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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 with EEA relevance)

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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 with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the Committee of the Regions,

Having regard to the opinion of the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A high general level of safety should be ensured in civil aviation in Europe and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in air transport.

(2) The expeditious holding of safety investigations of civil aviation accidents and incidents improves aviation safety and helps to prevent the occurrence of accidents and incidents.

(3) Reporting, analysis, and dissemination of findings of safety related incidents are fundamentally important to improving air safety. Therefore the Commission should bring forward a proposal to revise Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation before 31 December 2011.

(4) The sole objective of safety investigations should be the prevention of future accidents and incidents without apportioning blame or liability.

(5) Account should be taken of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to ensure the safe operation of aircraft. Particular account should be taken of Annex 13 to the Chicago Convention and of its subsequent amendments, which lay down international standards and recommended practices for aircraft accident and incident investigation, as well as the understanding of the terms of State of Registry, State of the Operator, State of Design, State of Manufacture and State of Occurrence used therein.

(6) According to the international standards and recommended practices set out in Annex 13 to the Chicago Convention, the investigation of accidents and serious incidents is to be conducted under the responsibility of the State where the accident or serious incident occurs, or the State of Registry when the location of the accident or serious incident cannot definitely be established as being in the territory of any State. A State may delegate the task of conducting the investigation to another State or request its

assistance. Safety investigations in the Union should be conducted in a similar way.

(7) The lessons learned from the implementation of Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents should be used to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.

(8) Account should be taken of the changes in the institutional and regulatory framework governing civil aviation safety in the Union which have taken place since the adoption of Directive 94/56/EC and in particular the establishment of the European Aviation Safety Agency (EASA). The Union dimension of safety recommendations should be also taken into account, given that aviation safety is increasingly regulated at Union level.

(9) EASA carries out on behalf of the Member States the functions and tasks of the State of Design, Manufacture and Registry when related to design approval, as specified in the Chicago Convention and its Annexes. Therefore EASA, in accordance with Annex 13 to the Chicago Convention, should be invited to participate in a safety investigation in order to contribute, within the scope of its competence, to its efficiency and to ensure the safety of aircraft design, without affecting the independent status of the investigation. National civil aviation authorities should be similarly invited to participate in safety investigations.

(10) Given their safety responsibilities, persons designated by EASA, as well as by the national civil aviation authorities, should have access to information of relevance for assessing the effectiveness of safety requirements.

(11) In order to ensure better prevention of aviation accidents and incidents, EASA, in cooperation with the competent authorities of the Member States, should also participate in the exchange and analysis of information in the framework of the occurrence reporting systems in accordance with Directive 2003/42/EC, whilst avoiding any conflict of interest. This information should be adequately protected from unauthorised use or disclosure.

(12) It is recognised that the participation of EASA and of the competent authorities of the Member States in the exchange and analysis of information covered by Directive 2003/42/EC could benefit safety investigations through on-line access to relevant safety related information contained in the central repository of information on civil aviation occurrences.

(13) The scope of safety investigations should depend on the lessons which can be drawn from them for the improvement of aviation safety, especially taking into account the need for the cost-efficient utilisation of investigation resources in the Union.

(14) The safety investigation of accidents and incidents should be conducted by or under the control of an independent safety investigation authority in order to avoid any conflict of interest and any possible external interference in the determination of the causes of the occurrences being investigated.

(15) The safety investigation authorities play a core role in the safety investigation process. Their work is of the utmost importance in determining the causes of an accident or incident. It is therefore essential that they should be able to conduct their investigations entirely independently and also that they should possess the financial and human resources required to conduct effective and efficient investigations.

(16) The capacity of safety investigation authorities of the Member States should be strengthened and cooperation between them is necessary to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.

(17) The coordination role of safety investigation authorities should be recognised and reinforced in a European context, in order to generate real added value in aviation safety, by building upon the already existing cooperation between such authorities and the investigation resources available in the Member States which should be used in the most efficient manner. That recognition and reinforcement could be best achieved by the European Network of Civil Aviation Safety Investigation Authorities (the Network), with clearly defined role and tasks.

(18) The Network should pursue its coordination activities in a transparent and independent manner and be actively supported by the Union.

(19) The objectives of this Regulation may be better achieved through cooperation with third countries, which could be allowed to participate as observers, in the work of the Network.

(20) As it is essential to ensure clear rights for safety investigations, Member States should, in compliance with the legislation in force on the powers of the authorities responsible for judicial investigations and, where appropriate, in close collaboration with those authorities, ensure that safety investigation authorities are allowed to carry out their tasks in the best possible conditions in the interest of aviation safety. The safety investigation authorities should therefore be granted immediate and unrestricted access to the site of the accident and all the elements necessary to satisfy the requirements of a safety investigation should be made available to them, without compromising the objectives of a judicial investigation.

(21) Efficient safety investigation is possible only if important pieces of evidence are duly preserved.

(22) The civil aviation safety system is based on feedback and lessons learned from accidents and incidents which require the strict application of rules on confidentiality in order to ensure the future availability of valuable sources of information. In this context sensitive safety information should be protected in an appropriate way.

(23) An accident raises a number of different public interests such as the prevention of future accidents and the proper administration of justice. Those interests go beyond the individual interests of the parties involved and beyond the specific event. The right balance among all interests is necessary to guarantee the overall public interest.

(24) The civil aviation system should equally promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of ‘just culture’.

(25) The information provided by a person in the framework of a safety investigation should not be used against that person, in full respect of constitutional principles and national law.

(26) Member States should have the option to limit the cases in which a decision of disclosure regarding information obtained during a safety investigation could be taken, without affecting the smooth functioning of the judicial system.

(27) It is important for the prevention of accidents and incidents to communicate in the shortest time possible relevant information, including in particular reports and safety recommendations resulting from safety investigations.

(28) The safety recommendations resulting from an accident or serious incident investigation or other sources, such as safety studies, should always be considered by the competent authority and, as appropriate, acted upon to ensure adequate prevention of accidents and incidents in civil aviation.

(29) Progress on research into both the real-time tracking of aircraft and the possibility of accessing flight-recorder information without the flight recorder being physically present should be encouraged to improve the tools available to investigators for determining the causes of accidents and to enhance capabilities for preventing recurrent incidents. Such developments would be an important step forward in aviation safety.

(30) Experience has shown that reliable lists of persons on board an aircraft are sometimes difficult to obtain in a rapid manner but also that it is important to establish a deadline within which an airline can be required to produce such a list. In addition, the data contained in such lists should be protected from unauthorised use or disclosure. Similarly, the availability of information about the dangerous goods on board an aircraft involved in an accident is necessary to minimise the risks to safety investigators at the site of the occurrence.

(31) Following an air accident it is not easy to identify rapidly the appropriate contact person to inform of a passenger’s presence on board. The possibility of designating a contact person should therefore be offered to passengers.

(32) Assistance to the victims of air accidents and their relatives should be adequately specified.

(33) The manner in which an accident and its consequences are dealt with by Member States and airlines is crucially important. In this respect, Member States should have an emergency plan providing for, in particular, airport emergency services and assistance to the victims of civil aviation accidents and their relatives. Airlines should also have a plan for assistance to the victims of civil aviation accidents and their relatives. Particular attention should be given to the support to and the communication with victims and their relatives, and their associations.

(34) The rules on access to data, data processing and the protection of individuals laid down in relevant legal acts of the Union should be fully respected in the application of this Regulation.

(35) Penalties should, in particular, allow for the sanctioning of any person who contrary to this Regulation releases information protected by this Regulation; obstructs the actions of a safety investigation authority by preventing the investigators from performing their duties or by refusing to provide useful recordings, material information and documents, hiding, altering or destroying them; or, having knowledge of any occurrence of an accident or serious incident, does not inform the relevant authorities thereof.

(36) Since the objective of this Regulation, namely the establishment of common rules in the field of civil aviation safety investigation cannot be sufficiently achieved by the Member States and can therefore, by reason of its Europe-wide scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(37) Directive 94/56/EC should therefore be repealed.

(38) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006 during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on Gibraltar Airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 Declaration,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation aims to improve aviation safety by ensuring a high level of efficiency, expediency, and quality of European civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability, including through the establishment of a European Network of Civil Aviation Safety Investigation Authorities. It also provides for rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident. It also aims to improve the assistance to the victims of air accidents and their relatives.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘accident’ means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

(a) a person is fatally or seriously injured as a result of:

- being in the aircraft, or,

- direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or,

- direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes) or minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, (including holes in the radome); or(c)the aircraft is missing or is completely inaccessible;

(2) 'accredited representative' means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in a safety investigation conducted by another State. An accredited representative designated by a Member State shall be from a safety investigation authority;

(3) 'adviser' means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in a safety investigation;

(4) 'causes' means actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident; the identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

(5) 'fatal injury' means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;

(6) 'flight recorder' means any type of recorder installed in the aircraft for the purpose of facilitating accident/incident safety investigations;

(7) 'incident' means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

(8) 'international standards and recommended practices' means international standards and recommended practices for aircraft accident and incident investigation adopted in accordance with Article 37 of the Chicago Convention;

(9) 'investigator-in-charge' means a person charged, on the basis of his or her qualifications, with responsibility for the organisation, conduct and control of a safety investigation;

(10) 'operator' means any natural or legal person, operating or proposing to operate one or more aircraft;

(11) 'person involved' means the owner, a member of the crew, the operator of the aircraft involved in an accident or serious incident; any person involved in the maintenance, design, manufacture of that aircraft or in the training of its crew; any person involved in the provision of air traffic control, flight information or aerodrome services, who have provided services for the aircraft; staff of the national civil aviation authority; or staff of EASA;

(12) 'preliminary report' means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

(13) 'relatives' means the immediate family and/or next of kin and/or other person closely connected with the victim of an accident, as defined under the national law of the victim;

(14) 'safety investigation' means a process conducted by a safety investigation authority for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and/or contributing factors and, when appropriate, the making of safety recommendations;

(15) ‘safety recommendation’ means a proposal of a safety investigation authority, based on information derived from a safety investigation or other sources such as safety studies, made with the intention of preventing accidents and incidents;

(16) ‘serious incident’ means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft, which in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down. A list of examples of serious incidents is set out in the Annex;

(17) ‘serious injury’ means an injury which is sustained by a person in an accident and which involves one of the following:

(a) hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received;

(b) a fracture of any bone (except simple fractures of fingers, toes, or nose);

(c) lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;

(d) injury to any internal organ;

(e) second or third degree burns, or any burns affecting more than 5 % of the body surface;

(f) verified exposure to infectious substances or harmful radiation.

Article 3

Scope

1. This Regulation shall apply to safety investigations into accidents and serious incidents:

(a) which have occurred in the territories of the Member States to which the Treaties apply, in accordance with the international obligations of the Member States;

(b) involving aircraft registered in a Member State or operated by an undertaking established in a Member State, which have occurred outside the territories of the Member States to which the Treaties apply, when such investigations are not conducted by another State;

(c) in which a Member State is entitled, according to international standards and recommended practices, to appoint an accredited representative to participate as a State of Registry, State of the Operator, State of Design, State of Manufacture or State providing information, facilities or experts at the request of the State conducting the investigation;

(d) in which a Member State having a special interest by virtue of fatalities or serious injuries to its citizens is permitted by the State conducting the investigation to appoint an expert.

2. This Regulation shall also apply to issues pertaining to the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident and assistance to the victims of air accidents and their relatives.

3. This Regulation shall not apply to safety investigations into accidents and serious incidents which involve aircraft engaged in military, customs, police or similar services, except when the Member State concerned so determines, in accordance with Article 5(4) and national legislation.

Article 4

Civil Aviation Safety Investigation Authority

1. Each Member State shall ensure that safety investigations are conducted or supervised, without external interference, by a permanent national civil aviation safety investigation authority (safety investigation authority) capable of independently conducting a full safety investigation, either on its own or through agreements with other safety investigation authorities.

2. The safety investigation authority shall be functionally independent in particular of aviation authorities responsible for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation and, in general, of any other party or entity the interests or missions of which could conflict with the task entrusted to the safety investigation authority or influence its objectivity.

3. The safety investigation authority shall, in the conduct of the safety investigation, neither seek nor take instructions from anybody and shall have unrestricted authority over the conduct of the safety investigations.

4. The activities entrusted to the safety investigation authority may be extended to the gathering and analysis of aviation safety related information, in particular for accident prevention purposes, in so far as these activities do not affect its independence and entail no responsibility in regulatory, administrative or standards matters.

5. In order to inform the public of the general aviation safety level, a safety review shall be published annually at national level. In this analysis, the sources of confidential information shall not be revealed.

6. The safety investigation authority shall be given by the respective Member State the means required to carry out its responsibilities independently and shall be able to obtain sufficient resources to do so. In particular:

(a) the head of the safety investigation authority and/or, in the case of a multimodal authority, the head of its aviation branch shall have the experience and competence in civil aviation safety to fulfil his or her tasks in accordance with this Regulation and national law;

(b) the investigators shall be afforded status giving them the necessary guarantees of independence;

(c) the safety investigation authority shall comprise at least one available investigator able to perform the function of the investigator-in-charge in the event of a major air accident;

(d) the safety investigation authority shall be allocated a budget that enables it to carry out its functions;

(e) the safety investigation authority shall have at its disposal, either directly or by means of the cooperation referred to in Article 6, or through arrangements with other national authorities or entities, qualified personnel and adequate facilities, including offices and hangars to enable the storage and examination of the aircraft, its contents and its wreckage.

Article 5

Obligation to investigate

1. Every accident or serious incident involving aircraft to which Regulation (EU) 2018/1139 of the European Parliament and of the Council applies shall be the subject of a safety investigation in the Member State in which the accident or serious incident occurred.

2. Where an aircraft to which Regulation (EU) 2018/1139 applies and which is registered in a Member State is involved in an accident or a serious incident the location of which cannot be definitely established as being in the territory of any State, a safety investigation shall be conducted by the safety investigation authority of the Member State of registration.

3. The extent of safety investigations referred to in paragraphs 1, 2 and 4 and the procedure to be followed in conducting such safety investigations shall be determined by the safety investigation authority, taking into account the consequences of the accident or serious incident and the lessons it expects to draw from such investigations for the improvement of aviation safety.

4. Safety investigation authorities may decide to investigate incidents other than those referred to in paragraphs 1 and 2, as well as accidents or serious incidents to other types of aircraft, in accordance with the national legislation of the Member States, when they expect to draw safety lessons from them.

5. By way of derogation from paragraphs 1 and 2 of this Article, the responsible safety investigation authority may decide, taking into account the expected lessons to be drawn for the improvement of aviation safety, not to initiate a safety investigation when an accident or serious incident concerns an unmanned aircraft for which a certificate or declaration is not required pursuant to Article 56(1) and (5) of Regulation (EU) 2018/1139, or concerns a manned aircraft with a maximum take-off mass less than or equal to 2 250 kg, and where no person has been fatally or seriously injured.

6. Safety investigations referred to in paragraphs 1, 2 and 4 shall in no case be concerned with apportioning blame or liability. They shall be independent of, separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.

Article 6

Cooperation between safety investigation authorities

1. A safety investigation authority from one Member State may request the assistance of safety investigation authorities from other Member States. When, following a request, a safety investigation authority agrees to provide assistance, such assistance shall, as far as possible, be provided free of charge.

2. A safety investigation authority may delegate the task of conducting an investigation into an accident or serious incident to another safety investigation authority subject to mutual agreement and shall facilitate the investigation process by that other authority.

Article 7

European Network of Civil Aviation Safety Investigation Authorities

1. Member States shall ensure that their safety investigation authorities establish between them a European Network of Civil Aviation Safety Investigation Authorities (the Network), composed of the heads of the safety investigation authorities in each of the Member States and/or, in the case of a multimodal authority, the head of its aviation branch, or their representatives, including a chairman chosen among these for a period of 3 years.

In close consultation with the members of the Network, the chairman shall draw up the annual work programme of the Network, which shall comply with the objectives and meet the responsibilities set out in paragraphs 2 and 3 respectively. The Commission shall transmit the work programme to the European Parliament and the Council. The chairman shall also draw up the agenda for the meetings of the Network.

2. The Network shall seek to further improve the quality of investigations conducted by safety investigation authorities and to strengthen their independence. In particular, it shall encourage high standards in investigation methods and investigator training.

3. In order to achieve the objectives set out in paragraph 2, the Network shall be responsible, in particular, for:

(a) preparing suggestions to and advising Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents;

(b) promoting the sharing of information useful for the improvement of aviation safety and actively promoting structured cooperation between safety investigation authorities, the Commission, EASA and national civil aviation authorities;

(c) coordinating and organising, where appropriate, 'peer reviews', relevant training activities and skills development programmes for investigators;

(d) promoting best safety investigation practices with a view to developing a common Union safety investigation methodology and drawing up an inventory of such practices;

(e) strengthening the investigating capacities of the safety investigation authorities, in particular by developing and managing a framework for sharing resources;

(f) providing, at the request of the safety investigation authorities for the purpose of the application of Article 6, appropriate assistance, including, but not limited to, a list of investigators, equipment and capabilities available in other Member States for potential use by the authority conducting an investigation;

(g) having access to information contained in the database referred to in Article 18, and analyse the safety recommendations therein with a view to identifying important safety recommendations of Union-wide relevance.

4. The Commission shall inform the European Parliament and the Council of the activities of the Network on a regular basis. The European Parliament shall also be informed whenever the Council or the Commission submits requests to the Network.

5. The members of the Network shall neither seek nor accept instructions from any body which could affect the independent status of safety investigations.

6. EASA shall, as appropriate, be invited as an observer to the meetings of the Network. The Network may also invite observers from safety investigation authorities of third countries and other relevant experts to attend its meetings.

7. The Commission shall be closely associated with the work of the Network and shall receive the necessary support from the Network on relevant aspects related to the development of the Union civil aviation accident investigation and prevention policy and regulation. The Commission shall provide the Network with the necessary support, including but not limited to assistance for the preparation and organisation of its meetings, as well as for the publication of an annual report covering the activities of the Network. The Commission shall transmit the annual report to the European Parliament and the Council.

Article 8

Participation of EASA and national civil aviation authorities in safety investigations

1. Safety investigation authorities shall, provided that the requirement of no conflict of interest is satisfied, invite EASA and national civil aviation authorities of the Member States concerned, within the scope of their respective competence, to appoint a representative to participate:

(a) as an adviser to the investigator-in-charge in any safety investigation under Article 5(1) and (2), conducted in the territory of a Member State or in the location referred to in Article 5(2) under the control and at the discretion of the investigator-in-charge;

(b) as an adviser appointed under this Regulation to assist accredited representative(s) of the Member States in any safety investigation conducted in a third country to which a safety investigation authority

is invited to designate an accredited representative in accordance with international standards and recommended practices for aircraft accident and incident investigation, under the supervision of the accredited representative.

2. The participants referred to in paragraph 1 shall be entitled, in particular to:

(a) visit the scene of the accident and examine the wreckage;

(b) suggest areas of questioning and obtain witness information;

(c) receive copies of all pertinent documents and obtain relevant factual information;

(d) participate in the read-outs of recorded media, except cockpit voice or image recorders;

(e) participate in off-scene investigative activities such as component examinations, tests and simulations, technical briefings and investigation progress meetings, except when related to the determination of the causes or the formulation of safety recommendations.

3. EASA and the national civil aviation authorities shall support the investigation in which they participate by supplying the requested information, advisers and equipment to the safety investigation authority in charge.

Article 9

Obligation to notify accidents and serious incidents

1. Any person involved who has knowledge of the occurrence of an accident or serious incident shall notify without delay the competent safety investigation authority of the State of Occurrence thereof.

2. The safety investigation authority shall notify without delay the Commission, EASA, the International Civil Aviation Organisation (ICAO), the Member States and third countries concerned in accordance with the international standards and recommended practices of the occurrence of all accidents and serious incidents of which it has been notified.

Article 10

Participation of the Member States in safety investigations

1. Upon receipt of the notification of the occurrence of an accident or serious incident from another Member State or third country, the Member States which are the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, inform the Member State or third country in the territory of which the accident or serious incident occurred whether they intend to appoint an accredited representative in accordance with the international standards and recommended practices. Where such an accredited representative is appointed, his or her name and contact details shall also be provided, as well as the expected date of arrival if the accredited representative intends to travel to the country which sent the notification.

2. Accredited representatives for the State of Design shall be appointed by the safety investigation authority of the Member State in the territory of which the principal place of business of the certificate holder for the type design of the aircraft or power plant is located.

Article 11

Status of the safety investigators

1. Upon his or her appointment by a safety investigation authority and notwithstanding any judicial investigation, the investigator-in-charge shall have the authority to take the necessary measures to satisfy the requirements of the safety investigation.

2. Notwithstanding any confidentiality obligations under the legal acts of the Union or national law, the investigator-in-charge shall in particular be entitled to:

(a) have immediate unrestricted and unhampered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) ensure an immediate listing of evidence and controlled removal of debris, or components for examination or analysis purposes;

(c) have immediate access to and control over the flight recorders, their contents and any other relevant recordings;

(d) request, and contribute to, a complete autopsy examination of the bodies of the fatally injured persons and to have immediate access to the results of such examinations or of tests made on samples taken;

(e) request the medical examination of the people involved in the operation of the aircraft or request tests to be carried out on samples taken from such people and to have immediate access to the results of such examinations or tests;

(f) to call and examine witnesses and to require them to furnish or produce information or evidence relevant to the safety investigation;

(g) have free access to any relevant information or records held by the owner, the certificate holder of the type design, the responsible maintenance organisation, the training organisation, the operator or the manufacturer of the aircraft, the authorities responsible for civil aviation, EASA and air navigation service providers or aerodrome operators.

3. The investigator-in-charge shall extend to his or her experts and advisers, as well as to the accredited representatives, their experts and advisers, the entitlements listed in paragraph 2, to the extent necessary to enable them to participate effectively in the safety investigation. Those entitlements are without prejudice to the rights of the investigators and experts designated by the authority in charge of the judicial investigation.

4. Any person participating in safety investigations shall perform his or her duties independently and shall neither seek, nor accept instructions from anybody, other than the investigator-in-charge or the accredited representative.

Article 12

Coordination of investigations

1. When a judicial investigation is also instituted, the investigator-in-charge shall be notified thereof. In such a case, the investigator-in-charge shall ensure traceability and retain custody of flight recorders and any physical evidence. The judicial authority may appoint an official from that authority to accompany the flight recorders or physical evidence to the place of the read-out or treatment. Where examination or analysis of such physical evidence may modify, alter or destroy it, prior agreement from the judicial authorities will be required, without prejudice to national law. Where such agreement is not obtained according to the advance arrangements referred to in paragraph 3 within a reasonable time and not later than 2 weeks following the request, it shall not prevent the investigator-in-charge from conducting the examination or analysis. Where the judicial authority is entitled to seize any evidence, the investigator-in-charge shall have immediate and unlimited access to and use of such evidence.

2. Where, in the course of the safety investigation, it becomes known or it is suspected that an act of unlawful interference as provided for under national law, such as national law on accident investigations, was involved in the accident or serious incident, the investigator-in-charge shall immediately inform the competent authorities thereof. Subject to Article 14, the relevant information collected in the safety investigation shall be shared with those authorities immediately and upon request, relevant material may also be transferred to those authorities. The sharing of that information and that material shall be without prejudice to the right of

the safety investigation authority to continue the safety investigation, in coordination with the authorities to which the control of the site may have been transferred.

3. Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.

Those arrangements shall respect the independence of the safety investigation authority and allow the technical investigation to be conducted diligently and efficiently. Among others, the advance arrangements shall cover the following subjects:

(a) access to the site of the accident;

(b) preservation of and access to evidence;

(c) initial and ongoing debriefings of the status of each process;

(d) exchange of information;

(e) appropriate use of safety information;

(f) resolution of conflicts.

Member States shall communicate to the Commission those arrangements, which shall transmit them to the chairman of the Network, the European Parliament and the Council for information.

Article 13

Preservation of evidence

1. The Member State in the territory of which the accident or serious incident occurred shall be responsible for ensuring safe treatment of all evidence and for taking all reasonable measures to protect such evidence and for maintaining safe custody of the aircraft, its contents and its wreckage for such period as may be necessary for the purpose of a safety investigation. Protection of evidence shall include the preservation, by photographic or other means, of any evidence which might be removed, effaced, lost or destroyed. Safe custody shall include protection against further damage, access by unauthorised persons, pilfering and deterioration.

2. Pending the arrival of safety investigators, no person shall modify the state of the site of the accident, take any samples therefrom, undertake any movement of or sampling from the aircraft, its contents or its wreckage, move or remove it, except where such action may be required for safety reasons or to bring assistance to injured persons, or under the express permission of the authorities in control of the site and, when possible, in consultation with the safety investigation authority.

3. Any person involved shall take all necessary steps to preserve documents, material and recordings in relation to the event, in particular so as to prevent erasure of recordings of conversations and alarms after the flight.

Article 14

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.

Article 15

Communication of information

1. The staff of the safety investigation authority in charge, or any other person called upon to participate in or contribute to the safety investigation shall be bound by applicable rules of professional secrecy, including as regards the anonymity of those involved in an accident or incident, under the applicable legislation.

2. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge shall communicate the information which it deems relevant to the prevention of an accident or serious incident, to persons responsible for aircraft or aircraft equipment manufacture or maintenance, and to individuals or legal entities responsible for operating aircraft or for the training of personnel.

3. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge and the accredited representative(s) referred to in Article 8 shall release to EASA and national civil aviation authorities relevant factual information obtained during the safety investigation, except information referred to in Article 14(1) or causing a conflict of interest. The information received by EASA and the national civil aviation authorities shall be protected in accordance with Article 14 and applicable legal acts of the Union and national legislation.

4. The safety investigation authority in charge shall be a?thorised to inform victims and their relatives or their associations or make public any information on the factual observations, the proceedings of the safety investigation, possibly preliminary reports or conclusions and/or safety recommendations, provided that it does not compromise the objectives of the safety investigation and fully complies with applicable legislation on the protection of personal data.

5. Before making public the information referred to in paragraph 4, the safety investigation authority in charge shall forward that information to the victims and their relatives or their associations in a way which does not compromise the objectives of the safety investigation.

Article 16

Investigation report

1. Each safety investigation shall be concluded with a report in a form appropriate to the type and seriousness of the accident or serious incident. The report shall state that the sole objective of the safety investigation is the prevention of future accidents and incidents without apportioning blame or liability. The report shall contain, where appropriate, safety recommendations.

2. The report shall protect the anonymity of any individual involved in the accident or serious incident.

3. Where safety investigations give rise to reports before the completion of the investigation, prior to their publication the safety investigation authority may solicit comments from the authorities concerned, including EASA, and through them the certificate holder for the design, the manufacturer and the operator concerned. They shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation.

4. Before publication of the final report, the safety investigation authority shall solicit comments from the authorities concerned, including EASA, and, through them the certificate holder for the design, the manufacturer and the operator concerned, who shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation. In soliciting such comments, the safety investigation authority shall follow the international standards and recommended practices.

5. The information covered by Article 14 shall be included in a report only when relevant to the analysis of the accident or serious incident. Information or parts of the information not relevant to the analysis shall not be disclosed.

6. The safety investigation authority shall make public the final report in the shortest possible time and if possible within 12 months of the date of the accident or serious incident.

7. If the final report cannot be made public within 12 months, the safety investigation authority shall release an interim statement at least at each anniversary of the accident or serious incident, detailing the progress of the investigation and any safety issues raised.

8. The safety investigation authority shall forward a copy of the final report and the safety recommendations as soon as possible to the:

(a) safety investigation authorities and civil aviation authorities of the States concerned, and the ICAO, according to the international standards and recommended practices;

(b) addressees of safety recommendations contained in the report;

(c) Commission and EASA, except where the report is publicly available through electronic means, in which case the safety investigation authority shall only notify them accordingly.

Article 17

Safety recommendations

1. At any stage of the safety investigation, the safety investigation authority shall recommend in a dated transmittal letter, after appropriate consultation with relevant parties, to the authorities concerned, including those in other Member States or third countries, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.

2. A safety investigation authority may also issue safety recommendations on the basis of studies or analysis of a series of investigations or any other activities conducted in accordance with Article 4(4).

3. A safety recommendation shall in no case create a presumption of blame or liability for an accident, serious incident or incident.

Article 18

Follow-up to safety recommendations and safety recommendations database

1. The addressee of a safety recommendation shall acknowledge receipt of the transmittal letter and inform the safety investigation authority which issued the recommendation within 90 days of the receipt of that letter, of the actions taken or under consideration, and where appropriate, of the time necessary for their completion and where no action is taken, the reasons therefor.

2. Within 60 days of the receipt of the reply, the safety investigation authority shall inform the addressee whether or not it considers the reply adequate and give justification when it disagrees with the decision to take no action.

3. Each safety investigation authority shall implement procedures to record the responses to the safety recommendations it issued.

4. Each entity receiving a safety recommendation, including the authorities responsible for civil aviation safety at the Member State and Union level, shall implement procedures to monitor the progress of the action taken in response to the safety recommendations received.

5. Safety investigation authorities shall record in the central repository established under Commission Regulation (EC) No 1321/2007 of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences exchanged in accordance with Directive 2003/42/EC all safety recommendations issued in accordance with Article 17(1) and (2) as well as the responses thereto. Safety investigation authorities shall similarly record in the central repository all safety recommendations received from third countries.

Article 19

Occurrence reporting

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Article 20

Information on persons and dangerous goods on board

1. Union airlines operating flights arriving to or departing from, and third country airlines operating flights departing from an airport located in the territories of the Member States to which the Treaties apply, shall implement procedures which allow for the production:

(a) as soon as possible, and at the latest within two hours of the notification of the occurrence of an accident to the aircraft, of a validated list, based on the best available information, of all the persons on board; and

(b) immediately after the notification of the occurrence of an accident to the aircraft, of the list of the dangerous goods on board.

2. The lists referred to in paragraph 1 shall be made available to the safety investigation authority in charge, the authority designated by each Member State to liaise with the relatives of the persons on board and, where necessary, to medical units which may need the information for the treatment of victims.

3. In order to allow passengers' relatives to obtain information quickly concerning the presence of their relatives on board an aircraft involved in an accident, airlines shall offer travellers the opportunity to give the name and contact details of a person to be contacted in the event of an accident. This information may be used by the airlines only in the event of an accident and shall not be communicated to third parties or used for commercial purposes.

4. The name of a person on board shall not be made publicly available before the relatives of that person have been informed by the relevant authorities. The list referred to in paragraph 1(a) shall be kept confidential in accordance with the legal acts of the Union and national law and the name of each person appearing in that list shall, subject thereto, only be made publicly available in so far as the relatives of the respective persons on board have not objected.

Article 21

Assistance to the victims of air accidents and their relatives

1. In order to ensure a more comprehensive and harmonised response to accidents at EU level, each Member State shall establish a civil aviation accident emergency plan at national level. Such an emergency plan shall also cover assistance to the victims of civil aviation accidents and their relatives.

2. Member States shall ensure that all airlines established in their territory have a plan for the assistance to the victims of civil aviation accidents and their relatives. Those plans must take particular account of psychological support for victims of civil aviation accidents and their relatives and allow the airline to react to a major accident. The Member States shall audit the assistance plans of the airlines established in their territory. Member States shall also encourage third-country airlines which operate in the Union to similarly adopt a plan for the assistance of victims of civil aviation accidents and their relatives.

3. When an accident occurs, the Member State in charge of the investigation, the Member State in which the airline, the aircraft of which was involved in the accident is established, or the Member State which had a

large number of its nationals on board the aircraft involved in the accident, shall provide for the appointment of a reference person as a point of contact and information for the victims and their relatives.

4. A Member State or a third country, which, by virtue of fatalities or serious injuries to its citizens, has a special interest in an accident which has occurred in the territories of the Member States to which the Treaties apply, shall be entitled to appoint an expert who shall have the right to:

(a) visit the scene of the accident;

(b) have access to the relevant factual information, which is approved for public release by the safety investigation authority in charge, and information on the progress of the investigation;

(c) receive a copy of the final report.

5. An expert appointed in accordance with paragraph 4 may assist, subject to applicable legislation in force, in the identification of the victims and attend meetings with the survivors of its State.

6. In accordance with Article 2(1) of Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, also third country air carriers shall fulfil the insurance obligations set out in that Regulation.

Article 22

Access to documents and protection of personal data

1. This Regulation shall apply without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

2. This Regulation shall apply in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Article 23

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive.

Article 24

Amendment of the Regulation

This Regulation shall be subject to a review no later than 3 December 2014. Where the Commission considers that this Regulation should be amended, it shall request the Network to issue a preliminary opinion, which shall also be forwarded to the European Parliament, the Council, the Member States and EASA.

Article 25

Repeals

Directive 94/56/EC is hereby repealed.

Article 26

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

List of examples of serious incidents

The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance with respect to the definition of ‘serious incident’:

- a near collision requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate,
- controlled flight into terrain only marginally avoided,
- aborted take-offs on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- take-offs from a closed or engaged runway, from a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- landings or attempted landings on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
- gross failures to achieve predicted performance during take-off or initial climb,
- fires and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents,
- events requiring the emergency use of oxygen by the flight crew,
- aircraft structural failure or engine disintegration, including uncontained turbine engine failures, not classified as an accident,
- multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft,
- flight crew incapacitation in flight,
- fuel quantity requiring the declaration of an emergency by the pilot,
- runway incursions classified with severity A according to the Manual on the Prevention of Runway Incursions (ICAO Doc 9870) which contains information on the severity classifications,
- take-off or landing incidents. Incidents such as undershooting, overrunning or running off the side of runways,
- system failures, weather phenomena, operation outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft,
- failure of more than one system in a redundancy system mandatory for flight guidance and navigation.