



Agenda Item 4: RASG-PA Projects
4.1 Model Legislation for the Protection of Safety Information and Follow-up Activities Report

RASG-PA GSI/3 PROJECT STATUS AND NEXT STEPS

(Presented by the Secretariat)

| SUMMARY | |
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| <p>This working paper presents the final version of the document “Proposal of Amendment to Aeronautical Legislation in Order to Protect Safety Information Sources.” This document is a guide that provides a legislative framework for States to amend aeronautical legislation in order to protect safety information sources. It was one of the initial RASG-PA projects proposed after the establishment of RASG-PA in 2008.</p> | |
| References: | |
| <ul style="list-style-type: none"> • ICAO Global Aviation Safety Plan (GSI-3) Efficient Reporting of Errors and Incidents • ISSG Global Aviation Safety Roadmap (Focus Area 3) Impediments to Reporting of Errors and Incidents • Draft RASG-PA GSI-3 Document: Proposal for Amendment to the Aeronautical Legislation in order to protect safety information sources • Annex 13, Appendix E | |
| Strategic Objective | <p><i>This working paper is related to Strategic Objective A: Safety</i></p> |

1. Introduction

1.1 The purpose of this project is to provide a model law to States in order to support their safety responsibilities and promote a voluntary safety information reporting system while protecting the data collected for the purpose of improving aviation safety.

1.2 In June of 2009, legal experts provided by COCESNA/ACSA, Jamaica and IFALPA began to draft a document titled, “*Proposal of Amendment to Aeronautical Legislation in Order to Protect Safety Information Sources*” as part of the RASG-PA GSI/3 Project.

1.3 After several draft documents and review by the RASG-PA Executive Steering Committee (ESC), ICAO and industry stakeholders, the draft document was submitted to the RASG-PA ESC for final review in June 2012.

1.4 The **Appendix** reflects the final draft version (available at this time in English only) submitted to the RASG-PA/5 Meeting for approval.

2. Next Steps

2.1 On approval of the GSI/3 document from the RASG-PA/5 Meeting, a RASG-PA seminar/workshop will be developed to present the project initiative and provide the final document. Two seminars/workshops are envisioned to support States with the implementation of this initiative.

3. Suggested Action

3.1 The Fifth RASG-PA Meeting members are requested to:

- a) take note and approve the final version of the “*Proposal of Amendment to Aeronautical Legislation in Order to Protect Safety Information Sources*”;
- b) approve the RASG-PA 2013 work programme, which includes two scheduled GSI/3 Seminar/Workshops in the CAR/SAM Regions; and
- c) support the activity by volunteering to host a GSI/3 Seminar/Workshop to provide the widest audience attendance and dissemination of project results.

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APPENDIX 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.