

Air Transport

Contributing editors

John Balfour and Mark Bisset



2016

**GETTING THE
DEAL THROUGH** 

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DEAL THROUGH 

Air Transport 2016

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Belgium

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General

1 Which bodies regulate aviation in your country, under what basic laws?

There are three regulatory bodies in Belgium: general authority lies with the Civil Aviation Authority of the Federal Public Service of Mobility and Transport, which was created by the Law of 27 June 1937 and its Royal Decree of 15 March 1954 (as amended); Belgocontrol is responsible for air traffic control and civil air navigation services for Luxembourg and Belgium and was created by the Law of 19 December 1997; and the Belgian Supervising Authority for Air Navigation Service, which was created in the context of the Single European Sky by the Royal Decree of 14 February 2006.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

A distinction should be made between international conventions and treaties that are directly applicable and their implementation instruments, EU regulations and directives and Belgian law.

The Chicago Convention was ratified in Belgium on 30 April 1947 and was implemented by the Royal Decree of 15 March 1954, which has been amended several times. The Law of 30 April 1947 has been further implemented by another 24 royal and ministerial decrees. In effect that law, together with the Law of 27 June 1937 and the Royal Decree of 15 March 1954, are the basic regulations for aviation operations in Belgium.

The basic regulations with respect to technical operations are laid down in the Royal Decree of 9 January 2005 and, with respect to flight operation licences, in the Royal Decree of 10 January 2000. The Ministerial Decree of 13 February 1970, as amended (see especially Ministerial Decree of 20 October 2003), sets out further technical requirements for the operation of aircraft of 5,700kg or more as well as organisational requirements for the airline and the maintenance of aircraft.

As a result of EC Regulation No. 3922/91, the JAR rules also apply in Belgium and have been further implemented by the Royal Decree of 25 June 2001. With the creation of the European Aviation Safety Agency (EASA), many safety issues are now further regulated and harmonised at EU level.

3 What safety regulation is provided for air operations that do not constitute public or commercial transport and how is the distinction made?

The Royal Decree of 15 March 1954 applies to all civil aircraft whether or not they are used for commercial transport. However, with respect to the licence requirements for commercial transport, a distinction is drawn between taxi services and other commercial operations. A taxi service is defined as aircraft with no more than 10 seats and in respect of which the destination is fixed by the users without any seat going to other commercial passengers. The licence requirements for taxi services are less stringent than for other commercial operations. If an aircraft is not used for commercial transport, the licence requirements for commercial operations do not apply. Both the Royal Decrees of 9 January 2005 with respect to technical operations and of 10 January 2000 with respect to flight operation licences make a clear distinction between the different types of aircraft.

4 Is access to the market for the provision of air transport services regulated and, if so, how?

EC Regulation No. 1008/2008 of 24 September 2008 is directly applicable in Belgium. A Ministerial Decree of 3 August 1994 further sets out the licence requirements for the commercial operation of aircraft.

The licence and the air operator's certificate (AOC) are issued by the Civil Aviation Authority.

5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

The applicants must have their principal place of business and, if any, their registered office in Belgium. Applicants must have at least one aircraft registered in Belgium, adequate insurance and evidence that the company is and will continue to be owned directly or through a majority shareholding by a company established and controlled by a company or person established in the European Economic Area (EEA). The application must be accompanied by the documents that identify the applicant and its shareholding structure and the routes it wishes to operate together with all the documents required pursuant to EC Regulation No. 1008/2008. Except for certain exceptions set out in the royal decree, an operating licence may not be granted if the operator has not previously obtained a certificate affirming that the operator has the ability and resources to ensure the safe operation of the aircraft for the activities set out in the certificate. The AOC is also issued by the Civil Aviation Authority.

The financial fitness criteria are those laid down in EC Regulation No. 1008/2008.

6 What procedures are there to obtain licences or other rights to operate particular routes?

Once an AOC and licence have been obtained, the airline may operate any intra-European route and routes to third countries in respect of which a licence and AOC have been obtained. To be able to operate routes outside EU or EEA countries, the airline must be designated by the minister of transport under bilateral air transport treaties. In accordance with the Law of 3 May 1999 with respect to scheduled air service an airline can be so designated if it has an operating licence issued by the Kingdom of Belgium in accordance with the EU regulations. Moreover, the minister can take into account the following elements in designating an airline:

- compliance with bilateral treaties;
- the interests of passengers;
- the investments realised or to be realised for the operation of the services for which it will be designated;
- the consequences of such operations for the development of Belgium as an economic centre and for employment in the air transport sector;
- the environmental nuisance; and
- the use of the fleet for the needs of the government in times of crisis.

Non-scheduled air services are considered on a case-by-case basis within the framework of the bilateral treaties.

7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Any appeal can be lodged with the Minister of Transport. Appeals against decisions of the minister can be filed with the Council of State.

8 Is there a declared policy on airline access or competition and, if so, what is it?

A distinction should be made between intra-European access or competition and access by airlines established outside the EEA. Belgium has implemented no state policies over and above the EU regulations in this respect.

Access to the Belgian territory for airlines established outside the EEA is laid down in bilateral treaties.

9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

A distinction has to be made between an EU air carrier and any other air carriers and flight within the EU and to a non-EU member state. In accordance with EC Regulation No. 1008/2008, article 15, any EU air carrier duly licensed by its home country in accordance with the above-mentioned EC regulation can freely operate intra-European routes. No member states can submit the Community air carrier to any further formalities or conditions.

The Royal Decree dated 18 August 2010 regulates the allocation of traffic rights to non-EU countries. Only EU air carriers established in Belgium are entitled to traffic rights to non-EU member states. These airlines must submit to the Belgian Civil Aviation Authority a formal request together with a copy of their AOC, insurance certificate, evidence that the airline is established in Belgium in accordance with Community law, information on the operational and financial sustainability and information on the planned flights and the possible acceptance of the applicant to cover in exceptional circumstances any required capacity to fulfil the national or international requirements of Belgium. The allocation of traffic rights and the possible limits on the number of flights will be determined by the terms and conditions of the applicable bilateral treaty. A non-Community carrier is not allowed to operate regular air transport services unless it has received prior authorisation from the minister of transport either through bilateral agreements or specific authorisation. Such bilateral treaties or authorisation will set out specific conditions with which the airline has to comply. Moreover, such airline may not be blacklisted by the European Commission pursuant to EC Regulation No. 2111/2005 as an unsafe airline.

Any carrier that has a trading activity in Belgium must also be registered in the commercial register and obtain a value added tax number. If such air carrier opens a branch office in Belgium it must also fulfil the formalities for the opening of a branch office in Belgium as stipulated in the Belgian Company Code.

10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

A distinction has to be made between intra-Community operations and operations with third countries. As to intra-Community operations, see EC Regulation No. 1008/2008. As to operations with third countries, see the criteria set out in question 6.

11 Are charter services specially regulated?

The EU regulatory framework makes no distinction between regular services or chartered services. The Royal Decree of 15 March 1954 provides, in article 47, specific licence requirements for charter services and specifies that non-scheduled flights or series of non-scheduled flights are subject to the specific authorisation of the minister. Non-scheduled air services are considered on a case-by-case basis within the framework of the bilateral treaties.

12 Are airfares regulated and, if so, how?

See EC Regulation No. 2409/92, which liberalised airfares and is now replaced by EC Regulation No. 1008/2008. With respect to flights to third countries, restrictions or information requirements on airfares can be contained in the bilateral treaties. The airfares are further subject to EC Regulation 868/2004 and to the Belgian trade practice regulations. They may be further limited by the competition regulations. Trade practices are regulated in Belgium by the Code of Economical Law, Book VI, Trade Practices and Consumer Protection, which entered into force on 31 May 2014 and replaced the former Trade Practices Law of 6 April 2010. It specifies how prices (including airfares) have to be published, how price reductions can be provided, it allows comparative publicity provided it is not misleading and complies with the strict fairness criteria laid down in the law, and allows combined services insofar as they do not relate in principle to financial services. The Law contains strict rules on distance selling,

including over the internet, for example the information to the consumer with respect to prices, costs and services has to be clear and detailed and specify whether the consumer can revoke its purchase within 14 days (previously seven days). The revocation right is the default position, unless the services are rendered within this 14-day period or the services are immediately executed and invoiced. If these conditions are not fulfilled, the consumer is not obliged to pay.

Aircraft

13 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The Royal Decree of 15 March 1954 provides that the following aircraft can be registered in the Belgian aviation register:

- civil aircraft that are fully owned by nationals of an EU member state or nationals of an EEA country who are domiciled in Belgium; or
- civil aircraft wholly owned by legal entities incorporated under Belgian law and whose main shareholders, managing shareholders, directors or agents are nationals of an EU member state or of an EEA country.

The following aircraft can be registered with the prior authorisation of the Minister of Communications:

- civil aircraft part-owned by:
 - nationals of an EU member state or of an EEA country who are domiciled in Belgium; or
 - legal entities formed under Belgian law and whose main shareholders, managing shareholders, directors or agents are nationals of an EU member state or of an EEA country;
- civil aircraft wholly or part-owned by:
 - Belgians residing abroad who have elected to domicile in Belgium for registration purposes;
 - legal entities governed by Belgian law whose main shareholders, managing shareholders, directors or agents are not nationals of an EU member state or of an EEA country;
 - legal entities of an EU member state or of an EEA country that have a place of business, an agency or an office in Belgium;
 - foreign nationals of a country that is not a member of the EU or the EEA who have resided in Belgium for at least one year or who have maintained for at least one year an office, place of business or agency in Belgium;
- civil aircraft that have been leased under a finance lease to any of the persons listed above; or
- civil aircraft operated by any of the persons listed above under a lease for at least six months.

14 Is there a register of aircraft mortgages or charges and, if so, how does it function?

Belgium ratified the Geneva Convention on the International Recognition of Rights in Aircraft on 22 October 1993, but failed up to recently to implement a law recording of security interests on aircraft in a public register. A new law dated 11 July 2013 on security interest on mobile goods introduces for the first time a national register for all security interests on mobile goods, including aircraft pledges which will record any security interest created over such mobile good. This law will enter into force at the latest on 1 January 2017. The law on security interests on mobile goods has introduced a dual regime for pledges, namely a possessory and non-possessory pledge. In the case of a registered pledge, the pledge will function as a mortgage. This means that the pledgor can remain in possession of the aircraft. The perfection of the pledge towards third parties is achieved through the registration in the national register. For non-registered aircraft pledges, the perfection is only achieved through dispossession either by way of the appointment of a third-party pledge holder or by delivering possession to the pledgee. The date of registration will determine the ranking. The register is a public register and will relate to all mobile goods and not only aircraft.

Until the entry into force of the new law and the creation of the new national register, the existing laws apply. Airlines and financiers can use basically two security structures, namely aircraft pledges and retention of title. This retention of title or aircraft pledge cannot be recorded. An aircraft pledge creates a security right in rem over an aircraft, which gives the pledgee rights similar to those of a mortgagee, namely a right to request a court, in the event of default by the debtor, to order the sale of the aircraft

and a preferential right to the sale proceeds. Compared with a mortgage, however, an aircraft pledge has a major disadvantage: under Belgian law, an aircraft is considered a moveable asset and a pledge of such an asset can only be perfected if the pledgor is not in possession of the asset.

This means that at present an airline that wishes to finance the purchase of an aircraft by way of a loan secured by a pledge can never actually own the aircraft. When such security is created in an aircraft, the airline usually acts as operator and third-party pledge holder, with ownership of the aircraft being vested in the lessor or a special purpose vehicle. Thus, an aircraft pledge can now only be perfected by continued dispossession by the owner-pledgor and possession by either the third-party pledge holder, as operator, or direct possession by the pledgee. But hopefully the national register will be created soon, so that this issue is finally solved.

15 What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

There are three types of liens under Belgian law: liens such as repairmen's liens, statutory liens or liens with respect to salvage and conservation costs (see Geneva Convention); temporary seizure; and forced sale.

Temporary seizures are regulated by article 1413 et seq of the Judicial Code and are limited by the Convention of Rome on Precautionary Arrest. The exercise of this right is conditional on there being urgency and a manifest undisputed claim that is certain, due and liquid.

The seizure for forced sale is regulated by article 1494 et seq of the Judicial Code and by the Geneva Convention. A forced sale requires an enforceable title (such as a judgment) and a manifest undisputed claim that is certain, due and liquid. No self-help is possible under Belgian law.

No specific measures have been implemented in Belgium with respect to the rights of Eurocontrol pursuant to Annex 4 to the protocol to the Eurocontrol Convention of 27 June 1997.

16 Do specific rules regulate the maintenance of aircraft?

See question 2.

Airports

17 Who owns the airports?

Brussels Airport, which is the main airport in Belgium, is owned by a private limited company. Although the state still owns 25 per cent of the shares, the other 75 per cent are privately owned.

Belgocontrol manages the safety and the policing at the airport and the air traffic control and civil air navigation services.

The other airports in Belgium are Liège Airport at Bierset, close to Liège, the Brussels South Charleroi Airport in Charleroi, the Ostend-Bruges International Airport and Antwerp Airport in Deurne. Both Ostend-Bruges International Airport and the Antwerp Airport are owned by the Flemish Region with respect to the infrastructure, but the management of both airports has been granted to a privately held company named EGIS Projects NV. Liège Airport is owned for 50 per cent by the Société de Leasing et de Financement, 25 per cent by the Walloon Region (Sowaer – Société Wallonne des aéroports SA, established in 2001 by Decree of 6 May 1999) and 25 per cent by the Aéroports de Paris Management. The Brussels South Charleroi Airport is owned by Sambrinvest – a private investment vehicle of the Walloon Region.

18 What system is there for the licensing of airports?

Brussels Airport is regulated by the Law of 19 December 1997 and by the Royal Decree of 27 May 2004. The Walloon airports are regulated by the Decree of 23 June 1994. There is no separate decree in Flanders where the airports fall under the general environmental legislation as to their licence.

19 Is there a system of economic regulation of airports and, if so, how does it function?

As set out in question 17, the licence and thus the operating conditions of the airports are regulated at regional level, except for Brussels Airport, which is regulated at national level.

The licence for Brussels Airport, for example, is contained in the Royal Decree of 21 June 2004. The licence not only sets out environmental conditions, but also regulates landing rights of aircraft, cargo and mail, security, and infrastructure of the aircraft, and how Brussels Airport can charge fees for such services.

The current licence contains no fixed fees except for landing rights, but it does contain detailed guidelines and consultancy procedures with respect to airport taxes. Part of the activities of the airport that relate to public services are furthermore subsidised by the Belgian state.

20 Are there laws or rules restricting or qualifying access to airports?

The operating licence sets out which type of aircraft may land at the airport and when. There are specific noise restrictions relating to the type of aircraft, its weight and the time of landing. These restrictions are different for each airport. The landing fees are calculated based on parameters of weight, noise and the time of landing.

Further noise restrictions for aircraft are laid down in the Royal Decree of 25 September 2003 setting out operating restrictions at Brussels Airport and by the Ministerial Decree of 3 May 2004. See also restrictions for Chapter 2 aircraft laid down in Council Directive 92/14/EC. More restrictions are contained in the Royal Decree of 16 December 2005 (implementing EC Directive 2004/36) with respect to the safety of aircraft of third countries wishing to land at a Belgian airport.

21 How are slots allocated at congested airports?

EC Regulation No. 95/93 has been implemented in Belgium by the Royal Decree of 23 September 2003 with respect to slot coordination at Brussels Airport. The royal decree has put in place a slot coordinator who, in case of congestion, allocates slots in accordance with their noise efficiency. The slot coordinator also has the general task of slot management in accordance with EC Regulation No. 95/93 as amended by EC Regulation No. 793/2004.

22 Are there any laws or rules specifically relating to ground handling?

Ground handling is regulated by the Royal Decree of 12 November 1998. The royal decree allows only two ground handlers for each of the following activities: baggage handling, cargo handling, fuel supply and platform handling. At least one of them may not be directly or indirectly owned for more than 25 per cent by the airport or any of its users. The selection must be based on objective, transparent and non-discriminatory criteria.

23 Who provides air traffic control services? And how are they regulated?

Air traffic control is carried out by Belgocontrol in accordance with the Law of 19 December 1997. In the context of the Single European Sky, the Belgian Supervising Authority for the Air Navigation Service has been created by the Royal Decree of 14 February 2006.

The tasks of Belgocontrol are set out in its management contract with the Belgian state, including the tariffs to be charged by Belgocontrol.

Liability and accidents

24 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Air carrier liability for passengers and their baggage and cargo is governed by the Montreal Convention as implemented by EC Regulation No. 889/2002 amending Regulation No. 2027/97 and by the Belgian Law of 13 May 2003, which also applies to domestic carriage.

25 Are there any special rules about the liability of aircraft operators for surface damage?

The Royal Decree of 3 May 1991 sets out the safety measures for civil aviation. It contains specific safety measures that must be complied with by the air carriers. Belgocontrol is also responsible for safety on the runways. Any accidents on the runways as a result of any breach of the applicable police rules can be subject to administrative sanctions. Otherwise, general civil liability rules apply.

26 What system and procedures are in place for the investigation of air accidents?

Pursuant to the Royal Decree of 9 December 1998, an independent unit has been created within the Ministry of Transport, namely the accidents and incidents investigation unit. The unit is responsible for the independent investigation of any accident or incident and is especially independent

Update and trends

There are many ongoing discussions in Belgium as to the commercial use of drones (remotely piloted aircraft systems, RPAS) for example, for monitoring performance of windmills or for the purpose of satellite pictures or films, wharf inspections. RPPAS, as they are only remotely piloted, do not fulfil the requirements for registration of aircraft under Belgian law and falls as such outside of the scope of the existing regulations. At present only the use of model aircraft of more than 1kg and less than 150g that are not used for commercial purposes is regulated by a circular letter number CIR/GDF-01 dated 28 July 2013. The Civil Aviation Authority can allow derogations from these provisions possibly linked to operational limitations. BCAA has provided derogations following review of qualifications of the RPAS pilots, and the operating and safety manuals, insurance covering civil liability, authorisation of the mayor and the landlord, description of the flights to be performed etc, for example, for testing purposes scientific research. The government is at present working on a new royal decree allowing the commercial use of such drones. The Belgian army uses 13 drones. The use of military drones, of course, falls outside the regulations on civil aviation.

from the Civil Aviation Authority, which is responsible among other things for the control on the airworthiness of the aircraft.

The accident and incident investigation unit will, following any accident or incident, carry out a full investigation and draft a report within 12 months to be available on a database for those responsible for safety in aerospace. Such report is furthermore communicated to the companies involved, the Civil Aviation Authority, the European Commission and the international civil aviation organisations. The investigators have free access to all data relating to the aircraft and accident or incident.

Following an accident, no repair can be carried out without prior approval of the Civil Aviation Authority, unless such repair is carried out in accordance with the manufacturer's manuals and maintenance programme.

Belgocontrol is also responsible for safety in the air and on the ground.

27 Is there a mandatory accident and incident reporting system and, if so, how does it operate?

The Royal Decree of 22 April 2005 sets out the reporting requirement to the accident and incidents investigation unit. Only those accidents or incidents that could have endangered the life of passengers or third parties or the aeroplane need to be reported. A list of those accidents and incidents is attached to the above-mentioned royal decree.

The airline or the pilot must notify the inspection unit within 72 hours of the accident or incident. (The royal decree extends this notification requirement to, among others, the maintenance providers, handling agents, Belgocontrol or similar agencies abroad, and the Civil Aviation Authority.)

Any accident or incident also needs to be reported to Belgocontrol, the Civil Aviation Authority and the local competent authorities if the accident or incident has occurred abroad. This is an obligation incumbent on the

pilot, commander on board in accordance with the Ministerial Decree of 13 February 1970 relating to technical measures for the operation of aircraft having a weight exceeding 5,700kg and the Royal Decree of 9 January 2005.

Competition law

28 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

As to Belgian law competition rules, the general competition rules apply.

29 Is there a sector-specific regulator or are competition rules applied by the general competition authority?

Competition rules are applied by the Competition Council.

30 How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

On 24 December 2004, the Competition Council made a pronouncement on the merger between Delta Air Transport and Virgin Express at holding level. The Competition Council considered that the relevant market had to be analysed based on the method place of origin and place of destination. Each combination of place of origin and place of destination can as such be considered as a separate market. But for the purposes of defining the market, any alternative airport in the same region and any alternative means of transport must be considered as well as any direct and indirect flights.

31 What are the main standards for assessing the competitive effect of a transaction?

In the above-mentioned decision, the Competition Council, although there was a concentration on two routes, took into consideration the availability of slots in the relevant airports and that the absence of such a merger might lead to the disappearance of both airlines and that one larger airline might instead lead to a more competitive environment.

32 What types of remedies have been imposed to remedy concerns identified by the competition authorities?

In the above-mentioned case, no remedies were imposed.

Financial support and state aid

33 Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

There are no state-owned airlines in Belgium. General EU state aid rules apply in the aviation sector. There are no national specific rules in the aviation sector.

34 What are the main principles of the state aid rules applicable to the aviation sector?

See question 33.

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35 Are there exemptions from the state aid rules or situations in which they do not apply?

See question 33.

36 Must clearance from the competition authorities be obtained before state aid may be granted?

See question 33.

37 If so, what are the main procedural steps to obtain clearance?

See question 33.

38 If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

See question 33.

Miscellaneous**39 Is there any aviation-specific passenger protection legislation?**

EC Regulation No. 261/2004 is directly applicable in Belgium as well as EC Regulation No. 1008/2008. No separate national legislation exists, other than with respect to airfares the Law of 6 April 2010 on fair trade practices, as set out in question 12.

40 Are there mandatory insurance requirements for the operators of aircraft?

EC Regulation No. 785/2004 entered into force on 1 May 2005 and is directly applicable in Belgium.

41 What legal requirements are there with regard to aviation security?

The general safety requirements are laid down in Royal Decree of 3 May 1991.

The licence for Brussels Airport contains further detailed safety rules that the airport must implement and respect.

42 What serious crimes exist with regard to aviation?

Criminal sanctions are set out in the Law of 27 April 1934 and depend on the offence committed. The criminal sanctions vary from one day's to one year's imprisonment and monetary fines. This law applies to almost all applicable royal and ministerial decrees regulating aviation in Belgium.

Other sanctions are included in international conventions such the Hague Convention, especially with respect to hijacking and offences committed on board aircraft.

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