

PROTOCOL OF UNDERSTANDING

BETWEEN

THE CIVIL AVIATION AND MARITIME NAVIGATION AUTHORITY OF THE REPUBLIC OF SAN MARINO

AND

THE NATIONAL AVIATION SAFETY AGENCY OF THE ITALIAN REPUBLIC

Having regard to Article 26 of the Convention on International Civil Aviation, concluded in Chicago on 7 December 1944, which provides for the following: «In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization¹.*[omissis]*»;

having regard to Annex 13 “Aircraft Accident and Incident Investigation” to the Convention on International Civil Aviation, implementing Article 37, paragraph 2, letter k, of the said Convention, which binds ICAO to adopt international standards and recommended practices for aircraft accident investigations;

having regard, in particular, to provision 5.1 of Annex 13 to Convention on International Civil Aviation, which allows the State responsible for carrying out the technical investigation to delegate the conducting of such investigation to another State: «5.1 The State of Occurrence shall institute an investigation into the circumstances of the accident and be responsible for the conduct of the investigation, but it may delegate the whole or any part of the conducting of such investigation to another State by mutual arrangement and consent. *[omissis]*»;

Whereas:

- Italy and the Republic of San Marino concluded, on 31 March 1939, a Convention of Friendship and Good Neighbourhood, which was supplemented by subsequent agreements;
- Italy and the Republic of San Marino are Parties to the Convention on International Civil Aviation, concluded in Chicago on 7 December 1944;
- the National Aviation Safety Agency, established under Decree 66 of 25 February 1999, thus implementing Council Directive 94/56/EC of 21 November 1994, is the Italian National Authority in charge of conducting, as a preventive measure, technical investigations on accidents and incidents involving civil aviation aircrafts;
- the National Aviation Safety Agency operates as a third party to the Italian National Aviation system so as to ensure objective investigations;
- In fulfilling its institutional duties, the National Aviation Safety Agency, complies with Annex 13 “Aircraft Accident and Incident Investigation” to the Convention on International Civil Aviation, as set forth by Article 827 of the Navigation Code;

¹ ICAO is a UN specialized agency for civil aviation set up under Article 43 of the Convention on International Civil Aviation.

- The Civil Aviation and Maritime Navigation Authority of the Republic of San Marino, set up under Law 9 of 16 January 2001, is also responsible for conducting aircraft accident investigations;
- Article 42, paragraph 1, of Delegated Decree 96 of 10 August 2007 establishes that in the Republic of San Marino the provisions set forth in Annex 13 to the Convention on International Civil Aviation shall apply to investigations on occurrences involving civil aviation aircrafts;
- Article 43, paragraph 4, of Delegated Decree 96 of 10 August 2007 provides that investigations on occurrences involving aircrafts that weigh more than 2250 kilograms shall be delegated to a specialized third party through a decision of the Congress of State and in compliance with the relevant regulations, which constitute an integral part of the agreement that also lays out the necessary financial and logistical resources;
- in 2007 the civil aviation system of the Republic of San Marino was audited by the International Civil Aviation Organization (ICAO);
 - during this *audit* ICAO pointed out, among other issues, that the Republic of San Marino:
 - a) has not set up, among its bodies, an investigation Authority responsible for conducting investigations on accidents and incidents involving civil aviation aircrafts and able to operate independently,
 - b) does not have qualified investigators for technical investigations;
 - c) the existing legislation is not in line with Annex 13 to the Convention on International Civil Aviation, especially as concerns the investigators' powers, the protection of objects being investigated and the recognition of the rights to which the accredited representatives of the States affected by the occurrence are entitled;
- With Note ref. 0224 of 25 September 2007, the Civil Aviation and Maritime Navigation Authority of the Republic of San Marino reported to the National Aviation Safety Agency, that ICAO, after the above mentioned *audit*, recommended to the same Authority to delegate the conducting of investigations to an investigation body located in another State and able to carry out inquiries pertaining to the Republic of San Marino in terms of location of occurrence;
- With the above mentioned Note ref. 0224 of 25 September 2007 the Civil Aviation and Maritime Navigation Authority of the Republic of San Marino on behalf of the Government and in order to ensure compliance with the provisions contained in Annex 13 to the Convention on International Civil Aviation asked if the National Aviation Safety Agency would be willing to conduct, by relying on its own staff, investigations that according to the said Annex 13 to the Convention on International Civil Aviation pertain to the Republic of San Marino and, if necessary, to issue relevant safety recommendations;
- With a view to establishing a real and fruitful cooperation between Italy and the Republic of San Marino, the Italian Ministry for Foreign Affairs, following a specific request of the National Aviation Safety Agency, with a Note dated 2 April 2008, reported that it does not see any obstacles to the conclusion of a technical protocol between the said the National Aviation Safety Agency and the Civil Aviation and Maritime Navigation Authority of the Republic of San Marino on the delegating of aircraft technical investigations;

the Civil Aviation and Maritime Navigation Authority of the Republic of San Marino (hereinafter CAA-MNA-SMR) and the National Aviation Safety Agency (hereinafter ANSV) conclude the following protocol of understanding, of which the preceding recitals constitute an integral part.

Article 1
(Definitions)

1. For the purposes of this protocol of understanding the definitions provided by Article 2 of Decree 66 of 25 February 1999, under which ANSV was set up, shall apply.

Article 2
(Notification of accident or serious incident)

1. CAA-MNA-SMR shall notify promptly ANSV of accidents or serious incidents involving civil aviation aircrafts that have occurred in the territory of the Republic of San Marino.
2. CAA-MNA-SMR shall notify promptly ANSV of accidents or serious incidents, involving civil aircrafts registered, planned or built in the Republic of San Marino or operated by an undertaking established in San Marino, which have occurred abroad.
3. Notifications referred to in paragraphs 1 and 2 shall be on the form indicated in Annex 1.

Article 3
(Delegating investigations and conferring the mandate)

1. Along with the notification referred to in Article 2, paragraph 1, CAA-MNA-SMR delegates to ANSV the conducting of investigation under its responsibility, by using the form indicated in Annex 2.
2. Along with the notification referred to in Article 2, paragraph 2, CAA-MNA-SMR confers upon ANSV, by using the form indicated in Annex 2, the mandate to represent the Republic of San Marino during the technical investigations carried out by investigation authority responsible for the territory of the occurrence and to exercise the rights that Annex 13 to the Convention on International Civil Aviation confers upon the State that registered, planned and built the aircraft as well as upon the State of the operator.
3. Provisions contained in paragraph 2 shall not apply if the accident or the serious incident occurred in the territory of the Italian State.

Article 4
(Acceptance of the delegation and representation)

1. Upon prior verification that the occurrence has been properly classified pursuant to Article 2, paragraph 1, ANSV shall notify CAA-MNA-SMR of the acceptance of the delegation to carry out the investigation under responsibility of the Republic of San Marino, by using the form indicated in Annex 3.
3. ANSV shall not carry out technical investigations on accidents and serious incidents involving civil aviation aircrafts that, according to the Italian legislation (Law 106 of 25 march 1985 and relevant implementation rules) fall under the category of pleasure and sports aircrafts (hang gliders, paragliders, ultralight planes, etc.)

Article 5
(Conducting the investigation)

1. In carrying out the investigation delegated by CAA-MNA-SMR, ANSV shall operate in compliance with the provisions contained in Article 13 to the Convention on International Civil Aviation.
2. The Republic of San Marino recognizes the powers that Articles 7 (paragraph 5), 9 and 10 of Italian Decree 66 of 25 February 1999 confers upon ANSV, its President, Board Members, and technical investigation staff.
3. For any investigation into an accident, ANSV shall draw up a report, which is to be sent to CAA-MNA-SMR and made available to whoever wishes to consult it, based on the criteria established by ANSV.
4. For any investigation into a serious incident, ANSV shall draw up a report, which is to be sent to CAA-MNA-SMR and circulated to the parties likely to benefit from its findings with regard to safety.
5. In the statements and reports the natural persons involved in the occurrence shall remain anonymous.
6. The statements and reports shall be discussed by the ANSV Board roughly within 12 months of the date of the accident, depending on the complexity of the investigation and on the priority institutional duties assigned to ANSV by the Italian State.
7. Deeds and documents related to investigations under way as well as to information contained in reports not yet completed are subject to the provisions set forth in Article 11 of Italian Decree 66 of 25 February 1999.

Article 6
(Support to investigations)

1. For the conducting of the delegated technical investigation, CAA-MNA-SMR undertakes to provide ANSV, if requested by the latter, with the necessary logistical support in the territory of the Republic of San Marino.
2. In order to ensure that the technical investigation is properly conducted, CAA-MNA-SMR undertakes to foster coordination between ANSV and the competent judicial authority of the Republic of San Marino, if the latter has initiated its own judicial inquiry.

Article 7
(Investigation costs)

1. The costs relating to the conducting of the technical investigations as well as to representation as referred to in Article 3, paragraph 2, shall be determined in a convention concluded by the parties for this purpose.

Article 8
(Re-evaluation and amendment of the protocol of understanding)

1. This protocol of understanding shall be re-evaluated every two years and may be amended if changes are necessary to meet the needs of ANSV or CAA-MNA-SMR.

Done in Rome, on 9 June 2009

The Director General
of the Civil Aviation

The President
of the National

And Maritime Navigation Authority
of the Republic of San Marino
(Dr. Marco Conti)

Aviation Safety Agency
of the Italian Republic
(Prof. Bruno Franchi)