

COURTESY TRANSLATION
LAW 1/2011
OF 4 MARCH, WHICH LAYS OUT THE
SPANISH STATE SAFETY
PROGRAMME FOR CIVIL AVIATION
AND AMENDS LAW 21/2003 OF 7
JULY ON AVIATION SAFETY

F-DEA-CDO-10 3.0

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AGENCIA ESTATAL DE SEGURIDAD AÉREA

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A courtesy translation of the articles in Law 1/2011 of 4 March, which lay out the requirements related to the Spanish State Safety Program, can be found below.

I. GENERAL PROVISIONS

HEAD OF STATE

4116 *Law 1/2011 of 4 March, which lays out the Spanish State Safety Programme for Civil Aviation and amends Law 21/2003 of 7 July on Aviation Safety.*

JUAN CARLOS I

KING OF SPAIN

To all who see and hear this:

Know: That Parliament has adopted and I hereby approve the following law:

PREFACE

Aeronautical regulations are subject to a constant process of modernisation and updating in an effort to maintain the high standards of safety. In this regard, Law 21/2003 of 7 July on Aviation Safety enhanced the inspection, control and sanction abilities of supervisory authorities, while at the same time it delimited the obligations of the various parties involved in air navigation and allocated responsibilities among various public administrations.

One of the most important goals of the aforementioned modernisation of the aeronautical regulation involves the prevention of risks and the improvement of safety conditions. To achieve this goal, the Spanish State Safety Programme for Civil Aviation, hereinafter Programme, is created pursuant to the requirements laid out by the International Civil Aviation Organization and to European Union guidelines. This requires amending Law 21/2003 of 7 July on Aviation Safety.

This programme, which is part of a new preventive approach to monitoring safety, will allow for the establishment of a safety management system consisting of objectives, rules and activities intended to improve safety.

The Programme, which the Government shall approve to complement inspection activities, comprises a safety management system that, on the one hand, will define the State's policy and objectives for aviation safety, and on the other, will allow for the establishment of a system to acquire, gather, process, exchange and analyse all of the relevant information on safety, the adoption and follow-up of risk mitigation measures and the promotion of safety.

Integrating all of the safety information into the Programme will allow for better identification of the precursors to aviation accidents and incidents, anticipating any potential degradation of the safety barriers in place, and thus reinforce the levels of safety and prevent possible accidents and incidents. It will also allow for an analysis of the threats to safety detected in the everyday routine of the aviation sector and an examination of the efficiency of the corrective measures applied, making it possible to identify the level and types of risks in various operational settings and the effectiveness of the measures employed to maintain and improve safety levels, promoting the application of best practices.

As a complement to the safety objectives specified in the Programme, a provision is included to ensure the periodic oversight and evaluation of the level of compliance with the objectives to improve the level of safety committed to by the providers of aviation services and products within the framework of their respective safety management systems.

In the implementation of the Programme, those public and other public and private sector administrations that will be linked to the Programme, and the scope of their obligations, will be formally determined.

Public, civil and military administrations with responsibilities relating to or having an impact on the area of safety, and the competent bodies for the investigation of civil aviation accidents and incidents, shall, in any case, be bound by the Programme and shall act in a coordinated fashion. However, the Programme does not assign control or supervisory responsibilities in the area of safety, and thus it does not affect the responsibilities that current laws assign to the various public sector organisations, bodies and entities.

Lastly, and to ensure the maximum collaboration of all the parties involved, the protection of the information provided under the Programme is guaranteed and civil and military aviation professionals are protected, both against their employer and the public organisations, bodies and entities that comprise the Programme, from the adverse effects that may ensue from their cooperation with the programme when providing relevant safety information.

The Law on Aviation Safety thus maintains the initiatives of the International Civil Aviation Organization (ICAO) to continue enhancing safety. Various annexes to the Convention and ICAO guidelines have provided the basis for the Spanish State Safety Programme in the application of two basic principles: the management of safety risks and guaranteeing safety. They also make it possible for the State to interact more effectively with providers of products and services to resolve safety problems by acting in a coordinated fashion with the safety systems in place at said suppliers.

The incorporation into the Programme of military bodies responsible for civil aviation safety requires amending Article 2.2 of the Law on Aviation Safety, to except the chapter that regulates the exclusion from the scope of applicability of the law that said precept makes in relation to aircraft, facilities, systems and personnel assigned to national defence.

Furthermore, in order to continue forward and enhance aviation safety, two other organisational and substantive improvements are introduced to the Law on Aviation Safety.

First, deleted from the Law on Aviation Safety is the regulation of the technical investigation of accidents and incidents covered by 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, which is referred directly to said Regulation. However, the protection of the information protected in the EU regulation is reinforced, covering those aspects that must be completed by national regulations, and compliance is ensured with the obligations imposed in terms of the information that must be provided to the Civil Aviation Accident and Incident Investigation Commission regarding compliance with their recommendations, categorising a non-compliance as an infraction.

The protection of the information obtained during the application of the Spanish State Safety Programme is underscored, and the Civil Aviation Accident and Incident Investigation Commission is modified to enhance the independence of its members and to reinforce parliamentary control in the appointment of its president and in the tracking of its actions.

Sole article. *Amendment of Law 21/2002 of 7 July on Aviation Safety.*

Law 21/2003 of 7 July on Aviation Safety is amended as follows:

One. Article 2.2 is amended to read as follows:

“Military aircraft, airport and air navigation systems and the services, activities and facilities assigned to national defence, as well as their personnel, are excluded from the scope of applicability of this Law and shall be subject to their specific legislation. The above notwithstanding, the stipulations of Title II, Chapter I shall apply to military facilities and air navigation systems assigned to national defence that provide civil aviation services.”

Two. The name of Title II is re-written to read as follows:

“TITLE II

Safety management”

Three. Chapter I, titled “Spanish State Safety Programme for Civil Aviation”, is inserted into Title II, which shall consist of Articles 11 and 12, the text of which shall be as follows:

“CHAPTER I

Spanish State Safety Programme for Civil Aviation”

Article 11. *Spanish State Safety Programme for Civil Aviation.*

1. As a preventive measure, and in order to improve the levels of safety, a State Safety Programme for Civil Aviation shall be approved, pursuant to the requirements adopted by virtue of the Convention on International Civil Aviation and in keeping with European Union guidelines.

The Spanish State Safety Programme for Civil Aviation shall lay out the State’s aviation safety policy and objectives by managing risks, consolidating, promoting safety and establishing safety indicators to be evaluated.

In particular, the Programme shall allow for the gathering, exchange and analysis of information on safety and its comprehensive management.

Information on safety provided voluntarily and that entails no serious fraud or negligence shall not be usable as valid evidence in any type of administrative proceedings. It shall also not be disclosed to the public, except as stipulated in Article 19, so as to ensure the constant availability to be able to take adequate and suitable preventive measures.

2 The Cabinet of Ministers, on a joint proposal from the Ministers of Development and Defence, within the scope of its power, shall approve the Spanish State Safety Programme for Civil Aviation and agree to its review under the terms as determined by law and designate the superior body responsible for implementing it. It shall be the task of the Spanish Aviation Safety and Security Agency (AESA) to prepare the Programme, subject to approval by the competent bodies of the Ministry of Development.

When approving the Spanish State Safety Programme, a basic tenet shall be the protection of safety information so as to ensure said information is not used improperly.

Before it is approved, the Minister of Development shall appear before the relevant commission of the Parliament to report on the

general areas of the proposal that will be presented to the Cabinet of Ministers.

By law, the bodies, public organisations, entities and parties, both public and private, required by the Spanish State Safety Programme for Civil Aviation shall be laid out, along with the scope of their obligations, as well as the functions assigned to the superior body that is tasked with implementing it.

3. In any event, the Programme shall require, by law, those organisations, bodies and entities from the civil and public sector with responsibilities relating to or having an impact on the monitoring or overseeing the civil aviation safety or that have an impact in civil aviation to specify the mechanisms for coordinating between them.

Also integrated into the Programme, within the limits specified in Article 18.1, paragraph two, are those bodies empowered to conduct technical investigations of civil aviation accidents or incidents.

4. The obligations of the public or private providers of aviation services or products, bound by the Programme pursuant to the stipulations of Section 2, shall in any case include the supply of information that is required of them and the implementation, pursuant to applicable laws, of safety management systems within their organisations. If so provided by the EU regulation, said systems may be integrated with other quality, airport security, occupational health, individual safety or environmental protection systems.

Said systems must identify safety threats, apply preventive measures to maintain an acceptable level of safety or improve said level, and ensure at all times the confidentiality of any information that may lead to the disclosure of personal information on the personnel involved, under the terms provided by under the law, pursuant to ICAO regulations. As part of these systems, the providers of aviation services and products shall agree with the public sector organisations, bodies and entities referred to in the first paragraph of Section 3 on objectives for improving the level of safety, which shall be constantly enforced and periodically evaluated.

The Programme shall apply to civil aviation air navigation services providers, managers of public-use civil aerodromes, aeroplane and helicopter air transport operators, flight schools, approved aircraft maintenance organisations and aerial work operators, when the application of the Programme is relevant to the civil aviation safety.

The providers of aviation services and products bound by the Programme that, pursuant to applicable law, are not required to have safety management systems, shall implement equivalent mechanisms that help to achieve the Programme's objectives under the terms specified therein and in the regulation that implements this Title.

5. The Spanish Aviation Safety and Security Agency is the entity empowered to coordinate the implementation and execution of the Programme, as well as to enforce the safety objectives specified therein. This shall not alter the powers that applicable laws assign to national supervisory authorities and to the remaining organisations, bodies and entities referred to in Section 3, paragraph one.

The public-sector organisations, bodies and entities referred to in the first paragraph of Section 3, including the Spanish Aviation Safety and Security Agency, are responsible for defining, executing and managing the Programme within the scope of their respective powers.

In the first half of each year, the Spanish Aviation Safety and Security Agency shall present an annual report to the Secretary of State for Transport detailing the level of implementation and execution of the Spanish State Safety Programme for Civil Aviation

and the previous year's compliance with the objectives specified therein. The Ministry of Development shall forward this annual report to the relevant commissions of the Parliament and Senate.

Article 12. Protection of the Information in the Spanish State Safety Programme for Civil Aviation.

1. The public-sector organisations, bodies and entities referred to in Article 11.3, paragraph one, shall use the information furnished by the providers of aviation services and products under the Programme for the sole purpose of preventing, evaluating safety risks and improving the levels of safety. They shall also refrain from adopting any type of unfavourable measure resulting from said information or from incorporating it into initiatives already begun, unless the actions are expressly shown to have been undertaken intentionally or with gross negligence.

The contents of the above paragraph do not impede using the results of the analysis of the information provided under said Programme to steer the aviation inspection toward those areas that require the most prevention.

2. The civil and military employees of the providers of the aviation services and products covered under the Programme who report on accidents, events, safety deficiencies or threats that can have a real or potential effect

on safety shall not be subject to any recriminatory measures at their jobs from their public or private employer for merely reporting the information, except in those cases where an employee is shown to have acted in bad faith.

Any decisions made by an employer that harm or are detrimental to the labour rights of employees who act as indicated in the above paragraph shall be deemed null and void.

3. The contents of Section 1 shall apply to the preventive measures adopted by the providers of aviation services and products as part of their safety management systems or equivalent mechanisms implemented pursuant to the previous article."

Four. The following is added to Title II, Chapter II, under the title "Technical investigation of civil aviation accidents and incidents", which includes Articles 13 to 17:

"CHAPTER II

Technical investigation of civil aviation accidents and incidents"

Five. Article 14 is amended to read as follows:

"Article 14. *Composition and functions.*

1. The Board of the Civil Aviation Accident and Incident Investigation Commission shall consist of a president, a minimum of four and a maximum of nine members, appointed by the Ministry of Development from among individuals of renowned prestige and with certified professional qualifications in the area of civil aviation, taking into account their technical knowledge, professional experience and titles.

2. The Minister of Development, prior to appointing the members, shall provide the names and justification of the proposed president and members of the Civil Aviation Accident and Incident Investigation Commission to the relevant Parliamentary committee.

Within one month after receipt of the corresponding report, the relevant Parliamentary committee shall either express its acceptance of the person proposed for the position of president or justify its rejection. During this time, said Commission may agree to hear from the candidate proposed for president on the actions he/she intends to undertake during his/her mandate at the Civil Aviation Accident and Incident Investigation Commission.

After this period, in the absence of an express statement from the Congress, the candidate proposed shall be deemed to be accepted and the Ministry of Development shall appoint the candidate.

3. The Commission's president and members shall be renewed every six years. All Commission members shall act independently in the exercise of their duties.

4. Commission members shall leave their posts if their resignation is accepted by the Minister of Development, at the conclusion of their term or as agreed with the Minister of Development following their permanent inability to exercise their duties, a final sanction for serious or very serious infractions involving aviation safety, gross dereliction of their duties or conviction of a criminal offence.

If removed from office, the Ministry of Development shall inform the relevant Parliamentary Committee of the causes for said removal.

5. In the first half of the year, the Commission shall draft a report on the activities and recommendations made in the previous calendar year, as well as on the information received involving the status of implementing the recommendations made in previous years. This report shall be submitted annually to the Ministry of Development, which shall forward it to the relevant commissions in the Parliament and Senate."

Six. Article 15 is amended to read as follows:

"Article 15. Legal basis for the technical investigation of civil aviation accidents and incidents and for the operation of the Civil Aviation Accident and Incident Investigation Commission.

The system for the technical investigation of civil aviation accidents and incidents shall be governed by 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 its application and implementing rules.

The precise rules for the technical investigation of civil aviation accidents and incidents and for the operation of the Civil Aviation Accident and Incident Investigation Commission shall be implemented by law.

Seven. Article 16 is amended to read as follows:

"Article 16. Publishing of reports and recommendations and follow-up recommendations.

The reports and recommendations of the Civil Aviation Accident and Incident Investigation Commission shall be published and followed-up as required by Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010.

When the addressees of the recommendations are Spanish authorities, they shall also evaluate the Commission's recommendations and, if required, adopt proportional and appropriate measures to prevent the potential reoccurrence of accidents and incidents."

Eight. Article 17 is amended to read as follows:

“Article 17. Cost of the search, recovery, preservation and disposal of the wreckage.

1. The costs associated with the search, recovery and preservation of the accident wreckage may be passed on to the operators, owners and manufacturers of the aircraft involved in the accident if the Civil Aviation Accident and Incident Investigation Commission, in consultation with the investigation authorities of the States involved, deems that these activities are justified by the needs of the investigation.

In exceptional circumstances, the Civil Aviation Accident and Incident Investigation Commission may pay for said costs in full or in part when extraordinary costs are incurred as a result of activities undertaken to locate, recover or preserve the wreckage.

When the preservation of the wreckage is no longer required for the technical investigation of the accident, and the wreckage is not under the custody of the court, the Civil Aviation Accident and Incident Investigation Commission shall release it to the owners or operators, who shall take delivery of said wreckage within one month following the day it is made available to them. Failing this, the Civil Aviation Accident and Incident Investigation Commission shall decide how to dispose of said property, the cost of which shall be payable by the owners.

2 Pursuant to the stipulations of this Article, the Civil Aviation Accident and Incident Investigation Commission is not bound to comply with the contents of

Articles 138 and 139 of Law 48/1960 of 21 July on Air Navigation.

3. The payment of the expenses stipulated in this article may be demanded by the administrative enforcement procedure.”

Nine. A new Chapter III, consisting of Articles 18 and 19, the text of which is given below, is added to Title II.

“CHAPTER III

Protection of Information

Article 18. *Confidential nature of information.*

1. The data, records, recordings, statements, communications, indicators and reports provided as part of the Spanish State Safety Programme for Civil Aviation by the providers of aviation services and products to the public-sector organisations, bodies and entities referred to in Article 11.3, paragraph one, are confidential and may only be used for the purposes specified therein.

The obligation to keep the information gathered as part of the technical investigation of civil aviation accidents or incidents confidential shall be governed pursuant to Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010.

In any event, the information referred to in the above paragraphs is gathered for the sole purpose of enhancing safety and preventing future accidents and incidents, and not to apportion blame or responsibility.

2. This confidentiality requirement shall apply to:

a) All of the public-sector organisations, bodies and entities referred to in Article 11.3, paragraph one, and to those who provide

their services in them.

b) The members of the Civil Aviation Accident and Incident Investigation Commission, the investigative personnel that assist it and the remaining personnel under its service, as well as to all those who provided information as part of the investigation.

c) Anyone who has access to said information in the performance of their duties for the purpose of cooperating with the Spanish State Safety Programme for Civil Aviation or in an accident investigation, or by chance.

3. Failure to observe the confidentiality requirement specified herein shall result in criminal and other liabilities, pursuant to applicable laws.

4. Those required to maintain confidentiality shall not make statements or publish, communicate or display confidential data or documents, not even after ceasing their activities, without the express consent of the relevant department within the Spanish Aviation Safety and Security Agency or of the Civil Aviation Accident and Incident Investigation Commission, which may only be granted under the circumstances stipulated in the article below or in the applicable EU regulation. If said permission were not granted, the affected person shall keep the information confidential and shall be exempted from any liability that may result from denying information in the proceedings specified in said precept.

5. The public and private sector parties thus required by the Spanish State Safety Programme for Civil Aviation shall establish protocols that allow preserving the confidential nature of the information.

Article 19. *Assignment or communication of the information.*

1. The information referred to in article 18.1 could only be communicated or assigned to third parties in the following cases:

a) When it is required by judicial bodies or by the Attorney General's Office/Public Prosecutor Service for the investigation and prosecution of criminal offences.

The Civil Aviation Accident and Incident Investigation Commission will send the necessary information, but only to provide the background information in its possession related to contributory factors in an accident or incident. The identification of these factors does not mean the burden of providing fault or the determination of liability, either civil or penal.

b) When it is required by the Investigation Parliamentary Commissions referred to in article 76 of the Constitution. Members of the Investigation Parliamentary Commission are enforced to uphold reservation in respect of the information received.

The Director of the Spanish Aviation Safety and Security Agency shall request in a reason manner the working sessions of those Parliamentary Commissions to be declared as secret.

c) When the Spanish Aviation Safety and Security Agency acts on the obligation to cooperate established in international, European or national regulation, under mutual confidentiality commitment.

d) If according to organisations, bodies and entities from the civil and public sector referred to in article 11.3, first paragraph, the communication of certain data between each other or to the aviation authority and to people and aviation organizations affected is considered necessary to prevent accidents and

incidents.

2. The information referred to in article 18.1, second paragraph, could only be communicated or assigned to third parties in the cases specified in the applicable EU regulation.

The Civil Aviation Accident and Incident Investigation Commission and the remaining authorities or institutions that may be involved in the activities related to the investigation must subscribe previous agreements pursuant to article 12.3 of Regulation (EU) No 996/2010 of the European parliament and of the council of 20 October 2010 that shall cover the exchange of information and the appropriate use of safety information, among other subjects.

3. In the case specified in section 1.a) those that are enforced to provide the information could request judicial bodies or the Attorney General's Office/Public Prosecutor Service keeping the confidential nature of the information and taking relevant actions to ensure the confidentiality during the conduct of the proceeding.

The judicial body could take such other or further actions to protect information and could forbid its publication or communication».