



WORKING PAPER

**SECOND HIGH-LEVEL SAFETY CONFERENCE 2015 (HLSC 2015)
PLANNING FOR GLOBAL AVIATION SAFETY IMPROVEMENT**

Montréal, 2 to 5 February 2015

Theme 2: Future approach to manage aviation safety

Topic 2.2: Safety information protection

BALANCING THE USE AND PROTECTION OF SAFETY INFORMATION

(Presented by the ICAO Secretariat)

SUMMARY

This working paper presents the progress made by ICAO in the development of new and enhanced provisions related to the protection of safety management information and certain accident and incident records, referred altogether as safety information and their related sources. It also reports on recommendations made by the Safety Information Protection Task Force (SIP TF) intended to assure implementation of the associated Annex provisions.

Action: The conference is invited to:

- a) note the work done by ICAO related to the protection of safety information;
- b) emphasize the importance of the development and roll-out of communication and training initiatives to support the implementation of new and enhanced provisions related to the protection of safety information and its related sources; and
- c) recommend that ICAO initiate work to assist Member States in the implementation of any new or enhanced provisions related to the protection of safety information and its related sources.

1. INTRODUCTION

1.1 The High-level Safety Conference (HLSC 2010) (Montréal, 29 March – 1 April 2010) recommended that ICAO establish a multidisciplinary group to progress activities regarding the protection of safety data and safety information, including certain accident and incident records as well as data supporting State Safety Programmes (SSP) and safety management systems (SMS) (Recommendation 2/4 refers).

1.2 The 37th Session of the Assembly (Montréal, 28 September – 8 October 2010) instructed the Council to consider enhancing, in view of the results of the work of the multidisciplinary group and taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture, the provisions on the protection of certain accident and incident records with the aim of

facilitating the implementation of relevant provisions in Annex 13 — *Aircraft Accident and Incident Investigation* as well as provisions on information gathered through safety management processes with a view to ensure and sustain the availability of information required for the management of safety.

1.3 The Air Navigation Commission, at the seventh meeting of its 185th Session held on 7 December 2010, agreed to establish a multidisciplinary Safety Information Protection Task Force (SIP TF) to provide recommendations for new and/or enhanced provisions and guidance materials intended to assure an appropriate level of protection for certain accident and incident records and information gathered through safety management processes.

1.4 In response, the SIP TF developed recommendations for amendments to Annex 19 — *Safety Management*, addressing various issues associated with the legal protection of information gathered through safety management processes (SIPTF/4, Recommendations 4/1 and 4/2 refer). These recommendations were developed in coordination with the Safety Management Panel (SMP), which continues its work to evolve safety management provisions.

1.5 The SIP TF proposals include amendments to Annex 6 — *Operation of Aircraft* and Annex 13 — *Aircraft Accident and Incident Investigation*. The recommendations for Annex 6 amendments apply the enhanced legal protections to information collected through flight data analysis and fatigue risk management systems (SIPTF/4, Recommendation 4/2 refers). The recommendations for Annex 13 amendments address the cooperation of the accident investigation authority with judicial authorities and suggest the elevation of Recommended Practice 8.3 in Annex 13 to a Standard (SIPTF/4, Recommendations 3/3 and 3/4 refer). With regard to the recommendations on provisions to Annex 13 related to the protection of flight recorder recordings used for the purposes of accident and incident investigations as well as the information generated through accident and incident investigations, the SIP TF further agreed that another appropriate study group, including selected SIP TF participants, under the ICAO Accident Investigation (AIG) Section, be informed of the work of the SIP TF and tasked to consider these recommendations (SIPTF/4, Recommendations 3/1, 3/2 and 4/3 refer). This work has been initiated.

1.6 The 38th Session of the Assembly (Montréal, 24 September – 4 October 2013) instructed the Council to take appropriate steps to ensure meaningful progress toward the development of new and/or amended provisions in Annex 13, Annex 19, other Annexes as appropriate, and related guidance material on the protection of certain accident and incident records and information gathered through safety management processes before the next ordinary session of the Assembly, taking into account the findings and recommendations of the SIP TF and further work informed by those findings and recommendations (Resolutions A38-3 and A38-4 refer).

2. DISCUSSION

2.1 Safety management information

2.1.1 The Air Navigation Commission, during the seventh and eighth meetings of its 196th Session held on 17 and 18 June 2014, respectively, reviewed amendment proposals based on the work of the SIP TF, and authorized the transmission of these proposals to Contracting States and appropriate international organizations for comments.

2.1.2 The proposed amendments enhance legal safeguards intended to assure the appropriate use and protection of information gathered through safety management processes, thereby ensuring its continued availability to support proactive strategies to maintain and improve aviation safety.

2.1.3 The aforementioned proposals aim to:

- a) strike a balance between the need for the protection of safety management information and the need for the proper administration of justice;
- b) establish parameters to ensure that safety management information is available to be used for its intended purposes;
- c) determine the levels of protection to be afforded to safety management information appropriate to specific circumstances; and
- d) provide necessary flexibility for Contracting States in determining the competent authority to make decisions regarding the disclosure of safety management information for use in judicial, administrative and disciplinary proceedings, as well as to the public.

2.1.4 The proposed amendments to Annex 19 are anticipated to be put forward for adoption by the Council in June 2015 and are envisaged for applicability on 10 November 2016 to allow States sufficient time to coordinate with all appropriate authorities.

2.2 **Certain accident and incident records**

2.2.1 In April 2014, the Group of Experts on Protection of Accident and Incident Records (GEPAIR) was established to finalize the recommendations of the SIP TF addressing paragraph 5.12 and Attachment E to Annex 13, and the use of data, voice and image recordings in Annex 6.

2.2.2 The GEPAIR consists of selected legal experts and aircraft accident and incident investigators, including former members of the SIP TF. The group held an initial meeting in Montréal, Canada, from 17 to 19 June 2014, a second meeting in Paris, France, from 23 to 25 September 2014, and a final meeting in November 2014 to conclude its work.

2.2.3 The work conducted by the SIP TF and GEPAIR is expected to enhance ICAO provisions and guidance material related to the protection of certain accident and incident records as well as flight recorder recordings, with the aim of facilitating their implementation. The findings and recommendations took into account the importance of mitigating impediments to accident and incident investigations, the sole objective of which is the prevention of accidents and incidents and not the apportionment of blame or liability. The recommendations also considered striking a balance between the need for the protection of records generated through such investigations in the context of an open reporting culture and the need for the proper administration of justice.

2.2.4 The recommendations of the GEPAIR will be presented to the Air Navigation Commission during its 198th Session, which will also take into account the results of the consultation process in ICAO State letter AN 8/1-14/47, entitled “Proposal for the amendment of Annexes 6, 13 and 19 relating to the protection of safety information”.

3. IMPLEMENTATION OF NEW OR ENHANCED PROVISIONS

3.1 In addition to the above-mentioned proposals, the SIP TF developed a number of recommendations to support the implementation of any new or enhanced provisions (SIPTF/4, Recommendations 2/1 refers). These recommendations include the establishment of communication and training initiatives to build trust and a common understanding among aviation safety practitioners, accident investigation authorities, regulators, law enforcement and judiciary officials. The SIP TF strongly believes that future interaction between aviation experts, regulatory, law enforcement, accident investigation and judiciary authorities will facilitate investigatory and judicial processes in a manner that facilitates accident and incident investigation objectives and that promotes proactive policies and practices for the maintenance and improvement of aviation safety.

3.2 The full recognition of the overriding importance of the training, interaction and communication deliverables will be essential for the implementation of the new provisions, enhanced safety information protection and the balance between the need for the protection of safety information and the need for the proper administration of justice. Consistent with the recommendation of the SIP TF, the conference is invited to emphasize the importance of the development and roll-out of communication and training initiatives to support the implementation of new and enhanced provisions related to the protection of safety information and their related sources.

4. CONCLUSIONS

4.1 New and enhanced provisions relating to the protection of safety information, in conjunction with the recommendations contained in Section 3 above, will provide much needed support of proactive safety management activities undertaken by States and service providers and will promote accident and incident investigation objectives. The proposed amendments and those that are under development will clarify critical aspects of the appropriate use of safety information to maintain and improve safety. The new and/or enhanced provisions will provide a means for States to balance the need for the protection of safety information and the need for the proper administration of justice, consistent with the Global Aviation Safety Plan. Additional information on the GASP update process can be found in HLSC/15-WP/6 under Topic 2.4 Evolution of the Global Aviation Safety Plan (GASP). These benefits will be instrumental to the future enhancement of aviation safety.