Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (Text with EEA relevance)

REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 October 2010

on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

After consulting the Committee of the Regions,

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

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

Whereas:

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

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

(3) Reporting, analysis, and dissemination of findings of safety related incidents are fundamentally important to improving air safety. Therefore the Commission should bring forward a proposal to revise Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation[(4)] before 31 December 2011.

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

(5) Account should be taken of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to ensure the safe operation of aircraft. Particular account should be taken of Annex 13 to the Chicago Convention and of its subsequent amendments, which lay down international standards and recommended

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practices for aircraft accident and incident investigation, as well as the understanding of the terms of State of Registry, State of the Operator, State of Design, State of Manufacture and State of Occurrence used therein.

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

(7) The lessons learned from the implementation of Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents[(5)] should be used to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.

(8) Account should be taken of the changes in the institutional and regulatory framework governing civil aviation safety in the Union which have taken place since the adoption of Directive 94/56/EC and in particular the establishment of the European Aviation Safety Agency (EASA). The Union dimension of safety recommendations should be also taken into account, given that aviation safety is increasingly regulated at Union level.

(9) EASA carries out on behalf of the Member States the functions and tasks of the State of Design, Manufacture and Registry when related to design approval, as specified in the Chicago Convention and its Annexes. Therefore EASA, in accordance with Annex 13 to the Chicago Convention, should be invited to participate in a safety investigation in order to contribute, within the scope of its competence, to its efficiency and to ensure the safety of aircraft design, without affecting the independent status of the investigation. National civil aviation authorities should be similarly invited to participate in safety investigations.

(10) Given their safety responsibilities, persons designated by EASA, as well as by the national civil aviation authorities, should have access to information of relevance for assessing the effectiveness of safety requirements.

(11) In order to ensure better prevention of aviation accidents and incidents, EASA, in cooperation with the competent authorities of the Member States, should also participate in the exchange and analysis of information in the framework of the occurrence reporting systems in accordance with Directive 2003/42/EC, whilst avoiding any conflict of interest. This information should be adequately protected from unauthorised use or disclosure.

(12) It is recognised that the participation of EASA and of the competent authorities of the Member States in the exchange and analysis of information covered by Directive 2003/42/EC could benefit safety investigations through on-line access to relevant safety related information contained in the central repository of information on civil aviation occurrences.

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(13) The scope of safety investigations should depend on the lessons which can be drawn from them for the improvement of aviation safety, especially taking into account the need for the cost-efficient utilisation of investigation resources in the Union.

(14) The safety investigation of accidents and incidents should be conducted by or under the control of an independent safety investigation authority in order to avoid any conflict of interest and any possible external interference in the determination of the causes of the occurrences being investigated.

(15) The safety investigation authorities play a core role in the safety investigation process. Their work is of the utmost importance in determining the causes of an accident or incident. It is therefore essential that they should be able to conduct their investigations entirely independently and also that they should possess the financial and human resources required to conduct effective and efficient investigations.

(16) The capacity of safety investigation authorities of the Member States should be strengthened and cooperation between them is necessary to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.

(17) The coordination role of safety investigation authorities should be recognised and reinforced in a European context, in order to generate real added value in aviation safety, by building upon the already existing cooperation between such authorities and the investigation resources available in the Member States which should be used in the most efficient manner. That recognition and reinforcement could be best achieved by the European Network of Civil Aviation Safety Investigation Authorities (the Network), with clearly defined role and tasks.

(18) The Network should pursue its coordination activities in a transparent and independent manner and be actively supported by the Union.

(19) The objectives of this Regulation may be better achieved through cooperation with third countries, which could be allowed to participate as observers, in the work of the Network.

(20) As it is essential to ensure clear rights for safety investigations, Member States should, in compliance with the legislation in force on the powers of the authorities responsible for judicial investigations and, where appropriate, in close collaboration with those authorities, ensure that safety investigation authorities are allowed to carry out their tasks in the best possible conditions in the interest of aviation safety. The safety investigation authorities should therefore be granted immediate and unrestricted access to the site of the accident and all the elements necessary to satisfy the requirements of a safety investigation should be made available to them, without compromising the objectives of a judicial investigation.

(21) Efficient safety investigation is possible only if important pieces of evidence are duly preserved.

(22) The civil aviation safety system is based on feedback and lessons learned from accidents and incidents which require the strict application of rules on confidentiality in order to

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ensure the future availability of valuable sources of information. In this context sensitive safety information should be protected in an appropriate way.

(23) An accident raises a number of different public interests such as the prevention of future accidents and the proper administration of justice. Those interests go beyond the individual interests of the parties involved and beyond the specific event. The right balance among all interests is necessary to guarantee the overall public interest.

(24) The civil aviation system should equally promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of 'just culture'.

(25) The information provided by a person in the framework of a safety investigation should not be used against that person, in full respect of constitutional principles and national law.

(26) Member States should have the option to limit the cases in which a decision of disclosure regarding information obtained during a safety investigation could be taken, without affecting the smooth functioning of the judicial system.

(27) It is important for the prevention of accidents and incidents to communicate in the shortest time possible relevant information, including in particular reports and safety recommendations resulting from safety investigations.

(28) The safety recommendations resulting from an accident or serious incident investigation or other sources, such as safety studies, should always be considered by the competent authority and, as appropriate, acted upon to ensure adequate prevention of accidents and incidents in civil aviation.

(29) Progress on research into both the real-time tracking of aircraft and the possibility of accessing flight-recorder information without the flight recorder being physically present should be encouraged to improve the tools available to investigators for determining the causes of accidents and to enhance capabilities for preventing recurrent incidents. Such developments would be an important step forward in aviation safety.

(30) Experience has shown that reliable lists of persons on board an aircraft are sometimes difficult to obtain in a rapid manner but also that it is important to establish a deadline within which an airline can be required to produce such a list. In addition, the data contained in such lists should be protected from unauthorised use or disclosure. Similarly, the availability of information about the dangerous goods on board an aircraft involved in an accident is necessary to minimise the risks to safety investigators at the site of the occurrence.

(31) Following an air accident it is not easy to identify rapidly the appropriate contact person to inform of a passenger's presence on board. The possibility of designating a contact person should therefore be offered to passengers.

(32) Assistance to the victims of air accidents and their relatives should be adequately specified.

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(33) The manner in which an accident and its consequences are dealt with by Member States and airlines is crucially important. In this respect, Member States should have an emergency plan providing for, in particular, airport emergency services and assistance to the victims of civil aviation accidents and their relatives. Airlines should also have a plan for assistance to the victims of civil aviation accidents and their relatives. Particular attention should be given to the support to and the communication with victims and their relatives, and their associations.

(34) The rules on access to data, data processing and the protection of individuals laid down in relevant legal acts of the Union should be fully respected in the application of this Regulation.

(35) Penalties should, in particular, allow for the sanctioning of any person who contrary to this Regulation releases information protected by this Regulation; obstructs the actions of a safety investigation authority by preventing the investigators from performing their duties or by refusing to provide useful recordings, material information and documents, hiding, altering or destroying them; or, having knowledge of any occurrence of an accident or serious incident, does not inform the relevant authorities thereof.

(36) Since the objective of this Regulation, namely the establishment of common rules in the field of civil aviation safety investigation cannot be sufficiently achieved by the Member States and can therefore, by reason of its Europe-wide scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(37) Directive 94/56/EC should therefore be repealed.

(38) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006 during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on Gibraltar Airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 Declaration,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1 This Regulation aims to improve aviation safety by ensuring a high level of efficiency, expediency, and quality of European civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability, including through the establishment of a European Network of Civil Aviation Safety Investigation Authorities. It also provides for rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident. It also aims to improve the assistance to the victims of air accidents and their relatives.