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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

18 January 2024 (*)

(Reference for a preliminary ruling – Aviation transport – Regulation (EU) No 376/2014 – Follow-up of occurrences endangering aviation safety – Article 15 – Confidentiality of details relating to those occurrences – Scope of that confidentiality – Charter of Fundamental Rights of the European Union – Article 11 – Freedom of expression and of information – Freedom of the media – Request for disclosure of information on the downing of an aircraft flying over eastern Ukraine, made by undertakings operating in the media sector – Article 52(1) – Limitation – Conditions)

In Case C451/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 29 June 2022, received at the Court on 7 July 2022, in the proceedings

RTL Nederland BV,

RTL Nieuws BV

joined party:

Minister van Infrastructuur en Waterstaat,

THE COURT (Second Chamber),

composed of K. Jürimäe, President of the Third Chamber, acting as President of the Second Chamber, F. Biltgen, N. Wahl, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: A.M. Collins,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 30 March 2023,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M.K. Bulterman, J.M. Hoogveld and C.S. Schillemans, acting as Agents,
- the Council of the European Union, by F. Naert and N. Rouam, acting as Agents,
- the European Commission, initially by P.-J. Loewenthal, A. Nijenhuis, B. Sasinowska and G. Wilms, and subsequently by P.-J. Loewenthal, A. Nijenhuis and B. Sasinowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 15(1) of Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ 2014 L 122, p. 18), as amended by Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ 2018 L 212, p. 1) ('Regulation No 376/2014').

2 The request has been made in proceedings between RTL Nederland BV and RTL Nieuws BV (collectively, 'the RTL undertakings'), on the one hand, and the minister van Infrastructuur en Waterstaat (Minister for Infrastructure and Water Management, Netherlands), on the other, concerning a decision by which that Minister refused a request from those two undertakings for information relating to the downing of an aircraft that occurred on 17 July 2014 as that aircraft flew over eastern Ukraine.

Legal context

European Union law

General legislation on civil aviation

3 According to Article 1(1) thereof, the principal objective of Regulation 2018/1139 is to establish and maintain a high uniform level of civil aviation safety in the European Union.

4 For this purpose, the provisions of Chapter IV of that regulation aim to establish a 'joint certification, oversight and enforcement system'. Among those provisions, Article 72 of Regulation 2018/1139, entitled 'Information gathering, exchange and analysis', provides:

‘1. The [European] Commission, the [European Union Aviation Safety Agency (EASA)] and the national competent authorities shall exchange any information available to them in the context of the application of this Regulation and of the delegated and implementing acts adopted on the basis thereof, which is relevant to the other parties for the performance of their tasks under this Regulation. ...

...

5. The Commission shall adopt implementing acts laying down detailed rules for the exchange of the information referred to in paragraph 1 of this Article between the Commission, [EASA] and the national competent authorities ...

The detailed rules referred to in the first subparagraph of this paragraph shall take account of the need to:

...

(b) limit the dissemination and use of information to what is strictly necessary for achieving the objectives set out in Article 1;

...

6. The Commission, [EASA] and the national competent authorities ... shall, in accordance with Union and national law, take the necessary measures to ensure appropriate confidentiality of the information received by them pursuant to this Article. This paragraph is without prejudice to any stricter confidentiality requirements provided for in [Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ 2010 L 295, p. 35), Regulation No 376/2014], or other Union legislation.

...’

5 Article 119 of Regulation 2018/1139, entitled ‘Transparency and communication’, provides, in paragraph 1:

‘Regulation (EC) No 1049/2001 [of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)] shall apply to documents held by [EASA]. This shall be without prejudice to the rules on access to data and information set out in Regulation [No 376/2014] and in the implementing acts adopted on the basis of Article 72(5) ... of this Regulation.’

Legislation on the investigation of civil aviation accidents and incidents

6 Article 5 of Regulation No 996/2010, as amended by Regulation 2018/1139 (‘Regulation No 996/2010’), entitled ‘Obligation to investigate’, states, in paragraphs 1 and 2:

‘1. Every accident or serious incident involving aircraft to which Regulation [2018/1139] applies shall be the subject of a safety investigation in the Member State in which the accident or serious incident occurred.

2. Where an aircraft to which Regulation [2018/1139] applies and which is registered in a Member State is involved in an accident or a serious incident the location of which cannot be definitely established as being in the territory of any State, a safety investigation shall be conducted by the safety investigation authority of the Member State of registration.'

7 Article 14 of Regulation No 996/2010, entitled 'Protection of sensitive safety information', provides:

'1. The following records shall not be made available or used for purposes other than safety investigation:

- (a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;
- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;
- (c) information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;
- (d) material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- (e) information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;
- (f) drafts of preliminary or final reports or interim statements;
- (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

2. The following records shall not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

- (a) all communications between persons having been involved in the operation of the aircraft;
- (b) written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;
- (c) covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;
- (d) occurrence reports filed under [Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation (OJ 2003 L 167, p. 23)].

Flight data recorder recordings shall not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

3. Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted in so far as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State shall be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4. Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.'

8 Article 15 of that regulation, entitled 'Communication of information', provides, in paragraphs 3 to 5:

'3. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge ... shall release to EASA and national civil aviation authorities relevant factual information obtained during the safety investigation, except information referred to in Article 14(1) or causing a conflict of interest. The information received by EASA and the national civil aviation authorities shall be protected in accordance with Article 14 and applicable legal acts of the Union and national legislation.

4. The safety investigation authority in charge shall be authorised to inform victims and their relatives or their associations or make public any information on the factual observations, the proceedings of the safety investigation, possibly preliminary reports or conclusions and/or safety recommendations, provided that it does not compromise the objectives of the safety investigation and fully complies with applicable legislation on the protection of personal data.

5. Before making public the information referred to in paragraph 4, the safety investigation authority in charge shall forward that information to the victims and their relatives or their associations in a way which does not compromise the objectives of the safety investigation.'

9 Under Article 16 of Regulation No 996/2010, entitled 'Investigation report':

'1. Each safety investigation shall be concluded with a report in a form appropriate to the type and seriousness of the accident or serious incident. The report shall state that the sole objective of the safety investigation is the prevention of future accidents and incidents without apportioning blame or liability. The report shall contain, where appropriate, safety recommendations.

2. The report shall protect the anonymity of any individual involved in the accident or serious incident.

3. Where safety investigations give rise to reports before the completion of the investigation, prior to their publication the safety investigation authority may solicit comments from the authorities concerned, including EASA, and through them the certificate holder for the design, the manufacturer and the operator concerned. They shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation.
4. Before publication of the final report, the safety investigation authority shall solicit comments from the authorities concerned, including EASA, and, through them the certificate holder for the design, the manufacturer and the operator concerned, who shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation. In soliciting such comments, the safety investigation authority shall follow the international standards and recommended practices.
5. The information covered by Article 14 shall be included in a report only when relevant to the analysis of the accident or serious incident. Information or parts of the information not relevant to the analysis shall not be disclosed.
6. The safety investigation authority shall make public the final report in the shortest possible time and if possible within 12 months of the date of the accident or serious incident.
7. If the final report cannot be made public within 12 months, the safety investigation authority shall release an interim statement at least at each anniversary of the accident or serious incident, detailing the progress of the investigation and any safety issues raised.

...’

Legislation on occurrences in civil aviation

- 10 Directive 2003/42 was repealed and replaced by Regulation No 376/2014.
- 11 Recitals 6, 12, 16, 20, 32 to 34, 40 and 50 of Regulation No 376/2014 state:

‘(6) In order to improve aviation safety, relevant civil aviation safety information should be reported, collected, stored, protected, exchanged, disseminated and analysed, and appropriate safety action should be taken on the basis of the information collected. ...

...

(12) Safety investigation authorities and any entity entrusted with regulating civil aviation safety within the Union should have full access to details of occurrences collected and occurrence reports stored by their Member States, in order to decide which incidents require a safety investigation, as well as to identify where lessons can be learned in the interest of aviation safety and to fulfil their oversight obligations.

...

(16) To facilitate information exchange, occurrence reports should be stored in databases which should be compatible with the European Coordination Centre for Aircraft Incident Reporting Systems (ECCAIRS) (the software used by all Member States and by the European Central Repository to store occurrence reports) ...

...

(20) The objective of the exchange of information on occurrences should be the prevention of aviation accidents and incidents. It should not be used to attribute blame or liability or to establish benchmarks for safety performance.

...

(32) The general public should be provided with general aggregated information on the level of aviation safety in Member States and in the Union. That information should cover, in particular, trends and analysis deriving from the implementation of this Regulation by the Member States, as well as information in an aggregated form on the content of the European Central Repository, and may be provided by publishing safety performance indicators (SPI).

(33) The civil aviation safety system is established on the basis of feedback and lessons learned from accidents and incidents. Occurrence reporting and the use of occurrence information for the improvement of safety depend on a relationship of trust between the reporter and the entity in charge of the collection and assessment of the information. This requires strict application of rules on confidentiality. The purpose of protecting safety information from inappropriate use, and of limiting access to the European Central Repository solely to interested parties participating in the improvement of civil aviation safety, is to ensure the continuing availability of safety information so that appropriate and timely preventive action can be taken and aviation safety improved. In this context, sensitive safety information should be protected in an appropriate way and its collection should be ensured by guaranteeing its confidentiality, protecting its source and ensuring the confidence of staff working in civil aviation in occurrence reporting systems. Appropriate measures should be put in place to ensure that information collected through occurrence reporting schemes is kept confidential and that access to the European Central Repository is restricted. National rules on freedom of information should take into account the necessary confidentiality of such information. The information collected should be adequately protected from unauthorised use or disclosure. It should be used strictly for the purpose of maintaining or improving aviation safety and should not be used to attribute blame or liability.

(34) In order to ensure the confidence of employees or contracted personnel in the occurrence reporting system of the organisation, the information contained in occurrence reports should be protected appropriately and should not be used for purposes other than maintaining or improving aviation safety. ...

...

(40) In order to enhance the confidence of individuals in the system, the handling of occurrence reports should be organised in such a way as to appropriately safeguard the confidentiality of the identity of the reporter and other persons mentioned in occurrence reports ...

...

(50) The rules on data processing and the protection of individuals ... should be fully respected in the application of this Regulation. The rules on access to data as laid down in Regulation [No 1049/2001] should be fully respected in the application of this Regulation except as regards the dissemination of data and information contained in the European Central Repository, which are protected under stricter access rules laid down in this Regulation.'

12 Article 1 of Regulation No 376/2014, entitled ‘Objectives’, is worded as follows:

‘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.’

13 Under Article 2 of that regulation:

‘For the purposes of this Regulation the following definitions apply:

...

- (3) “incident” means an incident within the meaning of Regulation [No 996/2010];
- (4) “serious incident” means a serious incident within the meaning of Regulation [No 996/2010];
- (5) “accident” means an accident within the meaning of Regulation [No 996/2010];
- (6) “disidentified information” means information arising from occurrence reports from which all personal data such as names or addresses of natural persons have been removed;
- (7) “occurrence” means any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident;

...

- (9) “anonymisation” means the removal from occurrence reports of all personal details relating to the reporter and to the persons mentioned in occurrence reports and any details, including the name of the organisation(s) involved in the occurrence, which may reveal the identity of the reporter or of a third party or lead to that information being inferred from the occurrence report;

...’

14 Article 3 of Regulation No 376/2014, entitled ‘Subject matter and scope’, provides, in paragraph 1:

‘This Regulation lays down rules on:

- (a) the reporting of occurrences which endanger or which, if not corrected or addressed, would endanger an aircraft, its occupants, any other person, equipment or installation affecting aircraft operations; and the reporting of other relevant safety-related information in that context;
- (b) analysis and follow-up action in respect of reported occurrences and other safety-related information;
- (c) the protection of aviation professionals;
- (d) appropriate use [of] collected safety information;
- (e) the integration of information into the European Central Repository; and

...’

15 Under Article 4 of that regulation, entitled ‘Mandatory reporting’:

‘1. Occurrences which may represent a significant risk to aviation safety and which fall into the following categories shall be reported by the persons listed in paragraph 6 through the mandatory occurrence reporting systems pursuant to this Article:

- (a) occurrences related to the operation of the aircraft, such as:

...

- (iv) in-flight occurrences;

...

2. Each organisation established in a Member State shall establish a mandatory reporting system to facilitate the collection of details of occurrences referred to in paragraph 1.

3. Each Member State shall establish a mandatory reporting system to facilitate the collection of details of occurrences including the collection of details of occurrences collected by organisations pursuant to paragraph 2.

...

6. The following natural persons shall report the occurrences referred to in paragraph 1 through the system established in accordance with paragraph 2 by the organisation which employs, contracts or uses the services of the reporter or, failing that, through the system established in accordance with paragraph 3 by the Member State of establishment of their organisation, or by the State which issued, validated or converted the pilot’s licence, or through the system established in accordance with paragraph 4 by [EASA]:

- (a) the pilot in command, or, in cases where the pilot in command is unable to report the occurrence, any other crew member next in the chain of command of an aircraft registered in a Member State or an aircraft registered outside the Union but used by an operator for which a Member State ensures oversight of operations or an operator established in the Union;

(b) a person engaged in designing, manufacturing, continuous airworthiness monitoring, maintaining or modifying an aircraft, or any equipment or part thereof, under the oversight of a Member State or of [EASA];

(c) a person who signs an airworthiness review certificate, or a release to service in respect of an aircraft or any equipment or part thereof, under the oversight of a Member State or of [EASA];

(d) a person who performs a function which requires him or her to be authorised by a Member State as a staff member of an air traffic service provider entrusted with responsibilities related to air navigation services ...

(e) a person who performs a function connected with the safety management of an airport ...

...

7. The persons listed in paragraph 6 shall report occurrences within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this.

8. Following notification of an occurrence, any organisation established in a Member State which is not covered by paragraph 9 shall report to the competent authority of that Member State, as referred to in Article 6(3), the details of occurrences collected in accordance with paragraph 2 of this Article as soon as possible, and in any event no later than 72 hours after becoming aware of the occurrence.

...'

16 Article 5 of Regulation No 376/2014, entitled 'Voluntary reporting', provides, in paragraphs 1 to 3, for the establishment, by each organisation established in a Member State, by each Member State and by [EASA], of a voluntary reporting system to facilitate the collection of details of occurrences that may not be captured by the mandatory reporting system provided for in Article 4 of that regulation and other safety-related information which is perceived by the reporter as an actual or potential hazard to aviation safety. Article 5(7) of that regulation provides that organisations, Member States and [EASA] may establish other safety information collection and processing systems to collect details of occurrences that might not be captured by the reporting systems referred to in paragraphs 1, 2 and 3 of that article and in Article 4 of that regulation.

17 Article 6 of Regulation No 376/2014, entitled 'Collection and storage of information', provides:

'...

3. Each Member State shall designate one or more competent authorities to establish a mechanism to independently collect, evaluate, process, analyse and store details of occurrences reported pursuant to Articles 4 and 5.

The handling of the reports shall be done with a view to preventing the use of information for purposes other than safety, and shall appropriately safeguard the confidentiality of the identity of the reporter and of the persons mentioned in occurrence reports, with a view to promoting a "just culture".

...

6. The competent authorities referred to in paragraph 3 shall store occurrence reports drawn up on the basis of details of occurrences collected in accordance with Articles 4 and 5 in a national database.

...’

18 Article 7 of that regulation, entitled ‘Quality and content of occurrence reports’, provides, in paragraph 4:

‘The databases referred to in paragraphs 5, 6 and 8 of Article 6 shall use formats which are:

- (a) standardised to facilitate information exchange; and
- (b) compatible with the ECCAIRS software ...

...’

19 Article 8 of Regulation No 376/2014, entitled ‘European Central Repository’, provides, *inter alia*, in paragraphs 1 and 2, that the Commission is to manage a European Central Repository to store all occurrence reports collected in the European Union and that each Member State is to update that repository by transferring to it all information relating to safety stored in the national databases referred to in Article 6(6) of that regulation.

20 Article 9 of Regulation No 376/2014, entitled ‘Exchange of information’, provides, in paragraph 1:

‘Member States and [EASA] shall participate in an exchange of information by making all information relating to safety stored in their respective reporting databases available to the competent authorities of the other Member States, [EASA] and the Commission, through the European Central Repository.

Occurrence reports shall be transferred to the European Central Repository no later than 30 days after having been entered in the national database.

Occurrence reports shall be updated whenever necessary with additional information relating to safety.

...’

21 Article 10 of that regulation, entitled ‘Dissemination of information stored in the European Central Repository’, states, in paragraph 1:

‘Any entity entrusted with regulating civil aviation safety, or any safety investigation authority, within the Union shall have secure full online access to information on occurrences contained in the European Central Repository.

The information shall be used in accordance with Articles 15 and 16.’

22 Article 13 of Regulation No 376/2014, entitled ‘Occurrence analysis and follow-up at national level’, is worded as follows:

‘ ...

9. Where available, information relating to the analysis and the follow-up of individual occurrences or groups of occurrences obtained pursuant to this Article shall be stored in the European Central Repository, in accordance with Article 8(2) and (3), in a timely manner and no later than two months after [its] storage in the national database.

10. Member States shall use information obtained from the analysis of occurrence reports to identify remedial action to be taken, if any, within the State Safety Programme.

11. In order to inform the public of the level of safety in civil aviation, each Member State shall publish a safety review at least once a year. The safety review shall:

- (a) contain aggregated and anonymised information on the type of occurrences and safety-related information reported through its national mandatory and voluntary reporting systems;
- (b) identify trends;
- (c) identify the action it has taken.

12. Member States may also publish anonymised occurrence reports and risk analysis outcomes.’

23 Under Article 15 of that regulation, entitled ‘Confidentiality and appropriate use of information’:

‘1. Member States and organisations, in accordance with their national law, and [EASA] shall take the necessary measures to ensure the appropriate confidentiality of the details of occurrences received by them pursuant to Articles 4, 5 and 10.

Each Member State, each organisation established in a Member State, or [EASA] shall process personal data only to the extent necessary for the purposes of this Regulation and without prejudice to national legal acts implementing Directive 95/46/EC [of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31)].

2. Without prejudice to the provisions relating to the protection of safety information in Articles 12, 14 and 15 of Regulation [No 996/2010], information derived from occurrence reports shall be used only for the purpose for which it has been collected.

Member States, [EASA] and organisations shall not make available or use the information on occurrences:

- (a) in order to attribute blame or liability; or
- (b) for any purpose other than the maintenance or improvement of aviation safety.

...’

24 Article 16 of Regulation No 376/2014, entitled ‘Protection of the information source’, provides, in paragraph 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.’

25 Article 20 of that regulation, entitled ‘Access to documents and protection of personal data’, contains a paragraph 1, which is worded as follows:

‘With the exception of Articles 10 and 11, which establish stricter rules on access to the data and information contained in the European Central Repository, this Regulation shall apply without prejudice to Regulation [No 1049/2001].’

Netherlands law

The Law on Government Information (Public Access)

26 The right of public access to administrative documents was governed, as regards the dispute in the main proceedings, by the Wet houdende regelen betreffende de openbaarheid van bestuur (Law laying down rules on Government Information (Public Access) of 31 October 1991 (Stb. 1991, No 703; ‘the Law on Government Information (Public Access)’).

27 Article 2(1) of the Law on Government Information (Public Access) provided:

‘In carrying out its task, an administrative authority shall provide information in accordance with this law, without prejudice to any other provisions provided for by law, taking into account the general interest of public access to information.’

28 Article 3 of that law provided:

‘1. Anyone may address a request for information contained in documents relating to an administrative matter to an administrative body or to an institution, department or undertaking operating under the authority of an administrative body.

2. In the request, the requestor shall specify the administrative matter, or the document relating thereto, about which the requestor wishes to receive information.

3. The requestor need not show an interest when making the request.

...

5. A request for information shall be granted subject to the provisions of Articles 10 and 11.’

29 Article 10(2) of the Law on Government Information (Public Access) was worded as follows:

‘The provision of information under this law shall also not take place if the interest in the provision of such information does not prevail over the following interests:

a. relations of the Kingdom of the Netherlands with other States and international organisations;

...

- d. inspection, control and monitoring by administrative bodies;
- e. respect for privacy;
- ...

The Law on Aviation

30 Article 7.1(1) of the Wet houdende algemene regeling met betrekking tot het luchtverkeer (Law laying down general rules concerning aviation) of 18 June 1992 (Stb. 1992, No 368), in the version applicable to the dispute in the main proceedings ('the Law on Aviation'), provided:

'Occurrences shall be notified to the Minister for Infrastructure and the Environment.'

31 Article 7.2(1) of the Law on Aviation was worded as follows:

'Data obtained from a notification referred to in Article 7.1(1) or received from a Member State of the European Union in response to a similar notification in that Member State are not made public.'

The background to the dispute and the questions referred

32 By letter of 10 January 2018, the RTL undertakings requested that the minister van Justitie en Veiligheid (Minister for Justice and Security, Netherlands) communicate, pursuant to the Law on Government Information (Public Access), a set of information relating to the downing of an aircraft chartered by Malaysia Airlines and operating a flight bearing IATA (International Air Transport Association) code MH17 from Amsterdam (Netherlands) to Kuala Lumpur (Malaysia) ('flight MH17'). That downing took place on 17 July 2014, as flight MH17 was crossing the part of the Ukrainian airspace above the Donetsk region, which is located in eastern Ukraine. By their request, which concerned, inter alia, a category of documents identified as the 'reports [stored in ECCAIRS in] 2014 [and] relating to Ukraine' ('the ECCAIRS reports'), the RTL undertakings sought to obtain information on what the Netherlands authorities knew about that occurrence.

33 The Minister for Justice and Security forwarded the part of that request concerning the ECCAIRS reports to the Minister for Infrastructure and Water Management. After carrying out a search in the Netherlands database, the Minister for Infrastructure and Water Management established that three reports concerning occurrences in Ukrainian airspace in 2014 had been stored there by the competent Netherlands authority. However, he did not inquire whether other reports in this regard had been stored by the competent authorities of the other Member States in their respective national databases and in the European Central Repository.

34 By decision of 17 April 2018, the Minister for Infrastructure and Water Management refused the request in question in so far as it concerned the ECCAIRS reports. He based that decision, in essence, on the existence of special rules on the prohibition of disclosure that stem from Regulation No 376/2014 and that alone are applicable to the information in question, to the exclusion of the general rules on public access to administrative documents established by the Law on Government Information (Public Access). In his view, the legal consequence of those special rules is that information stored in national databases may be communicated only to interested parties, as defined in Annex II to that regulation, and be used only for the purpose of maintaining or improving aviation safety.

35 The RTL undertakings filed an administrative appeal against the decision of 17 April 2018.

36 By decision of 17 October 2018, the Minister for Infrastructure and Water Management confirmed his decision of 17 April 2018, adding to that decision a ground based, in essence, on Article 7.2 of the Law on Aviation, which, in his view, seeks to ensure the correct application in national law of Regulation No 376/2014 and thus also precludes the communication of information relating to the downing of flight MH17 to a legal person such as the RTL undertakings.

37 The RTL undertakings then brought an action before the rechtbank Midden-Nederland (District Court, Central Netherlands, Netherlands).

38 By judgment of 7 November 2019, that court dismissed the action brought by the RTL undertakings as unfounded.

39 In their appeal before the Raad van State (Council of State, Netherlands), the referring court, the RTL undertakings submit, inter alia, that Regulation No 376/2014 and Article 7.2 of the Law on Aviation cannot be interpreted as establishing special rules on confidentiality or on the prohibition of disclosure the legal consequence of which is to deprive them, in a complete and absolute manner, of the possibility that they have, under the general rules on public access to administrative documents laid down by the Law on Government Information (Public Access), of obtaining communication of information relating to the downing of flight MH17. It is true, they argue, that an analysis of the wording of Article 15 of that regulation, of the context in which that article occurs and of the objectives that it pursues makes apparent that the EU legislature intended to establish specific rules on confidentiality in the field of aviation safety. However, those rules on confidentiality do not impose a complete and absolute prohibition on the disclosure of information covered by them.

40 In the alternative, the RTL undertakings maintain that, even if it is conceded that those rules on confidentiality are applicable to the exclusion of any other rules, they should nevertheless be interpreted in a manner consistent with the right to freedom of expression and information enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'). It is thus still possible, the RTL undertakings argue, for undertakings operating in the media sector to obtain communication of certain information concerning an important general interest, as is the case with information concerning the catastrophic occurrence constituted by the downing of flight MH17.

41 In that context, the referring court is uncertain, in the first place, as to the scope of the rules on confidentiality established by Article 15 of Regulation No 376/2014, their compatibility with the special rules on the prohibition of disclosure established by the Law on Aviation and the relationship between those two sets of rules and the general rules on public access to administrative documents laid down, in national law, by the Law on Government Information (Public Access).

42 In that regard, that court takes the view, inter alia, that an analysis of Directive 2003/42 and of Regulation No 376/2014 does not make it possible to determine whether those acts impose, allow or, on the contrary, preclude a complete and absolute prohibition on the disclosure of the information to which the various confidentiality regimes that they establish apply. Their provisions and the recitals that may clarify their scope refer, in their Dutch-language version, to the need to ensure 'appropriate' or 'adequate' confidentiality of that information. Furthermore, they sometimes refer to 'information' received by the national competent authorities, sometimes to 'sensitive information' held by those authorities and sometimes to 'details of occurrences' which may represent a significant risk to aviation safety, without expressly specifying what is covered by those different concepts or how they interrelate with each other.

43 The referring court takes the view, moreover, that the various confidentiality regimes in question must be interpreted in the light of the right to freedom of expression and information that Article 11 of the Charter and Article 10 ECHR guarantee generally to everyone, and of the rights and the specific role of ‘watchdog’ that the second of those articles confers on the press, as the European Court of Human Rights recalled, *inter alia*, in its judgment of 8 November 2016, *Magyar Helsinki Bizottság v. Hungary* (CE:ECHR:2016:1108JUD001803011).

44 In the second place, the referring court asks, in essence, what consequences are to be drawn from the possible incompatibility of the Law on Aviation with Regulation No 376/2014, interpreted in the light of Article 11 of the Charter. In that regard, it takes the view that, if the special rules on the prohibition of disclosure laid down by that law were to be regarded as incompatible with Regulation No 376/2014 and, consequently, as inapplicable, the lawfulness of the decision by which the Minister for Infrastructure and Water Management refused the request of the RTL undertakings should be assessed in the light of the Law on Government Information (Public Access). Even though the Law on Government Information (Public Access) is not intended to ensure the transposition or application of secondary EU legislation and even though the latter does not generally harmonise the right of public access to administrative documents within the Member States, that law should nevertheless also be interpreted, to the greatest extent possible, by taking account of the confidentiality regime established by Regulation No 376/2014, as is, moreover, noted in recital 33 of that regulation.

45 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) What should be understood by “details of occurrences” and “appropriate confidentiality” as referred to in Article 15(1) of [Regulation No 376/2014] and in the light of the right to freedom of expression and information enshrined in Article 11 of the [Charter] and Article 10 [ECHR]?’

(2) Is Article 15(1) of [Regulation No 376/2014], in the light of the right to freedom of expression and information enshrined in Article 11 of the [Charter] and Article 10 [ECHR], to be interpreted as being compatible with a national rule, such as that at issue in the main proceedings, by virtue of which no information received from reported occurrences may be disclosed?

(3) If the answer to question 2 is in the negative: is the competent national authority permitted to apply a general national rule on disclosure by virtue of which information is not disclosed if disclosure would be outweighed by the interests concerned with, for example, relations with other States and international organisations, with inspection, control and monitoring by administrative authorities, with respect for privacy and with preventing natural and legal persons from being disproportionately advantaged and disadvantaged?

(4) When the general national rule on disclosure is applied, does it make any difference whether the information in question is contained in the national database or is information from or about reports contained in other documents, for example, policy documents?’

Consideration of the questions referred

The first and second questions

46 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 15 of Regulation No 376/2014, read in the light of the right to freedom of expression and information enshrined in Article 11 of the Charter, must be interpreted

as meaning that information held by the national competent authorities regarding an ‘occurrence’ relating to aviation safety, within the meaning of Article 2(7) of that regulation, is subject to a confidentiality regime the consequence of which is that neither the public nor even a media undertaking has the right to have access to that information.

47 In that regard, it must, as a preliminary point, be recalled that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union. That interpretation must take into account not only the wording of the provision to be interpreted, but also the context in which it occurs and the objectives pursued by the legislation of which it forms part (see, to that effect, judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 15 November 2022, *Senatsverwaltung für Inneres und Sport*, C646/20, EU:C:2022:879, paragraph 40).

48 Furthermore, all acts of the European Union must be interpreted, as far as possible, in such a way as not to affect their validity and in conformity with primary law as a whole, in particular the provisions of the Charter. Thus, if a provision of such an act is open to several interpretations, preference should be given to the interpretation which renders that provision consistent with primary law rather than to the interpretation which would lead to its being incompatible with that law (judgments of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 77, and of 26 April 2022, *Poland v Parliament and Council*, C401/19, EU:C:2022:297, paragraph 70).

49 In the present case, as regards, in the first place, the wording of Article 15 of Regulation No 376/2014, it should be noted, first, that paragraph 1 of that article requires, inter alia, that Member States take the necessary measures to ensure the appropriate confidentiality of the details of occurrences received by them pursuant to Articles 4, 5 and 10 of that regulation.

50 As is apparent from Article 4(1) to (3) and (6) to (8) of Regulation No 376/2014 and from Article 5(1) to (3) and (7) of that regulation, read in the light of the definitions set out in Article 2(3) to (5) and (7) thereof, ‘details’, within the meaning of that regulation, include all ‘information’ that is collected in any form by the national competent authorities through the notification and reporting systems provided for in the first two of those three articles, regarding occurrences which endanger or could endanger an aircraft, its occupants or any other person, whether they be incidents, serious incidents or accidents. As follows from the first subparagraph of Article 10(1) of Regulation No 376/2014, those details also include, more broadly, all ‘information on [such] occurrences’ that is stored in any form in the European Central Repository and in the national databases referred to, respectively, in Article 8 and Article 6(6) of that regulation, in particular that relating to the ‘evaluation’, the ‘analysis’ and the ‘follow-up’ that it is the task of the national competent authorities to carry out pursuant to the first subparagraph of Article 6(3) and Article 13(9) of that regulation, as well as that relating to the ‘remedial action’ to be taken pursuant to Article 13(10) of that regulation.

51 Consequently, the obligation of confidentiality laid down in Article 15(1) of Regulation No 376/2014 applies, as the Advocate General observed, in essence, in point 30 of his Opinion, to all information on occurrences that is held by the national competent authorities or by EASA under Article 4, 5 or 10 of that regulation. That information includes both information collected by the national competent authorities following the notification of an occurrence which endangers or could endanger an aircraft, its occupants or any other person and other information stored in the national

databases and in the European Central Repository, in particular that contained in the reports and other documents or media drawn up or compiled by those authorities following such notification.

52 Secondly, Article 15(2) of Regulation No 376/2014 specifies the legal scope of the obligation of confidentiality laid down in paragraph 1 of that article, the material scope of which it defines. Thus, the first subparagraph of Article 15(2) provides that, without prejudice to the provisions relating to the protection of safety information in Articles 12, 14 and 15 of Regulation No 996/2010, information derived from occurrence reports is to be used only for the purpose for which it has been collected. In addition, in accordance with the second subparagraph of Article 15(2), Member States are not to make available or use the information on occurrences in order to attribute blame or liability, and, more broadly, for any purpose other than the maintenance or improvement of aviation safety.

53 Although the first subparagraph of Article 15(2) of Regulation No 376/2014 refers, in general terms, to ‘the purpose for which [such information] has been collected’, it is apparent from an analysis of that regulation as a whole that that purpose relates, in actual fact, to the maintenance and improvement of aviation safety, referred to in the second subparagraph of that provision. More specifically, Article 3(1), the second subparagraph of Article 6(3) and Article 13(10) of that regulation show, in a clear and consistent manner, that that information may be made available and used only for purposes relating, in one way or another, to that maintenance or improvement, such as, for example, the identification of risks that may affect aviation safety, the follow-up of those risks, the adoption of measures to address them or the protection of professionals in the civil aviation sector. Furthermore, it is apparent from those latter three provisions of Regulation No 376/2014 and Article 9(1) thereof that the set of mechanisms that have been put in place to regulate the various aspects of the handling of that information, such as its notification, storage, evaluation and analysis, or even its exchange, are all intended to contribute to the maintenance and improvement of safety in the civil air navigation sector.

54 As regards, in the second place, the context in which Article 15 of Regulation No 376/2014 occurs and the objectives pursued by that regulation, it should be noted, first, that, according to Article 1(1) thereof, that regulation aims to improve aviation safety in the European Union by ensuring that relevant safety information relating to civil aviation is reported, collected, stored, protected, exchanged, disseminated and analysed.

55 Secondly, Article 1(1)(b) and (2) of Regulation No 376/2014 and recitals 6, 12, 20, 33, 34 and 40 of that regulation confirm that the obligation of confidentiality laid down in Article 15 of that regulation is a central and necessary element of the system of supervision and control established by it in order to improve aviation safety. That obligation of confidentiality is strict and applies to all information that is collected or drawn up for that purpose by the national competent authorities. The corollary of that obligation is the prohibition on making available or using such information for any other purpose.

56 Thirdly, other provisions of Regulation No 376/2014, while not directly concerning the making available and use of the information in question, clearly have the aim and effect of ensuring the effectiveness of the obligation of confidentiality laid down in Article 15 of that regulation by strengthening the prohibition resulting therefrom on making available or using that information for purposes other than those expressly referred to in Article 15 of that regulation.

57 In particular, it is clear from Article 20 of Regulation No 376/2014, read in the light of recital 50 thereof, that the right of public access to documents, as provided for in Regulation

No 1049/2001, does not apply to that information. That information is subject exclusively to the stricter rules laid down in Articles 10 and 11 of Regulation No 376/2014.

58 Fourthly, an analysis of the other regulations applicable in the field of aviation safety, to which Regulation No 376/2014 refers on numerous occasions, also confirms the general and strict nature of the obligation of confidentiality laid down in Article 15 of that regulation.

59 Thus, Regulation 2018/1139, the objective of which, according to Article 1(1) thereof, is to establish and maintain a high uniform level of civil aviation safety in the European Union, provides, in Article 72(1) and (5) thereof, that all information that may be gathered, analysed and exchanged by the Commission, EASA and the national competent authorities in the context of the application of that regulation must be disseminated and used only in so far as is ‘strictly necessary’ for achieving that objective. In addition, Article 72(6) of that regulation requires that those various entities take the necessary measures to ensure appropriate confidentiality of that information, without prejudice to ‘any [even] stricter’ confidentiality requirements laid down, inter alia, in Regulation No 376/2014. Lastly, Article 119 of Regulation 2018/1139 states, in essence, that the right of public access to documents established by Regulation No 1049/2001 is not to apply to information that is collected or drawn up pursuant to Regulation No 376/2014.

60 In a consistent manner, Regulation No 996/2010, which, as is apparent from Article 5(1) and (2) thereof, applies in parallel to Regulation No 376/2014 where there are accidents or serious incidents involving an aircraft that are to be the subject of a safety investigation, provides, in essence, in Article 14(1) and (2) thereof, that sensitive information concerning those accidents or serious incidents that is collected in the course of the safety investigation to which they give rise must benefit from ‘protection’ comparable to the ‘confidentiality’ laid down in Regulation No 376/2014, in the sense that it cannot be made available or used for purposes other than those related to that investigation or, in certain cases, to the improvement of aviation safety. It is also apparent from Article 15(3) of Regulation No 996/2010 that, where the safety investigation authority in charge releases some of that sensitive information to EASA or national civil aviation authorities for the purpose of improving aviation safety, the information in question must remain protected from being made available or used for other purposes.

61 Thus, it is apparent from the wording of Article 15 of Regulation No 376/2014, from the context in which it occurs and from the objectives pursued by the legislation of which it forms part that that provision must be interpreted as meaning that all information that is held by the national competent authorities regarding an ‘occurrence’ relating to aviation safety, as defined by Regulation No 376/2014, is subject to a confidentiality regime the consequence of which is that the public does not have the right to have access to that information in any form.

62 As regards the referring court’s considerations relating to the use of the words ‘appropriate’ and ‘adequate’ by the EU legislature, inter alia in recitals 6, 33, 34 and 40 of Regulation No 376/2014 and in certain provisions of that regulation, inter alia in Article 1(1), Article 3(1) and Article 6(3) thereof, it should be added that those words refer not to the ‘confidentiality’ provided for in that regulation as such, but to the ‘protection’ or ‘safeguarding’ of that confidentiality, to the ‘action’ to be taken to ensure that safeguarding or protection and to the ‘use’ of the information concerned. Those words must therefore be understood not as meaning that that confidentiality is only relative in nature, as envisaged by that court, but rather that it must be guaranteed by all means ensuring that the information in question is used only for the purpose for which it has been collected or drawn up.

63 Accordingly, Article 15 of Regulation No 376/2014 does not preclude national legislation that provides that information held by the national competent authorities regarding such an occurrence is subject to a complete and absolute confidentiality regime the consequence of which is that the public does not have the right to have access to that information in any form.

64 It follows that the obligation of confidentiality laid down in Article 15(1) of Regulation No 376/2014 applies, *inter alia*, to any information collected in any form by a national competent authority regarding an occurrence such as that at issue in the main proceedings, namely an ‘accident’, within the meaning of Article 2(5) of Regulation No 376/2014 and of Regulation No 996/2010, to which that provision refers, and to any information contained in any form in a document or medium which has been drawn up or compiled following the notification of such an occurrence and which is in the corresponding national database as well as in the European Central Repository. Such an occurrence is among those occurrences that are to give rise to a mandatory notification under Article 4(1)(a)(iv) of Regulation No 376/2014, since it is an in-flight occurrence in respect of the aircraft concerned and represents a significant risk to aviation safety. Consequently, the obligation of confidentiality must be complied with, *inter alia*, where there are ‘ECCAIRS reports’, such as those referred to in paragraphs 32 to 34 of the present judgment, it being noted that ECCAIRS is, in practice, the software which is used by national databases and by the European Central Repository and the implementation of which is required by Regulation No 376/2014, as follows from Article 7(4) of that regulation, read in the light of recital 16 thereof.

65 In the third and last place, having regard to the referring court’s questions concerning the legal consequences of such an interpretation of Article 15 of Regulation No 376/2014 for the right to freedom of expression and information, enshrined in Article 11 of the Charter, in the specific case where the person who requests access to information benefiting from the confidentiality regime laid down in that article is a media undertaking, the following should be stated.

66 The Court has already recalled that acts or provisions of secondary EU law which are liable to have an adverse impact on the exercise of the right to freedom of expression and information enshrined in Article 11 of the Charter, and thus to place a limitation on such an exercise, must be interpreted in the light of that right (see, to that effect, judgment of 26 April 2022, *Poland v Parliament and Council*, C401/19, EU:C:2022:297, paragraphs 47 and 70).

67 In the present case, all three of the Council of the European Union, the Commission and the Netherlands Government, in their written observations, have expressed the view that, while placing a limitation on the exercise of the right to freedom of expression and information enshrined in Article 11 of the Charter, Article 15 of Regulation No 376/2014 satisfies the conditions laid down by Article 52(1) of the Charter for such a limitation to be accepted.

68 In that regard, Article 52(1) of the Charter provides that limitations may be placed on the exercise of rights and freedoms guaranteed by the Charter on condition that (i) those limitations are provided for by law, (ii) they respect the essence of the rights and freedoms at issue, and (iii) in compliance with the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

69 As regards, first, the requirement that such a limitation must be provided for by law, it can be seen from the case-law of the Court that that requirement means, *inter alia*, that the legal basis of the limitation must clearly and precisely define the scope of that limitation (see, to that effect, judgments of 17 December 2015, *WebMindLicenses*, C419/14, EU:C:2015:832, paragraph 81, and of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C245/19 and C246/19, EU:C:2020:795, paragraph 76).

70 That is the case with Article 15 of Regulation No 376/2014, as is apparent, in particular, from paragraphs 51 and 61 of the present judgment.

71 As regards, secondly, the requirement that the essence of the right at issue be respected, it should, first of all, be recalled that Article 15 of Regulation No 376/2014 makes information that is collected or held by the competent aviation safety authorities pursuant to that regulation subject to a general and strict confidentiality regime. On that basis, that Article 15 is liable to impair the right to freedom of expression and information enshrined in Article 11 of the Charter in so far as that latter article generally allows everyone, in paragraph 1 thereof, and more specifically the media, in paragraph 2 thereof, to receive information.

72 Article 15 of Regulation No 376/2014 precludes any person from freely accessing the details and information referred to in that provision and therefore from taking cognisance of their content, regardless of the occurrence to which that information relates and therefore regardless of the interest that that information might possibly have for the public.

73 Furthermore, it precludes, more specifically, media undertakings from having access to that information for the purpose of journalism, in the context of preparatory research, investigative and information-gathering activities which are inherent to the freedom of the media and to the ultimate objective of the journalistic activity, which is to communicate information to the public and to contribute to public debate (see, to that effect, judgment of 15 March 2022, *Autorité des marchés financiers*, C302/20, EU:C:2022:190, paragraphs 68 and 69 and the case-law cited).

74 However, Article 15 of Regulation No 376/2014 applies only to information that relates to accidents, serious incidents or other occurrences which may represent a significant risk to aviation safety and that is collected or held by the competent public authorities pursuant to that regulation. It does not therefore preclude the public and media undertakings from seeking information in this connection from other sources or by other means.

75 In addition, that Article 15 of Regulation No 376/2014 does not, in itself, undermine the freedom of opinion and expression.

76 In those circumstances, it should be held that that article does not undermine the essence of the right enshrined in Article 11 of the Charter.

77 As regards, thirdly, the requirement that any limitation must be necessary for the pursuit of an objective of general interest recognised by the Union and proportionate to that end, it must be borne in mind that the Court has already held that the objectives of guaranteeing air traffic safety and, more broadly, of ensuring a high uniform level of civil aviation safety in Europe constitute objectives of general interest recognised by the Union (see, to that effect, judgments of 5 July 2017, *Fries*, C190/16, EU:C:2017:513, paragraphs 42 and 43, and of 2 June 2022, *Skeyes*, C353/20, EU:C:2022:423, paragraph 67).

78 Such an objective of general interest might also be that consisting, for the EU legislature, in establishing, in a sector characterised by a particular situation, a system of supervision and control based on mechanisms for notification of information by the natural or legal persons concerned, shared analysis of that information by the national and EU competent authorities and protection of that information by means of confidentiality obligations. In particular, the Court has accepted that such obligations may be necessary to maintain the trust of the persons concerned and to protect them against the risk of disclosure of the information that they are to communicate to the competent authorities (see, as regards the financial supervision sector, judgment of 19 June 2018, *Baumeister*,

C15/16, EU:C:2018:464, paragraphs 31 to 33 and 46, and, as regards the public procurement sector, judgment of 7 September 2021, *Klaipėdos regiono atliekų tvarkymo centras*, C927/19, EU:C:2021:700, paragraph 115 and the case-law cited).

79 In the present case, as is apparent from paragraphs 54 and 55 of the present judgment, such objectives underlie both Regulation No 376/2014 as a whole and, more specifically, the system of supervision and control established by that regulation and the obligation of confidentiality laid down in Article 15 thereof, which is a central and necessary element of that system.

80 Furthermore, as the Council and the Commission have stated in their written and oral observations before the Court, it must be observed that, while precluding, in a general and strict manner, any right for the public or even for a media undertaking to have access to the information concerned, the obligation of confidentiality laid down in Article 15 of Regulation No 376/2014 is without prejudice to the possibility for the national competent authorities or courts to decide of their own motion, in certain specific situations and in compliance with strict conditions, to make some of that information public.

81 Thus, first of all, Article 13(11) and (12) of Regulation No 376/2014, which must be read in the light of recital 32 of that regulation, enables Member States to publish not only reviews to inform the public of the general level of safety in civil aviation, inter alia by means of aggregated and anonymised information, but also reports of individual occurrences, provided that those reports are anonymised.

82 Next, Article 15 of Regulation No 376/2014 is, as is apparent from its very wording, without prejudice to the possibility that Article 14(3) and (4) of Regulation No 996/2010 gives to the administration of justice or the national competent authority to decide to disclose, in so far as it is strictly necessary for a purpose permitted by law and in compliance with the conditions laid down by those provisions and by the applicable national law, certain information relating to an accident or serious incident involving an aircraft which has been the subject of a safety investigation.

83 Lastly, and in the same way, Article 15 of Regulation No 376/2014 is without prejudice to the possibility for the safety investigation authority in charge to decide, in accordance with Article 15(4) and (5) of Regulation No 996/2010, to inform the victims of the accident or serious incident concerned and their relatives or their associations, and to make public any information on the proceedings of the investigation as well as any preliminary reports, conclusions or recommendations to which those proceedings give rise. That authority is also obliged, pursuant to Article 16 of that regulation, to publish the final report to which those proceedings give rise.

84 In the light of all the provisions referred to in paragraphs 81 to 83 of the present judgment, which give the public and more specifically media undertakings certain possibilities of receiving general information relating to aviation safety in the European Union and information relating to certain particular occurrences, in situations where the national competent authorities or courts consider the publication or targeted disclosure of that information to be justified, the obligation of confidentiality laid down in Article 15 of Regulation No 376/2014 must be regarded as being proportionate to the objective that it pursues. Irrespective of the fact that that obligation does not preclude the public and media undertakings from seeking information from other sources or by other means, as is apparent from paragraph 74 of the present judgment, it does not preclude all possibility for the information in question to be disclosed at the initiative and under the control of those authorities or courts. It is thus apparent that, in adopting Regulation No 376/2014, the EU legislature sought to strike, and did indeed strike, a fair balance between the objectives pursued by

that regulation, on the one hand, and the various public and private rights and interests at stake, on the other.

85 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 15 of Regulation No 376/2014, read in the light of the right to freedom of expression and information enshrined in Article 11 of the Charter, must be interpreted as meaning that information held by the national competent authorities regarding an ‘occurrence’ relating to aviation safety, within the meaning of Article 2(7) of that regulation, is subject to a confidentiality regime the consequence of which is that neither the public nor even a media undertaking has the right to have access to that information in any form.

The third and fourth questions

86 In view of the answer given to the first and second questions, there is no need to answer the third and fourth questions.

Costs

87 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 15 of Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007, as amended by Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018, read in the light of the right to freedom of expression and information enshrined in Article 11 of the Charter of Fundamental Rights of the European Union

must be interpreted as meaning that information held by the national competent authorities regarding an ‘occurrence’ relating to aviation safety, within the meaning of Article 2(7) of Regulation No 376/2014, as amended, is subject to a confidentiality regime the consequence of which is that neither the public nor even a media undertaking has the right to have access to that information in any form.

[Signatures]

* Language of the case: Dutch.