release, at least during the first year of the investigation, established factual information and indicate the progress of the investigation in a timely manner.*

CHAPTER 6. FINAL REPORT

6.1 Recommendation.— *The format of the Final Report in Appendix 1 should be used. However, it may be adapted to the circumstances of the accident or incident.*

RESPONSIBILITY OF ANY STATE

Release of information — Consent

6.2 States shall not circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an accident or incident, without the express consent of the State which conducted the investigation, unless such reports or documents have already been published or released by that latter State.

RESPONSIBILITY OF THE STATE CONDUCTING THE INVESTIGATION

Consultation

6.3 The State conducting the investigation shall send a copy of the draft Final Report to the following States inviting their significant and substantiated comments on the report as soon as possible:

- a) the State that instituted the investigation;
- b) the State of Registry;
- c) the State of the Operator;
- d) the State of Design;
- e) the State of Manufacture; and
- f) any State that participated in the investigation as per Chapter 5.

If the State conducting the investigation receives comments within sixty days of the date of the transmittal letter, it shall either amend the draft Final Report to include the substance of the comments received or, if desired by the State that provided comments, append the comments to the Final Report. If the State conducting the investigation receives no comments within sixty days of the date of the first transmittal letter, it shall issue the Final Report in accordance with 6.4, unless an extension of that period has been agreed by the States concerned.

Note 1.— Nothing in this Standard is intended to preclude the State conducting the investigation from consulting other States, such as those States which provided relevant information, significant facilities, or experts who participated in the investigation under 5.27.

Note 2.— Comments to be appended to the Final Report are restricted to non-editorial-specific technical aspects of the Final Report upon which no agreement could be reached.

Note 3.— When sending the draft Final Report to recipient States, the State conducting the investigation may consider using the most suitable and quickest means available, such as facsimile, e-mail, courier service or express mail.

Note 4.— Intended safety recommendations are to be included in the draft Final Report.

6.3.1 Recommendation.— *The State conducting the investigation should send, through the State of the Operator, a copy of the draft Final Report to the operator to enable the operator to submit comments on the draft Final Report.*

6.3.2 Recommendation.— *The State conducting the investigation should send, through the State of Design and the State of Manufacture, a copy of the draft Final Report to the organizations responsible for the type design and the final assembly of the aircraft to enable them to submit comments on the draft Final Report.*

Recipient States

6.4 The Final Report of the investigation of an accident shall be sent with a minimum of delay by the State conducting the investigation to:

- a) the State that instituted the investigation;
- b) the State of Registry;
- c) the State of the Operator;
- d) the State of Design;
- e) the State of Manufacture;
- f) any State that participated in the investigation;
- g) any State having suffered fatalities or serious injuries to its citizens; and
- h) any State that provided relevant information, significant facilities or experts.

Release of the Final Report

6.5 In the interest of accident prevention, the State conducting the investigation of an accident or incident shall make the Final Report publicly available as soon as possible and, if possible, within twelve months.

Note.— Making a Final Report publicly available can be achieved by posting the Final Report on the Internet, and does not necessarily require a hard-copy publication of the Final Report.

6.6 If the report cannot be made publicly available within twelve months, the State conducting the investigation shall make an interim statement publicly available on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.

6.7 When the State that has conducted an investigation into an accident or an incident involving an aircraft of a maximum mass of over 5 700 kg has released a Final Report, that State shall send to the International Civil Aviation Organization a copy of the Final Report.

Note.— Whenever practicable, the Final Report sent to ICAO is to be prepared in one of the working languages of the Organization and in the form shown in Appendix 1.

Safety recommendations

6.8 At any stage of the investigation of an accident or incident, the accident investigation authority of the State conducting the investigation shall recommend in a dated transmittal correspondence to the appropriate authorities, including those in other States, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.

Note.— Precedence for the issuance of safety recommendations from an accident or incident investigation should be given to the State conducting the investigation; however, in the interest of safety, other States participating in the investigation may issue safety recommendations after coordinating with the State conducting the investigation.

6.9 A State conducting investigations of accidents or incidents shall address, when appropriate, any safety recommendations arising out of its investigations in a dated transmittal correspondence to the accident investigation authorities of other State(s) concerned and, when ICAO documents are involved, to ICAO.

Note.— When Final Reports contain safety recommendations addressed to ICAO, because ICAO documents are involved, these reports must be accompanied by a letter outlining the specific action proposed.

**RESPONSIBILITY OF A STATE RECEIVING OR ISSUING
SAFETY RECOMMENDATIONS****Action on safety recommendations**

6.10 A State that receives safety recommendations shall inform the proposing State, within ninety days of the date of the transmittal correspondence, of the preventive action taken or under consideration, or the reasons why no action will be taken.

Note.— Nothing in this Standard is intended to preclude the State conducting the investigation from making proposals for preventive action other than safety recommendations.

6.11 A State conducting the investigation or any other State issuing a safety recommendation shall implement procedures to record the responses received under 6.10 to the safety recommendation issued.

6.12 A State that receives a safety recommendation shall implement procedures to monitor the progress of the action taken in response to that safety recommendation.

Note.— Guidance on the identification, drafting and follow-up of safety recommendations is contained in the Manual of Aircraft Accident and Incident Investigation (Doc 9756), Part IV — Reporting.

CHAPTER 7. ADREP REPORTING

Note 1.— Attachment B provides a notification and reporting checklist.

Note 2.— The provisions of this Chapter may require two separate reports for any one accident or incident. They are:

*Preliminary Report
Accident/Incident Data Report.*

PRELIMINARY REPORT

RESPONSIBILITY OF THE STATE CONDUCTING THE INVESTIGATION

Accidents to aircraft over 2 250 kg

7.1 When the aircraft involved in an accident is of a maximum mass of over 2 250 kg, the State conducting the investigation shall send the Preliminary Report to:

- a) the State of Registry or the State of Occurrence, as appropriate;
- b) the State of the Operator;
- c) the State of Design;
- d) the State of Manufacture;
- e) any State that provided relevant information, significant facilities or experts; and
- f) the International Civil Aviation Organization.

Accidents to aircraft of 2 250 kg or less

7.2 When an aircraft, not covered by 7.1, is involved in an accident and when airworthiness or matters considered to be of interest to other States are involved, the State conducting the investigation shall forward the Preliminary Report to:

- a) the State of Registry or the State of Occurrence, as appropriate;
- b) the State of the Operator;
- c) the State of Design;
- d) the State of Manufacture; and
- e) any State that provided relevant information, significant facilities or experts.

Language

7.3 The Preliminary Report shall be submitted to appropriate States and to the International Civil Aviation Organization in one of the working languages of ICAO.

Dispatch

7.4 The Preliminary Report shall be sent by facsimile, e-mail, or airmail within thirty days of the date of the accident unless the Accident/Incident Data Report has been sent by that time. When matters directly affecting safety are involved, it shall be sent as soon as the information is available and by the most suitable and quickest means available.

ACCIDENT/INCIDENT DATA REPORT

RESPONSIBILITY OF THE STATE CONDUCTING THE INVESTIGATION

Accidents to aircraft over 2 250 kg

7.5 When the aircraft involved in an accident is of a maximum mass of over 2 250 kg, the State conducting the investigation shall send, as soon as practicable after the investigation, the Accident Data Report to the International Civil Aviation Organization.

Additional information

7.6 **Recommendation.**— *The State conducting the investigation should, upon request, provide other States with pertinent information additional to that made available in the Accident/Incident Data Report.*

Incidents to aircraft over 5 700 kg

7.7 If a State conducts an investigation into an incident to an aircraft of a maximum mass of over 5 700 kg, that State shall send, as soon as is practicable after the investigation, the Incident Data Report to the International Civil Aviation Organization.

Note.— *The types of incidents which are of main interest to the International Civil Aviation Organization for accident prevention studies are listed in Attachment C.*

CHAPTER 8. ACCIDENT PREVENTION MEASURES

Note.— In addition to the provisions of this Chapter, other provisions relative to the promotion of accident prevention by collection and analysis of safety data and by a prompt exchange of safety information, as part of the State safety programme (SSP), are included in Annex 19 — Safety Management and, to this effect, are applicable to this Annex. Further guidance is contained in the Safety Management Manual (SMM) (Doc 9859).

Database and preventive actions

8.1 A State shall establish and maintain an accident and incident database to facilitate the effective analysis of information on actual or potential safety deficiencies and to determine any preventive actions required.

Note.— Additional information on which to base preventive actions may be contained in the Final Reports on accidents and incidents that have been investigated.

8.2 **Recommendation.**— *State authorities responsible for the implementation of the SSP should have access to the accident and incident database referenced in 8.1 to support their safety responsibilities.*

Note.— An accident and incident database may be included in a safety database, which may refer to a single or multiple database(s). Further provisions on a safety database are contained in Annex 19 — Safety Management. Additional guidance is also included in the Safety Management Manual (SMM) (Doc 9859).

8.3 In addition to safety recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies. If safety recommendations are addressed to an organization in another State, they shall also be transmitted to that State's accident investigation authority.

APPENDIX 1. FORMAT OF THE FINAL REPORT

(See Chapter 6)

PURPOSE

The purpose of this format is to present the Final Report in a convenient and uniform manner.

Detailed guidance on completing each section of the Final Report is found in the *Manual of Aircraft Accident and Incident Investigation* (Doc 9756).

FORMAT

Title. The Final Report begins with a title comprising:

name of the operator; manufacturer, model, nationality and registration marks of the aircraft; and place and date of the accident or incident.

Synopsis. Following the title is a synopsis describing briefly all relevant information regarding:

notification of accident to national and foreign authorities; identification of the accident investigation authority and accredited representation; organization of the investigation; authority releasing the report and date of publication;

and concluding with a brief résumé of the circumstances leading to the accident.

Body. The body of the Final Report comprises the following main headings:

1. Factual information
2. Analysis
3. Conclusions
4. Safety recommendations

each heading consisting of a number of subheadings as outlined in the following.

Appendices. Include as appropriate.

Note.— In preparing a Final Report, using this format, ensure that:

- a) *all information relevant to an understanding of the factual information, analysis and conclusions is included under each appropriate heading;*
- b) *where information in respect of any of the items in 1.— Factual information is not available, or is irrelevant to the circumstances leading to the accident, a note to this effect is included under the appropriate subheadings.*

1. FACTUAL INFORMATION

1.1 **History of the flight.** A brief narrative giving the following information:

- Flight number, type of operation, last point of departure, time of departure (local time or UTC), point of intended landing.
- Flight preparation, description of the flight and events leading to the accident, including reconstruction of the significant portion of the flight path, if appropriate.
- Location (latitude, longitude, elevation), time of the accident (local time or UTC), whether day or night.

1.2 **Injuries to persons.** Completion of the following (in numbers):

<i>Injuries</i>	<i>Crew</i>	<i>Passengers</i>	<i>Others</i>
Fatal			
Serious			
Minor/None			

Note.— *Fatal injuries include all deaths determined to be a direct result of injuries sustained in the accident. Serious injury is defined in Chapter 1.*

1.3 **Damage to aircraft.** Brief statement of the damage sustained by aircraft in the accident (destroyed, substantially damaged, slightly damaged, no damage).

1.4 **Other damage.** Brief description of damage sustained by objects other than the aircraft.

1.5 **Personnel information:**

- a) Pertinent information concerning each of the flight crew members including: age, validity of licences, ratings, mandatory checks, flying experience (total and on type) and relevant information on duty time.
- b) Brief statement of qualifications and experience of other crew members.
- c) Pertinent information regarding other personnel, such as air traffic services, maintenance, etc., when relevant.

1.6 **Aircraft information:**

- a) Brief statement on airworthiness and maintenance of the aircraft (indication of deficiencies known prior to and during the flight to be included, if having any bearing on the accident).
- b) Brief statement on performance, if relevant, and whether the mass and centre of gravity were within the prescribed limits during the phase of operation related to the accident. (If not and if of any bearing on the accident give details.)
- c) Type of fuel used.

1.7 **Meteorological information:**

- a) Brief statement on the meteorological conditions appropriate to the circumstances including both forecast and actual conditions, and the availability of meteorological information to the crew.

b) Natural light conditions at the time of the accident (sunlight, moonlight, twilight, etc.).

1.8 **Aids to navigation.** Pertinent information on navigation aids available, including landing aids such as ILS, MLS, NDB, PAR, VOR, visual ground aids, etc., and their effectiveness at the time.

1.9 **Communications.** Pertinent information on aeronautical mobile and fixed service communications and their effectiveness.

1.10 **Aerodrome information.** Pertinent information associated with the aerodrome, its facilities and condition, or with the take-off or landing area if other than an aerodrome.

1.11 **Flight recorders.** Location of the flight recorder installations in the aircraft, their condition on recovery and pertinent data available therefrom.

1.12 **Wreckage and impact information.** General information on the site of the accident and the distribution pattern of the wreckage, detected material failures or component malfunctions. Details concerning the location and state of the different pieces of the wreckage are not normally required unless it is necessary to indicate a break-up of the aircraft prior to impact. Diagrams, charts and photographs may be included in this section or attached in the appendices.

1.13 **Medical and pathological information.** Brief description of the results of the investigation undertaken and pertinent data available therefrom.

Note.— Medical information related to flight crew licences should be included in 1.5 — Personnel information.

1.14 **Fire.** If fire occurred, information on the nature of the occurrence, and of the fire fighting equipment used and its effectiveness.

1.15 **Survival aspects.** Brief description of search, evacuation and rescue, location of crew and passengers in relation to injuries sustained, and failure of structures such as seats and seat-belt attachments.

1.16 **Tests and research.** Brief statements regarding the results of tests and research.

1.17 **Organizational and management information.** Pertinent information concerning the organizations and their management involved in influencing the operation of the aircraft. The organizations include, for example: the operator; the air traffic services; airway, aerodrome and weather service agencies; and the regulatory authority. The information could include, but not be limited to, organizational structure and functions, resources, economic status, management policies and practices, and regulatory framework.

1.18 **Additional information.** Relevant information not already included in 1.1 to 1.17.

1.19 **Useful or effective investigation techniques.** When useful or effective investigation techniques have been used during the investigation, briefly indicate the reason for using these techniques and refer here to the main features as well as describing the results under the appropriate subheadings 1.1 to 1.18.

2. ANALYSIS

Analyse, as appropriate, only the information documented in 1. — Factual information and which is relevant to the determination of conclusions and causes and/or contributing factors.

3. CONCLUSIONS

List the findings, causes and/or contributing factors established in the investigation. The list of causes and/or contributing factors should include both the immediate and the deeper systemic causes and/or contributing factors.

Note.— As stated in Chapter 6, 6.1, the Final Report format presented in this Appendix may be adapted to the circumstances of the accident or incident. Thus, States may use either “causes” or “contributing factors”, or both, in the Conclusions.

4. SAFETY RECOMMENDATIONS

As appropriate, briefly state any recommendations made for the purpose of accident prevention and identify safety actions already implemented.

APPENDICES

Include, as appropriate, any other pertinent information considered necessary for the understanding of the Final Report.

APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

1. INTRODUCTION

Note 1.— The disclosure or use of records listed in Chapter 5, 5.12, in criminal, civil, administrative or disciplinary proceedings, or their public disclosure, can have adverse consequences for persons or organizations involved in accidents and incidents, likely causing them or others to be reluctant to cooperate with accident investigation authorities in the future. The determination on disclosure or use required by 5.12 is designed to take account of these matters.

Note 2.— In accordance with 5.12, the provisions specified in this Appendix are intended to:

- a) assist States in developing national laws, regulations and policies to protect accident and incident investigation records appropriately; and*
- b) assist the competent authority in making the determination as required by 5.12.*

Throughout this Appendix:

- a) *balancing test* refers to the determination by the competent authority, in accordance with 5.12, of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations; and
- b) *record(s)* refers to those listed in 5.12.

Note 3.— Provisions on the use and protection of safety information and related sources other than accident and incident investigation records are included in Annex 19 — Safety Management.

2. GENERAL

2.1 States shall accord the protections in 5.12 and this Appendix to the entire recording of the cockpit voice recorder and airborne image recorder, and any transcripts from such recordings. These protections shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.

2.2 States shall accord the protections in 5.12 and this Appendix to the other records listed in 5.12 b). These protections shall apply from the time they come into the custody or control of the accident investigation authority and continue after the publication of the Final Report.

Non-disclosure of audio or image recordings to the public

2.3 States shall take action to achieve the non-disclosure of audio content of cockpit voice recordings as well as image and audio content of airborne image recordings to the public, as per 5.12.5, such as:

- a) prevention of disclosure through the adoption of national laws, regulations and policies; or
- b) adoption of authoritative safeguards such as protective orders, closed proceedings or in-camera review; or

- c) prevention of disclosure of recordings through technical means, such as encrypting or overwriting, before returning the cockpit voice recorders or airborne image recorders to the owners.

Note.— Ambient workplace recordings, such as cockpit voice recordings and airborne image recordings, required by SARPs contained in the Annexes to the Chicago Convention may be perceived as constituting an invasion of the privacy of operational personnel if disclosed or used for purposes other than those for which the recordings were made.

3. COMPETENT AUTHORITY

In accordance with 5.12, each State shall designate a competent authority or competent authorities appropriate to the task of administering the balancing test.

Note.— Different competent authorities may be designated for different circumstances. For example, the competent authority designated for applying the balancing test in criminal or civil proceedings may be a judicial authority. Another competent authority may be designated for applying the balancing test in cases where the purpose of the request for disclosure is for public accessibility.

4. ADMINISTRATION OF THE BALANCING TEST

4.1 Where the request is for a record to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.

Note.— A material fact in question is a legal term used to refer to a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test.

4.2 When administering the balancing test, the competent authority shall take into consideration factors such as:

- a) the purpose for which the record was created or generated;
- b) the requester's intended use of that record;
- c) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
- d) whether the person or organization to whom that record relates has consented to make that record available;
- e) whether suitable safeguards are in place to limit the further disclosure or use of that record;
- f) whether that record has been or can be de-identified, summarized or aggregated;
- g) whether there is an urgent need to access that record to prevent a serious risk to health or life;
- h) whether that record is of a sensitive or restrictive nature; and
- i) whether that record reasonably indicates that the accident or incident may have been caused by an act or omission considered, in accordance with national laws and regulations, to be gross negligence, wilful misconduct, or done with criminal intent.

Note 1.— The administration of the balancing test can be done once for a certain category of records and the result incorporated into national laws and regulations.

Note 2.— The competent authority may need to administer a balancing test for determining whether to permit the disclosure of a record, and a separate balancing test for determining whether to permit the use of a record.

Note 3.— Guidance material on the balancing test can be found in the Manual on Protection of Safety Information (Doc 10053), Part I — Protection of Accident and Incident Investigation Records.

5. RECORDS OF THE DECISIONS

Recommendation.— *The competent authority should record the reasons for its determination when administering the balancing test. The reasons should be made available and referred to as necessary for subsequent decisions.*

Note.— States may submit the decisions recorded to the International Civil Aviation Organization in one of the working languages of the Organization to be archived in a public database.

6. FINAL REPORT

Recommendation.— *In order to limit the use of the Final Report for purposes other than the prevention of accidents and incidents, States should consider:*

- a) instituting a separate investigation for those other purposes; or*
- b) differentiating between the parts of the Final Report in order to allow the use of factual information contained therein while preventing use of analysis, conclusions and safety recommendations for apportioning blame or liability; or*
- c) preventing the use of the Final Report as evidence in proceedings to apportion blame or liability.*

Note.— In accordance with Chapter 6, 6.5, Final Reports are publicly available in the interest of accident prevention and are not subject to protection under 5.12. However, the use of portions of the Final Report, in particular the analysis, conclusions and safety recommendations, as evidence before national courts in view of assigning blame or determining liability is against the purposes for which the investigation was undertaken.

7. ACCIDENT AND INCIDENT INVESTIGATION PERSONNEL

Recommendation.— *In the interest of safety and in accordance with Chapter 3, 3.1 States should consider that accident investigation personnel not be compellable to give an opinion on matters of blame or liability in civil, criminal, administrative or disciplinary proceedings.*

ATTACHMENTS

ATTACHMENT A. RIGHTS AND OBLIGATIONS OF THE STATE OF THE OPERATOR IN RESPECT OF ACCIDENTS AND INCIDENTS INVOLVING LEASED, CHARTERED OR INTERCHANGED AIRCRAFT

The Standards and Recommended Practices of Annex 13 — *Aircraft Accident and Incident Investigation* were developed when the State of Registry and the State of the Operator normally were the same. In recent years, however, international aircraft leasing and interchanging arrangements have developed so that in many instances the State of the Operator is different from the State of Registry.

Leasing or interchange arrangements sometimes include the provision of flight crews from the State of Registry. However, more often, flight crews are provided by the State of the Operator and the aircraft operated under national legislation of the State of the Operator. Similarly, a variety of arrangements for airworthiness can emerge from these arrangements. Airworthiness responsibility may rest, wholly or partly, with the State of the Operator or State of Registry. Sometimes the operator, in conformity with an airworthiness control system specified by the State of Registry, carries out maintenance and keeps records.

In the event of an accident or incident, it is important that any State which has assumed responsibility for the safety of an aircraft has the right to participate in an investigation, at least in respect of that responsibility. It is also important that the State conducting the investigation should have speedy access to all documents and other information relevant to that investigation.

When the location of an accident or an incident cannot definitely be established as being in the territory of another State, the State of the Operator, after consultation with the State of Registry, should accept full or partial responsibility for the conduct of the investigation.

ATTACHMENT B. NOTIFICATION AND REPORTING CHECKLIST

Note.— In this checklist, the following terms have the meaning indicated below:

- International occurrences: *accidents and serious incidents occurring in the territory of a Contracting State to aircraft registered in another Contracting State.*
- Domestic occurrences: *accidents and serious incidents occurring in the territory of the State of Registry.*
- Other occurrences: *accidents and serious incidents occurring in the territory of a non-Contracting State, or outside the territory of any State.*

1. NOTIFICATION — ACCIDENTS AND SERIOUS INCIDENTS

<i>From</i>	<i>For</i>	<i>Send to</i>	<i>Annex 13 reference</i>
State of Occurrence	International occurrences: All aircraft	State of Registry State of the Operator State of Design State of Manufacture ICAO (when aircraft over 2 250 kg or is a turbojet-powered aeroplane)	4.1
State of Registry	Domestic and other occurrences: All aircraft	State of the Operator State of Design State of Manufacture ICAO (when aircraft over 2 250 kg or is a turbojet-powered aeroplane)	4.8

2. FINAL REPORT

Accidents and incidents wherever they occurred

<i>From</i>	<i>Type of report</i>	<i>Concerning</i>	<i>Send to</i>	<i>Annex 13 reference</i>
State conducting the investigation	FINAL REPORT	All aircraft	State instituting the investigation State of Registry State of the Operator State of Design State of Manufacture Other States participating in the investigation State having suffered fatalities or serious injuries to its citizens State providing information, significant facilities or experts	6.4
		Aircraft over 5 700 kg	ICAO	6.7

ATTACHMENT C. LIST OF EXAMPLES OF SERIOUS INCIDENTS

1. The term “serious incident” is defined in Chapter 1 as follows:

Serious incident. An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down.

2. The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance to the definition of serious incident.

Near collisions requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate.

Collisions not classified as accidents.

Controlled flight into terrain only marginally avoided.

Aborted take-offs on a closed or engaged runway, on a taxiway¹ or unassigned runway.

Take-offs from a closed or engaged runway, from a taxiway¹ or unassigned runway.

Landings or attempted landings on a closed or engaged runway, on a taxiway¹ or unassigned runway.

Gross failures to achieve predicted performance during take-off or initial climb.

Fires and/or smoke in the cockpit, in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents.

Events requiring the emergency use of oxygen by the flight crew.

Aircraft structural failures or engine disintegrations, including uncontained turbine engine failures, not classified as an accident.

Multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft.

Flight crew incapacitation in flight.

Fuel quantity level or distribution situations requiring the declaration of an emergency by the pilot, such as insufficient fuel, fuel exhaustion, fuel starvation, or inability to use all usable fuel on board.

Runway incursions classified with severity A. The *Manual on the Prevention of Runway Incursions* (Doc 9870) contains information on the severity classifications.

1. Excluding authorized operations by helicopters.

Take-off or landing incidents. Incidents such as under-shooting, overrunning or running off the side of runways.

System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which caused or could have caused difficulties controlling the aircraft.

Failures of more than one system in a redundancy system mandatory for flight guidance and navigation.

The unintentional or, as an emergency measure, the intentional release of a slung load or any other load carried external to the aircraft.

ATTACHMENT D. GUIDELINES FOR FLIGHT RECORDER READ-OUT AND ANALYSIS

Initial response

The aftermath of a major accident is a demanding time for any State's accident investigation authority. One of the immediate items requiring a decision is where to have the flight recorders read out and analysed. It is essential that the flight recorders be read out as early as possible after an accident. Early identification of problem areas can affect the investigation at the accident site where evidence is sometimes transient. Early identification of problem areas may also result in urgent safety recommendations which may be necessary to prevent a similar occurrence.

Many States do not have their own facilities for the playback and analysis of flight recorder information (both voice and data) and consequently request assistance from other States. It is essential, therefore, that the accident investigation authority of the State conducting the investigation make timely arrangements to read out the flight recorders at a suitable read-out facility.

Choice of facility

The State conducting the investigation may request assistance from any State that, in its opinion, can best serve the investigation. The manufacturer's standard replay equipment and playback software, which are typically used by airlines and maintenance facilities, are not considered adequate for investigation purposes. Special recovery and analysis techniques are usually required if the recorders have been damaged.

Facilities for the read-out of flight recorders should have the ability to:

- a) disassemble and read out recorders that have sustained substantial damage;
- b) play back the original recording/memory module without the need for the use of a manufacturer's copy device or the recorder housing that was involved in the accident or incident;
- c) manually analyse the raw binary waveform from digital tape flight data recorders;
- d) enhance and filter voice recordings digitally by means of suitable software; and
- e) graphically analyse data, derive additional parameters not explicitly recorded, validate the data by cross-checking and use other analytical methods to determine data accuracy and limitations.

Participation by the State of Manufacture (or Design) and the State of the Operator

The State of Manufacture (or Design) has airworthiness responsibilities and the expertise normally required to read out and analyse flight recorder information. Since flight recorder information can often reveal airworthiness problems, the State of Manufacture (or Design) should have a representative present when the flight recorder read-out and analysis are being conducted in a State other than the State of Manufacture (or Design).

The State of the Operator has regulatory responsibilities regarding the flight operation and can provide insights into operational issues which may be specific to the operator. Since flight recorder information can reveal operational problems, the State of the Operator should also have a representative present when the flight recorder read-out and analysis are being conducted.

Recommended procedures

The flight data recorder and the cockpit voice recorder should be read out by the same facility, because they contain complementary data which can help validate each recording and aid in determining timing and synchronization.

Flight recorders should not be opened or powered up and original recordings should not be copied (particularly not by high-speed copy devices) prior to the read-out because of the risk of damage to the recordings.

The facility at which the flight recorders are read out for another State should be given an opportunity to comment on the Final Report in order to ensure that the characteristics of the flight recorder analysis have been taken into account.

The facility at which the flight recorders are read out may require the expertise of the aircraft manufacturer and the operator in order to verify the calibration data and validate the recorded information.

The State conducting the investigation may leave the original recordings, or a copy of them, with the read-out facility until the investigation is completed, in order to facilitate the timely resolution of additional requests or clarifications, providing that the facility has adequate security procedures to safeguard the recordings.

ATTACHMENT E. GUIDANCE FOR THE DETERMINATION OF AIRCRAFT DAMAGE

1. If an engine separates from an aircraft, the event is categorized as an accident even if damage is confined to the engine.
2. A loss of engine cowls (fan or core) or reverser components which does not result in further damage to the aircraft is not considered an accident.
3. Occurrences where compressor or turbine blades or other engine internal components are ejected through the engine tail pipe are not considered accidents.
4. A collapsed or missing radome is not considered an accident unless there is related substantial damage in other structures or systems.
5. Occurrences of missing flaps, slats and other lift augmenting devices, winglets, etc., that are permitted for dispatch under the configuration deviation list (CDL) are not considered accidents.
6. Retraction of a landing gear leg or wheels-up landing, resulting in skin abrasion only, when the aircraft can be safely dispatched after minor repairs or patching, and subsequently undergoes more extensive work to effect a permanent repair, would not be classified as an accident.
7. If the structural damage is such that the aircraft depressurizes, or cannot be pressurized, the occurrence is categorized as an accident.
8. The removal of components for inspection following an occurrence, such as the precautionary removal of an undercarriage leg following a low-speed runway excursion, while involving considerable work, is not considered an accident unless significant damage is found.
9. Occurrences that involve an emergency evacuation are not counted as accidents unless someone receives serious injuries or the aircraft has sustained significant damage.

Note 1.— Regarding aircraft damage which adversely affects the structural strength, performance or flight characteristics, the aircraft may have landed safely, but cannot be safely dispatched on a further sector without repair.

Note 2.— If the aircraft can be safely dispatched after minor repairs and subsequently undergoes more extensive work to effect a permanent repair, then the occurrence would not be classified as an accident. Likewise, if the aircraft can be dispatched under the CDL with the affected component removed, missing or inoperative, the repair would not be considered as a major repair and consequently the occurrence would not be considered an accident.

Note 3.— The cost of repairs, or estimated loss, such as provided by insurance companies may provide an indication of the damage sustained but should not be used as the sole guide as to whether the damage is sufficient to count the occurrence as an accident. Likewise, an aircraft may be considered a “hull loss” because it is uneconomic to repair, without it having incurred sufficient damage to be classified as an accident.

— END —



Regulation EU-996-2010

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► **B** REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 October 2010

on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC

(Text with EEA relevance)

(OJ L 295, 12.11.2010, p. 35)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014	L 122	18	24.4.2014
► <u>M2</u>	Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018	L 212	1	22.8.2018



**REGULATION (EU) No 996/2010 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

of 20 October 2010

**on the investigation and prevention of accidents and incidents in
civil aviation and repealing Directive 94/56/EC**

(Text with EEA relevance)

Article 1

Subject matter

1. This Regulation aims to improve aviation safety by ensuring a high level of efficiency, expediency, and quality of European civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability, including through the establishment of a European Network of Civil Aviation Safety Investigation Authorities. It also provides for rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident. It also aims to improve the assistance to the victims of air accidents and their relatives.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘accident’ means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

(a) a person is fatally or seriously injured as a result of:

— being in the aircraft, or,

— direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or,

— direct exposure to jet blast,

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except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

- (b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, wind-screens, the aircraft skin (such as small dents or puncture holes) or minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, (including holes in the radome); or
 - (c) the aircraft is missing or is completely inaccessible;
- (2) ‘accredited representative’ means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in a safety investigation conducted by another State. An accredited representative designated by a Member State shall be from a safety investigation authority;
 - (3) ‘adviser’ means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in a safety investigation;
 - (4) ‘causes’ means actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident; the identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
 - (5) ‘fatal injury’ means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;
 - (6) ‘flight recorder’ means any type of recorder installed in the aircraft for the purpose of facilitating accident/incident safety investigations;
 - (7) ‘incident’ means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;
 - (8) ‘international standards and recommended practices’ means international standards and recommended practices for aircraft accident and incident investigation adopted in accordance with Article 37 of the Chicago Convention;

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- (9) ‘investigator-in-charge’ means a person charged, on the basis of his or her qualifications, with responsibility for the organisation, conduct and control of a safety investigation;
- (10) ‘operator’ means any natural or legal person, operating or proposing to operate one or more aircraft;
- (11) ‘person involved’ means the owner, a member of the crew, the operator of the aircraft involved in an accident or serious incident; any person involved in the maintenance, design, manufacture of that aircraft or in the training of its crew; any person involved in the provision of air traffic control, flight information or aerodrome services, who have provided services for the aircraft; staff of the national civil aviation authority; or staff of EASA;
- (12) ‘preliminary report’ means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;
- (13) ‘relatives’ means the immediate family and/or next of kin and/or other person closely connected with the victim of an accident, as defined under the national law of the victim;
- (14) ‘safety investigation’ means a process conducted by a safety investigation authority for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and/or contributing factors and, when appropriate, the making of safety recommendations;
- (15) ‘safety recommendation’ means a proposal of a safety investigation authority, based on information derived from a safety investigation or other sources such as safety studies, made with the intention of preventing accidents and incidents;
- (16) ‘serious incident’ means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft, which in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down. A list of examples of serious incidents is set out in the Annex;
- (17) ‘serious injury’ means an injury which is sustained by a person in an accident and which involves one of the following:

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- (a) hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received;
- (b) a fracture of any bone (except simple fractures of fingers, toes, or nose);
- (c) lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) injury to any internal organ;
- (e) second or third degree burns, or any burns affecting more than 5 % of the body surface;
- (f) verified exposure to infectious substances or harmful radiation.

*Article 3***Scope**

1. This Regulation shall apply to safety investigations into accidents and serious incidents:

- (a) which have occurred in the territories of the Member States to which the Treaties apply, in accordance with the international obligations of the Member States;
- (b) involving aircraft registered in a Member State or operated by an undertaking established in a Member State, which have occurred outside the territories of the Member States to which the Treaties apply, when such investigations are not conducted by another State;
- (c) in which a Member State is entitled, according to international standards and recommended practices, to appoint an accredited representative to participate as a State of Registry, State of the Operator, State of Design, State of Manufacture or State providing information, facilities or experts at the request of the State conducting the investigation;
- (d) in which a Member State having a special interest by virtue of fatalities or serious injuries to its citizens is permitted by the State conducting the investigation to appoint an expert.

2. This Regulation shall also apply to issues pertaining to the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident and assistance to the victims of air accidents and their relatives.

3. This Regulation shall not apply to safety investigations into accidents and serious incidents which involve aircraft engaged in military, customs, police or similar services, except when the Member State concerned so determines, in accordance with Article 5(4) and national legislation.

*Article 4***Civil Aviation Safety Investigation Authority**

1. Each Member State shall ensure that safety investigations are conducted or supervised, without external interference, by a permanent national civil aviation safety investigation authority (safety

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investigation authority) capable of independently conducting a full safety investigation, either on its own or through agreements with other safety investigation authorities.

2. The safety investigation authority shall be functionally independent in particular of aviation authorities responsible for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation and, in general, of any other party or entity the interests or missions of which could conflict with the task entrusted to the safety investigation authority or influence its objectivity.

3. The safety investigation authority shall, in the conduct of the safety investigation, neither seek nor take instructions from anybody and shall have unrestricted authority over the conduct of the safety investigations.

4. The activities entrusted to the safety investigation authority may be extended to the gathering and analysis of aviation safety related information, in particular for accident prevention purposes, in so far as these activities do not affect its independence and entail no responsibility in regulatory, administrative or standards matters.

5. In order to inform the public of the general aviation safety level, a safety review shall be published annually at national level. In this analysis, the sources of confidential information shall not be revealed.

6. The safety investigation authority shall be given by the respective Member State the means required to carry out its responsibilities independently and shall be able to obtain sufficient resources to do so. In particular:

- (a) the head of the safety investigation authority and/or, in the case of a multimodal authority, the head of its aviation branch shall have the experience and competence in civil aviation safety to fulfil his or her tasks in accordance with this Regulation and national law;
- (b) the investigators shall be afforded status giving them the necessary guarantees of independence;
- (c) the safety investigation authority shall comprise at least one available investigator able to perform the function of the investigator-in-charge in the event of a major air accident;
- (d) the safety investigation authority shall be allocated a budget that enables it to carry out its functions;

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- (e) the safety investigation authority shall have at its disposal, either directly or by means of the cooperation referred to in Article 6, or through arrangements with other national authorities or entities, qualified personnel and adequate facilities, including offices and hangars to enable the storage and examination of the aircraft, its contents and its wreckage.

▼M2*Article 5***Obligation to investigate**

1. Every accident or serious incident involving aircraft to which Regulation (EU) 2018/1139 of the European Parliament and of the Council ⁽¹⁾ applies shall be the subject of a safety investigation in the Member State in which the accident or serious incident occurred.

2. Where an aircraft to which Regulation (EU) 2018/1139 applies and which is registered in a Member State is involved in an accident or a serious incident the location of which cannot be definitely established as being in the territory of any State, a safety investigation shall be conducted by the safety investigation authority of the Member State of registration.

3. The extent of safety investigations referred to in paragraphs 1, 2 and 4 and the procedure to be followed in conducting such safety investigations shall be determined by the safety investigation authority, taking into account the consequences of the accident or serious incident and the lessons it expects to draw from such investigations for the improvement of aviation safety.

4. Safety investigation authorities may decide to investigate incidents other than those referred to in paragraphs 1 and 2, as well as accidents or serious incidents to other types of aircraft, in accordance with the national legislation of the Member States, when they expect to draw safety lessons from them.

5. By way of derogation from paragraphs 1 and 2 of this Article, the responsible safety investigation authority may decide, taking into account the expected lessons to be drawn for the improvement of aviation safety, not to initiate a safety investigation when an accident or serious incident concerns an unmanned aircraft for which a certificate or declaration is not required pursuant to Article 56(1) and (5) of Regulation (EU) 2018/1139, or concerns a manned aircraft with a maximum take-off mass less than or equal to 2 250 kg, and where no person has been fatally or seriously injured.

⁽¹⁾ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

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6. Safety investigations referred to in paragraphs 1, 2 and 4 shall in no case be concerned with apportioning blame or liability. They shall be independent of, separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.

▼B*Article 6***Cooperation between safety investigation authorities**

1. A safety investigation authority from one Member State may request the assistance of safety investigation authorities from other Member States. When, following a request, a safety investigation authority agrees to provide assistance, such assistance shall, as far as possible, be provided free of charge.

2. A safety investigation authority may delegate the task of conducting an investigation into an accident or serious incident to another safety investigation authority subject to mutual agreement and shall facilitate the investigation process by that other authority.

*Article 7***European Network of Civil Aviation Safety Investigation Authorities**

1. Member States shall ensure that their safety investigation authorities establish between them a European Network of Civil Aviation Safety Investigation Authorities (the Network), composed of the heads of the safety investigation authorities in each of the Member States and/or, in the case of a multimodal authority, the head of its aviation branch, or their representatives, including a chairman chosen among these for a period of 3 years.

In close consultation with the members of the Network, the chairman shall draw up the annual work programme of the Network, which shall comply with the objectives and meet the responsibilities set out in paragraphs 2 and 3 respectively. The Commission shall transmit the work programme to the European Parliament and the Council. The chairman shall also draw up the agenda for the meetings of the Network.

2. The Network shall seek to further improve the quality of investigations conducted by safety investigation authorities and to strengthen their independence. In particular, it shall encourage high standards in investigation methods and investigator training.

3. In order to achieve the objectives set out in paragraph 2, the Network shall be responsible, in particular, for:

- (a) preparing suggestions to and advising Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents;

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- (b) promoting the sharing of information useful for the improvement of aviation safety and actively promoting structured cooperation between safety investigation authorities, the Commission, EASA and national civil aviation authorities;
- (c) coordinating and organising, where appropriate, ‘peer reviews’, relevant training activities and skills development programmes for investigators;
- (d) promoting best safety investigation practices with a view to developing a common Union safety investigation methodology and drawing up an inventory of such practices;
- (e) strengthening the investigating capacities of the safety investigation authorities, in particular by developing and managing a framework for sharing resources;
- (f) providing, at the request of the safety investigation authorities for the purpose of the application of Article 6, appropriate assistance, including, but not limited to, a list of investigators, equipment and capabilities available in other Member States for potential use by the authority conducting an investigation;
- (g) having access to information contained in the database referred to in Article 18, and analyse the safety recommendations therein with a view to identifying important safety recommendations of Union-wide relevance.

4. The Commission shall inform the European Parliament and the Council of the activities of the Network on a regular basis. The European Parliament shall also be informed whenever the Council or the Commission submits requests to the Network.

5. The members of the Network shall neither seek nor accept instructions from any body which could affect the independent status of safety investigations.

6. EASA shall, as appropriate, be invited as an observer to the meetings of the Network. The Network may also invite observers from safety investigation authorities of third countries and other relevant experts to attend its meetings.

7. The Commission shall be closely associated with the work of the Network and shall receive the necessary support from the Network on relevant aspects related to the development of the Union civil aviation accident investigation and prevention policy and regulation. The Commission shall provide the Network with the necessary support, including but not limited to assistance for the preparation and organisation of its meetings, as well as for the publication of an annual report covering the activities of the Network. The Commission shall transmit the annual report to the European Parliament and the Council.

Article 8

Participation of EASA and national civil aviation authorities in safety investigations

1. Safety investigation authorities shall, provided that the requirement of no conflict of interest is satisfied, invite EASA and national civil

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aviation authorities of the Member States concerned, within the scope of their respective competence, to appoint a representative to participate:

- (a) as an adviser to the investigator-in-charge in any safety investigation under Article 5(1) and (2), conducted in the territory of a Member State or in the location referred to in Article 5(2) under the control and at the discretion of the investigator-in-charge;
- (b) as an adviser appointed under this Regulation to assist accredited representative(s) of the Member States in any safety investigation conducted in a third country to which a safety investigation authority is invited to designate an accredited representative in accordance with international standards and recommended practices for aircraft accident and incident investigation, under the supervision of the accredited representative.

2. The participants referred to in paragraph 1 shall be entitled, in particular to:

- (a) visit the scene of the accident and examine the wreckage;
- (b) suggest areas of questioning and obtain witness information;
- (c) receive copies of all pertinent documents and obtain relevant factual information;
- (d) participate in the read-outs of recorded media, except cockpit voice or image recorders;
- (e) participate in off-scene investigative activities such as component examinations, tests and simulations, technical briefings and investigation progress meetings, except when related to the determination of the causes or the formulation of safety recommendations.

3. EASA and the national civil aviation authorities shall support the investigation in which they participate by supplying the requested information, advisers and equipment to the safety investigation authority in charge.

Article 9

Obligation to notify accidents and serious incidents

1. Any person involved who has knowledge of the occurrence of an accident or serious incident shall notify without delay the competent safety investigation authority of the State of Occurrence thereof.

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2. The safety investigation authority shall notify without delay the Commission, EASA, the International Civil Aviation Organisation (ICAO), the Member States and third countries concerned in accordance with the international standards and recommended practices of the occurrence of all accidents and serious incidents of which it has been notified.

*Article 10***Participation of the Member States in safety investigations**

1. Upon receipt of the notification of the occurrence of an accident or serious incident from another Member State or third country, the Member States which are the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, inform the Member State or third country in the territory of which the accident or serious incident occurred whether they intend to appoint an accredited representative in accordance with the international standards and recommended practices. Where such an accredited representative is appointed, his or her name and contact details shall also be provided, as well as the expected date of arrival if the accredited representative intends to travel to the country which sent the notification.

2. Accredited representatives for the State of Design shall be appointed by the safety investigation authority of the Member State in the territory of which the principal place of business of the certificate holder for the type design of the aircraft or power plant is located.

*Article 11***Status of the safety investigators**

1. Upon his or her appointment by a safety investigation authority and notwithstanding any judicial investigation, the investigator-in-charge shall have the authority to take the necessary measures to satisfy the requirements of the safety investigation.

2. Notwithstanding any confidentiality obligations under the legal acts of the Union or national law, the investigator-in-charge shall in particular be entitled to:

- (a) have immediate unrestricted and unhampered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;
- (b) ensure an immediate listing of evidence and controlled removal of debris, or components for examination or analysis purposes;
- (c) have immediate access to and control over the flight recorders, their contents and any other relevant recordings;
- (d) request, and contribute to, a complete autopsy examination of the bodies of the fatally injured persons and to have immediate access to the results of such examinations or of tests made on samples taken;

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- (e) request the medical examination of the people involved in the operation of the aircraft or request tests to be carried out on samples taken from such people and to have immediate access to the results of such examinations or tests;
- (f) to call and examine witnesses and to require them to furnish or produce information or evidence relevant to the safety investigation;
- (g) have free access to any relevant information or records held by the owner, the certificate holder of the type design, the responsible maintenance organisation, the training organisation, the operator or the manufacturer of the aircraft, the authorities responsible for civil aviation, EASA and air navigation service providers or aerodrome operators.

3. The investigator-in-charge shall extend to his or her experts and advisers, as well as to the accredited representatives, their experts and advisers, the entitlements listed in paragraph 2, to the extent necessary to enable them to participate effectively in the safety investigation. Those entitlements are without prejudice to the rights of the investigators and experts designated by the authority in charge of the judicial investigation.

4. Any person participating in safety investigations shall perform his or her duties independently and shall neither seek, nor accept instructions from anybody, other than the investigator-in-charge or the accredited representative.

Article 12

Coordination of investigations

1. When a judicial investigation is also instituted, the investigator-in-charge shall be notified thereof. In such a case, the investigator-in-charge shall ensure traceability and retain custody of flight recorders and any physical evidence. The judicial authority may appoint an official from that authority to accompany the flight recorders or physical evidence to the place of the read-out or treatment. Where examination or analysis of such physical evidence may modify, alter or destroy it, prior agreement from the judicial authorities will be required, without prejudice to national law. Where such agreement is not obtained according to the advance arrangements referred to in paragraph 3 within a reasonable time and not later than 2 weeks following the request, it shall not prevent the investigator-in-charge from conducting the examination or analysis. Where the judicial authority is entitled to seize any evidence, the investigator-in-charge shall have immediate and unlimited access to and use of such evidence.

2. Where, in the course of the safety investigation, it becomes known or it is suspected that an act of unlawful interference as provided for under national law, such as national law on accident investigations, was involved in the accident or serious incident, the investigator-in-charge shall immediately inform the competent authorities thereof. Subject to

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Article 14, the relevant information collected in the safety investigation shall be shared with those authorities immediately and upon request, relevant material may also be transferred to those authorities. The sharing of that information and that material shall be without prejudice to the right of the safety investigation authority to continue the safety investigation, in coordination with the authorities to which the control of the site may have been transferred.

3. Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.

Those arrangements shall respect the independence of the safety investigation authority and allow the technical investigation to be conducted diligently and efficiently. Among others, the advance arrangements shall cover the following subjects:

- (a) access to the site of the accident;
- (b) preservation of and access to evidence;
- (c) initial and ongoing debriefings of the status of each process;
- (d) exchange of information;
- (e) appropriate use of safety information;
- (f) resolution of conflicts.

Member States shall communicate to the Commission those arrangements, which shall transmit them to the chairman of the Network, the European Parliament and the Council for information.

Article 13

Preservation of evidence

1. The Member State in the territory of which the accident or serious incident occurred shall be responsible for ensuring safe treatment of all evidence and for taking all reasonable measures to protect such evidence and for maintaining safe custody of the aircraft, its contents and its wreckage for such period as may be necessary for the purpose of a safety investigation. Protection of evidence shall include the preservation, by photographic or other means, of any evidence which might be removed, effaced, lost or destroyed. Safe custody shall include protection against further damage, access by unauthorised persons, pilfering and deterioration.

2. Pending the arrival of safety investigators, no person shall modify the state of the site of the accident, take any samples therefrom, undertake any movement of or sampling from the aircraft, its contents or its wreckage, move or remove it, except where such action may be

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required for safety reasons or to bring assistance to injured persons, or under the express permission of the authorities in control of the site and, when possible, in consultation with the safety investigation authority.

3. Any person involved shall take all necessary steps to preserve documents, material and recordings in relation to the event, in particular so as to prevent erasure of recordings of conversations and alarms after the flight.

*Article 14***Protection of sensitive safety information**

1. The following records shall not be made available or used for purposes other than safety investigation:

- (a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;
- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;
- (c) information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;
- (d) material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- (e) information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;
- (f) drafts of preliminary or final reports or interim statements;
- (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

2. The following records shall not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

- (a) all communications between persons having been involved in the operation of the aircraft;
- (b) written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;

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(c) covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;

(d) occurrence reports filed under Directive 2003/42/EC.

Flight data recorder recordings shall not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

3. Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted insofar as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State shall be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4. Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.

Article 15

Communication of information

1. The staff of the safety investigation authority in charge, or any other person called upon to participate in or contribute to the safety investigation shall be bound by applicable rules of professional secrecy, including as regards the anonymity of those involved in an accident or incident, under the applicable legislation.

2. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge shall communicate the information which it deems relevant to the prevention of an accident or serious incident, to persons responsible for aircraft or aircraft equipment manufacture or maintenance, and to individuals or legal entities responsible for operating aircraft or for the training of personnel.

3. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge and the accredited representative(s) referred to in Article 8 shall release to EASA and national civil aviation authorities relevant factual information obtained during the

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safety investigation, except information referred to in Article 14(1) or causing a conflict of interest. The information received by EASA and the national civil aviation authorities shall be protected in accordance with Article 14 and applicable legal acts of the Union and national legislation.

4. The safety investigation authority in charge shall be authorised to inform victims and their relatives or their associations or make public any information on the factual observations, the proceedings of the safety investigation, possibly preliminary reports or conclusions and/or safety recommendations, provided that it does not compromise the objectives of the safety investigation and fully complies with applicable legislation on the protection of personal data.

5. Before making public the information referred to in paragraph 4, the safety investigation authority in charge shall forward that information to the victims and their relatives or their associations in a way which does not compromise the objectives of the safety investigation.

Article 16

Investigation report

1. Each safety investigation shall be concluded with a report in a form appropriate to the type and seriousness of the accident or serious incident. The report shall state that the sole objective of the safety investigation is the prevention of future accidents and incidents without apportioning blame or liability. The report shall contain, where appropriate, safety recommendations.

2. The report shall protect the anonymity of any individual involved in the accident or serious incident.

3. Where safety investigations give rise to reports before the completion of the investigation, prior to their publication the safety investigation authority may solicit comments from the authorities concerned, including EASA, and through them the certificate holder for the design, the manufacturer and the operator concerned. They shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation.

4. Before publication of the final report, the safety investigation authority shall solicit comments from the authorities concerned, including EASA, and, through them the certificate holder for the design, the manufacturer and the operator concerned, who shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation. In soliciting such comments, the safety investigation authority shall follow the international standards and recommended practices.

5. The information covered by Article 14 shall be included in a report only when relevant to the analysis of the accident or serious incident. Information or parts of the information not relevant to the analysis shall not be disclosed.

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6. The safety investigation authority shall make public the final report in the shortest possible time and if possible within 12 months of the date of the accident or serious incident.

7. If the final report cannot be made public within 12 months, the safety investigation authority shall release an interim statement at least at each anniversary of the accident or serious incident, detailing the progress of the investigation and any safety issues raised.

8. The safety investigation authority shall forward a copy of the final report and the safety recommendations as soon as possible to the:

- (a) safety investigation authorities and civil aviation authorities of the States concerned, and the ICAO, according to the international standards and recommended practices;
- (b) addressees of safety recommendations contained in the report;
- (c) Commission and EASA, except where the report is publicly available through electronic means, in which case the safety investigation authority shall only notify them accordingly.

*Article 17***Safety recommendations**

1. At any stage of the safety investigation, the safety investigation authority shall recommend in a dated transmittal letter, after appropriate consultation with relevant parties, to the authorities concerned, including those in other Member States or third countries, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.

2. A safety investigation authority may also issue safety recommendations on the basis of studies or analysis of a series of investigations or any other activities conducted in accordance with Article 4(4).

3. A safety recommendation shall in no case create a presumption of blame or liability for an accident, serious incident or incident.

*Article 18***Follow-up to safety recommendations and safety recommendations database**

1. The addressee of a safety recommendation shall acknowledge receipt of the transmittal letter and inform the safety investigation authority which issued the recommendation within 90 days of the receipt of that letter, of the actions taken or under consideration, and where appropriate, of the time necessary for their completion and where no action is taken, the reasons therefor.

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2. Within 60 days of the receipt of the reply, the safety investigation authority shall inform the addressee whether or not it considers the reply adequate and give justification when it disagrees with the decision to take no action.
3. Each safety investigation authority shall implement procedures to record the responses to the safety recommendations it issued.
4. Each entity receiving a safety recommendation, including the authorities responsible for civil aviation safety at the Member State and Union level, shall implement procedures to monitor the progress of the action taken in response to the safety recommendations received.
5. Safety investigation authorities shall record in the central repository established under Commission Regulation (EC) No 1321/2007 of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences exchanged in accordance with Directive 2003/42/EC ⁽¹⁾ all safety recommendations issued in accordance with Article 17(1) and (2) as well as the responses thereto. Safety investigation authorities shall similarly record in the central repository all safety recommendations received from third countries.

▼M1**▼B***Article 20***Information on persons and dangerous goods on board**

1. Union airlines operating flights arriving to or departing from, and third country airlines operating flights departing from an airport located in the territories of the Member States to which the Treaties apply, shall implement procedures which allow for the production:
 - (a) as soon as possible, and at the latest within two hours of the notification of the occurrence of an accident to the aircraft, of a validated list, based on the best available information, of all the persons on board; and
 - (b) immediately after the notification of the occurrence of an accident to the aircraft, of the list of the dangerous goods on board.
2. The lists referred to in paragraph 1 shall be made available to the safety investigation authority in charge, the authority designated by each Member State to liaise with the relatives of the persons on board and, where necessary, to medical units which may need the information for the treatment of victims.
3. In order to allow passengers' relatives to obtain information quickly concerning the presence of their relatives on board an aircraft involved in an accident, airlines shall offer travellers the opportunity to

⁽¹⁾ OJ L 294, 13.11.2007, p. 3.

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give the name and contact details of a person to be contacted in the event of an accident. This information may be used by the airlines only in the event of an accident and shall not be communicated to third parties or used for commercial purposes.

4. The name of a person on board shall not be made publicly available before the relatives of that person have been informed by the relevant authorities. The list referred to in paragraph 1(a) shall be kept confidential in accordance with the legal acts of the Union and national law and the name of each person appearing in that list shall, subject thereto, only be made publicly available in so far as the relatives of the respective persons on board have not objected.

*Article 21***Assistance to the victims of air accidents and their relatives**

1. In order to ensure a more comprehensive and harmonised response to accidents at EU level, each Member State shall establish a civil aviation accident emergency plan at national level. Such an emergency plan shall also cover assistance to the victims of civil aviation accidents and their relatives.

2. Member States shall ensure that all airlines established in their territory have a plan for the assistance to the victims of civil aviation accidents and their relatives. Those plans must take particular account of psychological support for victims of civil aviation accidents and their relatives and allow the airline to react to a major accident. The Member States shall audit the assistance plans of the airlines established in their territory. Member States shall also encourage third-country airlines which operate in the Union to similarly adopt a plan for the assistance of victims of civil aviation accidents and their relatives.

3. When an accident occurs, the Member State in charge of the investigation, the Member State in which the airline, the aircraft of which was involved in the accident is established, or the Member State which had a large number of its nationals on board the aircraft involved in the accident, shall provide for the appointment of a reference person as a point of contact and information for the victims and their relatives.

4. A Member State or a third country, which, by virtue of fatalities or serious injuries to its citizens, has a special interest in an accident which has occurred in the territories of the Member States to which the Treaties apply, shall be entitled to appoint an expert who shall have the right to:

- (a) visit the scene of the accident;
- (b) have access to the relevant factual information, which is approved for public release by the safety investigation authority in charge, and information on the progress of the investigation;
- (c) receive a copy of the final report.

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5. An expert appointed in accordance with paragraph 4 may assist, subject to applicable legislation in force, in the identification of the victims and attend meetings with the survivors of its State.

6. In accordance with Article 2(1) of Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators ⁽¹⁾, also third country air carriers shall fulfil the insurance obligations set out in that Regulation.

*Article 22***Access to documents and protection of personal data**

1. This Regulation shall apply without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾.

2. This Regulation shall apply in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁴⁾.

*Article 23***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 24***Amendment of the Regulation**

This Regulation shall be subject to a review no later than 3 December 2014. Where the Commission considers that this Regulation should be amended, it shall request the Network to issue a preliminary opinion, which shall also be forwarded to the European Parliament, the Council, the Member States and EASA.

*Article 25***Repeals**

Directive 94/56/EC is hereby repealed.

⁽¹⁾ OJ L 138, 30.4.2004, p. 1.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.



Article 26

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



ANNEX

List of examples of serious incidents

The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance with respect to the definition of 'serious incident':

- a near collision requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate,
- controlled flight into terrain only marginally avoided,
- aborted take-offs on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- take-offs from a closed or engaged runway, from a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- landings or attempted landings on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- gross failures to achieve predicted performance during take-off or initial climb,
- fires and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents,
- events requiring the emergency use of oxygen by the flight crew,
- aircraft structural failure or engine disintegration, including uncontained turbine engine failures, not classified as an accident,
- multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft,
- flight crew incapacitation in flight,
- fuel quantity requiring the declaration of an emergency by the pilot,
- runway incursions classified with severity A according to the Manual on the Prevention of Runway Incursions (ICAO Doc 9870) which contains information on the severity classifications,
- take-off or landing incidents. Incidents such as undershooting, overrunning or running off the side of runways,
- system failures, weather phenomena, operation outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft,
- failure of more than one system in a redundancy system mandatory for flight guidance and navigation.



Consolidated legislative part of the Transport Code and the Civil Aviation Code

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TRANSPORT CODE

PART ONE COMMON PROVISIONS

VOLUME VI: SECURITY AND SAFETY OF TRANSPORT

TITLE II: COMMON PROVISIONS REGARDING THE SAFETY INVESTIGATION FOLLOWING A TRANSPORT ACCIDENT OR INCIDENT.

Chapter I: The conditions of the technical investigation and the safety investigation

Section 1: Definitions

Article L1621-1

Amended by Order No 2011-635 of 9 June 2011 – Article 1

For the purposes of this Title:

1. ‘Land transport’ comprises rail and guided transport within the meaning of Article L2000-1, road transport and inland water transport;
2. ‘Land transport accidents and incidents’ means those where the accident or incident occurred on national territory;
3. ‘Sea event’ means any marine accident or incident as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), adopted in London on 16 May 2008;
4. Sea events that may lead to a technical investigation carried out in compliance with the Code referred to in point 3 above include:
 - a) events involving civil vessels flying the French flag wherever they may be and civil vessels flying another flag when the sea event occurs in inland waters or in French territorial waters;
 - b) events, wherever they occurred, which resulted in fatalities of or inflicted severe injuries on French nationals or caused or could have caused serious prejudice to French territory, the environment, installations or structures under French jurisdiction.

Section 2: Procedure

Article L1621-2

Amended by Order No 2012-872 of 12 July 2012 – Article 1

Subject to the provisions of Article L1621-1, any land transport accident or incident and any sea event may be subject to a technical investigation.

Every civil aviation accident and serious incident is subject to a safety investigation in accordance with the conditions laid down in Articles 11, 12 and 13 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC and with those set out, where appropriate,

in the agreement concluded between the safety investigation authority and the judicial authorities pursuant to Article 12 of the Regulation.

Article L1621-3

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The sole objective of the technical investigation and the safety investigation provided for under Article L1621-2 is to prevent future sea events and land transport and civil aviation accidents or incidents.

Without prejudice to the legal investigation which may be opened, the technical investigation and the safety investigation involve the collection and analysis of relevant information, determining the circumstances and definite or possible causes of the occurrence, accident or incident and, where appropriate, making safety recommendations.

Article L1621-4

Amended by Order No 2012-872 of 12 July 2012 – Article 1

A technical or safety investigation report is drawn up by the permanent body or by the authority responsible for safety investigations referred to in Article L1621-6, which publishes the report in an appropriate form at the end of the investigation. No names of persons may be mentioned in the report. The report exclusively comprises information resulting from the investigation required to determine the circumstances and causes of the accident or incident and to understand the safety recommendations.

Before the report is published, the investigators may seek the views of the relevant authorities, companies and staff, who are bound to professional secrecy with regard to the content of the consultation.

Section 3 - Powers of investigation

Article L1621-6

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The technical investigation and the safety investigation referred to in Article L1621-2 are carried out, respectively, by a specialist permanent body and by the authority responsible for safety investigations, or under their supervision, under the following conditions:

1. For sea events and land transport accidents or incidents, the following may be technical investigators: members of the permanent body, members of the inspection and supervision division on which the body may call, and, where appropriate, members of an investigation commission set up on the basis of a request by the body to the minister with responsibility for transport;
2. For civil aviation accidents and incidents, only members of the authority responsible for safety investigations may be safety investigators. However, reconnaissance investigators may be authorised to carry out the investigation operations provided for by this Title under the supervision and authority of the authority responsible for safety investigations.

Article L1621-7

Amended by Order No 2012-872 of 12 July 2012 – Article 1

During the technical investigation or the safety investigation, the body and persons tasked with carrying out the investigation must act entirely independently and may not receive or request instructions from any authority or body whose interests could conflict with the remit entrusted to them.

Article L1621-8

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The conditions of appointment of technical investigators, safety investigators and persons tasked with carrying out investigations, the conditions of authorisation of reconnaissance investigators and the conditions of nomination for the members of investigation commissions are set out in a decree of the Council of State.

The decree also sets out the cases and conditions under which technical investigators who are foreign nationals may be authorised to take part in investigations on national territory or on board French vessels, when their participation is required for the smooth running of the investigation.

Article L1621-10

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The technical investigators, safety investigators and reconnaissance investigators may access the site of the accident or incident, the means of transport itself or its wreckage and its content immediately in order to carry out the appropriate inspections on site.

The judicial authority must be informed in advance of the intervention of the investigators.

If necessary, the technical investigators or, in their absence, the reconnaissance investigators, must take all the necessary precautions to ensure the preservation of evidence.

Article L1621-11

Amended by Order No 2012-872 of 12 July 2012 – Article 1

I. - As regards land transport accidents and incidents and sea events, the technical investigators must have access without delay to the content of on-board recorders and technical data recorders, in particular the parameters relevant to identifying the causes and circumstances of the accident or incident, and may use them in the following ways:

1. When a legal investigation or inquiry is opened, data recorders and recording instruments previously sequestered by the judicial authority in accordance with the terms set out in Articles 97 and 163 of the Code of Criminal Procedure, must, at the request of the latter, be made available to the technical investigators who, under the supervision of a judicial police officer, may take a copy of the information contained therein;
2. If no legal investigation or inquiry is opened, the data recorders and recording instruments may be removed by the technical investigators, or, on the instruction of the permanent body, by the reconnaissance investigators, in the presence of a judicial police officer.

The involvement of the judicial police officer is instigated by the public prosecutor.

II.- As regards civil aviation accidents and incidents, the authority responsible for safety investigations must ensure the collection, preservation and use of evidence under the conditions provided for in the second paragraph of Article L1621-2.

Article L1621-12

Amended by Order No 2012-872 of 12 July 2012 – Article 1

I.- As regards land transport accidents and incidents and sea events where no legal investigation or inquiry is opened, the technical investigators or, on the instruction of the permanent body, the reconnaissance investigators, may, in the presence of a judicial police officer, remove, for examination or analysis purposes, debris, fluids, parts, instruments, sets or mechanisms which they consider appropriate for determining the circumstances and causes of the accident or incident.

The involvement of the judicial police officer is instigated by the public prosecutor.

II.- As regards land transport and civil aviation accidents and incidents and sea events, the objects or documents removed by the technical investigators or safety investigators must be returned as soon as their conservation ceases to be necessary for determining the circumstances and causes of the accident or incident.

If a legal investigation is to be carried out, the state prosecutor or the investigating magistrate dealing with the restitution must be notified in advance.

Retention and, where appropriate, alteration or destruction for the purposes of the investigation of objects or documents subject to examination or analysis does not give rise to any compensation.

III.- As regards civil aviation accidents and incidents, the authority responsible for safety investigations must ensure the collection, preservation and use of evidence under the conditions provided for in the second paragraph of Article L1621-2.

Article L1621-13

Amended by Order No 2012-872 of 12 July 2012 – Article 1

I. - As regards land transport accidents and incidents and sea events where a legal investigation or inquiry has been opened, the technical investigators may proceed, with the agreement of the state prosecutor or the investigating magistrate, to remove for examination and analysis purposes debris, fluids, parts, components, sets or mechanisms which they consider appropriate for determining the circumstances and causes of the accident or incident.

The technical investigators may only subject debris, fluids, parts, components, sets and mechanisms which have been sequestered to examinations or analyses likely to affect, modify or destroy them with the agreement of the judicial authority.

In the absence of an agreement, the technical investigators are informed of the examination operations instigated by the competent judicial authority. They are entitled to attend the examination and to use the findings made during these operations for the purposes of the technical investigation.

II.- As regards civil aviation accidents and incidents, the authority responsible for safety investigations must ensure the collection, preservation and use of evidence under the conditions provided for in the second paragraph of Article L1621-2.

Article L1621-14

Amended by Order No 2012-872 of 12 July 2012 – Article 1

I.- As regards land transport accidents and incidents and sea events, the technical investigators may meet all appropriate staff members and receive, without this being refused on grounds of professional secrecy, all information and documents relating to the circumstances, companies, bodies and equipment associated with the accident or incident, relating in particular to construction, certification, maintenance, use of equipment, preparation for transport, operation, information and supervision of the means of transport involved. The investigators may organise these meetings in the absence of any person whose interests could be considered as hampering the safety investigation. Evidence, information and documents collected may not be used by the technical investigators for purposes other than the technical investigation itself, unless there is an overriding public interest in their disclosure.

Under the same conditions, the technical investigators may request provision of all information or personal documents relating to staff training, qualification and aptitude to operate or supervise the means of transport in question. However, information of a medical nature may only be provided to doctors working with the permanent body or designated to assist these investigators.

A copy of the documents placed under seal by the judicial authorities must be made for these investigators.

The terms of application of I of this article are laid down by a decree of the Council of State.

II.- As regards civil aviation accidents and incidents, the authority responsible for safety investigations must ensure the collection, preservation and use of evidence under the conditions provided for in the second paragraph of Article L1621-2.

Section 4: Provisions concerning the confidentiality of legal investigations and professional secrecy

Article L1621-16

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The staff of the permanent body or the authority responsible for safety investigations, the persons carrying out the investigation, including the reconnaissance investigators and the members of the investigation commissions, as well as any experts called on are bound to professional secrecy under the conditions and subject to the penalties provided for in Article 226-13 of the Criminal Code.

Article L1621-17

Amended by Order No 2012-872 of 12 July 2012 – Article 1

I.- By derogation from the provisions of Article L1621-16, the person in charge of the permanent body or of the authority responsible for safety investigations is authorised to send the information resulting from the technical investigation or the safety investigation to the following parties, if they consider that the information may prevent a sea event or a land transport or civil aviation accident or incident:

1. the administrative authorities responsible for safety;
2. the directors of companies involved in the construction or maintenance of infrastructure, transport stock and equipment;
3. the natural and legal persons responsible for the operation of infrastructure or transport stock;
4. the natural and legal persons responsible for staff training.

II.- The person in charge of the permanent body or of the authority responsible for safety investigations as well as, where appropriate, the presidents of the investigation commissions are authorised, in the course of their work, to make public technical information on the findings of the investigators, the progress of the technical investigation or the safety investigation and, possibly, the provisional conclusions.

Article L1621-18

With the authorisation of the public prosecutor or the investigating magistrate, information which forms part of the legal proceedings in progress and which enables scientific or technical research or investigations to be carried out, intended in particular to prevent the occurrence of accidents or to facilitate the compensation of victims, may be made available to the competent authorities or bodies by decree of the Minister of Justice, adopted, where appropriate, following consultation of the minister(s) concerned. The staff working for these authorities or bodies who become apprised of such information are bound to professional secrecy, under the conditions and subject to the penalties set out in Articles 226-13 and 226-14 of the Criminal Code.

Article L1621-19

Amended by Order No 2012-872 of 12 July 2012 – Article 1

Information and documents subject to confidentiality for the purposes of the legal investigation or inquiry may be made available to the technical investigators and the safety investigators with the agreement of the public prosecutor.

Article L1621-20

Amended by Order No 2012-872 of 12 July 2012 – Article 1

The permanent body or the authority responsible for safety investigations may issue safety recommendations during the investigation, if they consider that their immediate implementation may prevent an accident or incident.

Chapter II: Penalties relating to the technical investigation

Article L1622-1

Amended by Order No 2012-872 of 12 July 2012 – Article 1

Any attempt to obstruct the work of the technical investigators and of the safety investigators referred to in Articles L1621-6 and L1621-10 in the ways indicated below is punished by one year's imprisonment and a fine of EUR 15 000:

1. either by preventing them from carrying out the work with which they have been entrusted;
2. or by refusing to provide the recordings, equipment, relevant information and documents by concealing them, altering them or disposing of them.

Article L1622-2

Legal persons found to be criminally liable, under the conditions set out in Article 121-2 of the Criminal Code, of the infringements set out under Article L1622-1 shall incur, in addition to the fine in accordance with Article 131-38 of the Criminal Code, the penalties set out in Article 131-39 of the same code.

The prohibition referred to in the second point of Article 131-39 of the same Code relates to work during the exercise or on the occasion of the exercise during which the infringement was committed.

PART 6: CIVIL AVIATION

VOLUME II: AIR TRAFFIC

TITLE II: AIRCRAFT POLICE

Chapter II: Safety investigations concerning civil aviation accidents and incidents.

Article L6222-1

Amended by Order No 2012-872 of 12 July 2012 - Article 2

Any serious civil aviation accident or incident involving an aircraft not engaged in military, customs or police operations or not referred to in Annex II to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency shall be subject to a safety investigation.

Article L6222-2

Amended by Order No 2012-872 of 12 July 2012 - Article 2

No administrative, disciplinary or professional penalty may be imposed on a person who reports a civil aviation accident or incident, irrespective of whether the person was involved in the accident or incident in question or not, except where the person claims responsibility him or herself for intentional or repeated failure to observe safety rules.

Article L6222-3

Amended by Order No 2015-1341 of 23 October 2015 - Article 3 (V)

The provisions of Volume III of the Code on relations between the public and the administration shall apply neither to the documents collected for the preparation of the safety investigation report, nor to the reports on civil aviation accidents and incidents, nor to the related documents.

TITLE III: ADMINISTRATIVE AND CRIMINAL SANCTIONS

Chapter II: Penalties

Section 5: Safety investigations concerning civil aviation accidents and incidents

Article L6232-10

Amended by Order No 2012-872 of 12 July 2012 - Article 2

Persons who, by virtue of their duties, are called upon to deal with an accident or serious incident as defined in Article 2 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and involving aircraft referred to in Article L6222-1, shall be punishable by one year's imprisonment and a fine if they do not report it.

Article L6232-11

The provisions of Articles L1622-1 and L1622-2 of this Code are applicable in respect of the accidents and incidents referred to in Article L6221.

CIVIL AVIATION CODE

VOLUME VII: TECHNICAL INVESTIGATION CONCERNING ACCIDENTS AND INCIDENTS — PROTECTION OF INFORMATION

TITLE III: DISSEMINATION OF INFORMATION AND INVESTIGATION REPORTS

Sole Chapter

Article L731-5

Created by Law No 2006-10 of 5 January 2006 - Article 7(V), Official Journal of the French Republic of 6 January 2006

Repealed by Order No 2010-1307 of 28 October 2010 - Article 7

Every year the Minister responsible for civil aviation shall publish the corrective measures (s)he is implementing following the safety recommendations issued by the permanent body. (S)he shall justify any deviation from these recommendations.



Consolidated Regulatory Part of the Transport Code and the Civil Aviation Code

TRANSPORT CODE

PART ONE – COMMON PROVISIONS

VOLUME VI – SECURITY AND SAFETY OF TRANSPORT

TITLE II – COMMON PROVISIONS CONCERNING SAFETY INVESTIGATIONS AFTER TRANSPORT ACCIDENTS OR INCIDENTS

Chapter 1 - The conditions for technical and safety investigations

Section 1 - The organisation and functioning of investigation bureaus

Article R1621-1

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The specialised permanent bodies and the authority responsible under Article L1621-6 for carrying out technical investigations and safety investigations concerning sea events, land transport accidents and incidents and civil aviation accidents and incidents are departments with national competence, referred to as ‘the investigation bureau for sea events’, ‘the investigation bureau for land transport accidents’ and ‘the investigation and analysis bureau for civil aviation safety’.

Article R1621-2

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The operations of each investigation bureau shall be managed by its director. He shall have authority over the staff.

The director shall be the secondary authorising officer for the bureau’s receipts and expenditure.

He may delegate his power to sign to officials and civil servants under his authority.

Article R1621-3

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The director of each investigation bureau shall determine the scope of the investigation and the methods of the technical and safety investigations in accordance with the objectives laid down in Articles L.1621-2 to L1621-4. He shall appoint the technical and safety investigators responsible for organising, carrying out and supervising the investigation.

Article R1621-4

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The director of the investigation and analysis bureau for civil aviation safety shall organise France’s participation in safety investigations conducted by a foreign state and determine the rules of such participation in accordance with the conditions laid down in the international conventions to which France is party and in Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC. Under the same conditions, the representatives of states concerned by an accident or an incident may participate in safety investigations under the supervision of the investigation bureau.

Article R1621-5

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The investigation bureau for land transport accidents and the investigation and analysis bureau for civil aviation safety operate under the supervision of the vice-president of the General Council for the Environment and Sustainable Development.

The investigation bureau for sea events operates under the supervision of the inspector-general for maritime affairs.

Article R1621-6

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

1. The director of the investigation bureau for land transport accidents and of the investigation and analysis bureau for civil aviation safety shall be appointed by order of the Minister in charge of transport, while the director of the investigation bureau for sea events shall be appointed by order of the Minister in charge of maritime affairs, on the proposal:

a) of the vice-president of the General Council for the Environment and Sustainable Development made after consulting the bureau of the Council, in the case of the investigation bureau for land transport accidents and the investigation and analysis bureau for civil aviation safety;

b) of the inspector-general for maritime affairs, in the case of the investigation bureau for sea events.

2. The directors shall be selected from among civil servants belonging to category A and having at least 20 years' professional experience:

a) in the field of transport and its infrastructure, in the case of the investigation bureau for land transport accidents;

b) in the field of maritime activities and maritime safety, in the case of the investigation bureau for sea events.

3. The director of the investigation and analysis bureau for civil aviation safety shall be selected from among civil servants belonging to category A and having the experience and competence necessary to carry out their tasks in accordance with the civil aviation safety rules in force.

4. The director of each investigation bureau shall be nominated for a term of five years.

The nomination of an investigation bureau director shall be equivalent to his appointment as a technical investigator or a safety investigator.

Article R1621-7

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

In addition to the director, the staff of the investigation bureau for land transport accidents, the investigation bureau for sea events and the investigation and analysis bureau for civil aviation safety also include a secretary-general.

The staff of the investigation bureau for land transport accidents and of the investigation bureau for sea events also include technical investigators appointed from among civil servants belonging to category A or of a corresponding level.

The investigation and analysis bureau for civil aviation safety includes safety investigators. They shall be designated by the director of the investigation and analysis bureau from among civil servants of the civil aviation technical corps and other civil servants belonging to category A or of a corresponding level.

The designation of the investigators shall be equivalent to their appointment.

The director of the investigation and analysis bureau for civil aviation shall accredit the reconnaissance investigators referred to in Article L1621-6 from among civil servants at the Directorate-General for Civil Aviation or from among persons with proven professional experience of at least ten years in the field of aviation safety. Those civil servants and persons shall attend a training course organised by the investigation and analysis bureau prior to their accreditation. The accreditation may be withdrawn by the director, after the parties concerned have had an opportunity to present their observations, if they have failed to meet their professional obligations or to perform their duties properly.

Article R1621-8

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The investigation bureau for land transport accidents, the investigation bureau for sea events and the investigation and analysis bureau for civil aviation safety may call upon experts, possibly from abroad, who are bound by professional secrecy under the same conditions as the bureau's civil servants.

Article R1621-9

Amended by Decree No 2016-1569 of 22 November 2016 - Art. 1

The recipients of safety recommendations issued in connection with a technical investigation shall inform the director of the investigation bureau within ninety days of receipt, unless another time limit is specified in the recommendations, of the measures they intend to take and, where appropriate, of the time required to implement them.

As regards civil aviation accidents and incidents, the addressees of safety recommendations shall comply with the procedure defined in Article 18 of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC.

Article R1621-10

Enacted by Decree No 2014-530 of 22 May 2014 - Art.

The investigation reports drawn up in accordance with Article L1621-4, together with any studies and statistics, shall be public. They shall be made publicly available through any appropriate means.

CIVIL AVIATION CODE

BOOK VII: SAFETY INVESTIGATIONS CONCERNING ACCIDENTS OR INCIDENTS

TITLE I – GENERAL PROVISIONS

Article R711-3

Amended by Decree No 2006-1544 of 7 December 2006 - Art. 3, Official Journal of the French Republic of 8 December 2006

The investigation and analysis bureau consists of a general secretariat, departments and divisions. It also has a unit in charge of communications.

Article R711-5

Amended by Decree No 2014-530 of 22 May 2014 - Art. 8

The investigation and analysis bureau includes technical and administrative staff, who are civil servants posted on the advice of the bureau's director or, where appropriate, contract agents recruited on the director's advice in accordance with the legislation and regulations in force.

Article R711-7

Amended by Decree No 2014-530 of 22 May 2014 - Art. 8

He shall determine the specific organisation thereof.

Article R711-9

Amended by Decree No 2014-530 of 22 May 2014 - Art. 8

The director of the investigation and analysis bureau may delegate to a foreign state the implementation of all or part of a technical investigation under the conditions set out in point IV of Article L711-1.

He may accept delegation by a foreign state of the implementation of all or part of a technical investigation.

If he becomes aware of a civil aviation accident that has occurred outside French territory or French airspace and resulted in the death of one or more persons of French nationality, he shall inform the competent judicial authority thereof.

TITLE II: DISCOVERY OF WRECKS AND REPORTING OF ACCIDENTS, INCIDENTS AND EVENTS

Article R722-1

Amended by Decree No 2006-1544 of 7 December 2006 - Art. 3, Official Journal of the French Republic of 8 December 2006

Subject to the provisions of Article L142-1, any person who discovers a wreck or an aircraft component must report this without delay to the nearest police or gendarmerie station.

Article R722-2

Amended by Decree No 2013-565 of 26 June 2013 - Art. 3

On the proposal of the investigation and analysis bureau's director, the Minister in charge of civil aviation shall draw up a list of the incidents that, in addition to accidents, must be notified to the police or gendarmerie. That list shall include at least the serious incidents referred to as examples in the Annex to Regulation (EU) prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC.

Article R722-3

Amended by Decree No 2013-565 of 26 June 2013 - Art. 3

Any operator whose registered office or principal place of business is in France and that operates an aircraft other than those referred to in Annex II to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency or, where appropriate, the pilot in command of such an aircraft shall notify the investigation and analysis bureau without delay of any civil aviation accident or incident involving that aircraft and referred to in the list laid down in Article R722-2.

Article R722-4

Amended by Decree No 2013-565 of 26 June 2013 - Art. 3

Any provider of civil air navigation services within the meaning of Article 2(4) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky that determines that a civil aviation accident or incident referred to in the list provided for in Article R722-2 has occurred, is notified thereof or is involved in the occurrence thereof shall notify the investigation and analysis bureau of the accident or incident without delay. The procedure for providing that information shall be determined through advance arrangements as referred to in Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC.

Article R722-5

Amended by Decree No 2006-1544 of 7 December 2006 - Art. 3, Official Journal of the French Republic of 8 December 2006

The managers of companies that are responsible for designing, manufacturing, maintaining or inspecting aircraft or their engines or equipment and have their registered office or principal place of business in France shall inform the investigation and analysis bureau without delay of any accident or incident that is referred to in the list laid down in Article R722-2 and involves such aircraft, engines or equipment as soon as they learn of the accident or incident, and regardless of the place of the event.

Article R722-6

Amended by Order No 2010-1307 du 28 octobre 2010 - Art. 7

The Minister in charge of civil aviation shall define and implement a system for collecting, recording and managing information from occurrence reports concerning the events referred to in Article L6223-1 of the Transport Code. The accidents and incidents referred to in Article L6222-8 of the Transport Code shall likewise be integrated into that system. The information collected shall be exchanged with other Member States of the European Economic Community and States that are party to the Agreement on the European Economic Area, as well as with the Swiss Confederation.

When the Minister in charge of civil aviation informs the public of occurrence reports or reports based on such reporting, he shall remove any information identifying their authors or third parties.

Article R722-7

Amended by Order No 2010-1307 du 28 octobre 2010 (V)

The obligations referred to in Article L6222-8 of the Transport Code shall apply to the following persons:

- a) operators and pilots of turbine-powered aircraft or aircraft operated by an undertaking holding an air operator's certificate;
- b) officials who are responsible for designing, manufacturing, maintaining or modifying turbine-powered aircraft or aircraft operated by an undertaking holding an air operator's certificate or any equipment

or part thereof;

- c) officials who issue certificates of release to service after maintenance operations performed on turbine-powered aircraft or aircraft operated by an undertaking holding an air operator's certificate;
- d) staff members of an air navigation service provider providing services for general air traffic;
- e) staff members of an aerodrome operator holding an airport security certificate pursuant to Article L211-3;
- f) staff members of departments responsible for installing, modifying, maintaining, repairing, overhauling, flight-checking or inspecting air navigation facilities;
- g) staff members of a company responsible for ground-handling services referred to in paragraphs 5, 6.2, 7, 8 and 9 of the Annex to Article R216-1.

The above-mentioned persons shall report to their employer or, where this is not possible:

- to the Minister for Defence, if they are under his authority; in this case, the Minister for Defence shall forward this information to the Minister in charge of civil aviation;
- in all other cases, to the Minister in charge of civil aviation.

Furthermore, in the case of events pertaining to air traffic management, the persons referred to in point a) shall notify the provider of civil or military air navigation services in question.

The Minister for Defence shall determine by order the conditions under which persons under his authority report to him for the purposes of applying the preceding subparagraph.

The employer or the provider of air navigation services shall forward the information it has received:

- to the Minister for Defence, in accordance with the procedure laid down by joint order of the Minister in charge of civil aviation and the Minister for Defence, if they are under the latter's authority; in that case, the Minister for Defence shall forward this information to the Minister in charge of civil aviation;
- in all other cases, to the Minister in charge of civil aviation, in accordance with the procedure laid down by order of the Minister in charge of civil aviation.

The list of events which must be reported pursuant to Article L6223-1 of the Transport Code shall be laid down by joint order of the two ministers.

TITLE III: INVESTIGATION REPORT AND SAFETY RECOMMENDATIONS

Article R731-3

Amended by Decree No 2016-308 of 17 March 2016 - Art. 2 (V)

They are releasable under the conditions provided for in book III of the code governing relations between the public and the administrative authorities.

TITLE IV: PENAL PROVISIONS

Article R741-1

Amended by Decree No 2006-1544 of 7 December 2006 - Art. 3, Official Journal of the French Republic of 8 December 2006

If a person discovers a wreck or an aircraft component and fails to report it pursuant to Article R722-1, they shall be punished with a fine established for category 2 offences.



ADVANCE ARRANGEMENT RELATING TO AIR SAFETY INVESTIGATIONS

ADVANCE ARRANGEMENT RELATING TO AIR SAFETY INVESTIGATIONS

PREAMBLE

Article 12(3) of Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation stipulates that the safety investigation authority, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, shall cooperate with each other through Advance Arrangements.

This Arrangement is in compliance with the principles that led to the adoption of Regulation (EU) No 996/2010, namely:

- independence of the safety investigation;
- free access for the safety investigation authority to all items necessary for its investigation;
- preservation of evidence;
- acting in accordance with the objectives and independence of the judicial investigation;
- endeavouring to strike the right balance between prevention of future accidents and good administration of justice to ensure that the overall public interest is served.

ARTICLE 1: PURPOSE OF THIS ADVANCE ARRANGEMENT

The purpose of this Advance Arrangement is to clarify the relationship between the safety investigation authority and the judicial authority in the event of accidents or serious incidents falling within the scope of Regulation (EU) No 996/2010.

This Arrangement covers the following subjects:

- access to the site of the accident;
- preservation of and access to evidence;
- initial and ongoing debriefings of the status of each process;
- exchange of information;
- appropriate use of safety information;
- resolution of conflicts.

It acts as a framework for establishing specific protocols that may be agreed between the Director of the BEA and the magistrate concerned during the two investigations and that may prove necessary for the coordination of the investigations and the division of responsibilities and costs concerning processes of common interest.

ARTICLE 2: PARTIES TO THE ADVANCE ARRANGEMENT

The safety investigation authority is represented by Mr Rémi Jouty, Director of the Investigation and Analysis Bureau (BEA) for civil aviation safety. He is responsible for all the members of the BEA and for the Reconnaissance Investigators who act on behalf of the BEA.

The BEA is the national civil aviation safety investigation authority within the meaning of Article 4 of Regulation (EU) No 996/2010. It is functionally independent of aviation authorities responsible for

airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation and, in general, of any other party or entity the interests or tasks of which could conflict with the task entrusted to it or affect its objectivity. It neither seeks nor takes instructions from anybody and has unrestricted authority over the conduct of safety investigations.

Within this Arrangement, the "investigator-in-charge" should be understood to be nominated by the BEA.

The judicial authority is represented by Mr Robert Gelli, Director for Criminal Matters and Pardons. The Directorate for Criminal Matters and Pardons performs the duties of the Minister for Justice relating to criminal matters. As such, it prepares general instructions on criminal policy, assesses their application and monitors their implementation by the Public Prosecutors' Offices and Prosecutors' Offices. It should be noted in this respect that the terms of this Arrangement will be covered by directives addressed through circulars to the Public Prosecutors' Offices and Prosecutors' Offices. These directives shall not be imposed on magistrates, and on investigating magistrates in particular, but magistrates are nevertheless obliged to comply with the European laws that are directly applicable in France. The terms of the European Regulation cited above and set out in this Arrangement are thus intended to apply directly to flagrant offence investigations as well as preliminary investigations and preparatory inquiries.

The judicial authority has powers over the judicial investigation services that work under the authority of the prosecution magistrates or investigating magistrates and are therefore obliged to comply with their instructions. The legality of the acts carried out by judicial police officers is subject to the sole responsibility of the judicial authority.

TITLE I: EXCHANGE OF INFORMATION

ARTICLE 3: EVENT GIVING RISE TO INFORMATION

The parties agree to inform each other of any accident as defined in Article 2 of the Regulation:

"Accident" means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

a) a person is fatally or seriously injured as a result of:

- being in the aircraft;
- direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
- direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes) or minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, (including holes in the radome); or

c) the aircraft is missing or is completely inaccessible.

In the event of serious incidents, the judicial authority systematically notifies the safety investigation authority. The safety investigation authority notifies the judicial authority in the event of serious incidents that may constitute an offence.

"Serious incident" means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft, which in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down.

ARTICLE 4: SHARED INFORMATION AND JUDICIAL REFERRAL

Article 4.1: Notification of an accident or serious incident

Transfer of information by the BEA:

The BEA shall notify the Prosecutor's Office with jurisdiction for the geographical area in question, or instruct them to be notified, through the duty Air Traffic Gendarmerie.

Transfer of information by the judicial authority:

The judicial authority shall notify the BEA, or instruct them to be notified, through its duty staff.

Article 4.2: Decision to take legal action

The judicial investigation and the safety investigation are independent. Consequently, once the Public Prosecutor has been informed that an accident or serious incident has taken place, he/she shall decide whether it is appropriate to institute a judicial investigation. He/she shall be free to make a decision without being restricted by any particular deadline and may repeal that decision at any time.

Article 4.3: Notification of institution of a judicial investigation (Article 12(1) of the Regulation)

If the Public Prosecutor decides to proceed with a judicial investigation, he/she shall notify the BEA, or instruct it to be notified, through its duty staff.

This notification shall specify:

- the context of the investigation (flagrant offence investigation, preliminary investigation or preparatory inquiry);
- the court dealing with the procedure;
- the name and contact details of the magistrate dealing with the file;
- a functional mailbox address to which the information provided for under Article 13 of this Arrangement shall be sent;
- the investigation service in charge.

TITLE II: THE INVESTIGATION PROCESS

The details in this section assume that a judicial investigation and a safety investigation take place concurrently.

ARTICLE 5: OBSERVATIONS

Both the safety investigation and the judicial investigation rely on observations.

Initial observations shall be taken to mean any operations intended to gather evidence relating to the events on the site of the accident or serious incident.

Article 5.1: Quality of the observations

The observations made in the context of the safety investigation must be made in such a way that they can be used in the context of the judicial investigation. Similarly, the safety investigation must be able to use observations made in the context of the judicial investigation.

Consequently, it is agreed that the following shall be minimum requirements for the observations:

- specially trained personnel;
- procedures carried out using methods that ensure high-quality observations and meet the respective objectives of the judicial authority and the BEA;
- equipment that is suitable for the operations to be performed.

The observations must thereby ensure that the evidence collected can be (Article 12(1) of the Regulation):

- preserved: any risk of deterioration is prevented and the integrity of the evidence is guaranteed;
- traced: the location of the object over time can be described from the moment it is collected and any transformations it has undergone further to analyses and tests are reported.

These objectives have led the signatory authorities to this Arrangement to recommend that any material evidence common to the two investigations should be placed under seal (see below).

Article 5.2: Access to the site of the accident

The safety investigators shall have free access to the site of the accident or serious incident, provided they can prove that they belong to the BEA by showing a professional identity card (Article 11(2) of the Regulation). If the safety investigators are accompanied by persons from outside their services, these persons must be able to prove their identity under the same conditions.

They shall be free to move around the site in order to make their observations without being subject to the judicial authority.

The work of the safety investigation on the site of the observations shall be carried out at the risk of the safety investigators and shall not entail the responsibility of the judicial authority, which has no control over it.

The BEA shall be responsible for the safety of the operators in the safety investigation, their access to the site and any damage caused by their work.

The judicial authority shall be responsible for the safety of the operators in the judicial investigation, their access to the site and any damage caused by their work.

The police force or gendarmerie shall ensure the security of the site as part of their administrative policing role.

Article 5.3: Making observations

The services in charge of the investigations shall carry out their observations according to various practical methods determined by the specific circumstances of each accident or incident.

In principle, the observations shall be made in parallel. The two investigations shall thereby work concurrently according to a methodology that they shall define together and that shall protect each investigation's objectives.

Exceptionally, if there is a particularly high risk of deterioration of evidence or for safety reasons, one service may carry out all the observations. These are then transferred to the service that has not carried out the observations.

Pursuant to Article 13 of the Regulation, when an accident or serious incident occurs, it is agreed that the judicial authority may begin making observations without waiting for the arrival of the safety investigators.

In this case, the judicial authority shall notify the duty staff of the BEA that it is going to begin the observations. At this moment, it shall gather the BEA's advice and recommendations. If the BEA cannot be contacted, the judicial authority may nevertheless begin its work.

Article 5.4: Transferring the observations to the non-observing party

In the event that the observations have been made in the absence of one of the Parties, this Party shall receive a copy of all the observations made.

For the judicial authority, this full copy of the observations shall be:

- the observation report(s) and report(s) of collected evidence;
- the inventory of material evidence placed under seal.

For the investigator-in-charge, this full copy of the observations shall consist of the sampling report(s).

ARTICLE 6: EVIDENCE PLACED UNDER JUDICIAL SEAL

Any object, part or item of interest to the judicial investigation shall be placed under judicial seal.

This seal shall be maintained, even when the object is no longer under the custody or responsibility of the judicial investigation, and in particular when it is entrusted to the BEA.

To this end, all tests on an object, part or item placed under judicial seal must be carried out under the conditions provided for in Articles 7 to 10 of this Arrangement.

ARTICLE 7: EVIDENCE OF INTEREST TO THE SAFETY INVESTIGATION

Article 7.1: Exclusion of bodies and human remains

The safety investigator must not apprehend bodies or human remains. These shall remain under the custody of the judicial authority.

In the event that human remains come into the safety investigator's possession, they shall be handed over to the judicial authority, which is the only party authorised to take charge of them.

However, the investigator-in-charge has the right to request forensic examinations of these human remains in compliance with Article 11 of the Regulation and detailed in Article 9.1 of the Advance Arrangement.

Article 7.2: Interest of the BEA in items under judicial seal in the context of the safety investigation

Any object, part or item collected in the context of the judicial investigation may be of interest to the safety investigation.

As such, the BEA may, at any time, request to have objects, parts or items placed under seal entrusted to it for testing. The BEA then performs this testing under the conditions provided for in Articles 8 to 10 of this Arrangement.

With the exception of the cases provided for in Article 9.2 of this Arrangement, the judicial authority remains free to proceed with any analysis or testing of items it has placed under seal.

Article 7.3: Allocation of certain items under judicial seal to the safety investigation

At the end of the observation operations, the investigator-in-charge or his/her delegate shall take possession of any objects, parts or items that they deem necessary for their investigation, in compliance with Articles 11 and 12-1 of the Regulation.

Pursuant to these Articles, the flight recorders shall be systematically handed over to the investigator-in-charge or his/her delegate. If requested by the judicial authority, a copy of the recordings shall be made for it, subject to Article 12 of this Arrangement.

Article 7.4: Change of custody of items under judicial seal

The transfer of possession of items under judicial seal shall be carried out as quickly as possible in the form

of a delivery report listing the evidence handed over to the investigator-in-charge or his/her delegate. The services in charge of the investigations shall draw up this document together.

The expenses related to the transfer of items under seal are covered by Article 16 of this Advance Arrangement.

ARTICLE 8: RESPONSIBILITY OF THE CUSTODIAN

The objects and evidence of interest to each investigation shall be under the responsibility of the service that has them in its possession.

The custodian shall be subject to the obligations regarding the preservation and traceability of the items of evidence for which it is responsible. In the event of an unauthorised breach or misappropriation of an object placed under seal, the penalties in Article 432(22) of the Criminal Code shall apply.

ARTICLE 9: INVESTIGATIVE ACTS

Each investigation authority has its own investigative powers, enabling it to act independently and autonomously. However, by their nature, some acts require coordination of the two investigations.

Article 9.1: Forensic acts

Autopsy request

The investigator-in-charge may submit a justified written request to the magistrate in charge of the judicial investigation for an autopsy to be carried out on the body of a person who has died in the accident or serious incident, in compliance with Article 11(2) of the Regulation.

The magistrate shall be free to give any response to this request in writing within a reasonable period of time.

If the magistrate grants the request, he/she shall indicate in the requirements that the investigator-in-charge should receive the results of the autopsy.

The judicial authority and safety investigator shall thereby both be notified of the autopsy results.

Participation in the autopsy

If the autopsy request is granted, the BEA's forensic pathologist may contribute to the autopsy and make requests that shall be brought to the magistrate's attention.

Handling of biological samples

Biological samples shall be handled as part of the judicial investigation. Through its forensic pathologist, the BEA may take biological samples solely for the requirements of the safety investigation if there is enough biological material.

Alcohol testing and testing for consumption of psychotropic substances

The investigator-in-charge may request the judicial authority to carry out an alcohol test or test for consumption of legal or illegal psychotropic substances on the persons involved in the operation of the aircraft in question.

Article 9.2: Carrying out tests or analyses on items of evidence that may be altered, spoiled or destroyed

The BEA and the judicial authority shall keep each other informed of their respective decisions to proceed in their investigations with a test or analysis of any object, part or item of interest to both investigations if this test or analysis may alter, spoil or destroy the object, part or item.

The parties shall consult each other under the following conditions:

If the judicial authority wishes to proceed with such a test or analysis, the magistrate shall first notify the investigator-in-charge, who shall have a maximum of 14 clear days to express his/her interest and request the item to be made available for analysis in compliance with the procedure described below.

If the BEA wishes to carry out such a test or analysis, the magistrate must respond to the request of the investigator-in-charge within 14 clear days of receiving the request:

- by formally accepting (otherwise a lack of a response within 14 days shall imply acceptance);
- by suggesting a common analysis for both investigations;
- by requesting a suspension of the analysis: his/her reply must be justified;
- by expressing his/her disagreement with the task or the designated expert.

In the two latter cases, the investigator-in-charge may nevertheless disregard the magistrate's reply, in compliance with Article 12(1) of the Regulation.

Article 20 of the preamble to the above-mentioned Regulation emphasises that "Member States should [...] ensure that safety investigation authorities are allowed to carry out their tasks in the best possible conditions in the interest of aviation safety".

In order to maintain the respective objectives of the safety investigation and the judicial investigation, the terms of this Regulation therefore encourage the Parties always to seek a negotiated solution.

Article 9.3: Opening items under seal

The judicial authority may authorise the breach and replacement of seals. On the judicial authority's request, a judicial police officer may attend the analysis operations and, in this case, shall record the operations in a report.

ARTICLE 10: MAKING EVIDENCE PLACED UNDER JUDICIAL SEAL AVAILABLE

The judicial authority may make a written request to the BEA to make one or more items of evidence available to it. The BEA may disregard this request until it has finished its testing or analysis of this evidence, within a reasonable period of time.

Making an item of evidence available in this way shall transfer the custody of the item to the judicial authority for the duration of the operations for which the item of evidence is required. At the end of this period, the item of evidence shall be returned to the BEA.

This operation shall be recorded in a report drawn up by both Parties.

ARTICLE 11: DISCOVERY OF CRIMINAL ACTIVITY

Article 11.1: Discovery of an act of unlawful interference

Pursuant to Article 12(2) of the Regulation, where, in the course of the safety investigation, it becomes known or it is suspected that an act of unlawful interference was involved in the accident or serious incident, the BEA shall immediately inform the judicial authority according to the procedure defined in Article 4 of this Advance Arrangement.

"Act of unlawful interference" is defined in Chapter I of Annex 17 to the Chicago convention on international civil aviation.

"Act of unlawful interference" means acts or attempted acts such as to jeopardize the safety of civil aviation and air transport including but not limited to:

- unlawful seizure of an aircraft;
- destruction of an aircraft in service;
- hostage taking on board aircraft or at aerodromes;
- forcible intrusions on board an aircraft, at an airport or on the premises of an aeronautical facility;
- introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;

- use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment;
- communication of false information so as to jeopardise the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an aerodrome or at the premises of a civil aviation facility.

Article 11.2: Denunciation in the context of Article 40 of the Code of Criminal Procedure

Pursuant to Article 40 of the Code of Criminal Procedure, the safety investigation authority must denounce any crime or offence it has become aware of in the context of its duties to the Public Prosecutor without delay and hand over any items related to this crime or offence.

Article 40, Code of Criminal Procedure.

The Public Prosecutor receives complaints and denunciations and decides how to deal with them in compliance with the provisions of Article 40(1).

Every constituted authority, every public officer or civil servant who, in the performance of his/her duties, has become aware of felony or misdemeanour is obliged to notify the Public Prosecutor of the offence without delay and to hand over any relevant information, official reports or documents to this magistrate.

In accordance with Article 4 of the Arrangement, this denunciation shall be addressed to the Air Traffic Gendarmerie, which shall in turn inform the Public Prosecutor with jurisdiction for the geographical area in question.

However, pursuant to Article 14 of Regulation (EU) No 996/2010 and Article 15 of Regulation (EU) No 376/2014, this Article shall not apply to information made known to the BEA through an occurrence report unless this report reveals wilful misconduct or manifest, severe and serious disregard with respect to 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 to property, or seriously compromising the level of aviation safety.

ARTICLE 12: COMMUNICATION OF INFORMATION

12-1: General provisions:

Article 15(1) of the Regulation stresses that the staff of the safety investigation authority in charge [...] shall be bound by applicable rules of professional secrecy.

Article 15(4) of the Regulation also provides that the safety investigation authority shall be authorised to inform victims and their relatives or make public any information, preliminary reports or safety recommendations [...].

Article 11 of the Code of Criminal Procedure provides for the secrecy of the enquiry and investigation and specifies that any person contributing to such proceedings who, being dependent on the public authority or acting on its request, participates in the enquiry or judicial investigation is bound to professional secrecy and is therefore subject to penalties if this secrecy is breached. Communicating information resulting from the judicial investigation would therefore expose these staff members to prosecution on this account, punishable by the penalties provided for in Articles 226(13) and 226(14) of the Criminal Code were they to have communicated information obtained through exchanges with the investigators or judicial authority, or during consultations in their capacity as experts or specialists.

Article 11 of the Code of Criminal Procedure also provides that in order to prevent the dissemination of incomplete or inaccurate information, or to quell a disturbance to the public peace, the Public Prosecutor may, on his/her own initiative or at the request of the investigating court or Parties, disclose objective matters related to the procedure that convey no judgment as to whether or not the charges brought

against the defendants are well founded. Similarly, the Public Prosecutor's communication could not concern information collected exclusively as part of the safety investigation.

Concerted communication between the safety investigation authority and the judicial authority may also be organised.

12-2: Provisions relating to the use of sensitive information

Sensitive information as listed in Article 14 of the Regulation may only be used for judicial purposes once the judicial authority has considered the consequences that this use could have for the proper functioning of the safety investigation and the voluntary information procedures intended for the BEA and other national and international civil aviation authorities in general.

To that end, the Director of the BEA must be consulted before any judicial use of this sensitive information. This consultation is particularly important for any request concerning audio or video recordings from the cockpit, to ensure that sources of information that are valuable for aviation safety remain available in the future. The judicial decision to use sensitive information shall refer to the control of proportionality carried out between the needs of the judicial investigation and the aviation safety requirements pursuant to Article 14(3) of the Regulation. The BEA shall be informed of the decision.

The communication of sensitive information from another State to the judicial authority in the context of a safety investigation is subject to the conditions in the last subparagraph of Article 14(3) of the Regulation.

TITLE III: END OF THE INVESTIGATION

ARTICLE 13: INFORMATION ON THE END OF INVESTIGATIONS

When an authority responsible for an investigation closes its investigations, it shall inform the other authority in accordance with the procedure in Article 4 of this Advance Arrangement.

When it closes its investigation, the BEA shall send a copy of its report to the judicial authority.

The judicial authority undertakes to notify the safety investigator at the end of its investigations.

ARTICLE 14: MANAGEMENT OF ITEMS UNDER SEAL

Transferring items under seal between the Parties or returning them to their owners

The authority that has completed its investigation shall transfer all items under seal to the authority that has not completed its investigation, unless the latter authority refuses them.

In this case, the authority that has completed its investigation shall return the items in its possession or have them destroyed in accordance with the following procedure.

Sealed items under the custody of the BEA

The BEA shall send the judicial authority a list of the items of evidence placed under judicial seal that it wishes to return. This list shall be sent to the judicial authority in charge of the judicial investigation by registered mail with acknowledgement of receipt.

The judicial authority shall reply to the BEA within two months. A lack of a response from the judicial authority within two months shall imply acceptance of the return proposal.

If its request is accepted, the BEA shall return the items under judicial seal to their owners or have them destroyed with the owners' consent.

If it refuses the BEA's request, the judicial authority shall retake possession of the items under seal that it wishes to preserve.

Sealed items in the custody of the judicial authority

The judicial authority shall consult the BEA before returning any material evidence common to the two investigations. This consultation shall be sent to the BEA by registered mail with acknowledgement of receipt.

The BEA shall reply to the judicial authority within two months. A lack of a response from the BEA within two months shall imply acceptance of the return proposal.

TITLE IV: PROVISIONS RELATING TO THE COSTS GENERATED BY INVESTIGATIONS INTO AN AVIATION ACCIDENT OR INCIDENT

ARTICLE 15: ALLOCATION OF COSTS

The judicial investigation and the safety investigation are independent. Consequently, the costs generated by the judicial investigation shall be covered by the judiciary and those generated by the safety investigation shall be covered by the BEA.

If an act is common to both investigations, the cost shall be shared between the two authorities. An investigative act is said to be common when it is of interest to both investigations under the same conditions, or under conditions judged to be sufficiently similar by those in charge of the investigations.

In this case, the costs relating to the requested investigations shall be shared in accordance with the following methods:

- where possible, allocation to each investigation of the costs resulting from its requests;
- mutual agreement to define a method of apportionment of the costs of the act depending on the items provided in the provisional estimate and each authority's requests.

However, when the BEA carries out investigative acts common to both investigations using its own resources, it may do so free of charge for the judicial investigation.

ARTICLE 16: CUSTODY AND TRANSPORT COSTS

Each authority shall have custody of the items of evidence related to its own investigation unless the law provides otherwise.

Preservation costs shall be covered by the custodian. Transport costs shall be covered by the authority that generates them.

Title V: GENERAL PROVISIONS RELATING TO THE ADVANCE ARRANGEMENT

ARTICLE 17: CONFLICT RESOLUTION

In the event of disagreement concerning the application of the European Regulation between the magistrate in charge of the judicial investigation and the BEA, the two Parties shall draw up a statement including the terms of the conflict and the decisions that have resulted from it.

The same procedure shall be followed in the event that the judicial authority alleges that the actions of the safety investigators have hindered operations or in the event that the BEA alleges that the actions of the judicial authority have hindered operations.

The BEA may send this statement to the competent European bodies.

If necessary, the statement shall be submitted for legal proceedings.

ARTICLE 18: ENTRY INTO FORCE OF THE ARRANGEMENT

Article 18.1: Validity:

This Arrangement shall be valid for a period of two years from the date of its signature.

Article 18.2: Renewal

At the end of the validity period, the Advance Arrangement shall be tacitly renewed for another two-year period if neither Party gives six months' notice to terminate it.

Article 18.3: Revision

This arrangement may be revised on the request of one of the Parties subject to acceptance by the other Party.

Done at Paris, on 16 September 2014 in two original copies.

Director of the Investigation and Analysis Bureau (BEA) for civil aviation safety

Rémi JOUTY

Director for Criminal Matters and Pardons

Robert GELLI



GLOSSARY

Aviation accident

The term 'aviation accident' is defined in Article 2 of Regulation (EU) No 996/2010 as an occurrence associated with the operation of an aircraft causing damage to a person or serious material damage to the aircraft or with the disappearance of an aircraft, i.e.:

‘...an occurrence associated with the operation of an aircraft which

- in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or

- in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

a) a person is fatally or seriously injured as a result of:

- being in the aircraft, or,

- direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or

- direct exposure to jet blast, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tyres, brakes, wheels, fairings, panels, landing gear doors, windcreens, the aircraft skin (such as small dents or puncture holes) or minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, (including holes in the radome); or

c) the aircraft is missing or is completely inaccessible...’

The accident must be notified to the competent safety investigation authority of the State of Occurrence thereof.

Act of unlawful interference

An act of unlawful interference, defined in Chapter 1 of Annex 17 to the Chicago Convention on International Civil Aviation, means acts or attempted acts such as to jeopardise the safety of civil aviation and air transport (non-exhaustive list):

- unlawful seizure of an aircraft;
- destruction of an aircraft in service;
- hostage-taking on board an aircraft or at aerodromes;
- forcible intrusions on board an aircraft, at an airport or on the premises of an aeronautical facility;
- introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
- use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment;

- communication of false information so as to jeopardise the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an aerodrome or at the premises of a civil aviation facility.

Fatal injury (Article 2 of Regulation (EU) No 996/2010)

An injury which is sustained by a person in an accident and which results in his/her death within 30 days of the date of the accident;

Causes

Defined in Article 2 of Regulation (EU) No 996/2010

actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident; the identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

Occurrence reporting

Occurrence reports are the main source of information for aviation authorities. These reports are mandatory in the cases listed in Article 4 of Regulation (EU) No 376/2014 or voluntary (Article 5). An occurrence is defined in Article 2 of Regulation (EU) No 376/2014, as any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident.

The only objective of occurrence reports, as defined by Regulation (EU) No 376/2014 is to prevent accidents and incidents, not to apportion blame or liability. Consequently, under Article 15 of Regulation (EU) No 376/2014, the authorities in charge of the safety investigation do not make available the information on occurrences in order to attribute blame. Prior administrative agreements are concluded with the judicial authority in order to ensure ‘the correct balance between the need for proper administration of justice, on the one hand, and the necessary continued availability of safety information, on the other’.

Article 16 of Regulation (EU) No 376/2014 provides for the non-disclosure by those in charge of safety investigations in respect of ‘unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported on the basis of mandatory and voluntary reports’. Article 16(10) provides for a derogation if wilful misconduct, manifest disregard or a profound failure has been reported.

Occurrence reporting is either mandatory (Art. 4 of Regulation (EC) No 376/2014) or voluntary (Art. 5 of Regulation (EC) No 376/2014).

Mandatory reporting

1. Occurrences which may represent a significant risk to aviation safety and which fall into the following categories must be reported:

- a) occurrences related to the operation of the aircraft (collisions, injuries, emergencies and other critical situations, crew incapacitation, meteorological conditions or security-related occurrences, etc.)
- b) occurrences related to technical conditions, maintenance and repair of aircraft (structural defects, system malfunctions, etc.)
- c) occurrences related to air navigation services and facilities (near collisions or potential for collisions; specific occurrences of air traffic management and air navigation services (ATM/ANS); operational occurrences)
- d) occurrences related to aerodromes and ground services (occurrences related to aerodrome activities and facilities, the handling of passengers, baggage, mail and cargo, etc.).

The following natural persons must report occurrences:

- a) the pilot in command, or, in cases where the pilot in command is unable to report the occurrence, any other crew member next in the chain of command of an aircraft registered in a Member State or an aircraft registered outside the Union but used by an operator for which a Member State ensures oversight of operations or an operator established in the Union;
- b) a person engaged in designing, manufacturing, continuous airworthiness monitoring, maintaining or modifying an aircraft, or any equipment or part thereof, under the oversight of a Member State or of the Agency;
- c) a person who signs an airworthiness review certificate, or a release to service in respect of an aircraft or any equipment or part thereof, under the oversight of a Member State or of the Agency;
- d) a person who performs a function which requires him or her to be authorised by a Member State as a staff member of an air traffic service provider entrusted with responsibilities related to air navigation services or as a flight information service officer;
- e) a person who performs a function connected with the safety management of an airport to which Regulation (EC) No 1008/2008 of the European Parliament and of the Council [1] applies;
- f) a person who performs a function connected with the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation facilities for which a Member State ensures the oversight;
- g) a person who performs a function connected with the ground handling of aircraft, including fuelling, loadsheet preparation, loading, de-icing and towing at an airport covered by Regulation (EC) No 1008/2008.

The persons listed in paragraph 6 [Translator's note: i.e. subparagraphs a) to g), above] must report occurrences within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this.

Voluntary reporting

Voluntary reporting concerns details of occurrences that may not be captured by the mandatory reporting system and other safety-related information which is perceived by the reporter as an actual or potential hazard to aviation safety.

Initial observations

Initial observations mean any operations intended to gather evidence relating to the events on the site of the accident or serious incident.

Just culture

"Just culture" is a concept that was developed in the civil aviation sector. It means a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated (Regulation (EU) No 376/2014). Regulation (EU) No 996/2010 (Recital number 24) specifies that 'The civil aviation system should equally promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of "Just culture".'

This principle has been established in order to ensure the confidence of employees or contracted personnel in the occurrence reporting system of the organisation (Recital number 34 of Regulation (EU) No 376/2014). "Just culture" is an essential element of a broader safety culture.

This principle rests on the fear that a person might have of incriminating themselves, which in turn would

discourage them from talking. Therefore the Regulation provides that unpremeditated or inadvertent infringements of the law (Recital number 43, Article 16 of Regulation (EU) No 376/2014) that come to the attention of the civil aviation authorities solely through obligatory or voluntary occurrence reports should not be the subject of disciplinary, administrative or legal proceedings.

Recital number 22 of Regulation (EU) No 996/2010 draws the following conclusions: the information, which is confidential, is transmitted for analysis for the purpose of prevention. Confidentiality aims "to ensure the future availability of valuable sources of information".

Aviation safety investigation/judicial investigation

The sole objective of an aviation safety investigation is to discover the causes of an accident or incident - without attributing blame or liability - in order to prevent accidents and incidents in future.

They cover the process conducted by a safety investigation authority for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and/or contributing factors and, when appropriate, the making of safety recommendations;

Recital number 20 of Regulation (EU) No 996/2010 prioritises the safety investigation: 'As it is essential to ensure clear rights for safety investigations, Member States should, in compliance with the legislation in force on the powers of the authorities responsible for judicial investigations and, where appropriate, in close collaboration with those authorities, ensure that safety investigation authorities are allowed to carry out their tasks in the best possible conditions in the interest of aviation safety. The safety investigation authorities should therefore be granted immediate and unrestricted access to the site of the accident and all the elements necessary to satisfy the requirements of a safety investigation should be made available to them, without compromising the objectives of a judicial investigation.

(21) An efficient safety investigation is possible only if important pieces of evidence are duly preserved. '

L1621-3 of the Transport Code contains these same provisions: 'The sole objective of the technical investigation and the safety investigation provided for under Article L.1621-2 is to prevent future sea occurrences and land transport and civil aviation accidents or incidents.

Without prejudice to the legal investigation which may be opened, the technical investigation and the safety investigation involve the collection and analysis of relevant information, determining the circumstances and definite or possible causes of the occurrence, accident or incident and, where appropriate, making safety recommendations. '

Principles of the safety investigation:

It must be conducted by an independent authority and guarantee the confidentiality of information in order to improve aviation safety.

These investigations must be separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.

The rights of the safety investigator:

immediate access to the site, the right to take samples and request analyses (Art. 11 of Regulation (EU) No 996/2010)

The coordination of investigations (Art. 12 of Regulation (EU) No 996/2010):

European legislation provides for cooperation and coordination on the basis of advance arrangements covering at least access to the site of the accident, preservation of and access to evidence, initial and ongoing debriefings of the status of each process, exchange of information, appropriate use of safety information and resolution of conflicts. These arrangements are communicated to the Commission.

Crash recorder

Any type of recorder installed in the aircraft for the purpose of facilitating accident/incident safety investigations

Occurrences

An occurrence is defined in Article 2 of Regulation (EU) No 376/2014 as any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident.

Aviation accident

Incident:

means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation. As a reminder, a serious incident means an incident involving circumstances indicating that there was a high probability of an accident.

Serious incident:

means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft, which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down. A list of examples of serious incidents is set out in the Annex to Regulation (EU) No 996/2010.

The serious incident must be notified to the competent safety investigation authority of the State of Occurrence thereof.

Sensitive information Article 14 of Regulation (EU) 996/2010

List of sensitive information

1) The following records may not be made available or used for purposes other than safety investigation:

- all statements taken from persons by the safety investigation authority in the course of the safety investigation;
- records revealing the identity of persons who have given evidence in the context of the safety investigation;
- information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;
- material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;
- drafts of preliminary or final reports or interim statements;
- cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation,

particularly information with a bearing on personal privacy, must be appropriately protected, without prejudice to paragraph 3[Translator's note: i.e. Article 14(3)].

2) The following records may not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

- all communications between persons having been involved in the operation of the aircraft;
- written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;
- covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;
- occurrence reports filed under Directive (EC) 2003/42.
- Flight data recorder recordings may not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

Treatment of sensitive information

3) Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted insofar as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State may be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4) Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.

SRGTA

The research section of the Air Traffic Gendarmerie



Information and Communication department
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