

# **Just Culture Manual for ATCO, ANSE & ATSEP**

**Behavior after an incident  
and further proceedings**





## Disclaimer

This brochure was designed and written by HelvetiCA (Swiss 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 are confirmed for and valid within Switzerland only. They will potentially need some adaptions to fit the legal setting, requirements and needs in other countries and/or companies.

Furthermore, when we mention HelvetiCA, this most likely also applies to your own association. Simply replace HelvetiCA with the name of your association and contact the relevant representatives should you have any questions.

Thank you for your understanding.

## Dear ATCO, ANSE & ATSEP

Aviation is one of the safest modes of transport. That is great news and the achievement of decades of excellent work and of reporting and investigating occurrences in order to adjust and improve system safety. This remarkable evolution has led to an aviation system that 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 necessary 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 aviation and ATM system.

Safety, therefore, needs a prospective, forward-looking accountability. Open and insightful safety information becomes increasingly important to make adequate changes to allow the system to evolve to a safer one for all of us and our successors in the system.

This can only be achieved when individuals – no matter whether they are managers, project owners, engineers, ATSEPs, ANSEs or ATCOs – 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

- reporters will only share relevant information if they can do this in an honest, non-discriminatory and non-punitive environment – and will then cease giving that information when in doubt of the latter, while
- some developments in the balance between the administration of justice and safety have led to judicial proceedings against ATCOs employed by skyguide.

In other words: According to today's legal interpretation, if an incident or accident is not dealt with solely within the framework of Just Culture, but is investigated under criminal law, the protection of the source of information in safety investigations can no longer be maintained. This implies the problem of potential self-incrimination. Consequentially, current Swiss law undermines the willingness of those concerned to report or testify and thus weakens the efforts of Swiss aviation organisations – and implicitly that of society – to achieve the highest possible level of safety.

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 without punishing them and consequently 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. Even though Switzerland has taken measures to implement some first steps heading in the right direction, that protection is not (yet) reflected in national law nor has the administration of justice been given any guidelines regarding its important role in a "Just Culture".

Subsequently, that puts you as a front-line operator in a delicate double bind position, particularly in cases where you have the requirement to share safety information with the Swiss aviation system.

HelvetiCA is well aware of this situation and the fact that reporting may raise questions about accountability and possible legal proceedings. At the same time, HelvetiCA is particularly interested in a continuously improved and safer working environment and supports the established reporting processes as well as each and every initiative that fosters a Just Culture.

One means to do so, we hope, is this brochure. It has the aim to shed some light on that dilemma and provide some useful information regarding Just Culture, Reporting, Investigation and the Judiciary. We do hope you will need this information as few times as possible or ideally not at all. But in the case you do, please do not hesitate to check the brochure, contact your HelvetiCA representative or one of the persons mentioned in the booklet. We might not have an answer right away, but we will take care of your questions.

Thank you for your attention,

Central Board HelvetiCA

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# 1. Just Culture

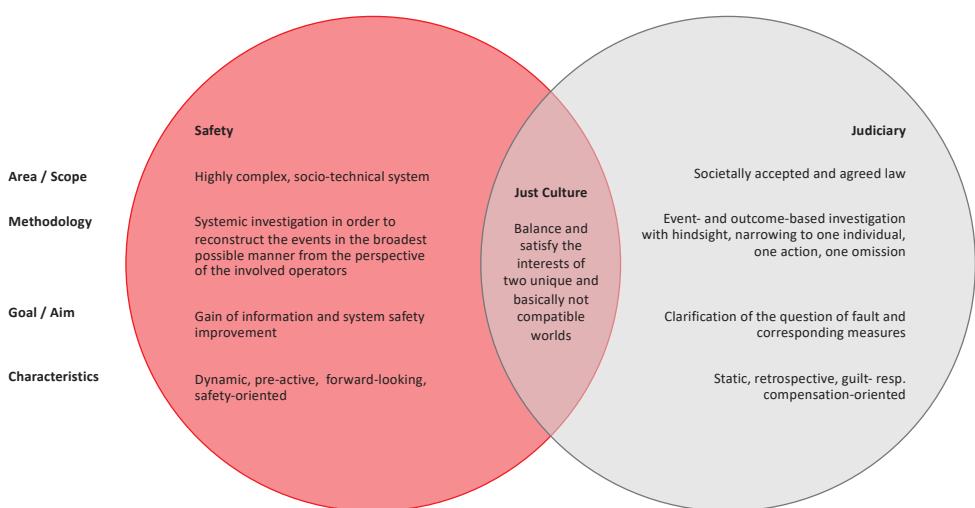
## 1.1. Definition

"Just Culture means a culture in which front-line operators and other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, willful violations and destructive acts are not tolerated!"

## 1.2. 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, whilst ensuring that people are not punished for doing their best at their job (even if they may have to submit to a judicial process).

The concept of Just Culture addresses the mutual recognition of two key functions, aviation safety and the administration of justice, and represents the fundamental recognition that both would benefit from a carefully established equilibrium, moving away from fears of criminalisation<sup>2</sup>, balancing and satisfying the interests of the two unique and basically not compatible domains.



<sup>1</sup> EU Occurrence Regulation 376/2014, Art. 2, §12 – adopted into EU law through EU Regulations 996/2010, 390/2013 & 376/2014.  
(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0376&from=EN>)

<sup>2</sup> "Words such as 'criminalisation' are sometimes used to describe misguided and unwarranted activities by the judiciary in the criminal law domain to address actions and events that should be dealt with in the safety domain." (Eurocontrol, Hindsight 28, p.47 ff., by Roderick van Dam/Maria Kovacova/Rony Licu; <https://www.eurocontrol.int/publication/hindsight-winter-2018>)

## 1.3. What Just Culture is NOT

### 1.3.1. 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.

- Externally: Between safety and judiciary to satisfy both needs.
- Internally: With organizational justice processes (OIR/TIR analysis process, investigation process, management of serious incidents (MOSI<sup>3</sup>) resp. safety arbitration process (SAP<sup>4</sup>), etc.).

### 1.3.2. 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!<sup>5</sup>

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

### 1.3.3. No valid term in the legal world

The Federal Office of Civil Aviation (FOCA)<sup>6</sup>, the Swiss Transportation Safety Investigation Board (STSB)<sup>7</sup>, 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.

<sup>3</sup> Check Chapter 7.1.1.

<sup>4</sup> Check Chapter 7.1.2.

<sup>5</sup> Technically, in some circumstances, not reporting becomes a crime.

<sup>6</sup> The Federal Office of Civil Aviation (FOCA) is responsible for aviation development and the supervision of civil aviation activities in Switzerland. The FOCA is part of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) and is charged with ensuring that the high safety standards in civil aviation in Switzerland are maintained, and with pursuing a policy of sustainable development. (<https://www.bazl.admin.ch/bazl/en/home.html>)

<sup>7</sup> The Swiss Transportation Safety Investigation Board (STSB) is the State authority of the Swiss Confederation which has a mandate to investigate accidents and serious incidents involving trains, aircraft, inland navigation ships, and seagoing vessels. The regulatory aim of this activity is to determine not only the direct causes of such events but also the more deep-seated reasons and other risks associated with them. The sole objective of this form of investigation is to acquire insights by means of which future accidents and hazardous situations can be prevented and which result in improved safety. However, the results of such a safety investigation are – according to law – not intended to clarify questions of blame and liability. (<https://www.sust.admin.ch/de/sust-startseite>)

#### 1.3.4. 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 same is valid for the internal world. As long as the above-mentioned exclusions (i.e. gross negligence, etc.) are found to be true, there is no reason to blame colleagues. Emotions during or right after an incident are normal reactions to an abnormal situation. However, HelvetiCA will not accept continuous, unfounded blaming of colleagues after an incident.

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

## 2. Reporting

### 2.1. 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.

#### 2.1.1. 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).<sup>8</sup>

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.

#### 2.1.2. Law

Reporting is compliant with applicable law<sup>9</sup> and hence enables the company to support you. EU 2015/1018, Annex 3<sup>10</sup>, provides a comprehensive list of incidents with a safety-relevant aspect that have to be reported.

Failing to report will place you in breach of the (criminal) law and having committed an offence. It will not be regarded as a mistake and, in case of detection, you will be prosecuted regardless of the actual event/incident.

### 2.2. Double bind situation

HelvetiCA is particularly interested in a continuously improved and safer working environment, which is why we fully support the established reporting processes and ask you to keep on reporting any safety-relevant<sup>11</sup> event.

On the other hand, we have the pillar of "nemo tenetur se ipsum accusare" in the Swiss Criminal Procedure Code<sup>12</sup>, i.e. the privilege against self-incrimination, according to which no one may be forced to incriminate himself in criminal proceedings.

<sup>8</sup> 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.

<sup>9</sup> EU 376/2014, Art.4, §1: "Occurrences which may represent a significant risk to aviation safety and which fall into the following categories shall be reported (...) through the mandatory occurrence reporting systems (...)." (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0376&from=EN>)

<sup>10</sup> EU Regulation No. 2015/1018 Annex III

- <https://skybrary.aero/articles/regulation-20151018-occurrences-civil-aviation-be-mandatory-reported>
- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:3A32015R1018&from=EN>
- [skyhub > Safety > Ops, Tech and Admin Personnel > Occurrence Management > Reporting](https://skyhub.skyguide.ch/portals/safety-portal/ops-tech-and-admin-personnel/occurrence-management/reporting)  
(<https://skyhub.skyguide.ch/portals/safety-portal/ops-tech-and-admin-personnel/occurrence-management/reporting>)

<sup>11</sup> 'Safety-relevant' covers more than the regulation and includes whatever you think of as worth being reported with regard to safety.

<sup>12</sup> The principle "nemo tenetur se ipsum accusare"

- states that no one has to incriminate himself. The core content is the right to refuse to testify. The principle is expressly enshrined in Art. 113 of the Swiss Criminal Procedure Code SCPC. "The accused may not be compelled to incriminate him or herself. In particular, the accused is entitled to refuse to make a statement or to cooperate in the criminal proceedings. He or she must however submit to the compulsory measures provided for by the law". Further partial aspects of the principle of "nemo tenetur" can be found in Art. 140, Art. 158, Art. 169, Art. 262 and Art. 265 SCPC. ([https://www.fedlex.admin.ch/eli/cc/2010/267/nn#art\\_113](https://www.fedlex.admin.ch/eli/cc/2010/267/nn#art_113))
- is explicitly mentioned in the SCPC, not in the Federal Constitution. Nevertheless, it enjoys constitutional status in doctrine and case law - not least due to the fact that norms of the International Covenant on Civil and Political Rights (ICCPR) are directly applicable in Switzerland like those of the ECHR.

Accordingly, some doctrine assumes that exceptions to the "nemo-tenetur principle" are (only) possible if there is a legal basis for them, such as EU 376/2014. This view is countered by another part of the doctrine with the (...) argument that the "nemo-tenetur principle" is enshrined in international law, which is why no actual exceptions can be possible in the law.  
(Dominik Valsangiocomo, 2016, [https://www.rwi.uzh.ch/dam/jcr:00000000-09ca-eb9b-0000-00006d435486/07\\_Valsangiocomo\\_Dominik\\_Nemo\\_Tenetur.pdf](https://www.rwi.uzh.ch/dam/jcr:00000000-09ca-eb9b-0000-00006d435486/07_Valsangiocomo_Dominik_Nemo_Tenetur.pdf))

This double bind, where opposing interests of safety and judiciary have to be served and satisfied at the same time, leads to a very unsatisfying situation:

- HelvetiCA understands that reporting may raise questions about accountability and possible legal proceedings, as Swiss Law does not protect the reporter of an unwanted situation according to international requirements and standards. However, none of these issues may be solved by non-reporting.
- HelvetiCA does not want to be confronted with any legal issues based on non-compliance with law.
- Currently, due to the wide-spread use of social media and sensationalism, both by private persons and/or media – we have to be aware that incidents will pop up sooner or later in the public and HelvetiCA (as well as your employer) prefers to be informed by you before being called by the journalists.

Presently, there is no way out of this double bind. However, HelvetiCA would like to emphasise:

**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.

## 2.3. How to report?

At skyguide you can report via the known channels (Operational Incident Report (OIR)/Technical Incident Report (TIR), Safety Improvement Report (SIR), LogOPS). Agreements on the use of data are in place between the various parties (e.g. skyguide, associations, STSB).

In case you do not see an internal channel as an option a report on the European Aviation Reporting<sup>13</sup> portal may be filed which is forwarded to the competent National Aviation Authority<sup>14</sup>.

*Note: According to internal regulations<sup>15</sup>, ATM Operators shall, whenever becoming aware of an occurrence requiring mandatory reporting, inform the SPVR as soon as possible.*

<sup>13</sup> European Aviation Reporting (<https://aviationreporting.eu/>)

• Follow-up of SWANS (Swiss Aviation Notification System)

<sup>14</sup> Switzerland: Federal Office of Civil Aviation (FOCA)

<sup>15</sup> Service Order SO020-0187E 0 2021, WEF 2021-09-01, "Safety Reporting - Mandatory Notification of SPVR".

Note: At the time of writing, this Service Order (SO) is under review as it possibly raises some issues related to EU 376/2014 and/or 996/2010. Nevertheless, the SO is valid until further notice.

## 2.4. 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<sup>16</sup>.

**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.**

HelvetiCA 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/TIR,
- 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 association board or one of the persons to contact<sup>17</sup>.

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

When using the skyguide portal to submit an OIR/TIR, after hitting the send button, predetermined skyguide internal recipients – including e.g. the shift supervisor, the head of unit and skyguide's internal safety reporting and investigation unit – receive an email stating an OIR/TIR has been filed, containing the original OIR/TIR attached without the name of the writer. Only a handful of dedicated people in skyguide's internal safety reporting and investigation unit have access to all the details. This is

- necessary in order to permit a decision about launching MOSI<sup>18</sup> and/or an internal investigation<sup>19</sup>, and
- independent from filing an OIR/TIR or SIR as “confidential” or not.

This “right of access” is valid for the immediate information about the OIR/TIR and – at a later stage – for skyguide's internal safety database.

<sup>16</sup> Check Chapter 2.2.

<sup>17</sup> Check Chapter 9.

<sup>18</sup> Check Chapter 7.1.1.

<sup>19</sup> Check Chapter 3.1.

## 2.6. Barriers to reporting

Apart of the issues mentioned above<sup>20</sup>, there are two major barriers:

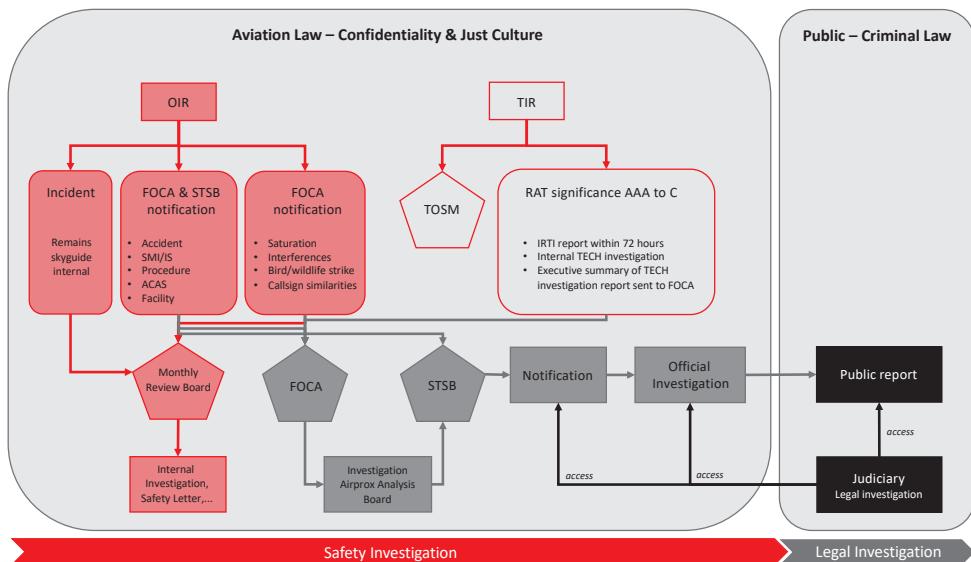
- No subsequent action: reports are often seen as one-way street as the output is rarely visible.
- Judiciary: aviation has raised the attention of the judiciary.

HelvetiCA 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 consequently on safety. Therefore, HelvetiCA strongly supports each and every initiative that fosters a Just Culture environment – including a favourable Reporting Culture.

<sup>20</sup> Check Chapter 2.1./2.2.

### 3. Safety Investigation

Schematic view of the investigation process.



#### 3.1. Internal investigation

Based on the submitted OIR/TIR, skyguide's internal safety reporting and investigation unit 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 finalised by an internal report.

This internal investigation invites each involved party to tell its account. There is no counterfactual, judgmental or blaming wording. 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

Based on, among other things, the above-mentioned notification by skyguide, the STSB will decide on its further course of action.

In case of a STSB investigation you

- will be informed accordingly by skyguide's internal reporting and investigation unit and/or the STSB itself,
- 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 provided by skyguide<sup>21</sup>,
- inform your HelveticA representative in order to organize/receive the corresponding support,
- be accompanied by a person of trust, an association representative or – strongly recommended – a competent lawyer.

After gathering all the required data, the STSB will come up with a draft report. In certain cases, namely full investigations according to ICAO Annex 13, the involved parties – and in most cases the respective association – have the opportunity to give an opinion. That is the moment to carefully review the report for critical wording, formulations and/or interpretations.

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

*Note: There is no obligation to give an opinion, nor is there any right to change or reformulate the written STSB report.*

**According to regulation, STSB investigations mainly follow the Just Culture principles.**

<sup>21</sup> "Memo – Rights and Duties after an Accident or serious Incident"

- skyhub > Safety > Ops, Tech and Admin Personnel > Occurrence Management > Investigation > Rights and Duties after an Accident or serious Incident
- skyhub > Emergency Essentials > "Rights and Duties ATCO"
- <https://skydoc.skyguide.corp/otcs/lisapi.dll/open/8200864>

"Memo – Guidelines STSB investigation"

- skyhub > Safety > Ops, Tech and Admin Personnel > Occurrence Management > Investigation > ATCO Guidelines for STSB Investigations
- <https://skydoc.skyguide.corp/otcs/lisapi.dll/open/9699453>

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

When being interviewed by the STSB, you are assigned the status of an informant<sup>22</sup>.

Regardless of how you are connected to the incident, whether involved directly or not:

**You always have the right to refuse to testify<sup>23</sup>.**

Whether to give testimony or not has to be judged on a case-by-case basis. Your input should contribute to the gain of safety in the future but must not have a negative influence on the final report of the STSB. If you decide to refuse testimony you have the full support of HelveticA to do so. The STSB is aware of that possibility. You do not need to feel pushed if the investigator asks the same question two or three times.

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<sup>24</sup>.

**“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 association nor skyguide will have access to the data provided.

**HelveticA suggests to say “no”!**

<sup>22</sup> The representative of your association and/or your lawyer will give you more information about the different kinds of status and their rights and obligations.  
(Note: For similarities from a legal point of view, check Chapter 4.5.1./4.5.2.)

<sup>23</sup> Art. 40 OSITI ([https://www.fedlex.admin.ch/eli/cc/2015/26/en#art\\_40](https://www.fedlex.admin.ch/eli/cc/2015/26/en#art_40))

<sup>24</sup> Art. 24 OSITI ([https://www.fedlex.admin.ch/eli/cc/2015/26/en#art\\_24](https://www.fedlex.admin.ch/eli/cc/2015/26/en#art_24))

## 4. Judiciary

According to Art. 6 and 7 of the Swiss Criminal Procedure Code<sup>25</sup> 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<sup>26</sup>.

Therefore, when a STSB notification or report is published it will (most probably) be screened by the Federal Attorney and distributed to the competent judicial authorities<sup>27</sup> – a prosecutor will seek as much information as possible and/or feasible 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.

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

There are defined rules for investigating possible violations of the criminal law. In Switzerland the Swiss Criminal Code, Art. 237 "Disruption of public traffic"<sup>28</sup>, 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 individual involved. In other words: To draw the line between acceptable and unacceptable behaviour, 'work as imagined' resp. 'work as prescribed' will be confronted with 'work as done'.

<sup>25</sup> Swiss Criminal Procedure Code, Art. 6 ([https://www.fedlex.admin.ch/eli/cc/2010/267/en#art\\_6](https://www.fedlex.admin.ch/eli/cc/2010/267/en#art_6))

Swiss Criminal Procedure Code, Art. 7 ([https://www.fedlex.admin.ch/eli/cc/2010/267/en#art\\_7](https://www.fedlex.admin.ch/eli/cc/2010/267/en#art_7))

<sup>26</sup> Switzerland has filed a difference to ICAO Annex 13, Art. 5.12.

<sup>27</sup> Check «Motion Candinas», which – after the process of legislation – will alter the jurisdiction/range of authority.

- <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20183700>

- [https://www.parlament.ch/centers/kb/Documents/2018/Kommissionsbericht\\_KVF-S\\_18.3700\\_2019-08-19.pdf](https://www.parlament.ch/centers/kb/Documents/2018/Kommissionsbericht_KVF-S_18.3700_2019-08-19.pdf)

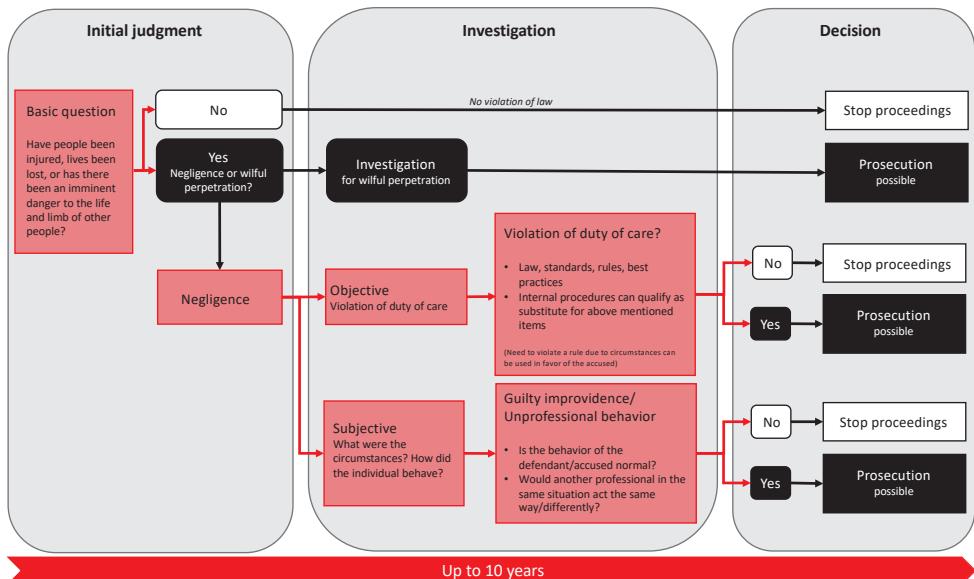
<sup>28</sup> Swiss Criminal Code, Art. 237 "Disruption of public traffic" ([https://www.fedlex.admin.ch/eli/cc/54/757\\_781\\_799/en#art\\_237](https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#art_237))

The right to draw that line is a prerogative of the justice, despite the regulations put in place at international and European level<sup>29</sup>.

### Legal investigations do NOT follow Just Culture principles.

## 4.2. The prosecutor's approach

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



Notes:

- Judiciary will open an investigation as soon as there are suspicions about a criminal offence.
- It is at the discretion of the judicial authorities whether and at what time they want to involve and/or inform the affected employee.
- It is possible that you will not know about the investigation until you receive the letter announcing one of the three possible outcomes mentioned below<sup>30</sup>.

<sup>29</sup> 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 (check chapter 3.2.1.)

<sup>30</sup> Check Chapter 4.3.

## 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 HelvetiCA. 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 association and skyguide Legal Services.  
Do not act individually!**

## 4.5. Rights and duties during a criminal investigation

### 4.5.1. Status

When interviewed by a prosecutor you will have different rights, depending on the status<sup>31</sup> 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 it 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**

A person who is

- able to help clarify circumstances of the criminal act, but
- not considered to be accused because of lack of evidence indicating its criminal responsibility.

  
→ Right to refuse to testify/give evidence at any given stage

<sup>31</sup> Status:

- SCPC, Art. 104 et seq., 157 et seq., 162 et seq., 178 et seq. ([https://www.fedlex.admin.ch/eli/cc/2010/267/en#tit\\_3/chap\\_1/sec\\_1](https://www.fedlex.admin.ch/eli/cc/2010/267/en#tit_3/chap_1/sec_1))
- "Memo – Rights and Duties after an Accident or serious Incident", p.5
  - skyhub > Safety > Ops, Tech and Admin Personnel > Occurrence Management > Investigation > Rights and Duties after an Accident or serious Incident
  - skyhub > Emergency Essentials > "Rights and Duties ATCO"
  - <https://skydoc.skyguide.corp/otcs/llisapi.dll/open/8200864>

- **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.

#### 4.5.2. Right and duties

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

- You must 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.

#### 4.5.3. Answering questions

You will be briefed by your lawyer and/or association representative about whether and how to answer questions by judicial authorities. 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
- 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 its duty to ask for it.

### 4.6. Further regulations

#### 4.6.1. Statutory limitation period

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<sup>32</sup>.

Within the statutory limitation, there is no limit in time for opening a legal investigation.

#### 4.6.2. Criminal record

In case of a legally valid penalty order/conviction, there will be a criminal record. Depending on the offense and the subsequent verdict, the record will be expunged. Generally, this is the case after 10 years.

<sup>32</sup> Check Chapter 4.2.

Note: The statutory limitation period was 7 years till end of 2013, and got changed to 10 years from January 1, 2014. Repercussion is excluded. So, any incident that occurred before December 31, 2013, passed the statutory period of limitation.

## 5. Data handling

According to Art. 23 of the "Ordinance on the Safety Investigation of Transport Incidents (OSITI)"<sup>33</sup>, 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/TIR, first infos, investigation reports (both internal and external), radar plots, records and radio transcripts must be handed over to the judiciary if requested.

**Data is not protected due to the provisions of the Criminal Code in Switzerland.**

Nonetheless, as mentioned before<sup>34</sup>, 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 their work.

**Information can only be used as evidence with your consent.**

*Note: 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. According to our latest check, this data handling has been accepted by the Judiciary<sup>35</sup>.*

<sup>33</sup> Art. 23 OSITI ([https://www.fedlex.admin.ch/eli/cc/2015/26/en#art\\_23](https://www.fedlex.admin.ch/eli/cc/2015/26/en#art_23))

<sup>34</sup> Check Chapter 3.2.1.

<sup>35</sup> At the time of writing, the OSITI is under review and will possibly be amended resp. adapted in the near future.

## 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 association or by skyguide, depending on the status of the procedure and/or the agreement between HelvetiCA and skyguide.

### 6.1. Legal protection insurance

ATCOs – and some other employees possibly concerned by judicial actions – are insured by CAP<sup>36</sup> 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 its choice or ask skyguide Legal Services for a suggestion, but CAP must validate this mandate before any action.

This external lawyer is completely independent from skyguide and defends the ATCO's sole interests. Skyguide Legal Services coordinates the actions to be taken.

<sup>36</sup> CAP Legal Protection Insurance ("Compagnie d'assurance et de protection juridique"), founded in Geneva in 1925, is one of the oldest existing insurance companies. With its incorporation as a subsidiary of Allianz in 2002, CAP - with headquarters in Wallisellen and regional legal services in Bern, Basel, Geneva, Etoy, Lugano, St. Gallen and Lucerne - became part of one of the leading insurance companies in Switzerland. Today, it is one of the largest legal protection insurers in the country. (<https://www.cap.ch>)

## 7. Licensing and employment

Licensing is an administrative process, considered to be a safety process, and completely independent and separate from judicial proceedings.

- FOCA may raise doubts about the performance of an ATCO and consequentially take measures, but these are meant to be safety related and are not disciplinary measures. This is why the competency scheme and OQFP<sup>37</sup> are so important to the protection of the ATCO and the company.
- A legally valid criminal conviction does not necessarily create doubt regarding the ATCO's license. Conversely, an ATCO can get into licensing issues even without being involved in an incident/accident/legal investigation.

### 7.1. Skyguide

#### 7.1.1. MOSI

At skyguide, the social partners have negotiated a process called Management of Serious Incidents (MOSI<sup>38</sup>). 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 and until it has been clarified if, under which conditions, and when one is ready to be safely re-integrated.

This procedure is linked to the EU ATCO license. In case you are involved in an incident triggering MOSI, you will be instructed to contact a CISM<sup>39</sup> peer to discuss the need for CISM.

The MOSI process will discuss and decide on the immediate future of an employee at skyguide. Whereas MOSI aims at quickly and safely re-integrating operators into their dedicated working environment again, in certain cases, skyguide might decide not to let the operator work with their endorsement again.

#### 7.1.2. 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 withdrawal from OPS based on a MOSI process decision in the past.

<sup>37</sup> Operational Quality Feedback Process OQFP (formerly known as OQDS)

<sup>38</sup> MOSI Manual, Management of serious incidents, v5.0 E, Work instruction C3WI0005E, WEF 2020-12-15 (<https://skydoc.skyguide.corp/otcs/lisapi.dll/open/15471406>)

<sup>39</sup> CISM is an integrated method which consists of several steps and helps the people affected to cope with their Critical Incident Stress (CIS) reactions thanks to direct and immediate intervention. In this way, it may be possible to decrease the probability of consequential disorders. CISM is a comprehensive, systematic and multi-component approach to the management of crisis/disaster intervention.

- skyhub > Safety > CISM
- <https://skyhub.skyguide.corp/portals/emergency-essentials/critical-incident-stress-management-cism/>

According to the latest scope of the Safety arbitration process (SAP)<sup>40</sup> – and corresponding to EU 376/2014<sup>41</sup> – this is no longer feasible. The SAP may be initiated in the following situations and only when direct communication between the concerned parties was not possible or unsuccessful:

- Doubts about operational or technical practices related to the provision of ATM.
- Doubts about the appropriate handling of Safety Data and Information as prescribed by skyguide internal rules.
- Doubts about the adequate usage and application of skyguide internal Safety processes.
- If an employee feels that they have been treated unjustly – namely not according to Just Culture principles – by a managerial decision taken in one of these cases.

The main objective of the SAP is to determine whether the line between acceptable and unacceptable behavior has been crossed.

### 7.1.3. Employment at skyguide

Each instance will be dealt with on a case-by-case basis. However, there are some basic guidelines and policies within skyguide

- In case and for the duration of a legal procedure, the probability of being taken away from operations/ your endorsed working position in order to protect both the employee 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.
- In case of a penalty order/judicial procedure respectively a legally valid conviction - where 'no negligence or deliberate act' is involved – skyguide policy is to continue to employ the member of staff, although sometimes this might be in a different position and/or location from the one in which the employee was convicted. The measure that might be taken needs to be a balance of the best interests of the employee involved and the company.

An employee who has done its job to the best of its ability shall have no concerns that the employment with skyguide will be terminated.

## 7.2. Federal Office of Civil Aviation (FOCA)

In certain cases, FOCA as the competent authority might decide to issue doubts on the competence of a 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 EU Regulations.

### 7.3. Exception

EU Regulation No. 376/2014, Art. 16 (10<sup>42</sup>), 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."*

<sup>40</sup> Safety Arbitration Process, v4.0E, Work instruction C3W10006E, WEF 2020-12-10 (<https://skydoc.skyguide.corp/otcs/llisapi.dll/open/30029655>)

<sup>41</sup> EU Regulation No. 376/2014 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0376&from=EN>)

<sup>42</sup> EU Regulation No. 376/2014, Art. 16 (10) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0376&from=EN>)

Clause a) is part of the Just Culture definition<sup>43</sup> 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<sup>44</sup>, but the latter has no influence to the view of the outside (judiciary) world<sup>45</sup>.

HelvetiCA is aware of this potential issue and constantly studying the development of the operational, political and legal environment.

<sup>43</sup> Check Chapter 1.

<sup>44</sup> Check Chapter 7.1.2.

<sup>45</sup> Check Chapter 4.

## 8. Skyguide

### 8.1. Strategy to foster a Just Culture

#### 8.1.1. Internal

Just Culture is an explicit part of processes, training, discussions and decisions at different levels. The company has developed and implemented a Just Culture policy<sup>46</sup> and strongly lives up to Just Culture principles. Skyguide trusts that its operators work according to their best knowledge and belief. It is understood and fully accepted that incidents and unwanted outcomes happen and that their investigation shall solely serve learning and improving safety.

When operators fulfil their legal obligations, they can count on strong internal support. In case of doubt, skyguide applies a just and fair internal process to determine on the acceptability of behaviour (Safety Arbitration Process<sup>47</sup>).

#### 8.1.2. External

Regular contact has been established with the FOCA, STSB and judicial authorities.

Furthermore, skyguide is in a continuous exchange with other HRO/high-risk businesses such as aviation, public transport, nuclear power plants, medicine and others. In order to facilitate this exchange and to foster the common efforts in regard of having a Just Culture implemented within Swiss Law, jurisdiction and society, skyguide and its partners have launched the "Just Culture Platform (JCP)<sup>48</sup>" in 2019.

### 8.2. Support during legal proceedings

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 skyguide Legal Services 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.

#### 8.2.1. Steering Group Inquiries (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 and is chaired by the Head of Legal department.

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.

<sup>46</sup> Just Culture Policy:

- skyhub > Safety > (Ops, Tech and Admin Personnel) > Safety Culture > Just Culture Policy
- <https://skydoc.skyguide.corp/ots/lisapi.dll/open/28783263>

<sup>47</sup> Check Chapter 7.1.2.

<sup>48</sup> Just Culture Switzerland

- skyhub > Portals > Just Culture Switzerland
- <https://skyhub.skyguide.corp/portals/just-culture-platform-switzerland/>
- <https://www.justculture.ch>

## 8.2.2. Internal process

In the aftermath of the Überlingen accident, skyguide has implemented an internal process in regard of the handling of judicial proceedings (penalty order, lawsuits). For further information check the Memo "Rights and Duties of an ATCO after a serious incident"<sup>49</sup> by skyguide.

Furthermore, skyguide has come up with a "Legal first aid kit after a serious aircraft accident"<sup>50</sup> in case an employee gets involved in a judicial proceeding.

<sup>49</sup> "Memo – Rights and Duties after an Accident or serious Incident"

- skyhub > Safety > Ops, Tech and Admin Personnel > Occurrence Management > Investigation > Rights and Duties after an Accident or serious Incident
- skyhub > Emergency Essentials > "Rights and Duties ATCO"
- <https://skydoc.skyguide.corp/otcs/llisapi.dll/open/8200864>

<sup>50</sup> Crisis Organisation Skyguide, "Legal first aid kit after a serious aircraft accident", v1.0E, M2GU0702E, WEF 2021-12-13

- skyhub > Emergency Essentials > MOSI
- <https://skyhub.skyguide.corp/portals/emergency-essentials/mosi>
- <https://skydoc.skyguide.corp/otcs/llisapi.dll?func=ll&objaction=overview&objid=57141920>

## 9. 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 associations' board. Additionally, we are pleased to be able and allowed to list the following people, all of them with a broad and thorough knowledge of Just Culture and the different topics mentioned in this booklet. So, you may also contact:

- HelvetiCA
  - Safety Chair (safety@helvetica.aero) – Spycher Marcel, OLZO
- skyguide (Safety)
  - Chief Safety and Security Officer (S) – Affholderbach Klaus
  - Counsel for JC and Investigation Management (SC) - Gurt Robin
  - Head of Safety Services West (SG) - Novotny Thomas
  - Head of Safety Services East (SZ) – Fuhrer Thierry
  - Head of Transformation (ST) - Baumgarten Monika
  - Line Safety Delegate (SL) - Hulliger Melanie
- skyguide (JC Experts)
  - Transformation Safety Management (OP-T) – Barraz Stéphane
- Editors in charge
  - IFATCA JC representative / ATCO (OVWO) – Baumgartner Marc
  - Eurocontrol JC Prosecutor Expert / ATCO (OVEO) – Schorer Reto

We might not have an answer right away, but we will take care of your question.

## 10. Summary – Conclusions & Recommendations

### 10.1. Just Culture

Just Culture is about safety. It is about fostering a constructive environment in 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 the Judiciary to satisfy both needs, which implies that Just Culture is neither an absolution, nor a "no blame culture".

### 10.2. Reporting

Reporting is primarily about safety and enables the whole ATM system to continuously improve to a safer working environment. That is why HelvetiCA 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/TIR,
- 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.

### 10.3. External investigation (STSB)

HelvetiCA strongly suggests to

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

### 10.4. 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 association board and skyguide Legal Services 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.

## 10.5. 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 association nor your company will have access to the data provided.HelvetiCA suggests to say “no”/“not accessible”.

## 10.6. Licensing and employment

MOSI and SAP have been introduced in order to provide the best possible protection and support for the employee as well as for the company on a case-by-case basis.

Both processes are aligned with the company's policy that an employee who has done their job to the best of their ability shall have no concerns that the employment with skyguide will be terminated.

## 10.7. 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 association board and/or one of the persons to contact.

## 11. Documentation

### 11.1. Safety data protection

ICAO	Annex 13 (12 <sup>th</sup> edition) Annex 19 (2 <sup>nd</sup> edition) Assembly 38 (2013)	§ 5.12 / Attachment E § 5.3 / Attachment B A38-3 / A38-4
European Union	Regulation No. 996/2010 (OJ-L295/35)	Recital 30 / 34 §14
	Regulation No. 376/2014 (OJ-L122/18)	Recital 35 / 45 §15 (1)
IFATCA	Policy	LM11.2.6, p. 4.2.4.13 LM11.2.7, p. 4.2.4.14
Eurocontrol	Just Culture Policy	(Provisional council decision 2012)

### 11.2. Reporter protection

ICAO	Annex 13 (12 <sup>th</sup> edition) Annex 19 (2 <sup>nd</sup> edition) Assembly 38 (2013)	5.12 / Attachment E 5.3 / Attachment B A38-3 / A38-4
European Union	Regulation No. 996/2010 (OJ-L295/35)	Recital 34 §§14
	Regulation No. 376/2014 (OJ-L122/18)	Recital 35 / 45 / 50 §15 (1) / 16 / 20
	Directive 95/46/EC Regulation No. (EC) 45/2001	(OJ-L281, 23.11.1995, p. 31) (OJ-L8, 12.2.2001, p. 1)
IFATCA	Policy	WC8.7.2., p. 4.2.1.40 LM11.2.4, p. 4.2.4.11
Eurocontrol	Just Culture Policy	(Provisional council decision 2012)

### 11.3. Definition Just Culture

ICAO	Assembly 38 (2013)	A38-3 / A38-4
European Union	Regulation No. 996/2010 (OJ-L295/35)	Recital 24
	Regulation No. 390/2013 (OJ-L128/1)	§2 (10)
	Regulation No. 376/2014 (OJ-L122/18)	Recital 34 / 36 / 37 / 40 / 44 §2 (12) / 6.1 / 6.3 / 6.4 / 16.11
IFATCA	Policy	LM11.2.1, p. 4.2.4.7
Eurocontrol	Just Culture Policy	(Provisional council decision 2012)

## 12. References

EU Regulation No.	2014/376	Reporting, analysis and follow-up of occurrences in civil aviation (incl. Guidance Material)
EU Regulation No.	2015/1018	Laying down a list classifying occurrence in civil aviation to be mandatorily reported (according to Regulation)
EU Regulation	2010/996	Investigation and prevention of accidents and incidents in civil aviation
Federal court decisions ( <a href="https://www.bger.ch">https://www.bger.ch</a> )	2019 2019 2022	6B_1220/2018 6B_332/2019 6B_427/2021
ICAO Annex 13 Investigation (12 <sup>th</sup> edition)	2020	Aircraft Accident and Incident
ICAO Annex 19	2016	Safety Management (2 <sup>nd</sup> edition)
Luftfahrtsgesetz (LFG) Loi Fédérale sur l'Aviation (LA)	2017	SR 748.0, Articles 20, 24 – 26
Ordinance on the Safety Investigation of Transport Incidents (OSIT)	2015	SR 742.161, Article 23 – 24
MOSI Process	2020	Skyguide, MOSI manual (v5.0E)
Raphael Widmer-Kaufmann	2022	Die Flugunfalluntersuchung nach schweizerischem Recht ( <a href="https://www.dike.ch/widmer-die-flugunfalluntersuchung-nach-schweizerischem-recht">https://www.dike.ch/widmer-die-flugunfalluntersuchung-nach-schweizerischem-recht</a> )
		Studie der Foundation for Aviation Competence FFAC ( <a href="https://www.fedpol.admin.ch/bj/de/home/publiservice/publikationen/externe/2022-01-18.html">https://www.fedpol.admin.ch/bj/de/home/publiservice/publikationen/externe/2022-01-18.html</a> )
Safety Arbitration Process	2020	Skyguide, SAP (v4.0E)
Skyguide Just Culture Policy	2017/7	Skyguide
Skyhub (skyguide internal platform)		Emergency essentials • Skyhub > Emergency essentials • <a href="https://skyhub.skyguide.corp/portals/emergency-essentials">https://skyhub.skyguide.corp/portals/emergency-essentials</a>
		Safety • Skyhub > safety • <a href="https://skyhub.skyguide.corp/portals/safety">https://skyhub.skyguide.corp/portals/safety</a>
Swiss Criminal Code (CP/StGB)	2022	SR 311.0, Article 237
Swiss Criminal Procedure Code (CPP/StPO)	2022	SR 312.0, Articles 6 – 7, 113, 157 et seq., 162 et seq., 178 et seq.

	2019	Bleienheuft/Wysk, Strafverfolgung von Lotsen und Verwertung von Erkenntnissen der Unfallunter- suchungsstellen, ZLW 68. Jg. 4/2019, 543
	2020	Hempel, Strafbarkeit von Fluglotsen wegen Störung des öffentlichen Verkehrs nach schweiz- erischem Recht, ZLW 69. Jg. 1/2020, 29

## 13. Glossary

ANSE	Air Navigation Service Employee
ATCO	Air Traffic Control Officer / Air Traffic Controller
ATIR	Air Traffic Incident Report
ATSEP	Air Traffic Safety Electronics Personnel
CAP	Legal Protection Insurance Company ("Compagnie d'assurance et de protection juridique")
CISM	Critical Incident Stress Management
FOCA	Federal Office of Civil Aviation
ICAO	International Civil Aviation Organisation
MOSI	Management of Serious Incidents
OIR	Operational Incident Report
OJ-L	Official Journal of the European Union – Legislation
OQFP	Operational Quality Feedback Process
OSITI	Ordinance on the Safety Investigation of Transport Incidents
SCC	Swiss Criminal Code
SCPC	Swiss Criminal Procedure Code
SGI	Steering Group Inquiries (skyguide)
SIR	Safety Improvement Report
SO	Service Order
STSB	Swiss Transportation Safety Investigation Board
SWANS	Swiss Aviation Notification System
TIR	Technical Incident Report

## 14. Edition notice

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## 15. Notes

## 16. Checklists

### 16.1. 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 72h (OIR/TIR)
  - Keep it factual, short and simple
  - No names, no explanations, no assumptions, no accusations, no judgments
- Contact your association committee
- No information to third parties
  - Neither internal nor external

### 16.2. STSB investigation

- Follow the instructions by the STSB
- Never attend an interview unprepared and on your own
  - Check your notes
  - Check the information provided by skyguide
- Inform STSB about your companion/lawyer
- Contact your association board in order to get a companion/lawyer
- Contact skyguide for company support
- Written correspondence with STSB upon consultation with your association/lawyer only
  - Keep it factual, short and simple
- You have the right to refuse to give evidence
  - Check with association/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 association/lawyer

### 16.3. Legal investigation

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

### 16.4. Further information

Please check the information provided by skyguide:

- Memo "Rights and Duties of an ATCO after a serious incident"; and
- Memo "ATCO guidelines in case of STSB investigation"
- "Legal first aid kit after a serious aircraft accident"



