

## ASSEMBLY — 35TH SESSION

### TECHNICAL COMMISSION

- Agenda Item 24: ICAO Global Aviation Safety Plan (GASP)**  
**24.1: Protection of sources and free flow of safety information**

### PROTECTION OF SAFETY DATA

(Presented by France)

#### SUMMARY

This paper comes back to the difficulties encountered in the protection of data related to air safety, whether or not they are collected within the framework of Annex 13. It recalls the fact that the various safety data collection systems form a consistent whole and that the protection of this information must be understood in a global manner, with the differences having to relate more to the nature of the data than to the collection system or the system that processes the data collected. Paragraph 3 stresses desirable developments to ensure better flow of information.

#### REFERENCES

A35-WP/52

### 1. NATURE OF THE SAFETY-RELATED DATA

1.1 The failures which are linked during an accident, often in a complex manner, can in general be identified in precursors, that is incidents prior to the accident where one finds part of the fault tree of the accident. The search for and study of these precursor events during an investigation often help in understanding the accident; it is therefore desirable for the data on these events to be available and usable, and therefore to have been recorded.

1.2 Similarly, it is established that suitable handling of incidents is likely to reduce the risk of seeing an accident occurring. This proactive approach also implies that the data on these events are available and usable.

1.3 A high level of safety assumes therefore the collection, processing and sharing of accurate, precise and complete data. Chapter 8 of Annex 13 recommends in this regard that States put in place mandatory and voluntary incident reporting systems.

1.4 These two reporting systems are complementary. In fact, the regulatory texts cannot describe in an exhaustive manner all of the events that have to be reported and there has to be a large share left to the perceptiveness of the professionals. The objective of the voluntary collection systems is thus to facilitate the collection of the events that are not recorded *a priori* as potentially bringing lessons. Those who have the information should therefore be encouraged to provide it to the collection agencies. When this is made possible by the national law, the guarantee of not incurring penalties can be a factor that encourages one to report an event and to accept that clarifications may be sought about the circumstances; in fact, particularly for operational failures, the players in an event do not always have an accurate and complete memory of the event.

1.5 Another incentive to protect the data collected and the sources thereof comes from the process itself of handling accidents and incidents which requires the collection of many records related to the players and the circumstances of the event, without being able to perceive their relevance *a priori*, since this will often only appear during the analytical work. These records, generally provided spontaneously, are rarely public; they may for example come under industrial property or private life and their untimely disclosure may have serious consequences, going beyond the negative impact on the investigation process itself, which Annex 13 warns about (Annex 13, paragraph 5.12).

1.6 Faced with the multiplicity and diversity of the events that occur in an activity as developed as civil aviation, the handling of the events cannot be the domain of the investigation agencies alone. Other entities have to be involved, for example the oversight authorities or the operators, sometimes under the control of the investigation agency and sometimes directly. In all cases, the process has to be the same: access to all the data available, recording and processing of these data and dissemination of the results to all of the players in the safety system. The safety-related data are therefore all the same in nature, whatever the agency in charge of their collection is, and the protection of the data should be addressed in a global manner because it is the same difficulties that are encountered.

1.7 The data relating to an event are diverse in nature: for the purpose of determining the most suitable protection measures, one can therefore distinguish the data prior to the event (records, for example), the factual data subsequent to the event (similar incidents, results of examinations) and the data related to the investigation itself (notes or opinions of the investigators or draft recommendations, for example). Finally, some of these data originate outside the State which is conducting the investigation and they are sent by another Contracting State for the sole purposes of safety.

## 2. **LIMITS TO THE PROTECTION OF SAFETY-RELATED DATA**

2.1 The provisions of Annex 13, as well as Resolutions A33-17 and A33-16, are aimed at establishing a balance between the protection of the data collected for the benefit of safety and the proper administration of justice. Not of all these data furthermore justify the same level of protection and Annex 13 distinguishes some of them in paragraph 5.12. In practice however, in many States the protection of data resulting from accident and incident investigations comes up against constraints specific to the judicial process (appropriation of the records likely to demonstrate the truth) or the laws on access to information and

the provisions of paragraph 5.12 are the subject of many notifications of differences. Any other safety data collection system will probably be faced with the same difficulties.

2.2 Paragraph 8.3 of Annex 13 states that a voluntary incident reporting system shall be non-punitive and afford protection of the information. The level of protection to be given is not clarified further.

2.3 The use, for other purposes, of the data collected for safety purposes takes on different forms, from the search for the truth within the framework of a judicial process, without necessarily this involving the information being made public, to the publication without precautions by certain media of information that is wrongly interpreted and taken out of context or to the drawing up of blacklists.

2.4 The data or data media collected by one State and sent to other Contracting States do not always enjoy in those States the same level of protection as in the State where they are collected. This situation is frequently encountered during accident investigations.

### 3. CONCEIVABLE IMPROVEMENTS

3.1 The protection given to safety data must not imply that the safety approach of international civil aviation is lacking in transparency. Such a deviation would give rise to concern on the part of all third parties, and particularly passengers. Furthermore, the victims of aircraft accidents are entitled to compensation for the damage suffered. However, it appears necessary to strengthen the protection provided by the current legal framework in order to combat the inappropriate use of these data. ICAO is the appropriate organization to take these steps in order to standardize the approach of States and to include it in the context of the lasting development of civil aviation. In this regard, the Accident Investigation and Prevention Divisional Meeting in 1999 had established that the Assembly should encourage States to amend their national legislation in order to prevent the untimely disclosure of records (Recommendation 1.2/3 of AIG/99).

3.2 AIG/99 had also recommended (Recommendation 1.2/5) that the protection of recordings (CVR) and their transcript be the subject of a Standard different from Standard 5.12 because of the particular difficulties encountered by States in protecting these data. This Recommendation had been modified by the Air Navigation Commission to be more stringent, at the proposal of an organization enjoying observer status. However, the draft modified in this way had weaknesses which led to its withdrawal. This should not however delay the consideration by the Council of the provisions that should be adopted to strengthen the protection of CVRs.

3.3 In order to facilitate trust among States and the transfer of data useful for investigations and for the improvement of safety, the data or data media, sent by one State to another State, should be the subject of particularly strict protection.

3.4 The protection of safety data must be understood in a global manner, without distinguishing the agency that ensures the effective processing of them. While the particular emphasis often given to accidents or incidents may prompt one to give particular protection to the results of the investigations, the effectiveness of the prevention systems for its part depends on the proper flow of all of the safety-related data.

#### 4. **CONCLUSIONS**

4.1 France supports the analysis and proposals in A35-WP/52 with a view to improving the protection of safety data coming from different sources. It recommends that the Resolution proposed to the Assembly be well understood as targeting all of the sources of safety data, including those that are the subject of particular provisions in the Annexes.

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