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COMMERCIAL VS PRIVATE OPS:

A NEED FOR CERTAINTY

Implementing different regulatory frameworks for business and general aviation is not a straightforward task for the European authorities, leaving the door open to many abuses that have harmed the aviation industry over the last decade.

BY PHILIPPE RENZ

Every year, the number of airspace users is increasing. From birds of prey to airliners, drones, gliders, and business jets, not all are on the same level when it comes to ensuring their safe cohabitation. While some of them are hunted or captured, the air transport of people has been regulated for decades by the civil aviation authorities via separate standards for commercial and private flights.

The goal of using different regulatory frameworks is to ensure the average passengers get the strictest possible safety standards. Furthermore, it is meant to protect commercial operators against possible unfair competition from private operators who spend less on their operations and are not supposed to be able to make a profit from them. However, implementing these distinct frameworks for business and general aviation has never been a straightforward task for the European authorities.

Quite the opposite. Ultimately, the 2008 regulation is far too vague, light on details, and not enforceable in practice for the oversight authorities. This has left the door open to many abuses that have harmed the aviation industry over the last decade.

COMMERCIAL AIR TRANSPORT (CAT)
The situation could have improved following the recent adoption by the authorities in Brussels of the new version of the basic regulation governing

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European aviation, which is effective as of September 11, 2018. However, instead of taking advantage of this revision to improve the definition of “Commercial Air Transport (CAT)” that has never really matched with the realities and needs of business and general aviation, these authorities once again missed the opportunity to finally correctly model one of the most important definitions of the aeronautical sector. Unfortunately, as so often happens, when politicians get too close to a complex issue, it’s the European Aviation Safety Agency (EASA), the national civil aviation authorities and the entire aviation sector, who take the rap.

Specifically, the problem is as follows: by defining “Commercial air transport” as “an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration,” the law ignores the fact that more and more non-commercial operations involve “remuneration,” which would then make them illegal.

For example, an owner who entrusts his business jet to an AOC or NCC operator for operations, and who, for tax or customs reasons, pays the market price to the operator when using private flights. Or the case of a general aviation pilot who flies a private flight where passengers contribute in the cost, which is legally permitted. Therefore, in order to overcome this gross loophole in the basic regulation, the EASA will have to invent a legal construction to enable private operations involving remuneration to continue.

While the European legislator unfortunately missed its chance to come up with a judicious alternative to ICAO’s equally out-dated definition of CAT, the EASA and the aviation sector’s stakeholders simply cannot afford to do the same from now on. They should use the opportunity provided by the basic regulation to specify precisely which operations should be qualified as commercial, and which can be private, within the framework of the implementing rules that still need to be adopted in the coming years. As things stand, the grey zone between these two sectors has resulted in the authorities of each of the EASA’s 32 Member states adopting

their own interpretations of a law that was supposed to standardize practices, which never happened. Therefore, it is critically important for the aviation industry, which requires long-term regulatory certainty on these issues, to have rules that are comprehensible, play their role, and can be implemented effectively.

THE ROLE OF BIZAV ASSOCIATIONS

In the regulatory process that should begin shortly, associations representing the interests of business aviation will have a major role to play alongside the EASA. Firstly, they are the ones who understand better than anyone the complex operational needs of their members, and they are the best placed to combine these needs with the law’s aim of ensuring aviation safety and economic efficiency.

Secondly, it is in business aviation that the issues are the most numerous and complex. That’s before you take into account the future economic models that should already be anticipated as far as possible.

For example, besides the problems mentioned above related to the acceptable remuneration in private aviation, entire activities of business aviation have never been seriously addressed – much less in detail – by lawmakers. This is the case of “clubs,” of economic interest groups and of similar structures that vary from one country to another, and which should be able to continue subsisting within clearly defined limits to avoid prejudicing the competitiveness of commercial aviation, which is legally protected. Another example is “fractional ownership” structures, where it should be clarified once and for all which belong to commercial aviation and which can be classified as private aviation. Another area to look into is “corporate” aviation, where the limits of private operations should be clearly spelled out in cases where several companies share the same aircraft for their business needs.

Furthermore, this regulatory process will also have to involve stakeholders in the general aviation sector, where the passenger’s life is currently less

well protected than the passenger’s life in the business aviation sector. That is also a sector where the limits to the aircraft ridesharing model still need to be defined.

Last but not least, the implementing rules must be easy to understand, and compliance must be easy to monitor. This to finally provide the European aviation industry and the oversight authorities with a high level of legal certainty and consistent standardization, turning the huge grey area of today into a simple red line in the future. Simple solutions exist to achieve this overriding goal, failing which, the distinction between commercial and private activity will remain meaningless. And nobody today wants that situation to continue. ☹

