



ENCASIA OPINION
CONCERNING
THE INVESTIGATION OF ACCIDENTS AND SERIOUS INCIDENTS
INVOLVING AIRCRAFT LISTED IN ANNEX II OF THE BASIC
REGULATION

Article 5 of Regulation (EU) No 996/2010 mandates the investigation of every accident or serious incident involving aircraft other than specified in Annex II to 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 (the Basic Regulation).

It is important that the scopes of Regulation (EU) No 996/2010 and Regulation (EC) No 216/2008 remain consistent, especially if the Basic Regulation is revised in the coming years.

Annex II contains 'unmanned aircraft with an operating mass of no more than 150 kg'. Consequently, such light drones are currently not subject to mandatory investigations if they are involved in an accident or a serious incident.

In the context of the revision of the Basic Regulation, the Network is of the opinion that the investigation of accidents and serious incidents involving drones should be limited to those which are certified by the European Aviation Safety Agency (EASA) or when fatalities, serious injuries or commercial air transport operations are involved. The amendment should also provide flexibility to enable the investigation of other occurrences where it is expected to draw lessons from such investigations for the improvement of aviation safety. Introducing flexibility to amend the technical characteristics of aircraft listed in Annex II could create an uncertainty on the scope of the obligation to investigate accidents and serious incidents involving aircraft which are normally listed in Annex II. Considering that manned aircraft currently listed in Annex II are mostly with a maximum take-off mass less than or equal to 2 250 kg, the Network would like to take advantage of this amendment to provide additional flexibility on the investigation of light manned aircraft below this threshold.

Because resources to investigate accidents and serious incidents are limited across the Union, the Network underlines the importance of having such flexibility in selecting the occurrences involving drones and other light aircraft to be investigated. Furthermore, the depth of these safety investigations should be proportionate to the expected lessons to be drawn for the improvement of aviation safety.

This Opinion is issued on the understanding that the Commission is considering the removal of the above-mentioned reference to drones in Annex II of the Basic Regulation. It is also understood that the Commission is considering whether to facilitate the flexibility to amend the technical characteristics of aircraft listed in Annex II. Should that be the case, Article 5 of Regulation (EU) No 996/2010 should be amended as well, in order to establish a proportionate framework on the investigation of accidents and serious incidents involving drones and other aircraft currently listed in Annex II.

On 16 September 2015, the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA) supported the scope and re-wording of Article 5 as follows:

Amendments to Regulation (EU) No 996/2010

Article 5 of Regulation (EU) No 996/2010 is amended as follows:

1. ~~Every~~ Without prejudice to paragraph 5, every accident or serious incident involving aircraft ~~other than specified in Annex II to~~ to which Regulation (EC) No 216/2008~~[ref. to new regulation]~~ 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 applies shall be the subject of a safety investigation in the Member State in the territory of which the accident or serious incident occurred.
2. ~~When~~ Without prejudice to paragraph 5, when an aircraft, ~~other than specified in Annex II to~~ to which Regulation (EC) No 216/2008~~[ref. to new regulation]~~ applies, registered in a Member State is involved in an accident or serious incident the location of which cannot be definitely established as being in the territory of any State, a safety investigation shall be conducted by the safety investigation authority of the Member State of registration.
3. The extent of safety investigations referred to in paragraphs 1, 2 and 4 and the procedure to be followed in conducting such safety investigations shall be determined by the safety investigation authority, taking into account the lessons it expects to draw from such investigations for the improvement of aviation safety, ~~including for those aircraft with a maximum take-off mass less than or equal to 2 250 kg.~~
4. Safety investigation authorities may decide to investigate incidents other than those referred to in paragraphs 1 and 2, as well as accidents or serious incidents to other types of aircraft, in accordance with the national legislation of the Member States, when they expect to draw safety lessons from them.
5. ~~The responsible safety investigation authority may decide, taking into account the expected lessons to be drawn for the improvement of aviation safety, not to initiate a safety investigation when an accident or serious incident concerns an unmanned aircraft of a type for which a certificate of airworthiness is not required, or concerns a manned aircraft with a maximum take-off mass less than or equal to 2 250 kg, and where:~~
 - ~~(a) no person has been fatally or seriously injured, and~~
 - ~~(b) commercial air transport operations are not involved.~~
6. Safety investigations referred to in paragraphs 1, ~~2~~ and 4 and 5 shall in no case be concerned with apportioning blame or liability. They shall be independent of, separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.'



Ulf Kramer

Chairman

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