

**EVENT CALENDAR:**

September 11, 2019 – Aviation Law Afternoon Workshop  
Clyde&Co/gbf Attorneys-at-law/Mercury Aero, Zurich,  
Switzerland

September 24 – October 04, 2019 – The 40th regular  
session of the ICAO Assembly, Montreal, Canada

October 4, 2019 – The 9th St. Petersburg Air Law  
Conference, St. Petersburg, Russia

October 16-18, 2019 – 31th IAWA's Annual Conference,  
Lima, Peru

October 18-19, 2019 – 12th Annual McGill Conference on  
International Aviation Liability, Insurance & Finance,  
Montreal, Canada

October 22, 2019 – 2019 Shanghai International Air Law  
Forum, Shanghai, China

November 14-15, 2019 – IIASL/Clyde&Co Air Law  
Workshop, Leiden, the Netherlands

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- Overview of July 2019 changes

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in Leiden
- Aviation Law Afternoon Workshop  
Clyde&Co/gbf Attorneys-at-  
law/Mercury Aero
- 9th St. Petersburg Air Law  
Conference

**EXPERT'S OPINION**

- Andre Soutelino about Airport  
privatization in Brazil
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Passenger Rights ECJ update

**NEWS OF THE AEROHELP INSTITUTE**

**EVENTS: IIASL/CLYDE&CO AIR LAW WORKSHOP IN LEIDEN**

The International Institute of Air and Space Law at Leiden University and Clyde&Co (London) joined forces to organize a two-day Air Law Workshop in November 14-15, 2019. Program of the Workshop include all essential and debatable issues in the field of aviation:

*14 November, 2019*

- Open skies;
- Montreal Convention;
- Aviation insurance and reinsurance;
- Thesis defence by Fernando Fiallos Pazino "Legal Perspectives on the Cross Border Operations of Unmanned Aircraft Systems";
- Practical aspects of aviation claims handling, with reference to the two MH major losses;
- Aircraft leasing and financing, comprising: introductory short presentation on the Cape Town Convention; interview of David Bartlett (GECAS) and Donal Hanley (AGG); and Q+A/discussion, joined by Mark Bisset;

*15 November, 2019*

- EU liberalisation;
- EU Regulation 261;
- EU competition law;
- Airports: regulation concerning ground handling, slots, airport charges;
- An introduction to space law;
- Interview of Jorn Wegter (General Counsel, Wizz Air);
- Panel discussion on liability / Montreal Convention.





## RUSSIAN AIR LEGISLATION: OVERVIEW OF JULY 2019 CHANGES

On 2 July Federal Government published its Decree of 29 June approving the Rules for determining the amount of payment for the provision of data and copies thereof contained in the Federal Fund of Earth Remote Sensing Data.

On 9 July Federal Government published its Decree of 29 June granting Federal Agency for Air Transport the power to accept air trainers for preparation of flight crews. Just to remind you that on 8 February Ministry of Transport approved the Regulations for air trainers acceptance procedure, which will be followed by Agency in execution of its authority.

On 11 July Federal Government amended Rules of regional passenger flights subsidization. The changes, in particular, complemented the list of settlements located in remote and hardly accessible regions of the Russian Federation; increased the ratio to subsidies for these regions; expanded the list of remote and hardly accessible areas, which was complemented with Primorsky, Khabarovsk and Zabaikalsky Areas; Amur and Orenburg Regions; Jewish Autonomous Region; Republic of Buryatia.

On 18 July Federal Law No. 187-FZ granted Federal Government the power to determine possibility of certain concerted actions and agreements limiting competition which are basically prohibited by the Federal Law “On Competition Protection”. The amendment was adopted at the initiative of the Krasnoyarsk Area Government aiming at protection of NordStar airlines financial interests. In its application to the RF President the Krasnoyarsk Area Government stressed out that the reconstruction of Norilsk Airport runway would lead to the increase of number of air carriers that fly between Norilsk and other territories in the summer high-income period and this will have a negative impact on NordStar airlines financial state. And this, in turn, creates a risk of unstable air traffic in Norilsk region, since NordStar is the major regional air carrier and operates flights all year round, including the low-income winter period.

On 26 July Ministry of Transport published its Order amending Federal Aviation Rules No. 128 “Preparation and performance of flights in civil aviation of the Russian Federation”. The amendments provide for the installation of satellite navigation system capable of receiving and processing signals from GLONASS on aircraft with a maximum take-off weight of more than 6,500 kg, both domestic and foreign-made which were produced in Russia after January 1, 1990 or imported to the Russian territory after January 1, 2026.

### EVENTS: AVIATION LAW AFTERNOON WORKSHOP CLYDE&CO/GBF ATTORNEYS-AT-LAW/MERCURY AERO



September 11, 2019

Zurich, Switzerland

**gbf**  
Attorneys-at-law  
Rechtsanwälte  
Avocats

**CLYDE&CO**

**Mercury Aero**



The European Union Aviation Safety Agency (EASA) has released the first regulations to enable the safe operation of hybrid and electrical vertical take-off and landing aircraft. The special condition, first opened to public comment in October 2018 applies to ‘small’ VTOL aircraft, defined as with seating for up to nine passengers and a maximum certified take-off weight of up to 3.175 kg.

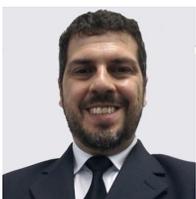
Patrick Ky, EASA’s Executive Director, noted that “the establishment of a common set of conditions for the certification of these new concepts of vehicles will enable fair competition in the European market as well as provide clarity for future manufacturers and their investors”.

The regulation-update comes as research shows that development of electric aircraft has doubled over the last year, with eVTOLs representing the largest number of projects. It is indeed estimated that there are currently more than 170 electrically propelled aircraft in development around the world, a number, which is expected to rise to more than 250 by the end of 2019. The majority of such vehicles are urban air taxis.

In the context of air transport competition, on 5 July, the EU Commission approved, under the EU Merger Regulation, the acquisition of the UK regional air carrier Flybe by Connect Airways, a consortium by Virgin Atlantic, Stobart Aviation and Cyrus. The decision is, however, conditional on full compliance with commitments offered by Connect Airways.

The Commission investigated the impact of the proposed transaction on the market for air transport of passengers from British airports to other European airports as well as some intra-UK routes. The investigation found that the transaction would likely result in quasi-monopolies on two direct European routes, namely Birmingham – Amsterdam and Birmingham – Paris. Following the EU Commission’s findings, Connect Airways committed to the release of five daily slot pairs at Amsterdam Schiphol and three daily slot pairs at Paris Charles de Gaulle airport. “This commitment fully address the identified competition concerns. [...] The acquisition is conditional upon full compliance with the commitments”, observed the Commission.

### EXPERT’S OPINION: ANDRE SOUTELINO ABOUT AIRPORT PRIVATIZATION IN BRAZIL



**ANDRE SOUTELINO**

SAO PAULO (BRAZIL)

EXPERT IN AVIATION REGULATION (AIRPORTS AND AIRLINES), CONSUMER, LABOR AND BUSINESS LAW, LL.M., ADVOCATE

The development of civil aviation has been changing the way to manage an airport. Then, airport management can be classified into four types of entities: a) *Etablissement* public; b) authority; c) airport company; d) concessions.

*Etablissement* public is a mix of private and state functions. One example is the law to set Paris Airport complex with 15 airports (Ordonnance n° 45.2488 du octobre 1945). While *authority* means that the State has less autonomy to manage the airport. American and Canadian airports are examples. The *airport company* is an entity to manage the airport. It doesn’t mean that the company is entirely private. In most of the cases, the airport company is a public entity or a mixed capital company. Changi (Singapore),

Schiphol (the Netherlands), Fraport (Germany), Flughafen Zurich (Switzerland) and Korean Airport Corporation (Korea). A *concession* is a contract between the State and a private entity or State company or any government department.

About Brazil, the State has opted for a public airport company (Empresa Brasileira de Infraestrutura Aeroportuária – INFRAERO) to manage the main Brazilian airports in 1972. Before the privatization wave, INFRAERO managed 67 airports. Since 2011, INFRAERO has been losing airports to the private sector and all of them (44) will be granted to the private sector until 2022. Besides INFRAERO, states and cities are able to manage airports in Brazil.

Since 1998, the Brazilian Constitution has been establishing the regulator state, which seeks to increase airport efficiency and the competition in Brazil. With the national aviation civil policy from 2009 (Decree n° 6.780/2009) the efficiency in the airport infrastructure (management, building and operations) will be reached only with the private sector. The first experience of a public-private partnership happened in 2011 (São Gonçalo do Amarante). The State built all airside and the private sector was responsible to build landside and manage the whole airport infrastructure.

Since 2011 to now on, 18 airports managed by INFRAERO were granted to the private sector. Then, there is a scenario for airport competition due to the number of players (10) and its trends to be more competitors in the last round in 2022.

Despite the success from all bids, the Brazilian airport privatization model is a patchwork of regulatory rules. There isn't a single regulatory system to handle all concessions after 2011. Every round had different regulatory rules. Then, the lack of a single system can impact the operation efficiency and the competition as well and cannot develop the system in full power because some concessionaires have more contractual obligations and different ways to pay the granting than the others. It is notorious that some investments will be a wasting of money from the concessionaire such as the construction of a new runway in a middle size airport like CNF and VCP because there isn't enough traffic to justify it.

Nowadays, the use of correct technology can avoid the building of a new runway. Just, for example, Gatwick (GTW) will be able to reach 61 mppa (million passengers per annum) with a single runway until 2032. Then, there is no reason to justify new runways in VCP and CNF because these airports have only 8 mppa and 9 mppa and the Brazilian economy doesn't flow like the British one.

Another problem in the Brazilian privatization process is the lack of financial profit from the airports from 2nd and 3rd rounds due to problems with INFRAERO (partner with 49%) and the high annual fixed granting fees.

Now, it is time from the regulator to unify the granting rules in a national field to create a competitive environment and review all contracts from the first three rounds before the airport system has a collapse.

Albeit the patchwork of regulations in airport exploitation and the problems listed during this article, Brazil is a good market to invest in the airport as an asset because ANAC has opened the aviation market to new entrants doing open skies agreements worldwide. Besides investments in airports, Brazil offers a range of opportunities in all civil aviation sectors such as new airlines, training institutions and equipment factories.



**CHRYSTEL EROKORITOU**

NICOSIA (CYPRUS)

EXPERT IN AIR PASSENGERS COMPENSATION FOR CANCELLED, DELAYED AND OVERBOOKED FLIGHTS, LL.M.

On 11th July, the European Court of Justice (ECJ) made another important preliminary ruling in regards to air passenger rights, further clarifying how the legislation should be interpreted.

Article 3 of Regulation EC 261 provides that it shall apply: (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies and (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies if the operating air carrier of the flight concerned is a Community carrier.

In the case *CS and Others v České aerolinie a.s* (C-502/18), the ECJ held that in the context of connecting flights that are the subject of a single reservation departing from a Member State to a non-Member State via another non-Member State, the air carrier that performed the first flight on time is obliged to pay compensation to passengers who suffered a long delay in the arrival of the second flight performed by a non-Community air carrier when the second flight was operated under a code-share agreement.

The passengers had made a reservation with České aerolinie to travel from Prague to Bangkok via Abu Dhabi. The first flight operated by České aerolinie landed in Abu Dhabi according to schedule. The second flight, operated by the non-Community carrier, Etihad, under a code share agreement with České aerolinie, arrived in Bangkok with a delay of more than 8 hours.

The Court held that the Community carrier retains the right to bring a separate action against the non-Community in order to obtain financial redress for the costs incurred.

As a result of this decision airlines will surely start reviewing and amending their code-share agreements with their partners in order to adapt to this new ruling.

**EVENTS: 9<sup>th</sup> ST. PETERSBURG AIR LAW CONFERENCE**

Dear friends! Please, save the date – the annual 9th St. Petersburg Air Law Conference on October 4, 2019.

Within the framework of five discussion panels, scientists and practicing lawyers from the aviation community from different countries will present their reports on relevant industry topics.

The working languages of the Conference are Russian and English, simultaneous translation is provided.

For more information on the Conference Program and Terms of participation, please visit the Conference website [airlaw.ru](http://airlaw.ru)



## NEWS OF THE AEROHELP INSTITUTE



September 4-5, 2019, Experts of the Institute AEROHELP prof. Patrick Honnebier (Amsterdam) and Viktor Snegirev (Moscow) will conduct a course “International aviation financing and leasing law”. The course will be held in the Interstate Aviation Committee.

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The Federal Authority for Transport Oversight has announced official support for the 9th St. Petersburg Air Law Conference to be held on October 4, 2019

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Pavel Starikov (St. Petersburg), a specialist in design and construction of airports, airfields (heliports) and landing sites, became an Expert at the AEROHELP Institute of Air and Space Law.

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Following the analysis of eligibility for arbitration by the College of the Commercial Arbitration Court Ilfov from Bucharest and the conformation by the College of Chamber of Commerce and Industry Ilfov, by the Decision of the President of the Commercial Arbitration Court Ilfov from Bucharest of July 17, 2019, Oleg Aksamentov is appointed an arbitrator for a term of 3 years.

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The 12th Munich Liability Seminar organized by the European Air Law Association (EALA) was held on June 28, 2019. Oleg Aksamentov (AEROHELP Institute) and Dmitry Karamyslov (Debevoise & Plimpton) took part in the special panel "Sanctions against Russia – Impact on Insurers".

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A specialist in aviation regulation (airports and airlines), LL.M., advocate from Sao Paulo (Brazil) Andre Soutelino became an Expert at the AEROHELP Institute of Air and Space Law.

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