

# **GUIDANCE MATERIAL**

## **REGULATION (EU) No 376/2014**

**ON THE REPORTING, ANALYSIS AND FOLLOW-UP  
OF OCCURRENCES IN CIVIL AVIATION**

### **COMMISSION IMPLEMENTING REGULATION (EU) 2015/1018**

**LAYING DOWN A LIST CLASSIFYING OCCURRENCES  
IN CIVIL AVIATION TO BE MANDATORILY REPORTED**

*Version 1 - December 2015*

*The content of this guidance material does not modify or amend Regulation (EU) No 376/2014 and its implementing rules.*

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# **SECTION 1**

## **INTRODUCTION**

## 1.1 How will Regulation (EU) No 376/2014 contribute to enhance aviation safety?

The European Union and its Member States are committed to ensure a high level of aviation safety and to protect European citizens by better preventing aircraft accidents (*Recital 1 of Regulation (EU) No 376/2014*).

While air transport remains one of the safest forms of travel, the expected air traffic growth foreseen for the next decades presents significant challenge to the European Union if it wants to prevent air accidents from increasing (*Recital 2*).

However, the current aviation safety system is mainly a reactive and prescriptive safety system, in which safety improvements are essentially resulting from technological progresses, compliance with prescriptive regulations and lessons learned from aircraft accidents. Therefore additional actions should be taken to avoid an increased number of fatalities and accidents (*Recital 5*). In that perspective, the European Union and its Member States have started the transition towards a more proactive, evidence-based, risk and performance oriented safety system (*Recital 5*). Such system requires a systematic and continuous collection of safety information in view for safety hazards to be identified, assessed and addressed. It should work continuously to ensure that any new hazards or risks are rapidly identified and that mitigation actions are implemented and where found ineffective are revised (*Recital 6*). In addition, in a safety system where the EU and its Member States are aiming to focus available resources on higher risks to ensure a better safety efficiency of measures taken, safety information supports a risk-based oversight of regulated entities.

As it is highlighted in the Commission Communication on "*Setting up an Aviation Safety Management System for Europe*"<sup>1</sup>, the collection, analysis and follow-up of occurrences are a central element of such proactive and evidence-based safety system. This is also reflected at international level, where ICAO rules puts data reporting and analysis systems at the heart of safety management<sup>2</sup>.

In this context, on the basis of a Commission proposal from December 2012<sup>3</sup>, the European Parliament and the Council have adopted, on 3<sup>rd</sup> April 2014, a new legislation: Regulation (EU) No 376/2014 on the reporting, analysis and follow up of occurrences in civil aviation<sup>4</sup> (hereinafter called 'Regulation 376/2014'). It is completed by Commission Implementing Regulation (EU) 2015/1018<sup>5</sup> classifying the occurrences to be reported in the context of mandatory reporting schemes (hereinafter called 'Regulation 2015/1018').

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<sup>1</sup> COM/2011/0670 final: Communication from the Commission to the Council and the European Parliament "*Setting up an Aviation Safety Management System for Europe*".

<sup>2</sup> Annex 19 "*Safety Management*" to the Chicago Convention.

<sup>3</sup> COM/2012/0776 final - 2012/0361 (COD): Proposal for a Regulation of the European Parliament and of the Council on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007.

<sup>4</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007; OJ L 122, 24.4.2014, p. 18.

<sup>5</sup> Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (Text with EEA relevance); OJ L163, 30.06.2015, p. 1.

The objective of Regulation 376/2014 is to ensure that the necessary safety intelligence is available to support the safety management efforts of the whole European Aviation Community. The information provided through the collection and analysis of occurrence reports under this Regulation should allow the industry and the regulators to be informed about the risks they are facing and to take decisions supported with relevant knowledge and information.

Regulation 376/2014 establishes a framework, across aviation domains and at each level (industry, national and European), to ensure the collection of as complete as possible safety occurrence data and its analysis with a view to support the full spectrum of safety management activities, including the adoption and implementation of mitigation actions where relevant.

The reporting, analysis and follow-up of occurrences is supported by a broader safety risk management process that helps to identify the main safety issues and risks. This process involves continuous dialogue between the industry and their competent authorities and full engagement from all involved - the industry, the European Aviation Safety Agency (EASA) and the Member States- as part of routine safety management activity. This notably includes the provision of feedback and lessons learned to improve safety.

This Regulation aims to ensure that the industry is aware of the risks it is facing and takes relevant measures to mitigate those risks. It should also allow the Member States to be informed about the risks it is facing at national level and to identify national measures that may be necessary to ensure aviation safety from a broader national perspective. In addition, it intends to ensure that the Member States, EASA and the European Commission are collectively informed of the risks faced by the European Union as a whole and may decide, on the basis on joint analysis, the adoption of relevant mitigation actions to maintain or improve the level of aviation safety from a European perspective.

Regulation 376/2014 and its implementing rules are completed by other existing reporting, analysis and follow-up requirements contained in other European or national rules.

The mandatory and voluntary reporting systems as well as the analysis and follow-up tasks established by Regulation 376/2014 shall be understood as part of existing safety management processes of the organisations and authorities subject to such processes under other European rules.

## **1.2 Why developing guidance material for Regulation 376/2014?**

European legislation is generally the result of a political compromise between the co-legislators i.e. the European Parliament and the Council (representing the Member States). This reality may impact the overall coherence of an adopted legislation and may lead to provisions which are vague or unclear because they are resulting from a political compromise.

Furthermore, legal provisions that are contained in a regulation may be read without a clear understanding of the purpose intended by the co-legislators. This may therefore lead to diverging implementation across the Member States. It may also sometimes lead to implementation that is contracting with the objective pursued by the co-legislators.

Regulation 376/2014 repeals and replaces the existing occurrence legal framework (Directive 2003/42/EC<sup>6</sup> and its implementing regulations) and introduces a number of new legal

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<sup>6</sup> Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation; OJ L 167, 4.7.2003, p. 23.

requirements. Impacted stakeholders expressed the need to benefit from guidance material supporting the implementation of that Regulation and its implementing rules. Furthermore, Article 7(8) of Regulation 376/2014 requires the Commission and EASA to develop guidance material to support the implementation of certain provisions of it.

In addition, the interaction between Regulation 376/2014 and other occurrence reporting, analysis and follow-up related requirements contained in other existing European regulations should be explained to ensure the proper implementation of all these rules and to allow Regulation 376/2014 to fully achieve its objectives.

This paper aims to explain the intended purpose of Regulation 376/2014 provisions and its implementing regulations, in accordance with the spirit of the agreement found between co-legislators. It proposes, where relevant, possible means of compliance and examples of good practices, with a view to contribute to a consistent and appropriate implementation of Regulation 376/2014 and its implementing rules across the EU.

It has been prepared by the services of the European Commission, with the support of the European Aviation Safety Agency (EASA). If relevant, this paper may be updated by the European Commission, based on feedback and experience with the application of the Regulation and when new delegating or implementing provisions will be introduced.

### **1.3 When did Regulation 376/2014 become applicable?**

The Regulation was adopted on 3<sup>rd</sup> April 2014. It became applicable on 15 November 2015.

Its first implementing regulation, Regulation 2015/1018, was adopted on 29 June 2015 and became applicable at the same date than Regulation 376/2014, on 15 November 2015.

A roadmap to support the industry, the Member States and all relevant stakeholders in preparing for Regulation 376/2014 application has been prepared by the Commission, with the support to EASA. This guidance material is part of the various initiatives included in the roadmap.

The roadmap includes other initiatives such as the establishment of a European Reporting Portal<sup>7</sup>, the development of a European Corporate Just Culture Declaration<sup>8</sup>, of promotional material<sup>9</sup>, as well as other activities and initiatives.

### **1.4 Is the application of Regulation 376/2014 compulsory?**

Regulation 376/2014 is a Regulation and therefore, in accordance with Article 288 of the Treaty on the Functioning of the European Union (TFEU), it is binding in its entirety and directly applicable in all Member States.

It is binding in its entirety and so cannot be applied incompletely, selectively or partially.

In addition, Regulation 376/2014 is directly applicable as a national law in the Member States and no measure to incorporate it in national law is required.

This Regulation is applicable in the legal orders of the 28 EU Member States. It is also expected to be applicable in Norway, Iceland and Liechtenstein (via the Agreement on the European Economic Area) and in Switzerland (via the Agreement between the European

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<sup>7</sup> [www.aviationreporting.eu](http://www.aviationreporting.eu)

<sup>8</sup> [www.ec.europa.eu/transport/modes/air/sign-up-just-culture/index\\_en.htm](http://www.ec.europa.eu/transport/modes/air/sign-up-just-culture/index_en.htm)

<sup>9</sup> [www.aviationreporting.eu/index.php?id=269](http://www.aviationreporting.eu/index.php?id=269) and [www.aviationreporting.eu/index.php?id=270](http://www.aviationreporting.eu/index.php?id=270)



Community and the Swiss Confederation on Air Transport) once the Regulation will be incorporated within these respective agreements.

Same applies to Regulation 2015/1018.

### 1.5 Can Member States adopt rules in areas covered by Regulation 376/2014?

Regulation 376/2014 is different from Directive 2003/42 it replaces as it is directly applicable in the Member States as national law, whereas the Directive was requiring national transposition measures. Same applies to its implementing rules.

#### Key principle

**Regulation 376/2014 and Regulation 2015/1018 do not require the adoption of national transposition legislation.**

This does not mean that the Member States cannot take implementing measures. They must do so if required by the Regulation.

#### Example:

Article 6(3) requests each Member State to "*designate one or more competent authorities to establish a mechanism to independently collect, evaluate, process, analyse and store details of occurrences reported pursuant to Articles 4 and 5*". In this case, as well as in similar situations where States are required to adopt measures, each Member State shall adopt relevant implementing measures.

### 1.6 Are Member States allowed to adopt national rules which are stricter than Regulation 376/2014?

In principle States should not adopt national rules covering issues already regulated in a European Regulation, including rules that would be stricter, unless it is specifically foreseen in that European Regulation.

#### Key principle

**The Member States, and EASA when acting as a competent authority, can adopt measures going beyond the provisions of Regulation 376/2014 only where this possibility is specified in the Regulation itself.**

#### Example:

Article 3(2) of Regulation 376/2014 states that the Regulation "*applies to occurrences and other safety-related information involving civil aircraft, with the exception of aircraft referred to in Annex II to Regulation (EC) No 216/2008*". The paragraph continues as follows "*Member States may decide to apply this Regulation also to occurrences and other safety-related information involving the aircraft referred to in Annex II to that Regulation*". In such case, while the Regulation is only applicable to non-Annex II aircraft, the possibility is given to States to go beyond and to equally apply it to Annex II aircraft.

Similar provisions allowing to go beyond the requirements of the Regulation are included in Articles 5(6), (7) and (8); 6(2), 13(4); (5) and (12); 16(6), (7) and (8).

#### Key principle

**In any other situation, the Member States, and EASA when acting as a competent authority, are not allowed to deviate from the provisions of the Regulation.**

#### Example:

Article 4(7) requests reporters to "report occurrences within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this". Adopting a national legal measure requesting reporters to report occurrence within a short deadline (e.g. 36 hours) is not authorised and is understood as going against the Regulation.

### 1.7 What type of aircraft is covered under the Regulation?

Regulation 376/2014 applies to occurrences and other safety-related information involving civil aircraft, with the exception of aircraft referred to in Annex II to Regulation (EC) No 216/2008<sup>10</sup> (Article 3(2)).

The concept of civil aircraft in the area of design and production is understood as relating to the Type Certificate and not necessarily to the type of operation that an individual aircraft (registration) performed at the time of the occurrence.

#### Example:

If an occurrence occurred during non-civil operations (e.g. military operations) and reveals an unsafe condition in the civil Type Certificate of the aircraft, this occurrence should be considered within the scope of Regulation 376/2014 and should, therefore, be reportable under the mandatory reporting scheme.

The same criteria apply in other fields for cases where there is potential impact on safety of civil aviation, though no civil aircraft was directly involved in the occurrence.

#### Example:

If there is an airspace infringement of military or Annex II aircraft, the occurrence should be considered within the scope of this Regulation.

Member States have the possibility to extend the application of this Regulation to occurrences and other safety-related information involving the aircraft referred to in Annex II to Regulation (EC) No 216/2008 (Article 3(2)).

### 1.8 What type of information is covered under the Regulation?

Regulation 376/2014 applies to (Article 3(1)):

<sup>10</sup> Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (Text with EEA relevance); OJ L 79, 19.3.2008, p. 1.

- occurrences i.e. any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident (*Article 2(7)*),
- and to other relevant safety-related information in that context.

#### **Key principle**

**Events or information which are reported through reporting systems but which are not aviation safety-related (in the sense of pertinent to prevent an aircraft, its occupants or any other person to be endangered) are not subject to the provisions of Regulation 376/2014.**

#### *Example:*

An event reported by a crew member to his/her operator about a commercial or quality issue and which has no safety implication, is therefore not subject to Regulation 376/2014 and to the requirements of transfer, analysis and follow-up contained in that Regulation.

It is understood that Regulation 376/2014 does not apply to automatic sources of safety information such as the Flight Data Monitoring programmes in air operators or radar track analysis calculations in Air Navigation Service Providers. Other rules, outside the context of Regulation 376/2014 and its implementing rules, may be applicable to those sources of safety information, including possible reporting and analysis obligations.

# **SECTION 2**

# **AVIATION PROFESSIONALS**

## 2.1 Why should I report safety occurrences?

The reporting of aviation safety occurrences is vital to the prevention of aircraft accidents. It contributes to understand where safety risks lie in the aviation system and helps decision makers in organisations and competent authorities (both at national and European level) to adopt relevant measures (see also section 1.1). The information and safety intelligence needed to support safety improvement in the industry, in the Member States and in the EU largely relies on individuals reporting occurrences when they happen. Without this information, the realities of aviation safety issues cannot be properly understood and addressed.

Therefore, the reporting of safety occurrences by aviation professionals contributes to the prevention of accidents. Their role is fundamental to ensure the safety of aviation activities within the organisation that employs them or uses their services, but also more generally in the overall European aviation system.

## 2.2 Am I under the legal obligation to report occurrences?

Whereas the reporting of any safety relevant occurrence should be encouraged, Regulation 376/2014 differentiates between occurrences that should always be reported, because they have been considered by the legislator as posing a significant risk for aviation safety, and those that may be reported if judged relevant by potential reporters (more information of the reportable occurrences is provided in section 2.3).

Furthermore, whereas any person involved in aviation activities should be encouraged to report any safety occurrence it considers relevant, Regulation 376/2014 differentiates between the persons who are always required to report defined occurrences, because they have been considered as front line operators by the legislator, and those that may report occurrences when they judge it relevant.

### Key principle

**The obligation for designated persons to report certain occurrences does not prevent other persons from reporting occurrences under the normal operation of their organisation safety management system.**

This section provides information on the persons who are required to report certain occurrences in accordance with Regulation 376/2014.

This Regulation provides for a list of designated persons that must report occurrences in the context of mandatory reporting schemes (*Article 4(6)*). This list covers a broad range of persons involved in aviation activities, employees as well as other persons.

### Key principle

**The list of persons who are required to report certain occurrences covers employees of an organisation, as well as persons whose services are contracted or used by the organisation (*Article 4(6)*).**

### *Example:*

Pilots employed by a European operator as well as self-employed pilots who are pilot-in-command of aircraft used by a European operator are covered under this obligation.

These designated persons are under a legal obligation to report certain defined occurrences. Without these occurrence reports, the European Union and the organisations and competent authorities that are part of it cannot make the best decisions on safety priorities. In addition, the failure to comply with the reporting legal obligation might have consequences for those required to report (*Article 21; Recital 38*).

It is therefore important to clearly identify the persons that are under the obligation to report occurrences under Regulation 376/2014.

Furthermore, clarification is necessary to ensure that, where relevant, natural persons already subject to an obligation to report safety occurrences under other European rules (see also section 3.6) are the same than the ones covered under Regulation 376/2014.

➤ Pilots

**Key principle**

**Article 4(6)(a) covers both pilots in command operating in the context of commercial air transport as well as private pilots operating on an aircraft covered by the Regulation.**

In addition, Article 4(6) (a) refers to "*the pilot in command, or, in cases where the pilot in command is unable to report the occurrence, any other crew member next in the chain of command of an aircraft*". Situations where the pilot would be unable to report is understood as referring to cases where the pilot would be unable to report because he would not be physically able to do so.

The reference to "*any other crew member next in the chain of command*" intends to cover any configuration of the crew.

*Example:*

Any other crew member next in the chain of command in the context of a CAT operation on-board of a large aeroplane would be the co-pilot whereas in the case where there is only one pilot on board it would be the cabin manager.

These situations should be covered and described by organisations within their safety management system.

➤ Design / manufacturing / airworthiness personnel

**Key principle**

**Article 4(6)(b) is understood as covering persons engaged in manufacturing of an aircraft, or any equipment or part thereof under the oversight of a Member State or of EASA, who are directly involved in the production of aeronautical items, have the role to verify compliance with applicable design data and the responsibility to perform investigations with the holder of the type-certificate or design approval in order to identify if those deviations could lead to an unsafe condition.**

This is aligned with occurrence reporting requirements in Commission Regulation (EU) No 748/2012<sup>11</sup>, where the production organisation is required to liaise with the design organisation to confirm that the deviation in design data is actually an unsafe condition

*Example:*

A person working in a production organisation being responsible of the investigation, together with the Design Approval Holder (DAH)<sup>12</sup>, to confirm if identified deviations of the manufactured product from design data could lead to an unsafe condition of the final certified product.

**Key principle**

**Article 4(6)(b) is also understood as covering persons engaged in designing an aircraft, or any equipment or part thereof under the oversight of a Member State or of EASA, who are in charge of the process to identify unsafe or potential unsafe conditions for the holder of a type-certificate, restricted type-certificate, supplemental type-certificate, ETSO authorisation, major repair design approval or any other relevant approval deemed to have been issued under Commission Regulation (EU) No 748/2012.**

This is aligned with occurrence reporting requirements in Commission Regulation (EU) No 748/2012.

*Example:*

A person working in a DAH having the responsibility to carry out the process to identify unsafe or potential unsafe conditions as per Part-21 requirements under Commission Regulation (EU) No 748/2012.

**Key principle**

**Article 4(6)(b) is also understood as covering persons engaged in designing an aircraft, or any equipment or part thereof under the oversight of a Member State or of EASA, who are in charge of the process to identify unsafe or potential unsafe conditions in the context of the continuing airworthiness of their products under the Commission Regulation (EU) No 748/2012 but not subject to any certification or approval under such Regulation.**

*Example:*

A person working in a design organisation dedicated to the design of light aircraft not

<sup>11</sup> Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations; OJ L224, 21.08.2012, p.1.

<sup>12</sup> Design Approval Holder (DAH) is a written convention to refer to the holder of a type-certificate, restricted type-certificate, supplemental type-certificate, ETSO authorisation, major repair design approval or any other relevant approval holder deemed to have been issued under Commission Regulation (EU) No 748/2012.

certified as per Part-21 requirements or subject to an organisation approval under Commission Regulation (EU) No 748/2012 but still falling under this legal framework and in charge of the process to identify unsafe or potential unsafe conditions of the product.

#### Key principle

**Finally, Article 4(6)(b) is also understood as covering persons engaged in continuing airworthiness monitoring, maintaining or modifying an aircraft, or any equipment or part thereof under the oversight of a Member State or of EASA, and**

- **who holds a valid aircraft maintenance licence; or**
- **who is authorised by its organisation and is directly involved with tasks of maintaining aircraft, including any component for installation thereto or of continuing airworthiness management; or**
- **who is a pilot-owner directly involved with tasks of maintaining aircraft.**

This is aligned with occurrence reporting requirements in Commission Regulation (EU) No 1321/2014<sup>13</sup>.

#### *Example:*

A person who holds a valid Part-66 mechanic license and performs actual maintenance work or a person who is a postholder for the continuing airworthiness of an aircraft.

#### ➤ Airworthiness personnel

#### Key principle

**Article 4(6)(c) is understood as applying to the person responsible for the airworthiness review performed in accordance with Annex I (Part M), M.A.710 of Regulation (EU) No 1321/2014, or the person responsible for the release to service in accordance with Annex I (Part M), M.A.801, M.A.802 or M.A.803 or Annex II (Part-145) 145.A.50 of Commission Regulation (EU) No 1321/2014.**

#### *Example:*

A person that holds a valid mechanic license as per Part-66 requirements and performs the release to service of aviation products.

#### ➤ ATM/ANS personnel

#### Key principle

**Article 4(6)(d) is understood as applying to a person who performs a function which**

<sup>13</sup> Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (Text with EEA relevance); OJ L 362, 17.12.2014, p. 1.



**requires him to be authorised by a Member State as a staff member of an air traffic service provider entrusted with responsibilities related to air navigation services or as a flight information service officer.**

*Example:*

An Air Traffic Controller or Flight Information Officer who holds a valid license as per Commission Regulation (EU) 2015/340<sup>14</sup> and acting as controller or officer on duty. In situations where an occurrence involves more than one person within the same organisation, it is understood that the most appropriate person should raise the report. A report is not needed from each person involved in the occurrence.

➤ Aerodrome personnel

**Key principle**

**Article 4(6)(e) is understood as applying to a person who performs a function connected with the safety management of an airport to which Regulation (EC) No 1008/2008<sup>15</sup> applies. This covers the Safety Manager of aerodromes certified under Commission Regulation (EU) No 139/2014<sup>16</sup>, the equivalent responsible person of those aerodromes not certified under Commission Regulation (EU) No 139/2014 but covered by Regulation (EC) No 1008/2008, as well as any person who can actively contribute to the safety management of an aerodrome covered by Regulation (EC) No 1008/2008.**

It also includes personnel and persons whose services (e.g. ground handling organisations, bird control and aerodrome services) are contracted or used by the aerodrome and who are expected to report information in the context of the safety management system of the aerodrome because of their aviation related tasks.

➤ ANS facilities personnel

**Key principle**

**Article 4(6)(f) is understood as applying to a person who performs a function connected with the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation facilities for which a Member State is**

<sup>14</sup> Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011 (Text with EEA relevance); OJ L 63, 6.3.2015, p. 1.

<sup>15</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance); OJ L 293, 31.10.2008, p. 3.

<sup>16</sup> Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (Text with EEA relevance); OJ L 44, 14.2.2014, p. 1.

**responsible.**

- Ground handling personnel

**Key principle**

**Article 4(6)(g) is understood as applying to a person who performs a function connected with the ground handling of aircraft in accordance with Directive 96/67/EC<sup>17</sup>, including fuelling, servicing, loadsheet preparation, loading, de-icing and towing, at an airport covered by Regulation (EC) No 1008/2008.**

### 2.3 What types of occurrences shall be reported?

**Key principle**

**It is understood that the reporting of any safety relevant occurrence should be encouraged with the view to support the principles of safety management as included in other European rules and as promoted by Regulation 376/2014.**

As mentioned in section 2.2, the reporting of any safety relevant occurrence should be encouraged. However, for the sake of clarifying legal obligations, Regulation 376/2014 differentiates between occurrences that should always be reported (mandatorily reportable occurrences) and those that may be reported if judged relevant by potential reporters (voluntarily reportable occurrences).

i. Mandatory reporting

The occurrences to be reported in the context of mandatory reporting systems are those which may represent a significant risk to aviation safety and which fall into defined categories (*Article 4(1)*). To facilitate the identification of those occurrences, the Commission was required to adopt a list classifying occurrences to be referred to (*Article 4(5)*).

These occurrences to be reported are therefore be listed in the Commission Implementing Regulation 2015/1018 which classifies the occurrences to be reported in the context of mandatory reporting schemes. The occurrences contained in Regulation 2015/1018 are those which have been considered by the legislator as potentially representing a significant risk to aviation safety.

Regulation 2015/1018 includes occurrences falling in the four categories mentioned in Regulation 376/2014 as well as those applicable to aircraft other than complex motor-powered aircraft (*Article 4(5)*) which are, where appropriate, adapted to the specificities of that aviation sector.

**Key principle**

**The occurrences to be reported in the context of mandatory reporting systems are those listed in Regulation 2015/1018.**

<sup>17</sup> Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports; OJ L 272, 25.10.1996, p. 36.

The division in categories of occurrences to be reported provided for in Article 4(1) is established to allow the identification of the occurrences to be reported by the persons designated under Article 4(6). Therefore the division in the various Annexes of the Regulation 2015/1018 intends to support the identification by reporters of the occurrences they are required to report.

**Key principle**

**It is therefore understood that reporters subject to mandatory reporting obligations are not required to report all occurrences contained in Regulation 2015/1018 but only those relevant for their respective area of activities.**

Reporting obligations in the context of mandatory schemes are therefore a combination of persons subject to mandatory reporting obligations and occurrences to be mandatorily reported in a specific area of activity.

Consequently these reporting obligations are understood to apply as detailed in the diagram below.

*Diagram 1. Obligations of reporting in the context of mandatory occurrence reporting systems (MORS)*

Type of reporter	Occurrences to be reported
Pilot in command - Art.4(6)(a) (for detailed definition see question 2) - when flying on complex motor-powered aircraft	Occurrences related to the operation of the aircraft - Annex I of Regulation 2015/1018
Manufacturing staff members - Art.4(6)(b) (for detailed definition see question 2)	Occurrences related to manufacturing - Annex II.1 of Regulation 2015/1018
Design staff members - Art.4(6)(b) (for detailed definition see question 2)	Occurrences related to design - Annex II.2 of Regulation 2015/1018
Maintenance staff members - Art.4(6)(b) (for detailed definition see question 2)	Occurrences related to maintenance and continuing airworthiness management - Annex II.3 of Regulation 2015/1018
Airworthiness certificate reviewers - Art.4(6)(c) (for detailed definition see question 2)	Occurrences related to maintenance and continuing airworthiness management - Annex II.3 of Regulation 2015/1018
Air traffic controllers and flight information service officer - Art.4(6)(d) (for detailed definition see question 2)	Occurrences related to related to air navigation services and facilities - Annex III of Regulation 2015/1018
Safety manager of an aerodrome - Art.4(6)(e)	Occurrences related to aerodromes and

(for detailed definition see question 2)	ground services - Annex IV.1 of Regulation 2015/1018
Air navigation facilities personnel - Art.4(6)(f) (for detailed definition see question 2)	Occurrences related to related to air navigation services and facilities - Annex III of Regulation 2015/1018
Ground handling personnel - Art.4(6)(f) (for detailed definition see question 2)	Occurrences related to related to aerodromes and ground services - Annex IV.2 of Regulation 2015/1018
Pilot in command - Art.4(6)(a) (for detailed definition see question 2) - when flying on aircraft other than complex motor-powered aircraft	Occurrences related to related to operation of the aircraft - Annex V of Regulation 2015/1018

Regulation 2015/1018 in its Annexes I, III, IV.1, IV.2, V.1, V.2 and V.3 states that the structure of the Annex or Section is made to ensure that the "*pertinent occurrences are linked with categories of activities during which they are normally observed, according to experience, in order to facilitate the reporting of those occurrences*". It highlights that this presentation should not be understood "*as meaning that occurrences must not be reported in case they take place outside the category of activities to which they are linked in the list*".

#### Key principle

**It is therefore understood that all occurrences listed in a specific Annex or Section of Regulation 2015/1018 are reportable by those identified as mandatory reporters for that Annex or Section, independently of the circumstances in which the occurrence may occur.**

#### *Example:*

A pilot in command flying on complex motor-powered aircraft is required to report all occurrences listed in Annex I of Regulation 2015/1018, even if those occurrences happen in circumstances different from the ones described in the various headlines (e.g. flight preparation, aircraft preparation, take-off and landing etc.).

#### ii. Voluntary reporting

There is no legal obligation under Regulation 376/2014 for reporting occurrences outside the situations detailed in diagram 1 above. It is nevertheless understood that reporting of any safety relevant occurrence by anyone aware of it should be encouraged. To allow such reporting Regulation 376/2014 imposes a legal obligation on organisations and competent authorities (*Article 5*) to establish voluntary occurrence reporting systems (VORS).

In this context, the voluntary reporting systems notably enable the reporting of (*Article 5(4)*):

- any occurrence or safety related information by individuals which are not subject to mandatory reporting (see section 2.2 for the detailed list of persons subject to MOR), this might include the reporting by those individuals of occurrences included in Regulation 2015/1018;
- any occurrence or safety related information not included in the Regulation 2015/1018 by individuals which are subject to MOR.

*Examples:*

A crew member may report a runway excursion through voluntary occurrence reporting systems.

A pilot in command may report occurrences outside those listed in Annex I of Regulation 2015/1018 through voluntary occurrence reporting systems.

It should be understood that while Regulation 376/2014 does not impose the reporting of all occurrences, its objective is to use all available safety data for the improvement of safety. Therefore the reporting of all relevant information should be strongly promoted and front-line professionals should be encouraged to share their experiences.

**Key principle**

**It is understood that the reporting of any safety relevant occurrence should be encouraged and therefore that the use of reporting systems, be they mandatory or voluntary, should be promoted.**

The legal obligation for organisations and competent authorities to establish voluntary reporting systems aims at supporting the collection of relevant information.

Industry organisations, the Member States and EASA are therefore encouraged to promote the reporting of any occurrence, whether or not there is a legal obligation to report it.

The Commission has prepared and published promotional material with the view to promoting and encouraging the reporting of safety occurrences. This material is available [here](#)<sup>18</sup>.

iii. Interaction with other reporting requirements

Reporting requirements that exist under other EU rules are aligned with reporting requirements under Regulation 376/2014. This means in practice, that reporting obligations under the Regulation 216/2008 and its implementing rules on one hand and reporting obligations under Regulation 376/2014 on the other hand are compatible. These reporting obligations can be discharged through the use of one reporting channel and should avoid the establishment of two parallel systems (*Recital 4*).

In addition, a person who holds more than one role subject to the obligation to report can discharge all those obligations with a single report. Organisations are encouraged to properly describe this in the organisation manual, to address cases where the responsibilities are taken up on behalf of the organisation.

<sup>18</sup> <http://www.aviationreporting.eu/index.php?id=269>

## 2.4 How can I know if an occurrence is reportable?

Safety management systems rely on the collection and analysis of safety related information. Therefore, anything that is perceived by the individuals as having the potential to impact or potentially impact safety should be reported.

The mandatory obligation of reporting is linked with the awareness of the situation by the person subject to the reporting obligation. It is understood that "being aware" of an occurrence refers to situations where the individual has been directly involved in the occurrence. Therefore, for example, while being aware of an occurrence through radio on-board the aircraft or ear say may motivate the reporting to the organisation or to the competent authority under VORS, this should not be understood as a legal obligation to be discharged by the individual under MORS.

Regulation 2015/1018 contains certain occurrences which are factual events easily identifiable such as "*a collision on the ground or in the air, with another aircraft, terrain or obstacle*". In such cases, as soon as the occurrence happens and the potential reporter is aware of it, the obligation to report it applies.

Regulation 2015/1018 also includes situations in which a judgement has to be made by the reporter to assess whether the aircraft or its occupants have or might have been endangered. This is for example the following occurrence: "*Significant failure, malfunction or defect of aerodrome equipment or system considered to have endangered or which might have endangered the aircraft or its occupants*". In such cases, the occurrence is reportable if the potential reporter has assessed that the aircraft or its occupants have or might have been endangered.

In such situations it is more difficult to identify whether the reporter has fulfilled his/her obligations under the legislation or not. This may be particularly challenging if the reporter has decided not to report an occurrence which has been reported by another person in the context of voluntary reporting schemes (*Recital 38*).

### Key principle

**Regulation 376/2014 prescribes potential reporters to report defined occurrences they are aware of. It is understood that if the reporter is not aware of the occurrence or if, in relevant cases, the reporter judges that the aircraft, its occupants or any other person have not been endangered or potentially endangered, and has therefore not reported the occurrence, the reporter may not be considered as infringing his/her reporting obligations under Regulations 376/2014 and 2015/1018.**

The Regulation sets the necessary legal framework to encourage individual reporters to go beyond the strict compliance with the mandatory reporting obligations and share those issues perceived by them as a threat to the aviation system with the relevant party (organisation or competent authority, as applicable). Therefore any occurrence or safety-related information considered as safety relevant by reporters should be reported.

### Key principle

**In situations where the reporter is aware about an occurrence and suspects it is reportable but cannot determine it with certainty, he/she is expected to report it.**

## 2.5 Am I required report occurrences that happened outside of the EU?

Regulation 376/2014 covers all occurrences involving an aircraft registered in a Member State or operated by an organisation established in a Member State, even if the occurrence happened outside the territory of that Member State (*Recital 18*).

### Key principle

**Occurrences should be reported even if they happen outside of the European Union.**

#### *Example:*

A pilot in command flying on a European airline and being aware of an occurrence listed in Annex I of Regulation 2015/1018 which happened in a third country is required to report it.

In addition, in the case of potential reporters working in production and design organisations, the reporting of occurrences is understood as covering products under their manufacturing or design responsibilities, regardless of the State of occurrence, operator or registration.

## 2.6 If I report an accident or serious incident under Regulation 376/2014, am I also required to report it to the State of Occurrence?

Accidents and serious incidents, as defined within Regulation (EU) No 996/2010<sup>19</sup>, are also subject to Regulation 376/2014 (*Article 2(7)*).

This should not interfere with the implementation of Regulation (EU) No 996/2010 and in particular, the notification of occurrences to the safety investigation authority (SIA) of the State of Occurrence in the context of Article 9 of that Regulation (*Recital 3*).

It means double reporting could be required in a situation where a person subject to mandatory reporting obligations in accordance with Article 4(6) has to report an accident or a serious incident listed in Regulation 2015/1018.

In such cases, this person shall report the accident or serious incident in accordance with Article 4(6) of Regulation 376/2014 and shall also "*notify without delay the competent safety investigation authority of the State of Occurrence thereof*" in accordance with Article 9 of Regulation (EU) No 996/2010.

#### *Example:*

A pilot in command being aware of an accident or a serious incident listed in Annex I of Regulation 2015/1018 and which occurred in the United Kingdom is required to report it to his/her organisation as well as to the UK SIA (the UK Air Accidents Investigation Branch).

<sup>19</sup> 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; OJ L 295, 12.11.2010, p. 35.

## 2.7 If several reporters are aware of the same reportable occurrence, are they all required to report it?

Situations may occur where several reporters subject to mandatory reporting obligations are aware of the same occurrence.

### Key principle

**In a situation where reporters employed or whose services are contracted or used by different organisations are aware of the same reportable occurrence, they are all required to report that occurrence.**

#### *Example:*

Two pilots from two different airlines, an air traffic controller, the safety manager of an airport and a ground handler are involved in or witness a collision on the ground between an aircraft and another aircraft. All of them shall report the occurrence even in the case they are working for organisations that are under the responsibility of the same Member State.

### Key principle

**In the case where reporters employed, or whose services are contracted or used by the same organisation, are aware of the same reportable occurrence while being physically together, it is understood that not of all of them are required to report the occurrence. They can do so but are not considered under the obligation to do so.**

#### *Example:*

Two ground handlers working for the same organisation discover a foreign object on the aerodrome movement area which has been considered to have endangered or which might have endangered an aircraft or its occupants. In this case the occurrence may be reported by only one of the ground handlers.

## 2.8 To what entity shall I report occurrences?

The Regulation gives persons subject to the MOR obligation the following reporting channels (Article 4(6)):

- The mandatory reporting system of the organisation which employs them or contracts or uses their services, or
- The mandatory system of the Member State of establishment or of the competent authority of their organisation, or by the State which issued, validated or converted the pilot's licence or
- The mandatory system of EASA.

### Key principle

**Reporting an occurrence through the reporting system of their organisation should be promoted and recognised as the normal channel of reporting for aviation professionals.**



This is notably consistent with the integration of occurrence data into the safety management system of an organisation.

The reporting through the system of a Member States is understood as the one to be used in the absence of any organisation or in situation where the reporter is not confident in the reporting system of an organisation certified or approved by that Member State.

The reporting through the mandatory system of EASA is understood as the one to be used by organisations for which EASA is the competent authority or in situation where the reporter is not confident in the reporting system of an organisation certified or approved by EASA.

Whereas the most direct reporting channel should be preferred (the organisation's reporting system) and even promoted, it is understood that direct reporting to a competent authority by a person employed by an organisation or whose services are contracted or used by this organisation is not prevented. Indeed, situations may occur where reporters are not confident in the reporting system of their organisations and may wish to use another reporting channel. This is consistent with the objective of fostering a 'Just Culture' which is pursued by Regulation 376/2014. It aims, in particular, at ensuring confidence of aviation professionals in occurrence reporting systems and encourages them to reports any relevant safety information with a view to contribute to the enhancement of aviation safety and accidents prevention.

It should be highlighted that the choice of a reporting system should be exclusive. Indeed the use of "or" in Article 4(6) indicates that only one report is required to be made by the reporter and that an occurrence should not lead to multiple reports from the reporter.

It is therefore understood, in accordance with the Regulation, that a reporter should not report an occurrence to his/her organisation and report it as well to a Member State and/or to EASA. This is without prejudice to other reporting obligations contained in other legal acts (see also section 2.6).

## **2.9 What is the deadline to report an occurrence?**

Regulation 376/2014 requires the persons subject to mandatory reporting requirements to report occurrences listed in the Regulation 2015/1018 within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this (*Article 4(7)*).

It is understood that the 72 hours period starts from the moment they learn about the occurrence, usually meaning when they witness the occurrence or are involved in it.

In the case of individuals engaged in design or production organisations (Design Organisation Approval - DOA - or Production Organisation Approval - POA) and who are under the obligation to report a potential unsafe or unsafe condition, the 72 hours period starts from the identification of the possible unsafe condition, which is normally reported through a dedicated process in those organisations.

The circumstances allowing a reporting of the occurrences after the 72 hours deadline shall be exceptional. This may for example include situations in which the reporter is unable to access a mean to report the occurrence.

In some cases an individual may be made aware of an occurrence through the automatic reporting systems of his/her organisation (e.g. Flight Data Monitoring programme, post processing of radar tracks etc) and not during the actual operation. In those cases, the 72 hours period starts when the potential reporter is made aware of this occurrence.

## 2.10 What is the format to report an occurrence?

Regulation 376/2014 does not impose any reporting format for individual reporters.

The format to be used by an aviation professional to report an occurrence to his/her organisation may be defined by the organisation as part of its safety management system.

In general, it is encouraged to develop reporting forms and means to report that are user-friendly and that do not discourage potential reporters to report occurrences. The aim should be to facilitate the collection of information from the front-line individuals into the management system of the organisation or into the system of the competent authority.

## 2.11 What information should be included in an occurrence report?

Regulation 376/2014 does not impose any specific information to be provided by aviation professionals when reporting an occurrence. Obviously, the description of the occurrence is expected to be included in the report.

Reporters are encouraged to include as complete as possible information in their report. To this purpose, reporters can use Annex I of Regulation 376/2014 as a reference for information encouraged to be reported in each specific circumstance.

Furthermore, aviation professionals are encouraged to include, in their report, any factor relevant to the occurrence, including contributing human factor. Including these details should help to a better understanding of safety hazards and to a more accurate identification of safety risks.

*Example:*

When reporting a fatigue related occurrence, reporters are encouraged to include in their report information such as total duty time, flight time (including the number of sectors flown) and the hours of rest achieved by the crew on the day of the incident and at least the two preceding days, along with other relevant information.

## 2.12 Is my report confidential?

- i. Within my organisation

Reporting to the organisation is not necessarily anonymous. This may depend of the type of reporting system used, as some organisations run, next to their mandatory and voluntary reporting systems, confidential reporting systems.

Regulation 376/2014 does not require organisations to fully anonymise reports collected but it requires organisations to take the necessary measures to ensure the appropriate confidentiality of the details of occurrences contained in its database (*Article 15(1)*).

### **Key principle**

**Organisations are required to take the necessary measures to ensure the appropriate confidentiality of occurrences they collect and to comply with rules on the processing of personal data.**

It is notably recognised by Regulation 376/2014 that a clear separation between the department handling occurrence reports and the rest of the organisation may be an efficient

way to achieve this objective (*Recital 34*). This should therefore be encouraged where practicable.

In addition Regulation 376/2014 requires organisations to process personal data only to the extent necessary for the purposes of this Regulation and in accordance with applicable personal data rules (*Article 15(1)*).

The Regulation also includes a number of provisions limiting the possible disclosure and use of the information reported and protecting reporters and any person mentioned in a report (see section 2.13 below).

- ii. Outside of my organisation

**Key principle**

**Member States and EASA are not allowed to record personal details in their databases. Furthermore, they are required to take the necessary measures to ensure the appropriate confidentiality of occurrences they collect and to comply with rules on the processing of personal data.**

Regulation 376/2014 ensures the confidentiality of individual reporter identity and of any other person involved in reports stored in Member States national occurrence databases and in the EASA database. Indeed it prohibits the recording of personal details (e.g. name of the reporter or anyone else mentioned in the report, addresses of natural persons) in the competent authority database (*Article 16(1), (2) and (3) and Recital 35*). To support this requirement, organisations are encouraged to refrain from including names and personal details when transferring occurrences reports to their competent authority.

In addition, requirements on the confidentiality of information and processing of personnel data similar to those imposed to organisations are applicable to the Member States and to EASA. Finally, *Recital 33* highlights the need for national rules on freedom of information to take into account the necessary confidentiality of information.

See section 2.13 below for more information on limitation to disclosure and use of information coming from occurrence reports.

### **2.13 Can my report be used against me or anyone mentioned in it?**

**Key principle**

**Regulation 376/2014 includes strong rules protecting occurrence reporters and persons mentioned in occurrence reports. These rules limit possible disclosure or use of occurrence reports.**

Regulation 376/2014 includes a number of provisions aimed at encouraging the reporting of occurrences by preventing their use against reporters and other persons mentioned in occurrence reports. These provisions protect the reporter and other persons mentioned in the report in their working environment as well as in the broader national and European context.

Regulation 376/2014 states that the aviation safety system is based on feedback and lessons learned from accidents and incidents and that the reporting of information by front line professionals is crucial to bringing safety improvements. It also highlights the need to establish an environment in which potential reporters feel confident in the existing systems and to report the relevant safety information. The necessity to create such an environment supports the protection principles in the Regulation (limitation to information use or

availability, Just Culture principles within an organisation, non-self-incrimination principle etc). The objective of such rules is to create an environment in which people will feel confident to report and therefore ensure a continued availability of safety information.

The objective is not to exonerate aviation professionals from their responsibilities but to find a balance between full impunity and blame culture. This balance is notably supported by the definition of 'Just Culture' (*Article 2*), by *Article 16* and by several recitals.

**Key principle**

**A 'Just Culture' should encourage individuals to report safety-related information but should not absolve individuals of their normal responsibilities (*Recital 37*). It is defined as a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated (*Article 2*).**

- i. In the context of the organisation

This principle is implemented by several provisions which prevent certain actions to be taken against reporters and persons mentioned in an occurrence report while identifying unacceptable behaviours that are not covered under this protective framework.

**Key principle**

**Employees and contracted personnel who report or are mentioned in occurrence reports shall not be subject to any prejudice by their employer or by the organisation for which the services are provided, on the basis of the information supplied by the reporter except in cases of unacceptable behaviour (*Article 16(9)*).**

This is the implementation of the Just Culture principle in a corporate context. It means that if a person reports an occurrence to his/her organisation, the organisation is not allowed to blame that person or to impose prejudice on him/her on the basis of the occurrence reported. This rule also applies if the person is not the reporter but is mentioned in the occurrence report.

**Key principle**

**Regulation 376/2014 recognises two exceptions to this principle (*Article 16(10)*):**

- **wilful misconduct; and**
- **situations where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.**

The objective is to clearly set, in the legislation, the line between acceptable behaviours (which shall not be punished) and unacceptable behaviours (which can be punished).

Furthermore, Regulation 376/2014 states additional principles limiting the possibility for an organisation to disclose or use occurrence reports.

**Key principle**

**Organisations can only use an occurrence report for the purpose for which it has been collected (Article 15(1)).**

**Organisations are not allowed to make available or use occurrence reports:**

- **in order to attribute blame or liability; or**
- **for any purpose other than the maintenance or improvement of aviation safety (Article 15(2)).**

Those limitations to the disclosure or use of occurrence reports apply within the organisation as well as outside of it.

It is therefore understood that sharing information on occurrences with press and media is not allowed by the Regulation. Disclosure of information on occurrence reports to judicial authorities is similarly not allowed.

**Key principle**

**There are however few exceptions to those principles.**

**Firstly, it is understood that in a situation where safety might be endangered, information on occurrences may be shared or used with a view to maintain or improve aviation safety. It is therefore understood that sharing or using information on occurrences in the cases detailed in Article 16(10) with the view to address the risks to safety is allowed by the Regulation.**

**Secondly, exception may apply in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted, as the provisions of Regulation 996/2010 have precedent in such case (Article 15(2)).**

Regulation 996/2010 foresees in its Article 14(2) and (3) that, in cases where it applies (opening of a formal technical accident or incident investigation), occurrences reports shall not be made available or used for purposes other than aviation safety unless the administration of justice or the authority competent to decide on the disclosure of records according to national law decides that the benefits of the disclosure of the occurrence report outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation (balancing test). If this balancing test concludes that the information on occurrences should be disclosed, then the organisation should make it available to the requesting authority.

An organisation shall only disseminate personal details within the organisation in those cases where it is essential to progress the investigation or to ensure the safety actions are properly taken (Article 16(2)). In this regards, the organisation may use the same protocols and agreements than the ones established and consulted with staff representatives to deal with other safety information (e.g. Flight Data Monitoring).

In order to support all these legal provisions, each organisation is required to adopt internal rules describing how Just Culture principles are guaranteed and implemented within that organisation (Article 16(11)). It is specified that staff representatives shall be consulted before the adoption of these internal rules.

With the support of the Commission and of EASA, staff and employers representatives across aviation domains have developed a European Corporate Just Culture Declaration which

contains principles to be implemented in each organisation and reflected in its internal Just Culture rules, with a view to ensure an effective Just Culture within the organisation. This initiative is expected to support a proper and harmonised implementation of this legal provision and should guarantee a similar level of protection across European organisations.

The Declaration was officially presented and signed on 1<sup>st</sup> October in Brussels. It is available [here](#)<sup>20</sup>.

In addition a best practice issued from experience in a number of operators is the setting up an 'occurrence review committee' within the organisation whose role is to support the practical implementation of the protection principles.

ii. In the context of the Member States and of the EU

In addition to limitations to the use and disclosure within and by organisations, Regulation 376/2014 also includes provisions limiting the use of an occurrence report by a State or EASA and guaranteeing its confidentiality.

#### Key principle

**States cannot institute disciplinary, administrative or legal proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Regulation 376/2014 unless where otherwise provided by applicable national criminal law (Article 16(6) and Recital 43).**

**In the cases where disciplinary or administrative proceedings have been instituted under national law, information contained in occurrence reports cannot be used against the reporters or the persons mentioned in occurrence reports (Article 16(7) and Recital 44).**

The exceptions contained in Article 16(10) (see in section i. above) apply to those principles.

The Member States are allowed to provide, at national level, a more protective framework (Article 16(8)) which may in particular provide full impunity to reporters.

This means that outside those unacceptable behaviours situations, a State is not allowed to open a proceeding if it is only made aware of a situation because an occurrence was reported under Regulation 376/2014. It is however understood that in those cases where the opening of a criminal proceeding on the basis of an occurrence report is allowed under national law, national law has precedent and applies. But limitation to the possibility of disclosing information on occurrences (see below) remains applicable in all cases.

#### Key principle

**Competent authorities can only use an occurrence report for the purpose for which it has been collected (Article 15(1)).**

**They are not allowed to make available or use occurrence reports:**

- **in order to attribute blame or liability; or**
- **for any purpose other than the maintenance or improvement of aviation safety (Article 15(2)).**

<sup>20</sup>

[http://ec.europa.eu/transport/modes/air/sign-up-just-culture/index\\_en.htm](http://ec.europa.eu/transport/modes/air/sign-up-just-culture/index_en.htm)

Those limitations to the disclosure or use of occurrence reports apply within the competent authorities as well as outside of them.

It is therefore understood that sharing information on occurrences with press and media is not allowed by Regulation 376/2014. Disclosure of information on occurrence reports to judicial authorities is similarly not allowed.

**Key principle**

**There are however few exceptions to those principles.**

**Firstly, it is understood that in a situation where safety might be endangered, information on occurrences may be shared or used with a view to maintain or improve aviation safety. It is therefore understood that sharing or using information on occurrences in the cases detailed in Article 16(10) with the view to address the risks to safety is allowed by the Regulation.**

**Secondly, exception may apply in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted, as the provisions of Regulation 996/2010 have precedent in such case (Article 15(2)).**

Regulation 996/2010 foresees in its Article 14(2) and (3) that, in cases where it applies (opening of a formal technical accident or incident investigation), occurrences reports shall not be made available or used for purposes other than aviation safety unless the administration of justice or the authority competent to decide on the disclosure of records according to national law decides that the benefits of the disclosure of the occurrence report outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation (balancing test). If this balancing test concludes that the information on occurrences should be disclosed, then the organisation should make it available to the requesting authority.

Finally Regulation 376/2014 provides for rules ensuring the confidentiality of the identity of the reporter and of any person mentioned in the report within Member States and EASA databases.

**Key principle**

**No personal details are allowed to be recorded in the Member States and in EASA occurrence databases (Article 16(3) and (4)).**

## **2.14 What can I do if I consider that the above protection rules have been infringed?**

There may be situation where an aviation professional will consider that the protection principles have not been complied with, for example if he/she has been subject to prejudice from his/her employer on the basis of an occurrence report or if a proceeding has been opened by a Member State.

Regulation 376/2014 addresses such situation and requires each Member State to put in place an entity to which employees and contracted personnel may report alleged infringements of the protection rules contained in the Regulation (Article 16(12)). The Regulation also ensures that employees and contracted personnel are not penalised for reporting alleged infringements (Article 16(12)).

# **SECTION 3**

# **ORGANISATIONS**



### **3.1 What may be the safety benefit of sharing occurrence reports with the competent authority?**

See also Sections 1.1 and 2.1. The collection, analysis and follow-up of occurrences are part of organisations safety management systems. It contributes to the identification of risks and to the adoption of relevant mitigation actions by organisations.

Regulation 376/2014 requires the collection, analysis and follow-up by organisations, as well as the transfer of certain occurrences to their competent authority. One could question the safety benefit of transferring this information to the competent authority. Indeed the organisation has already addressed its safety risks in the context of its SMS.

Sharing occurrences with the competent authority (Member States or EASA) allow this authority to be informed about the risks faced at national or European level and to therefore identify measures that may be necessary to ensure aviation safety from a broader (national or European) perspective. Indeed, the reporting of aviation safety occurrences is vital to the understanding safety risks in the aviation system and, importantly, helps decision makers in competent authorities to take the appropriate decisions on safety priorities and on possible changes to rules or procedures. This may in particular trigger the adoption of actions in the context of national safety plans or of the European Plan for Aviation Safety (EPAS)<sup>21</sup>. The entire safety system and its stakeholders should benefit from a more data driven decision making from competent authorities and decision makers.

Furthermore, this information is necessary in the context of the oversight performed by the competent authorities on their organisations.

### **3.2 How can information be shared with the industry?**

#### **i. Information from competent authorities databases**

Granting organisations access to occurrences stored in a competent authority database is not prevented by Regulation 376/2014 as long as the purpose of sharing this information is aviation safety. Under this condition, each competent authority can decide to provide or not access to its database (partly or entirely) to its organisations<sup>22</sup>. In particular, Member States and EASA are not prevented from establishing feedback loops with organisations reporting to them, especially in those cases where identified safety issues fall under third party's responsibility. In these cases, the feedback provided by the competent authority would help reinforcing trust in the system.

But organisations are required to respect the provisions of Regulation 376/2014 relating to disclosure or use of information on occurrences contained in their competent authority database (see Sections 3.16 and 4.7).

#### **ii. Information from the European Central Repository (ECR)**

As regards to the ECR (which regroups all occurrences collected by competent authorities), Regulation 376/2014 prohibits direct access by organisations to this database but recognises them as interested parties, allowing them to request certain information issued from the ECR

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<sup>21</sup> The European Plan for Aviation Safety (EPAS) was previously named the European Aviation Safety Plan (EASp).

<sup>22</sup> Information related to access to EASA (acting as a competent authority) database is available at <http://easa.europa.eu/easa-and-you/safety-management/occurrence-reporting/occurrence-reporting-protection-information-sources>

(Article 10(2)). Rules related to the possibility to request information from the ECR is contained in Articles 10 to 12 of Regulation 376/2014. More information is provided in Section 4.8.

Furthermore reporting organisations receive feedback on occurrences they have transferred in various format, such as annual safety reviews and safety bulletins. Such information may be provided at national level as well as at European level. In addition, the results of analysis carried out at European level through Regulation 376/2014 are shared through the various safety processes supporting the EPAS.

### 3.3 What are the organisations subject to Regulation 376/2014?

#### Key principle

**Regulation 376/2014 applies to "any organisation providing aviation products and/or which employs, contracts or uses the services of persons required to report occurrences in accordance with Article 4(6)" (i.e. subject to mandatory reporting obligations) (Article 2(8)). It is therefore understood that organisations which do not, on a professional basis, employ, contract or use the services of a person subject to mandatory reporting obligations (see section 2.2) are not requested to comply with the Regulation.**

#### Example:

Organisations created with the aim of promoting aerial sport and leisure aviation, and which does not, on a professional basis, employ, contract or use the services of someone covered by Article 4(6), are understood as not being subject to Regulation 376/2014 and therefore not requested to comply with it.

Furthermore, Regulation 376/2014 contains a number of provisions applicable to "*each organisation established in a Member State*". It means that among the organisations which are subject to the Regulation only those which are "*established in a Member State*" are subject to those provisions.

#### Key principle

**"Organisation established in a Member State" is understood as meaning:**

- **each organisation which has been approved or certified by a Member State, and**
- **each organisation which has been approved or certified by EASA and whose principal place of business is located in a Member State.**

The Regulation is understood as applying to all the facilities of the organisation under its approval, regardless of their location.

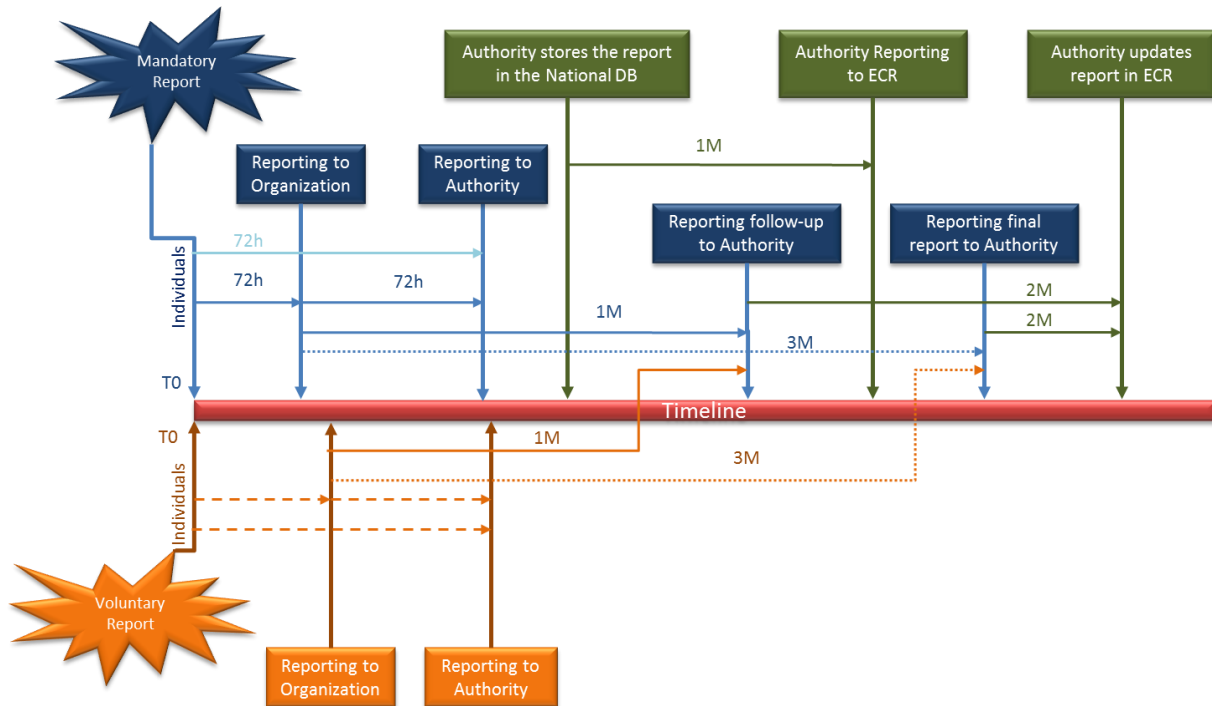
### 3.4 What is the reporting flow implied by the Regulation?

Regulation 376/2014 prescribes reporting obligations on certain natural persons (see Section 2.2), organisations and competent authorities.

The information follows a reporting flow from its initial reporting until its registration in the European Central repository (ECR).

The diagram below illustrates the general flow of information, main deadlines and stages of the reporting.

Diagram 2. Flow of information under Regulation 376/2014



This reporting flow starts from the moment the occurrence is detected (T0). From this moment, the individual shall report it to the organisation or to the authority as soon as possible, but before 72 hours if it falls within the mandatory scheme. In this case, the organisation has 72 hours to report to the authority from the moment they become aware of the occurrence.

It should be understood that in certain specific situations the identification of the occurrence might require an additional stage before this reporting flow starts. In particular, for Design or Production Organisations the time start (T0) is the moment where the individuals carrying out this process in the organisation identify the unsafe or the potential unsafe condition. Therefore, these organisations will have 72 hours to report to the competent authority when this process concludes that an occurrence represents an unsafe or potential unsafe condition as per Annex Part 21 of Regulation 748/2012.

In cases where an organisation learns about an occurrence through its automatic data capturing systems (e.g. FDM) and if it has requested a retrospective report to be made, the 72 hours starts when it receives the retrospective report from the reporter.

Information about the various stages part of the reporting is detailed in sections below.

### 3.5 Which occurrences shall be collected by organisations?

**Key principle**

**Each organisation covered by Regulation 376/2014 is required to put in place systems to facilitate the collection of both mandatorily and voluntarily reportable occurrences. For organisations subject to safety management systems requirements, it is understood that such systems should be part of the organisation SMS.**

Detailed information on the persons subject to reporting obligations and the type of occurrences to be collected is contained in Sections 2.2 and 2.3.

### **3.6 How do these reporting requirements interact with those contained in other rules?**

Whereas the reporting of occurrences in the EU is overall regulated under Regulation 376/2014, there are also a number of more sectorial occurrence reporting requirements contained in other European Regulations. This situation is recognised by Regulation 376/2014 (*Recital 4*) which clarifies that this should not be seen as setting up two parallel systems but only one reporting system.

#### **Key principle**

**Where reporting requirements also exists in other European rules and are consistent with those contained in Regulation 376/2014, the co-existence of two or more set of rules should not lead to multiple reporting systems. One system is considered sufficient to comply with the various legal obligations that are covering similar aspects. Whereas certain specifications may be contained in different legal act or based on different legal basis, they are all considered as part of a single overall European safety system.**

#### *Example:*

Design Approval Holders are required to report unsafe or potential unsafe conditions as per Part-21 requirements under Commission Regulation (EU) No 748/2012.

The same requirement is contained in Regulation 376/2014 through the obligation for organisations certified or approved by EASA to report occurrences listed in Regulation 2015/1018 to EASA.

It is the same requirement which happens to be contained in two set of rules but should be reported once to EASA. It should be noted that when reporting such occurrence, the organisation is required to ensure that all specifications contained in both acts should be complied with (such as for example timeline or format).

It should also be understood that Regulation 376/2014 does not cover all existing reporting requirements in the European system. Other types of reporting requirements may in particular be contained in Regulation 216/2008 and its implementing rules (e.g. reporting between organisations). Organisations are encouraged to properly reflected this in the organisation manual and cover all the specificities of all different obligations.

For reporting requirements under Regulation 216/2008, while efforts have been made to align the list of occurrences to be reported, the list of reporters and the timeline under which occurrences shall be reported, requirements related to other aspects such as reporting formats requires further alignment. A rulemaking task has been initiated to ensure a better alignment of all requirements and support the implementation of a single reporting system.

In the meantime, it is important that individuals and organisations are aware of the various reporting requirements to ensure proper discharge of their obligations.

Furthermore, while the European legislation on the performance scheme for air navigation services and network functions<sup>23</sup> does not impose the reporting of occurrences, it requires the reporting of certain information such as the level of occurrence reporting and the number of certain defined occurrences. Regulation 376/2014 supports a proper implementation of these rules by ensuring that the availability of the data that is necessary to provide required information.

### 3.7 What information shall be transferred to the competent authority?

#### i. Occurrence initial notification

Diagram 3. Information flow related to the occurrence initial notification



Note: for the purpose of simplification, the scheme indicates that the reporting by individuals is made to the organisation while it is recognised by Regulation 376/2014 that individuals may report directly to the competent authority. See Section 2.8 for more information on the various reporting channels.

#### Key principle

**Organisations are required to report to their competent authority (Article 4(8) and (9)) all mandatory reportable occurrences they have collected i.e. those contained in Regulation 2015/1018 when reported by a person listed in Article 4(6) (see Sections 2.2 and 2.3).**

**Occurrences collected under VORS are not all reportable to the competent authority. Indeed, only those that may involve an actual or potential aviation safety risk (Article 5(5) and (6)) shall be reported to the competent authority.**

'Reportable occurrences' are those subject to an initial notification report requirement as described in the principles above.

It is understood that organisations shall discuss with their competent authorities to determine what types of occurrences are considered involving an actual or potential aviation safety risk. This should ensure an alignment between the occurrences that the organisation intends to transfer from the VORS and the ones that the competent authority expects to receive. It should also ensure harmonisation among all organisations reporting to the same competent authority.

<sup>23</sup> Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions; OJ L 128, 9.5.2013, p. 1.

Regulation 376/2014 gives Member States the possibility to request their organisations to transfer them all occurrences they have collected under their VORS (*Article 5(6)*).

It is also understood that when an occurrence is reported to an organisation, this organisation might need to assess whether or not it falls under MOR or VOR and therefore what the applicable notification obligations are. In a situation where a reporter has transferred the report under VORS, the organisation may reclassify it into MOR and vice-versa.

Organisations are encouraged to include in the occurrence notification sent to the competent authority all available relevant information. If appropriate, this should include the indication that no further analysis and follow-up will be made on that occurrence ("closed-on-issue") or the assessment and actions on the safety risk identified from the occurrence.

Organisations are encouraged to report to their competent authority all necessary information to enable a proper understanding and assessment of the occurrence. It is acknowledged that all essential information is not always known at the time of the initial report. However, an effort should be made to gather as much information as possible, especially in the follow-up and final reports.

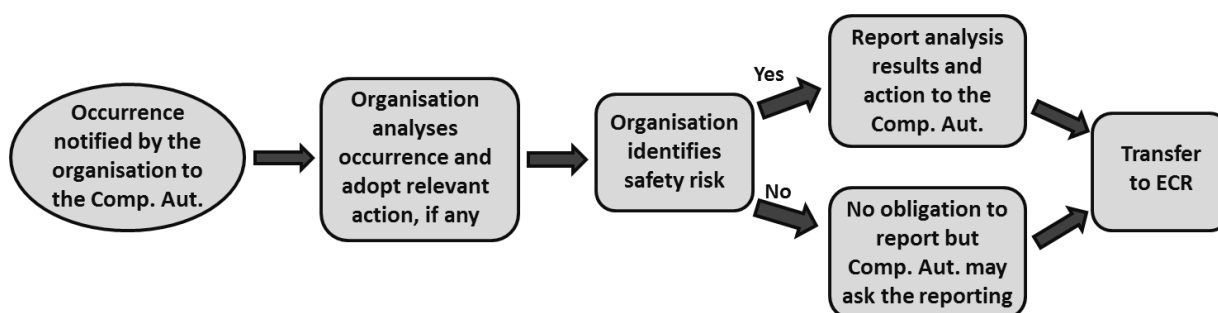
All occurrences reported to the competent authority (either directly or through organisations) are required to be transferred to the ECR (*Article 9(1)*).

**Key principle**

**It is understood that an organisation shall not be accountable for not reporting to the competent authority an occurrence which has not been reported to it (e.g. pilot not reporting an occurrence or in service occurrence not reported to the organisation)**

ii. Analysis and follow-up related information

Diagram 4. Information flow related to analysis and follow-up related information



All occurrences collected by the organisation (MOR and VOR) are subject to analysis and follow-up requirements (*Article 13(1) and (2)*). However not all of them (i.e. only reportable ones - see i. above) are subject to further reporting obligations.

**Key principle**

**Analysis and follow-up related information of reportable occurrences is required to be transferred only if it has revealed an actual or potential aviation safety risk (*Article 13(4) and (5)*).**

Whereas Regulation 376/2014 only requires organisations to transfer to their competent authority analysis results and follow-up information for certain occurrences (those which may involve an actual or potential aviation safety risk), it allows a competent authority to require the transfer of analysis and follow-up information related to all reportable occurrences (i.e. all MOR occurrences and the VOR reportable ones - see i. above) (*Article 13(4) and (5)*).

It is understood that the competent authority may require so on a case by case basis or by adopting a general measure requiring organisations to transfer to it analysis and follow-up related information of all reportable occurrences.

In the same way as for initial notification, it is understood that organisations shall discuss with their competent authority to determine when an actual or potential aviation safety risk is considered identified out of the analysis. This should ensure an alignment between the analysis and follow-up information that the organisation intends to transfer and the one that the competent authority expects to receive. It should also ensure harmonisation among all organisations reporting to the same competent authority. Through the Network of Aviation Safety Analysts, a common approach will be promoted to ensure a standardised approach exists across the Member States.

It is understood that the reporting of the follow-ups or final results of the analysis pertaining to single occurrences should be done in the same format than the initial report.

The mean to report the analysis and follow-up pertaining to a group of occurrences should be agreed with the competent authority of the organisation.

These requirements are aligned with organisations safety management processes where not only occurrences are followed in a closed-loop process but also safety issues (group of occurrences).

iii. Transfer of information on the reporter or other persons mentioned in the report

The Regulation prohibits competent authorities to record personal details (e.g. name of the reporter or anyone else mentioned in the report, addresses of natural persons) in their database (*Article 16(1), (2) and (3) and Recital 35*). To support this requirement, organisations are encouraged to refrain from including names and personal details when transferring occurrences reports to the competent authority.

iv. Transfer of information subject to export control

When reporting information under Regulation 376/2014 an organisation may provide to its competent authority information subject to export control regulations. In this case, the organisation should declare this fact in the report (dedicated field in the Reduced Interface Taxonomy - RIT) to inform its competent authority. Whereas the authority is required to transfer all safety related information to the ECR, it is understood that this does not cover information subject to export control.

### 3.8 To whom should organisations report occurrences?

**Key principle**  
**Organisations are required to report occurrences to their competent authority.**

In most cases, the competent authority is the one which has certified or approved the organisation.

*Examples:*

Design organisations approved by EASA: EASA is the competent authority.

Air operators certified by a Member State: that Member State is the competent authority.

In a situation where an organisation has two AOC under two different States (State A and B), it shall report occurrences involving aircraft operating under the State A AOC to State A competent authority and occurrences involving aircraft operating under the State B AOC to State B competent authority.

For organisations which are not certified or approved, the competent authority is the State in which the organisation is established.

*Example:*

A ground handling organisation reports its occurrences under Regulation 376/2014 to the State in which it is established.

### 3.9 What is the required format to record and transfer occurrences?

Regulation 376/2014 imposes requirements on organisations related to reporting format and content (*Article 7*). This set of requirements applies to all reportable occurrences (MOR and VOR reportable occurrences).

#### **Key principle**

**Occurrence reports contained in an organisation database and sent to the competent authority shall comply with format specifications that include:**

- **The compatibility with the ECCAIRS software and the ADREP taxonomy**
- **The use of standardised formats**
- **The provision of mandatory data fields**

In addition, organisations are required to use data quality checking processes and to classify occurrences according to their safety risk.

Detailed information about these requirements is provided in Sections 3.10 to 3.14.

These obligations apply to occurrence reports registered in organisations databases.

It is recognised that some of the requested information might necessitate detailed assessment or analysis (e.g. risk classification) and might only be available after the occurrence has been analysed. It is also recognised that the period required for the notification of the occurrence might not allow the organisation to provide complete information within its initial notification. However, organisations should aim to provide the initial report as complete as possible, notably in regards to the safety assessment, as not all reports may be subject to follow-up report.

The European Commission, with the support of EASA, has developed a European Reporting Portal which is available [here](http://www.aviationreporting.eu/)<sup>24</sup>. This website offers a single address that can be used by

<sup>24</sup> <http://www.aviationreporting.eu/>



reporting organisations to transfer occurrences to their competent authority in a format that is compliant with Regulation 376/2014.

**Key principle**

**Using tools and methods provided by the European Commission ensures compliance with format related legal requirements.**

It is understood that organisations and competent authorities may agree on any other method that brings equivalent level of compliance.

### **3.10 How to comply with the ADREP/ ECCAIRS compatibility requirement?**

Regulation 376/2014 requires organisations to use formats which are compatible with the ECCAIRS software<sup>25</sup> and the ADREP taxonomy (*Article 7(4)*).

ADREP taxonomy compatibility is understood as a reporting system which uses the ADREP taxonomy (as integrated in ECCAIRS). The Reduced Interface Taxonomy (RIT), based on ADREP, is integrated into the ECCAIRS software and is published by the European Commission. It is maintained by the Commission, EASA and the Member States in the context of the ECCAIRS Steering Board and Committee.

ECCAIRS software compatibility is understood as a means of reporting which uses technical means and data formats that enable a direct upload of information in an ECCAIRS database. Organisations are expected to agree this technical solution with their competent authority to ensure information is transferred in a compatible format.

To facilitate organisations complying with these requirements the European Commission, supported by EASA, has developed standard methods that could be used to comply with the ECCAIRS/ADREP compatibility requirement.

These acceptable means of compliance are the following:

- E5X file format - mostly meant for large organisations which are producing a large number of occurrence reports a month.
- European Reporting Portal (off-line and on-line reports) - mostly targeting small or medium sized organisations which are not producing many occurrence reports a month.
- Use of the ECCAIRS system - would enable the exchange of ECCAIRS files or data transfer through the DINER software.

The European Reporting Portal<sup>26</sup> facilitates the reporting to the competent authority in a format that is compliant with Regulation 376/2014. It provides on-line and off-line reporting forms which are compatible with the ADREP taxonomy and the ECCAIRS software.

It is understood that organisations also have the possibility to agree with their competent authority any other mean that provides similar level of compatibility with ECCAIRS and ADREP.

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<sup>25</sup> <http://eccairsportal.jrc.ec.europa.eu/>

<sup>26</sup> <http://www.aviationreporting.eu/>

### 3.11 How to comply with the standardised format requirement?

Regulation 376/2014 requires industry organisations to use formats which are standardised with a view to facilitate information exchange (*Article 7(4)*).

One of the methods for reporting provided by the European Commission is the E5X data transfer file.

Another method is to use the off-line or on-line reporting forms provided on the European Reporting Portal. It notably provides for standard reporting forms by type of reporting organisation.

### 3.12 How to comply with the mandatory data fields requirement?

Occurrence databases of organisations subject to Regulation 376/2014 shall contain the mandatory data fields listed in Annex I (*Article 7(1)*).

#### Key principle

**The set of common mandatory data fields included in Annex I.1. is required to be provided for each reportable occurrence<sup>27</sup>.**

**The set of specific mandatory data fields included in Annex I.2 is required to be provided only for certain specific occurrences i.e. occurrences for which that data is relevant.**

**The objective is to ensure that data necessary to the proper understanding of the occurrence is provided.**

#### *Examples:*

Aerodrome-related data fields (Location Indicator and Location on the aerodrome) are required to be provided only if an aerodrome is involved in the occurrence, such as for example a runway excursion.

Aircraft-related data fields are required to be provided only if one or more aircraft is involved in the occurrence. This may not be relevant for certain occurrences such as for example a failure of navigation service, an unauthorised person left unsupervised on apron or an engine production issue.

#### Key principle

**Mandatory data fields cannot be left blank when they are relevant to the occurrence. They should always be filled with a value (*Annex I*).**

If the information of any mandatory attribute is not known, the attribute may be transmitted with the value "Unknown" (*Annex I*). Other attributes may be relevant in specific circumstances (e.g. "Not applicable").

<sup>27</sup> See definition of reportable occurrence in Section 3.7.i.

The transfer of mandatory data fields should be done in an ECCAIRS/ADREP compatible format (*Article 7(4)*) such that it can be uploaded automatically to the ECCAIRS database of the competent authority (see Section 3.10 on the issue of ECCAIRS/ADREP compatibility).

The European Reporting Portal facilitates the completion of mandatory data fields by indicating the attributes to be provided.

Regulation 376/2014 foresees the possibility to amend the list of mandatory data fields based on experience. The Commission, with the support of EASA, will regularly review the completeness and relevance of the mandatory data fields list and may propose changes to it.

### 3.13 What is the requirement related to risk classification?

#### Key principle

**Organisations are required to provide a risk classification for each reportable occurrence (*Article 7(1) and Annex I.1.*).**

Risk classification is one of the common mandatory data fields and should therefore be completed for each reportable occurrence. It is expected that, where analysis and follow up is needed, such risk assessment may be preliminary, based on information available at the time of the initial report.

#### Key principle

**Organisations have the possibility to use the risk methodology of their choice.**

As from the adoption of the European Risk Classification Scheme (no later than May 2017), competent authorities will be required to use it to review and classify the risk of occurrences they collect (*Article 7(2)*). It shall be noticed that several industry organisations, across aviation domains, participate in the development of the European Risk Classification scheme. The use of this scheme by industry organisations would support a better harmonisation of risk classification across the EU. It should therefore be encouraged.

### 3.14 How to apply the requirement related to data quality checking processes?

#### Key principle

**Organisations are required to establish data quality checking processes to ensure the quality of the information stored in and transmitted from their databases (*Article 7(3)*).**

It is understood that data quality checking processes should address four main areas:

- Errors in data entry
- Completeness of data, specially referring to mandatory data
- Proper use of the ADREP taxonomy
- Improve data consistency, notably between the information collected initially and the report stored in the database (*Article 7(3)*).

The European Commission is developing reference material that will help organisations to develop their own quality rules. This reference material will contain coding guidelines for all

mandatorily occurrences listed in Regulation 2015/1018 and it will be accompanied by the corresponding libraries detailing the necessary quality checks in the ECCAIRS environment. This reference material will be made available on the European Reporting Portal as soon as finalised.

### 3.15 How to apply the requirement related to transfer of analysis and follow-up?

While all occurrences collected by an organisation (MOR and VOR) are subject to analysis and follow-up requirements (*Article 13(1) and (2)*), only those which are reportable (see Section 3.7) are subject to further reporting obligations to the competent authority.

#### Key principle

**Among reportable occurrences only those for which the analysis (of single occurrence or together with a group of other occurrences) has led to the identification of an actual or potential aviation safety risk are covered by the obligation to transfer analysis and follow-up related information.**

**For those occurrences, Regulation 376/2014 requires organisations to transmit to their competent authority the results of the analysis performed, if any; and any action to be taken pursuant to that analysis.**

**Organisations are required to report preliminary results within 30 days from the date of notification of the occurrence by the reporter and are encouraged to report final results as soon available and no later than three months after the notification (*Article 13(4) and (5)*).**

Regulation 376/2014 however gives the competent authority the possibility to require organisations to transfer information on analysis and follow-up of any other reportable occurrences. It is understood that the competent authority may require so on a case by case basis or by adopting a general measure requiring organisations to transfer analysis and follow-up related information of all their reportable occurrences.

It is understood that organisations shall discuss with their competent authorities to determine in which cases an actual or potential aviation safety risk is identified out of the analysis. This should ensure an alignment between the analysis and follow-up information that the organisation intends to transfer and the one that the competent authority expects to receive. Through the Network of Aviation Safety Analysts, a common approach will be promoted to ensure consistency among Member States.

It is understood that the analysis and follow-up of occurrences required under Regulation 376/2014 is taking place in the context of existing processes such as management systems mandated under implementing rules to Regulation 216/2008, SMS, safety processes required under EU law or similar safety processes. Where it already exists, it is therefore not intended to create another system alongside the safety management system of an organisation.

#### Key principle

**Whereas organisations are encouraged to provide complete analysis and follow-up as soon as available and, in principle, no later than three months after the occurrence notification, it is recognised that analysing an occurrence may take longer than three months, especially in the event of a complex investigation or where the services of a specialist investigator are required.**

**The follow up requirements are not intended to jeopardise the quality and thoroughness of an occurrence analysis. It may be detrimental to safety if rushed in order to be completed within the encouraged three months period without properly establishing root cause and determining relevant remedial action.**

Organisations should agree with their competent authority the format and nature of follow up and details of final analysis to be provided. Through the Network of Aviation Safety Analysts, a common approach will be promoted to ensure consistency across Member States.

### **3.16 How shall information collected be handled?**

Detailed information on those aspects is contained in Sections 2.12 and 2.13.

#### **Key principle**

**Organisations are required to take the necessary measures to ensure appropriate confidentiality of occurrences they collect and to comply with rules on the processing of personal data.**

It is notably recognised by Regulation 376/2014 that a clear separation between the departments handling occurrence reports and the rest of the organisation may be an efficient way to achieve this objective (*Recital 34*). This should therefore be encouraged where practicable.

In addition Regulation 376/2014 requires organisations to process personal data only to the extent necessary for the purposes of this Regulation and in accordance with applicable personal data rules (*Article 15(1)*).

Regulation 376/2014 prevents certain actions to be taken against reporters and persons mentioned in an occurrence report while identifying unacceptable behaviours that are not covered by this protective framework.

#### **Key principle**

**Employees and contracted personnel who report or are mentioned in occurrence reports shall not be subject to any prejudice by their employer or by the organisation for which the services are provided on the basis of the information supplied by the reporter except in cases of unacceptable behaviour (*Article 16(9)*).**

This principle is implemented by several provisions which prevent certain actions to be taken against reporters and persons mentioned in an occurrence report while identifying unacceptable behaviours that are not covered under this protective framework.

It means that if a person reports an occurrence to his/her organisation, the organisation is not allowed to blame that person or to impose prejudice on him/her on the basis of the occurrence reported. This rule also applies if the person is not the reporter but is mentioned in the occurrence report.

#### **Key principle**

**Regulation 376/2014 recognises two exceptions to this principle (*Article 16(10)*):**

- **wilful misconduct; and**
- **situations where there has been a manifest, severe and serious disregard of an**

**obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.**

The objective is to clearly set, in the legislation, the line between acceptable behaviours (which shall not be punished) and unacceptable behaviours (which can be punished).

Furthermore, Regulation 376/2014 states additional principles limiting the possibility for an organisation to disclose or use occurrence reports.

**Key principle**

**Organisations can only use an occurrence report for the purpose for which it has been collected (Article 15(1)).**

**Organisations are not allowed to make available or use occurrence reports:**

- **in order to attribute blame or liability; or**
- **for any purpose other than the maintenance or improvement of aviation safety (Article 15(2)).**

Those limitations to the disclosure or use of occurrence reports apply within the organisation as well as outside of it.

It is therefore understood that sharing information on occurrences with press and media is not allowed by the Regulation. Disclosure of information on occurrence reports to judicial authorities is similarly not allowed.

It is understood from this principle that organisations can use the information with the view to maintain or improve aviation safety. This covers in particular the measures and actions foreseen under Article 13. It also includes existing procedures and actions (e.g. safety recommendations, airworthiness directives, safety information bulletin etc), including sharing of lessons learnt with the organisation personnel.

It is also understood that 'for the purpose of maintaining or improving aviation safety' includes any measure necessary for safety and therefore can include the suspension of a licence or requesting a person to do additional training.

**Key principle**

**In addition, there are however few exceptions to those principles.**

**Firstly, it is understood that in a situation where safety might be endangered, information on occurrences may be shared or used with a view to maintain or improve aviation safety. It is therefore understood that sharing or using information on occurrences in the cases detailed in Article 16(10) with the view to address the risks to safety is allowed by the Regulation.**

**Secondly, exception may apply in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted, as the provisions of Regulation 996/2010 have precedent in such case (Article 15(2)).**

Regulation 996/2010 foresees in its Article 14(2) and (3) that, in cases where it applies (opening of a formal technical accident or incident investigation), occurrences reports shall not be made available or used for purposes other than aviation safety unless the administration of justice or the authority competent to decide on the disclosure of records according to

national law decides that the benefits of the disclosure of the occurrence report outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation (balancing test). If this balancing test concludes that the information on occurrences should be disclosed, then the organisation should make it available to the requesting authority.

An organisation shall only disseminate personal details within the organisation in those cases where it is essential to progress the investigation or to ensure the safety actions are properly taken (*Article 16(2)*). In this regards, the organisation may use the same protocols and agreements than the ones established and consulted with staff representatives to deal with other safety information (e.g. Flight Data Monitoring).

In order to support all these legal provisions, each organisation is required to adopt internal rules describing how Just Culture principles are guaranteed and implemented within that organisation (*Article 16(11)*). It is specified that staff representatives shall be consulted before the adoption of these internal rules. The body designated pursuant to Article 16(12) may ask to review the internal rules of organisations before those internal rules are implemented.

With the support of the Commission and of EASA, staff and employers representatives across aviation domains have developed a European Corporate Just Culture Declaration which contains principles to be implemented in each organisation and reflected in its internal Just Culture rules, with a view to ensure an effective Just Culture within the organisation. This initiative is expected to support a proper and harmonised implementation of this legal provision and should guarantee a similar level of protection across European organisations.

The Declaration was officially presented and signed on 1<sup>st</sup> October in Brussels. It is available [here](#)<sup>28</sup>.

In addition a best practice issued from experience in a number of operators is the setting up an 'occurrence review committee' within the organisation whose role is to support the practical implementation of the protection principles.

### **3.17 How is information transferred to the competent authority protected?**

Information provided by organisations to their competent authority under Regulation 376/2014 is stored in the competent authority database. Strong protection rules apply to this database (see Sections 2.12, 2.13, 4.3, 4.7 and 4.8).

All information contained in a competent authority database is later transferred to the European Central Repository (ECR). The database is subject to even stricter protection rules. Indeed, in addition to the legal provisions to limiting the possible use of the information, the access to the ECR is restricted to regulatory and investigation authorities, to the EASA and to the European Commission. This access is granted by a controlled and restricted personal access code based on unique IP address.

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<sup>28</sup> [http://ec.europa.eu/transport/modes/air/sign-up-just-culture/index\\_en.htm](http://ec.europa.eu/transport/modes/air/sign-up-just-culture/index_en.htm)

## **SECTION 4**

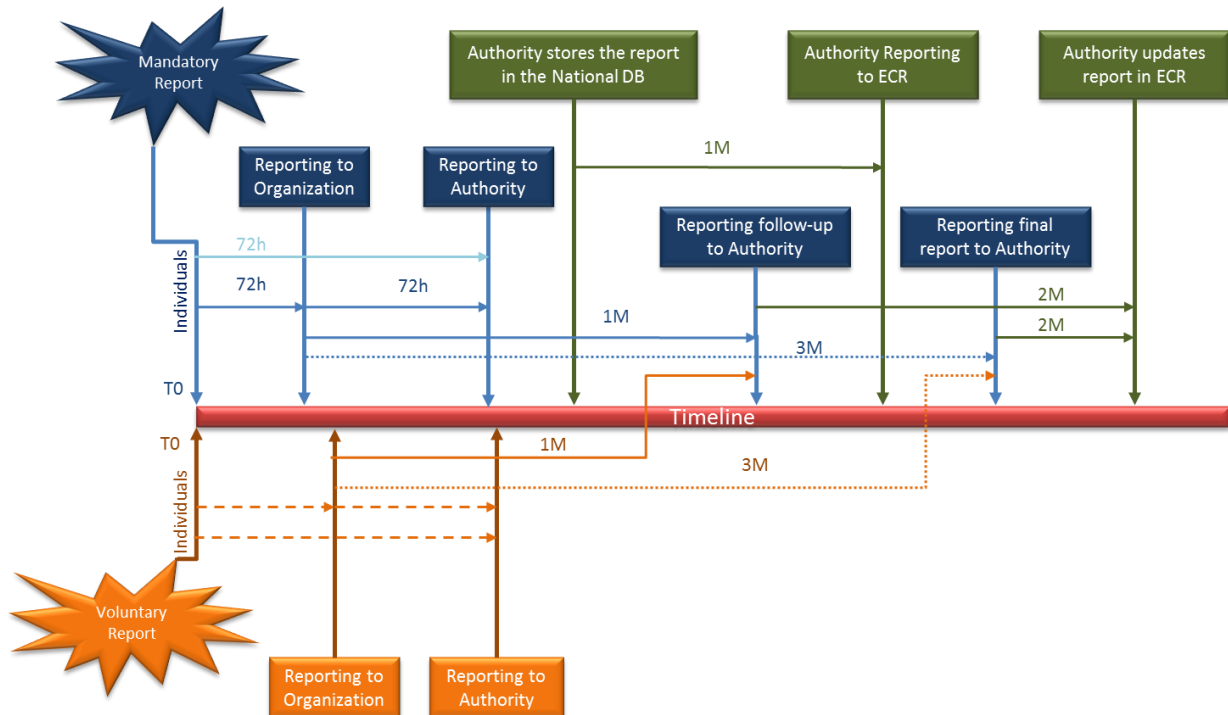
# **COMPETENT AUTHORITIES**



#### 4.1 What is the reporting flow implied by the Regulation?

The green boxes and lines in the diagram below illustrate the obligation of the competent authority in terms of reporting flow. From the day of the reception of the initial report, it has 30 days to integrate this report in the ECR. In the case of follow-up it has two months to send updated information to the ECR. These workflow and timeline are applicable to occurrences receive both in the context of organisations' mandatory and voluntary reporting schemes.

Diagram 5. Flow of information under Regulation 376/2014



#### 4.2 What information shall be collected by the competent authority and how should it be handled?

Detailed information on the type of information to be collected by the competent authority is provided in Section 3.7.

Regulation 376/2014 establishes two different systems, the mandatory one and the voluntary one, in order to clarify reporting obligations for reporters and for organisations. It is understood that this differentiation has no impact at the level of the competent authority.

##### Key principle

**All occurrences reported by an organisation to its competent authority in application of Regulation 376/2014 and its implementing rules shall be handled and addressed in the same manner by this competent authority.**

**All occurrences directly by an individual reporter to a competent authority, whether or not it is reported on the basis of Regulation 2015/1018, shall be handled and addressed in the same manner by that competent authority**

**In general, Regulation 376/2014 does not differentiate the way mandatorily reportable and voluntarily reportable occurrences shall be addressed by the competent authority.**

**It does, however, impose differentiated requirements to the competent authority for handling, from one side, occurrences transferred by an organisation and, from the other side, occurrences directly reported by an individual.**

All information collected from organisations, whether it was reported in application of Article 4 or of Article 5, is subject to similar handling by the competent authority. And all information directly reported by individuals to the competent authority, whether it was reported in application of Article 4 or of Article 5, is subject to the same analysis and follow-up obligations.

More detailed information on the way information collected should be handled is included in the questions below.

#### **4.3 How is the information shared among the competent authorities?**

##### **Key principle**

**The competent authorities (EASA Member States and EASA) share, among them, all information collected and registered in the respective databases through the means of the European Central Repository (ECR) (Article 9).**

This includes information on occurrences (*Article 9(1)*) which shall be transferred within 30 days of receipt as well as information related to their analysis and follow-up which shall be transferred within 2 months of receipt (*Article 13(9)*). This also includes detailed information about accidents and serious incidents such as the investigation report (*Article 9(2)*).

Regulation 376/2014 (*Article 10(1)*) provides secure full online access to the ECR to any entity entrusted with regulating civil aviation safety, or any safety investigation authority, within the Union. It is understood that this includes the Member States Civil Aviation Authorities and Safety Investigation Authorities, as well as the European Commission, EASA and Eurocontrol. This access covers the entire content of the ECR i.e. occurrences entered after 15 November 2015 as well as those which were already contained in the ECR before that date.

##### **Key principle**

**In addition, if, while handling occurrences, a competent authority identifies safety matters which may be of interest to another competent authority or which possibly requires safety action to be taken by another competent authority, it is required to forward all pertinent safety-related information to that relevant competent authority as soon as possible (*Article 9(3)*).**

It is understood that Regulation 376/2014 does not intend to unnecessarily duplicate the flow of information between the Member States and EASA.

Therefore, it is understood that certain criteria should be applied in order to identify those occurrences which may be of interest to another competent authority or possibly requiring safety action to be taken, and therefore to be communicated to another competent authority.

Situations where information on occurrences should be shared as soon as possible with the relevant competent authority should be understood as situations where:

- A conclusive safety analysis that summarises individual occurrence data and provides an in-depth analysis of a safety issue is or may be relevant for another Member State or for EASA. In the case of EASA this information could be connected to the European Plan for Aviation Safety or to the role of EASA in safety promotion.

or

- The following criteria are met
  - i. the occurrence falls in the scope of Regulation 376/2014 (i.e. a Member State or EASA is the competent authority, the occurrence is reportable under Regulation 376/2014 and the organisation responsible of addressing the occurrence is subject to Regulation 376/2014), and
  - ii. the competent authority that received the occurrence has come to the conclusion that
    - the organisation to which the occurrence relates and its competent authority have not been informed of the occurrence; or
    - the occurrence has not been properly addressed or has been left unattended by the organisation.

This mechanism may be supported through exchange of information in the context of the Network of Aviation Safety Analysts.

#### 4.4 When shall information be transferred to the ECR?

**Key principle**

**Competent authorities are required to send to the ECR initial notifications received from organisations and individuals within 30 days after registering them in their database (Article 9(1)).**

As imposing ECCAIRS and ADREP compatible reporting will provide an immediate data entry in the ECCAIRS environment of the competent authority, the time between the reception and registration of the information should be considered negligible and in practice doable in 30 days since the reception of the initial notification.

**Key principle**

**Competent authorities are required to send to the ECR information related to analysis and follow-up no later than 2 months from the registration of the follow-up or final report (Article 13(9)).**

Any additional safety-related information obtained by a Member State or by EASA on any reported occurrence should be also transmitted to the ECR within the next 2 months after registering such information.

To facilitate the processing of follow-ups and final reports, the use of standard means should be promoted. The Network of Aviation Safety Analysts (NoA) and the ECCAIRS Steering Committee will contribute to develop and promote such standard means.

#### 4.5 What is the required format to record and transfer occurrences?

Regulation 376/2014 imposes requirements on competent authorities (*Article 7*). These requirements apply to all occurrences collected (MOR and VOR) and are similar to those imposed on their organisations except for risk classification.

##### **Key principle**

**Occurrence reports sent to the ECR shall comply with format specifications that include (*Article 7*):**

- **the compatibility with the ECCAIRS software and the ADREP taxonomy**
- **the use of standardised formats**
- **the provision of mandatory data fields**
- **the use of data quality checking processes**
- **the classification of collected occurrences according to the European common risk classification scheme**

Detailed information about these requirements is provided in Section 3.10 to 3.14.

EASA and the Commission are developing tools to support harmonised data quality and completeness across the EU by:

- publishing standard quality rules that could be implemented in any IT or database environment
- developing the necessary methods in ECCAIRS environment to facilitate Member States to comply with mandatory data fields requirements, and
- providing training to Member States to facilitate the proper use of the ADREP taxonomy.

In addition, the European Commission is developing reference material intended to help Member States to develop their own quality rules. This reference material will contain coding guidelines for all mandatorily occurrences listed in Regulation 2015/1018 and will be accompanied by the corresponding libraries detailing the necessary quality checks in the ECCAIRS environment. This reference material will be made available in the European Reporting Portal as soon as finalised.

Regulation 376/2014 requires Member States and EASA to store and transmit the risk value of each occurrence received. This value should reflect the risk assessment done (*Article 7(2)*).

##### **Key principle**

**When receiving from an organisation the risk classification of an occurrence, the competent authority is required to review it and if necessary to amend it. It shall then endorse it in accordance with the common European Risk Classification Scheme (*Article 7(2)*).**

The European Risk Classification Scheme is under development and relevant legal acts should be adopted by May 2017 to ensure its proper implementation.

Regulation 376/2014 foresees that *Article 7(2)* will become applicable only after the adoption relevant legislation defining and proving the implementation rules applicable to the European

Risk Classification Scheme. However, Article 7(1) and Annex I.1 of Regulation 376/2014 require the risk classification from the application date of the Regulation.

**Key principle**

**Member States and EASA are required to provide the risk classification for each occurrence registered in their database from 15 November 2015. However, they are not required to review and amend risk classification transmitted by the organisation, and endorse it in accordance with the common European Risk Classification Scheme before the adoption of that scheme.**

#### **4.6 What are the competent authority obligations in terms of oversight?**

Article 13(8) of Regulation 376/2014 establishes that the competent authority shall have access to the analysis made and actions taken by organisations it is responsible for. This is notably ensured by the obligation for organisations to transfer certain information to their competent authority (*Article 13(4) and (5)*) and to the possibility for their competent authority to request other information to be transmitted to it.

**Key principle**

**Regulation 376/2014 requires each competent authority to appropriately monitor actions of the organisations it is responsible for (*Article 13(8)*). It is understood that this monitoring obligation does not require the competent authority to perform a detailed investigation of each single occurrence it is notified of. This monitoring is notably expected to participate to the overall oversight functions of a competent authority on organisations it is responsible for.**

It is understood that, to perform this responsibility, the competent authority needs to establish a process to assess the information reported. This process should notably allow the competent authority to require additional appropriate action to be taken and implemented by the organisation in situation where it has assessed that the action was inappropriate to address actual or potential safety deficiencies (*Article 13(8)*). It should also enable reviewing and validating the risk classification of the occurrence.

In situations where the monitoring is done over organisations which are outside oversight responsibilities of the competent authority (ground handling organisations, small aerodromes) it is understood that the monitoring obligations do not require creating comprehensive oversight mechanisms such as inspections. It is however expected to allow analysing information transmitted with the view to monitor the appropriateness of actions adopted.

**Key principle**

**It is understood that not all occurrences reported will require action and that preliminary assessment made by the competent authority following initial notification may conclude that certain occurrences should be closed on receipt (no action or further analysis needed).**

In such situation, those occurrences should be reviewed if the organisation provides a follow-up or if additional information gathered by the competent authority questions the initial assessment made (i.e. by the reception of another report on the same occurrence from a different source).

#### 4.7 How shall information collected be handled?

##### **Key principle**

**Member States and EASA shall not be prevented from taking any action necessary for maintaining or improving aviation safety (Article 16(5)).**

Detailed information on those aspects is contained in Section 2.12 and 2.13.

##### **Key principle**

**Member States and EASA are not allowed to record personal details in their database. Furthermore, they are required to take the necessary measures to ensure the appropriate confidentiality of occurrences they collect and to comply with rules on the processing of personal data.**

Regulation 376/2014 ensures the confidentiality of individual reporter identity and of any other person involved in reports stored in Member States national occurrence databases and in the EASA database. Indeed it prohibits the recording of personal details (e.g. name of the reporter or anyone else mentioned in the report, addresses of natural persons) in the competent authority database (Article 16(1), (2) and (3) and Recital 35).

In addition, requirements on the confidentiality of information and processing of personnel data similar to those imposed to organisations are applicable to the Member States and EASA. Finally, Recital 33 highlights the need for national rules on freedom of information to take into account the necessary confidentiality of information.

In addition to limitations to the use and disclosure within and by organisations, Regulation 376/2014 also includes provisions limiting the use of an occurrence report by a State or EASA and guaranteeing its confidentiality.

##### **Key principle**

**States cannot institute disciplinary, administrative or legal proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Regulation 376/2014 unless where otherwise provided by applicable national criminal law (Article 16(6) and Recital 43).**

**In the cases where disciplinary or administrative proceedings have been instituted under national law, information contained in occurrence reports cannot be used against the reporters or the persons mentioned in occurrence reports (Article 16(7) and Recital 44).**

##### **Key principle**

**Regulation 376/2014 recognises two exceptions to these principles (Article 16(10)):**

- **wilful misconduct; and**
- **situations where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.**

The objective is to clearly set, in the legislation, the line between acceptable behaviours (which shall not be punished) and unacceptable behaviours (which can be punished).

This means that outside those unacceptable behaviours situations, a State is not allowed to open a proceeding if it is only made aware of a situation because an occurrence was reported under Regulation 376/2014. It is however understood that in those cases where the opening of a criminal proceeding on the basis of an occurrence report is allowed under national law, national law has precedent and applies. But limitation to the possibility of disclosing information on occurrences (see below) remains applicable in all cases.

#### **Key principle**

**Competent authorities can only use an occurrence report for the purpose for which it has been collected (Article 15(1)).**

**They are not allowed to make available or use occurrence reports:**

- **in order to attribute blame or liability; or**
- **for any purpose other than the maintenance or improvement of aviation safety (Article 15(2)).**

Those limitations to the disclosure or use of occurrence reports apply within the competent authority as well as outside of it.

It is therefore understood that sharing information on occurrences with press and media is not allowed by Regulation 376/2014. Disclosure of information on occurrence reports to judicial authorities is similarly not allowed.

#### **Key principle**

**There are however few exceptions to those principles.**

**Firstly, it is understood that in a situation where safety might be endangered, information on occurrences may be shared or used with a view to maintain or improve aviation safety. It is therefore understood that sharing or using information on occurrences in the cases detailed in Article 16(10) with the view to address the risks to safety is allowed by the Regulation. In addition, any measure necessary for safety can be adopted, including where necessary the suspension of a licence or requesting a person to do additional training. This is reinforced with the principle that Member States and EASA shall not be prevented from taking any action necessary for maintaining or improving aviation safety as stated in Article 16(5).**

**Secondly, exception may apply in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted, as the provisions of Regulation 996/2010 have precedent in such case (Article 15(2)).**

Regulation 996/2010 foresees in its Article 14(2) and (3) that, in cases where it applies (opening of a formal technical accident or incident investigation), occurrences reports shall not be made available or used for purposes other than aviation safety unless the administration of justice or the authority competent to decide on the disclosure of records according to national law decides that the benefits of the disclosure of the occurrence report outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation (balancing test). If this balancing test concludes that the information on

occurrences should be disclosed, then the organisation should make it available to the requesting authority.

The Member States are allowed to provide, at national level, a more protective framework (*Article 16(8)*) which may in particular provide full impunity to reporters.

**Key principle**

**All limitations applicable to disclosure and use of occurrences information contained in Regulation 376/2014 cover to the entire competent authority database i.e. it applies to all occurrences contained in the database including those registered in the database prior to 15 November 2015.**

The Regulation also requests the Member States competent authorities to cooperate with their competent authorities for the administration of justice through advance administrative arrangements (*Article 15(4)*). It is specified that these advance administrative arrangements shall seek to ensure the correct balance between the need for proper administration of justice, on the one hand, and the necessary continued availability of safety information, on the other. It is understood that these advance arrangements should notably cover the access to occurrence reports by judicial authorities in cases where Regulation 996/2010 is applicable.

#### **4.8 Can the competent authority share information contained in the ECR and under what conditions?**

The ECR being a European database, its access and use are subject to specific rules under EU law.

**Key principle**

**Member States and EASA shall ensure compliance with rules on ECR access and use including for local access they have to the ECR. Granting direct access to the ECR is limited to defined personnel in Member States Civil Aviation Authority and Safety Investigation Authority and in EASA. It is prohibited outside of these cases.**

The possibility to provide certain information from the ECR and the processes to be applied are described in Articles 10 to 12 of Regulation 376/2014.

In this context, third parties may request information contained in the ECR. The request shall be submitted to the Member State where the third party is established or to the European Commission when the place of establishment is not a Member State territory. The Member State or the European Commission will assess the suitability of the request and, if applicable, will provide the requested information.

Information from the ECR can only be supplied in aggregated (e.g. number of runway incursions for a given period) or anonymised form (removed of any details, including the name of the organisation involved in the occurrence, which may reveal the identity of the reporter or of a third party). Non anonymised information can only be provided if it relates to the requestor own equipment, operations or field of activity (*Articles 2 and 11*). It is understood that information unrelated to the requestor own equipment or operations but related to his field of activity will be provided anonymised.

Requests shall fulfil the criteria established in the Articles 10 and 11 of Regulation 376/2014 and will be subject to individual decision made by the relevant point of contact.



The third party receiving information from the ECR is responsible and liable of ensuring that information is only used for the purpose specified in the request form, that the information is not disclosed without the written consent of the information provider and that it has taken the necessary measures to ensure appropriate confidentiality of the information received.

#### 4.9 How shall States implement Article 16(12) of Regulation 376/2014?

##### **Key principle**

**Article 16(2) requires the Member States to designate a body responsible for the implementation of Article 16 (6), (9) and (11).**

Article 16(6) states the principle of proceedings limitations; Article 16(9) establishes the principle of non-prejudice in a corporate context, both principles being subject to the two exceptions mentioned in Article 16(10). Article 16(11) sets the obligation for organisations to adopt, after consulting its staff representatives, internal rules describing how 'Just Culture' principles are guaranteed and implemented within that organisation.

##### **Key principle**

**Full flexibility is given to the Member States to decide which entity shall be entrusted with this role.**

It is understood that it could be an existing entity or an entity established specifically for fulfilling this responsibility. It is also understood that this entity might be elsewhere entrusted with aviation responsibilities, judicial responsibilities, ombudsman related responsibilities or with any other responsibility. Member States are however encouraged to designate an entity which acts independently from those responsible for the implementation of Article 16 (6), (9) and (11).

The designated entity is responsible for:

- Receiving and handling employees and contracted personnel alleged infringements of the rules
- Advise the relevant authorities of the Member States on the adoption of actions against those who infringe the principles of protection of the reporter and of other persons mentioned in occurrence reports, such as remedies or penalties
- Upon its decision, reviewing 'Just Culture' internal rules of organisations established in its Member State.

It is understood that this entity shall coordinate with the authorities of its Member State responsible for imposing penalties in infringement to the Regulation and shall advise them about remedies or penalties it intends to adopt (*Article 16(12)*).

A report detailing the activities of this entity shall be sent to the European Commission every five years.

# **SECTION 5**

# **PRIVATE PILOTS**

## 5.1 Why shall I report occurrences?

The reporting of aviation safety occurrences is vital to the prevention of aircraft accidents. It contributes to understand where safety risks lie in the aviation system and helps decision makers in organisations and competent authorities (both at national and European level) to adopt relevant measures (see also Section 1.1).

The information and safety intelligence needed to support safety improvement in the Member States and in the EU largely relies on individuals reporting occurrences when they happen. Without this information, the realities of aviation safety issues cannot be properly understood and addressed.

Therefore, the reporting of safety occurrences by private pilots directly contribute to make aviation safer and to the prevention of accidents.

## 5.2 Am I required by law to report occurrences?

Regulation 376/2014 (*Article 4(6)a*) requires pilots of an aircraft registered in a Member State or an aircraft registered outside the Union but used by an operator for which a Member State ensures oversight of operations or an operator established in the Union, to report certain defined occurrences.

### Key principle

**Private pilots flying on an aircraft registered in a Member State are subject to the requirement to report occurrences under EU law.**

## 5.3 What occurrences shall I report?

### Key principle

**It is understood that the reporting of any safety relevant occurrence should be encouraged.**

For the sake of clarifying legal obligations, Regulation 376/2014 differentiates between occurrences that should always be reported (mandatorily reportable occurrences) and those that may be reported if judged relevant by potential reporters (voluntarily reportable occurrences).

The occurrences to be reported in the context of mandatory reporting systems are those which may represent a significant risk to aviation safety and which fall into defined categories (*Article 4(1)*). To facilitate the identification of those occurrences, the Commission was required to adopt a list classifying occurrences to be referred to (*Article 4(5)*).

These occurrences to be reported are therefore be listed in the Commission Implementing Regulation 2015/1018 classifying the occurrences to be reported in the context of mandatory reporting schemes. The occurrences contained in Regulation 2015/1018 are those which have been considered by the legislator as potentially representing a significant risk to aviation safety. The division in the various Annexes of the Regulation 2015/1018 intends to support the identification by reporters of the occurrences they are required to report.

### Key principle

**The occurrences that shall always be reported are those listed in Annex V of**

### **Regulation 2015/1018.**

Regulation 2015/1018 in its Annex V.1, V.2 and V.3 states that the structure of the Section is made to ensure that the "*pertinent occurrences are linked with categories of activities during which they are normally observed, according to experience, in order to facilitate the reporting of those occurrences*".

#### **Key principle**

**It is therefore understood that all occurrences listed in a specific Section of Annex V to Regulation 2015/1018 are reportable, independently of the circumstances in which these occurrences may occur.**

There is no legal obligation for the reporting of occurrences outside those contained in Annex V to Regulation 2015/1018. It is nevertheless understood that reporting of any safety relevant occurrence by anyone aware of it should be encouraged.

The Commission has prepared and published promotional material with the view to promoting and encouraging the reporting of safety occurrences. This material is available [here](#)<sup>29</sup>.

#### **5.4 How can I know if an occurrence is reportable?**

The obligation of reporting is linked with the awareness of the situation by the person subject to the reporting obligation. It is understood that "being aware" of an occurrence refers to situations where the individual has been directly involved in the occurrence.

Annex V to Regulation 2015/1018 contains certain occurrences which are factual events easily identifiable such as "*unintentional loss of control*". In such cases, as soon as the occurrence happens the obligation to report applies. Annex V to Regulation 2015/1018 also includes situations in which a judgement has to be made by the reporter to assess whether the aircraft or its occupants have or might have been endangered. This is for example the following occurrence: "*Any flight which has been performed with an aircraft which was not airworthy, or for which flight preparation was not completed, which has or could have endangered the aircraft, its occupants or any other person*". In such cases, the occurrence is reportable if the potential reporter has assessed that the aircraft, its occupants or any other person have or might have been endangered. In such situations it is more difficult to identify if the occurrence should be reported.

#### **Key principle**

**In situations where the reporter is aware about an occurrence and suspects it is reportable but cannot determine it with certainty, he/she is expected to report it.**

#### **5.5 Am I required report occurrences that happened outside of the EU?**

#### **Key principle**

**Occurrences should be reported even if they happen outside of the European Union.**

<sup>29</sup> <http://www.aviationreporting.eu/index.php?id=270>

## 5.6 To what authority shall I report occurrences?

### Key principle

**Private pilots are required to report occurrences to the Member State that issued, validated or converted their pilot's licence.**

These pilots may also be required to comply with other applicable reporting obligations under other rules. In addition, they may be encouraged to share their occurrence reports with the Member State best placed to act on the safety issue behind the occurrence (for example the State of occurrence or of registry).

## 5.7 Under what format shall I report an occurrence?

There is no obligation for private pilots to report in any specific format. They can choose the most suitable reporting form among the ones available in the State they report to.

To facilitate the reporting of occurrences by private pilots, the European Commission, with the support of EASA, has developed a European Reporting Portal which is available [here](#)<sup>30</sup>. It allows, depending on the method chosen by the State, on-line reporting of occurrences directly on the Portal or transfer to the national Portal of the State.

## 5.8 Is my report confidential?

### Key principle

**Member States are not allowed to record personal details in their database. Furthermore, they are required to take the necessary measures to ensure the appropriate confidentiality of occurrences they collect and to comply with rules on the processing of personal data.**

Regulation 376/2014 prohibits the recording of personal details (e.g. name of the reporter or anyone else mentioned in the report, addresses of natural persons) in the Member State database (*Article 16(1), (2) and (3) and Recital 35*).

In addition, there are requirements applicable to the Member States on the confidentiality of information and processing of personnel data. Finally, Recital 33 highlights the need for national rules on freedom of information to take into account the necessary confidentiality of information.

## 5.9 Can my report be used against me or anyone mentioned in it?

### Key principle

**Regulation 376/2014 includes strong protection rules for occurrence reporters and persons mentioned in occurrence reports. These rules include limitations to the possibility of disclosing or using occurrence reports.**

<sup>30</sup> <http://www.aviationreporting.eu/>

Regulation 376/2014 includes a number of provisions aimed at encouraging the reporting of occurrences by preventing their use against reporters and other persons mentioned in occurrence reports.

Regulation 376/2014 states that the aviation safety system is based on feedback and lessons learned from accidents and incidents and that the reporting of information by front line professionals is crucial to bringing safety improvements. It also highlights the need to establish an environment in which potential reporters feel confident in the existing systems and to report the relevant safety information. The necessity to create such an environment supports the protection principles in the Regulation (limitation to information use or availability, Just Culture principles within an organisation, non-self-incrimination principle etc). The objective of such rules is to create an environment in which people will feel confident to report and therefore ensure a continued availability of safety information.

The objective is not to exonerate individuals from their responsibilities but to find a balance between full impunity and blame culture. This balance is notably supported by the definition of 'Just Culture' (*Article 2*), by *Article 16* and by several recitals.

#### **Key principle**

**A 'Just Culture' should encourage individuals to report safety-related information but should not absolve individuals of their normal responsibilities (*Recital 37*). It is defined as a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated (*Article 2*).**

#### **Key principle**

**States cannot institute disciplinary, administrative or legal proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Regulation 376/2014 unless where otherwise provided by applicable national criminal law (*Article 16(6) and Recital 43*).**

**In the cases where disciplinary or administrative proceedings have been instituted under national law, information contained in occurrence reports cannot be used against the reporters or the persons mentioned in occurrence reports (*Article 16(7) and Recital 44*).**

#### **Key principle**

**Regulation 376/2014 recognises two exceptions to these principles (*Article 16(10)*):**

- **wilful misconduct; and**
- **situations where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.**

The Member States are allowed to provide, at national level, a more protective framework (*Article 16(8)*) which may in particular provide full impunity to reporters.

This means that outside those unacceptable behaviours situations, a State is not allowed to open a proceeding if it is only made aware of a situation because an occurrence was reported under Regulation 376/2014. It is however understood that in those cases where the opening of a criminal proceeding on the basis of an occurrence report is allowed under national law, national law has precedent and applies. But limitation to the possibility of disclosing information on occurrences (see below) remains applicable in all cases.

The objective is to clearly set, in the legislation, the line between acceptable behaviours (which shall not be punished) and unacceptable behaviours (which can be punished).

#### **Key principle**

**States can only use an occurrence report for the purpose for which it has been collected (Article 15(1)). They are not allowed to make available or use occurrence reports:**

- **in order to attribute blame or liability; or**
- **for any purpose other than the maintenance or improvement of aviation safety (Article 15(2)).**

It is therefore understood that sharing information on occurrences with press and media is not allowed by Regulation 376/2014. Disclosure of information on occurrence reports to judicial authorities is similarly not allowed.

#### **Key principle**

**There are however few exceptions to those principles. Firstly, it is understood that in a situation where safety might be endangered, information on occurrences may be shared or used with a view to maintain or improve aviation safety. It is therefore understood that sharing or using information on occurrences in the cases detailed in Article 16(10) with the view to address the risks to safety is allowed by the Regulation. Secondly, exception may apply in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted, as the provisions of Regulation 996/2010 have precedent in such case (Article 15(2)).**

Regulation 996/2010 foresees in its Article 14(2) and (3) that, in cases where it applies (opening of a formal technical accident or incident investigation), occurrences reports shall not be made available or used for purposes other than aviation safety unless the administration of justice or the authority competent to decide on the disclosure of records according to national law decides that the benefits of the disclosure of the occurrence report outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation (balancing test). If this balancing test concludes that the information on occurrences should be disclosed, then the organisation should make it available to the requesting authority.

### **5.10 What can I do if I consider that the above protection rules have been infringed?**

There may be situation where a private pilot will consider that the protection principles have not been complied with, for example if a proceeding has been open by a Member State. Regulation 376/2014 addresses such situation and requires each Member State to put in place an entity to which employees and contracted personnel may report alleged infringements of the protection rules contained in the Regulation (Article 16(12)).

## LIST OF ACRONYMS

ATM/ANS	Air Traffic Management / Air Navigation Services
EASA	European Aviation Safety Agency
ECR	European Central Repository
FDM	Flight Data Monitoring
ICAO	International Civil Aviation Organization
IORS	Internal Occurrence Reporting System
LOSA	Line Operation Safety Audit
MORS	Mandatory Occurrence Reporting System
MS	Member State
NAA	National Aviation Authority
NoA	Network of aviation safety Analysts
RIT	Reduced Interface Taxonomy
SIA	Safety Investigation Authority
SMS	Safety Management System
SSP	State Safety Programme
VORS	Voluntary Occurrence Reporting System