

Draft guidance material

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

Industry workshop - 27 April 2015

1. Is the application of Regulation 376/2014 compulsory?

Regulation 376/2014 is binding in its entirety and directly applicable in all Member States.

It 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 measures to incorporate it in national law are 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 Community and the Swiss Confederation on Air Transport) once the Regulation incorporated within these respective agreements.

2. 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. It does not require the adoption of national transposition measures.

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 situation where the States are required to adopt measures, the Member States shall adopt implementing measures.

3. Can Member States adopt national rules that are stricter than Regulation 376/2014?

As for any European Regulation, the Member States are allowed to go beyond the provisions of the Regulation only when this possibility is specified in the Regulation.

Example: Article 3(2) 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); 14(1); 16(6), (7) and (8).

In any other situation, the Member States must not go beyond the provisions of the Regulation.

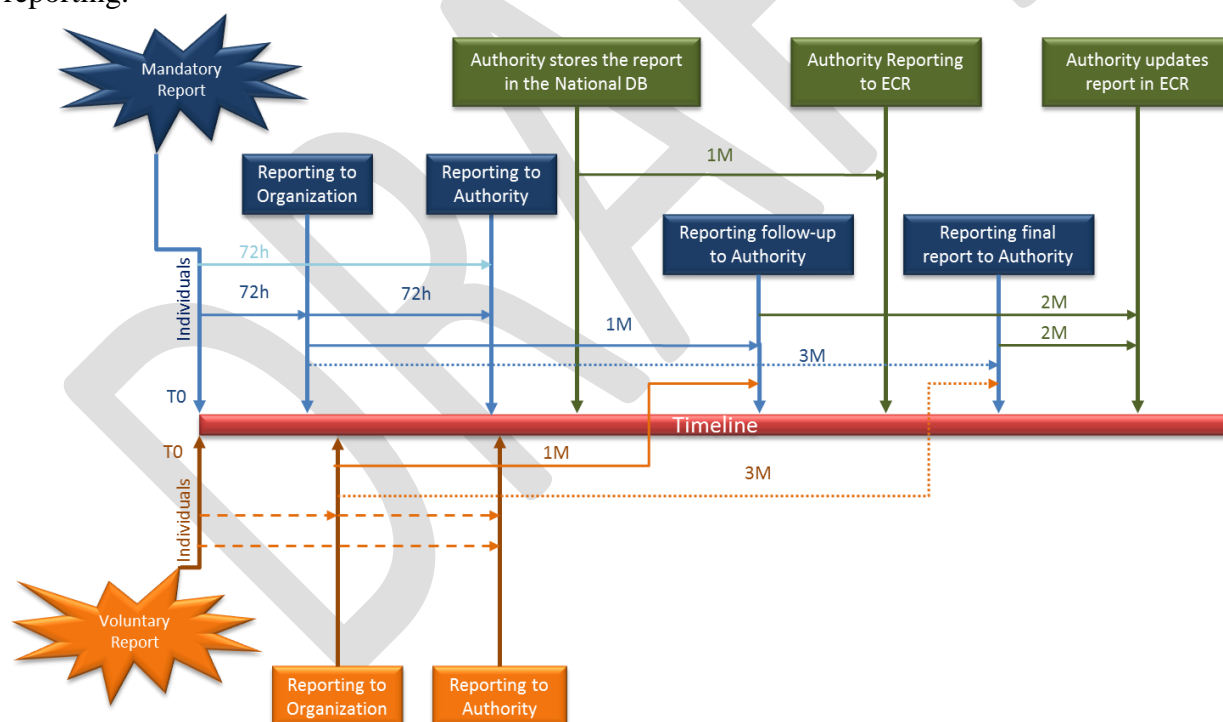
Example: Article 4(7) requests reporters to "report occurrences within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this". Adopting a national measure requesting reporters to report occurrence within a short deadline (e.g. 36 hours) is not authorised and would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

4. What is the reporting flow implied by the Regulation?

The Regulation prescribes reporting obligations on certain natural persons (see question 6 for more information), organisations and competent authorities.

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

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



This reporting flow starts from the moment the occurrence is detected. It should be understood that in certain specific situations the identification of the occurrence might require an additional stage before this reporting flow starts (e.g. assessment to determine the presence of an unsafe condition).

5. Which type of information is covered under the Regulation?

Regulation 376/2014 applies to (Article 3(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.

Events or information which are reported through reporting systems but which are not 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 this Regulation.

Example: An event reported by a crew member to its operator which is about commercial or quality issue and has no safety implications, is not subject to this Regulation and is therefore not subject to reporting, analysis or follow-up requirements in the context of this Regulation.

6. Which type of person is under the legal obligation to report occurrences?

Regulation 376/2014 provides for a list of designated persons that shall report occurrences in the context of mandatory reporting schemes (*Article 4(6)*).

This list of persons covers employees of organisations, 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 pilots self-employed who are pilot-in-command of aircraft used by a European operator are covered under this obligation.

These designated person being under a legal obligation to report certain defined occurrences and therefore potentially facing penalties in the case they fail to their reporting obligations (*Article 21; Recital 38*), it is important for them to be clearly identified.

Furthermore, clarification is necessary to ensure that, where relevant, natural persons already subject to an obligation to report safety occurrences under other European legislations (see also the question on interaction with Regulation No 216/2008 and its Implementing Regulations) are the same than the ones covered under this Regulation in view to prevent double reporting, as this would be contrary to the objective of Regulation 376/2014 (*Recital 4*).

In particular, 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 the Agency, who are directly involved in the production of aeronautical items and who 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 those deviations which could lead to an unsafe condition.

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

Example: a person working in a production organisation being responsible of the investigation, together with the Design Approval Holder (DAH)¹, to confirm if identified deviations of the manufactured product from design data could lead to an unsafe condition of the final certified product.

It 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 the Agency, who are in charge of

¹ 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.

occurrence reporting 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.

It 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 the Agency, who are in charge of occurrence reporting to the competent authority in the context of the continuing airworthiness of their products but which are not subject to any approval under the Commission Regulation (EU) No 748/2012.

Example: a person working in a design organisation dedicated to the design of drones not certified as per Part-21 requirements or subject to an organisation approval under Commission Regulation (EU) No 748/2012.

Finally, it 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 the Agency, 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.

Example: a person who holds a valid Part-66 mechanic license and preforms actual maintenance work, or a person who is a postholder for the continuing airworthiness or an aircraft.

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

Article 4(6)(d) is understood as applying to a person who performs a function which 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) No 805/2011 and acting as controller or officer on duty.

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 applies. This covers the Safety Manager of aerodromes certified under Commission Regulation (EU) No 139/2014 as well as the equivalent responsible person of those aerodromes not certified under Commission Regulation (EU) No 139/2014 but covered by Regulation (EC) No 1008/2008. It also includes personnel and persons whose 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.

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 responsible.

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/EC², including fuelling, servicing, loadsheet preparation, loading, de-icing and towing, at an airport covered by Regulation (EC) No 1008/2008.

7. Which occurrences shall be reported by individuals?

While for the sake of clarifying legal obligations the Regulation establishes two different reporting systems, mandatory and voluntary, 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 Regulation 216/2008 and its IRs and as promoted by Regulation 376/2014.

i. Mandatory reporting

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 to be reported in the context of mandatory systems, the Commission is required to adopt a list classifying occurrences to be referred to (*Article 4(5)*). The occurrences to be reported will therefore be listed in the Commission Implementing Regulation classifying the occurrences to be reported in the context of mandatory reporting schemes (hereinafter called “IR on occurrences”).

The IR on occurrences includes occurrences falling in the four categories mentioned in the Regulation as well as those applicable to aircraft other than complex motor-powered aircraft (*Article 4(5)*) which is, where appropriate, adapted to the specificities of this that aviation sector.

In practice it means that the occurrences to be reported in the context of mandatory systems are understood as those contained in the IR on occurrences³.

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 IR on

² Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports; OJ L 272, 25.10.1996, p.36.

³ If relevant and once the IR adopted, the guidance material will include clarification on the understanding of the occurrences listed in it.

occurrences intends to support the identification by reporters of the occurrences they shall report.

It is therefore understood that, on a mandatory basis, reporters shall not report all occurrences contained in the IR on occurrences but only those relevant for their area of activities.

Reporting obligations in the context of mandatory schemes are therefore understood as follows:

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

Pilot in command - Art.4(6)(a) (for detailed definition see question 6) - when flying on aircraft other than complex motor-powered aircraft	Occurrences related to related to operation of the aircraft - Annex V of IR on occurrences
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ii. Voluntary reporting

There is no legal obligation for individuals to report occurrences outside the ones reported through mandatory reporting systems (MOR). There is however a legal obligation for organisations and competent authorities (*Article 5*) to establish voluntary reporting systems (see also question 9).

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

- any occurrence or safety related information by individuals which are not subject to mandatory reporting (see question 6 for the detailed list of persons subject to MOR), this might include the reporting by those individuals of occurrences included in the IR on occurrences;
- any occurrence or safety related information not included in the IR on occurrences by individuals which are subject to MOR.

It should however 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.

The legal obligation for organisations and competent authorities to establish voluntary reporting systems aims at supporting this sharing of information.

Industry organisations, the Member States and EASA are therefore encouraged to promote the reporting of any occurrence, whether or not it falls under a legal obligation to report it. The Commission intends to prepare and publish promotion material with the view to promote and encourage the reporting of occurrences.

iii. Interaction with other reporting requirements (see also question 8)

Reporting requirements existing in other EU legislations are aligned with reporting requirements under Regulation 376/2014. This means in practice, that reporting obligations under the Basic Regulation 216/2008 and its implementing rules (IRs) and reporting obligations under Regulation 376/2014 are compatible and their obligations can be discharged by one reporting channel avoiding the establishment of two parallel systems (*Recital 4*).

8. How does this Regulation interact with other existing reporting requirements?

Whereas the reporting of occurrences in the EU is regulated under Regulation 376/2014, there are also a number of occurrence reporting requirements contained in different European legislations. This situation is recognised by Regulation 376/2014 (*Recital 4*) and it is clarified that this should not be seen as setting up two parallel systems but to the opposite that it should be one reporting system.

It should also be understood that Regulation 376/2014 does not cover all existing reporting requirements in the European system. Other reporting requirements may in particular be contained in Regulation 216/2008 and its IRs (e.g. reporting between organisations).

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 will need further alignment. A rulemaking task has been initiated to ensure a better fit of the 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 performance scheme for air navigation services and network functions⁴ 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.

9. What information shall be transferred to the competent authority?

i. Occurrence initial notification

The scheme below illustrates the 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 the Regulation that individuals may report directly to the competent authority. See question 12 for more information on the various reporting channels.

Organisations are required to report to the competent authority (Article 4(8) and (9)) all mandatory reportable occurrences they have collected i.e. those contained in the IR on occurrences when reported by a person listed in Article 4(6).

Occurrences collected under VORS (not in the IR on occurrences or those reported by a person not listed in Article 4(6)) are not all reportable to the competent authority. Indeed, only

⁴ 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.

those which may involve an actual or potential aviation safety risk (*Article 5(5) and (6)*) shall be reported to the competent authority.

It is understood that organisations shall discuss with their competent authorities to determine what type of occurrences are considered to involve 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 is expected to receive.

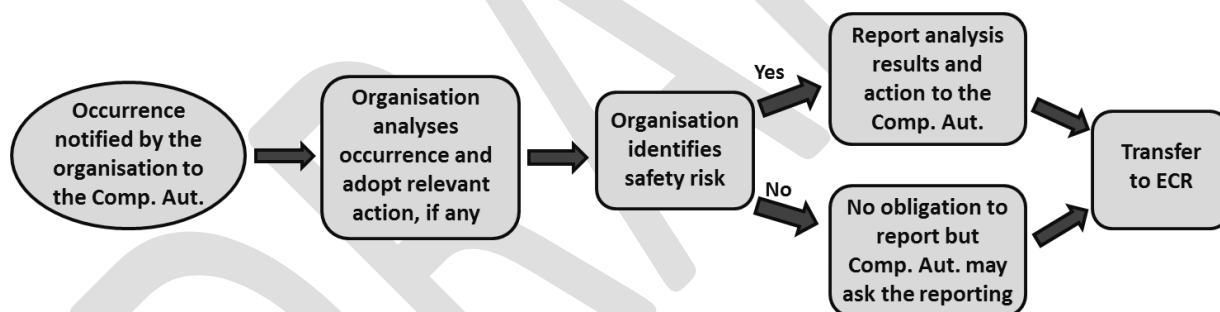
It is also understood that when an occurrence is reported to an organisation, this organisation might need to assess whether or not it falls under MOR or VOR and therefore what the applicable notification obligations are. In a situation where a reporter has transferred the report under VORS, the organisation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

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

ii. Analysis and follow-up related information

The scheme below illustrates the information flow related to analysis and follow-up related information.



While all occurrences collected by the organisation (MOR and VOR) are subject to analysis and follow-up requirements (*Article 13(1) and (2)*), only those which are reportable (i.e. all MOR occurrences and the VOR occurrences which may involve an actual or potential aviation safety risk) are subject to further reporting obligations.

Among those 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 the analysis and follow-up related information (*Article 13(4) and (5)*).

Regulation 376/2014 does not require organisations to transfer to the competent authority the analysis result and follow-up information for occurrences other than those collected under the MOR, and those collected under the VOR which may involve an actual or potential aviation safety risk.

The Regulation however gives the competent authority the possibility to require organisations to transfer information on analysis and follow-up of those other reportable occurrences (*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 analysis and follow-up related information of all their reportable occurrences.

In the same way as for initial notification, it is understood that organisations shall discuss with their competent authorities to determine what 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 is expected to receive. Through the Network of Analysts, a common approach will be promoted to ensure that level playing field is ensured across the EU 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.

The European Commission, the Joint Research Centre, the Agency and the Member States participating in the ECCAIRS Steering Committee are currently assessing the technical developments to support and standardise the reporting of the analysis and follow-up of group of occurrences, notably to facilitate its integration in an ECCAIRS environment.

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

iii. Assessment of the information by the competent authority

Regulation 376/2014 differentiates between MOR and VOR with the view to clarify the obligations of reporting for the reporters as well as for the industry organisations.

However the Regulation does not differentiate the manner MOR and VOR are addressed by the competent authority. 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. Similarly, 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.

10. Which are the reportable occurrences?

i. Mandatory reporting

As explained under question 7, the occurrences to be reported in the context of mandatory systems are understood are those contained in the IR on occurrences.

The IR on occurrences contains occurrences which are factual events easily identifiable such as *"a collision on the ground or in the air, with another aircraft, terrain or obstacle"*.

It is however recognised that it also includes situations in which a judgement has to be made by the reporter to assess whether it is a reportable occurrence such as *"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 situations it is more difficult to identify whether the reporter has acted in compliance or not with the legislation, in particular if the same occurrence has been reported by a person in the context of voluntary reporting schemes (*Recital 38*).

It is understood that if the reporter is not aware of the occurrence or if, in the cases where it is relevant, 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 is considered compliant with his reporting obligations under Regulation 376/2014.

It shall however be understood that in situation where the reporter is aware about the occurrence and suspects it is reportable but cannot determine with certainty, he is expected to report it.

Organisations are required to transfer to the competent authority all occurrences reported to them under MOR. It is understood that in situation where the organisation considers that the occurrence reported by an individual fails to meet the criteria of mandatory reportable occurrences, the occurrence falls under the regime of the VORS (see below).

It is also 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 or in service occurrence not reported to the organisation)

ii. Voluntary reporting

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 is considered as a potentially reportable occurrence under VORS.

For organisations, as explained under question 9, amongst those occurrences reported to it under VOR, only those occurrences which may involve an actual or potential aviation safety risk are reportable to the competent authority. This implies an assessment to be made by the organisation. As underlined under question 9, organisations are encouraged to coordinate with their competent authority to ensure a shared understanding of the reportable occurrences in this context.

11. If an accident or serious incident is reported under Regulation 376/2014, is it also reportable to the competent safety investigation authority of the State of Occurrence?

Accidents and serious incidents, as defined within Regulation (EU) No 996/2010⁵, are 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 in the context of Article 9 of that Regulation (*Recital 3*).

⁵ 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.

It means a 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 the IR on occurrences.

In such case, 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.

12. What are the reporting channels?

It is recognised that 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.

It is however understood that the reporting through the reporting system of the organisation should be promoted and recognised as the normal channel of reporting for persons employed by an organisation or whose services are contracted or used by this organisation (*Article 4(6)*).

This is notably consistent with the integration of occurrence data into safety management systems of organisations.

For pilots who are not employed by an organisation or whose services are not contracted or used by an organisation, the reporting to the Member State which issued, validated or converted their pilot's licence should be promoted and understood as the normal channel (e.g. general aviation pilots).

The reporting through the system of the 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 his organisation.

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.

While the most direct reporting channel should be privileged (organisation reporting system privileged first) it is understood that the direct reporting by persons employed by an organisation or whose services are contracted or used by this organisation to report directly through to a competent authority shall not be prevented.

Indeed, situations may occur where reporters are not confident into the reporting system of their organisations and may wish to use another reporting channel. This is consistent with the objective of fostering such a 'Just Culture' which is pursued by Regulation 376/2014 and which aims, in particular, at ensuring the confidence of aviation professionals into occurrence reporting systems and encourage them to reports any relevant safety information in view of contributing to the enhancement of aviation safety and the prevention of accidents.

Off-line and on-line reporting forms are currently under development by the Commission, with the support of EASA, to facilitate the direct reporting by individuals to the competent authority (see question 14 for more information on the reporting forms). The Commission intends to develop a single European portal which will then redirect reporters to the reporting portal of the relevant competent authority.

It should be highlighted that the choice of a reporting system is exclusive and not cumulative. Indeed the use of "or" in Article 4(6) ensures that only one report will be made by a person and that an occurrence does not lead to its reporting by the same person to different authorities.

It is therefore understood that the Regulation does not allow a person to the report an occurrence to the organisation and to report it as well to a Member State and/or to EASA.

13. What are the organisations subject to Regulation 376/2014?

Regulation 376/2014 contains a number of provisions applicable to "*each organisation established in a Member State*".

Furthermore, 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)*" (Article 2(8)).

It is understood that organisations which do not, on a professional basis, employ, contract or use the services of a person subject to mandatory reporting obligations 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 the Regulation and therefore not requested to comply with it.

The reference to "*organisation established in a Member State*" is understood as covering organisations approved or certified in a Member State, though not necessarily by a Member State, or those not having an approval or certificate, whose main seat is established in a Member State of the EU.

For those organisations approved or certified under the Regulation 216/2008 and its IRs, "*organisation established in a Member State*" is understood as organisations approved or certified in a Member State, either by the Agency or by the competent authority in the Member State.

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

14. Under which format occurrences shall be reported?

The Regulation does not impose any reporting format for individual reporters.

It however imposes requirements on organisations as well as on the competent authorities (Article 7). These requirements apply to all occurrences collected (MOR and VOR).

The obligations cover:

- The compatibility with the ECCAIRS software and the ADREP taxonomy
- The use of standardised formats
- Mandatory data fields
- Safety risk classification
- Data quality checking processes.

Detailed information about these issues is provided in questions 14 to 18.

These obligations apply to the reports registered in the respective databases of the organisations and of the competent authorities.

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.

15. How to comply with the ADREP/ ECCAIRS compatibility requirement?

ADREP taxonomy compatibility is understood as a reporting which uses ADREP taxonomy as integrated in ECCAIRS. The Reduced Interface Taxonomy, which is integrated into the ECCAIRS software suite and is published by the EC and maintained by the JRC, EASA and MS, within the ECCAIRS Steering activity.

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

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 (*Article 7(4)*).

These acceptable means of compliance are the following:

- Off-line reporting form: mostly targeting small or med-size organisations which are not producing many occurrence reports a month.
- On-line reporting form: mostly targeting small or med-size organisations which are not producing many occurrence reports a month.
- E5X file format: mostly meant for large organisations which are producing a large number of occurrence reports a month.
- Use of the ECCAIRS system by an organisation, which would enable the exchange of ECCAIRS files or by the data transfer through the DINER software.

The Commission intends to develop a single European portal which will redirect organisations to the reporting portal of the relevant competent authority. This portal is expected to support the use of off-line and on-line reporting forms.

It is understood that organisations have also the possibility to agree with their competent authority any other means that provide similar levels of completeness and quality of data, and use the ADREP taxonomy.

16. How to comply with the standardised format requirement?

One of the methods for reporting provided by the European Commission will be the E5X data transfer file. This format allows the reporting of occurrences using a standard data format which gives compliance to the ADREP taxonomy and ECCAIRS software compatibility, and to the transmission of mandatory data fields detailed in Annex I of the Regulation.

Technical specifications will be made available by the competent authority in Member States and EASA. Technical assistance to organisations implementing this file format should be streamlined through the competent authority in Member State or EASA. Organisations should agree with their competent authority the practical aspects of its implementation, such as the use of taxonomy and the data fields beyond the mandatory ones to be transmitted.

It is understood that organisations have also the possibility to agree with their competent authority any other means of electronic data transfer that provide similar levels of completeness and quality of data, and use the ADREP taxonomy.

To support the implementation of standardised formats for reporting in organisations not implementing the E5X file format, a European Occurrence Report Set has been developed that consist of the following occurrence reports: General Aviation Report, Flight Operations Report, Aerodrome Report, ATM Report, Birdstrike Report, Dangerous Goods Report, Technical Report. This European Occurrence Report Set will be available for reporting to competent authorities through the single European Reporting Portal described in Question 14.

17. How to comply with the mandatory data fields requirement?

Occurrence databases of organisations subject to Regulation 376/3014, as well as those of their competent authorities shall contain the mandatory data fields listed in Annex I (*Article 7(1)*).

The set of mandatory data fields to be provided includes common data fields to be provided for each occurrence (*Annex I.1*). It also includes fields which shall only be provided when relevant in the context of the occurrence (e.g. design organisations are not expected to record and complete mandatory fields related to Air Navigation Services, and vice versa).

If the information of any relevant and 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").

The transfer of the mandatory data fields is expected to be done in an ECCAIRS/ADREP compatible format (*Article 7(4)*).

18. What is the European Risk Classification Scheme and who shall apply it?

All organisations, Member States and EASA shall store and transmit the risk value of each occurrence received reflecting the result of the risk assessment done (*Article 7(2)*).

The requirement to use the European Risk Classification Scheme to perform this assessment is only applicable to the competent authorities (Member States and EASA).

Organisations have the possibility to use the risk methodology of their choice. When receiving the risk classification provided on an occurrence by the organisation the competent authority is required to review and if necessary amend the risk classification provided. It shall then endorse it in accordance with the common European Risk Classification Scheme.

It shall be noticed that the industry participates to the development of the European Risk Classification and that the use of this scheme by the industry organisations would support a better harmonisation of risk classification across the EU. It should therefore be encouraged.

The European Risk Classification Scheme is under development and will be published by May 2017.

The Regulation 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, the list of mandatory data fields required under Article 7(1) includes the risk classification. It is therefore understood that organisations, the Member States and EASA shall provide this information from the application date of the Regulation. But until Article 7(2) becomes applicable the competent authority is not expected to review and endorse the risk classification transmitted by the organisation.

19. What are the data quality checks refer in Article 7(3)?

Organisations, Member States and EASA are required to ensure a minimum data quality in the information stored in and transmitted from their databases, by running regular quality checks.

It is understood that data quality check 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)*).

EASA and the Commission intend 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 achieve a minimum level of quality required, and
- Providing the necessary training to Members States to facilitate the proper use of the ADREP taxonomy.

20. How to apply the occurrence analysis and follow-up requirements?

It is understood that the analysis and follow-up of occurrences required under Article 13 is taking place in the context of exiting processes such as:

- management systems
- SMS
- safety processes required under EU law or similar safety processes.

It is not intended to create another system alongside the safety management system of an organisation or of a State.

It is therefore understood that occurrences collected and analysed under Regulation 376/2014 are part of industry SMS and support it by providing it with relevant occurrence information.

21. How is the information shared among the competent authorities?

The competent authorities (EASA Member States and EASA) share all information collected and registered in the respective databases through the European Central Repository (ECR) (*Article 9*). This includes information on occurrences (*Article 9(1)*) which shall be transferred within 30 days as well as information related to their analysis and follow-up which shall be transferred within 2 months (*Article 13(9)*). This also includes detailed information about accidents and serious incidents such as the investigation report (*Article 9(2)*).

The Regulation (*Article 10(1)*) provides secure full online 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 CAAs and SIAs, as well as the European Commission, EASA and Eurocontrol. This access will cover the entire ECR i.e. occurrences entered after 15 November 2015 as well as those which were already contained in the ECR before that date.

Member State or the Agency are required (*Article 9(3)*) to forward all pertinent safety-related information to the relevant authority of the Member State or the Agency as soon as possible if, while collecting details of occurrences or when storing occurrence reports or carrying out an analysis in accordance with Article 13(6), it identifies safety matters which it considers either to be of interest to other Member States or the Agency or to possibly require safety action to be taken by other Member States or the Agency.

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

Therefore, certain criteria are expected to be applied in order to identify those occurrences or safety issues known through the analysis of occurrences constituting safety significant information, and therefore to be communicated to other Member States or to EASA.

Safety significant information stemming from occurrence reports should be understood as:

- a. A conclusive safety analysis that summarises individual occurrence data and provides an in-depth analysis of a safety issue, which might be relevant for another Member State or for EASA. In the case of the EASA this information could be connected to the European Aviation Safety Plan or to the role of EASA in safety promotion.
- b. Individual occurrence data where the Member State or EASA is the competent authority and:
 - i. the occurrence is defined as a reportable occurrence as per applicable legislation,
 - ii. the organisation responsible of addressing the occurrence is certified or approved by the Member State or EASA, and
 - iii. the Member State or EASA has come to the conclusion that:
 - the organisation certified by the Member State or EASA to which the occurrence relates, has not been informed of the occurrence; or
 - the occurrence has not been properly addressed or has been left unattended by the organisation certified by the Member State or EASA.

22. Under which deadline the information shall be transferred to the ECR?

The Member States and EASA are required to send to the ECR those initial notifications received from organisations and individuals no later than 30 days after entering them in the national or EASA's occurrence database. As the reporting means will provide an immediate data entry in the ECCAIRS environment of the Member State or EASA, the time between receiving and entering the information should be considered negligible and in practice doable in 30 days since the reception of the initial notification (*Article 9(1)*).

In the case of updates from organisation on occurrences initially reported representing a safety risk, the information of the follow-up should be transferred to the ECR 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 the Member State or by the Agency 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.

23. How shall the information be handled?

Information provided in an occurrence reported in accordance with Regulation 376/2014 shall only be used for safety purposes. The Just Culture principles enclosed in the Regulation applies to the handling of occurrence reports (see questions 25, 26 and 27).

While an organisational separation with a clear separation between the department handling occurrence reports and the rest of the organisation or of the competent authority is not required, this is considered as a good way to achieve these objectives.

In any case, the privacy of the elements contained in the reports must be safeguarded. Names and personal details of reporters shall not be recorded in the databases of national authorities and of EASA. In that perspective, organisations are encouraged to refrain from including names and personal details when transferring occurrences reports to the competent authority.

24. What are the competent authority obligations in terms of oversight?

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

The Regulation requires the competent authority to appropriately monitor actions of the organisations they are responsible for (*Article 13(8)*). It is understood that to perform this responsibility the competent authority would need 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 allow a process to review and validate the risk classification of the occurrence.

It is also understood that this monitoring obligation does not require the competent authority to perform detailed investigation of each single occurrence it is notified of. This monitoring is expected to participate to the overall oversight functions on organisations it is responsible for.

In situations where the monitoring is done over organisations which are outside the normal oversight responsibilities of the competent authority (ground handling organisations, small aerodromes) it is understood that the monitoring obligations does not require to create comprehensive oversight mechanisms such as inspections, but is expected to be limited to the analysis of information transmitted with the view to monitor whether or not the action adopted was appropriate.

It is understood that not all occurrence reported may require action and that their preliminary assessment at reception may conclude that certain occurrences could be closed on receipt (no action or further analysis needed). In those cases, the occurrence should be reviewed if they are reported as a follow-up by the organisation 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).

25. Under which conditions can information of occurrences be used or made available?

Industry organisations, the Member States and EASA are required to take the necessary measures to ensure the appropriate confidentiality of the details of occurrences contained in their respective databases, in accordance with their national law (*Article 15(1)*). It is understood that national law may include freedom of information acts or equivalent national legislation which may impact the access to the national database. Recital 33 highlights the need for national rules on freedom of information to take into account the necessary confidentiality of information.

The Regulation requires organisations, the Member States and EASA 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)*). In addition, it introduces an interdiction to record 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 the competent authority.

The Regulation requires the information, cleared of any personal details, to be disseminated internally as appropriate. This aims in particular to ensure that the information is used by appropriate aviation authorities to allow them to discharge their obligations in relation to aviation safety improvement (*Article 16(2) and (3)*).

While Regulation 376/2014 includes limitations to the possibility of using occurrence reports, it is clearly stated that the Member States and EASA shall not be prevented from taking any action necessary for maintaining or improving aviation safety (*Article 16(5)*).

It is understood from this principle that the competent authority 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 in particular existing procedures and actions (e.g. safety recommendations, airworthiness directives, safety information bulletin etc).

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 (EU) No 996/2010 is applicable (see below for more details).

In addition to the safeguards described above, Regulation 376/2014 sets up the conditions under which information on occurrences may be used or made available in Article 15(2). This provision introduces strong limitations to the possibility to use information but also to the possibility to share externally information issued from occurrence reports.

Indeed the Regulation states that organisations and competent authorities shall not make available or use the information on occurrences in order to attribute blame or liability or for any purpose other than the maintenance or improvement of aviation safety (*Article 15(2)*).

This provision therefore prevents the sharing of information on occurrences for non-safety purposes such as a request made on the basis of freedom of information or by judicial authorities.

In practice, this implies that industry organisations, the Member States and EASA are not allowed to share or use information contained in their occurrence database unless there is a demonstrated objective of aviation safety maintenance or improvement. Furthermore the information cannot be made available or used to attribute blame or liability towards the reporter or any other person mentioned in the report.

This principle is however not applicable in a situation where an investigation under Regulation (EU) No 996/2010 has been instituted (*Article 15(2)*). Regulation (EU) No 996/2010 foresees in its Article 14(2) and (3) that, in cases where Regulation 996/2010 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.

In practice it means that if a request for information on an occurrence is made for example by judicial authority, the information cannot be given unless Regulation 996/2010 applies (accident, serious incident as well as situation where an investigation on an incident has been instituted under Regulation 996/2010).

26. Can information on occurrences be used against the reporter?

Regulation 376/2014 includes a number of provisions aiming at encouraging 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 context.

The Regulation recognises that aviation safety system based on feedback and lessons learned from accidents and incidents and that the reporting of information by front line professionals is crucial to bring safety improvements. It also highlights the need to establish an environment in which potential reporters feel confident into the existing systems and report the relevant

safety information. The necessity to create such environment supports the presence of protection principles in the Regulation (limitation to information use or availability, no blame principle within organisation, no self-incrimination etc).

As highlighted previously, these protection principles do not prevent Member States and EASA shall not be prevented from taking any action necessary for maintaining or improving aviation safety (*Article 16(5)*).

It does however limit the possibility for States of instituting 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*).

It also prevents that, in the cases where disciplinary or administrative proceedings have been instituted under national law, information contained in occurrence reports is used against the reporters or the persons mentioned in occurrence reports (*Article 16(7) and Recital 44*).

In addition, it includes a strong protection for those persons in their working environment. Indeed Except where Article 16(9) ensures that employees and contracted personnel who report or are mentioned in occurrence reports are 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.

In order to support this legal provision, 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 Commission, supported by EASA, has set up a group of experts from the industry (gathering representatives of organisations and staff representatives) with the view to develop a model for these internal rules as well as supporting guidance. This initiative is expected to support a proper and harmonised implementation of this legal provision guaranteeing a similar level of protection across the European organisations.

The Regulation however recognises that all the above mentioned protection principles are subject to limitations:

- in cases of wilful misconduct; and
- 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.

This balance between protection and safety is notably supported by the definition of 'Just Culture' (*Article 2*), by Article 16 and by several recitals. Indeed a 'just culture' should encourage individuals to report safety-related information but should not absolve individuals of their normal responsibilities (*Recital 37*).

Article 15 requires information derived from occurrence reports to be used only for the purpose for which it has been collected and prevents the possibility to share or use this information in order to attribute blame or liability or for any purpose other than the maintenance or improvement of aviation safety. It is understood that measures necessary for safety (e.g. suspension of a licence or requesting a person to do additional training) are not considered as apportioning blame or liability. Similarly, taking necessary actions in the

situations of exceptions detailed in Article 16(10), which might include measures attributing blame or liability, is not understood as being prevented by Regulation 376/2014.

The Regulation authorises the Member States to adopt or maintain in force legislative provisions ensuring a higher level of protection for reporters or for persons mentioned in occurrence reports than those described above (*Article 16 (6), (7) and (8)*).

27. Can the competent authority share information contained in the ECR and under what conditions?

The ECR being a European database, its access and use is subject to specific rules under EU law. The Member States and EASA shall ensure the compliance with the ECR access and use rules including for their local access to the European database.

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

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.

It should be clarified that no direct access to the ECR is allowed (*Article 10(4)*) except for the entities covered under Article 10(1) (see also question 21). It should also be highlighted that 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) except 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.

The third party receiving information from the ECR is responsible and liable of ensuring that use the information is only 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.

28. How shall States implement Article 16(12)?

Article 16(2) requires the Member State 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 question 25. 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.

The Regulation provides the Member States with full flexibility in deciding 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.

The 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
- On request of an organisation, reviewing its 'Just Culture' internal rules.

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)*).

The activities of this entity shall be reported to the European Commission in a report to be sent every five years.