

# Position of general and business aviation in the legal framework of air law

**G.A.R.S. Workshop "The Future Role of Business Jets in Air Transport"**

**Faculty L&R**

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# Who am I?



- Graduated in June 2006 at Stork Fokker AESP
  - A Boeing 787 Strategy and Opportunity Research from a Supply Chain Perspective for Stork Fokker AESP BV
- E-Learning Project Coordinator
- Profile Coordinator Airline Profile, DUT
- Founder of the Start-Up Aeolus Aviation



Transport people on-demand and door-to-door through the air, competing with current Business Jet Airlines

# Position of general and business aviation in the legal framework of air law

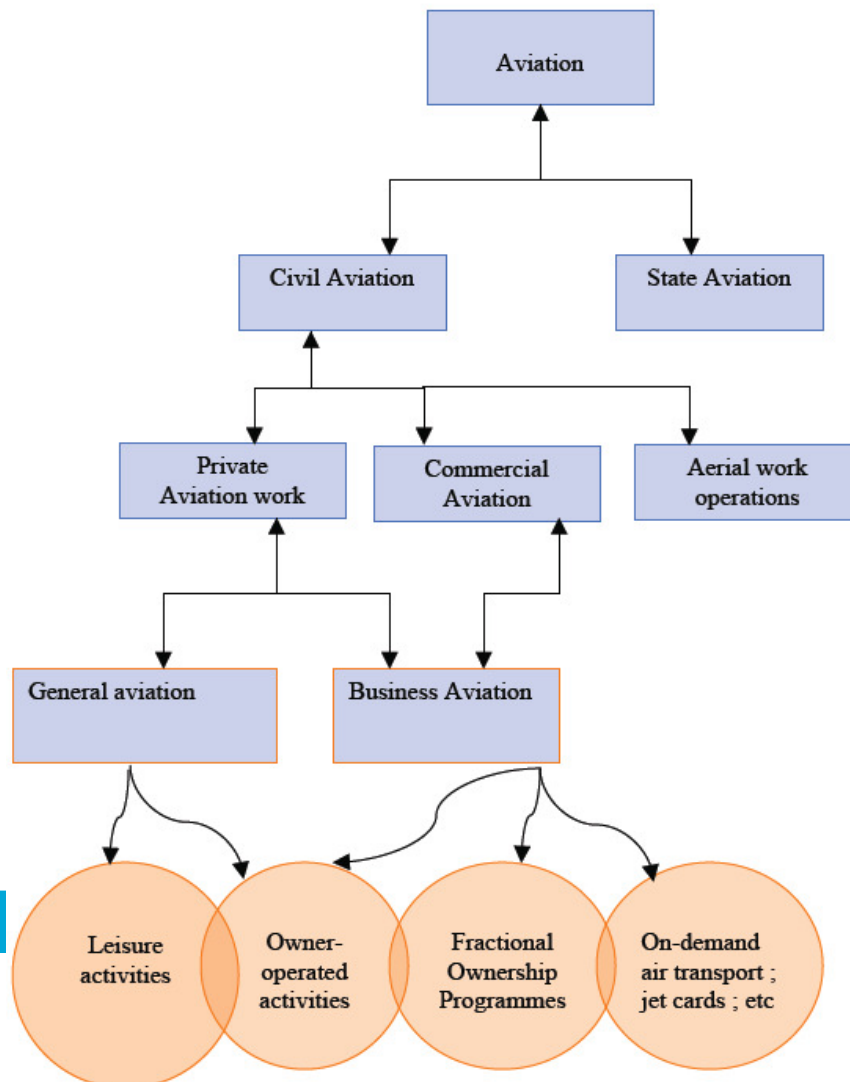
- General and Business Aviation definition
  - General Aviation
  - Business Aviation
  - Aircraft Management Schemes and Fractional Ownership
- Influence of the principles of the practice
  - Proportionate regulations
  - Financial aspects
  - Public and private law

# Relevance

- 50,000 motor-powered general and business aviation aircraft in Europe
- 5,000 aircraft in the European commercial aviation
- 180,000 to 200,000 aircraft used for sport and recreation
  
- Growth of the business and general aviation is **two** times quicker than the entire rest of the traffic.

*Source: European Commission*

# How can general and business aviation be defined



Strict difference between the:

- nature of the activity (private or commercial)

and

- the activity itself.

# Definition of general aviation

- General aviation (*Chicago convention, annex 6.2*)
  - “an aircraft operation other than a commercial air transport operation or an aerial work operation”
- Commercial aviation
  - “carriage of passengers, cargo or mail for remuneration or hire”
  - “commercial air transport operation” = “an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire”

# Definition of general aviation

Terms subject to interpretation:

- Transport
  - Non qualified = general aviation
  - Non compatible national law
- Passengers
- Remuneration or hire
  - “any kind of remuneration, whether monetary or other, which the operator receives from someone else for the act of transportation”

# Definition of general aviation

Transport considered as made for reward or gratuitously

- Remuneration by the passenger
- Identifiable fare or lump sum
- Flight on a share-expenses basis (also not monetary)
- Identification of the carrier  
(rewarding for transport = profit?)

# Definition of business aviation

- Delimitation of general aviation definition versus confusing business aviation definition
  - Classification private/commercial
  - No limited definition
- ICAO
  - Commercial air taxi
  - Corporate aviation
  - Owner-operated
  - Fractional ownership

# Definition of business aviation

- Eurocontrol: list of aircraft type
  - Proportionality
  - Discrimination
- IBAC
  - *“ That sector of aviation which concerns the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating.”*
  - Commercial aviation, corporate aviation and owner operated aviation

# Definition of business aviation

- EU
  - « *General and business aviation is very diverse. It encompasses activities ranging from recreational flying with non-powered aircraft to complex operation of high-performance business jets and specialized aerial works* »
  - Corporate aviation, fractional ownership, jet cards, on-demand charter, other products like on-demand business-class air taxi

# Definition of fractional ownership programs

- Generally considered as business aviation
- National legislated
- Vast range of different systems
- The qualification FAOP has consequences because of separation
- US regime: private and common carriage  
*(scope of business)*
- EU regime: adapts characteristics from ICAO and US

# Definition of fractional ownership programs

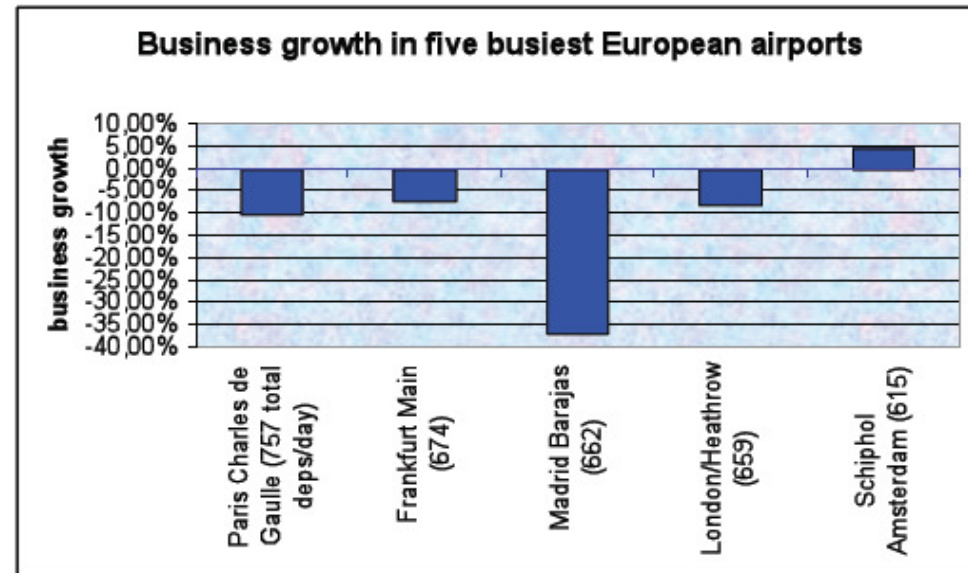
1. The provision of services for management of the program by a single program manager acting on behalf of the owners;
2. The availability of two or more aircraft for services;
3. One or more owners per aircraft belonging tot the program, with at least one aircraft having more than one owner;
4. Each owner owning a minimum percentage (to be determined) in at least one of the program's aircraft;
5. *An agreement on dry lease exchange of aircraft between all the owners*
6. *Multi-annual agreements between participants in the program, defining conditions with regards to ownership, management of the program and exchange of aircraft between owners;*

# Definition of fractional ownership programs

7. ***private non-commercial transport***, and must delegate all or part of the tasks associated with the operation of the aircraft to the Program Manager;
8. A clear statement would be required that transport of passengers or goods or any operation for remuneration or hire under such a program is prohibited;
9. A prohibition on the sale or lease of an aircraft interest that is less than the "minimum Fractional Ownership interest" unless the flights associated with that interest are operated under a commercial regime by a certified and licensed air carrier; and
10. A requirement that passengers on a Fractional Ownership flight must be "designated" by the relevant owner."

# Characteristics and conclusions

- Aircrafts involved
- Users involved
- Routes and activities involved
- Concluding:
  - Diversity
  - Aims of the transport
  - Common understandings



# Influence of the principles of the practice

- Proportionate regulations
- Financial aspects
- Public and private law

# Proportionate regulations

European Commission "*highlighted that in view of a wider objective of better regulation, proportionality should be one of the priorities in the rulemaking process*"

- Exclusion from Business and general aviation in regulations
- Different impact of regulation
- Specific needs (ex. small operators)

# Financial aspects

- “Cape town convention” is centered on the recovery of assets in case of defaults.
- Definition for
  - Airframes
  - Helicopters
  - Engines
- “confine the Convention to dealings in high-value civil aviation aircraft by experienced parties”
- Concluding:
  - Proportionality
  - Smaller capacity a/c

# Public law

- The license
- Granting the license
- Traffic rights
- Security and Safety measures
- Air traffic management
- Airport Charges
- Environmental issues

# Public law: the licensing

*“European Community: “The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, as well as local flights not involving carriage between different airports, are not subject to this Regulation. In respect of these operations, national law concerning operating licenses, if any, and Community and national law concerning the air operator's certificate (AOC) shall apply.”*

Outside scope of application:

- The flight must be local
- The operation must be a carriage
- The carriage must be circular

# Public law: granting the license

*Without prejudice to Article 1 (2), no undertaking established in the Community shall be permitted within the territory of the Community to carry by air passengers, mail and/or cargo for remuneration and/or hire unless the undertaking has been granted the appropriate operating license.*

1. The operation is not a carriage;
2. The operation, even if constituting a carriage, does not involve passengers, mails or cargo;
3. The operation, even if constituting a carriage of passengers, mail or cargo is not made for remuneration or hire;

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= exclusion definition commercial operation elaborated by ICAO

# Public law: Traffic rights

- Chicago convention: *“the Contracting states recognize that every State has complete and exclusive sovereignty over the airspace above its territory”*.
  - Not elaborate on a specific regime
  - Flexibility to non-commercial flights
  - CC: Private flights not subjected to obtain traffic rights and cabotage right
  - FAOP's from one point to another in a state besides the registering state ??

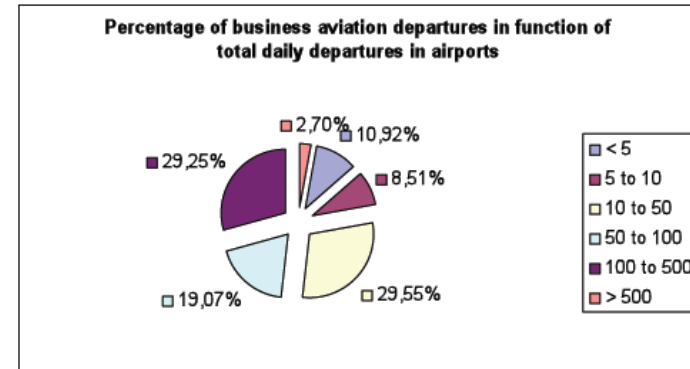
# Public law: security and safety measures

Operation	Accidents on 100.000 departures
Air Taxi	317 (95 fatal)
Owned operated	128
Corporate	47

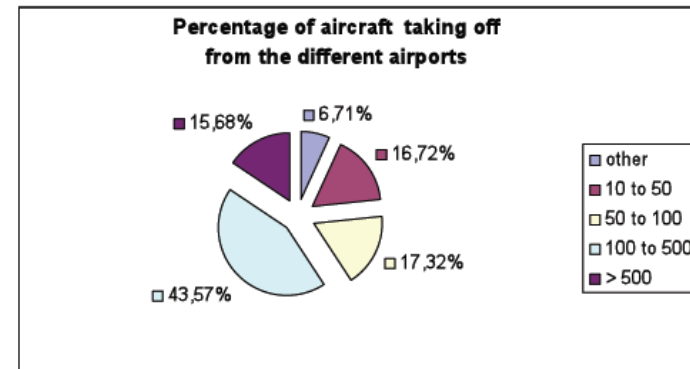
- European level:
  - Recognition of proportional regulations to ensure the safety (excluding certain a/c)
  - FAOP's classified as commercial or private towards these safety regulations compared to fewer regulations towards VLJ's
- International level (IBAC):
  - MTOW
  - Threat analysis
  - Supplement SRA's (Security Programme Zones)Generating proportionality!

# Public law: air traffic management

- Airspace capacity
- Airport capacity
  - Sensitivity to turbulent wake vortices generated by bigger aircraft
- Slot availability due to volatile demand



One can notice the that half of business departures are taking-off from airports with less than 100 daily departures.



# Public law: airport charges

- European level: EC, necessity of a global regulation.
- National level:
  - Currently regulator, lack of harmonization
  - Peak charges

# Public law: environmental issues

- Noise pollution
  - Caps
  - Small distances versus environment
  - Quick climbing
- Gaseous emission pollution
  - ETS, excluding
    - VFR flights
    - Circular flights
    - MTOW < 5700 kg

# Private law

- European competition aspects (economic activities)
- The Warsaw/Montreal convention
- Insurance requirement

# Conclusions

- Need for proportionality and differentiation
- Stagnation: actors agree on a vision, but the way to get there is still uncertain
- Regulate recreational activities through basic regulations and business activities by a specific set of rules
- In the mean while: ad hoc
- EU and ICAO should define and characterize

