Just Culture Manual for ATCO, ANSE & ATSEP

Behavior after an incident and further proceedings
Disclaimer

This brochure was designed and written by SwissATCA (Swiss Air Traffic Controllers’ Association) based on Swiss Law, Swiss jurisdiction, national authorities’ setup and skyguide internal procedures, processes and guidelines.

Whereas the content about Just Culture is rather general and therefore valid across country borders, the parts about internal and legal issues as well as the Q&A in the annex are confirmed for and valid within Switzerland only. They will potentially need some adoptions to fit the legal setting, requirements and needs in your country and your company.

Thank you for your understanding.
Dear ATCO, ANSE & ATSEP

Latest developments in the balance between the administration of justice and safety – such as the implementation of EU Regulation No. 376/2014 – have led to court cases and financial penalty orders on ATCO employed by skyguide. While these cases are still ongoing, SwissATCA has decided to provide this booklet in order to show what is at stake and in particular to brief you in case you would have to face similar Just Culture issues and/or interaction with administration of justice.

Aviation is one of the safest modes of transport and cannot really learn anymore from accidents as they are too rare to provide learning opportunities. In order to, at the very minimum, keep the aviation system at the current level of safety, it is absolutely necessary to be able to understand that safety events themselves no longer tell us too much about safety. However, the way we respond to these events, how we adapt to different situations and circumstances and which lessons we learn tells us a lot about the health of the company and the wider ATM system.

Therefore, safety needs a prospective, forward-looking accountability and safety information becomes important to make the adequate changes. It is crucial to

- have safety-related events and issues reported,
- understand – in oversimplified words – the difference between ‘work as done’ and ‘work as imagined’ which is shaped by ‘work as prescribed’ in rules and procedures,
- listen to multiple narratives from all the stakeholders involved and
- share the experience and the ensuing information

in order to let the system evolve to a safer one for all those following us in the system.

This can only be achieved when individuals – no matter whether they are managers, project owners, engineers, ATSEP, ANSE or ATCO – are able, allowed and willing to share safety information by reporting incidents and other safety-related issues, and when there is a commitment to act on what is shared in order to learn and make things better.

Today’s challenge is that the reporter will only share this information if s/he can do this in an honest, non-discriminatory and non-punitive nature.

That is where Just Culture comes in. Just Culture is “a culture in which front-line operators and others are not punished for actions, omissions or decisions taken by them which are commensurate with their experience and training, but where gross negligence, willful violations and destructive acts are not tolerated” [European Commission, Eurocontrol & IFATCA]. It is one means to achieve a better working environment by holding people accountable – allow people to give and share their account – without punishing them and consequentially allowing the system to learn from past events.

Just Culture has found its way into many safety-critical business branches – such as transport, medicine, nuclear technology and more – and recent regulation acknowledges the need for protecting the reporter. However, that protection is not (yet) reflected in national legislation, nor has the administration of justice been given any guidelines regarding its important role in a “Just Culture”, which is both accepted by the current regulation.

Subsequently, that puts you as a front-line operator in a delicate position. This brochure has the aim to provide some useful information which you can use in cases where you have the requirement or need to share safety relevant intelligence with the Swiss aviation system.

Actually, we hope you will need this information – which will be continuously updated in order to reflect revised practices and regulations – as few times as possible, but in case, do not hesitate to check the brochure, contact your union board, one of the persons to contact and/or one of the two editors mentioned at the end of the document. We might not have an answer right away, but we will take care of your questions.

Thank you for your attention,

Your union boards
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1. Reporting

1.1. Why should I report?

Writing a report after having been involved in an incident often seems to be and feels like an inconvenient, time-consuming and worthless action. However, it is way more than that – and important and helpful in at least two different ways.

1.1.1. Safety

Reporting enables the company and your colleagues to understand what happened, to learn from past events and to make things safer. This means, it is about procedures, rules and standardisation and the potential difference between ‘work as done’ and ‘work as imagined’ (which is shaped by ‘work as prescribed’ in rules and procedures). But it is also about revealing the double binds, tensions and conflicting goals that are played out within the system day in and day out and which are hidden to those who can make the difference by adapting or changing your working environment accordingly.

1.1.2. Law

Reporting is compliant with applicable law and hence enables the company to support you. By law any incident with a safety-relevant aspect has to be reported. In other words, failing to report will place you in breach of the law and a committed offence. It will not be regarded as a mistake and, in case of detection, you will be prosecuted regardless of the actual event/incident, as it is a breach of criminal law – and you will be treated as such.

1.2. Double bind situation

We are highly interested in a continuously improved and safer working environment, which is why SwissATCA fully supports the established reporting processes and asks you to keep on reporting any safety-relevant event. Furthermore, SwissATCA does not want to be confronted with any legal issues based on non-compliance with law.

On the other hand, we are well aware that reporting may raise questions about accountability and possible legal proceedings, but none of these issues may be solved by non-reporting.

There is no way out of this so called “double bind” situation, where opposing interests of safety and judiciary have to be served and satisfied. However, SwissATCA would like to emphasize:

- It is not about convenience.
  Reporting is not only important for safety but also a legal requirement and therefore compliant with applicable law. Reporting shall be a normal routine after having been involved in an incident.

- It is not about time.
  Reporting is about your very own, your colleagues’ and your company’s safety and reputation.

- It is not worthless.
  Reporting enables the whole ATM system to get safer.

- It is about content.
  Reporting can be done in many different ways, from a very short, factual and static report to a very descriptive and safety-wise helpful, but possibly self-incriminating report of the occurrence.

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1 It is recognized that the operational community is bound to rules, but that there are circumstances where the underspecification drives the human to resolve the limitations of procedures that were never envisaged.

2 EU Regulation No. 2015/1018, Annex III (check Chapter 12.)

3 Safety-relevant’ covers more than the regulation and includes whatever you think of as worth being reported with regard to safety.
1.3. How to report?

At skyguide you can report via the known channels (OIR, SIR, LogOPS). Agreements on the use of data are in place between the various parties (e.g. skyguide, unions, STSB). In case, you do not see an internal channel as an option a SWANS report may be filed which goes directly to the FOCA.

1.4. What to write and what to avoid?

This is a crucial point. As an operator involved in an incident and required to report accordingly, you will find yourself in the double bind situation mentioned above 4.

From a safety point of view, it is best to provide as much information as possible. From a legal point of view, it is best to keep the information as short and factual as possible.

SwissATCA would like to emphasize that

- the language used in filing a report shall be neutral,
- no names shall be stated (neither first/last names nor initials),
- the information provided shall be kept short and factual in order to protect yourself, especially from unintentional and unconscious self-incrimination,
- the information provided shall be fact-bound, non-emotional and refrain from finger pointing,
- judgments, assumptions and/or interpretations shall not be part of an OIR,
- wording such as e.g.  
  - “I forgot…”
  - “I assumed…”
  - “I was not aware…”
  - “I was sure the aircraft….”
  - “I thought it might…”
  - “The pilot promised to….”, etc.
- shall be avoided.

The data you provide – once submitted – may end up with your head of unit, the STSB or a prosecutor and/or be used at a later stage. If in doubt or in case of questions about the wording/language to be used in filing a report, do not hesitate to ask a member of your union board.

1.5. Once I have made a report – what will happen?

When using the skyguide portal to submit an OIR, after hitting the send button predetermined skyguide internal recipients – including the Safety Investigation department (SI) – get an email stating an OIR has been filed, containing the original OIR attached without the name of the writer.

In SODA (Safety Occurrence Database) – and independently of the ‘confidentiality status’ chosen by the writer when filing the OIR – SI and the DMS get the information with all the details. All the other users have access to all the details except the names.

1.6. Barriers to reporting

Apart of the issues mentioned above 5, there are two major barriers:

- No subsequent action: reports are often seen as one-way street as the output is rarely visible.
- Judiciary: aviation has raised the attention of the judiciary.

SwissATCA is well aware of these two issues, including the fact that legal action following a report is proved to have a negative influence on the reporting itself and consequentially on safety.

Therefore, SwissATCA strongly supports each and every initiative that fosters a Just Culture environment.

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4 Check Chapter 1.2.
5 Check Chapter 1.1.
2. **Just Culture**

2.1. **Definition**

“Just Culture is a culture in which front-line operators and others are not punished for actions, omissions or decisions taken by them which are commensurate with their experience and training, but where gross negligence, willful violations and destructive acts are not tolerated.” [European Commission, Eurocontrol & IFATCA]

2.2. **What Just Culture is**

Just Culture is about safety. It is a question of mindset, about fostering a constructive environment by which individuals can share their accounts to add to our knowledge of how the ATM system works. In doing so, Just Culture is a mechanism that allows to uncover pertinent aspects of the operation that are traditionally hidden.

The concept of Just Culture represents the fundamental recognition that both aviation safety and the administration of justice would benefit from a carefully established equilibrium, moving away from fears of criminalisation, balancing and satisfying the interests of two unique and basically not compatible worlds: The world of safety and the world of justice.

2.3. **What Just Culture is NOT**

2.3.1. **Nothing quick or unambiguous**

Just Culture is not about quick fixes, clear rules, strict guidelines or a set of given norms. It is about a constant interaction

- between Safety and Judiciary to satisfy both needs,
- with internal, organisational justice processes.

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2.3.2. No absolution, no “no blame culture”

Just culture does not mean complete protection of front-line operators in the event of aviation incidents and accidents. Particularly, it does not offer protection in case of gross negligence, willful misconduct and/or destructive acts, severe and serious disregard of an obvious risk and/or profound failure of professional responsibility. E.g.: Just Culture covers a reported incident – but not the omission of reporting!  

If the company reveals doubts about the mentioned exclusions from protection, even internal Just Culture might come to an end.

2.3.3. No valid term in the legal world

FOCA, STSB, the Swiss Legislator and the EU have all acknowledged the importance of Just Culture, even though implementation of its principles is still lagging behind, especially in the criminal law. As Judiciary is bound to the law – with little to no scope to deviate from it for the benefit of Just Culture and/or the accused – it is subject to a case by case appreciation by the competent judicial authority.

2.4. No one-way street

Just Culture is not a given concept from the outside world. Based on a mindset, a way of thinking and behavior and a constant give-and-take, it is fair to expect a just and fair treatment from the outer world. But at the very same time we have to be just and fair towards the outer world, too. Otherwise this two-way road will come to a dead end.

The outside world does not (yet) care about Just Culture.

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7 Technically, in some circumstances, not reporting becomes a crime
3. **Safety Investigation**

Schematic view of the investigation process.

3.1. **Internal investigation**

SI writes a FOCA/STSB notification (formerly known as ATIR) for external use if necessary, gathers all the relevant data – possibly including an interview with the respective individual – and does the internal investigation which will be finalized by an internal report.

This investigation invites each involved party to tell its account, there is no counterfactual, judgmental or blaming speaking, the main objective is the intention to learn and the report’s only aim is to improve system and organisational safety within skyguide.

This report remains internal, unless judiciary requests access to it at a later stage.

**Internal investigations follow the Just Culture principles.**

3.2. **External investigation (STSB)**

If the STSB decides to investigate, you will be informed accordingly by SI and/or the STSB.

In case of a STSB investigation you
- will be required to follow the instructions by the STSB,
- may be required to attend an interview.

We strongly suggest to
- prepare yourself for the interview – check your notes and the information by skyguide,
- be accompanied by a person of trust or a lawyer.
After gathering all the required data, the STSB will come up with a draft report. The involved parties – and in most cases the respective union – have the opportunity to give an opinion. That is the moment to carefully check the report for critical wording, formulations and/or interpretations. Nevertheless, there is no right to alter or reword the written STSB report.

The STSB will collect the inputs, adapt the report if deemed necessary and publish its final report.

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### STSB investigations mainly follow the Just Culture principles.

#### 3.2.1. Rights and duties during a STSB investigation

When being interviewed by the STSB, you are assigned the status of an informant. Regardless of how you are connected to the incident, whether involved directly or not, you have the right to refuse to testify.

In case you provide any information in an STSB safety investigation interview, this information may only be used in possible criminal proceedings with your consent.

> "The information that any person provides in terms of a safety investigation may only be used in criminal proceedings with that person’s consent." (Art. 24 OSITI)

**Caution:**

Despite the clearly formulated regulation the STSB may ask you to declare whether you want the information to be accessible for other parties or not.

- "yes" = the information may be used in possible criminal proceedings
- "no" = neither a prosecutor, your lawyer, your union nor skyguide will have access to the data provided.

**SwissATCA suggests to say “no”!**
4. Judiciary

According to Art. 6 and 7 of the Swiss Criminal Procedure Code\textsuperscript{10} criminal justice authorities are obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed.

Furthermore, in Switzerland – as one of the only countries around the world – accident or incident reports can explicitly be used in a possible court case\textsuperscript{11}.

Therefore, when a STSB notification or report is published it will most probably be screened by the Federal Attorney and then distributed to the cantonal judiciary authorities – a prosecutor will seek as much information as possible at various levels (e.g. skyguide, STSB, FOCA etc.) – in order to determine if a prosecution has to be started or not. The diagram in chapter 4.2. shows the possible process.

4.1. Intention

In simple terms, the criminal law intends to protect the lives and physical integrity of everyone from harm, or even from the imminent danger of being harmed. This protection unfolds on a very broad level, with most relevant provisions on the criminal law dating back to a pre-aviation era.

In case of an incident or accident, the criminal justice system is intended to elaborate if

- the event is a consequence of the action or omission of an individual,
- an action or omission, which resulted in an unwanted outcome, is violating any provisions of the criminal law, and
- an individual can and should be punished for the action/omission which led to said incident or accident.

There are defined rules for investigating possible violations of the criminal law. In Switzerland the Swiss Criminal Code, Art. 237 “Disruption of public traffic”\textsuperscript{12}, will be one of these rules that may be subject of an investigation, as well as other laws that may be applicable.

In order to determine whether a law has been violated a prosecutor will refer to other rules and regulations which are binding for the involved individual. In other words: To draw the line between acceptable and unacceptable behavior, ‘work as imagined’ will be confronted with ‘work as done’.

The right to draw that line is a prerogative of the justice, despite the regulations put in place at international and European level.

A judicial investigation is a normal part of the consequences of a serious incident. An indictment is not, neither is a sentence!

Legal investigations do NOT follow Just Culture principles.

\textsuperscript{10}\textsuperscript{StPO/CPP SR 312.0 (check Chapter 14.)}

\textsuperscript{11}\textsuperscript{Switzerland has filed a difference to ICAO Annex 13, Art. 5.12.}

\textsuperscript{12}\textsuperscript{Swiss Criminal Code, Art. 237 “Disruption of public traffic” – StGB/CP SR 311.0 (check Chapter 13.)}
4.2. The prosecutor’s approach

Schematic view of the prosecutor’s approach in a potential tort of negligence.

4.3. Three possible outcomes

Whenever the prosecutor’s office decides to pursue a prosecution, the following three outcomes are possible:

- Suspension (of further legal proceedings)
- Penalty order
- Criminal charge (court case)
  - Acquittal
  - Conviction
  - Settlement

This is normal jurisdiction. As long as there is no valid penalty order/conviction you are presumed innocent.

4.4. Interaction between stakeholders

It is important to understand that in criminal proceedings, the relation and interaction are solely between the prosecutor office and the individual. Skyguide needs to be informed of course, so shall the union. However, the prosecutor will address you as an ATCO/ANSE/ATSEP directly and individually.

In such a case, you will receive a letter directly from the prosecutor office or a penalty order from the Federal Prosecutor.

Please immediately inform a member of your union board and skyguide (CR) and do not act individually!
4.5. Rights and duties during a criminal investigation

When interviewed by a prosecutor you will have different rights, depending on the status\textsuperscript{13} you have been assigned by the respective authority. This status will be communicated to you prior to the interview.

- **Accused person**
  A person is considered to be accused if there is sufficient evidence to suspect that she/he has committed a criminal act, after the act has been reported to the criminal authorities.
  - Right to refuse to testify/give evidence at any given stage

- **Informant (Person who can help clarify circumstances of the criminal act)**
  A person who is not considered to be accused because of a lack of evidence indicating his/her criminal responsibility. Depending on the development of the procedure, such a person may later be formally accused as being the perpetrator or a participant to the criminal act.
  - Right to refuse to testify/give evidence at any given stage

- **Witness**
  A person who has not committed a reprehensible act – “not involved” in the incident – but can help clarify the circumstances of the accident/serious incident for having witnessed the criminal act.
  - Duty to testify/give evidence, unless you are in a private relationship (partner/relative) with the accused person and/or you would incriminate yourself.

No matter what status you will be assigned to, the basic rules are:

- You have to follow the invitations by the Judiciary for examination hearings.
- You need a lawyer to defend you.
- You get access to all the documentation.
- You will be explained your acts, rights and duties according to your status.
- You have the right to refuse to testify/give evidence (except for the witness status).
- You are innocent until further notice.

\textsuperscript{13}Art. 113, 157 et seqq., 162 et seqq., 178 et seqq. StPO/CPP
5. **Data handling**

According to Art. 23 of the “Ordinance on the Safety Investigation of Transport Incidents” (OSITI), the prosecution and administrative authorities and the STSB shall coordinate their activities and provide each other with investigation documents, assessments and records free of charge.

OIR, first infos, investigation reports (both internal and external), radar plots, records and radio transcripts will (have to) be handed over to judiciary if requested so.

Nonetheless, as mentioned before 14, the information a person provides in terms of a safety investigation may only be used in criminal proceedings with that person’s consent. This means the statements made during an STSB interview cannot be used as evidence in a possible court case. However, a prosecutor may still read and use them as basis for his work.

[According to the present handling by the STSB access to the STSB file is only granted to the person who is willing to provide and guarantee protection of the data according to Art. 24 OSITI. Last checked in July 2017, this data handling has been accepted by the Judiciary.]

6. **Expenses and fees**

During an investigation, legal proceedings and/or a court case there will be no expenses for you. The fees for your lawyer will be paid by your union or by skyguide, depending on the status of the procedure and/or the agreement between your union and skyguide.

14 Check Chapter 3.2.1.; Art. 24 OSITI
7. Licensing and work

7.1. MOSI

At skyguide the social partners have negotiated a process called Management of Serious Incidents (MOSI). This process is separate from the safety investigation and only aims at establishing a protective approach towards the individual involved in a serious incident and the company’s reputation. Provisional suspension from work at your working place/endorsement might be a consequence of such a process. This is not, in any way, an attribution of blame or guilt, it is a protective measure until the initial internal or STSB investigation have been launched.

This procedure is linked to the EU ATCO license. In case you are involved in an incident triggering MOSI, you are requested and you will get instructed to contact a CISM peer to discuss with him/her the need for CISM.

The MOSI process will discuss and decide on the future of an involved employee inside skyguide. In certain cases, skyguide might decide not to let the operator work with her/his endorsement again.

7.2. Safety Arbitration Process (SAP)

Although this is not foreseen by the EU Regulation No. EU376/2014, skyguide has used the issue of and concerns about corporate reputation to justify such decisions in the past. If someone feels treated incorrectly – namely not according to Just Culture principles – the newly implemented Safety Arbitration process may be initiated in order to clarify the situation and to determine whether the line between acceptable and unacceptable behavior has been crossed.

In certain cases, FOCA as the competent authority might decide to issue certain doubts on the competence of an license holder following an incident. The competency scheme will assist skyguide and the regulator to take a decision. Again, this is not linked to the incident itself but rather to the role the competent authority has been allocated by the EU Regulations.

7.3. Exception

EU Regulation No. 376/2014, Art. 16 (10), says the following:

“The protection (….) of this Article shall not apply to any of the following situations:

a. in cases of willful misconduct;
b. 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.”

Clause a) is part of the Just Culture definition and less delicate than clause b), which might put some doubts on the competence of an operator involved in an incident. Internally, these potential doubts may be discussed and evaluated by the Safety Arbitration Process, but the latter has no influence to the view of the outside (judiciary) world.

SwissATCA is aware of this potential issue and constantly studying the development of the operational, political and legal environment.
8. Persons to contact

In case of questions in regard of any topic mentioned in this brochure – and especially Just Culture issues – do not hesitate to contact your union board. Additionally, we are pleased to have a number of people at hand, all of them with a broad and thorough knowledge of the different topics mentioned in this booklet. Furthermore, some of them took part in the Prosecutor Expert Course by Eurocontrol/IFATCA.

For more information check with your union board.

We might not have an answer right away, but we will take care of your question.
9. Summary – Conclusions & Recommendations

9.1. Reporting

Reporting is primarily about safety and enables the whole ATM system to continuously improve to a safer working environment. That is why SwissATCA fully supports the reporting process and asks you to keep on reporting any safety-relevant event, keeping in mind:

- the language used in filing a report shall be neutral,
- do not state first/last names
- keep the information short and factual in order to protect yourself, especially from unintentional and unconscious self-incrimination
- the information provided shall be fact-bound, non-emotional and refrain from finger pointing,
- judgments, assumptions and/or interpretations shall not be part of an OIR,
- wording such as e.g.
  - “I forgot…”
  - “I was not aware…”
  - “I assumed…”
  - “I was sure the aircraft…”
  - “I thought it might…”
  - “The pilot promised to…”, etc.
  shall be avoided.

9.2. Just Culture

Just Culture is about safety. It is about fostering a constructive environment by which individuals can share their accounts to add to our knowledge of how the ATM system works. This includes a constant interaction between Safety and Judiciary to satisfy both needs, which implies that Just Culture is neither an absolution, nor a “no blame culture”.

9.3. External investigation (STSB)

SwissATCA strongly suggests to

- prepare yourself for the interview – check your notes and the information by skyguide,
- be accompanied by a person of trust or a lawyer,
- carefully check the draft report for critical wording, formulations and/or interpretations.

9.4. Judiciary

A judicial investigation is a normal part of the consequences of a serious incident. An indictment is not, neither is a sentence!

In case you get involved into any judicial actions, please immediately inform a member of your union board, skyguide (CR) and do not act individually.

The basic rules are:

- You have to follow the invitations by the Judiciary for examination hearings.
- You need a lawyer to defend you.
- You have the right to refuse to testify/give evidence (except for the witness status).
- You are innocent until further notice.
9.5. **Data handling**

- **Safety Data:**
  Data is not protected due to the provisions of the criminal code in Switzerland.

- **Safety Information:**
  Despite the clearly formulated regulation in Art. 24 OSITI, the STSB may ask you to declare whether you want the safety information provided to be accessible for other parties or not:
  - "yes" = the information may be used in possible criminal proceedings
  - "no" = neither a prosecutor, a lawyer, your union nor your company will have access to the data provided.
  SwissATCA suggests to say "no"/"not accessible".

9.6. **Insecurities and/or questions**

If in doubt about the wording to be used in filing a report, in case of questions about the processes or any other issue related to this booklet, do not hesitate to ask a member of your union board.
10. **Annex 1 – Q&A Just Culture**  

10.1. **Part 1 – skyguide internal**

10.1.1. **General**

- **What is the company’s strategy to foster the principles of a Just Culture?**
  Skyguide has been active for quite some time. Internally, Just Culture is an explicit part of discussions and decision-making at EB level. The company has developed and implemented a Just Culture policy.
  Externally, regular contact has been established with the FOCA, STSB and judicial authorities. Furthermore, skyguide has been involved in developing activities on an international level in order to support the worldwide Just Culture initiative.

- **Is there an established, internal process in regard of the handling of judicial proceedings (penalty order, lawsuits)?**
  Yes, there is. The process was implemented in the aftermath of the Überlingen accident. For further information check the Memo “Rights and Duties of an ATCO after a serious incident” by skyguide:
  - skyhub > Safety > Occurrence Management > STSB Investigation
  - skyhub > Tools > First Aid > Emergency Essentials

- **Is there an established set of guidelines on how an ATCO should act/react when being confronted with a judicial measure (penalty order/lawsuit)?**
  Yes, there is. Information is given to ATCO trainees during introduction course. For further information check the Memo “Rights and Duties of an ATCO after a serious incident” by skyguide:
  - skyhub > Safety > Occurrence Management > STSB Investigation
  - skyhub > Tools > First Aid > Emergency Essentials

- **Is there a designated single point of contact within skyguide for an ATCO involved?**
  Simone Rossier, Head of Legal Services skyguide (CR).

- **Who/what is the SGI?**
  The SGI is an internal body, the purpose of which is to identify any event or situation which may require legal, political or communication attention, in order to anticipate and prepare any necessary measure on the side of skyguide. It was created upon request of the BoD in order to capitalize on the experience acquired after the Überlingen collision.
  The SGI is composed of representatives of all concerned units (O, S, H, DC, CR) and is chaired by Head of Legal department (CR).
  The objectives of the SGI are to provide adequate legal, psychological and communication support to employee(s) involved in serious safety occurrences as well as to skyguide itself in order to prevent or minimize the negative impact of legal or other proceedings against a staff member or the company.

10.1.2. **External relations**

- **Is there an established process between skyguide and FOCA/STSB/judicial authorities in regard of the handling of legal proceedings?**
  There is no formal agreement as skyguide is not a party to these procedures. However, there is a continuous exchange between skyguide and the relevant authorities on a number of topics.

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18 The Q&A was originally developed for SwissATCA ATCO. Nevertheless, most of the answers are valid for ANSE/ATSEP and MIL ATCO as well.
- For reasons of simplicity and in order not to potentially challenge the correctness of the answers we have got, we decided to stick to the expression “ATCO” in Annex 1 for the moment.
- For reasons of lacking information, we were yet not able to cover all the relevant issues for MIL ATCO as well.
Thank you, ANSE/ATSEP and MIL ATCO, for your understanding.
• Is there a set of established relations to other HRO (SWISS, SBB/CFF, medicine, nuclear industry, etc.) in order to harmonize the efforts in fostering a Just Culture?

Skyguide is in a continuous exchange with other HRO such as SWISS, nuclear power plants and others. However, so far skyguide experiences quite a gap between the level of Just Culture within aviation and the level of Just Culture achieved in other fields. Discussing and elaborating further developments are therefore pretty delicate.

It is important to understand that judiciary has to play along. Whereas aviation (and other branches) are very dynamic, flexible and international, the legal system is rather static, resistant to change and national. It is all about bringing these two different worlds together.

10.1.3. Employment

• What happens to your license, endorsement and rating in a case of an incident?

At skyguide the social partner negotiated a process called Management of Serious Incidents (MOSI). This process aims only at establishing a protective approach towards the ATCO involved in a serious incident and the company’s reputation. Provisional suspension from work at your working place/endorsement might be a consequence of such a process. This is by no means an attribution of blame or guilt, it is a protective measure until the initial internal (or STSB) investigation have been launched. MOSI and further established processes will discuss and decide on the immediate and long-term future of an involved ATCO inside skyguide. In certain cases, skyguide might decide not to let an ATCO work at his endorsement. Although this is not foreseen by the EU Regulation No. 376/2014, skyguide has used the reputational issues to justify such decisions in the past. The Safety Arbitration process might be used to determine if the line of acceptable and/or unacceptable behavior has been crossed. In certain cases, FOCA as competent authority might decide to issue certain doubts on the competence of an ATCO, following an incident. The competency scheme will assist skyguide and the regulator to take a decision. This is not linked to the incident but rather to the role allocated to the competent authority by the EU Regulations.

• What happens during the legal procedure?

During a legal procedure the probability of being taken away from operations/your endorsed working position in order to protect both the ATCO and the company is considerably raised. However, as long as there is no legally valid conviction, skyguide considers its employee as not guilty and all current employment agreements are continued.

• Is there any impact on the ATCO’s employment by skyguide by a penalty order/judicial procedure respectively by a legally valid conviction?

From the starting point of ‘no negligence or deliberate act involved’, skyguide’s policy is to continue to employ the member of staff, though sometimes this needs to be in a different position from the one in which s/he was convicted. Each instance is dealt with on a case-by-case basis, but an ATCO who has done her/his job to the best of her/his ability should have no concerns that the employment with skyguide will be terminated.

• Will an ATCO in case of a legally valid penalty order/conviction continue to be employed and work as an ATCO for skyguide?

Usually, yes – although exactly the same location and validation might no longer be possible, for reasons of the company’s reputation or because the ATCO no longer wants to work in that position. Overall, any measure that might be taken need to be a balance of the best interests of the ATCO involved and the company.

10.1.4. Reporting

• Is there a need to report?

By law any incident has to be reported. Failing to report will place you in an illegal situation as not reporting will not be regarded as mistake but as a violation (s. EU regulation No. 376/2014 resp. EU Commission Implementing Regulation No. 2015/1018).
• How to report?
At skyguide you can report via the known channels (OIR, SIR, LogOPS, etc.). Agreements on the use of data are in place between the various parties involved (e.g. skyguide, unions, STSB).

• What does an ATCO have to write in a report?
ATCOs shall report the facts of an incident or a lesson-learning event in a short, non-emotional way.

• What should an ATCO NOT do?
Whatever you write in a report should be fact-bound, non-emotional and refrain from finger pointing and/or self-incrimination. Details of the incident will be revealed during the investigation. Wording such as e.g.
  – “I forgot to…”,
  – “I assumed”,
  – “I was not aware…”,
  – “My focus was at…”,
  – “I assumed that…”,
  – “I thought I might have…” shall be avoided.

• Why is it so important to choose the correct wording?
An OIR is always checked by the local RIT and – in case – rewritten before being forwarded to the relevant authorities. Furthermore, an OIR will always be de-identified before that process. However, the outside world does not – for legitimate reasons – care about Just Culture. In front of a prosecutor no data can be protected and the wording in the published OIR (meaning the one by RIT, the one written by the ATCO remains internal) respectively the following, official investigation report might influence the prosecutor.

• What will happen after reporting?
When using the skyguide portal to submit an OIR, about 30 internal recipients receive a notification that an OIR has been filed. The OIR is attached to the mail notification. The investigation unit – including ATCO investigators – will take their decision whether to start an investigation or not. The RIT will transform the OIR to an ATIR and send it to the relevant authorities. The STSB will decide whether to start an investigation or not.

• If a OIR is filed is my operational boss informed?
Yes. About the fact an OIR has been filed, not about your name, unless you filed it non-confidential.

• If an OIR is filed is my operational boss entitled to discuss ahead of the internal safety investigation the incident?
For a limited number of SIR/OIR it is understandable and okay for the S Dept and the ATCO that the line manager discusses the case while the internal investigation is still ongoing. However, if a line manager directly speaks to an ATCO who filed a confidential report, puts pressure on that person following a report or intends to prohibit the writing of a report, the SAP (Safety Arbitration Process) may be launched. Basically, the SAP can be activated in case of misuse of safety process/data/information.

10.2. Part 2 – External

10.2.1. Support skyguide

• How will skyguide support the ATCO involved?
Skyguide will organize legal support, take charge of all the expenses in connection to the proceedings through its legal insurance (as long as the ATCO is accused, informs CR and complies with its directive and the terms and conditions of the insurance) and support the ATCO – with the presumption of innocence – throughout the legal proceedings until a legally valid verdict will have been entered into force.
• How does the CAP insurance work? (Payment of premium, beneficiary of insurance, independence?)
ATCOs – and some other employees possibly concerned by judicial actions – are insured by CAP (legal protection insurance company) against criminal proceedings committed by negligence and against external administrative proceedings regarding licensing as well. The insurance fees are taken charge of by skyguide. The ATCO may propose a lawyer of her/his choice or ask CR for a suggestion, but the CAP must validate this mandate before any action. This external lawyer is absolutely independent from skyguide and defends the ATCO’s sole interests. CR coordinates the actions to be taken.

• Who will be my lawyer?
You can choose your own lawyer. Skyguide is paying a legal assistance fund. The legal insurance is limiting the payment of the lawyers honorary according to the expertise of the defense lawyer. Skyguide maintains a list of defense lawyer who are entitled to be reimbursed at the full rate by the insurance company for this specialty.

• Should an ATCO involved in an external investigation inform the respective union?
An ATCO is strongly advised to inform the respective union as soon as s/he gets involved into an external investigation (STSB, FOCA, judicial authorities).

10.2.2. Safety investigation (STSB)

• Is it legal to refuse to testify/give evidence in a safety investigation?
When being interviewed by the STSB, you are assigned the status of an informant. Regardless of how you are connected to the incident, whether involved directly or not, you have the right to refuse to testify at any given stage.

• What happens to the safety information provided in an interview?
In case you provide any information in an STSB safety investigation interview, this information may only be used in possible criminal proceedings with your consent.

10.2.3. Law – Jurisdiction

• How and to which extent has EU regulation No. 376/2014 (Reporting, analysis and follow-up of occurrences including handling of safety relevant data) been implemented within Switzerland?
The EU Regulation No. 376/2014 became effective in Switzerland by mid-May 2016. It includes protection of data privacy, as well as some level of protection from legal proceedings for the person reporting an occurrence. The protection is however only granted to the extent prescribed under national laws. In Switzerland, this protection is excluded for criminal procedures, where the judicial authorities can use all the factual elements of the incident reports – access to the STSB file (including analysis and records) is granted to criminal authorities by law (could however be restricted or delayed for the purpose of STSB or another investigation) – to determine the relevancy of a judicial investigation or to use them as evidence. However, they can use statements made in interviews only with the written consent of the person concerned: “The information that any person provides in terms of a safety investigation may only be used in criminal proceedings with that person’s consent.” (Art. 24 OSITI)

• How does the STSB handle the effects of the EU Regulation No. 376/2014?
Access to the audio files, transcripts and the interview data is only granted if the person requesting access is willing to provide and guarantee protection of the data according to Art. 24 OSITI.

• What is NOT covered/protected by the EU Regulation No. 376/2014?
EU Regulation No. 376/2014 does not offer protection in case of willful misconduct, severe and serious disregard of an obvious risk, and profound failure of professional responsibility to take such care, etc. (see Art. 16 Par. 10). As mentioned above, any exemption from punishment provided in the regulation does not apply for proceedings that fall under the Swiss Criminal Code. The same is valid for NOT reporting in cases where you are obliged to report. Failing to report will place you in an illegal situation as not reporting will not be regarded as mistake but as a violation.
• Do the Judiciary have to investigate or not?
According to Art. 6 and 7 of the Swiss Criminal Procedure Code criminal justice authorities are obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed.

• Is there a statuary limitation period for incidents/accidents?
Differing from case to case, there is a statutory limitation period. In case of accidents and serious incidents committed by negligence, the limitation period for a judicial action is 10 years.

• Is there a maximum timespan between an incident and the starting of a legal investigation?
Within the statutory limitation, there is no limit in time for opening a legal investigation.

• Is there a criminal record in case of a legally valid penalty order/conviction?
Yes, there is.

• How/when will a criminal record be expunged?
Depends on the offense and the subsequent verdict. Generally, it is 10 years.

10.2.4. Legal Investigation/Proceedings

• If I receive an official letter from the prosecutor what do I have to do?
Inform immediately a member of your union board and skyguide (CR). Do not act individually.

• What does a letter from the prosecutor mean?
For one or another reason you got the interest from the judiciary. However, you are innocent until further notice – no matter what is written in the letter.

• What happens to me once I have received a letter from the prosecutor?
Invitations by the Judiciary for examination hearings must be followed, consequentially you will need a lawyer to defend yourself.
You will get access to all the documentation and you will get an explanation of your rights and acts according to your role.

• What’s the prosecutor’s job?
The prosecutor will have to determine if you violated any law in a negligent way with regard to the prevailing rules and recommendations.
In simple terms, the criminal law intends to protect the lives and physical integrity of everyone from harm, or even from the imminent danger of being harmed. This protection unfolds on a very broad level, with most relevant provisions on the criminal law dating back to a pre-aviation era.

In case of an incident or accident, the criminal justice system is intended to elaborate if
– the event is a consequence of the action or omission of an individual,
– an action or omission, which resulted in an unwanted outcome, is violating any provisions of the criminal law, and
– an individual can and should be punished for the action/omission which led to said incident or accident.

There are defined rules for investigating possible violations of the criminal law. In Switzerland the Swiss Criminal Code, Art. 237 “Disruption of public traffic”19, will be one of these rules that may be subject of an investigation, as well as other laws that may be applicable.
In order to determine whether a law has been violated a prosecutor will refer to other rules and regulations which are binding for the involved individual. In other words: To draw the line between acceptable and inacceptable behavior, ‘work as imagined’ will be confronted with ‘work as done’.

• Is it legal to start a legal investigation without informing/interrogating the ATCO involved?
Yes, it is. The Prosecutor will open a judicial proceeding as soon as he has suspicions about a criminal offense (could be after reading the STSB report). In second step, he could convene the ATCO for a hearing.

19 Swiss Criminal Code, Art. 237 “Disruption of public traffic” – StGB/CP SR 311.0 (check Chapter 13.)
• Is it legal to impose a penalty order without informing/interrogating the ATCO involved?
Yes, it is (though unusual).

• At what stage can an ATCO get involved into/be informed about legal proceedings by the judicial authorities?
At any given moment, depending on the way the legal authorities act and react.

• How to answer questions by the Judiciary?
You will be briefed by your lawyer and/or union representative. However, the principles are the following:
  – No interpretations
  – No judgments
  – No speculation
  – Stick to your own job/perception/duty and avoid answers about your colleagues
Furthermore, it is important to only answer the question of the prosecutor. There’s no need to give more information. If the prosecutor wants/needs to know more, it’s her/his duty to ask for it.

• Is it legal to refuse to testify/give evidence in a legal investigation?
This depends on the status you have been allocated by the Judiciary:
  – Accused person
    A person is considered to be accused if there is sufficient evidence to suspect that she/he has committed a criminal act, after the act has been reported to the criminal authorities.
    ➔ Right to refuse to testify/give evidence at any given stage
  – Informant (Person who can help clarify circumstances of the criminal act)
    A person who is not considered to be accused because of a lack of evidence indicating his/her criminal responsibility. Depending on the development of the procedure, such a person may later be formally accused as being the perpetrator or a participant to the criminal act.
    ➔ Right to refuse to testify/give evidence at any given stage
  – Witness
    A person who has not committed a reprehensible act – “not involved” in the incident – but can help clarify the circumstances of the accident/serious incident for having witnessed the criminal act.
    ➔ Duty to testify/give evidence, unless you are in a private relationship (partner/relative) with the accused person and/or you would incriminate yourself.

In case an ATCO gets involved into an external investigation, she/he should contact skyguide (CR), the respective union and the personal lawyer in order to get advice about how to act/react.

• Is there a difference whether an incident happens over Swiss or foreign territory?
Yes, there is. Authorities from both countries will get involved, both can declare themselves in charge and both can start safety and legal investigation. However, in the end the ATCO will be judged only once for the same infraction.

• Is there a difference whether a Swiss ATCO or an ATCO with another nationality is involved?
No.

10.2.5. Licensing

• Is there any impact on the ATCO’s license (issuance, revalidation, renewal, withdrawal, suspension) by a penalty order/judicial procedure respectively by a legally valid conviction?
De facto, licensing is an administrative process completely independent and separate from judicial proceedings. Furthermore, licensing is considered to be a safety process. Therefore, FOCA may raise doubts about the performance of an ATCO and consequentially take measure, but these are meant to be safety and not disciplinary measures. This is why the competency scheme and OQDS are so important to the protection of the ATCO and the company.

In other words: A legally valid criminal conviction does not necessarily mean troubles in regard of the ATCO’s license. Conversely an ATCO can get into licensing troubles even without being involved in an incident.
• **What reasons might exist leading to a revocation/suspension of a license?**
  A license suspension/revocation may be decided by FOCA if, based on their analysis of a safety event, they find ground to believe that the license holder no longer meets the requirements (skills, competence, training, etc.) to perform his/her safety related tasks.

• **Can the decision of a withdrawal/suspension of a license be appealed?**
  A withdrawal or suspension of the license is an administrative decision which may be appealed to the Federal Administrative Court (with the help of CR; costs and support for the appeal are covered by CAP insurance).

### 10.2.6. Investigation Reports

• **What to do with a draft report from STSB?**
  It is of utmost importance to check STSB reports for judicially critical wording and write a statement. The final report will be published (meaning that the Prosecutor will also have access to it and could decide to open a judicial proceeding based on it – a complaint is not necessary) and words such as – “forgot”
– “didn’t check”
– “instead of…”
– “should have…”, etc.
are crucial and may raise unnecessary attention.
In case of doubt or trouble, the ATCO shall contact the respective RIT and/or union.
It is important to add that this is not about hiding or covering up. It is about describing instead of judging, it is about explaining what was done and why, instead of showing what could have been done (but was not).

• **Do prosecutors have access to the STSB material, including transcripts and interviews?**
  Yes. In Switzerland, the judicial authorities can use all the factual elements of the incident reports – access to the STSB file (including analysis and records) is granted to criminal authorities by law (could be however restricted or delayed for the purpose of the STSB or another investigation) – to determine the relevancy of a judicial investigation. However, they can use statements made in interviews only with the written consent of the person concerned.

### 10.3. Part 3 – Just Culture

• **Is Just Culture dead?**
  No. Especially in aviation it has never been more alive than now, and it is increasing in importance in the political arena significantly. FOCA, STSB, the Swiss Legislator and the EU have all acknowledged the importance of Just Culture, even though implementation of its principles is still lagging behind, especially in the criminal law.

• **What does Just Culture stand for?**
  Just culture does not mean the absence of potential prosecution from the judicial system – it means ensuring that people do not get punished for doing their best at their job (even if they may have to submit to a judicial process).

• **What is Just Culture about?**
  Just Culture is not primarily a legal issue, it is much more a question of mindset. Just Culture is about safety. It is about fostering a constructive environment by which individuals can share their accounts to add to our knowledge of how the ATM system works. In doing so Just Culture is a mechanism that can reveal, can uncover pertinent aspects of the operation that are traditionally hidden.
REGULATION (EU) No 376/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 3 April 2014


(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1. This Regulation aims to improve aviation safety by ensuring that relevant safety information relating to civil aviation is reported, collected, stored, protected, exchanged, disseminated and analysed.

This Regulation ensures:

(a) that, where appropriate, safety action is taken in a timely manner based on analysis of the information collected;

(b) the continued availability of safety information by introducing rules on confidentiality and on the appropriate use of information and through the harmonised and enhanced protection of reporters and persons mentioned in occurrence reports; and

(c) that aviation safety risks are considered and dealt with at both Union level and national level.

2. The sole objective of occurrence reporting is the prevention of accidents and incidents and not to attribute blame or liability.

ANNEX III

OCCURRENCES RELATED TO AIR NAVIGATION SERVICES AND FACILITIES

Remark: This Annex is structured in such a way 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. However, this presentation must 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.

1. AIRCRAFT-RELATED OCCURRENCES

(1) A collision or a near collision on the ground or in the air, between an aircraft and another aircraft, terrain or obstacle (1), including near-controlled flight into terrain (near CFIT).

(2) Separation minima infringement (2).

(3) Inadequate separation (3).

(4) ACAS RAs.

(5) Wildlife strike including bird strike.

(6) Taxiway or runway excursion.

(7) Actual or potential taxiway or runway incursion.

(8) Final Approach and Take-off Area (FATO) incursion.

(9) Aircraft deviation from ATC clearance.

(10) Aircraft deviation from applicable air traffic management (ATM) regulation:

   (a) aircraft deviation from applicable published ATM procedures;

   (b) airspace infringement including unauthorised penetration of airspace;

   (c) deviation from aircraft ATM-related equipment carriage and operations, as mandated by applicable regulations.

(11) Call sign confusion related occurrences.

2. DEGRADATION OR TOTAL LOSS OF SERVICES OR FUNCTIONS

(1) Inability to provide ATM services or to execute ATM functions:

   (a) inability to provide air traffic services or to execute air traffic services functions;

   (b) inability to provide airspace management services or to execute airspace management functions;

   (c) inability to provide air traffic flow management and capacity services or to execute air traffic flow management and capacity functions.

(2) Missing or significantly incorrect, corrupted, inadequate or misleading information from any support service (4), including relating to poor runway surface conditions.

(3) Failure of communication service.

(4) Failure of surveillance service.

(1) Obstacle includes vehicle.

(2) This refers to a situation in which prescribed separation minima were not maintained between aircraft or between aircraft and airspace to which separation minima is prescribed.

(3) In the absence of prescribed separation minima, a situation in which aircraft were perceived to pass too close to each other for pilots to ensure safe separation.

(4) For example: air traffic service (ATS), automatic terminal information service (ATIS), meteorological services, navigation databases, maps, charts, aeronautical information service (AIS), manuals.
(5) Failure of data processing and distribution function or service.

(6) Failure of navigation service.

(7) Failure of ATM system security which had or could have a direct negative impact on the safe provision of service.

(8) Significant ATS sector/position overload leading to a potential deterioration in service provision.

(9) Incorrect receipt or interpretation of significant communications, including lack of understanding of the language used, when this had or could have a direct negative impact on the safe provision of service.

(10) Prolonged loss of communication with an aircraft or with other ATS unit.

3. OTHER OCCURRENCES

(1) Declaration of an emergency (‘Mayday’ or ‘PAN’ call).

(2) Significant external interference with Air Navigation Services (for example radio broadcast stations transmitting in the FM band, interfering with ILS (instrument landing system), VOR (VHF Omni Directional Radio Range) and communication).

(3) Interference with an aircraft, an ATS unit or a radio communication transmission including by firearms, fireworks, flying kites, laser illumination, high-powered lights lasers, Remotely Piloted Aircraft Systems, model aircraft or by similar means.

(4) Fuel dumping.

(5) Bomb threat or hijack.

(6) Fatigue impacting or potentially impacting the ability to perform safely the air navigation or air traffic duties.

(7) Any occurrence where the human performance has directly contributed to or could have contributed to an accident or a serious incident.
13. **Annex 4 – Swiss Criminal Code (Ext.)**

311.0

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

**Swiss Criminal Code**

of 21 December 1937 (Status as of 1 January 2017)

*The Federal Assembly the Swiss Confederation,*

based on Article 123 paragraphs 1 and 3 of the Federal Constitution¹,² and having considered a Federal Council Dispatch dated 23 July 1918³,

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**Art. 237 Disruption of public traffic**

Disruption of public traffic

1. Any person who wilfully obstructs, disrupts or endangers public traffic, in particular traffic on the roads, on water or in the air and as a result knowingly causes danger to the life and limb of other people is liable to a custodial sentence not exceeding three years or to a monetary penalty.

   If the offender thus knowingly endangers the life and limb of a large number of people, a custodial sentence of from one to ten years may be imposed.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.
14. **Annex 5 – Swiss Criminal Procedure Code (Ext.)**

312.0

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

**Swiss Criminal Procedure Code**

*(Criminal Procedure Code, CrimPC)*

of 5 October 2007 (Status as of 1 January 2017)

*The Federal Assembly of the Swiss Confederation,*

on the basis of Article 123 paragraph 1 of the Federal Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005²,

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**Art. 6 Principles governing investigations**

1 The criminal justice authorities shall investigate ex officio all the circumstances relevant to the assessment of the criminal act and the accused.

2 They shall investigate the incriminating and exculpating circumstances with equal care.

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**Art. 7 Obligation to prosecute**

1 The criminal justice authorities are obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed.

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¹ The criminal justice authorities shall investigate ex officio all the circumstances relevant to the assessment of the criminal act and the accused.

² They shall investigate the incriminating and exculpating circumstances with equal care.
## 15. Annex 6 – Documentation

### 15.1. Safety data protection

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### 15.2. Reporter protection

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### 15.3. Definition Just Culture

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<tr>
<td>ICAO</td>
<td>Assembly 38 (2013)</td>
<td>A38-3 / A38-4</td>
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<td>European Union</td>
<td>Regulation No. 996/2010 (OJ-L295/35)</td>
<td>Recital 24 §2 (10)</td>
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<td>IFATCA</td>
<td>Policy</td>
<td>LM11.2.1, p. 4.2.4.7</td>
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<td>Eurocontrol</td>
<td>Just Culture Policy</td>
<td>(Provisional council decision 2012)</td>
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## 16. References

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<tr>
<td>EU Regulation No.</td>
<td>2014/376</td>
<td>Reporting, analysis and follow-up of occurrences in civil aviation (incl. Guidance Material)</td>
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<td>EU Regulation No.</td>
<td>2015/1018</td>
<td>Laying down a list classifying occurrence in civil aviation to be mandatorily reported (according to Regulation)</td>
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<td>EU Regulation</td>
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<td>Investigation and prevention of accidents and incidents in civil aviation</td>
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<tr>
<td>ICAO Annex 13 Investigation (11th edition)</td>
<td>2016</td>
<td>Aircraft Accident and Incident</td>
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<td>ICAO Annex 19</td>
<td>2013</td>
<td>Safety Management (1st edition)</td>
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<tr>
<td>Luftfahrtsgesetz (LFG)</td>
<td>2017</td>
<td>SR 748.0, Articles 20, 24 – 26</td>
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<tr>
<td>Loi Fédérale sur l’Aviation (LA)</td>
<td>2017</td>
<td>SR 742.161, Article 23 – 24</td>
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<td>Ordinance on the Safety Investigation of Transport Incidents (OSITI)</td>
<td>2015</td>
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<td>MOSI Process</td>
<td>2014</td>
<td>Skyguide, MOSI manual (3rd edition)</td>
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<td>Safety Arbitration Process</td>
<td>2017/9</td>
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<td>2017</td>
<td>SR 311.0, Article 237</td>
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<td>Swiss Criminal Procedure Code (CPP/StPO)</td>
<td>2017</td>
<td>SR 312.0, Articles 6 – 7, 113, 157 et seqq., 162 et seqq., 178 et seqq.</td>
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### Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>ACAS</td>
<td>Airborne Collision Avoidance System</td>
</tr>
<tr>
<td>ANSE</td>
<td>Air Navigation Service Employee</td>
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<tr>
<td>ATCO</td>
<td>Air Traffic Controller</td>
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<tr>
<td>ATIR</td>
<td>Air Traffic Incident Report</td>
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<tr>
<td>ATSEP</td>
<td>Air Traffic Safety Electronics Personnel</td>
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<tr>
<td>CAP</td>
<td>Legal Protection Insurance Company</td>
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<td>CISM</td>
<td>Critical Incident Stress Management</td>
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<td>CR</td>
<td>Legal Services, skyguide</td>
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<tr>
<td>DMS</td>
<td>Domain Manager Safety</td>
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<td>EB</td>
<td>Executive Board, skyguide</td>
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<td>EXT.</td>
<td>Extract</td>
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<tr>
<td>FOCA</td>
<td>Federal Office of Civil Aviation</td>
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<td>ICAO</td>
<td>International Civil Aviation Organisation</td>
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<td>IS</td>
<td>Inadequate Separation</td>
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<td>MOSI</td>
<td>Management of Serious Incidents</td>
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<td>OIR</td>
<td>Operational Incident Report</td>
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<td>SI</td>
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<tr>
<td>SIR</td>
<td>Safety Improvement Report</td>
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<td>SMI</td>
<td>Separation Minimum Infringement</td>
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<td>SODA</td>
<td>Safety Occurrence Database</td>
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<td>STSB</td>
<td>Swiss Transportation Safety Investigation Board</td>
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<tr>
<td>SWANS</td>
<td>Swiss Aviation Notification System</td>
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<td>TIR</td>
<td>Technical Incident Report</td>
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19. Checklists

19.1. After a serious incident/accident (MOSI)

- Stay calm!
- Get yourself released from duty
- Contact a CISM peer
- Check with SPVR/Head of Unit whether MOSI shall be initiated
- Take notes and keep them safe and secure
  - Facts and figures
  - Additional information: What went awry from your perspective? What are the implications for safety?
- Report within 24h (OIR)
  - Keep it factual, short and simple
  - No names, no explanations, no assumptions, no accusations, no judgments
- Contact your union committee
- No information to third parties
  - Neither internal nor external

19.2. STSB investigation

- Follow the instructions by the STSB
- Never attend an interview unprepared and on your own
  - Check your notes
  - Check Memos by skyguide for further information
- Inform STSB about your companion/lawyer
- Contact your union board in order to get a companion/lawyer
- Contact skyguide/CR for company support
- Written correspondence with STSB upon consultation with your union/lawyer only
  - Keep it factual, short and simple
- You have the right to refuse to give evidence
  - Check with union/lawyer
- You have the right to protect your data from revealing to Judiciary
- Check the record carefully and only sign when its content reflects your statements/opinion
- Check the intermediate/final report and write a statement if necessary
  - Check with union/lawyer

19.3. Legal investigation

- Contact your union board
- Contact skyguide/CR for company support
- Invitations by the Judiciary for examination hearings must be followed
  - Check with union/lawyer
- You have the right to refuse to give evidence (except for the witness status)
  - Check with union/lawyer

19.4. Further information

Please check the two memos by skyguide:
- Memo “Rights and Duties of an ATCO after a serious incident”; and
- Memo “ATCO guidelines in case of STSB investigation”