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From : COREPER

To : Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council on investigation and prevention of accidents and incidents in civil aviation
- *General approach*

A. INTRODUCTION

On 30 October 2009, the Commission submitted the above mentioned proposal. Its main objective is to replace the existing informal cooperation among the national safety investigation authorities with a voluntary cooperation coupled with a legally binding framework. Under the proposed Regulation this informal cooperation will be transformed into a European Network of civil aviation safety investigation authorities whose purpose is to contribute to greater uniformity, as well as to better implementation and enforcement of the EU civil aviation investigation legislation.

In November 2009, under the Swedish Presidency, the Aviation Working Party started the examination of the proposal. In line with the Inter-Institutional Approach to Impact Assessments¹, the Working Party also discussed and evaluated the Commission's impact assessment.

Coreper examined this proposal at its meeting on 5 March 2010. It was able to solve most of the outstanding issues. However, some of them remain open and will be examined by the TTE Council on 11 March. The result of the work done by Coreper appears in Annex to this report. The changes with regard to the previous version (6835/10) are highlighted in **bold** and ~~strike through~~. All delegations have a general scrutiny reservation on the new text.

All delegations have a scrutiny reservation on the next introduced following the Coreper meeting. DK, MT, and UK have a parliamentary scrutiny reservation.

The recitals have not yet been examined and they will have to be adapted to the text of the general approach at a later stage. Other adaptations, following the entry into force of the Lisbon Treaty, will also have to be introduced at a later stage.

B. OUTSTANDING ISSUES

The following issues still remain unresolved:

1. Participation of EASA and national civil aviation authorities in safety investigations (Article 9, footnotes 12 and 13)

The Presidency compromise on paragraph 1 of Article 9 received support from a clear majority of delegations. However, two delegations (AT and EL) indicated that they still had a (positive) scrutiny reservation on the new text agreed by Coreper on 5 March (footnote 12).

¹ Better Regulation: Inter-Institutional Common Approach to Impact Assessment (IA) 14901/05 JUR 486 COMPET 263

Some Member States considered that the participation of EASA and of the national civil aviation authorities in safety investigations carried out in the territory of a Member State was not clearly defined in the previous version of paragraph 1(a) (in comparison with paragraph 1(b), where there is clear reference to the term 'advisor'). All delegations can accept the new text on paragraph 1(a), as agreed by Coreper. However, the Cion has a reservation on this proposal, because it would create an extra layer between the investigator-in-charge and the appointed representative, as in the case of safety investigations in third countries. It also puts both types of investigation (in a Member State and in a third country) on the same level, situation which the Commission proposal wanted to avoid.

2. Status of the safety investigators (Article 12, footnote 16)

Article 12 aims at strengthening the position of the investigator-in-charge throughout the investigation aiming at a better coordination of the various inquiries related to the causes of accidents and incidents.

Member States have different legal solutions applicable to this issue. In some of them the investigator-in-charge has discretionary power and total control over the investigation; while in others the judicial authority has pre-eminence and can interfere in or even block the investigation. Therefore, they have supported different solutions according to their national laws.

LU has a reservation (footnote 16) on paragraph 2(c) because in this Member State it is the judicial authority, and not the investigator-in-charge, who has control over the flight recorders.

3. Coordination of investigations (Article 13, footnote 18) and Protection of sensitive safety information (Article 15, footnotes 19 and 20)

One of the objectives of this Regulation is to ensure a better cooperation between the safety investigation authorities and other authorities likely to be involved in the investigation, especially with judicial authorities, and to allow safety and judicial investigations to be conducted independently, without interference. In order to achieve this objective, Member States will have the obligation to ensure the existence of advance arrangements between the above mentioned involved authorities.

Some delegations (DE, FR, HU) consider that the final decision on the possibility to analyse material evidence which may be modified, altered or destroyed will belong to the judicial authorities, who in principle can only refuse it in limited situations (footnote 18).

For similar reasons, two delegations (DE and FR) consider that the provisions of Article 15 can create conflict with the rights of judicial authorities under their national laws. This article ensures the confidentiality of information gathered during the course of the safety investigation, which cannot be disclosed for any other purposes except the safety investigation. These two delegations consider that the provision of this Article should be read without prejudice to the rights of judicial authorities under their national laws.

4. **Information on persons on board (Article 22)**

All Member States agree that both European Union airlines operating flights arriving to and departing from an airport located the territories of the Member State, and third countries airlines operating flights departing from an airport located in the territories of the Member States should implement procedures that, following the notification of the occurrence of an accident, would allow them to produce, in a short period of time, a validated list based on the best available information of all the persons on board the aircraft.

However, they disagree on the duration of the deadline for the production of that list. Some Member States consider that the deadline should be very short (within one hour) in order to send a signal to authorities that this important sensitive information must become available very quickly. They argue that the list of passengers on board is already complete before the departure of the aircraft. Others consider that it is not always possible or even realistic to have the list available in less than one hour (difficult in the case of big aircraft, with hundreds of passengers). These delegations would like the deadline to be longer (as soon as possible, and at the latest within two hours) in order to allow for greater flexibility.

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

C. **CONCLUSION**

The TTE Council is invited to examine the text as set out in the Annex to this report and to resolve the outstanding issues with a view to reaching a general approach on the text at its meeting on 11 March 2010.

**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on investigation and prevention of accidents and incidents in civil aviation**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure laid down in Article 294 of the TFEU⁵,

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 consumer 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 such accidents and incidents.

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

- (3) The sole objective of safety investigations should be prevention of future accidents and incidents without apportioning blame or liability.
- (4) Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents⁶ needs to be replaced to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents systems that it contributed to establish in the Union.
- (5) Account should be taken of the changes in the institutional and regulatory framework governing civil aviation safety in the Union which took place since the adoption of Directive 94/56/EC and in particular of the establishment of the European Aviation Safety Agency.
- (6) Account should be taken of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, which provides for implementation of the measures necessary to ensure the safe operation of aircraft; particular account should be taken of Annex 13 to this Convention, and of its subsequent amendments which lay down recommended international standards and practices for aircraft accident and incident investigation.
- (7) The European Aviation Safety Agency 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, and therefore should be represented during a safety investigation to contribute to its efficiency and to ensure safety of aircraft design, without affecting the independent status of the investigation.
- (8) Given its increasing safety responsibilities, the European Aviation Safety Agency should also participate in the exchange of data in the framework of the occurrence reporting systems; this data should be adequately protected from unauthorised use or disclosure.

⁶ OJ L 319, 12.12.1994, p. 14

- (9) 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.
- (10) Safety investigation of accidents and incidents should be carried out 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.
- (11) The capacity of safety investigation authorities of the Member States should be strengthened and the cooperation between them is necessary to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.
- (12) The coordination role of safety investigation authorities should be recognised in a European context, by taking into account the already existing cooperation between them and the investigation resources available in the Member States which should be used in the most cost-efficient manner; this could be best achieved by establishing a European Network of Civil Aviation Safety Investigation Authorities ('the Network').
- (13) The Network should pursue its coordination activities in a transparent and independent manner and be actively supported by the Union.
- (14) The objectives of this Regulation may be efficiently achieved through cooperation with European third countries, which should be allowed to participate in the work of the Network.
- (15) The Member States should, in compliance with the legislation in force as regards the powers of the authorities responsible for the judicial investigation and, where appropriate, in close collaboration with those authorities, ensure that the authorities responsible for safety investigations of civil aviation accidents and incidents are allowed to carry out their tasks in the best possible conditions; the objectives of a judicial investigation should not be compromised either.

- (16) Efficient safety investigation is only possible if important pieces of evidence are duly preserved.
- (17) The civil aviation safety system is based on feedback and lessons learned from accidents and incidents which require strict application of confidentiality to ensure the future availability of valuable sources of information; in this context sensitive safety information should not be used for purposes other than prevention of accidents and incidents unless there is an overriding public interest in its disclosure.
- (18) It is important for accident prevention to make public the findings of accident and incident investigations in the shortest time possible.
- (19) The safety recommendations resulting from an accident or incident investigation should be always duly taken into account and acted upon if needed to ensure adequate prevention of accidents in civil aviation; the Union dimension of safety recommendations should be also taken into account given that aviation safety is increasingly regulated at the European level.
- (20) Experience has shown that reliable lists of people on board an aircraft are sometimes difficult to obtain in a rapid manner and that the data contained on such lists should be protected from unauthorised use or disclosure.
- (21) Rights of the victims of air accidents and of their families should be adequately protected.
- (22) Directive 95/46/EC should apply to the processing of personal data pursuant to this Regulation.

- (23) Since the objectives of this Regulation, namely the establishment of common rules in the field of civil aviation accident and incident investigation cannot be sufficiently achieved by the Member States and can therefore, by reason of Europe-wide scope of this Regulation, 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 those objectives.
- (24) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷. In particular the Commission should be empowered to decide on the rules of procedures and the work program of the Network established under this Regulation.
- (25) Directive 94/56/EC should therefore be repealed.
- (26) 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:

⁷ OJ L 184, 17.7.1999, p. 23.

Article 1
Subject-matter

- (1) This Regulation aims to improve aviation safety by ensuring that European civil aviation safety investigations are conducted expeditiously, efficiently and to the highest standards and that their sole objective is the prevention of future accidents and incidents without apportioning blame or liability. It also provides rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident or serious incident and assistance to 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 with regard to the dispute over sovereignty over the territory in which the airport is situated.

Article 2⁸
Definitions

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

- (1) 'accident' means an occurrence associated with the operation of an aircraft with the intention of flight 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:

⁸ Legal linguist experts will put the definitions in a logical order at a later stage.

- (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, its cowlings or accessories; or for minor damages to main rotor blades, tail rotor blades, damages limited to propellers, wingtips, antennas, probes, vanes, tyres, brakes, wheels, superficial damage to the landing gear, fairings, panels, landing gear doors, damaged windscreens, small dents or puncture holes in the aircraft skin, minor hail or bird strike damage (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 safety investigation conducted by another State; an accredited representative designated by a Member State shall be from a safety investigation authority;

(3) 'advisor' means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in 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) ~~['accident and serious incident' means any accident or serious incident involving at least one aircraft entered on the civil register]]~~ 'civil aviation accident and incident' means any accident or incident involving an aircraft not engaged in military, customs, police or similar services];
- (6) 'fatal injury' means an injury which is sustained by a person in an accident and which results in his/her death within 30 days of the date of the accident;
- (7) 'flight recorder' means any type of recorder installed in the aircraft for the purpose of facilitating accident/incident safety investigations;
- (8) 'incident' means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;
- (9) 'investigator-in-charge' means a person charged, on the basis of his or her qualifications, with responsibility for the organization, conduct and control of a safety investigation;
- (10) 'operator' means any legal or natural 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, or any person involved in the provision of air traffic control, flight information or aerodrome services who have provided services for the aircraft, or staff of the national civil aviation authority, or staff of EASA;

- (11a) 'international standards and recommended practices' means international standards and recommended practices for aircraft accident and incident investigation adopted pursuant to Article 37 of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944;
- (12) '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;
- (13) '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;
- (14) 'serious incident' means an incident involving circumstances indicating that there was a high probability of an accident associated with the operation of an aircraft with the intention of flight (a list of examples of serious incidents is set out in the Annex);
- (15) 'serious injury' means an injury which is sustained by a person in an accident and which involves one of the following:
- (a) hospitalization for more than 48 hours, commencing within seven 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;

(16) [...]

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 carried out 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 or serious incident and assistance to victims of aircraft accidents and their families.

- 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 unless the Member State, in accordance with Article 5(3) and national legislation, so determines⁹.**

Article 4 [*former article 5*]

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 (hereinafter 'safety investigation authority').
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 whose interests or missions 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 data, 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. The safety investigation authority shall be given the means required to carry out its responsibilities independently and shall be able to obtain sufficient resources to do so. In particular:

⁹ DE: scrutiny reservation on this paragraph.

- (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 investigator able to perform the function of the investigator-in-charge in the event of a major aircraft accident;
- (d) the safety investigation authority shall be allocated a budget that would enable it to carry out its functions;
- (e) the safety investigation authority shall have at its disposal, either directly or through arrangements 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 [former article 4]

Obligation to investigate

1. Every accident involving aircraft other than specified in Annex II to the Regulation (EC) No 216/2008 of the European Parliament and of the Council¹⁰ shall be the subject of a safety investigation in the Member State in whose territory the accident occurred.
- 1a. Every serious incident involving aircraft of a maximum take-off mass over 2250 kg shall be the subject of a safety investigation in the Member State in whose territory the serious incident occurred¹¹.

¹⁰ OJ L 79, 19.3.2008, p. 1.

¹¹ Cion has a scrutiny reservation on this paragraph.

2. The extent of safety investigations referred to in paragraph 1 and 1a and the procedure to be followed in carrying out such safety investigations shall be determined by the safety investigation authority, taking into account the lessons it expects to draw from such investigations for the improvement of safety.
3. Safety investigation authorities may decide to investigate incidents other than those referred to in paragraphs 1 and 1a 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.
4. Safety investigations referred to in paragraphs 1, 1a and 3 shall in no case be concerned with apportioning blame or liability. They shall be 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 carrying out an investigation into an accident or serious incident to another safety investigation authority subject to mutual agreement and shall facilitate the investigation process by this authority.
3. [...] *[moved to article 7(2) (h)]*

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 (hereinafter '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 three years.
2. The Network shall, in particular:
 - a) promote cooperation and exchange of information among the safety investigation authorities, the Commission, the European Aviation Safety Agency (hereinafter 'EASA') and the national Civil Aviation Authorities;
 - b) promote the sharing of facilities, equipment and personnel among the safety investigation authorities;
 - c) have access to information contained in the database referred to in Article 21, and analyse the safety recommendations therein with a view to identifying important safety recommendations of EU wide relevance;
 - d) advise Union institutions on all aspects related to the development of the EU civil aviation accident investigation and prevention policy and regulation;
 - e) coordinate and organise, where appropriate, "peer reviews" and relevant training activities;
 - f) promote best safety investigation practices in view to developing a common EU safety investigation methodology;
 - g) [...];

- h) provide appropriate assistance at the request of the safety investigation authorities for the purpose of the application of Article 6. *[moved from Article 6(3)]*
3. The Members of the Network shall neither seek nor accept instructions from any public or private entity, which could affect the independent status of safety investigations.
4. 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.
- 4a. The Commission shall be closely associated to the work of the Network **and shall receive the necessary support from the Network on relevant aspects related to the development of the EU civil aviation accident investigation and prevention policy and regulation.** ~~and~~ **The Commission** shall provide the Network with the necessary support, including but not limited to assistance for the preparation and organisation of the meetings, as well as for the publication of an annual report covering the activities of the Network.
5. [...].

Article 8

[...]

Article 9 *[to be moved after Article 11]*

Participation of EASA and national civil aviation authorities in safety investigations

1. Safety investigation authorities shall, when appropriate ~~and within the scope of their competence~~, 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, while ensuring that any conflict of interest is avoided¹²:

¹² AT and EL have a positive scrutiny reservation on paragraph 1.

- (a) in any safety investigation under Article 5(1) and 5(1a), **as an advisor to the investigator-in-charge**, carried out in the territory of a Member State under the control and at the discretion of the investigator-in-charge¹³;
 - (b) as an advisor appointed under this Regulation to assist accredited representative(s) of the Member States in any safety investigation carried out 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. ¹⁴ The participants referred to in paragraphs 1(a) and (b) 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 determination of the causes or formulation of safety recommendations;
 - (f) [...]; *[moved to article 19(3)]*
3. EASA and the national civil aviation authorities shall support the investigation in which they participate by supplying the requested information, advisors and equipment to the safety investigation authority in charge.

¹³ Cion: reservation on this indent.

¹⁴ A recital on the need to ensure that any conflicts of interests will be avoided will be added at a later stage.

4. [...]

Article 10 *[former article 11]*

Obligation to notify accidents and serious incidents

1. Any person involved who has the 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 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 11 *[former 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 State(s) which is(are) the State of Registry, the State of the Operator, the State of Design and the State of Manufacture¹⁵ shall, as soon as possible, inform the Member State or third country in whose territory the accident or serious incident occurred whether it intends to appoint an accredited representative in accordance with the international standards and recommended practices. If such an accredited representative is appointed, his/her name and contact details shall be also provided, as well as the expected date of arrival if the accredited representative intends to travel to the country which sent the notification.

¹⁵ A general reference to the meaning of the terms State of Registry, the State of the Operator, the State of Design and the State of Manufacture and State of Occurrence should be made in the recitals, ensuring that these terms are understood as set out in and for the purpose of Annex 13 to the Convention on International Civil Aviation.

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 12

Status of the safety investigators

1. ~~Each Member State shall designate the authority in charge of the accident sites.~~ Upon his 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 EU or national law, the investigator-in-charge shall in particular be entitled to:
 - (a) have 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 contents~~ of the flight recorders, **their contents** and any other relevant recordings¹⁶;
 - (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 examination or of tests made on samples taken;

¹⁶ LU has a reservation on this indent

- (e) request the medical examinations of the people involved in the operation of the aircraft or of tests made on samples taken from such people and to have immediate access to the results of such examinations;
 - (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 and by the authorities responsible for civil aviation and EASA, provision of air navigation services or aerodrome operation;
3. The investigator-in-charge shall extend to its experts and advisors as well as to the accredited representatives, their experts and advisors the entitlements listed in paragraph 2, to the extent necessary to enable them effective participation in the safety investigation. This is without prejudice to the rights of the investigators and experts designated by the authority in charge of the judicial investigation.
- 3a. Any person participating in safety investigations shall perform his/her duties independently and shall neither seek, nor accept instructions from anybody, other than the investigator-in-charge or the accredited representative.

Article 13

Coordination of investigations

- 1a. ~~To ensure proper coordination of investigations into accidents and serious incidents,~~ 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. Such arrangements shall respect the independence of the safety investigation authority. *[former paragraph (3)]*

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 material evidence. The judicial authority may appoint an official from that authority to accompany the flight recorders or material to the place of the read-out or treatment. If examination or analysis of such material may modify, alter or destroy them, without prejudice to national law, prior agreement from the judicial authorities will be required. Where such agreement is not obtained according to the advance arrangements referred to in paragraph 1a within a reasonable time and not later than two weeks, it shall not prevent the investigator-in-charge from conducting the examination or analysis^{17 18}.
2. If, in the course of the safety investigation, the safety investigation authority suspects 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 Articles 15, the relevant information collected in the safety investigation shall be shared with these authorities immediately and relevant material may also be transferred to these authorities upon their request. This shall be without prejudice to the right of the safety investigation authority, in coordination with the authorities to which the control of the site may have been transferred, to continue the safety investigation.
3. [...]

¹⁷ The case of a possible seizure of any material evidence by a judicial authority will be included into a recital at a later stage.

¹⁸ DE, supported by FR and HU, wants to replace the last sentence of this paragraph with the following wording: "*The approval of the judicial authorities must be given as soon as possible and can only be refused if serious negative impacts on a judicial investigation procedure are to be feared*".

Article 14
Preservation of evidence

- 1a. The Member State in whose territory the accident or serious incident occurred shall be responsible to ensure safe treatment of all evidence material and to take all the reasonable measures to protect such evidence material and to maintain safe custody of the aircraft, its contents and its wreckage for such a 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.
1. Pending the arrival of safety investigators, no person shall modify the state of the accident site, nor take any samples there from, nor undertake any movement of or sampling from the aircraft its contents or its wreckage, nor 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 ~~investigator in charge~~ **safety investigation authority**.
2. 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 15

Protection of sensitive safety information

1. ¹⁹ 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 recorders information;
 - (e) information and evidence provided by foreign investigators in accordance with the provisions of international standards and recommended practices, if so requested by the foreign 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.

¹⁹ DE, supported by FR, wants to add at the beginning of this paragraph: *"Without prejudice to the rights of judicial authorities under national law,..."*

2. ²⁰ 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, if so requested by the safety investigation authority issuing the recommendation;
 - (d) occurrence reports filed under Directive 2003/42/EC of the European Parliament and of the Council²¹.

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

- 2a. However, the administration of justice or the authority competent to decide on the disclosure of records according to the national law ~~in the Member State conducting the safety investigation~~ 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 outweighs 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 Union law.**

²⁰ DE, supported by FR, wants to add at the beginning of this paragraph: "*Without prejudice to the rights of judicial authorities under national law,...*"

²¹ OJ L 167, 4.7.2003, p. 23.

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.²²

3. [...] *[moved to Article 16]*

~~Article 15a~~²³

~~Use of occurrence data~~

~~1. EASA and the Member States shall participate in the exchange and analysis of information covered by Directive 2003/42/EC and shall have online access to all relevant safety related information contained in the central repository of information on civil aviation occurrences as provided for in the Commission Regulation (EC) No 1321/2007²⁴. Such access shall cover information which directly identifies the operator and the aircraft subject to an occurrence report.~~

~~2. The sole objective of the participation of EASA and the Member States in the exchange and analysis of information referred to in paragraph 1 shall be the prevention of accidents and incidents. The participation of EASA and the Member States shall in no case be concerned with apportioning blame or liability. EASA and the Member States shall ensure the confidentiality of the information exchanged in accordance with applicable legislation.~~

Article 16 [moved to Article 15 (2)]

[...]

²² AT: scrutiny reservation

²³ The main elements of this article will be included in a recital at a later stage.

²⁴ OJ L 294, 13.11.2007, p. 3.

Article 17

[...]

Article 18

Communication of information

1. The staff of the safety investigation authority, or any other person called upon to participate or contribute to the safety investigation shall be bound by professional secrecy under the relevant applicable legislation.
2. Without prejudice to the obligations contained in Articles 19 and 20, the safety investigation authority in charge of the safety investigation shall communicate the information which it deems pertinent to the prevention of an accident or serious incident, persons responsible for aircraft or aircraft equipment manufacture or maintenance, and to individuals or legal entities responsible for operating aircraft or for training of personnel.
 - 2a. Without prejudice to the obligations contained in Articles 19 and 20, the safety investigation authority and the accredited representative(s) referred to in Article 9 shall release to EASA and national civil aviation authorities relevant factual information obtained during the safety investigation, except information referred to in Article 15(1) or causing a conflict of interest. EASA shall ensure the confidentiality of the information received in accordance with applicable legislation. *[former Article 9 (1b)]*
3. The safety investigation authority in charge of the safety investigation shall be authorised to inform victims and their relatives or their associations or make public any information on the factual observations and the proceedings of the safety investigation and possibly preliminary reports or conclusions and/or safety recommendations, provided that it does not compromise the objectives of the investigation.

Article 19
Investigation reports

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.²⁵
2. The report shall protect the anonymity of any individuals **involved in the accident or serious incident**.
 - 2a. Where safety investigations give rise to reports before the completion of the investigation, the safety investigation authority may solicit comments from the authorities concerned, including from EASA and through them, the certificate holder for the design, the manufacturer and the operator concerned prior to their publication. They shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation.
3. Before publication of the final report, the safety investigation authority shall solicit comments from the authorities concerned, including from EASA and through them, the certificate holder for the design, the manufacturer and the operator concerned, which 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.
 - 3a. The information covered by Article 15 shall be included in a report only when pertinent to the analysis of the accident or serious incident. Information or parts of the information not relevant to the analysis shall not be disclosed.

²⁵ PL proposal: *"The report shall not be used as an evidence in legal proceedings or for the purpose of the settlement of responsibility for the accidents or the incident."* The main elements of this proposal will be included in a recital at a later stage.

4. [...]
5. The safety investigation authority shall make public the final report in the shortest possible time and if possible within twelve months of the date of the accident or serious incident.
6. If the final report cannot be released within twelve 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.
7. The safety investigation authority shall forward a copy of the final reports and the safety recommendations as soon as possible to:
 - a) safety investigation authorities and civil aviation authorities of the States concerned, and the International Civil Aviation Organisation, according to the international standards and recommended practices,
 - b) addressees of safety recommendations contained in the report,
 - c) Commission and EASA,

except if the reports are publicly available through electronic means, in which case the safety investigation authority shall only notify them accordingly.

Article 20

Safety recommendations

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

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 carried out 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 21

Follow-up to safety recommendations and safety recommendations database

1. The addressee of a safety recommendation shall acknowledge its receipt and inform the safety investigation authority which issued the recommendation within 90 days of the receipt of the transmittal 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 thereof.
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 ~~satisfactory~~ **adequate** and give justification ~~thereto~~.
3. Each safety investigation authority shall implement procedures to record the responses to the safety recommendation issued.
4. Each entity receiving safety recommendations, 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 Regulation (EC) No 1321/2007 all safety recommendations issued in accordance with Article 20(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 22

Information on persons and dangerous goods on board

1. European Union airlines operating flights arriving to or departing from an airport located in the territories of the Member States to which the Treaties apply, shall implement procedures allowing to produce:
 - (a) [within one hour] [as soon as possible, and at the latest within two hours] of the notification of the occurrence of an accident to this aircraft, a validated list based on the best available information, of all the persons on board the aircraft;
 - (b) immediately after the notification of the occurrence of an accident to this aircraft, the list of the dangerous goods onboard the aircraft.
- 1a. 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 allowing to produce:
 - (a) [within one hour] [as soon as possible, and at the latest within two hours] of the notification of the occurrence of an accident to this aircraft, a validated list based on the best available information, of all the persons on board the aircraft;
 - (b) immediately after the notification of the occurrence of an accident to this aircraft, the list of the dangerous goods onboard the aircraft.
2. The lists referred to in paragraphs 1 and 1a shall be made available to the safety investigation authority in charge of the investigation, the authority designated by each Member State to liaise with relatives of the persons on board and, if necessary, to medical units which may need the information for the treatment of victims.

3. The lists referred to in paragraphs 1 and 1a shall be confidential in accordance with EU and national law. The lists referred to in paragraphs 1(a) and 1a(a) shall not be made publicly available before relatives of all persons on board have been informed by the relevant authorities.

Article 23

Assistance to the victims of air accidents and their families

1. The Member States shall ensure that a plan for the assistance of the victims of civil aviation accidents and their families is set up at national level.
2. Member State or a third country, which has a special interest in an accident which has occurred in the territories of the Member States to which the Treaties apply by virtue of fatalities or serious injuries to its citizens 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 of the investigation, and information on the progress of the investigation,
 - (c) receive a copy of the final report.
3. An expert appointed in accordance with paragraph 2 may assist, subject to applicable legislation in force, in identification of the victims and in meetings with the survivors of its State.

Article 23a
Data protection

The provisions of this Regulation shall be without prejudice to Directive 95/46/EC and Regulations 45/2001 and 1049/2001²⁶.

Article 24
[...]

Article 25
Penalties

Member States shall lay down the rules on penalties applicable to infringement of the provisions of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive. [...] ²⁷

Article 26
Repeals

Council Directive No 94/56/EC is repealed.

²⁶ A recital will provide further clarification on the relationship between this Regulation and the acts referred to in this article.

²⁷ The deleted part will be introduced into a recital at a later stage.

Article 27
Entry into force

This Regulation shall enter into force on the twentieth day following that of 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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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 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 taxiway²⁸ or unassigned runway.
- Take-offs from a closed or engaged runway, from a taxiway²⁹ or unassigned runway.
- Landings or attempted landings on a closed or engaged runway, on a taxiway³⁰ or 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.

²⁸ Excluding authorised operations by helicopters.

²⁹ Excluding authorised operations by helicopters.

³⁰ Excluding authorised operations by helicopters.

- 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. *The Manual on the Prevention of Runway Incursions* (ICAO Doc 9870) 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.
