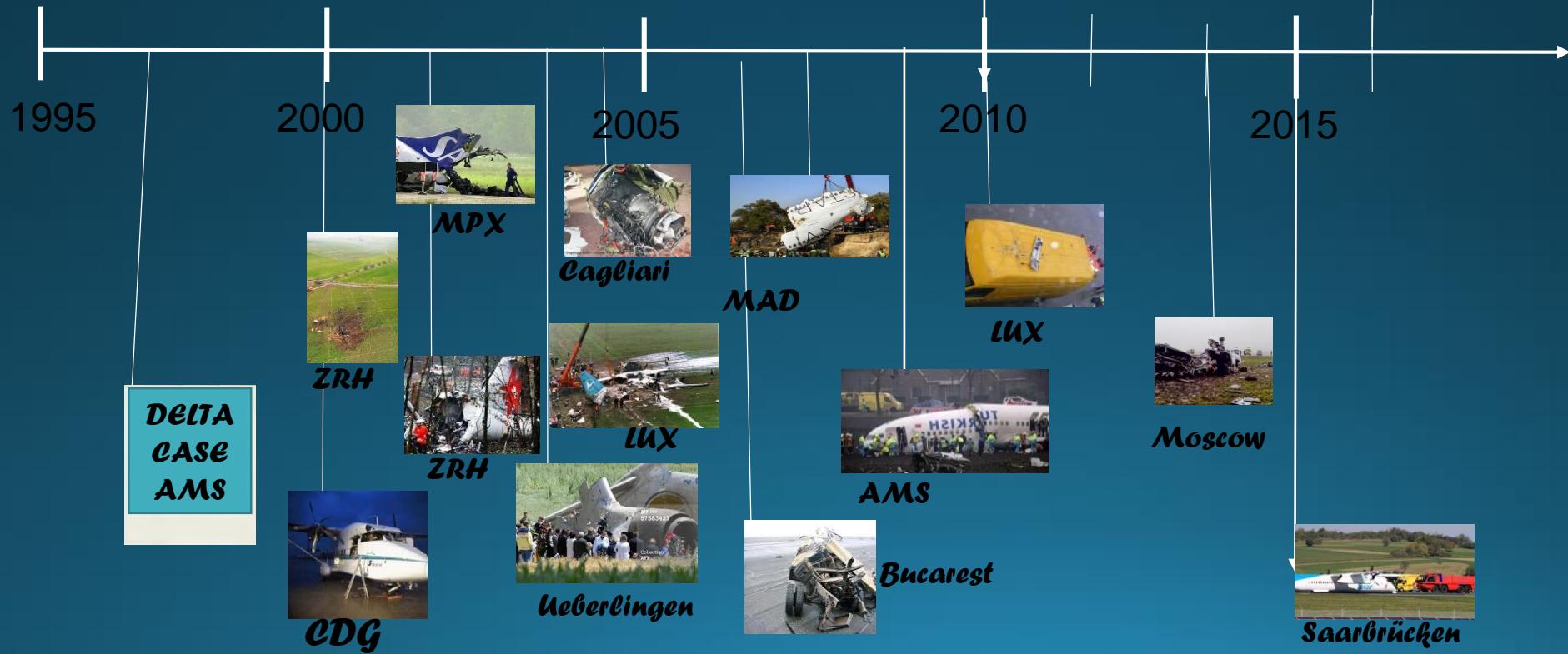


# Just culture quo vadis

**IFATCA Survey on Just Culture and socio-legal perspective**

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21.11.2017

# Just culture time line



**IFATCA questionnaire to the Member Association of the European Region**  
**Distributed April 2017**  
**First assessment November 2017**

The Questionnaire is focusing on the application of “drawing the line” between what could be acceptable and/or unacceptable behavior and is seeking to find out how your country has established this application.

It therefore focusses on the application of article 16 of the 376/2014. In case we would need further information or explanations to your answers, do not forget to indicate an email address or a phone number where you could be contacted.

This first and rough Questionnaire will be followed by some scientific work. You will be contacted in time for possible further requests of information.

# Article 16 of 376/2014

## *Article 16*

### **Protection of the information source**

1. For the purposes of this Article, 'personal details' includes in particular names or addresses of natural persons.
2. Each organisation established in a Member State shall ensure that all personal details are made available to staff of that organisation other than persons designated in accordance with Article 6(1) only where absolutely necessary in order to investigate occurrences with a view to enhancing aviation safety. Disidentified information shall be disseminated within the organisation as appropriate.
3. Each Member State shall ensure that no personal details are ever recorded in the national database referred to in Article 6(6). Such disidentified information shall be made available to all relevant parties, for example to allow them to discharge their obligations in relation to aviation safety improvement.

4.The Agency shall ensure that no personal details are ever recorded in the Agency database referred to in Article 6(8). Such disidentified information shall be made available to all relevant parties, for example to allow them to discharge their obligations in relation to aviation safety improvement.

5.Member States and the Agency shall not be prevented from taking any action necessary for maintaining or improving aviation safety.

6.Without prejudice to applicable national criminal law, Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Articles 4 and 5. The first subparagraph shall not apply in the cases referred to in paragraph 10. Member States may retain or adopt measures to strengthen the protection of reporters or persons mentioned in occurrence reports. Member States may in particular apply this rule without the exceptions referred to in paragraph 10.

7.If disciplinary or administrative proceedings are instituted under national law, information contained in occurrence reports shall not be used against: (a) the reporters; or (b) the persons mentioned in occurrence reports. The first subparagraph shall not apply in the cases referred to in paragraph 10. Member States may retain or adopt measures to strengthen the protection of reporters or persons mentioned in occurrence reports. Member States may in particular extend that protection to civil or criminal proceedings.

8.Member States may adopt or maintain in force legislative provisions ensuring a higher level of protection for reporters or for persons mentioned in occurrence reports than those established in this Regulation.

9.Except where paragraph 10 applies, employees and contracted personnel who report or are mentioned in occurrence reports collected in accordance with Articles 4 and 5 shall not be subject to any prejudice by their employer or by the organisation for which the services are provided on the basis of the information supplied by the reporter.

10. The protection under paragraphs 6, 7 and 9 of this Article shall not apply to any of the following situations:

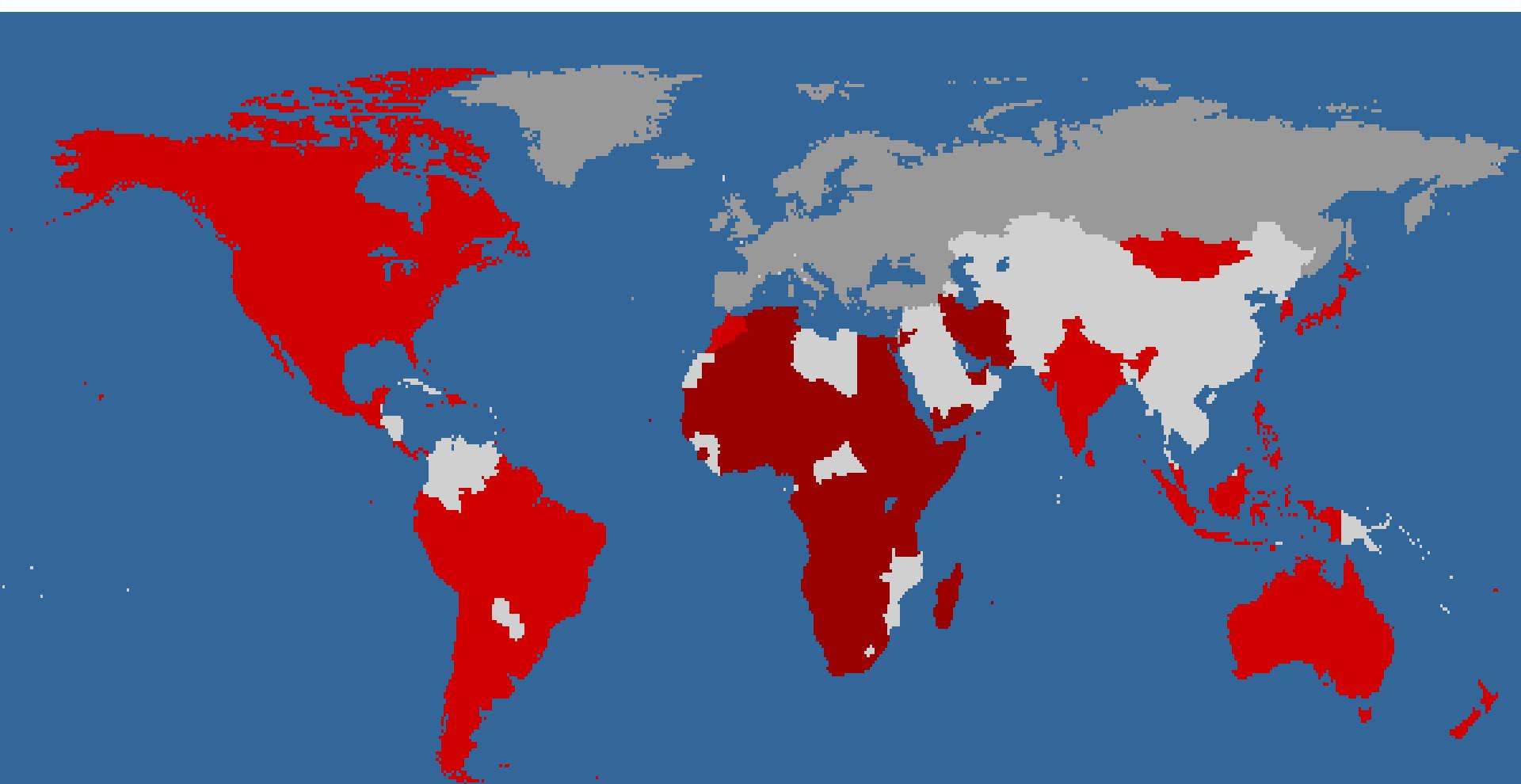
- (a) in cases of wilful misconduct;
- (b) where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.

11. Each organisation established in a Member State shall, after consulting its staff representatives, adopt internal rules describing how 'just culture' principles, in particular the principle referred to in paragraph 9, are guaranteed and implemented within that organisation. The body designated pursuant to paragraph 12 may ask to review the internal rules of the organisations established in its Member State before those internal rules are implemented.

12. Each Member State shall designate a body responsible for the implementation of paragraphs 6, 9 and 11. Employees and contracted personnel may report to that body alleged infringements of the rules established by this Article. Employees and contracted personnel shall not be penalised for reporting alleged infringements. Employees and contracted personnel may inform the Commission about such alleged infringements. Where appropriate, the designated body shall advise the relevant authorities of its Member State concerning remedies or penalties in application of Article 21.

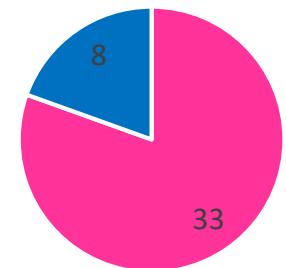
13. On 15 May 2019 and every five years thereafter, each Member State shall send the Commission a report on the application of this Article, and in particular on the activities of the body designated pursuant to paragraph 12. The report shall not contain any personal data.

# IFATCA

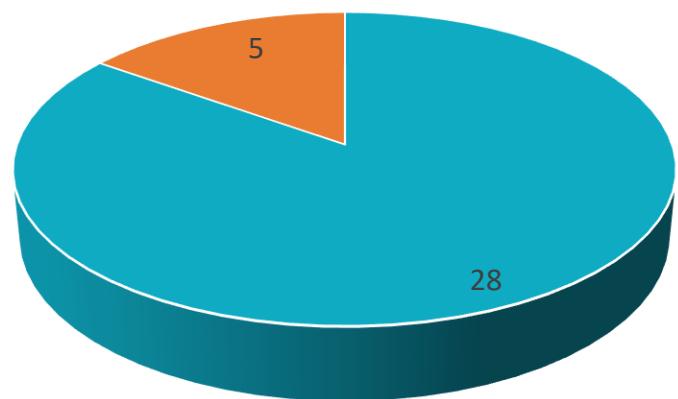


Distributed to 41  
Member Association  
In the IFATCA  
European Region

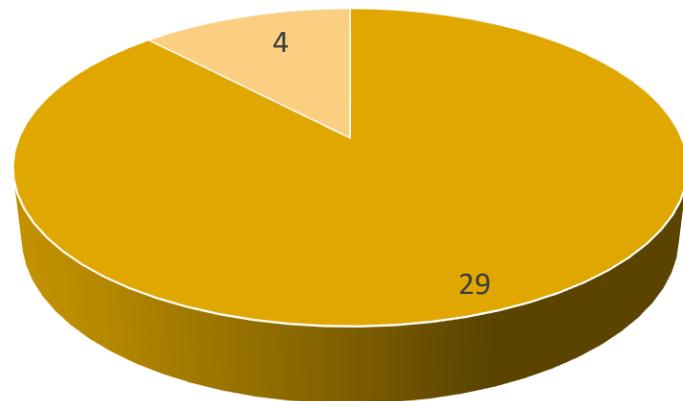
Participation  
80%



## Awareness 100%

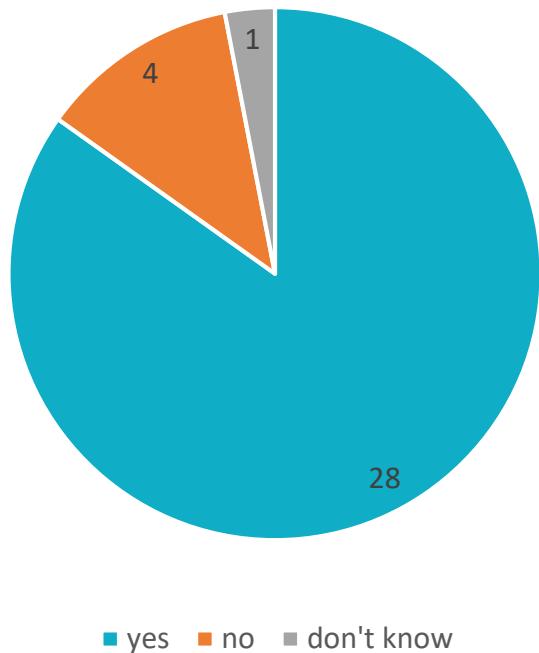


■ affected ■ not

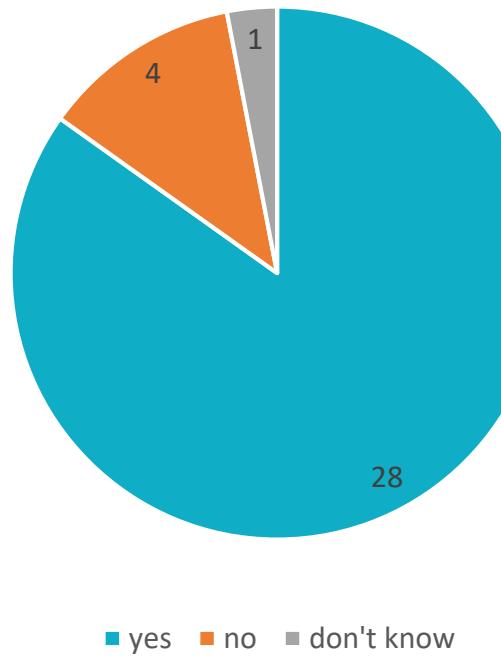


■ transposed ■ not

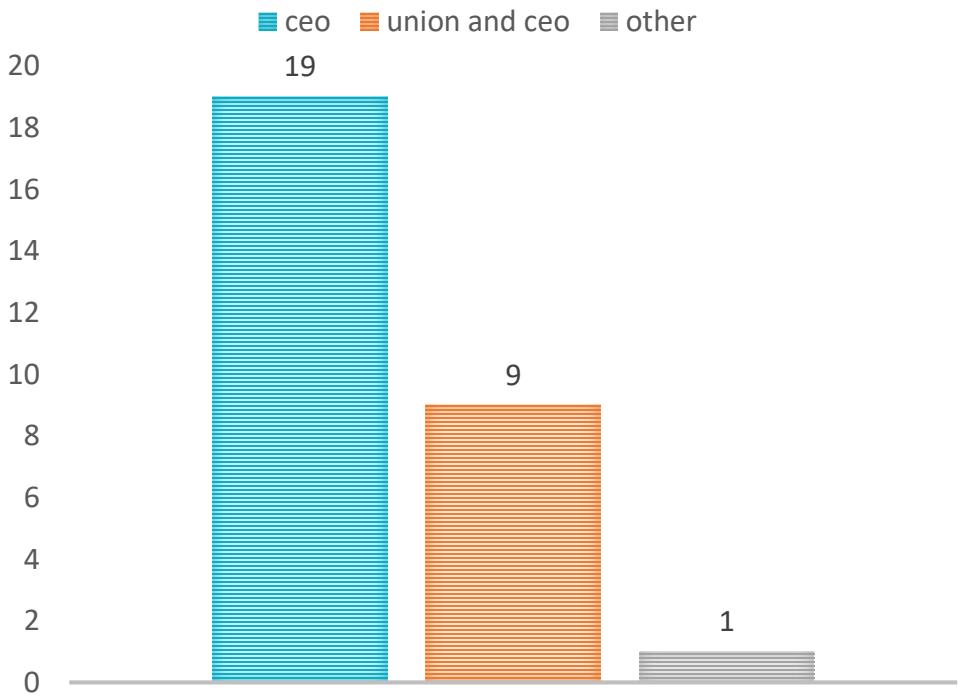
Do have a JC policy in your Air Navigation Service Provider ?



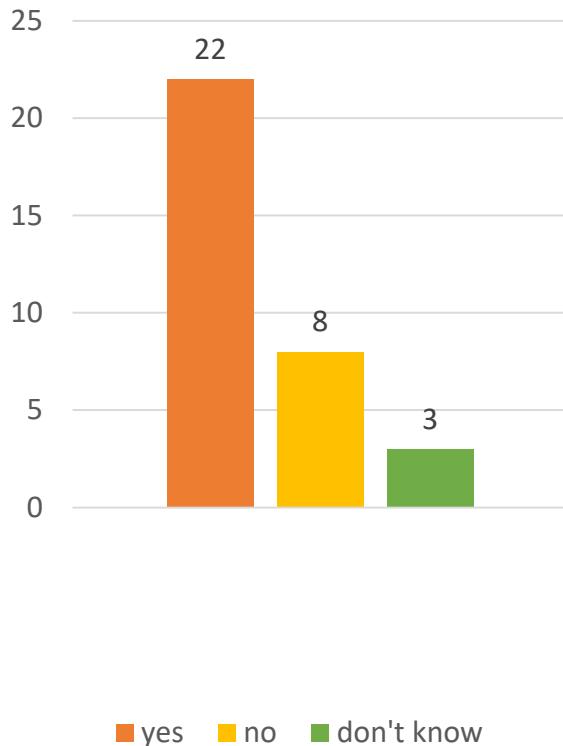
do have a JC policy in your ANSP



## WHO SIGNED THE POLICY



# Do you have a data protection act signed in your company?



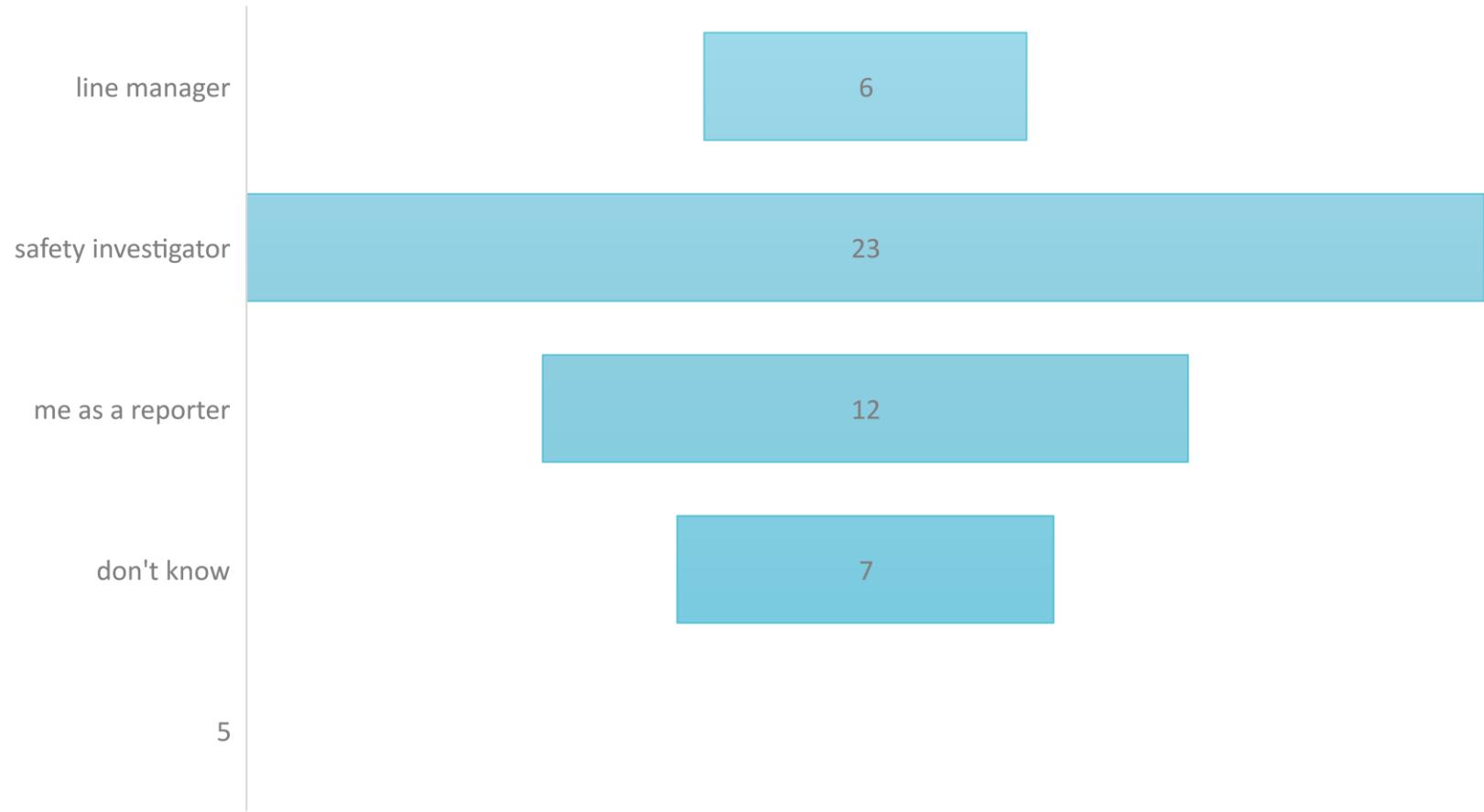
## Which data affected?

Radar  
Radio  
Telephone  
All data  
Mouse clicks  
Ambience  
Voice recording  
Camera on airfield

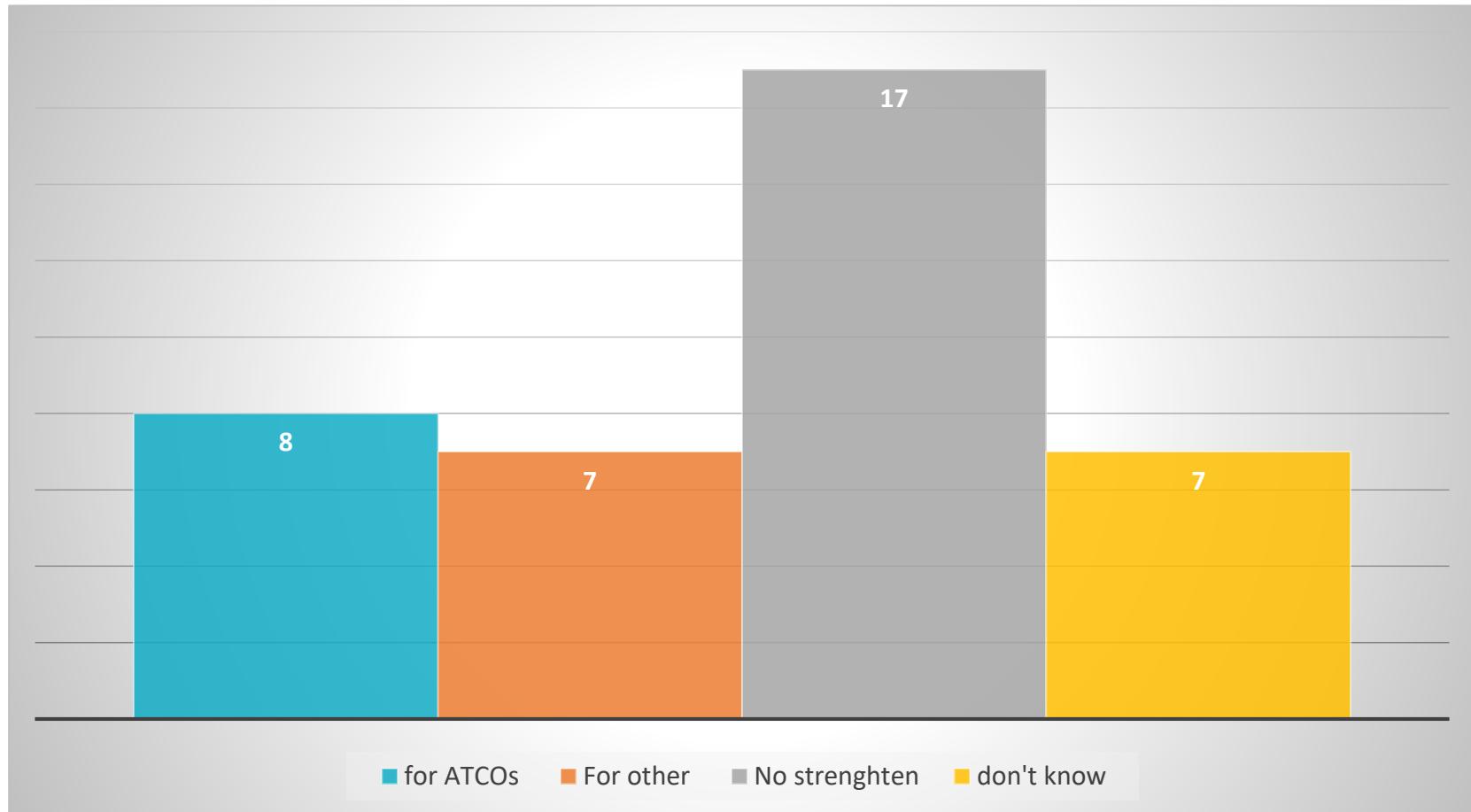
## Who has access to the raw data?

Safety department  
Safety investigator  
Operational manager  
Trained operator  
Any supervisor

# To whom belongs the report?



Article 16 (7) & (8) introduces the possibility for a member state to strengthen the protection of reports or persons mentioned in occurrence reports. Member States may in particular extend that protection to civil or criminal proceedings



Article 16 establishes different kind of protection of the information source. Can you quickly describe how the personnel data of a reporter or a person mentioned in the report is protected?

4 It is immediately de-identified via TOKAI. The names are only available as long as the internal investigation is ongoing. Afterwards it shall be deleted. ☐

5 Although the details of the person submitting the report are stored somewhere in the system (we have not details about how that is done). No personal details are disclosed when disseminating the results of the investigation/radar replay/lesson learned. ↵ The radar replay/telephone conversations can identify an individual based on his/her voice but the option always exists to not distribute the audio. That is, and it is only a transcript if the person filing the report so chooses. That is fairly common on occasions when it has happened on a number of occasions, most people are happy for the radar replay to be played to other members of staff. ☐

6 Atco identity is only protected within the company and towards the AAIU (aircraft accident investigation unit). For state level it is still uncertain. In case of legal proceedings, uncertainty exists. ☐

7 The name of the reporter is only visible to the SATCO of that unit. He/she then sends the report to safety department, at this stage the name of the reporter is no longer visible. The reporter remains confidential through the process. ☐

8 Personal Data Protection Act which, to a certain extent, limits the personal information shared. ☐

9 At ANSP level reports and results from subsequent investigations are being used for training purposes (best practices, lessons learnt, TRM and that stuff). These reports are de-identified having all personal data taken away though of course in small units at the end always names comes up. At NSA level, don't think that reports are kept in a data base being previously de-identified. But could not really say. At Judiciary level there is no protection at all. ☐

EXAMPLE

Can you cite cases where the identity of a person might be revealed and what are the circumstances which could lead to revealing this data?

25. Depending on an internal process - e.g. Safety Arbitration process and when Ju... or CAA requires name - □

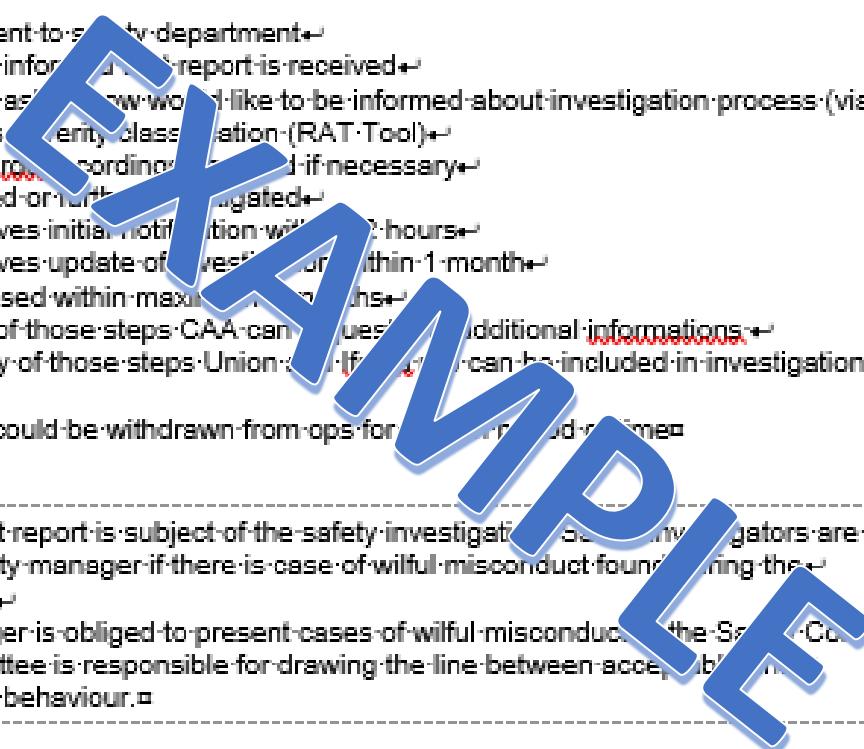
26. Only when there is been intentional or wilful misconduct or dishonesty or corruption and other forms of unlawful behaviour. □

27. 1- When the case must go to court the person must be named - if this reveal don't affects the safety of the person. □  
2- When the case must go to court and the data is needed as evidences to or against. □

28. In our opinion the identity of a person should not be revealed in any case. □

EXAMPLE

# Describe process



- 1--report-is-sent-to-reporter-by-department-->
- 2--reporter-is-informed-when-report-is-received-->
- 3--reporter-is-asked-whether-would-like-to-be-informed-about-investigation-process-(via-system-or-individually)-->
- 4--report-gets-security-classification-(RAT-Tool)-->
- 5--audio-and-pics-according-to-reporter-if-necessary-->
- 6--case-closed-or-not-the-report-is-logged-->
- 7--CAA-receives-initial-notification-within-24-hours-->
- 7--CAA-receives-update-of-investigation-within-1-month-->
- 8--case-is-closed-within-maximum-12-months-->
- 9--within-any-of-those-steps-CAA-can-ask-for-additional-information-->
- 10--within-any-of-those-steps-Union-Confederation-can-be-included-in-investigation-or-revision-of-process-if-reporter-has-that-request-->
- 11--reporter-could-be-withdrawn-from-ops-for-wilful-misconduct-->

11

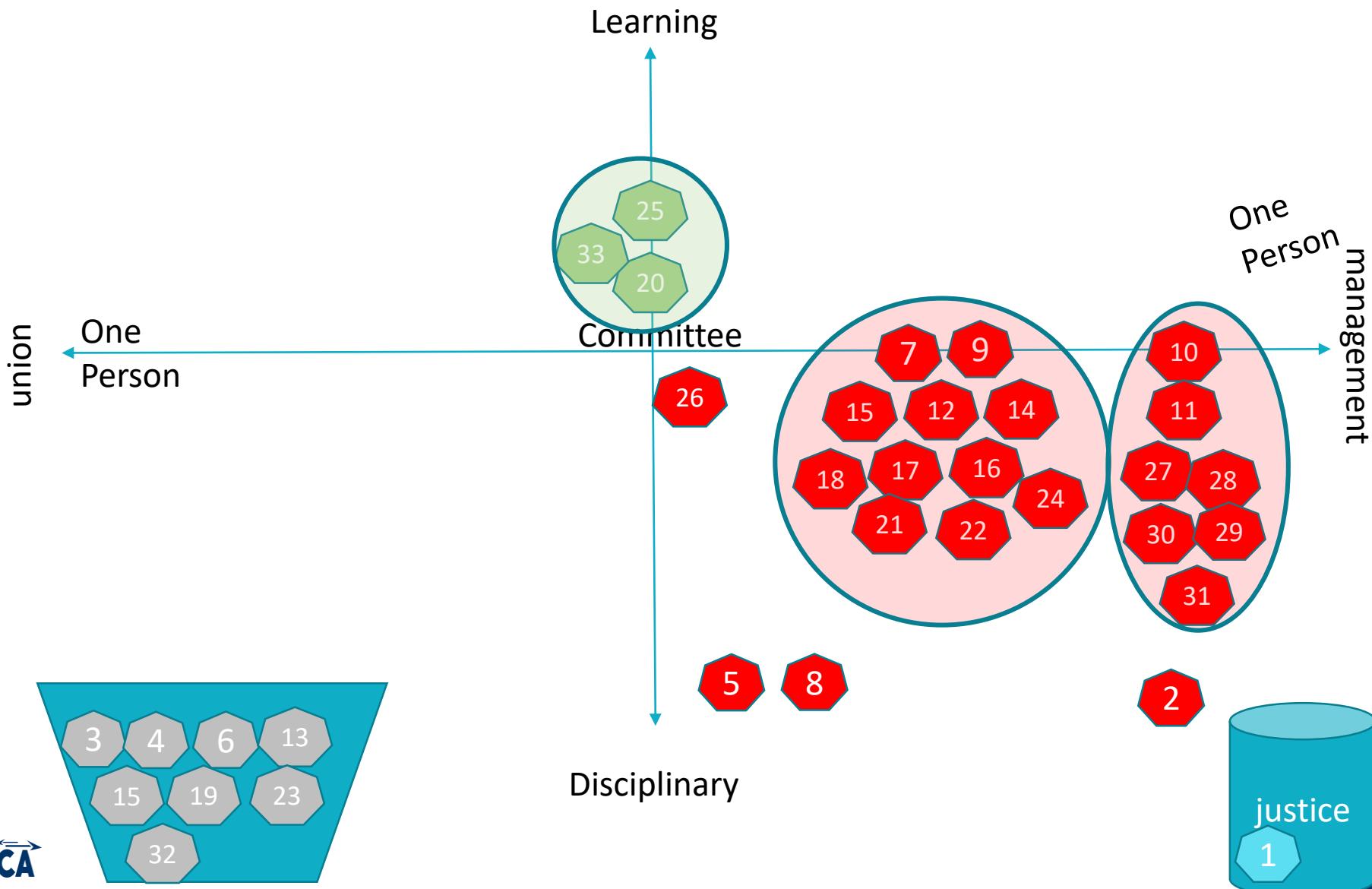
Every incident report is subject of the safety investigation. Safety investigators are obliged to inform safety manager if there is case of wilful misconduct found during the investigation.-->

Safety manager is obliged to present cases of wilful misconduct to the Safety Committee.-->

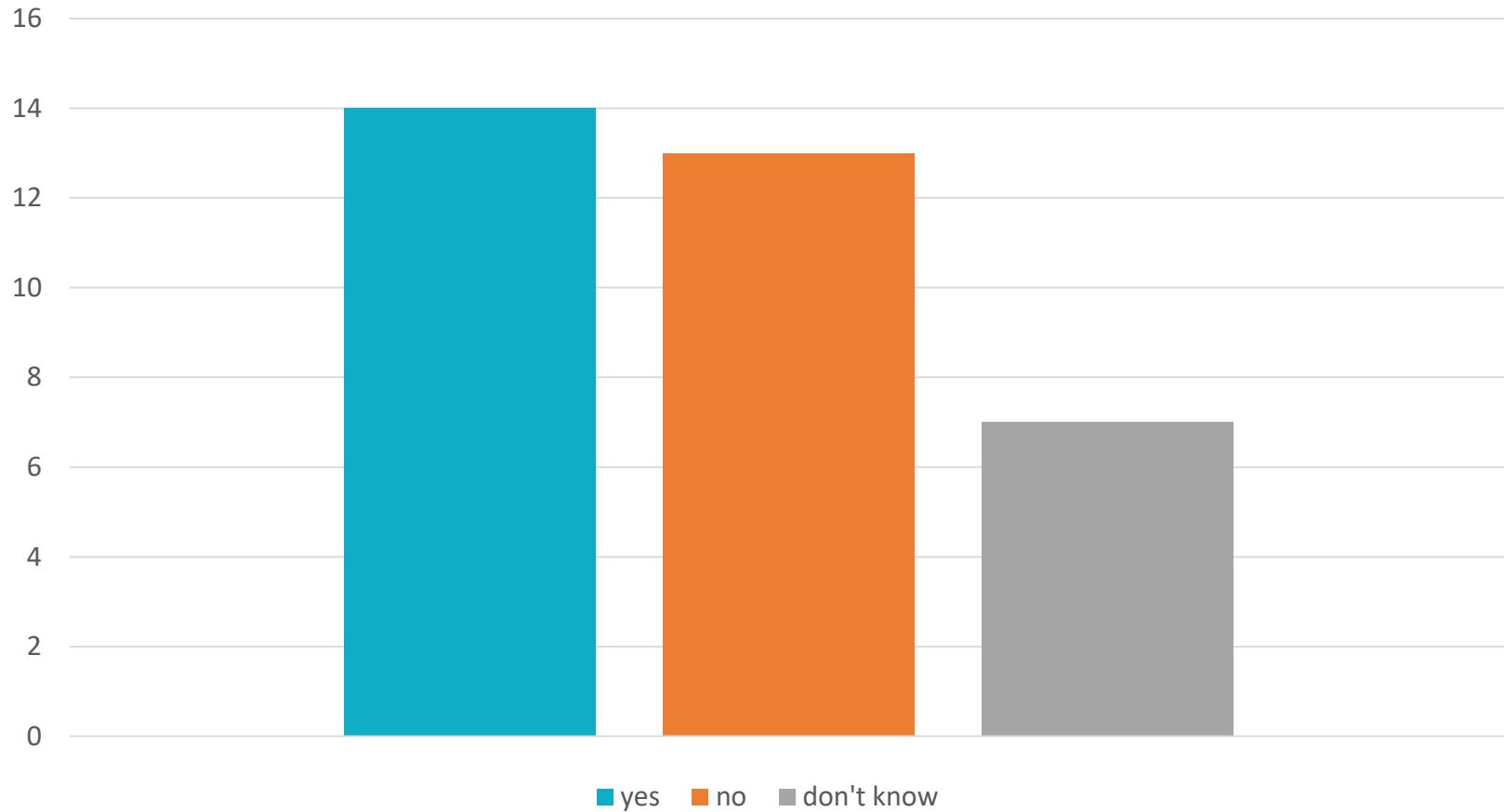
Safety committee is responsible for drawing the line between acceptable and unacceptable behaviour.-->

12

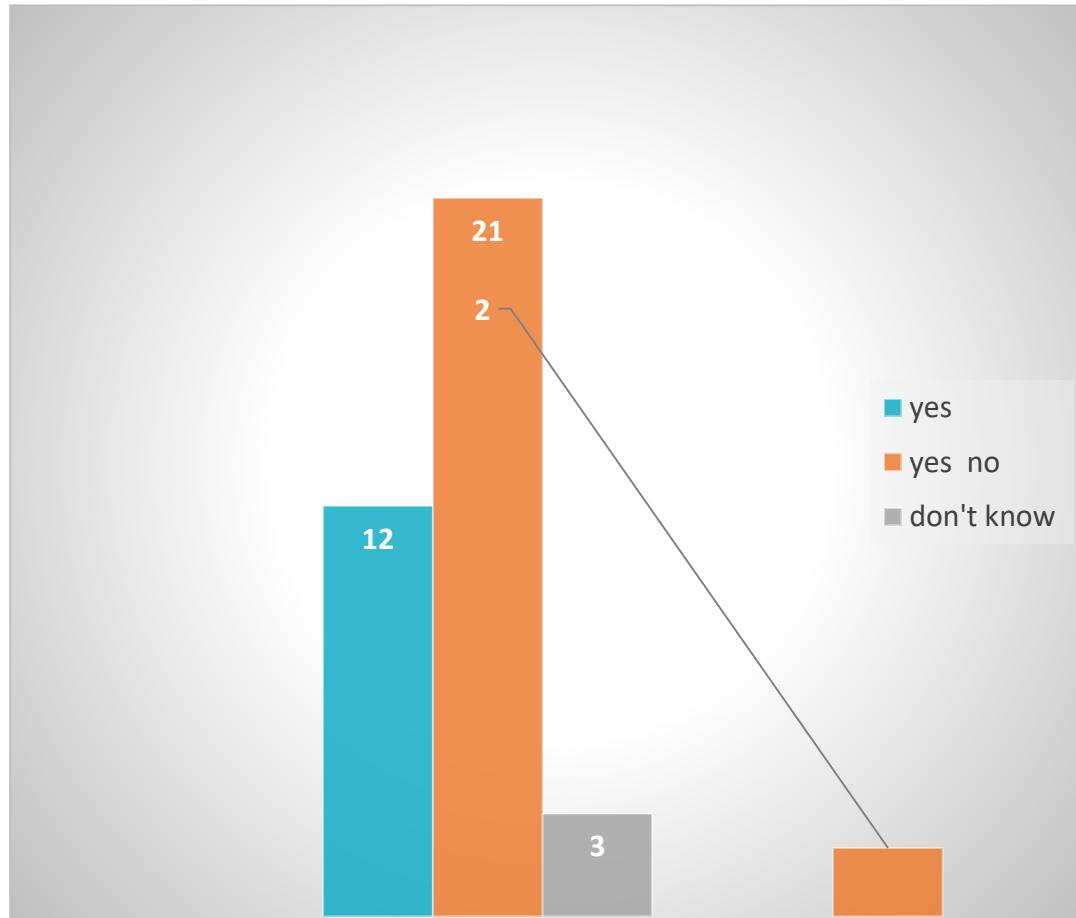
# Who draws the line?



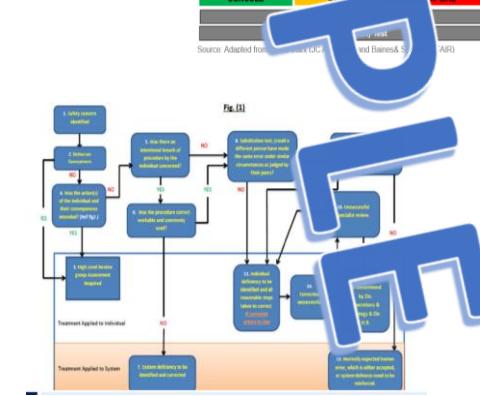
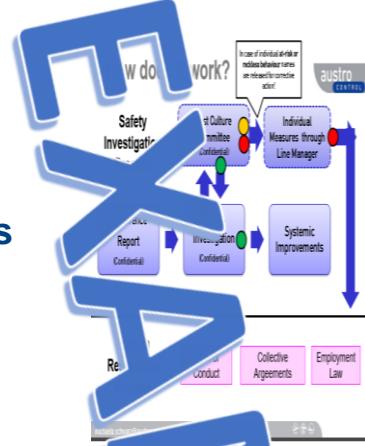
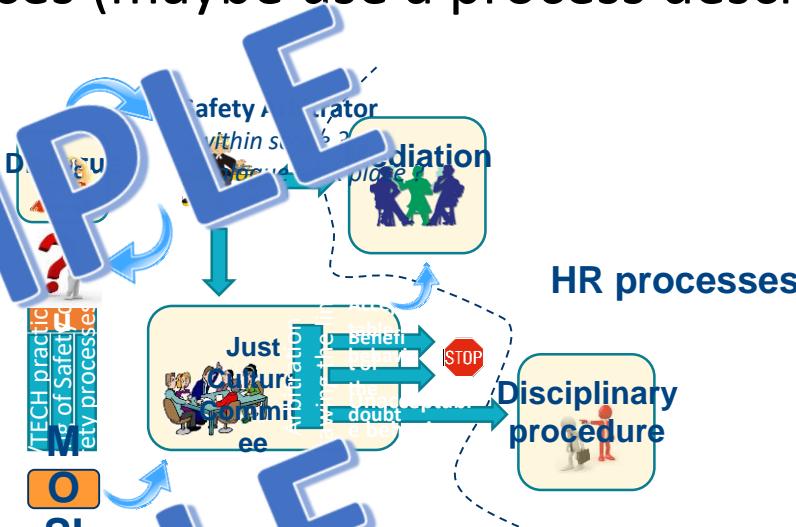
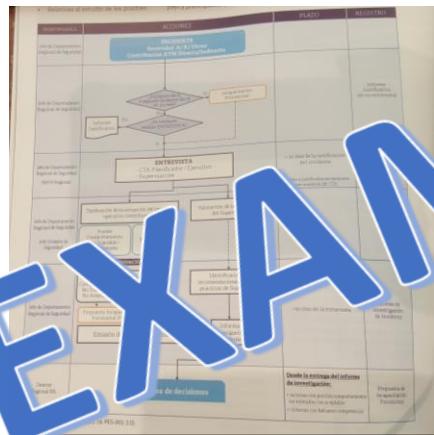
As the social partner need to agree on this process, the Association and/or union should at certain stage give its green line to the internal process.



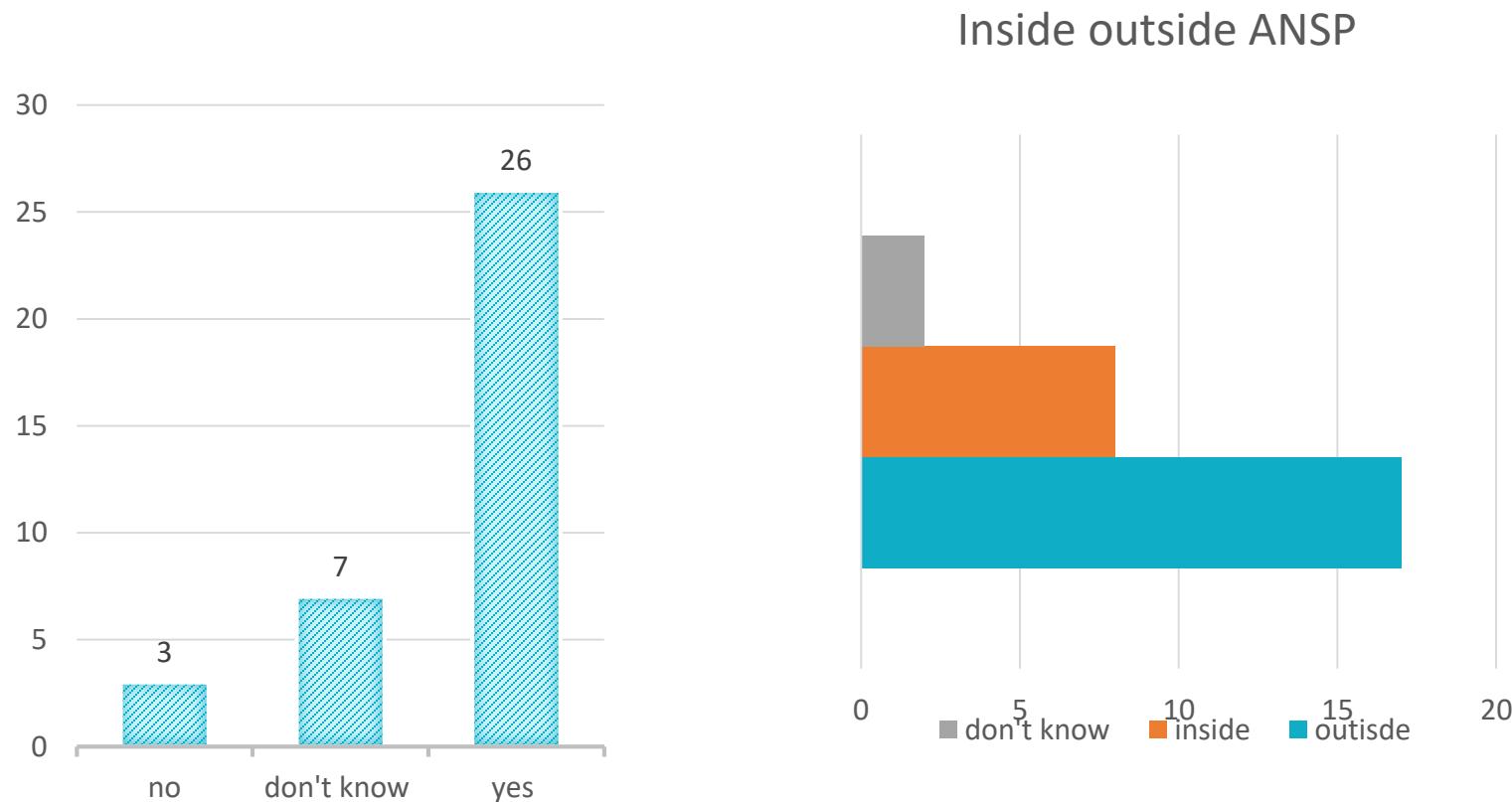
Is there a process in place in your organisation to draw the line (e.g. a committee – or an arbitration)?



If you have answered yes in Question 11 a) could you describe how this takes places (maybe use a process description).



# Appeal process possible?



swissatca



Just Culture Manual for ATCO, ANSE & ATSEP  
Behavior after an incident and further proceedings

V1.0, October 2017