



**Cuestión 4
del Orden del Día**

Proyectos del RASG-PA

4.1 Legislación modelo para la protección de la información de la seguridad operacional y actividades de seguimiento

ESTADO DEL PROYECTO Y SIGUIENTES PASOS DEL RASG-PA GSI/3

(Presentada por la Secretaría)

RESUMEN	
<p>Esta nota de estudio presenta la versión final del documento “Propuesta de Enmienda a la Legislación Aeronáutica con el objeto de Proteger las Fuentes de Información de Seguridad Operacional”. Este documento es una guía que proporciona un marco de referencia legislativo para que los Estados enmienden su legislación aeronáutica con el fin de proteger las fuentes de información de seguridad operacional. Este fue uno de los proyectos iniciales del RASG-PA propuesto después del establecimiento del RASG-PA en 2008.</p>	
Referencias:	
<ul style="list-style-type: none">• Plan Global OACI para la Seguridad Operacional de la Aviación (GSI-3) Notificación Eficiente de Errores e Incidentes• Hoja de Ruta para la Seguridad Operacional a nivel mundial ISSG (Enfoque Área 3) Impedimentos para notificar Errores e Incidentes• Borrador del Documento RASG-PA GSI-3: Propuesta de Enmienda a la Legislación Aeronáutica con el objeto de proteger las fuentes de seguridad operacional• Anexo 3, Apéndice E	
Objetivos Estratégicos	<i>Esta nota de estudio se relaciona con el Objetivo estratégico A – Seguridad operacional.</i>

1. Introducción

1.1 El propósito de este proyecto es proporcionar una legislación modelo para los Estados con el objeto de apoyarlos con sus responsabilidades de seguridad operacional y promover un sistema de notificación voluntaria de información de seguridad operacional mientras se protege la información recabada con el propósito de mejorar la seguridad operacional.

1.2 En junio de 2009, los expertos legales proporcionados por COCESNA/ACSA, Jamaica e IFALPA, empezaron el borrador de un documento titulado, “*Propuesta de Enmienda a la Legislación Aeronáutica con el objeto de Proteger las Fuentes de Información de Seguridad Operacional*”, como parte del proyecto RASG-PA GSI/3.

1.3 Después de varios borradores del documento y la revisión por parte del Comité Ejecutivo Directivo (ESC) del RASG-PA, la OACI y las partes interesadas de la industria, el borrador del documento se presentó al RASG-PA ESC para su revisión final en junio de 2012.

1.4 El **Apéndice** refleja la versión del borrador final (disponible en este momento solamente en inglés) y se presenta a la Reunión RASG-PA/5 para su aprobación.

2. Sigüientes pasos

2.1 A la aprobación del documento del GSI/3 por parte de la Reunión RASG-PA/5, se desarrollará un seminario/taller RASG-PA para presentar la iniciativa del proyecto y proporcionar el documento final. Están previstos dos seminarios/talleres para apoyar la implementación en los Estados de esta iniciativa.

3. Acción sugerida

3.1 Se solicita a los miembros de la Quinta Reunión del RASG-PA a:

- a) tomar nota y aprobar la versión final de la “*Propuesta de Enmienda a la Legislación Aeronáutica con el objeto de Proteger las Fuentes de Información de Seguridad Operacional*”;
- b) aprobar el programa de trabajo del RASG-PA 2013, el cual incluye dos Seminarios/Talleres sobre el GSI/3 en la Región CAR/SAM; y
- c) apoyar la actividad como voluntario para organizar un Seminario/Taller GSI/3 para proporcionar la participación de la mayor audiencia posible y la difusión de los resultados del proyecto.

APÉNDICE (disponible únicamente en inglés)
MODEL PROPOSAL

**PROTECTION AND USE OF SOURCES OF INFORMATION FROM SAFETY DATA
COLLECTION AND PROCESING**

Article 1: NATURE

This law is of public interest and considered essential for the air transport service. States should ensure life, physical integrity, and legacy protection both in the contractual and non-contractual environment.

Article 2: OBJECTIVE

The objective of this law is to protect the use of safety information from safety data collection and processing systems (SDCPS) that have been developed with the aim of improving safety.

Article 3: SCOPE

This law is limited in its application to the safety information collected in SDCPS, with the exception that its provisions do not apply to use of information collected or generated during the course of aircraft accident and incident investigations that are governed in accordance with Annex 13 to the Convention on International Civil Aviation or by a State's official aircraft investigation agency.

Article 4: APPROPRIATE USE OF SAFETY INFORMATION

This law protects against the inappropriate use of safety information from SDCPS. Subject to the exceptions stated herein, this information should be solely used for safety improvement purposes and not for disciplinary, civil, administrative, or criminal proceedings against any personnel nor disclosure of the information to the public.

Article 5: PRINCIPLES

For the application of this law, the following principles shall be taken into consideration:

- a) **Principle of protection.** It considers essential the protection of life, physical integrity, safety of individuals and corporations, and legacy within the context of the aeronautical activity. In addition, as part of this law, it is also important to protect data collection and processing as well as safety information aimed at ensuring the highest safety margins in air operations and related activities.
- b) **Principle of confidentiality.** All data collection and processing of safety information, its flow, and the administrative activity related to these actions as established in paragraph a), should be reserved solely for safety improvement set out herein.

Article 6: SAFETY MANAGEMENT SYSTEM

A Safety Management System (SMS) is a documented risk management process that is part of a SDCPs and integrates technical operations and systems with the management of financial and human resources in order to minimise risks and make continuous aviation safety improvements to protect public interest.

Article 7: STATE OBLIGATIONS

With regard to the management systems defined in the previous article, the competent authority of the State has the obligation to:

- a) manage and maintain an effective safety oversight system.
- b) create, manage, and maintain an effective State Safety Programme (SSP) to ensure an acceptable level of safety.
- c) require that every operator, aeronautical service provider, or aeronautical equipment manufacturer implements an effective safety management system (SMS) accepted by the State.
- d) include the financial resources necessary for the implementation of the State Safety Programme in the State's national budget.

Article 8: STATE RESPONSIBILITIES

The Director of the Civil Aviation Authority or his/her counterpart is the administration official responsible for coordinating the activities of the various organisations that participate in the State Safety Programme and the functions assigned herein:

- a) to establish and promote facilities and services for the collection, publication, and dissemination of safety information, and reach agreements with individuals or government entities for the collection, publication and dissemination of such information.
- b) to conduct inspections, audits, and assessments of the aeronautical activities of operators, aeronautical service providers, and aeronautical equipment manufacturers that require a Safety Management System.
- c) to require operators, aeronautical service providers, and aeronautical equipment manufacturers that need a Safety Management System, to improve, amend, or take corrective measures in their system, when deficiencies or gaps representing a risk that might compromise the safety of aeronautical activities, are identified.

Article 9: EXCEPTIONS TO THE PRINCIPLE OF CONFIDENTIALITY

The aeronautical authority should ensure that an operator, aeronautical service provider, or aeronautical equipment manufacturer that has a Safety Management System is protected by the Principle of Confidentiality. The aeronautical authority may only use safety information to prevent future accidents or incidents, except in the following circumstances:

- a) by express requirement of a court of justice with jurisdiction and that has determined that the aeronautical authority has information that might be necessary for a criminal investigation; or
- b) that a competent authority considers that the circumstances reasonably indicate that the event may have been caused by conduct with the intent to cause damage, or with the knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or a wilful misconduct; or
- c) there is evidence that the event has been caused by an act which, in accordance with the law, is considered with the intent to cause damage, or with knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or wilful misconduct; or

- d) a review by an appropriate authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

Information that is disclosed or made available should not include the names of individuals. However, a jurisdictionally competent court of justice or other legal authority may, after considering the negative impact of the release of the names of individuals on the future availability of safety information, order that the disclosure of the names of individuals is necessary for the proper administration of justice.

Article 10: SAFEGUARD MEASURES

The operator, aeronautical service provider, or aeronautical equipment manufacturer that must maintain a Safety Management System cannot use the information disclosed by its employees for safety purposes as a basis for taking disciplinary action against them, except for the conditions defined as unacceptable within its own Safety Management System

Article 11: SAFEGUARD MEASURES RELEVANT TO INFORMATION ABOUT THIRD PARTIES

The operator, aeronautical service provider, or aeronautical equipment manufacturer required to maintain a Safety Management System must not take action that could adversely affect the working conditions of its employees in retaliation for information disclosed by the latter about supposed actions or omissions by another person, provided it was disclosed in good faith and for safety purposes.

Article 12: EXCEPTIONS TO PROTECTION OF DATA COLLECTION AND PROCESSING

Data collection, processing, analysis and use of the process of safety information provided by a Safety Management System which is maintained by an operator, aeronautical service provider or aeronautical equipment manufacturer, whether obliged to maintain such a system or not, are protected by the Principle of Confidentiality and such information cannot be disclosed or be made available except in the following cases:

- a) by express requirement of a court of justice with jurisdiction and that has determined that the aeronautical authority has information that might be necessary for a criminal investigation; or
- b) that a competent authority considers that the circumstances reasonably indicate that the event may have been with the intention to cause harm, or with the knowledge of the possibility that this event could occur and is equivalent to a reckless behaviour, gross negligence or a malicious act; or
- c) there is evidence that the event has been caused by an act which, in accordance with the law, is considered with the intention to cause harm, or with knowledge of the possibility that it could occur and is equivalent to reckless behaviour, gross negligence or malicious act; or
- d) A review by an appropriate authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on future availability of safety information.

Information that is disclosed or made available should not include the names of individuals. However, a jurisdictionally competent court of justice or other legal authority may, after considering the negative impact of the release of the names of individuals on the future availability of safety information, order that the disclosure of the names of individuals is necessary for the proper administration of justice.

Article 13: FLIGHT DATA RECORDINGS

Subject to the exceptions in Article 12, which apply equally here, the safety information gathered from flight data recordings must not be used to take disciplinary action or initiate legal proceedings against the air operator, its crew, its employees, any person related to the operator, or a third party as a result of actions that generate safety-related information.

Article 14: SAFEGUARDS FOR EMPLOYEES

Air operators must not use the safety information gathered from flight data recordings in any disciplinary action against their employees.

Article 15: AGREEMENTS WITH THE OPERATOR, AERONAUTICAL SERVICE PROVIDER OR AERONAUTICAL EQUIPMENT MANUFACTURER

In order to promote safety, the competent aeronautical authority is empowered to enter into agreements with the air operator, aeronautical service provider or aeronautical equipment manufacturer with respect to the collection, analysis, use, and dissemination of safety information. The safeguard measures described in articles 10, 11, 13, 14 and 16 of this law are an essential part of these agreements.

Article 16: PROTECTION OF INFORMATION CONTAINED IN THE AGREEMENTS

Safety information resulting from the agreements mentioned in Article 15 of this law and provided to the competent aeronautical authority must not be used to take action or initiate legal proceedings against the air operator, its crew, its employees, or a third party due to the fact that such information is relevant for safeguarding safety and protected by the Principle of Confidentiality.

Article 17: EXCEPTIONS TO THE CONFIDENTIALITY OF AGREEMENTS

Information provided to the competent aeronautical authority and resulting from the agreements mentioned in Article 15 of this law is regulated by the Principle of Confidentiality and cannot be disclosed nor made available except:

- a) by express requirement of a court of justice with jurisdiction and that has determined that the aeronautical authority has information that might be necessary for a criminal investigation; or
- b) that a competent authority considers that the circumstances reasonably indicate that the event may have been with the intention to cause harm, or with the knowledge of the possibility that this event could occur and is equivalent to a reckless behaviour, gross negligence or a malicious act; or
- c) there is evidence that the event has been caused by an act which, in accordance with the law, is considered with the intention to cause harm, or with knowledge of the possibility that it could occur and is equivalent to reckless behaviour, gross negligence or malicious act; or

- d) A review by an appropriate authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on future availability of safety information.

Information that is disclosed or made available should not include the names of individuals. However, a jurisdictionally competent court of justice or other legal authority may, after considering the negative impact of the release of the names of individuals on the future availability of safety information, order that the disclosure of the names of individuals is necessary for the proper administration of justice.

Article 18: VOLUNTARY REPORTING

The competent aeronautical authority, as part of the State Safety Programme, must regulate a voluntary reporting mechanism through which a person, in accordance with the corresponding regulations, can report safety-related events, including violations, legal provisions, or any other legal instrument, which will be protected by the Principle of Confidentiality.

Article 19: MANAGEMENT OF VOLUNTARY REPORTING

The competent aeronautical authority must designate a person or body to manage the voluntary reporting mechanism in accordance with the corresponding regulations.

Article 20: CONFIDENTIALITY OF VOLUNTARY REPORTING

According to the State Safety Programme, in the case of voluntary reporting of a violation, no administrative or court proceeding can be opened against the informant by an authority competent in this matter. Any voluntary reporting will be regulated by the Principle of Confidentiality.

Article 21: EXCEPTIONS TO THE CONFIDENTIALITY OF VOLUNTARY REPORTING

Information provided pursuant to a voluntary reporting program, such as described in Article 18, is protected by the Principle of Confidentiality and such information cannot be disclosed or be made available except in the following cases:

- a) by express requirement of a court of justice with jurisdiction and that has determined that the aeronautical authority has information that might be necessary for a criminal investigation; or
- b) that a competent authority considers that the circumstances reasonably indicate that the event may have been with the intention to cause harm, or with the knowledge of the possibility that this event could occur and is equivalent to a reckless behaviour, gross negligence or a malicious act; or
- c) there is evidence that the event has been caused by an act which, in accordance with the law, is considered with the intention to cause harm, or with knowledge of the possibility that it could occur and is equivalent to reckless behaviour, gross negligence or malicious act; or
- e) a review by an appropriate authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on future availability of safety information.

Information that is disclosed or made available should not include the names of individuals. However, a jurisdictionally competent court of justice or other legal authority may, after considering the negative impact of the release of the names of individuals on the future availability of safety information, order that the disclosure of the names of individuals is necessary for the proper administration of justice.

Article 22: USE OF SAFETY INFORMATION

Based on the Principle of Confidentiality, the competent aeronautical authority is empowered to use the safety information or any information obtained voluntarily under the State Safety Programme it deems appropriate or necessary to safeguard safety.

Article 23: DISCLOSURE OF SAFETY INFORMATION AMONG STATES

Safety information obtained voluntarily under the State Safety Programme can be disseminated among States with the purpose of improving safety, but without identifying operators, aeronautical service providers, aeronautical equipment manufacturers, or individuals related to the aeronautical activity and should be regulated by the Principle of Confidentiality.

Article 24: PROTECTION OF THE INFORMANT

Nobody can be required, in connection to a legal or disciplinary process, to provide evidence concerning voluntary safety information they submitted under the State Safety Programme, or in the case of oral or written statement containing voluntary information, that must be regulated by the Principle of Confidentiality.

Article 25: PROTECTION OF THE EMPLOYEE

Voluntary information provided by an employee as part of the State Safety Programme cannot be used for retaliation purposes, including measures that adversely affect the job or working conditions.

Article 26: VOLUNTARY REPORTING MECHANISM

The competent aeronautical authority must define the way in which the voluntary reporting mechanism established in the State Safety Programme will be established and managed.