



EU Accident Investigation Regulation 996/2010

Template Advance Arrangements

Introduction

Following Article 12.3 of Regulation No 996/2010 of the European Parliament and of the Council of 20 October 2010, “Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.”

The European Cockpit Association together with IFATCA has prepared a template Advance Arrangements based on the existing arrangements in Europe and the recommendations of ICAO.

When an air accident occurs, different processes are triggered at the same time. Each of them responds to a specific need and may have different modus operandi and different responsibility chains. These processes have legitimate objectives and take place in a by definition emergency situation where the individual players are under significant pressure. The objective of such advance arrangements should be therefore to define, before an air accident happens, the needs and roles of each of these processes to facilitate successful, coordinated and non-contentious operations of these different processes.

The proposed template Advance Arrangements are based on the following principles:

- Clear definition of roles, duties and responsibilities
- Determination of points of contact
- Mutual information on the needs and objectives of the processes
- All actors should realise the importance and legitimacy of the other processes and avoid damageable interference among the processes to preserve the overall general public interest.

This template shall be completed and adapted according to the national legislation and administrative framework and shall be made public in each Member State.

The conclusion of the Advance Arrangements cannot, as stated in Article 12.3, put into question the independence of the safety investigation authority and should allow the safety investigation to be conducted diligently and efficiently.

1. Access to the site of investigation

Notwithstanding article 11 of EU Regulation 996/2010 and article 3.4 of ICAO Annex 13, the access to the site of investigation will be granted under the following priorities:

- Rescue potential survivors
- Prevent destruction by fire or other causes
- Protect the site from being altered
- Preserve all evidences

With the aim of ensuring close collaboration with authorities responsible for judicial investigation and ensuring 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 be granted immediate and unrestricted access to the site of the accident.

2. Preservation of and access to evidence

Seizure

In addition to article 12.1 of EU regulation 996/2010, release of seized objects should only take place after consultations between the parties.

Destructive testing

Notwithstanding article 12.1 of EU regulation 996/2010 destructive testing should not take place unless after the documented agreement of both parties.

3. Initial and ongoing debriefings of the status of each process

Setting up the coordination process

If a judicial investigation is conducted, the nominated AIB point of contact will, without delay be informed by the judiciary point of contact and liaise with it to coordinate the organisation of both investigations.

Both parties will inform each other and coordinate about their investigative activities to be performed, the planning of these investigative activities in time, the seizure of objects and the arrangement of regular coordinating consultations during both investigations. This coordination process should be documented.

Progress of the investigations

On request, both parties will inform one another of the investigative activities performed and still to be performed, in so far as this is in the interest of the mutual investigations.

The information exchanged on the progress of the investigations will be used in strict confidence and exclusively for the purpose of the investigations. This information on the progress of the investigation shall not be disclosed or revealed to third parties, without written consent of both parties.

4. Exchange of information

Each party of this arrangement shall designate a permanent and up to date point of contact.

The AIB and the judicial authorities will appoint representatives (and inform the other party thereof) who are responsible for dealing with requests for provision of information and for providing it.

Provision of information

In so far as this is permitted within the laws and on a need to know basis, information will be shared in writing by the appointed parties on the principle of openly sharing factual technical evidence notwithstanding the need to avoid potential conflicts of interest and secrecy of the summary justified by a potential implication of one of the parties. Each organisation will keep a record of the information provided.

The request of information should be as concrete as possible and state the reasons for this request.

The following exceptions to this principle should be applied

- Statements and declarations made by people/persons involved
- Medical data or private information of persons involved
- Voice and image recordings
- Safety Data Collection and Processing Systems (SDCPS) as described in attachment E of ICAO Annex 13

If requested, statements of persons made within the scope of an investigation will be made available to the requesting party, provided that the person concerned has given his/her explicit consent thereto. If requested, medical or private information of persons which has been laid down within the scope of an investigation will be made available to the requesting party, provided that the person concerned (or surviving relative of this person) has given his/her explicit consent thereto. In any case the person concerned should be previously informed about their rights.

If requested by the judicial authorities, voice and image recordings and/or their transcripts can only be shared on a need to know basis if it concerns a criminal investigation into a case of hostage-taking, murder or a criminal offence with terrorist intention.

5. Appropriate use of safety information

Notwithstanding article 14 of the EU Regulation 996/2010, the information obtained in the process of an exchange of information will be used in strict confidence and exclusively for the purposes stated in the request in order to respect the fundamental rights of the persons involved, notably the right of privacy and due process. The information will not be disclosed or revealed to third parties, without the prior consent of both parties.

The use of SDCPS data beyond its intended aim should be carefully considered as it might impact the future availability of safety information and the efficiency of the concerned safety systems.

6. Resolution of conflicts

Disputes with respect to the cooperation and coordination between the parties within the scope of their investigations into a specific incident shall primarily be solved through consultations between the responsible representatives. If the dispute continues, as well as in case of general disputes on the interpretation and implementation of the present protocol, the next higher level representatives of each party will consult with each other. The independency of the AIB should be guaranteed throughout the process.