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Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 10 June 2013*

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007 - General approach

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**I. INTRODUCTION**

On 19 December 2012, the Commission transmitted to the Council and to the European Parliament the above-mentioned proposal. The purpose of this proposal is to improve the system of rules on occurrence reporting established under Directive 2003/42/EC and its implementing rules, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007, on the basis of experience acquired during the implementation of the above-mentioned instruments.

At a general level, it is considered that the current aviation safety system is primarily reactive and overly reliant on detailed air accident investigations. The main objective of the proposal is to move towards a more proactive system that attempts to foresee and prevent accidents based primarily on the collection and analysis of data. The legal basis of the proposal is Article 100(2) of the Treaty on the Functioning of the European Union.

## II. WORK WITHIN THE COUNCIL BODIES

The Aviation Working Party (hereinafter referred to as the "Working Party") started the examination of the proposal under the Irish Presidency in January 2013. The Commission presented its proposal to the Working Party on 10 January 2013 and the Impact Assessment was presented on 14 January 2013, followed by an exchange of views.

The examination of the Commission proposal continued on 28 January, 18 and 25 February, 4, 14 and 20 March, 8, 18, 25 and 29 April. Following the in-depth discussions held at the above-mentioned meetings of the Working Party, the Presidency has amended several provisions of the Commission proposal to take account of delegations' comments. The recitals have not been examined yet and they will have to be adapted to the text of the general approach at a later stage.

On 31 May 2013, the draft general approach was submitted to the Permanent Representatives Committee (Coreper). During this meeting, several delegations expressed, in general, their support for the Presidency compromise text, while others reiterated their concerns on some issues and presented new drafting suggestions. The Presidency took note of the delegations' concerns and, in order to solve some outstanding issues and to facilitate reaching a general approach, accepted some of the proposals tabled by the delegations.

However, a few questions still need to be discussed at Council level, as some delegations and the Commission maintain their reservations on the text. The changes in the Annex to this report compared to the Annex to the report to Coreper are indicated in **bold** and ~~strikethrough~~. All delegations have a scrutiny reservation on the new changes introduced following the Coreper meeting.

### III. MAJOR OUTSTANDING ISSUES

In spite of the hard work carried out in order to reach an agreed text, some issues are still outstanding.

#### a) **Scope of the Regulation (Article 4 footnotes 21, 23 and 24)**

According to Chapter 8 of Annex 13 to the Chicago Convention, Member States already have to establish mandatory occurrence reporting systems (MORS). Annex 13 also recommends that states have a voluntary occurrence reporting system (VORS) to facilitate the collection of information that may not be captured by a mandatory incident reporting system. 23 EU Member States have already established VORS. Article 5 of the proposal introduces the obligation for all EU Member States to establish VORS, with the purpose of capturing safety related information, which is perceived by reporters as an actual or potential hazard.

However, some Member States consider that applying the two systems - mandatory and voluntary - to all types of aircraft would extend the scope of the Regulation too much. FR would prefer MORS to be applied only to public transport and to turbine-powered general aviation aircraft and not to impose reporting obligations to smaller and less complex general aviation aircraft. This delegation argues that the scope of the current Directive (EC) 2003/42 should be maintained, in order to impose reporting obligations which should be proportional to the objective of gathering significant safety-related information. In its opinion, for less complex aircraft, the decision as to whether an occurrence is worth reporting should be left to the reporter. FR considers that the main purpose of this proposal should be to raise the quality of occurrence reports so that safety lessons can be learnt, rather than their quantity, which in some Member States (especially FR) is already very large. Increasing the number of occurrence reports would only make the analysis and follow-up of such reports even more difficult.

Along the same line of argument, FR proposes that MORS should be applied to airports referred to in Regulation (EU) No 216/2008, and not to the airports referred to in Article 4(1) of Directive (EC) 2003/42. However, given the position of the majority of delegations on this issue, the Presidency has decided to keep the Commission proposal.

The majority of Member States prefer the text of the Commission proposal, with the argument that narrowing the scope would risk leaving unreported significant safety-related information. In order to bridge the gap, the Presidency has proposed in Article 3 paragraph 2 that this Regulation apply to all aircraft except those referred to in Annex II to Regulation (EU) No. 216/2008 (microlight aeroplanes, amateur-built aircraft, vintage aircraft, ex-military aircraft, aircraft built for research purposes, light gyroplanes, foot-launched aircraft). Moreover, following the recommendation of the ad hoc group of experts charged with the examination of the Annexes to the Regulation, Article 4(2a) provides that, for non-complex aircraft, the reporting requirements will be simplified in order to facilitate the reporting and alleviate the potential administrative burden on small organisations.

Moreover, in order to satisfy the concerns of those Member States who would prefer a wider scope, the Presidency compromise text gives Member States the possibility to decide to apply the Regulation to all aircraft, including those referred to in Annex II to Regulation (EU) No 216/2008, if they consider it necessary.

In Coreper, a large majority of delegations supported the Presidency compromise text on this issue. However, the Commission emphasised that the Presidency compromise text unduly reduced the scope of the Regulation.

**b) ‘Just Culture’ and the definition of ‘gross negligence’ (Article 2 footnote 13 and Article 16 footnote 45)**

The feedback and the lessons learned from accidents and from reported occurrences constitute an essential dimension of the civil aviation safety system. In order to create a more proactive and evidence-based safety system, capable of drawing maximum benefit from the available safety information, including civil aviation occurrences, the Commission proposal aims to establish a non-punitive environment facilitating the spontaneous reporting of the occurrences based on the principle of ‘Just Culture’.

Some Member States have a safety system allowing for total impunity, namely that the reporter of occurrences is always protected against sanctions or legal proceedings in accordance with the principle of privilege against self-incrimination, without any conditions. Other Member States support a highly protected voluntary reporting system, focused on protecting human error in order to encourage reporting without fear of self-incrimination, but with a less protected mandatory reporting system.

For the purpose of establishing a 'Just Culture' environment in aviation, Member States will be under the obligation of putting in place advance administrative arrangements between the judicial authorities and the safety authorities who must seek to balance the two public interests at stake, i.e. justice and aviation safety. Regulation (EU) No 996/2010 on the investigation of accidents and incidents in civil aviation has already introduced the obligation of such advance arrangements between the safety investigation authorities and other authorities (e.g. judicial, search and rescue) likely to be involved in the investigation of an accident.

So far, the term 'gross negligence' has not been defined by the EU legislation. Member States have their own definitions in their national law and therefore a great number of delegations would prefer not to include this definition in the Regulation. A majority of Member States has argued that since the definition already exists in the national law, it is better not to define it at EU level because Member States have different interpretations for it. Deleting the definition from the proposal would avoid any possible conflicts between the Regulation and national legislation. Other delegations (EL and NL) and the Commission considered that the Regulation should contain such a definition, which appears as essential in order to ensure the uniform application of the Regulation. They emphasised that this definition, together with Articles 15 ("Confidentiality and appropriate use of the information") and 16 ("Protection of the information source") constitute the core elements of the proposal.

In connection with the 'Just Culture' principle, long and intense discussions in the Working Party concentrated around paragraphs 3 and 4 of Article 16, which involve issues that normally pertain to the competence of ministries of Justice. Several delegations repeatedly expressed concerns that Article 16(3) might aim at harmonising the criminal law of Member States. The Presidency compromise text has taken into account these concerns and the above-mentioned paragraphs have been modified to allow for the Member States' national criminal law to take precedence over the Member States' prohibition to institute proceedings in respect of unpremeditated or inadvertent infringements of the law only on the basis of the reporter's report.

However, in order to clarify the employer-employee relationship, the Presidency revised text provides that the reporter cannot be self-incriminated in the event of disciplinary or administrative proceedings and that employees will not be subject to prejudice by their employer on the basis of their own reports, with the exception of situations of gross negligence or wilful misconduct.

In Coreper, NL, supported by the Commission, proposed that self-incrimination should not be possible in civil proceedings, either, and proposed the addition of the term 'civil' in Article 16(3). SI suggested the addition of a new recital which would better explain the application of Article 16(3). As a general comment on the 'Just Culture' principle and the definition of 'gross negligence', the Commission explained that the intention of its proposal was to create a trusting environment for aviation professionals in order to encourage reporting and to improve safety. However, even if supported by the majority of delegations, the Commission indicated that the Presidency compromise text did not offer sufficient protection to the reporter.

#### **IV. OTHER ISSUES**

##### **c) Delegated and implementing acts (Article 4 footnote 22, Article 8 footnote 36, Article 11 footnote 38, and Articles 17 and 18 footnote 47)**

The initial Commission proposal would give the Commission the possibility to adopt delegated acts for the updating of the Annexes to the Regulation to technical progress, to align the Annexes with the internationally agreed taxonomy ADREP, with other legislation adopted by the EU and with international agreements, to update the list of interested parties and the request for a European Central Repository information form, and to ensure that the scope of incidents to be reported under the mandatory scheme remains appropriate.

A great majority of delegations considers that some of the above-mentioned issues, in particular updating Annexes I and II to the proposal, constitute an essential part of the legislative act and that Member States should be thoroughly involved in any such modifications and they therefore cannot accept the Commission proposal on this issue.

The Presidency invited the Member States' experts to discuss the Annexes to the proposal and make recommendations to the Working Party. The Presidency's proposal was accepted by the Working Party. The work of the ad hoc group was coordinated by the Commission, with the involvement of EASA. Following the three meetings of the ad hoc experts' group, the Member States' experts considered that more time should be dedicated to the discussion of Annexes I and II to the proposal. Therefore, several delegations emphasised that these Annexes were too important to be discussed in a hurry or to allow the Commission to develop and/or update them through delegated acts and they proposed to develop the above-mentioned Annexes by means of implementing acts. They argued that such a solution would allow both the involvement of Member States' experts, and the necessary time for the development of Annexes I and II. As a result, the Presidency compromise text reflects the position of the Member States and Articles 4, 7, 17 and 23 have been modified to allow for the development of the above-mentioned Annexes through implementing acts. The Commission has a reservation on this issue.

**d) Delayed application of the Regulation (Article 24, footnote 49)**

The Commission proposal only provided that the Regulation should enter into force twenty days following the publication of the proposal in the Official Journal. However, several delegations have emphasised that more time would be necessary for the Member States' competent authorities and for the organisations to prepare for the application of this Regulation and have proposed to apply it two years after its entry into force and not before the entry into force of the implementing measures concerning the list of occurrences to be reported mandatorily referred to in Article 4(2a) and the list of mandatory data fields referred to in Article 7(1a). Moreover, the application of Article 7(2) will be further delayed until the common European risk classification scheme is developed by the Commission. The Commission argues that the application of the Regulation will be delayed unnecessarily and that only for certain articles a delayed application might be justified. Therefore, the Commission keeps a reservation on the above-mentioned compromise proposal.



Furthermore, the Commission fully reserves its position on the entire compromise proposal, pending the negotiations with the European Parliament.

SI has a parliamentary scrutiny reservation.

Other concerns and reservations expressed by delegations appear in the footnotes in the Annex to this report.

## **V. CONCLUSIONS**

In the light of the above, at its meeting on 10 June 2013, the Council is invited to examine the text as set out in the Annex to this report, to resolve the last outstanding issues and to adopt a general approach.

2012/0361 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and  
repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and  
Commission Regulation (EC) No 1330/2007**

(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,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

After consulting the European Data Protection Supervisor<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C [...], [...], p. [...].

Whereas:

- (1) A high and uniform general level of safety should be ensured in civil aviation in the Union and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in aviation transport.
- (2) The rate of fatal accidents in civil aviation has overall remained fairly constant in the last decade; nevertheless there is concern that the forecasted traffic increase for the next decades could lead to an increase in the number of accidents.
- (3) 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<sup>4</sup> aims at preventing accidents by facilitating the conduct of expeditious, efficient and qualitative safety investigations. This Regulation should not interfere with the process of accidents and incidents investigations managed by national Safety Investigation Authorities as defined in Regulation (EU) No 996/2010.
- (4) Experience has shown that often before an accident occurs, a number of incidents and numerous other deficiencies have shown the existence of safety hazards. In addition, whilst the ability to learn lessons from an accident is crucial, purely reactive systems have shown their limit in continuing to bring forward improvements. The Union and its Member States should move towards more proactive and evidence based safety processes which focus on preventing an accident occurring by analysing all available safety information, including information on civil aviation occurrences.
- (5) The improvement of civil aviation safety requires that relevant civil aviation safety information should be reported, collected, stored, protected, exchanged, disseminated, analysed and that appropriate safety actions should be taken on the basis of the information collected. This proactive and evidence based approach should be implemented by Member States relevant aviation safety authorities, by organisations as part of their safety management system and by the European Aviation Safety Agency (EASA).

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<sup>4</sup> OJ L 295, 12.11.2010, p. 35.

- (6) Mandatory and voluntary reporting systems allowing individuals to report details of occurrences should be set up and the information collected should be transferred to the authority competent for taking action on the basis of occurrences collected in order to enhance civil aviation safety.
- (7) Various categories of personnel working in civil aviation observe events of interest for the prevention of accidents and should therefore report them.
- (8) The development of other means to collect safety information next to the systems required by this legislation should be encouraged in order to capture all information which could contribute to the enhancement of aviation safety.
- (9) Safety investigation authorities should get full access to details of occurrences collected or occurrence reports stored by their Member States in order to decide which incidents may require a safety investigation and produce safety lessons serving for the interest of aviation safety.
- (10) It is crucial to get good quality and complete data as analysis and trends based on inaccurate data may involve misleading results and focus efforts where no action is appropriate. In addition such inaccurate data may lead to a loss of confidence in the information issued from occurrences reporting schemes. In order to ensure the quality and the completeness of occurrences reports, they should contain minimum information which may vary depending on the occurrence category. In addition, processes to check the quality of information and to ensure the consistency between an occurrence report and the initial details of occurrence collected should be implemented. In addition, with the support of the Commission, adequate guidance material should be developed notably to ensure the quality and completeness of data as well as a consistent and uniform integration of data into databases. Workshops should also be organised, notably by the Commission, to provide the necessary support.

- (11) A common European risk classification scheme should be developed in order to allow support for the identification of necessary quick action when looking at high risk single safety occurrences. It should also allow the identification of key risk areas when looking at aggregated information. Such a scheme should support Member States in their assessment of occurrences and in determining where to best focus their efforts. It should also, when looking at aggregated information from a European perspective, allow the identification of key risk areas within the Union and support the work done in the area of the European Aviation Safety Programme and of the European Aviation Safety Plan. Appropriate support should be given to ensure a consistent and a uniform risk classification across Member States.
- (12) Occurrence reports should be stored in databases which should be a system compatible with ECCAIRS (the software used by all Member States and the European Central Repository to store occurrence reports) and with the ADREP taxonomy (the ICAO taxonomy, also used for the ECCAIRS software) in order to facilitate information exchange.
- (13) Occurrences involving an aircraft registered in a Member State or operated by an organisation established in a Member State should be reported even when it happened outside the territory of the Member States.
- (14) Information on occurrences should be exchanged within the Union. This should notably greatly enhance the detection of actual or potential hazards. In addition, this should allow Member States to receive all necessary information on occurrences occurring in their territory but which are reported to another Member State.
- (15) The exchange of information on occurrences should respect the objective of preventing aviation accidents and incidents, excluding as a consequence the attribution of blame and liability as well as benchmarking of safety performance.

- (16) The most efficient way to ensure the exchange of a large amount of information between all the Member States, the Commission and EASA is the European Central Repository.
- (17) All safety related information issued from occurrence reports collected in the Union should be transferred in the European Central Repository in a timely manner. This should include the collection of incidents but also information derived from accidents and serious incidents investigated in accordance with Regulation (EU) No 966/2010.
- (18) Information concerning national occurrences, stored in the national databases, should be subject to the present Regulation.
- (19) Safety information contained in the European Central Repository should be fully available to entities entrusted with regulating civil aviation safety, including EASA, and to the authorities in charge of investigating accidents and incidents within the Union.
- (20) Interested parties may request access to certain information contained in the European Central Repository.
- (21) As national points of contacts have the best knowledge of interested parties established in their own Member State, each national point of contact should deal with requests from interested parties established in the territory of that Member State while requests from interested parties from third countries or from international organisations should be dealt with by the Commission.
- (22) Information contained in occurrence reports should be analysed and safety risks identified. As a result, appropriate actions for improving aviation safety should be determined and implemented in a timely manner. Information on the analysis and follow up of occurrences should be disseminated within organisations and Member States authorities as providing feedback on occurrences reported is a good incentive for individuals to report occurrences.

- (23) The effectiveness of safety measures adopted should be monitored and, where necessary, additional actions should be taken to ensure that the safety deficiencies have been correctly addressed. Information contained in occurrence reports should also be used in the form of aggregated data to detect trends.
- (24) When determining the actions to be included within their State Safety Programme and in order to ensure that the actions are evidence based, Member States should use the information coming from the occurrence reports collected and their analysis.
- (25) Since the objective of air safety improvement cannot be sufficiently achieved by the Member States because reporting systems operated by Member States in isolation are less efficient than a coordinated network with exchange of information enabling an identification of possible safety problems and key risk areas at Union level, the analysis at national level should be complemented by an analysis and follow-up at Union level in order to ensure better prevention of aviation accidents and incidents. This task at Union level should be carried out by a Network of Aviation Safety Analysts.
- (26) The European Aviation Safety Programme and the European Aviation Safety Plan should notably benefit from the work of the Network of Aviation Safety Analysts to determine the actions to be implemented at Union level in an evidence based perspective.
- (27) The general public should be provided with general aggregated information on the level of aviation safety in Member States and in the Union. This information should in particular cover trends and analysis resulting from the implementation of this Regulation by the Member States, as well as information on the content of the European Central Repository in an aggregated manner.

- (28) The civil aviation safety system is based on feedback and lessons learned from accidents and incidents. Occurrence reporting and the use of occurrences for the benefit of safety are built on a relation of confidence between the reporter of the occurrence and the entity in charge of its collection and assessment. This requires the strict application of rules on confidentiality. The purpose of protecting safety information from inappropriate use and the limited access to the European Central Repository only to interested parties participating in the improvement of civil aviation safety are there to ensure continued availability of safety information so that proper and timely preventive actions can be taken and aviation safety improved. In this context, sensitive safety information should be protected in an appropriate way and its collection ensured by guaranteeing its confidentiality, the protection of its source and the confidence of the personnel working in civil aviation. Appropriate measures should be put in place to enable the confidentiality of information collected through occurrence reporting schemes and the access to the European Central Repository should be restricted. National freedom of information acts should take into account the necessary confidentiality of such information. The information collected should be adequately protected from unauthorised use or disclosure. It should strictly be used for the purpose of maintaining or improving aviation safety and should not be used to attribute blame or liability.
- (29) A person who has reported an occurrence in application of this Regulation should be adequately protected. In this context occurrence reports should be anonymised and details related to the reporter should not be registered into databases.
- (30) In addition the civil aviation system should promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of ‘Just Culture’. A non-punitive environment should not prevent the adoption of actions necessary to maintain or enhance the level of aviation safety.
- (31) A 'Just Culture' environment should encourage individuals to report safety related information. It should however not absolve individuals from their normal responsibilities. In this context, employees should not be punished on the basis of information they have provided in application of this Regulation, except in case of gross negligence.



- (32) It is important to clearly set the line which protects the reporter from prejudice or prosecution by providing a common understanding of the term gross negligence.
- (33) Occurrences reported should be handled by designated persons working independently from other departments in order to contribute to the implementation of 'Just Culture' and enhance the confidence of individuals in the system.
- (34) Employees should have the possibility to report breaches to the principles delimiting their protection as established by this legislation. Member States should define the consequences for those having infringed the principles of protection of reporter and should adopt penalties when relevant.
- (35) Individuals may be refrained to report occurrences by the fear of self-incrimination and their potential consequences in terms of prosecution before judicial authorities. In this context Member States should not institute proceeding against a reporter on the basis of its report, except in case of gross negligence. In addition, the cooperation between safety and judicial authorities should be enhanced and formalised by the means of advance arrangements which should respect the balance between the various public interests at stake and notably cover the access and use of occurrence reports contained in the national databases.
- (36) In order to ensure the appropriate flexibility and update of the information contained in the Annexes to this Regulation as well as to define the common European risk classification scheme, to update the measures concerning the integration into the European Central Repository and to extend or restrict the dissemination of information contained in the European Central Repository, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

- (37) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to the implementation of the common European risk classification scheme and to the management of the European Central Repository. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>5</sup>.
- (38) The rules on data processing and the protection of individuals as defined in Directive 95/46 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<sup>6</sup> and in Regulation (EU) 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 EU institutions and bodies and on the free movement of such data<sup>7</sup> should be fully respected in the application of this Regulation. The rules on access to data as defined in 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<sup>8</sup> should be fully respected in the application of this Regulation except when it relates to the dissemination of data and information contained in the European Central Repository which are protected under stricter access rules laid down in this Regulation.

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<sup>5</sup> OJ L 55, 28.2.2011, p. 13.

<sup>6</sup> OJ L 281, 23.11.1995, p. 31.

<sup>7</sup> OJ L 8, 12.1.2001, p. 1.

<sup>8</sup> OJ L 145, 31.5.2001, p. 43.

- (39) Penalties should, in particular, allow for the sanctioning of any person or entity who, contrary to this Regulation, misuses information protected by this Regulation; adopts prejudice against the reporter of an occurrence except in case of gross negligence; does not establish an environment appropriate for allowing the collection of details of occurrences; does not analyse the information collected and does not act to address the safety or potential safety deficiencies detected; does not share the information collected in application of this Regulation.
- (40) Since the objective of this Regulation, namely the establishment of common rules in the field of occurrence reporting in civil aviation 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.
- (41) Regulation (EU) No 996/2010 should be amended.
- (42) Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation<sup>9</sup>, 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<sup>10</sup>, Commission Regulation (EC) No 1330/2007 of 24 September 2007 laying down implementing rules for the dissemination to interested parties of information on civil aviation occurrences<sup>11</sup> should be repealed.

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<sup>9</sup> OJ L 167, 4.7.2003, p. 23.

<sup>10</sup> OJ L 294 of 13.11.2007, p. 3.

<sup>11</sup> OJ L 295 of 14.11.2007, p. 7.

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Objectives**

1. This Regulation aims to improve aviation safety by ensuring that relevant civil aviation safety information is reported, collected, stored, protected, exchanged, disseminated and analysed. It seeks to ensure that, where appropriate, safety actions are taken following analysis of the information collected. It aims to ensure a continued availability of safety information through rules on the appropriate use of information and protection of the reporter. *(last sentence has been moved to Article 3 Subject Matter)*
2. The sole objective of occurrence reporting is the prevention of accidents and incidents and not to attribute blame or liability.

*Article 2*

**Definitions**

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

- (0) ‘accident’ means an accident within the meaning of Regulation (EU) No 996/2010;
- (0a) ‘aircraft’ means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth’s surface;<sup>12</sup>

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<sup>12</sup> Article 2(18) of Regulation 923/2012 (OJ L 281 of 12.10.2012, p.1) and Annex 6 to the Chicago Convention. This definition has to be read in conjunction with Article 3 (Scope).

- (0b) ‘disidentified information’ means information arising from occurrence reports from which all personal data such as names or addresses of natural persons have been removed;
- (1) ‘anonymisation’ means removing from occurrence reports submitted all personal details pertaining to the reporter and any details, including the name of the organisation(s) involved in the occurrence, which may reveal the identity of the reporter, or of third parties, or lead to its being inferred from the information;
- (2) ‘European Aviation Safety Programme’ means the integrated set of regulations at Union level, together with the activities and processes used to jointly manage safety at European level;
- (3) ‘European Aviation Safety Plan’ means safety issues assessment and related action plan at European level;
- (4) [...] <sup>13</sup>
- (5) ‘incident’ means an incident within the meaning of Regulation (EU) No 996/2010;
- (5a) ‘serious incident’ means a serious incident within the meaning of Regulation (EU) No 996/2010;<sup>14</sup>
- (6) ‘interested party’ means any natural person, any legal person or any official body, whether having its own legal personality or not, that is in a position to participate in the improvement of civil aviation safety by having access to information on occurrences exchanged by the Member States and which is included in one of the categories of interested parties established by this Regulation;

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<sup>13</sup> EL and NL prefer to keep the definition of 'gross negligence'. CION also has a reservation on the deletion of this definition.

<sup>14</sup> According to Article 2(16) of Regulation 996/2010, OJ L 295 of 12.11.2010, p. 35.

- (7) ‘Just Culture’ means a culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training,<sup>15</sup> but where gross negligence, wilful violations and destructive acts are not tolerated;<sup>16</sup>
- (8) ‘occurrence’ means any safety related event<sup>17</sup> which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident and serious incident;
- (9) ‘organisation’ means any organisation providing aviation products and/or services which employs, contracts or uses the services of persons required to report occurrences in accordance with Article 4(3);<sup>18</sup>
- (10) ‘point of contact’ means:
- a) the competent authority designated by each Member State in accordance with Article 6(2) when a request for information is made by an interested party established in a Member State; or
  - b) the Commission when a request is made by an interested party not established in the Union;
- (11) ‘safety investigation authority’ means the permanent national civil aviation safety investigation authority conducting or supervising safety investigations as defined by Article 4 of Regulation (EU) No 996/2010;

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<sup>15</sup> A recital will be added along the following lines: *"when timely and honestly reported to an organisation involved or a proper authority"*.

<sup>16</sup> A recital will be added along the following lines: *"Just Culture" is an essential element of a broader term "Safety Culture" which is a cornerstone of robust Safety Management System"*.  
<sup>17</sup> IT is against the deletion of the text *'or other irregular circumstance'*.

<sup>18</sup> New recital to be added along the following lines: *"This definition does not exclude any individual not listed in Art.4(3) to report any occurrence"*.

- (12) 'safety management system (SMS)' means a systematic approach to managing safety including the necessary organisational structures, accountabilities, policies and procedures;
- (13) 'State Safety Programme (SSP)' means an integrated set of legislations and activities aimed at managing civil aviation safety in a Member State.
- (14) 'Hazard' means a condition or an object with the potential to cause death, injuries to personnel, damage to equipment or structures, loss of material, or reduction of ability to perform a prescribed function.<sup>19</sup>

### *Article 3*

#### ***Subject matter and scope***

1. This Regulation lays down provisions on reporting of occurrences or other safety related information which endangers or which, if not corrected or addressed, would endanger an aircraft, its occupants, any other person, equipment or installation affecting aircraft operations. *(one sentence has been moved to Article 4(3))* It provides for analysis and follow-up action in respect of the reported occurrences. It also provides for rules concerning the integration of information collected into the European Central Repository and their dissemination of this anonymised information to interested parties with the objective of providing such parties with the information they need to improve civil aviation safety.

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<sup>19</sup> As defined in ICAO 'Safety Management Manual' 3rd version (doc. ICAO 9859), point 1.12.1.

2. This Regulation applies to aircraft, with the exception of aircraft referred to in Annex II to Regulation (EC) No 216/2008<sup>20</sup>. Member States may decide to apply this Regulation also to the aircraft referred to in that Annex II.

*Article 4<sup>21</sup>*

***Mandatory reporting***

1. A mandatory reporting system to facilitate the collection of details of its occurrences shall be set up by each organisation established in a Member State.
2. A mandatory reporting system shall be set up by each Member State to facilitate collection of details of occurrences including collection of details of occurrences gathered by organisations in application of paragraph 1.
- 2a. The Commission shall, by means of implementing acts<sup>22</sup>, adopt a list of occurrences which individuals listed in paragraph 3 have an obligation to report under mandatory occurrence reporting schemes in accordance with this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2). This shall include simplified<sup>23</sup> requirements for potential reporters flying aircraft other than complex motor-powered aircraft. This list shall contain occurrences which endanger or which, if not corrected or addressed, would endanger an aircraft, its occupants, any other person, equipment or installation affecting aircraft operations and shall concern at least the following categories:

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<sup>20</sup> Regulation 216/2008, OJ L 79 of 19.03.2008, p.1.

<sup>21</sup> FR would prefer MORS to be applied to public transport aircraft and to turbine-powered general aviation aircraft.

<sup>22</sup> The Commission has a reservation on the replacement of delegated acts with implementing acts for the adoption of the list of occurrences reported under MORS.

<sup>23</sup> A recital will be added explaining that, for non-complex aircraft, the scope is the same as for other aircraft, but the reporting requirements should be drafted in a simplified manner to facilitate the reporting.



- occurrences related to the operation of the aircraft, such as collision related, take off and landing related and fuel related occurrences, in-flight occurrences, communication related occurrences, occurrences related to emergencies and other critical situations, crew incapacitation, meteorological conditions or security;
- occurrences related to technical conditions, maintenance and repair of the aircraft, such as structural defects, system malfunctions, propulsion (including engines, propellers and rotor systems) and auxiliary power units;
- occurrences related to air navigation services and facilities, such as collisions or potential collisions, ATM / ANS specific occurrences, ATM/ANS operational occurrences;
- occurrences related to aerodromes and ground services such as occurrences related to aerodrome activities and facilities, handling of passengers, baggage, mail and cargo and aircraft ground handling and servicing.

3. The following natural persons shall report the occurrences referred to in paragraph 2a, through the system established by the organisation which employs that person in accordance with paragraph 1 or, failing that, through the system established by the Member State of establishment of their organisation, or by the State which issued, validated or converted the pilot's licence, in accordance with paragraph 2:

- (a) the pilot-in-command of an aircraft registered in a Member State or an aircraft registered outside the Union but used by an operator for which a Member State ensures oversight of operations or an operator established in the Union;
- (b) a person engaged in designing, manufacturing, maintaining, monitoring, maintenance or modifying an aircraft, or any equipment or part thereof, under the oversight of a Member State or under the oversight of the European Aviation Safety Agency (EASA);

- (c) a person who signs an airworthiness review certificate, or a release to service in respect of an aircraft, or any equipment or part thereof, under the oversight of a Member State or under the oversight of EASA;
- (d) a person who performs a function which requires him to be authorised by a Member State as an air traffic controller or as a flight information officer;
- (e) a person who performs a function connected with the safety management of an airport to which Regulation (EC) No 1008/2008<sup>24</sup> of the European Parliament and of the Council<sup>25</sup> applies;
- (f) a person who performs a function connected with the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation facilities for which a Member State is responsible;
- (g) a person who performs a function connected with the ground handling of aircraft, including fuelling, servicing, loadsheet preparation, loading, de-icing and towing at an airport covered by Regulation (EC) No 1008/2008.

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<sup>24</sup> FR proposes to replace the reference to Regulation 1008/2008 with Regulation 216/2008. The Commission explains that, in the current Directive, the reference is already made to Regulation 2408/1992, which has been replaced by Regulation 1008/2008.

<sup>25</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance); OJ L 293, 31.10.2008, p. 3.

4. Every person listed in paragraph 3 shall report occurrences<sup>26</sup> within 72 hours<sup>27</sup> of becoming aware of the occurrence, unless exceptional circumstances prevent this.
5. [...] (*moved to paragraph 7*)
6. Each organisation certified or approved by EASA shall report to EASA the details of occurrences collected in accordance with paragraph 1 without undue delay from the notification of the occurrence.
7. Any organisation established in a Member State that is not covered by the previous paragraph shall report to the competent authority of that Member State, as referred to in Article 6(2) the details of occurrences collected in accordance with paragraph 1 without undue delay from the notification of the occurrence. (*moved from paragraph 5*)

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<sup>26</sup> IT proposes to add the following text: "*in a timely manner in order to comply with the reporting time limits referred to in paragraphs 6 and 7, or through the system established by the Member States,*"

<sup>27</sup> IT proposes to delete any time limit and leave the reporting by persons more flexible, as provided by the rules of each organisation.

<sup>28</sup> The following text will be used to complement recital 3: "*In case of an accident or serious incident, the notification of the occurrence shall also be subject to the provisions of Article 9(1) of Regulation (EU) No 996/2010.*"

*Article 5*  
***Voluntary reporting***

1. A voluntary reporting system shall be set up by each organisation established in a Member State to facilitate collection of occurrences<sup>29</sup> that may not be captured by the mandatory reporting system, or other safety related information which is perceived by the reporter as an actual or potential hazard.
  
2. A voluntary reporting system shall be set up by each Member State to facilitate collection of occurrences<sup>30</sup> that may not be captured by the mandatory reporting system, or other safety related information which is perceived by the reporter as an actual or potential hazard. This system shall also include but will not be limited to the collection of information transferred by organisations in accordance with paragraph 5a.

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<sup>29</sup> IT proposes to add: "*on actual or potential safety deficiencies*". DE, ES and MT suggest putting the text suggested by IT in a recital.

<sup>30</sup> Ibidem

3. The voluntary reporting systems shall allow the collection of occurrences<sup>31</sup> or safety related information which do not have to be mandatorily reported in accordance with Annex I or the reporting of occurrences or safety related information by persons which are not listed in Article 4(3).
4. [...] (*moved to paragraph 5a*)
5. Each organisation certified or approved by EASA shall report to EASA the details of relevant occurrences and safety related information collected in accordance with paragraph 1.
- 5a. Any organisation established in a Member State that is not covered by the previous paragraph shall report to the competent authority of that Member State, as referred to in Article 6(2), the details of relevant occurrences and safety related information collected in accordance with paragraph 1. **Member States may require any organisation established in their territory to report the details of all occurrences in accordance with paragraph 1.**
6. Member States and organisations may establish other safety information collection and processing systems to collect details of occurrences that may not be captured by the reporting systems mentioned in Article 4 and in paragraphs 1 and 2 of this Article. These systems may include the reporting to entities other than the ones described in Article 6(2) and may involve an active participation of the industry.
7. Information received from voluntary and mandatory reporting may be integrated in a single system.

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<sup>31</sup> IT proposes to add: "*on actual or potential safety deficiencies*".

*Article 6*

***Collection and storage of information***

1. Each organisation established in a Member State shall put in place a mechanism to handle the collection, evaluation, processing, analysis and storage of details of occurrences reported in accordance with Articles 4 and 5. The handling of these reports shall be organised so as to appropriately safeguard the confidentiality of the reporter with regard to fostering a Just Culture.<sup>32</sup>
  
2. Each Member State shall designate one or more competent authorities to put in place a mechanism to collect, evaluate, process, analyse and store details of occurrences reported in accordance with Articles 4 and 5. The handling of these reports shall be organised so as to appropriately safeguard the confidentiality of the reporter with regard to fostering a Just Culture.

The authorities which may be entrusted with that responsibility, either together or separately, are the following:

- (a) the national civil aviation authority; and/or
- (b) the safety investigation authority; and/or
- (c) any other independent body or entity based in the European Union entrusted with this function.

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<sup>32</sup> The following text will be used as a basis for a recital: *"The requirements imposed on the aviation industry dealing with occurrence reports should be proportionate to the size of organisation and its scope of activity. Therefore it should be possible, in particular for smaller organizations, to decide on joining/merging postholders' functions within the organization or enabling outsourcing of the collection, evaluation, processing, analysis and storage of details of occurrences to approved/certified specialized entities. Such entities should fulfill maximum data security and confidentiality standards. However overall accountability and responsibility should stay with the organizations."*

If a Member State designates more than one body or entity, it shall designate one of these as point of contact for the transfer of information mentioned in Article 8(2).

- 2a. EASA shall put in place a mechanism to collect, evaluate, process, analyse and store details of occurrences reported in accordance with Articles 4 and 5. The handling of these reports shall be organised so as to appropriately safeguard the confidentiality of the reporter with regard to fostering a Just Culture.
- 2b. Without prejudice to the applicable national rules of criminal law, Member States shall refrain from instituting proceedings against the persons which are part of the mechanisms referred to in paragraphs ~~[1]~~ and 2 in respect to decisions taken concerning their duties of evaluating, processing and analysing occurrences, which, later on and with the benefit of hindsight, prove to be erroneous or ineffective, but that, when they were taken and with the information available at that time, were proportional and appropriate.
3. Organisations shall store occurrence reports arising from details of occurrences collected in accordance with Articles 4 and 5 in one or more databases<sup>33</sup>.
4. The competent authorities referred to in paragraph 2 shall store occurrence reports arising from details of occurrences collected in accordance with Articles 4 and 5 in a national database.

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<sup>33</sup> The following text will be used as a basis for a recital: *"Organisations shall store occurrence reports arising from details on occurrences collected in accordance with Articles 4 and 5 in the database. The complexity of the database should be proportionate to the organisation's size and/or its significance regarding the objectives of this Regulation and should, as a minimum, consist of a data file containing all mandatory data fields as listed in Annex II of this Regulation."*

5. Relevant information on accidents and serious incidents collected or issued by safety investigation authorities shall also be stored in that national database.
- 5a. EASA shall store occurrence reports arising from details of occurrences collected in accordance with Articles 4 and 5 in a database.
- 5b. Safety investigation authorities shall have full access to their national database referred to in paragraph 4 in order to discharge the obligations laid down in Article 5(4) of Regulation (EU) No 996/2010. *(moved from para. 7)*
6. Member State civil aviation authorities shall have full access to their national database referred to in paragraph 4 to support their safety responsibilities.
7. [...] *(moved to para. 5b)*

#### *Article 7*

#### ***Quality and content of occurrence reports***

1. Occurrence reports referred to in Article 6 issued from the mandatory occurrence reporting system shall contain at least the following information:
  - common mandatory data fields;
  - where relevant, specific mandatory data fields including aircraft related data fields, air navigation services related data fields, aerodrome related data fields and maintenance related data fields.



- 1a. In order to facilitate the collection, storage and evaluation of the information, the Commission shall, by means of implementing acts, establish the detailed list of common mandatory data fields and specific mandatory data fields. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).
- 1b. Occurrence reports issued from the voluntary occurrence reporting system shall also be completed, to the extent possible, using the fields established for mandatory reporting.
2. Each occurrence report referred to in paragraphs 3 and 4 of Article 6 shall contain a safety risk classification of the occurrence collected. This classification shall be validated by the Member State competent authority or EASA, in accordance with the common European risk classification scheme laid down in paragraph 5<sup>34</sup>.
3. Organisations and Member States shall establish data quality checking processes to improve data consistency, notably between the information initially collected and the report stored in the database.
4. The databases mentioned in paragraphs 3 and 4 of Article 6 shall use standardised formats to facilitate information exchange and shall be an ECCAIRS and an ADREP-compatible format.
5. The Commission, in close cooperation with the Member States and EASA, shall develop a common European risk classification scheme in order to classify occurrences in terms of safety risk. In doing so the Commission shall take into account the need for compatibility with existing risk classification schemes. The Commission shall develop this European risk classification scheme not later than three years after the entry into force of this Regulation.

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<sup>34</sup> A recital will be added to explain that organisations can use any risk classification scheme and that the Member States will convert it to the ECR and validate it.

6. The Commission shall be empowered to adopt, delegated acts in accordance with Article 18 for defining the common European risk classification scheme.
7. The Commission shall, by means of implementing acts, adopt the arrangements for the implementation of the common European risk classification scheme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).
8. The Commission shall support competent authorities of the Member States in their task of data integration, notably, but not limited to, the integration of minimum information referred to in paragraph 1, the risk classification of occurrences referred to in paragraph 2 and the establishment of data quality checking processes referred to in paragraph 3. This support from the Commission, provided notably in the form of guidance material and workshops, shall contribute to harmonise the data entry process across Member States.

*Article 8*

***European Central Repository***

1. The Commission shall manage a European Central Repository to store all occurrence reports collected in the Union.
2. Each Member State shall, in agreement with the Commission, update the European Central Repository by transfer of all safety related information contained in the national databases referred to in Article 6(4). *(last sentence has been moved to Art.9(1))*

3. EASA shall agree with the Commission the technical protocols for transferring into the European Central Repository all occurrence reports collected by EASA under Regulation (EC) No 216/2008 of the European Parliament and of the Council<sup>35</sup> and its implementing rules as well as the information collected in application of Articles 4(6) and 5(5).
4. The Commission shall, by means of implementing acts, adopt the arrangements for the management of the European Central Repository as referred to in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).
5. <sup>36</sup> [...].

#### *Article 9*

#### ***Exchange of information***<sup>37</sup>

1. Member States and EASA shall participate in an exchange of information by making all safety related information stored in their respective reporting databases available to the competent authorities of the other Member States, EASA and the Commission, through the means of the European Central Repository. Occurrence reports shall be transferred to the European Central Repository no later than two months after their storage in the national database. Occurrence reports shall be updated whenever necessary with additional safety related information.

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<sup>35</sup> Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance); *OJ L 79, 19.3.2008, p. 1.*

<sup>36</sup> The Commission has a reservation on the deletion of delegated acts for the purpose of this paragraph.

<sup>37</sup> The following text will be used as a basis for a recital: "*EASA and the Commission should provide technical support for the interoperability of the systems.*"

2. Information related to accidents and serious incidents shall also be transferred in the European Central Repository. Preliminary factual information on accidents and serious incidents shall be transferred while an investigation thereon is on-going. When the investigation is completed, the final investigation report and, when available, a summary in English of the final investigation report shall be added.
3. If a Member State or EASA, in the collection of details of occurrences or storage of occurrence reports or of an analysis carried out in accordance with Article 13(4), identifies safety matters considered to be of interest to other Member States or EASA or possibly requiring safety action to be taken by other Member States or EASA, that Member State or EASA shall forward all pertinent safety related information to relevant Member States authorities or EASA as soon as possible.

#### *Article 10*

#### ***Dissemination of information stored in the European Central Repository***

1. Any entity entrusted with regulating civil aviation safety or safety investigation authority within the Union shall have full online access to information on occurrences contained in the European Central Repository. The information shall be used in accordance with the principles and safeguards established by Articles 15 and 16.
2. Interested parties listed in Annex III may request access to certain information contained in the European Central Repository. Interested parties established within the Union shall address requests for information to the point of contact of the Member State in which they are established. Interested parties not established in the Union shall address their request to the Commission. The Commission shall inform the competent authority of the Member State concerned when such a request is made.

- 2a. Subject to Article 15(2) of Regulation 996/2010, information contained in the European Central Repository about ongoing safety investigations conducted in accordance with Regulation 996/2010 shall not be disclosed to interested parties pursuant to this Article.
3. For security reasons, direct access to the European Central Repository shall not be granted to interested parties.

### *Article 11*

#### *Processing of requests and decisions*

1. Requests for information contained in the European Central Repository shall be submitted using forms approved by the point of contact. These forms shall contain at least the items set out in Annex II.
2. A point of contact which receives a request shall check that it is made by an interested party and that the point of contact is competent to deal with such request. When the point of contact determines that another Member State or the Commission is competent to deal with the request, it shall transfer it to this Member State or to the Commission, as appropriate.
3. A point of contact which receives a request shall evaluate on a case-by-case basis whether the request is justified and practicable. The points of contact may supply information to interested parties on paper or by using secure electronic means of communication.

4. If the request is accepted, the point of contact shall determine the amount and the level of information to be supplied. The information shall be limited to what is strictly required for the purpose of the request, without prejudice to Articles 15 and 16. Information unrelated to the interested party's own equipment, operations or field of activity shall be supplied only in aggregated or anonymised form. Information under non aggregated form may be provided to the interested party if it provides a detailed written justification.
5. Interested parties listed in Annex I point (b) may be supplied only with information relating to the interested party's own equipment, operations or field of activity.
6. A point of contact receiving a request from an interested party listed in Annex III point (a) may take a decision of general nature to supply information on a regular basis to that interested party. The information requested shall be related to the interested party's own equipment, operations and field of activity. The decision of general nature cannot grant access to the whole content of the database and shall only cover access to anonymised information.
7. The interested party shall only use the information received for the purpose specified in the request form, which should be compatible with the objective of this Regulation as stated in Article 1. The interested party shall not disclose the information received without the written consent of the provider and shall take the necessary measures to ensure appropriate confidentiality of the information received.
8. The decision to disseminate information under this Article shall be limited to what is strictly required for the purpose of its user.
9. <sup>38</sup> [...].

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<sup>38</sup> The Commission has a reservation on the deletion of this paragraph.

*Article 12*

***Record of requests and exchange of information***

1. Each point of contact shall record each request received and the action taken. That information shall be transmitted in a timely manner to the Commission whenever a request is received and/or action taken.
2. The Commission shall make available to all points of contact the updated list of requests received and action taken by the various points of contact and by the Commission itself.

*Article 13*

***Occurrence analysis and follow up at national level***

1. Each organisation established in a Member State shall develop a process to analyse occurrences collected in accordance with Articles 4(1) and 5(1) in order to identify the safety hazards associated with identified occurrences or groups of occurrences. Based on this analysis it shall determine the appropriate corrective or preventive action, if any, required, for the enhancement of safety.
2. Each organisation established in a Member State shall, following the identification of any appropriate actions required to address actual or potential safety deficiencies, implement these actions in a timely manner and establish a process to monitor implementation and effectiveness of the responses.

3. Each organisation certified or approved by EASA shall report to EASA<sup>39</sup> the first results of the analysis performed in accordance with paragraph 1 and any action to be taken in accordance with paragraph 2 within 30 days from the day of notification of the occurrence by the reporter.
- 3a. Each organisation established in a Member State, which is not covered by the previous paragraph, shall report to the competent authority of the Member State the first result of the analysis, if any, of occurrences reported in accordance with Article 4(7) and Article 5(5a) **which identify an actual or potential safety risk** and performed in accordance with paragraph 1 and any action to be taken in accordance with paragraph 2 within 30<sup>40</sup> days from the day of notification of the occurrence by the reporter.<sup>41</sup>
4. Each Member State and EASA shall develop a process to analyse the information about occurrences or groups of occurrences which are directly reported to them in accordance with Articles 4 and 5 in order to identify the safety hazards associated with reported occurrences. Based on this analysis they shall determine any appropriate corrective or preventive action required for the enhancement of safety.

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<sup>39</sup> AT proposes to add "*and the competent authority of the Member State*".

<sup>40</sup> IT, supported by LV, proposes to replace "*within 30 days*" with "*as soon as they are identified, at the latest within 90 days*". CION argues that the ICAO Safety Management Manual (doc. 9859) recommends 30 days.

<sup>41</sup> A recital will be added to clarify that organisations are responsible for their own actions.



5. Each Member State and EASA shall, following the identification of actions required to address actual or potential safety deficiencies in accordance with paragraph 4, implement any appropriate actions in a timely manner and establish a process to monitor implementation and effectiveness of the responses.
6. Each Member State and EASA shall also oversee the responses of organisations reported to them pursuant to paragraphs 3 and 3a. If a Member State or EASA assesses that the implementation of the reported responses is inappropriate to address actual or potential safety deficiencies, it shall ensure that additional appropriate actions are taken and implemented by the relevant organisation.<sup>42</sup>
7. When available, information related to the analysis and, where relevant, the follow-up of individual occurrences or groups of occurrences as described in this Article shall be stored in the European Central Repository, in accordance with Article 8(2) and (3), in a timely manner and no later than two months after their storage in the national database.
8. Information obtained from the analysis of occurrence reports shall be used by Member States to help determine remedial actions to be taken, if any, within the State Safety Programme.
9. Member States shall publish, at least annually, a safety review for the information of the public containing information on the type of occurrences collected by their national mandatory and voluntary reporting systems, identifying trends and the actions they have taken.

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<sup>42</sup> A recital will be added to explain how the Member States and EASA will monitor the implementation and effectiveness of the actions taken by organisations pursuant to paragraph 2.

10. Member States may also publish anonymised occurrence reports and risk analysis outcomes.

*Article 14*

***Occurrence analysis and follow up at European Union level***

1. The Commission, EASA and the competent authorities of the Member States shall, in collaboration, participate regularly in the exchange and analysis of information contained in the European Central Repository. Without prejudice to the confidentiality requirements laid out in this Regulation, other participants may be invited on a case by case basis, where appropriate.<sup>43</sup>
2. The collaboration shall be carried out by network of aviation safety analysts. The network of aviation safety analysts shall contribute to the enhancement of aviation safety in the Union notably by performing safety analysis activity to support the European Aviation Safety Programme and the European Aviation Safety Plan.
3. EASA shall support the network of aviation safety analysts activities including, but not limited to, assistance for the preparation and organisation of its meetings.
4. [...] (moved to paragraph 2)
5. EASA shall include information about the result of information analysis referred to in paragraph 1 in the annual safety review mentioned in Article 15(4) of Regulation (EC) No 216/2008.

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<sup>43</sup> A recital will be added to explain that EASA, The Commission and the MS authorities can invite other participants, if necessary and if the others agree, by consensus.

*Article 15*

***Confidentiality and appropriate use of the information***

1. Member States and organisations, according to their national legislation, as well as EASA shall take the necessary measures to ensure appropriate confidentiality of the details of occurrences received by them pursuant to Articles 4, 5 and 10. Each Member State, each organisation established in a Member State, or EASA shall process personal data only to such an extent as necessary for the purpose of this Regulation and without prejudice to the national legislations implementing Directive 95/46/EC. *(last sentence has been moved from Article 16(1), (2) and (2a))*
  
2. Without prejudice to the provisions related to the protection of safety information in Articles 12, 14 and 15 of Regulation (EU) No 996/2010, the information on occurrences shall only be used for the purpose for which it has been collected. Member States, EASA and organisations shall not make available or use the information to attribute blame or liability, or for any purpose other than maintaining or improving aviation safety.
  
3. The Commission, EASA and the competent authorities of the Member States, when discharging their obligations referred to in Article 14, shall ensure the confidentiality of the information contained in the European Central Repository, and shall limit its use to what is strictly necessary to discharge their safety related obligations without apportioning blame or liability. In this respect, that information shall in particular be used for risk management and for analysis of safety trends which may lead to safety recommendations or actions, addressing actual or potential safety deficiencies.

4. <sup>44</sup>Member States shall ensure that their competent authorities referred to in Article 6(2) and their competent authorities for the administration of justice cooperate with each other through advance administrative arrangements. These advance administrative arrangements shall seek to ensure the correct balance between the need for proper administration of justice on the one hand, and the necessary continued availability of safety information on the other.

*Article 16*

*Protection of the information source*

1. Each organisation established in a Member State shall ensure that all personal details such as names or addresses of individual persons are available only as absolutely necessary to investigate the occurrence. Disidentified information shall be disseminated within the organisation as appropriate.
2. Each Member State shall ensure that all personal details such as that names or addresses of individual persons are never recorded in the national database mentioned in Article 6(4). Such disidentified information shall be made available to all relevant parties notably to allow them to discharge their obligations in terms of aviation safety improvement.
- 2a. EASA shall ensure that all personal details such as names or addresses of individual persons are never recorded in the EASA database mentioned in Article 6(5a). Such disidentified information shall be made available to all relevant parties notably to allow them to discharge their obligations in terms of aviation safety improvement.

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<sup>44</sup> IT proposes either to delete this paragraph or that the Commission provide a format for these advance administrative arrangements. DK also proposes the deletion of this paragraph. The Commission explains that the intention is to allow the Member States the flexibility to have their own systems. However, the Commission is ready to provide Member States with existing examples of such arrangements.

- 2b. Member States and EASA shall not be prevented from taking any action necessary for maintaining or improving aviation safety.
3. <sup>45</sup> Without prejudice to the applicable national rules of criminal law, Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported in application of Articles 4 and 5. In the event of any **civil**, disciplinary or administrative proceedings instituted under national law, information contained in occurrence reports shall not be used against the persons who reported the occurrence<sup>46</sup>.

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<sup>45</sup> The Commission has a reservation on paragraphs 3 and 4.

<sup>46</sup> Following a Slovenian suggestion, a recital will be added to explain the application of Article 16(3).

4. Employees who report occurrences in accordance with Articles 4 and 5 shall not be subject to any prejudice by their employer on the basis of the information they have reported, except in cases of gross negligence or wilful misconduct.
5. Each organisation established in a Member State shall adopt internal rules describing how Just Culture principles, in particular the principle referred to in paragraph 4, are guaranteed and implemented within their organisation.
6. Each Member State shall designate a body responsible for the implementation of paragraphs 4 and 5 of this Article. Employees can report to this body alleged infringements to the rules established by this Article. Where appropriate, the designated body shall advise its Member State's relevant authorities concerning remedies or the application of Article 21.

#### *Article 17*

#### *<sup>47</sup>Update of the Annexes*

The Commission shall be empowered to adopt delegated acts in accordance with Article 18 concerning the Annex I to this Regulation in order to align it with the international agreed taxonomy ADREP and with ECCAIRS, with other legislations adopted by the Union and with international agreements, and to update the request for European Central Repository information form provided in Annex II.

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<sup>47</sup> The Commission has a reservation on the changes to Articles 17 and 18.

*Article 18*

***Exercise of the delegation***

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 7(6) and 17 shall be conferred on the Commission for [five] years from the entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.
3. The delegation of power referred to in Articles 7(6) and 17 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 7(6) and 17 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

*Article 19*  
***Committee procedure***

1. The Commission shall be assisted by the committee established by Article 65 of Regulation (EC) No 216/2008. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.<sup>48</sup>

*Article 20*  
***Access to documents and protection of personal data***

1. With the exception of Articles 10 and 11 which establish stricter access rules to the data and information contained in the European Central Repository, this Regulation shall apply without prejudice to Regulation (EC) No 1049/2001.
2. This Regulation shall apply without prejudice to national legislations implementing Directive 95/46/EC and in accordance with Regulation (EC) No 45/2001.

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<sup>48</sup> The Commission has a reservation on the no-opinion clause.



*Article 21*

***Penalties***

1. 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. Member States shall notify to the Commission those provisions and any subsequent amendment affecting them.
  
2. [...]

*Article 22*

***Amendment to Regulation (EU) No 996/2010***

Article 19 is deleted. However, this article shall remain applicable until the date of the application of this Regulation in accordance with Article 24 (2).

*Article 23*

***Repeals***

Directive 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007 are repealed. The above legislative acts shall remain applicable until the date of the application of this Regulation in accordance with Article 24 (2).

*Article 24*

***Entry into force and application***

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply [twenty four months<sup>49</sup> after the entry into force of this Regulation] and not before the entry into force of the implementing measures referred to in Article 4(2a) and Article 7(1a). Article 7 paragraph 2 shall apply once the delegated and implementing acts specifying and developing the European common risk classification scheme referred to in Article 7(6) and (7) enter into force.
- 2a. Within five years after the application of this Regulation, the Commission shall publish a report on the implementation of this Regulation.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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<sup>49</sup> The Commission has a reservation on the delayed application of the whole Regulation. The Commission argues that only some specific articles should have a delayed application.

## Annex I: LIST OF INTERESTED PARTIES

- a) **List of interested parties which may receive information on the basis of a case by case decision in accordance with Article 11(4) or on the basis of a general decision under Article 11(6)**
1. *Manufacturers:* designers and manufacturers of aircraft, engines, propellers and aircraft parts and appliances; designers and manufacturers of Air Traffic Management (ATM) systems and constituents; designers and manufacturers of systems and constituents for Air Navigation Services (ANS); designers and manufacturers of systems and equipments used on the air side of aerodromes
  2. *Maintenance:* organisations involved with the maintenance or overhaul of aircraft, engines, propellers and aircraft parts and appliances; with the installation, modification, maintenance, repair, overhaul, flight checking or inspection of air navigation facilities; or with maintenance or overhaul of aerodrome air side systems, constituents and equipment
  3. *Operators:* airlines and operators of aircraft and associations of airlines and operators; aerodrome operators and associations of aerodrome operators
  4. Air navigation services providers and providers of ATM specific functions
  5. *Aerodrome service providers:* organisations in charge of ground handling of aircraft, including fuelling, servicing, loadsheet preparation, loading, de-icing and towing at an aerodrome, as well as rescue and fire fighting, or other emergency services
  6. Aviation training organisations
  7. *Third-country organisations:* governmental aviation authorities and accident investigation authority from third countries

8. International aviation organisations
  9. *Research*: public or private research laboratories, centres or entities; or universities engaged in aviation safety research or studies
- b) List of interested parties which may receive information on the basis of a case by case decision in accordance with Articles 11(4) and 11(5)**
1. *Pilots* (on personal basis)
  2. *Air traffic controllers* (on personal basis) and other ATM/ANS staff carrying out safety related tasks
  3. Engineers/technicians/air traffic safety electronics personnel/aviation (or aerodrome) managers (on personal basis)
  4. Professional representative bodies of staff carrying out safety-related tasks

**ANNEX II: REQUEST FOR INFORMATION FROM THE EUROPEAN CENTRAL  
REPOSITORY**

1. Name:

Function/position

Company:

Address:

Tel:

E-mail:

Date:

Nature of Business:

Category of interested party you fall into (see Annex III of Regulation (EU) No.../... of the European Parliament and of the Council on occurrence reporting in civil aviation):

2. **Information requested** (please be as specific as possible in your request, stating the relevant date/period over which you are interested):

3. Reason for the request:

4. Explain the purpose the information will be used for:

5. Date by which the information is requested:

6. Completed form should be sent, via e-mail, to: (point of contact)

7. Access to information

The point of contact is not required to make available any requested information. It may do so only if it is confident that the request is compatible with Regulation (EU) No.../... of the European Parliament and of the Council on occurrence reporting in civil aviation. The requestor commits itself and its organisation to restrict the use of the information to the purpose it has described under point 4. It is also recalled that information provided on the basis of this request are made available only for the purposes of flight safety as provided in Regulation (EU) No.../... and not for other purposes including attributing blame or liability or commercial purposes.

The requestor is not allowed to disclose information provided to it to anyone without written consent of the provider

Failure to meet the above requirements may lead to the denial of access to further information from the European Central Repository and to any sanction where applicable.

8. Date, place and signature:

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