



## **Review of Regulation (EU) No 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation**

### **Foreword**

Article 7(3)a of Regulation (EU) No 996/2010 states that ENCASIA shall be responsible for “*preparing suggestions to and advising Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents.*”

The following Opinion was developed in accordance with this provision.

### **1. Background on Regulation (EU) No 376/2014**

In 2011, ENCASIA released an Opinion concerning the revision of Directive 2003/42/EC that was subsequently repealed by Regulation (EU) No 376/2014. The main points of that Opinion involved the notification of incidents, incident selection and investigation, access to databases and the protection of sensitive safety information.

The ENCASIA points were taken on board by the two European co-legislators, the Council and the Parliament. In particular, Recital (3)<sup>1</sup> of Regulation (EU) No 376/2014 clearly declares the primacy of Regulation (EU) No 996/2010 over the process of accident and serious incident notification to the safety investigation authorities and the conduct of investigations. Recital (12) and Article 6(9) further confirm this hierarchy and separation by granting the SIAs a direct access to their respective national database in order for them to decide which incidents require a safety investigation.

Recital (24) and Articles 10(1) of Regulation (EU) No 376/2014 confirm the full access of SIAs to information on occurrences contained in the European Central Repository (ECR).

Regulation (EU) No 376/2014 also directly concerns a number of ENCASIA Members, because several SIAs are the national point of contact in accordance with Article 6(3) or manage the voluntary reporting system referred to in Article 5.

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<sup>1</sup> Recital (3): Regulation (EU) No 996/2010 of the European Parliament and of the Council aims to prevent accidents by facilitating the prompt holding of efficient and high-quality safety investigations. This Regulation should not interfere with the process of accident and incident investigations managed by national safety investigation authorities as defined in Regulation (EU) No 996/2010. In the event of an accident or a serious incident, notification of the occurrence is also subject to Regulation (EU) No 996/2010.



Despite two distinct remits between Regulation (EU) No 996/2010 and Regulation (EU) No 376/2014, sometimes there has been some degree of confusion regarding the treatment of incidents when dealing with the fine line between incidents and serious incidents. Incidents are covered by Regulation (EU) No 376/2014 and may be subject to an investigation under Regulation (EU) No 996/2010 whereas serious incidents are investigated in accordance with Regulation (EU) No 996/2010.

This Opinion will essentially discuss the classification of incidents with the aim of further clarifying who does what and proposing ways to overcome this challenge. It will also propose to enrich the content of the ECR to improve the usefulness of this database and to further enhance the sharing of safety related information with aviation authorities, and in particular with EASA.

## **2. Discussion on incident classification**

### **2.1) Definition of serious incident**

Both Attachment C to Annex 13 and Regulation (EU) No 996/2010 provide lists of examples of incidents, which are likely to be considered serious incidents. The word 'likely' is of utmost importance as it is up to the SIA to decide whether the incident may need to be qualified as a serious incident, subject to an investigation or not, based on the available information. In order to help incident screening, the ICAO guidance in Annex 13 has been supplemented with a risk model to make decisions both based on risks (or causal factors) and on known consequences (the list of incidents).

This risk model was introduced with Amendment 17 to Annex 13. It aims to better select the serious incidents in order to identify where lessons can be learned in the interest of aviation safety thanks to a complete Annex 13 safety investigation.

### **2.2) European Risk Classification Scheme**

Regulation (EU) No 376/2014 introduced a common European Risk Classification Scheme (ERCS) referred to in Article 7(5). In the context of the European Aviation Safety Plan, the ERCS<sup>2</sup> has been used to classify occurrences in terms of safety risk by EASA and some States, with a view to identifying key risk areas from aggregated information resulting from the analysis of the ECR.

The key aspect to be identified is not the outcome of an occurrence (accident or not) but the risk posed to aviation safety (in the sense of public safety). Thus no

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<sup>2</sup> The definition and development of the ERCS provide the basic definitions of the Matrix, which is a grid made up of the following two dimensions: 1) Potential Accident Outcome: The Potential Accident Outcome Score considers what would be the most likely accident outcome if the occurrence being assessed had escalated into an accident. 2) Likelihood of the Accident Outcome: This second dimension covers the likelihood of the escalation from the actual occurrence to the accident outcome using a weighted barrier model to determine how close the occurrence being considered was to the potential accident outcome previously selected, i.e. the number and strength of the barriers remaining in the safety system.



accidents are the same in terms of risk and also the risk cannot be determined just by differentiating accident (even fatal) from non-accident. This means that the main focus of the ERCS is to establish a higher risk for Commercial Air Transport (CAT) or where there is a risk to members of the public, with reduced levels of risk for light aviation and where members of the public are not likely to be affected.

To summarize, the output from the ERCS is not an 'accident' or a 'serious incident' but a risk score that uses other terms to score the risk.

### 2.3) Two different but complementary processes

The ICAO risk model and the ERCS are different in terms of purposes and outputs. Although these two processes can be complementary, it is crucial to bear in mind that the word "serious incident" remains the prerogative of Regulation (EU) No 996/2010 as it entails a safety investigation.

Even if the application of the ERCS points to 'serious' risks on a given occurrence, it does not mean that it has to be investigated as per Regulation (EU) No 996/2010.

Nevertheless, a good dialogue between authorities is useful to address these potential safety issues. A number of national SIAs and NAAs have already included provisions on the identification of serious incidents in their advance arrangements. These arrangements could also clarify who does what regarding the common mandatory field (5) 'occurrence class' mentioned in Annex 1 of Regulation (EU) No 376/2014.

This good practice of establishing a comprehensive advance arrangement should be expanded to all Member States when such provisions are not already in place. When available, it has greatly helped in clarifying the respective roles of national aviation authorities and safety investigation authorities under the two Regulations.

## **3. Discussion on transferring more validated information to the ECR**

Article 9(2) of Regulation (EU) No 376/2014 stipulates that:

*"Member States shall also transfer information related to accidents and serious incidents to the European Central Repository as follows:*

*(a) during the course of the investigation: preliminary factual information on accidents and serious incidents;*

*(b) when the investigation is completed:*

*(i) the final investigation report; and*

*(ii) when available, a summary in English of the final investigation report."*

This requirement, limited to preliminary factual information on accidents and serious incidents, does not cover the validated safety data produced in the course of the investigation with relevance for EASA and the national aviation authorities. Therefore ENCASIA should encourage its Members to go beyond the requirements



of article 9(2) by sharing, when possible, such safety data through the ECR. This would contribute to making this database more useful for all its stakeholders.

Regarding the sharing of safety data between stakeholders, it is worth recalling Recital 16 of Regulation (EU) No 376/2014 which states: *“To facilitate information exchange, occurrence reports should be stored in databases which should be compatible with the European Coordination Centre for Aircraft Incident Reporting Systems (ECCAIRS) (the software used by all Member States and by the European Central Repository to store occurrence reports) and with the ADREP taxonomy (the International Civil Aviation Organisation (ICAO) taxonomy, also used for the ECCAIRS software).”* The Agency and the Commission should provide technical support for the interoperability of the systems. Article 7(4)b rightly mandates that the ECR and the national databases shall be compatible with the ECCAIRS software and the ADREP taxonomy.

ECCAIRS is about to be modified by EASA under the control of the European Commission. ENCASIA will be involved in the testing process of the new version when the Key User Group (KUG) is activated. Thanks to the European Commission, ENCASIA now has a representative on the ECCAIRS Steering Board. For ENCASIA, it is crucial that the above-mentioned compatibility with ADREP is maintained, so that ENCASIA members can easily share their occurrences through the ECR and at the same time discharge their international obligations in accordance with Annex 13, Chapter 13. This compatibility has been proven to be effective and has prevented duplication of efforts for SIAs as each record can be simultaneously sent to the ECR and to the ICAO ADREP database.

#### **4. Conclusion**

ENCASIA believes that overall, Regulation (EU) No 376/2014 does not need to be amended as it took on board ENCASIA's points during the revision process of its predecessor, Directive 2003/42/EC.

However, a couple of points would need further actions in the format of either additional guidance or good/best practices.

- 1) When deemed useful, Member States should establish a special provision on the identification of serious incidents in their advance arrangements between SIAs and NAAs to clarify the SIAs prerogative on the decision to classify serious incidents.
- 2) When possible, ENCASIA Members should transfer relevant validated data to enrich the content and usefulness of the ECR in order to further enhance the sharing of safety related information with aviation authorities, in particular EASA.
- 3) When updating the ECCAIRS software, the European Commission should maintain the compatibility between the ECR and the ADREP taxonomy.

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