



*International Civil Aviation Organization*

**Third Meeting of the Asia Pacific Accident Investigation Group  
(APAC-AIG/3)**

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**Agenda Item 3: Update on ICAO initiatives**

**PROTECTION OF SAFETY INFORMATION IN EUROPE**

(Presented by France)

**SUMMARY**

Improving aviation safety depends on an uninterrupted and systematic flow of relevant safety information, including data, relying on an environment which facilitates and supports its reporting and sharing. Such environment shall include an appropriate use and protection of safety information. To be effective, safety information protection shall take into account the purpose for which the information has been gathered. It shall be defined and implemented inside a given context and might differ depending their collection context. It is therefore necessary to differentiate between information protection in the context of an accident or incident investigation and in the context of safety management activities. Efforts shall be made to develop a common understanding of protection principles and ensure their effective and harmonised implementation.

This paper highlights the importance of protection of safety information.

**1. INTRODUCTION AND PRINCIPLES**

1.1 Improving aviation safety depends on an uninterrupted and systematic flow of relevant safety information, including data and analysed data, in particular for and from accident and incident investigation activities, safety data collection, analysis and sharing systems. The enhancement of aviation safety therefore requires the creation of an environment in which the reporting, collection and sharing of such safety information is facilitated and supported. Such environment shall notably include an appropriate use and protection of safety information in order to enhance the confidence of those who are reporting or exchanging safety information and encourage them to continue reporting or exchanging information.

1.2 Safety information protection is not a new concept; it is a catch-all concept with many diverse interpretations. The failure to agree, over the last years, on a shared and precise understanding of safety information protection has led to its very diverse implementation across States and generated discrepancies in the manner safety information is protected around the world. Such divergence can notably limit the exchange of information between States and create confusion for sources regarding the protection offered to them. There is consequently a need to develop a common understanding of the protection and exception principles applicable to safety information and to make efforts in view of ensuring that these principles are effectively applied and in a harmonised manner. Europe has developed regulations to better protect sensitive safety information. Work, under the coordination of ICAO, has been developed then over the past couple of years in view of achieving this objective

worldwide. The ICAO Safety Information Protection Task Force (SIP TF), the Safety Management Panel (SMP) and the Group of Experts on Protection of Accident and Incident Records (GEPAIR) have contributed to the discussion in a very valuable and constructive manner.

1.3 The objective of protecting safety information is to ensure confidence from those who are reporting or exchanging safety information into reporting systems or exchange mechanisms. It has thus been recognised by some States, in particular European States, that, in a given context, a similar level of protection shall be given to information mandatorily reported and information voluntarily submitted .

1.4 Safety information protection is not an objective in itself; it is a tool which serves multiple objectives. Therefore, in order to be effective, safety information protection cannot be defined and implemented outside a given context. In that perspective, it is necessary to differentiate between safety information protection in the context of an accident or incident investigation and safety information protection in the context of safety management activities at both national and service provider level.

## **2. PROTECTION OF SAFETY INFORMATION IN THE CONTEXT OF ACCIDENT OR INCIDENT INVESTIGATION**

2.1 An accident usually implicates considerable damage such as serious deterioration of the aircraft, injuries and/or fatalities. This often leads to the involvement of judicial authorities which are investigating responsibility, to the opposite of accident investigation authorities whose aim is solely the prevention of accidents and not to apportion blame or liability. In this context, judicial authorities often request access to safety information such as cockpit voice recorders or information collected or generated by the accident investigation authority. Accidents also generate a lot of attention from the media which equally seeks access to that information in order to feed general public interest.

2.2 However, the disclosure or use of such records in legal proceedings or their public disclosure can have adverse consequences for persons or organisations involved in accidents and incidents leading to their reluctance or the reluctance of others to cooperate with accident investigation authorities in the future. It is therefore necessary to protect that type of safety information from disclosure or use which might have adverse impact on aviation safety. The Article 14 of the EU Regulation No 996/2010 of 20 October 2010 is detailing the protection of sensitive information in Europe.

2.3 ICAO Annex 13 Standard 5.12 recognises this situation and requires States to limit the disclosure of certain records by conditioning it to a balance test between the need for disclosure and the likely adverse domestic and international impact such action will have on that or any future investigations. GEPAIR, following on the work of the SIP TF, has provided recommendations in view of better framing this requirement to make it more effective. Furthermore GEPAIR has developed principles to support the implementation of this provision and complement it, as well as to guide judicial authorities or the competent authority to decide on the disclosure when they are administering the balancing test. If endorsed by ICAO contracting States, these recommendations should contribute to better harmonise and more efficiently protect safety information in States in the context of an accident or incident investigation.

2.4 Considerable progress towards safety information protection can also be made in training, support, education and communication to balance the adequate protection of safety information with the proper administration of justice. These might include the establishment of communication and training initiatives for States and stakeholders and the furtherance of advance

arrangements between the aviation safety sector and the judiciary to avoid unnecessary interference and to build mutual trust and understanding. A number of States and groups of States in different ICAO regions are already organising training and communication between safety and judicial authorities addressing implementation tools and deliverables that would lead to a stable and successful basis for enhanced safety information protection and a balanced interaction between safety and the administration of justice. Training, support, cooperation, communication, and advanced arrangements complement and support existing rules, forming together conditions for an efficient and balanced safety information protection.

### **3. PROTECTION OF SAFETY INFORMATION IN THE CONTEXT OF SAFETY MANAGEMENT ACTIVITIES**

3.1 Safety management and the proactive approach to aviation safety rely on a continuous availability of safety information in order for safety hazards to be identified and risks to be determined and mitigated. This risk assessment is conducted on the basis of information coming from a variety of sources notably including occurrences reported by aviation professionals and exchange of information between partners such as regulated stakeholders and aviation public authorities.

3.2 The continuous availability of such safety information relies on the completion of two conditions: a) the sources of information shall have sufficient confidence in the protection offered by the different systems available to report safety occurrences, including those involving their own mistakes; b) the exchange of safety information shall be accompanied by relevant and adequate limitations regarding the use of this information.

3.3 Confidence of sources of information into the system shall be guaranteed by realistic legal provisions on information protection as well as by the adequate implementation of Just Culture principles. Just Culture means a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated. In this context, the Article 16 of the EU Regulation No 376/2014 of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation is detailing the protection of the information source in Europe

3.4 In the context of reporting systems handled by service providers, confidence of information source shall therefore be guaranteed by the protection of employees reporting occurrences from blame or punishment from their employer on the basis of the information they have supplied unless they have committed gross negligence, wilful violations or destructive acts. This protection shall also cover personnel which, notably in the context of new aviation business models, are working for a service provider while not being employed under permanent contract. This principle of protecting information source shall be recognised at international level in view of requiring States to implement it as appropriate in their national law.

3.5 In the context of legal proceedings, ensuring confidence of the source might be achieved by conditioning the use of safety information to an effective and realistic balance between safety interests and other interests such as administration of justice. Both SMP and SIP TF have made recommendations aiming to introduce such requirement in Annex 19. This principle might be completed by the determination of the line between an “honest mistake” and intentional or reckless behaviour under national law or by a judiciary professional.

3.6 Exchange of safety information, whether between States, stakeholders or States and stakeholders, shall be supported by strict control of the possible use of that information in order to prevent it from being misused while allowing those who need access to that information to receive it.

Safety information should therefore only be used for the purpose of maintaining or improving aviation safety. Recommendations for introducing of this principle in Annex 19 have been made by SMP and SIP TF.

#### 4. **PROTECTION OF SENSITIVE SAFETY INFORMATION INCLUDING VIDEO OR AUDIO RECORDINGS**

4.1 Certain types of safety information, namely video or audio recordings of cockpit voice recorders or airborne image recorders, are of particular sensitivity notably because it might include recordings of crew members at the time of the accident. A public broadcasting of such recordings will go against the concept of privacy and decency and shall be prevented.

4.2 The Article 14 (See Appendix) of the EU Regulation No 996/2010 of 20 October 2010 is detailing the European regulation regarding the protection of sensitive information in Europe.

4.3 There is a need to improve the ICAO SARPS on this issue. In that perspective, recommendations have been developed by GEPAIR, based on SIP TF work, to prohibit disclosure to the general public, including possible means to achieve this objective. These include the prevention of disclosure in the context of national law, regulations and policies; authoritative safeguards such as protective orders, closed proceedings or in-camera review; or technical means to prevent disclosure of recordings before returning the cockpit voice recorders or airborne image recorders to the owner.

#### 5. **ACTIONS**

5.1 The workshop is invited to note the protection of safety information in Europe and support the work of the GEPAIR.

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Article 14 of the EU Regulation No 996/2010 of 20 October 2010

**Protection of sensitive safety information**

1. The following records shall not be made available or used for purposes other than safety investigation:

- (a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;
- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;
- (c) information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;
- (d) material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- (e) information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;
- (f) drafts of preliminary or final reports or interim statements;
- (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

2. The following records shall not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

- (a) all communications between persons having been involved in the operation of the aircraft;
- (b) written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;
- (c) covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;
- (d) occurrence reports filed under Directive 2003/42/EC.

Flight data recorder recordings shall not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

3. Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted insofar as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State shall be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4. Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.

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