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# THE EURO CRUCIBLE

Navigating Europe's private flying challenges with Renz & Partners' attorney at-law, Philippe Renz.

Flying privately in Europe remains a source of uncertainty and risk for many aircraft operators. Ten years ago, European civil aviation authorities began implementing new safety rules applicable to non-commercial flights of business jets, smaller tourist planes and helicopters. In the same time, customs controls on business jets based in, but not imported into Europe began to intensify in several European countries, leading to the forced importation of many of them. Five years ago, a small plane crashed in the English Channel, which led to the organiser of the flight being sentenced to 18 months in jail for operating illegal charter flights.

Today in 2024, while bringing non-commercial operators into line with the new safety rules is becoming a matter of good practice, a grey zone continues to reign over what is still a legal non-commercial operation, from what is no longer. This opacity is a source of uncertainty for many aircraft operators and in turn, for aircraft owners and their passengers. This exposes them to aviation and customs related risks they need to be aware of, which will be summarized here for the business aviation sector.

## PRIVATE OR COMMERCIAL FLIGHT?

Only aircraft operators with their principal place of business on European territory are subject to European laws governing the safety of flight operations. This is the case when the ▶





**50** **The firm:** In aviation, the firm engages its skills for the benefit of aircraft operators and owners, AOC holders, pilots, maintenance and aviation training organizations, aerodrome operators, aviation victims, and any other companies and individuals active in commercial and general aviation.



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whether their operation can be classified as private, what can be a tedious exercise given the opacity and even contradictions of the relevant rules, and the fact that this situation has led many national civil aviation authorities to stop providing information to third parties in this area.

These operators, who may also be in the form of aircraft fractional ownership structures or “clubs”, will therefore have every interest in clarifying in advance with specialists which passengers, in addition to the aircraft owner and his family, may board their aircraft for flights in Europe, and whether remuneration may be requested from these passengers, and if so, of what maximum amount. This is to avoid the trap of illegal flights and their consequences.

#### THE TRAP OF ILLEGAL FLIGHTS

After the aforementioned fatal accident caused a stir in the aviation world, voices were raised calling for an uncompromising crackdown on illegal charter flights, which are damaging the aviation industry and can endanger passengers. However, this call went ▶

▶ home base of the aircraft concerned, or the location of the operator’s flight department, is based on European territory. For aircraft with multiple bases inside and outside Europe, it is generally the place where the operator has registered its organisation with the local register and pays corporate tax that is decisive.

On the other hand, all operators are subject to European rules on the legality of their non-commercial flights when their aircraft, whether registered in Europe or elsewhere, land on European territory. They must therefore determine in advance

► unheeded, because the European legislator, who should have made legislative changes to enable law enforcement authorities to do their job effectively in this field, did nothing, even though relatively simple solutions exist.

In the face of so much inertia and impunity, all those who operate illicit flights today continue to do so, but they are often too unaware of the consequences to be assumed in the event of an accident during such a flight. While the likelihood of a serious case resulting in a prison sentence often seems too remote, and the often ridiculous fines imposed when there is no loss of life do nothing to dissuade them from continuing their illegal activities, the most important and little-known risk is that of a refusal of insurance cover, which generally leads to ruin.

Indeed, in an aviation insurance market that has become tougher in recent years, many insurers have no hesitation in questioning the legality of the flights in question in order to deny coverage. This way of proceeding is exacerbated by the grey area on the demarcation between private and commercial operations, a situation that insurers are taking advantage of to force policyholders to take long and costly legal action against them or forgo cover. In the event of loss of cover, accident victims have no choice but to sue the operator or owner of the aircraft in question for damages that can run into tens of millions of dollars. For such an illicit flight scenario to occur, it may suffice for a single

passenger aboard the aircraft in question to have paid (too much) remuneration to the operator of that flight. Aircraft operators and owners are thus warned.

**AVOIDING FORCED IMPORTATION OF THE AIRCRAFT**

The remuneration paid by a passenger to the operator of an aircraft for a flight to or within Europe is also the number one risk factor that can lead to the forced importation of the aircraft into European territory, entailing the payment of import VAT calculated on the value of the aircraft, which is generally not recoverable. VAT is charged at a rate of 8.1% in Switzerland, 20% in the UK and between 19 and 27% in the European Union.

Customs regulations in Europe differentiate between flights for commercial use, for which payment may be made, and flights for private use against no remuneration. However, while aviation regulations in some cases allow non-commercial flights to be carried out for remuneration, this is not the case in customs regulations, where one dollar can already be considered as remuneration, triggering the application of the stricter rules applicable to operations with commercial use.

To avoid this, the operator and owner of an aircraft that is not imported into Europe are well advised not to have paying passengers on board, because if they do, and the aircraft remains on European soil for a few days, or makes an internal flight within Europe, its forced importation will generally be unavoidable following a customs inspection. Such a scenario could also occur on a non-commercial flight in Europe with non-paying European residents on board.

It is therefore in the interest of aircraft operators and owners to analyse the customs status of their aircraft prior to each commercial or private use for flights within Europe. A few adjustments will often enable them to carry out these flights under the temporary admission regime, without payment of VAT or customs taxes, but sometimes subject to prior customs authorization and the deposit of a financial guarantee. In doing so, they will avoid the forced and costly import of their aircraft. 🌐

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