



DUTCH
SAFETY BOARD

Legal framework – EU and International context

Dutch Safety Board
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16 November 2022

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- Obligation to investigate
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- Balancing test



**International
legal
framework**

Art. 26 Chicago Convention

ICAO Annex 13

Regulation (EU) 996/2010

Article 26 Chicago Convention

Obligation to investigate:

“In the event of an **accident to an aircraft** of a contracting State occurring in the territory of another contracting State, and involving **death or serious injury**, or indicating **serious technical defect** in the aircraft or air navigation facilities, **the State** in which the accident **occurs** will **institute an inquiry** into the circumstances of the accident, in accordance, so far as its laws permit, with **the procedure which may be recommended** by the International Civil Aviation Organization.”

Standards and Recommended Practices>>>>>**Annex 13**



Convention on International Civil Aviation

Convention relative à l'aviation civile internationale

Convenio sobre Aviación Civil Internacional

Конвенция о международной гражданской авиации

This document supersedes Doc 7300/8.
Le présent document annule et remplace le Doc 7300/8.
Este documento reemplaza el Doc 7300/8.
Настоящий документ заменяет Doc 7300/8.

Ninth Edition – Neuvième édition – Novena edición – Издание девятое — 2006

International Civil Aviation Organization
Organisation de l'aviation civile internationale
Organización de Aviación Civil Internacional
Международная организация гражданской авиации

Annex 13

ICAO | International Standards and Recommended Practices

Annex 13 to the Convention on International Civil Aviation

Aircraft Accident and Incident Investigation

Twelfth Edition, July 2020

This edition supersedes, on 5 November 2020, all previous editions of Annex 13.

For information regarding the applicability of the Standards and Recommended Practices, see Chapter 2 and the Foreword.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Doc 9756 AN/965

Manual of Aircraft Accident and Incident Investigation

Part I Organization

ICAO

Doc 9962

Manual on Accident and Incident Investigation Policies and Procedures

Second edition, 2019

Doc 9973 AN/485

Manual on Assistance to Aircraft Accident Victims and their Families

First Edition – 2013

International Civil Aviation Organization

ICAO

Doc 10053

Manual on Protection of Safety Information

Part I – Protection of Accident and Incident Investigation Records

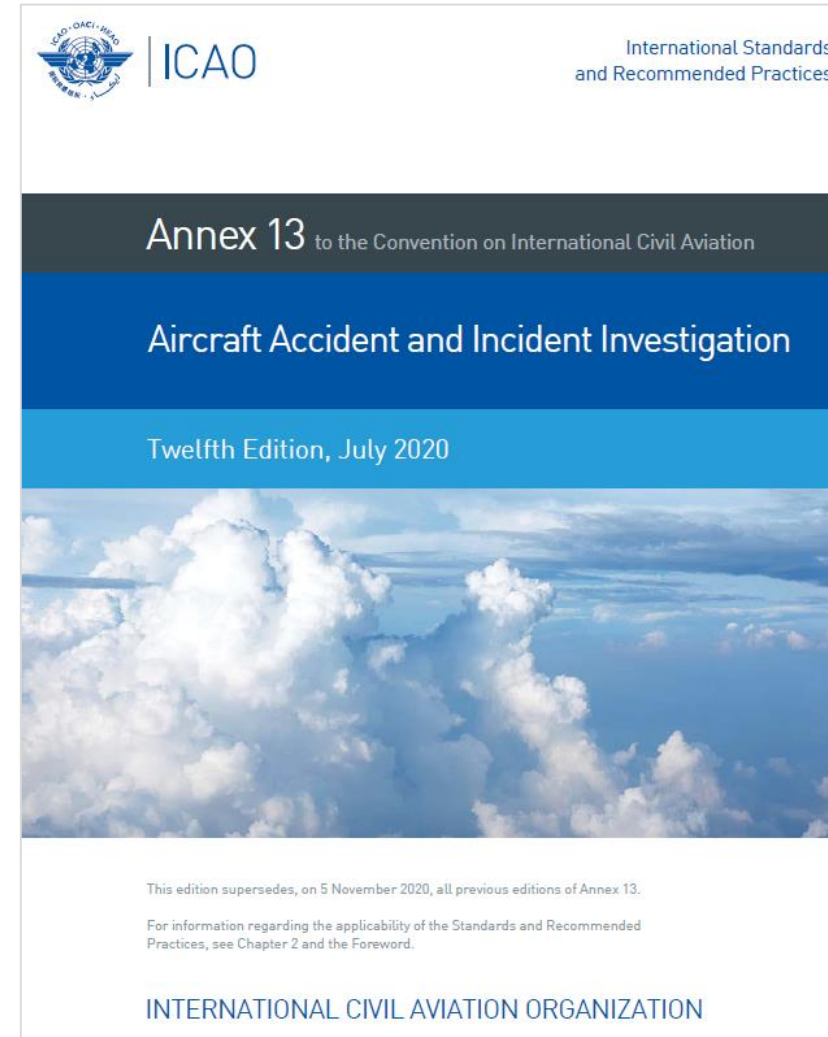
First Edition, 2016

Approved by and published under the authority of the Secretary General

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Annex 13 – key features

- Objective of investigation
- Independency of investigation
- Access and protection of evidence and wreckage
- Responsibility State of Occurrence
- Notification obligations
- Responsibility for instituting and conducting an investigation
- Coordination with judicial authorities
- Participation in the investigation
- Final report



Regulation (EU) 996/2010 on the investigation and prevention of accidents and incidents

- Consolidated version: 11/09/2018

as latest amended by the new EASA Basic Regulation (EU) 2018/1139.

- Implementing Annex 13 (but there are gaps and differences!!)

- Superseding national regulations.

12.11.2010 EN Official Journal of the European Union L 295/35

REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 October 2010
on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

bring forward a proposal to revise Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation (*) before 31 December 2011.

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,

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

Having regard to the opinion of the European Economic and Social Committee (1),

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

After consulting the Committee of the Regions,

Having regard to the opinion of the European Data Protection Supervisor (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

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

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

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

(3) Reporting, analysis, and dissemination of findings of safety related incidents are fundamentally important to improving air safety. Therefore the Commission should

(7) The lessons learned from the implementation of Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents (3) should be used to improve the efficiency of the investigation and

Regulation (EU) 996/2010

scope (art. 3): Investigations into accidents and serious incidents

- a) occurred in **territory** EU Member State;
- b) involving an **aircraft registered** or **operator** established in EU Member State;
- c) Member States entitled to appoint an **accredited representative** (accrep):
 - State of Registry
 - State of Operator
 - State of Design
 - State of Manufacturer
 - State providing information/facilities or experts
- d) Member States having suffered **fatalities** or **serious injuries** to its citizens and which is permitted by State conducting the investigation to appoint an **expert** .

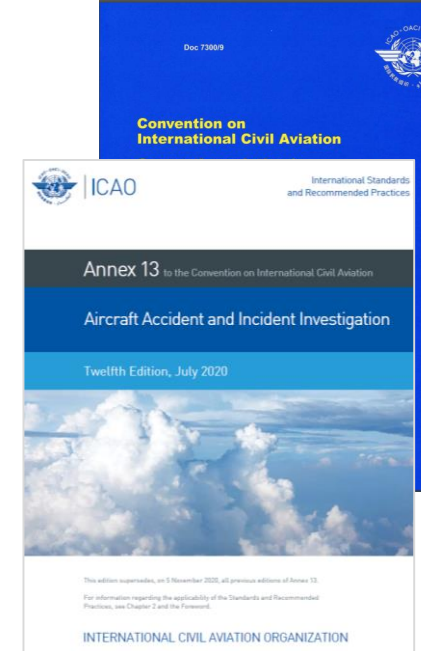
(EU) 996/2010 is not applicable to *State aircraft* operations, unless applicability is established by national law (art. 3(3)).

Who is obliged to investigate?

State of Occurrence (art. 26 CC and Std. 5.1 Annex 13)

- Institute and responsible for the conduct of an investigation
- Delegate whole or any part of investigation to another State or a regional accident and incident investigation organization (RAIO)
- Obligation to investigate all
 - **accidents**
 - **serious incidents** with aircraft of a maximum certified take-off of over 2 250 kg.

What about unmanned aircraft?



Obligation to investigate

Art. 5 Regulation (EU) 996/2010

- Every **accident** or **serious incident** involving aircraft falling under the scope of **Regulation (EU) 2018/1138** shall be subject to an investigation in the **MS where it occurred**.
- Unless there are **persons fatal** or **serious injured**, and taking into account the lessons to be drawn, **no obligation** to investigate accidents or serious incidents involving :
 - Uncertified unmanned aircraft
 - Aircraft ≤ 2250 kg

REGULATION (EU) NO 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 2002/94/EC (Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	having forwarded a proposal to the Commission from the Commission, and after consulting the Economic and Social Committee,
having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,	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 Commission,	having regard to the proposal from the Commission,
after consulting the Committee of the Regions,	after consulting the Committee of the Regions,
having regard to the opinion of the European Data Protection Supervisor,	having regard to the opinion of the European Data Protection Supervisor,
acting in accordance with the ordinary legislative procedure,	acting in accordance with the ordinary legislative procedure,
Whereas:	Whereas:
(1) A high general level of safety should be ensured in civil aviation in order to protect the safety of passengers and to ensure public confidence in air transport;	(1) A high general level of safety should be ensured in civil aviation in order to protect the safety of passengers and to ensure public confidence in air transport;
(2) The responsibility for the investigation of civil aviation accidents and incidents is to be shared between the State and the Commission;	(2) The responsibility for the investigation of civil aviation accidents and incidents is to be shared between the State and the Commission;
(3) Reporting, analysis and dissemination of findings of safety-related incidents are fundamental elements in improving air safety; therefore the Commission should support the activities of the States in this regard;	(3) Reporting, analysis and dissemination of findings of safety-related incidents are fundamental elements in improving air safety; therefore the Commission should support the activities of the States in this regard;
(4) The Commission should support the States in their efforts to improve the efficiency of the investigation and reporting of civil aviation accidents and incidents;	(4) The Commission should support the States in their efforts to improve the efficiency of the investigation and reporting of civil aviation accidents and incidents;

Definitions accident, serious incident, incident

■ Accident:

Occurrence associated with the operation of aircraft whereby

- a. a person is fatally or seriously injured;
- b. aircraft sustained (substantial) damage or structural failure;
- c. aircraft is missing.

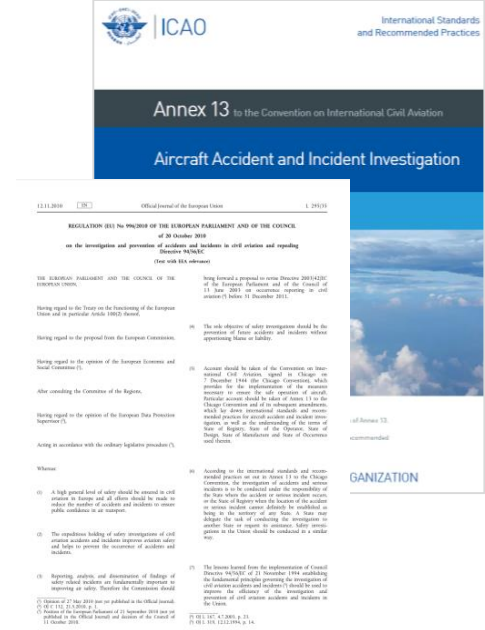
■ Serious incident:

High probability of an accident occurring.

List of examples>>>>> attachment C (Annex 13) or Annex (EU 996/2010)

■ Incident:

Occurrence, other than accident, associated with the operation of aircraft that affects or could affect flight safety.



Objective of the investigation

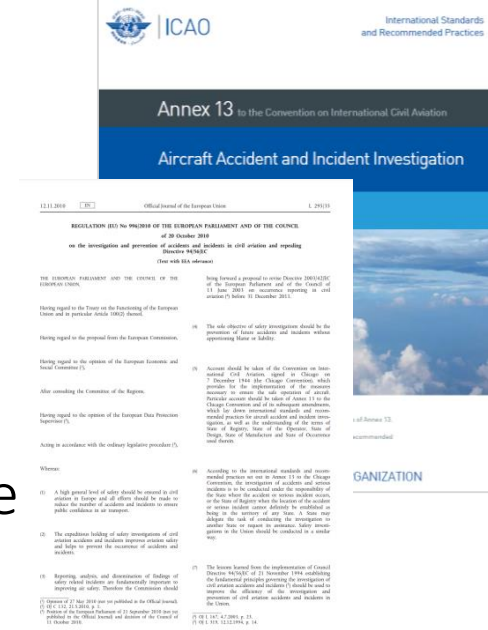
Enhancing flight safety

Std 3.1 Annex 13:

“The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is **not** the purpose of this activity to **apportion blame or liability.**”

Art. 5(6) Regulation (EU) 996/2010:

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



Accident Investigation Authority / Safety Investigation Authority



Std. 3.2 Annex 13

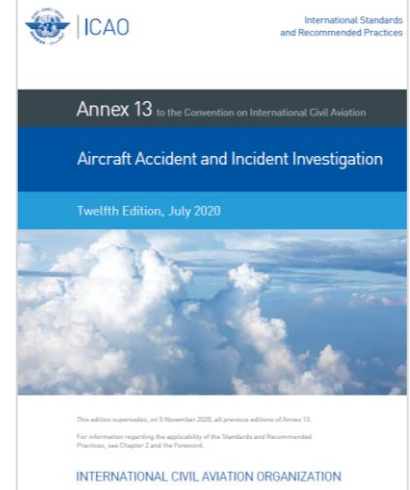
A State shall establish an *accident investigation authority* that is **independent** from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

Article 4 (1) Regulation (EU) 996/2010

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

Participation in the investigation

State of Occurrence	Conducting the investigation – Investigator In Charge (IIC)
State of Registry	Participating in the investigation Accredited Representative (accrep) + advisers
State of Operator	Idem
State of Manufacture	Idem
State of Design	Idem
State providing requested information	Idem
States having suffered fatalities or serious injuries to their citizens	Limited participation - Expert



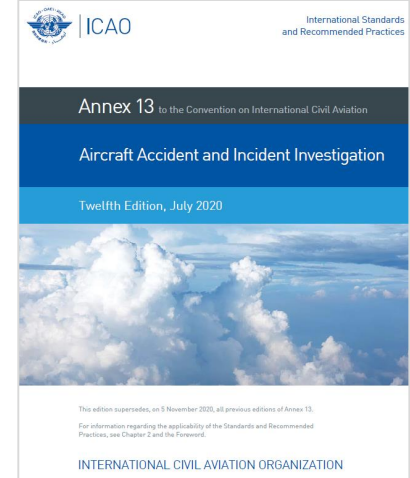
Entitlements IIC (and accreps, experts and advisers)

- **Immediate unrestricted** and **unhampered access** to the site of the accident or incident, its content or wreckage;
- **Immediate listing of evidence** and controlled removal of debris, or components for examination or analysis purposes;
- **Immediate access** to and control over **flights recorders**, their contents and **any other relevant recordings**;
- Request, and contribute to, a **complete autopsy** and have **immediate access** to the **results**;
- Request **medical examination** of people involved in the operation of the aircraft or request test to be carried out and have **immediate access** to **results**;
- **Interview witnesses** and require them to **provide information** or **evidence** relevant for the investigation;
- **Free access** to **relevant information** or **records** held by the owner, certificate holder, training organisation, operator, manufacturer, CAA, EASA, ANSP's or Aerodrome operators.

art. 11 Regulation (EU) 996/2010

St. 5.6 to 5.9.1 and 5.25 of Annex 13

Coordination of investigation – judicial authorities



Std 5.4.1

“Any investigation conducted in accordance with the provisions of this Annex shall be separate from any judicial or administrative proceedings to apportion blame or liability.”

Note.— Separation can be achieved by the investigation being conducted by State accident investigation authority experts, and any judicial or administrative proceedings being conducted by other appropriate experts. Coordination, as per 5.10, between the two processes would likely be required at the accident site and in the gathering of factual information, with due consideration to the provisions in 5.12.

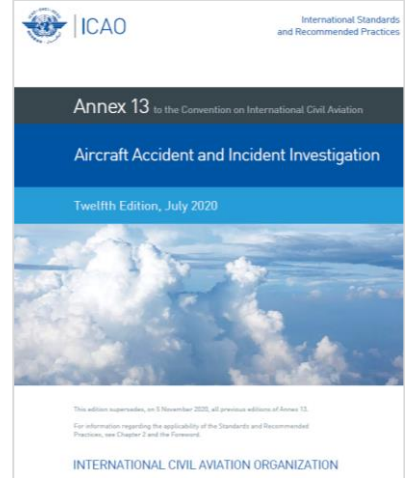
Std. 5.10

5.10 The State conducting the investigation shall recognize the need for **coordination** between the **investigator-in-charge** and the **judicial authorities**. Particular attention shall be given to evidence which requires prompt recording and analysis for the investigation to be successful, such as the examination and identification of victims and read-outs of flight recorder recordings.

Access to the wreckage

Std. 5.6 Annex 13

The investigator-in-charge shall have **unhindered access** to the **wreckage** and all relevant material, including flight recorders and ATS records, and **shall have unrestricted control over it** to ensure that a detailed examination can be made without delay by authorized personnel participating in the investigation.



Coordination of investigations – art. 12 (1) Reg. (EU) 996/2010

- **Notification** to IIC of judicial investigation;
- IIC to ensure **traceability** and to **retain custody** of flight recorders and any physical evidence;
- Appointment of a **judicial official** to **accompany evidence** to read-out or treatment;
- Agreement on **destructive examination** (national law to be respected), within time limits
- IIC has **immediate** and **unrestricted access** to evidence seized by judicial authorities.

REGULATION (EU) NO 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and regarding (EUROPEAN SAFETY BOARD)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	Having regard to a proposal to create Directive 2002/32/EC of the European Parliament and of the Council of 15 May 2002 on accident investigation in civil aviation (1),
Having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,	Having regard to the proposal from the European Commission,
Having regard to the opinion of the European Economic and Social Committee (2),	After consulting the Committee of the Regions,
Having regard to the opinion of the European Data Protection Supervisor (3),	Acting in accordance with the ordinary legislative procedure (4),
Whereas:	
(1) A high general level of safety should be ensured in civil aviation in Europe and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in air transport.	(16) The main objective of safety investigations should be the prevention of future accidents and incidents without apportioning blame or liability.
(2) The expedition handling of safety investigations of civil aviation accidents and incidents requires cooperation and close links to prevent the recurrence of accidents and incidents.	(17) According to the international standards and recommended practices as set out in Annex 13 to the Chicago Convention, the investigation of accidents and incidents involving the investigation of flight recorders and cockpit voice recorders is to be conducted under the responsibility of the State of Registry when the location of the accident or incident location cannot definitely be established or during the first 48 hours of an investigation. It may, however, be necessary to assign the task of conducting the investigation to another State to support an extensive, rapid investigation in the Union should be conducted in a similar way.
(3) Regarding accidents and disturbances of flight of safety related incidents an internationally approved co-operation system should be established to ensure the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.	(18) The system based upon the implementation of Council Directive 2002/32/EC of 15 May 2002 on accident investigation of civil aviation accidents and incidents (5) should be used to ensure the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.
(4) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(19) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(5) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(20) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(6) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(21) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(7) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(22) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(8) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(23) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(9) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(24) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(10) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(25) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(11) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(26) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(12) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(27) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(13) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(28) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(14) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(29) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.
(15) Council Directive 2002/32/EC is amended in the Official Journal of the European Union.	(30) The Commission should be asked to submit to the Council a proposal to amend the said Directive in order to ensure the full implementation of the system.

Coordination of investigations – art. 12 (2) Reg. (EU) 996/2010

- IIC informs competent authorities in case of (suspicion of) unlawful act.
- Relevant information must be shared, in accordance with art. 14 provisions (confidentiality of safety information);

Question: can this notification obligation impede future safety investigations?

REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 2003/42/EC (Text with EEA relevance)	
Having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,	18. The sole objective of safety investigations should be the prevention of future accidents and incidents without apportioning blame or liability.
Having regard to the proposal from the European Commission,	19. Accidents should be taken of the Commission on behalf of the Commission, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the Convention, necessary to ensure the safe operation of aircraft. Several annexes should be signed of which 13 to the Chicago Convention and of its subsequent amendments, shall lay down international standards and recommended practices for aircraft accidents and incident investigations, as well as the arrangements for the issue of such Reports, took of the Objective, task of Chicago State of Investigation and Issue of Occurrence and Alerts.
Having regard to the opinion of the European Data Protection Supervisor ⁽¹⁾ ,	20. According to the international standards and recommended practices set out in Annex 13 to the Chicago Convention, the investigation of accidents and serious incidents is to be conducted under the responsibility of the State where the accident or serious incident occurs, and the State of Origin when the location of the accident or serious incident cannot definitely be established or being in the interest of any State. It shall not deprive the task of conducting the investigations in another State or region its autonomy. Safety investigations in the Dutch should be conducted in a similar way.
Acting in accordance with the ordinary legislative procedure ⁽²⁾ ,	21. The lessons learned from the implementation of Council Directive 2003/42/EC of 13 November 2003 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents ⁽³⁾ should be used to improve the efficiency of the investigation and to ensure the confidentiality of safety information and incidents in the Dutch.
Whereas	
(1) A high general level of safety should be attained in civil aviation in Europe and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in air transport.	
(2) The expedition, holding of safety investigations of civil aviation accidents and incidents requires concerted action and help to prevent the recurrence of accidents and incidents.	
(3) Reporting, analysis, and dissemination of findings of safety-related incidents are fundamental to improve or improve air safety. Therefore the Commission should ensure that the objective of the investigation and to ensure the confidentiality of safety information and incidents in the Dutch.	
(4) Council Directive 2003/42/EC of 13 November 2003 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents ⁽³⁾ should be used to improve the efficiency of the investigation and to ensure the confidentiality of safety information and incidents in the Dutch.	
(5) Council Directive 2003/42/EC of 13 November 2003 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents ⁽³⁾ should be used to improve the efficiency of the investigation and to ensure the confidentiality of safety information and incidents in the Dutch.	

Protection of investigation information - art. 14 (2) Reg. (EU) 996/2010

12.11.2010	EN	Official Journal of the European Union
REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and regarding Directive 2003/42/EC (Text with EEA relevance)		
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,</p> <p>having regard to the proposal from the European Commission,</p> <p>after consulting the Committee of the Regions,</p> <p>acting in accordance with the ordinary legislative procedure (1),</p>	<p>DESIRING to amend Directive 2003/42/EC of the European Parliament and of the Council of 27 June 2003 on occurrence reporting in civil aviation (2),</p> <p>DESIRING to amend Directive 2003/42/EC of the European Parliament and of the Council of 27 June 2003 on occurrence reporting in civil aviation (2) in order to:</p> <p>(a) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p> <p>(b) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p> <p>(c) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p>	
<p>DESIRING to amend Directive 2003/42/EC of the European Parliament and of the Council of 27 June 2003 on occurrence reporting in civil aviation (2) in order to:</p> <p>(a) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p> <p>(b) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p> <p>(c) ensure that the investigation of accidents and incidents is conducted in a manner which is consistent with the objectives of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to secure the safe operation of aircraft;</p>	<p>(1) The European Parliament and the Council agreed on 23 October 2010 in accordance with the ordinary legislative procedure (first reading) on the basis of the proposal from the Commission (COM(2009) 425 final) and the Council position (CONLEG 2010/0110) and the Parliament's second reading position (P7_TA(2010) 0225).</p> <p>(2) Directive 2003/42/EC of the European Parliament and of the Council of 27 June 2003 on occurrence reporting in civil aviation (OJ L 161, 27.6.2003, p. 1).</p>	

Not to be made **available** or **used** for **other purposes** than **safety investigation** or other purposes aiming at **improving aviation safety**:

- all communications between persons involved in operation of an aircraft;
- written or electronic recordings and transcriptions of ATC units, including reports and results for internal purposes;
- covering letters for transmission of safety recommendations, if so requested by SIA;
- occurrences reports filed under the previous Directive 2003/42/EC on occurrence reporting (replaced by Regulation (EU)376/2014).

Protection of investigation information - art. 14 (3) Reg. (EU) 996/2010

Records mentioned in art. 14 paragraph 1 and 2 **not to be made available** or **used** for other purposes **unless**:

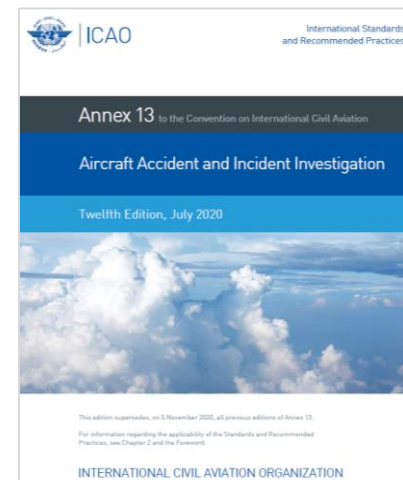
- **administration of justice** or **competent authority** decides,
- in accordance with national law,
- that **benefits of disclosure outweighs** the **adverse impact** on **future safety investigations**.

REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and regarding Directive 2002/94/EC (Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL, in view of the Commission proposal to amend Directive 2002/94/EC by the European Parliament and of the Council of 23 June 2009 on occurrence reporting in civil aviation (1),	1. This Regulation shall be applicable to the investigation and prevention of accidents and incidents in civil aviation and regarding Directive 2002/94/EC.
Having regard to the Treaty on the Functioning of the European Union and in particular Article 100(2) thereof,	2. The tasks of safety investigations should be the prevention of those accidents and incidents without approving them as liability.
Having regard to the proposal from the European Commission,	3. Accidents should be taken as the Commission on International Civil Aviation, agreed in Chicago, on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to ensure the safe operation of aircraft.
after consulting the Committee of the Regions,	4. The Commission should be assisted by the High Level Group of Experts on the investigation and prevention of accidents and incidents in civil aviation, which has diverse international standards and recommendations for civil aviation and the investigation and prevention of accidents and incidents in civil aviation, as well as the recommendations of the Group of Experts, from the Civil Aviation Authority of the United Kingdom and from the International Civil Aviation Organisation.
Having regard to the opinion of the European Data Protection Supervisor (2),	5. A high general level of safety should be ensured in civil aviation in Europe and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in air transport.
Acting in accordance with the ordinary legislative procedure (3),	6. The procedures leading to safety investigations of civil aviation accidents and incidents approved should not delay or prevent the occurrence of accidents and incidents.
Whereas:	7. According to the international standards and recommended practices set out in Annex 13 to the Chicago Convention, the investigation of accidents and incidents is to be conducted under the responsibility of the State where the accident or incident occurred, taking into account the number of accidents and incidents to ensure public confidence in air transport.
(1) OJ L 165, 24.6.2009, p. 1.	8. The Commission should be assisted by the High Level Group of Experts on the investigation and prevention of accidents and incidents in civil aviation, which has diverse international standards and recommendations for civil aviation and the investigation and prevention of accidents and incidents in civil aviation, as well as the recommendations of the Group of Experts, from the Civil Aviation Authority of the United Kingdom and from the International Civil Aviation Organisation.
(2) Opinion of the European Data Protection Supervisor of 15 November 2010 (not published in the Official Journal).	9. The Commission should be assisted by the High Level Group of Experts on the investigation and prevention of accidents and incidents in civil aviation, which has diverse international standards and recommendations for civil aviation and the investigation and prevention of accidents and incidents in civil aviation, as well as the recommendations of the Group of Experts, from the Civil Aviation Authority of the United Kingdom and from the International Civil Aviation Organisation.
(3) Council Directive 2002/94/EC of 15 December 2002 on occurrence reporting in civil aviation (2002/94/EC) is published in the Official Journal and Annexes of the Council of 18 December 2002.	10. The Commission should be assisted by the High Level Group of Experts on the investigation and prevention of accidents and incidents in civil aviation, which has diverse international standards and recommendations for civil aviation and the investigation and prevention of accidents and incidents in civil aviation, as well as the recommendations of the Group of Experts, from the Civil Aviation Authority of the United Kingdom and from the International Civil Aviation Organisation.

Protection of investigation information – Std. 5.12 Annex 13

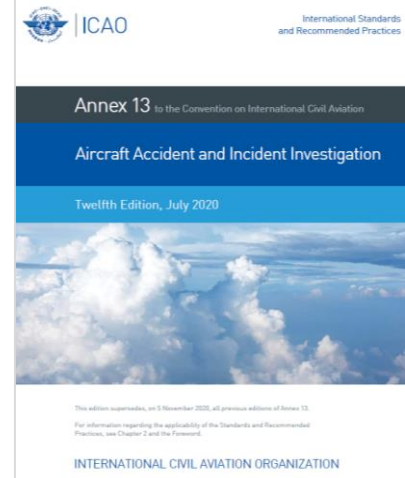
The State conducting the investigation shall not make the following records available, unless the **designated competent authority** determines, in accordance with national law and subject to Appendix 2 and 5.12.5, that their **disclosure** or use outweighs the likely **adverse domestic** and **international impact** such action may have on that or any future investigations

- a) CVR and AIR and any transcripts thereof;
- b) Records in the custody or control of the accident investigation authority being:
 1. statements taken by accident investigation authority;
 2. all communications between persons involved in the operation of an aircraft;
 3. medical or private information of persons involved;
 4. ATC recordings and transcripts;
 5. analysis and opinions of the accident investigation authority and accreps;
 6. draft Final Report.



Balancing test – Annex 13, Appendix 2

- Assist States developing national laws, regulations and policies to protect accident and incident investigation records.
- Assist the competent authority making the determination to disclose or not.
- States shall designate one or more competent authorities.



Balancing test – Annex 13, Appendix 2

- Request for disclosure or use in criminal, civil, administrative or disciplinary proceeding
> first determine if a material fact cannot be determined without that record.

- Take into consideration:
 - a) purpose for which record was created or generated;
 - b) requesters' intended use of the record;
 - c) any adverse affects for rights or interest of other persons/organisations;
 - d) consent of the person or organisation to whom that record relates;
 - e) are suitable safeguards in place to limit further disclosure or use?
 - f) as or can the record be de-identified, summarized or aggregated?
 - g) is there an urgent need to access that record?
 - h) is the record of sensitive or restrictive nature?
 - i) can the record indicate that the accident or incident may have been caused by gross negligence, wilful misconduct or with criminal intent?

Balancing test – Annex 13, Appendix 2

- **Category of records:** possibility of administering the balancing test once, and incorporate in national laws and regulations.
- Recomm: **record the reasons** behind the decisions.
- **Guidance material:** Doc 10053.
- Recomm: prevent the use of final report as evidence in proceedings to apportion blame or liability.
- Recomm: investigators not to be compelled to give an opinion on matters of blame or liability in civil/criminal/administrative/disciplinary proceedings.



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INTERNATIONAL CIVIL AVIATION ORGANIZATION

Questions, remarks, etc



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