

Work is underway in Polish Lower House committees on a draft of an act amending the Law of Aviation of 3 July 2002 (Journal of Laws 2006, no. 100, pos. 696, as amended).

The draft contains legal regulations concerning:

- Improvement of air safety and security of civil aviation, and aviation oversight;
- Modernisation and development of airport and navigation infrastructure, and improvement of the airport management process;
- Development of the aviation market and conduct of other aviation activities, development of competition, and making the aviation industry more passenger friendly, especially in respect of disabled passengers.

In addition, the draft was supplemented by provisions implementing recent Community directives. Other groups of amendments refer to issues such as ground-handling equipment, test and aerobic flights, unmanned flights, radio equipment, etc.

A new regulation concerning the impact of laser beams on air traffic was added. The draft introduces a modifying amendment to the Law on Environmental Protection and contains modifying and interim provisions (e.g. the general aviation plan, ground services, ASAR, landing fields, entitlements).

Here is a description of some amendment proposals:

I. *Aircraft, aviation safety, competencies of the President of the Civil Aviation Office*

The amendment of art. 31.2 and art. 32 of the Law of Aviation, and in consequence of its art. 41, implements art. 83 bis of the Convention on International Civil Aviation signed in Chicago on 7 December 1944.

Practice shows that these regulations in their present form seriously hinder efficient exchange of aviation equipment and services between carriers operating in the EU and that they place Polish companies in a position where they cannot compete and find it difficult to operate. Current regulations do not provide for short term leasing (up to 5 days) of aircraft and crew (ACMI) owing to the fact that art. 41 of the Law of Aviation does not define the notion of “making aircraft available for temporary use”, contains a regulation that conditions the validity of such exchange on its acceptance by the CAO President in the part concerning supervision of aircraft operations and hinders the execution of art. 83 bis of the Chicago Convention concerning transfer of supervision over operations of a Polish aircraft to the aviation authorities of the contracting State and acceptance of charter and lease agreements.

The changed wording of art. 160 of the Law of Aviation (certification), particularly the addition of Sec. 3.9, concerns the performance of duties by the registered agent and inclusion of these duties in the certification process.

The amendment of art. 161 and art. 162 arises from the necessity of taking into account EASA’s entitlement to certify certain forms of activities in civil aviation (Regulations (EC) 1592/2002, 1702/2003 and 2042/2003) and aims at clearly separating CEO President’s competencies in matters concerning those types of certification that are not within EASA’s competence but are required under domestic law and belong to its area of competence.

The addition of art. 162a takes into account the fact that certificates issued by EASA are equal to Polish certificates and do not require separate recognition in Poland.

The modification of art. 209 of the Law of Aviation (insurance) aims at abolishing the

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requirement to take out civil liability insurance by certain aviation training centers, aircraft service organisations, institutions designing and making aircraft and aircraft parts, and airport management organisations, and submitting them to the action of market mechanisms. The requirement of these entities holding liability insurance does not arise directly from the laws of the European Union.

II. Airports, landing fields, real estate, operation and management of airports, performance of duties by State services at airports, airport fees, certification

The draft law (art. 54) proposes a new division of airports into public use airports and exclusive use airports (currently “non-public use airports”), which diversifies entities entitled to establish such airports, contrary to the current regulations of the Law of Aviation (art. 55). In the case of exclusive use airports, any entity will be allowed to establish such airport (hence also entities from third countries) that has permanent residence or registered address on the territory of Poland, another EU Member State, Switzerland or EFTA Member State that signed the EEA Agreement.

Moreover, the draft proposes (in art. 54.3 and 54.4) that a wider range of flights be permitted on exclusive use airports with consent of airport operators than provided for under current regulations, including certain commercial flights – desired in particular by general aviation organisations.

As concerns public use airports, the draft proposes in art. 55.2 that any entity listed in that provision be allowed to establish such airport (hence also entities from third countries) provided that it has permanent residence or registered address on the territory of Poland, another EU Member State, Switzerland or EFTA Member State that signed the EEA Agreement. This solution is analogous to that governing the operation of public use airports – art. 174.

Broadening the access to the use of the Polish airport infrastructure is associated at the same time with the State’s obligation to introduce other instruments than restrictions concerning the ownership of capital that would guarantee the execution of the State’s duties connected with ensuring public safety and order on public use airports, including the duty to assure uninterrupted, safe and effective air travel within the country and to destinations in Europe and beyond.

Next to the regulations concerning concentration assessments of capital flows in companies establishing and operating such airports (account taken of art. 65 and art. 222 of the Law of Aviation and Regulation (EC) 139/2004 on concentration of undertakings), an instrument added in the draft law is the right of the Infrastructure Minister to object to certain decisions made by companies that operate supra-local public use airports if such decisions threaten State security, including safe, uninterrupted and effective passenger traffic at those airports (art. 64b). This is about the Infrastructure Minister’s right to object to airport operator’s decisions concerning disposal of assets necessary to the functioning of the airport, operator’s dissolution, transfer of his registered seat abroad, modification of the object of operator’s enterprise, alienation or lease-out of operator’s assets (art. 64b.1 and 2), or operator’s actual change of core business, as well as operator’s issuance of a resolution to change the intended purpose or abandonment of the use of operator’s asset necessary to the functioning of the airport (art. 64b.8). The Council of Ministers would issue an ordinance listing companies to which the right of Infrastructure Minister’s objection would apply.

The draft law introduces the institution of airport general plan (art. 55.5-7) for the purpose of optimizing public use airport development possibilities, protecting airport land and taking account of airports in the process of spatial planning and development.

In accordance with the direction of work conducted in the EU and world trends concerning the diversification of notions and requirements applicable to airport owners and operators,

the draft law proposes diversified airport certification requirements and procedures, including a diversified classification of airport owners and operators (art. 59a).

The draft defines the notion of “airport fees” (art. 75) and proposes the rules of their establishment and collection at public use airports (art. 77), diversifying procedures and methods depending on the volume of airport traffic and on whether an agreement relevant to this issue has been signed between the airport operator and carriers.

The regulation suggested in art. 68.2c simplifies the procedure of executing international flights from airports not equipped with an air border crossing facility and the procedure of obtaining consent to executing such flights (art. 73.5).

The introduction of draft provisions should result in development of local and regional airports, and should improve absorption of EU assistance funds. The amended law will have a positive impact on the labour market since the development and construction of new airports and their subsequent exploitation will create new jobs.

The amended law will have a positive impact because creation of simplified, legible, terms and procedures of airport investment, management and supervision, and execution of air transports and services, will benefit undertakings in the aviation industry. At the same time, some proposed changes, e.g. restriction of the requirement to keep separate accounting books to large airports, will have a positive effect on the freedom of Polish companies to do business and may contribute thereby to increasing their competitiveness.

One of the objectives of new legislation is to establish legal grounds for activation of regional airports and their operation of air services, and also to include in the legal system the notion of local airport as a facility satisfying collective needs of the population. Consequently, one may expect regional development based on aviation activities.

III. Aviation business

Changes in Part VIII of the Law of Aviation (aviation business) are connected with the coming into force of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community and with introduction of modifications allowing the performance of obligations imposed by the Council Directive 96/67/CE of 15 October 1996 on access to the ground-handling market at Community airports (transformation) (OJEU L 293 of 31.10.2008, p. 3).

Directive 1008/2008 does away with permits and authorisations to provide air transport services in the Community, issued hitherto to carriers licensed by EU Member States, Switzerland and EFTA states that signed the EEA Agreement. It also does away with the requirement to present documents issued by the relevant aviation licensing authority to the aviation authorities of the Member State to which the given EU carrier is planning to direct his air transport services. These authorities ensure that all carrier documents meet the requirements of the relevant regulations. Proposed legislative amendments do away with authorisations for Polish carriers and permits for foreign carriers licensed according to the EU regulations to provide transport services on the territory covered under the a/m Regulation.

Proposed amendments of the Law of Aviation are also meant to ensure, pursuant to Directive 96/67/EC, compliance with the rules on reciprocity in treatment of third-country entities providing ground-handling services in terms of the access to the market of ground-handling services at Community airports.

In art. 196.2, it allows carriers from EU or EFTA countries to sell air transport services on the territory of Poland on the same terms as Polish carriers. Consequently, the principle of reciprocity specified in sec. 1 will apply only to third-country carriers.

The Community Regulation 1008/2008 also details the method of specifying air fares and rates. The proposed provision of art. 198 is meant to eliminate the practice used by some carriers and travel agents of not providing the final air travel price. It is suggested that the Law of Aviation be expanded by a provision obligating air carriers to provide the full price of the flight including all additional charges and surcharges.

IV. Air transport services

Changes proposed in the part concerning aviation personnel (art. 94-105) result from the hitherto practice of applying statutory provisions. In addition, current regulations do not provide for full supervision over licensing aviation personnel and recognising qualifications obtained in countries where licensing regulations are very different from Polish.

Introduction into the Polish licensing system of the national tourist aircraft and glider pilot license was long awaited by many in Poland. The national license is issued on the basis of domestic regulations and is valid only in the country of issuance. To fly to another country the pilot must get a permit from the aviation authorities of that country. This is required under the Chicago Convention.

V. Airport security

Proposed changes aim at shifting all airport security duties on airport operators, who would be performing them under the supervision of the Civil Aviation Office President in cooperation with Border Guards. The airport operator will be responsible for security of transported passengers, luggage, cargo and postal consignments, and of persons using restricted areas.

The airport security service must be established at major airports and at smaller airports it can be established depending on the needs and resources of the airport operator. Wherever there is a security service, it will be responsible for security control as described above on behalf of the airport operator.

Among other privileges, Border Guards will be entitled to inspect the standards of security control measures applied by entities referred to in sec. 1.2. This will eliminate the risk of a private companies neglecting their entrusted duties.

The need to amend the Law of Aviation of 3 July 2002 (Journal of Laws 2006, no. 100, pos. 696, as amended) arises from the compulsory implementation into Polish law of Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJEU L 261 of 6.08.2004).

The market assesses that replacing Border Guards with airport security services or specialised armed security formations will encumber the aviation industry with an additional annual expense of at least PLN 100 million owing to the need to hire, train and provide uniforms and equipment to at least 1200 new security agents across the country. No employment reductions are planned at Border Guards, who will be supervising security agents. There is no clear division of tasks between Border Guards and new security forces. The idea of passengers paying for security seems to apply only to actual air travel.

VI. Investigation of air accidents and near-accidents

Proposed changes of the regulations governing the activities of the State Air Accident Investigation Commission are dictated by the necessity of rendering the investigation process more credible and adapting it to current national, European and international standards, and to the expectations concerning flight safety policies in civil aviation.

VII. Search and rescue service

The organisation and functioning of the ASAR Aviation Search and Rescue (art. 140a-140c) is subject to the regulations of the Convention on International Civil Aviation signed in 1944 in Chicago and ratified by Poland, in particular its Annex 12 (Search and Rescue) and other executive orders adopted by that organisation.

The aviation search and rescue service is organised as an aviation service intended for the aviation industry and performed using aviation personnel and resources. The service covers all aircraft, civilian and state-owned, irrespective of the country to which they belong.

The market assesses that the cost of establishing and maintaining a civilian/military search and rescue coordination centre within the Polish Air Navigation Services Agency would be covered by payers of air fees, which means that carriers would pay for that purpose approx. PLN 3 million annually (establishment – approx. PLN 8 million, annual maintenance – approx. PLN 1.2 million, for the average annual total of approx. PLN 3 million, assuming a 4-year period of depreciation of electronic equipment). This amount does not comprise the cost of responding to serious, large scale, crisis situations. Search and rescue costs would be covered with air fees, even though these fees are not paid by main beneficiaries of the search and rescue service, i.e. aircraft flying according to Visual Flight Rules (VFR) in general aviation.

VIII. Subsidising the public utility requirement, purchase of equipment and appliances necessary to ensuring aviation safety and expenses of the Civil Aviation Office, air fees

According to the current wording of art. 197 of the Law of Aviation, the CAO President may order – on request of the relevant unit of the territorial self-government – that a specific flight route with limited traffic but important to the city or region be a beneficiary of the public utility requirement.

However, current regulations do not specify the authority responsible for subsidising surplus costs associated with maintaining such routes. Neither is there any reference to such subsidies in art. 22a of the Law of Aviation, which in practice makes it impossible to impose the subsidy requirement.

The issue of financing the public utility requirement imposed on certain routes will be settled by the disposal of art. 22c of the amended law, which will make it possible to introduce that requirement at all.

The proposed model of financing the aviation authorities was based on resources generated by air fees referred to in art. 25 of the Law of Aviation, including an appraisal of the costs of the main types of activities conducted by the Civil Aviation Office (CAO).

Full terms of CAO financing will be specified in the amended Law and by way of an ordinance on the detailed method of determining the scale of CAO expenses, in consideration of budget planning methods and procedures. A list of air fees will be appended to the Law.

At present, activities that are subject to air fees as well as the level of these fees are governed by the Infrastructure Minister's ordinance of 2003, a part of which has been called in question by the Constitutional Tribunal (the cfee for permanent supervision of airport operator certificate holders was recognised as unconstitutional in the Tribunal's judgement of 10 September 2010). The adaptation of the regulations to the judgement of the Constitutional Tribunal is said to consist in, among others, specifying the fees in an annex to the Law. A

major increase of these fees may lead to curtailment of aviation operations of some entities (e.g. closing production) and concurrent expansion of the “grey zone”.

IX. Working time in civil aviation

The change in art. 103 arises from the need to modify the scope of the ordinance on detailed terms of settling up working time, particularly for the purpose of implementing Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

Subpart Q of Annex III of Regulation (EC) No 8/2008 applies only to air transport services executed by fixed-wing aircraft and, as such, is set out directly in the domestic legal order.

Sec. 3b-3d of the draft law contain rules not covered in Subpart Q of Annex III of Regulation (EC) No 8/2008, i.e. remaining in the national competence of Member States, covering the method of determining “service time” in air transport operations using helicopters and in performance of aviation activities by air medical rescue services, service aviation, general aviation and air traffic control institutions.

X. Administrative penalties

The proposed draft law introduces new regulations concerning imposition of administrative fines for violations of the requirements and conditions arising from the Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, which constitute executive orders to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002, Directive 2004/36/EC and Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility while traveling by air. Thus, the introduction of draft provisions concerning fines constitutes fulfilment of the obligation imposed on Poland by Community regulations.

XI. Air navigation

The addition of art. 128b and 128c is connected with the entry into force of Commission Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005 (OJEU L 291/16 of 9.11.2007), which imposes on the CAO President the duty to oversee changes in operating systems of the institutions providing air navigation services, the ATFM (Air Traffic Flow Management) agency or the ASM (Air Space Management) agency, and authorises the CAO President to draw up administrative procedures associated with the safety of changes in operating systems.

