

EASA Compliant Contracts for Maintenance and Operations Environment – General Discussion Points

Sofema Online (SOL) www.sofemaonline.com Considers key aspects related to contractual challenges within the Maintenance and Operational Domains

1. General Overview of Regulatory Requirements (Air Law) for Contracts

All aviation-related contracts must align with air law, including international agreements like the Chicago Convention and regulations set by bodies such as EASA or the relevant national aviation authority. Essential elements typically covered in such contracts include safety management, aircraft operation, maintenance standards, and personnel qualifications.

The aim is to ensure all aviation activities comply with the highest safety and regulatory standards.

In the context of aviation, contracts play a crucial role in ensuring that operations, maintenance, and management adhere to the stringent regulatory requirements defined by air law. These requirements are enforced by international bodies such as the International Civil Aviation Organization (ICAO) and regional regulators like the European Union Aviation Safety Agency (EASA), as well as national aviation authorities. The complexity of complying with these regulatory frameworks presents a series of challenges, yet adherence can be achieved through the implementation of best practices.

Air Law Requirements

Air law related to European operators' legal responsibilities encompasses a broad spectrum of regulations and standards. These laws are primarily focused on ensuring safety, security, environmental protection, and fair competition within the aviation industry. The key legal frameworks and regulations include:

- **EU Regulations on Common Rules for the Operation of Air Services (Regulation (EC) No 1008/2008):** This regulation covers licensing of air carriers, freedom to provide air services within the EU, and pricing.
- **EASA Regulations (European Union Aviation Safety Agency):** EASA is responsible for ensuring safety and environmental protection in civil aviation in Europe. Its regulations cover all aspects of aviation safety, including design, construction, maintenance, and operation of aircraft. (CS25 – 1178/2011 – 965/2012 – 2018/1139 etc)
- **EU Air Passenger Rights (Regulation (EC) No 261/2004):** This regulation establishes common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights.
- **The Single European Sky (SES) initiative and its implementing rules:** These aim to reform the architecture of European air traffic control to meet future capacity and safety needs.
- **EU Regulations on Aviation Security:** These rules are designed to protect passengers and citizens against acts of unlawful interference with aviation security. Regulation (EC) No 300/2008 lays down common rules and basic standards on aviation security.

- EU Emissions Trading System (EU ETS) for Aviation: This scheme is part of the EU's policy to combat climate change and is a major effort to reduce greenhouse gas emissions from aviation.
- Regulation (EU) No 996/2010 on the Investigation and Prevention of Accidents and Incidents in Civil Aviation: This regulation aims to improve aviation safety by ensuring that thorough investigations are conducted into accidents and incidents, without apportioning blame or liability.
- Regulation (EC) No 785/2004 on Insurance Requirements for Air Carriers and Aircraft Operators: This regulation specifies insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo, and third parties.

These regulations are enforced by national aviation authorities within each EU member state, in coordination with the European Union Aviation Safety Agency (EASA), which plays a central role in the EU's strategy to establish and maintain a high uniform level of civil aviation safety in Europe. Compliance with these regulations is mandatory for European operators, and failure to comply can result in penalties, including fines and the revocation of operating licenses.

NOTE – Concerning – EASA & National Authority Precedent

- EASA regulations predominantly cover areas related to the design, certification, and maintenance of aircraft, as well as the certification of personnel and organizations involved in these tasks.
- Since EASA is a pan-European body, its regulations have a direct effect on all EU member states and are designed to ensure a uniform level of safety and environmental protection across the EU.
- **This means that in areas covered by EASA regulations, these rules take precedence over national regulations to ensure consistent application across member states.**
- National aviation authorities (NAAs), on the other hand, are responsible for implementing and enforcing both EASA regulations and national laws within their respective countries.

While EASA provides the framework for safety and environmental standards, NAAs may have their own additional requirements or procedures for compliance within their jurisdictions, especially in areas not fully covered by EASA regulations, such as domestic air operations, airport operations, and national security measures related to aviation.

Summary

In cases where both EASA regulations and national laws apply, EASA regulations generally take precedence in matters of safety and environmental protection in civil aviation.

- National laws and regulations can complement EASA regulations by addressing specific national needs and requirements, provided they do not conflict with the overarching EASA framework.
- Therefore, while EASA regulations predominantly set the standards for aviation safety and environmental protection across Europe, national laws and regulations play a

crucial role in their implementation, enforcement, and in covering areas beyond EASA's remit.

Contractual Challenges

- **Regulatory Diversity:** Aviation operations often span multiple jurisdictions, each with its own regulatory requirements.
 - This diversity can create challenges in drafting contracts that are universally compliant, especially for international carriers or service providers.
- **Evolving Regulations:** Air law is subject to continuous updates and revisions, driven by advancements in technology, lessons learned from incidents and accidents, and evolving safety paradigms.
 - Keeping contracts updated to reflect these changes requires constant vigilance and flexibility.
- **Operational Specificity:** Contracts must detail operational procedures, safety standards, and compliance measures specific to the aviation sector.
 - This level of specificity requires a deep understanding of both legal and operational aspects of aviation, which can be challenging for legal professionals who may not have a background in aviation, or vice versa.
- **Intercompany Agreements:** When the contracting parties are part of the same corporate family, ensuring that contracts do not inadvertently create conditions that could lead to regulatory non-compliance is a unique challenge.
 - This is particularly relevant in areas like financial transactions, shared services, and operational dependencies.

Reference Point: Best Practices

- **Collaboration with Regulatory Experts:** Engage with legal professionals who specialize in aviation. These experts can provide guidance on current regulations and insights into how best to structure agreements to ensure compliance.
- **Use of Standard Contracts and Clauses:** Where applicable, utilizing standard contracts and clauses developed by international aviation organizations can help ensure that agreements meet a baseline level of regulatory compliance.
 - Examples include standard ground handling agreements (SGHAs) endorsed by the International Air Transport Association (IATA).
- **Continuous Monitoring and Updating:** Contracts should be viewed as living documents that require regular review and revision to remain in compliance with evolving air law.
 - Establishing a process for continuous monitoring of regulatory changes and a mechanism for efficiently updating contracts is crucial.
- **Risk Management and Compliance Programs:** Integrating risk management and compliance programs within the contractual framework can help both parties identify potential regulatory issues before they become problematic.
 - This includes defining clear lines of communication, responsibilities for compliance monitoring, and processes for addressing non-compliance.

- **Training and Education:** Ensuring that all stakeholders, from legal teams to operational staff, are educated about the importance of regulatory compliance and understand the specifics of air law relevant to their roles can significantly reduce the risk of non-compliance.

2. Specific Requirements for Contracts Between Parent Companies and Subsidiaries

Contracts between parent companies and subsidiaries are crucial for defining the relationship and expectations between the two entities.

Addressing these challenges through thoughtful planning, legal advice, and clear communication can lead to effective agreements that benefit both parties and comply with regulatory requirements.

Contracts between mother companies and subsidiaries must address the potential for intercompany agreements to conflict with air law requirements.

This involves establishing clear governance structures, ensuring operational independence where necessary (particularly in matters of safety and compliance), and maintaining transparency in financial transactions to prevent conflicts of interest.

- **Legal and Regulatory Compliance** - Ensuring contracts comply with local and international laws, including tax laws, antitrust regulations, and corporate governance standards.
 - There might be differences in legal systems if the parent and subsidiary are in different countries.
 - Engage legal experts in each jurisdiction to review contract terms.
 - Stay updated on regulatory changes and adjust contracts accordingly.Implement compliance programs and regular audits.
- **Transfer Pricing and Taxation** - Transfer pricing, or the pricing of goods, services, and intangible assets transferred within an enterprise, can attract scrutiny from tax authorities, aiming to prevent profit shifting to low-tax jurisdictions.
 - Establish transfer pricing policies based on the arm's length principle, ensuring transactions are priced as if they were between unrelated parties.
 - Document pricing strategies and prepare for potential audits by tax authorities.
- **Corporate Governance and Conflict of Interest**
 - Managing potential conflicts of interest and ensuring that the contracts serve the interests of both entities without unfairly benefiting one over the other.
 - Ensure transparency in the decision-making process, with clear policies to handle conflicts of interest.
 - Include clauses in contracts that affirm adherence to corporate governance standards.
- **Operational Independence** - Maintaining the operational independence of the subsidiary while ensuring it aligns with the strategic goals of the parent company.

- Define clear boundaries of operational autonomy in contracts. Establish governance frameworks that allow subsidiaries some level of decision-making autonomy.
- **Intellectual Property (IP) and Asset Transfer** - Safeguarding intellectual property rights and setting terms for asset transfers between the parent company and subsidiaries.
 - Include detailed IP management and licensing agreements within contracts. Ensure fair valuation and documentation of any asset transfers.
- **Financial Arrangements and Support** - Structuring financial support, including loans and equity injections, in a way that reflects market conditions and complies with tax and financial regulations.
 - Clearly outline the terms of financial transactions, including interest rates for loans, in line with prevailing market rates.
 - Document the business rationale for financial support
- **Dispute Resolution** - Managing and resolving disputes that arise from contract interpretations or performance issues without harming the overall business relationship.
 - Include clear dispute resolution mechanisms in contracts, such as mediation or arbitration clauses, and establish internal processes for resolving issues before they escalate.
- **Cultural and Strategic Alignment** - Ensuring that the contracts reflect and promote the strategic objectives and cultural values of the parent company while respecting the subsidiary's local context.
 - Involve stakeholders from both entities in contract development to align on strategic goals. Regularly review and update contracts to reflect changes in strategy or operations.

Further Considerations

Implementing a robust compliance program that includes regular audits and checks to ensure that intercompany agreements do not infringe upon regulatory requirements is crucial.

- Legal and regulatory advice should be sought when drafting these agreements to align them with air law.

3. Overview of Escalating Non-Compliances

Non-compliances with air law can escalate from minor infractions to significant safety risks.

The escalation process involves identifying the non-compliance, assessing its impact, implementing corrective measures, and monitoring the effectiveness of these measures. Regulatory authorities may impose penalties, require operational changes, or, in extreme cases, revoke licenses.

- To thoroughly discuss the escalation of non-compliances in the context of air law, we can divide the topic into several key areas:
 - identification of non-compliances,
 - assessment of their impact,

- implementation of corrective measures,
- monitoring for effectiveness, and
- the potential consequences imposed by regulatory authorities.

Each of these areas requires adherence to best practices while also navigating certain challenges and cautions.

- **Identification of Non-Compliances** - Continuous monitoring and auditing of operations against established air law regulations and standards.
 - Implementing a transparent reporting system for employees to report potential non-compliances without fear of retaliation.
 - The complexity and ever-evolving nature of air law regulations can make it difficult for organizations to remain fully compliant at all times.
 - Ensuring that all employees are aware of and understand the relevant laws and regulations.

Note - Failing to identify non-compliances early can lead to more significant issues down the line, including safety risks and legal penalties.

- **Assessment of Impact** Conducting a thorough risk assessment to understand the potential impact of the non-compliance on safety, operations, and legal standing.
 - Involving cross-functional teams to ensure a comprehensive evaluation of the non-compliance's implications.
 - Quantifying the impact of certain non-compliances can be difficult, especially when it comes to potential reputational damage.
 - Balancing the need for a thorough assessment with the urgency of addressing certain non-compliances.

Note - Underestimating the impact of a non-compliance can lead to inadequate corrective measures and continued safety risks.

- **Implementation of Corrective Measures** - Developing a corrective action plan that addresses the root cause of the non-compliance.
 - Engaging with regulatory authorities to ensure that the proposed corrective measures meet their requirements and expectations.
 - Implementing corrective measures can be resource-intensive and may require significant changes to operations or procedures.

Note - Resistance to change from within the organization can hinder the effective implementation of corrective measures.

- Corrective measures that do not fully address the root cause of the non-compliance can result in recurring issues.

- **Monitoring for Effectiveness** Establishing metrics and KPIs to measure the effectiveness of corrective measures over time.

- Conducting follow-up audits and reviews to ensure that non-compliances have been resolved and to prevent recurrence.
- Continuous monitoring requires ongoing resources and commitment from the organization.
- Identifying appropriate metrics that accurately reflect the effectiveness of corrective measures can be challenging.

Note - Failure to effectively monitor the resolution of non-compliances can lead to compliance fatigue, where the importance of compliance measures is downplayed or ignored.

- **Consequences Imposed by Regulatory Authorities** - Maintaining open and transparent communication with regulatory authorities throughout the process of addressing non-compliances.
 - Proactively engaging with regulators to demonstrate commitment to compliance and safety.
 - Navigating the legal and regulatory landscape, especially in cases where penalties or operational changes are required.
 - Managing the reputational impact of regulatory actions or penalties.

Note - Severe penalties, including the revocation of licenses, can have significant long-term impacts on the organization's ability to operate.

Further Considerations

Managing escalating non-compliances within air law requires a proactive, comprehensive approach that involves identifying potential issues early, accurately assessing their impact, implementing and monitoring effective corrective measures, and engaging constructively with regulatory authorities.

- Adhering to these best practices while being mindful of the associated challenges and cautions is essential for maintaining compliance and ensuring operational safety.

4. Intercompany Agreements and Service Level Agreements (SLAs)

Intercompany and SLA agreements should include specific provisions to ensure compliance with air law. This includes operational performance standards, safety requirements, and mechanisms for addressing non-compliance. Drafting these agreements requires a detailed understanding of both the legal landscape and operational specifics.

- **Understanding the Legal and Operational Framework** - Before drafting SLAs and intercompany agreements, it's crucial to have a comprehensive understanding of the international, regional, and national air laws applicable to the operations.
 - This includes regulations from bodies like the International Civil Aviation Organization (ICAO), the European Union Aviation Safety Agency (EASA), and the Federal Aviation Administration (FAA) in the United States.
 - Ensure the agreement incorporates provisions that require compliance with these laws and regulations, updating them as necessary to reflect changes in the legal landscape.

- **Operational Performance Standards:**
- Define clear operational performance standards that align with safety and efficiency requirements.
 - This includes punctuality, reliability, maintenance turnaround times, and response times for addressing operational issues.
 - Use industry benchmarks and best practices to set these standards, ensuring they are realistic, measurable, and achievable.
- **Safety Requirements** - Explicitly detail the safety standards and protocols that must be adhered to, including aircraft maintenance, crew training, and emergency procedures.
 - These standards should exceed the minimum requirements set by regulatory bodies.
 - Include provisions for regular safety audits and the establishment of a safety management system (SMS) to proactively identify and mitigate risks.
- **Mechanisms for Addressing Non-Compliance** - Establish mechanisms for continuous monitoring of performance against the SLAs. This should include regular reporting intervals, with both quantitative and qualitative data, to assess compliance with the agreed standards.
- **Remedial Actions and Penalties** - Define clear remedial actions and penalties for non-compliance. This could range from corrective action plans and additional training to financial penalties and, in extreme cases, termination of the agreement.
 - Ensure that the actions are proportionate to the level of non-compliance and are aimed at quickly rectifying any issues.
- **Dispute Resolution** - Incorporate a stepwise dispute resolution process that includes negotiation, mediation, and, as a last resort, arbitration or litigation.
 - This process should be designed to resolve issues amicably and efficiently.
- **Specify the jurisdiction and governing law for resolving disputes to avoid legal uncertainties.**
- **Drafting the Agreement**
 - Clear and Concise Language:
 - Use clear, concise language that is easily understood by all parties. Avoid legal jargon where possible or provide definitions for any technical terms used.
- **Review and Update Mechanism**
 - Include a clause for regular review and update of the agreement to ensure it remains relevant and compliant with current laws and operational realities.
 - This should involve input from legal, operational, and safety departments to ensure a comprehensive approach.

- **Implementation and Ongoing Management** Conduct regular training sessions for all relevant employees on the contents of the SLAs and their importance in ensuring legal compliance and operational safety.
 - Create awareness campaigns to reinforce the importance of adherence to the SLAs.
 - Establish a mechanism for continuous improvement of the SLA terms based on operational experience, changes in the legal environment, and technological advancements.
 - Encourage feedback from all stakeholders to identify areas for improvement.

Further Considerations - Drafting effective intercompany agreements and SLAs in the aviation industry requires a detailed understanding of air law, operational requirements, and safety standards. By incorporating specific provisions for compliance, performance standards, safety requirements, and mechanisms for addressing non-compliance, companies can ensure that these agreements support safe, efficient, and compliant operations.

5. Customs Regulations and Insurance in International Contracts

Customs regulations and insurance requirements are critical in aviation contracts, particularly for international operations.

- These should reflect the need for compliance with international customs laws, insurance standards that cover the full scope of operations, and adherence to health, safety, and environmental (HSE) standards.
- The need for compliance with international customs laws, insurance standards, and adherence to health, safety, and environmental (HSE) standards cannot be overstated.
- Customs regulations play a significant role. These regulations govern the import and export of aircraft parts and equipment, and failure to comply can result in severe penalties, including fines and delays.
 - Aviation companies must ensure that they are aware of and comply with the customs laws of all countries they operate in.
 - This includes understanding tariffs, taxes, and import/export restrictions.
 - Effective management of customs regulations can prevent operational disruptions and ensure that aircraft maintenance and operations are conducted smoothly.
- **Insurance Requirements**
 - Insurance in aviation is multifaceted, covering aspects from aircraft damage to liability for passenger injuries and environmental damage.
 - International contracts must include comprehensive insurance coverage that accounts for the various risks involved in aviation operations, including but not limited to:
 - **Hull Insurance:** Covering damage to the aircraft itself.
 - **Liability Insurance:** Covering the operator's liability for damage to third-party property and injury to passengers, crew, and third parties.
 - **War and Terrorism Insurance:** Given the international scope, aviation operations must consider the risks of war and terrorism.

- **Cargo Insurance:** For operators involved in the transportation of goods, this covers loss or damage to cargo.

Ensuring that insurance coverage meets the legal requirements of every country involved in the operations is essential. Furthermore, considering the potential for significant financial loss, contracts must clearly outline the insurance obligations of all parties involved.

- **Health, Safety, and Environmental (HSE) Standards**
 - Adherence to HSE standards is crucial in international aviation contracts.
 - This includes compliance with international safety regulations, such as those issued by the International Civil Aviation Organization (ICAO), and environmental standards aimed at reducing the aviation industry's impact on the environment.
 - Ensuring the safety of passengers, crew, and ground personnel is paramount. This involves strict adherence to maintenance schedules, training programs, and operational procedures.
 - Aviation operations contribute to environmental pollution, including noise and air pollution. Contracts should address the need for compliance with international environmental standards, such as carbon offsetting and reducing emissions through the use of more efficient aircraft and operational practices.

Insurance Provision within the Contract - Implementation

- To effectively implement these requirements in international contracts, aviation operations and maintenance departments should:
 - Engage with Legal and Compliance Experts - to navigate the complexities of international laws and regulations.
 - Develop Robust Risk Management Strategies to including comprehensive insurance coverage that is regularly reviewed and updated to reflect the changing risk landscape.
 - Ensuring that all employees are aware of and understand the importance of compliance with customs regulations, insurance requirements, and HSE standards.

Further Considerations -Customs regulations, insurance requirements, and adherence to HSE standards are interlinked facets that must be meticulously managed in international aviation contracts.

- These elements not only ensure legal and operational compliance but also safeguard the reputation of aviation companies, minimize financial risks, and contribute to the sustainability of global aviation operations.
- Detailed risk assessments and mitigation strategies should be integral parts of any contract.

7. EASA Compliance in Ground Handling Contracts

EASA compliance in ground handling contracts necessitates clear specifications on operational procedures, safety management systems, personnel training, and equipment maintenance.

These contracts must detail the roles, responsibilities, and expectations from each party to ensure safety and efficiency in ground operations.

Opinion No 01/2024, issued on 16 January 2024, introduces a proposal for a new EU regulation on ground handling (GH) services, alongside amendments to existing regulations concerning air operations, aerodromes, and information security.

The anticipated outcome of implementing these new rules includes a more effective feedback mechanism on safety reports, a deeper understanding of safety risks, enhanced exchange of safety information among all stakeholders, and a thorough evaluation of risk mitigation measures. Collectively, these improvements are expected to significantly enhance overall flight safety.

- This Opinion aims to create an equitable operational environment for all organizations offering GH services within Europe, whether performed directly by aircraft operators or external service providers. It seeks to establish a fundamental standard for the safety and security of these services.
- The document proposes a regulatory framework that introduces a scalable management system tailored to the operational size and complexity of the GH service providers.
- This system encompasses various components, including:
 - Safety management,
 - Fostering a safety culture,
 - Specifying training requirements for GH personnel,
 - Maintenance schedules for ground support equipment, and
 - Overall operational protocols for GH services.

Note - One of the innovative aspects of this proposal is the acceptance of industry standards for GH on a voluntary basis.

- Recognizing the diversity and comprehensiveness of these standards, the proposal allows for their continued use to foster harmonization and standardization across GH operations, which is vital due to the varied nature of these activities.

Oversight Considerations

- For regulatory oversight, the Opinion emphasizes cooperative oversight among competent authorities, highlighting its importance for efficiently monitoring GH service providers that operate across Europe.
- The proposed amendments to existing regulations focus on improving the exchange of safety-relevant information among GH organizations, aircraft and aerodrome operators. This exchange is crucial for integrating new management systems and ensuring cohesive operations within the GH domain.
- Additionally, the Opinion suggests incorporating GH services into the regulatory scope of EU Regulation 2022/1645, which addresses security management.
 - This inclusion aims to enhance the management of safety and security risks associated with GH operations.

Next Steps

Please see here details of the following course Developing and Managing Aviation Contracts in the Operations and Maintenance Environment – 2 Days <https://sassofia.com/course/developing-and-managing-aviation-contracts-in-the-operations-and-maintenance-environment-2-days/>

For comments or questions please email team@sassofia.com