

# HFW Aero



## Cybersecurity and privacy for drones

Victor Vuillard | Chief Security Officer, The Parrot Group

## Promotion of carbon neutrality initiatives

Greenwashing targeted by France's latest climate regulations

## France strengthens its legal arsenal against unruly passengers

A flight in the EU is jeopardised by the behaviour of some passengers every three hours

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Significant global developments



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To give any feedback on our publication please contact the editor of **HFW Aero**:

**GARETH MILLER-REEDMAN**  
**T** +44 (0)20 7264 8035  
**E** gareth.miller-reedman@hfw.com

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Welcome to the new edition of Aero Quarterly, put together by our team in Paris and Brussels with a focus on Europe. We feature a fascinating article by Victor Vuillard, Cybersecurity CTO at French drone manufacturer Parrot, who tells us why Europe would do well to adopt the US Army's "Trusted Drones" model for cybersecurity.

We also look at how recent developments in French criminal law will affect airlines— first, we explain why they must now choose their words very carefully when advertising carbon neutrality initiatives, or risk criminal conviction for greenwashing. Then, with in-flight incivility on the rise, we outline the new range of criminal and administrative sanctions which will give them more power to deter and penalise unruly passengers.

As you may know, there have recently been some developments in our global aerospace team. Following Giles Kavanagh's election as HFW's Global Senior Partner, I was very proud to be elected as the new Global Head of our Aerospace team, effective from 1 April 2022. I am currently based in Singapore but will be relocating to London in 2023, and am looking forward to leading the team over the coming years. David Brotherton, who coordinates the activities of the aviation finance team, will act as my deputy, and has also relocated from Singapore to London. Our London aviation finance capability has also been strengthened by the recent arrival of Rebecca Quayle, who joins as a Partner from Bryan Cave Leighton Paisner.

We look forward to keeping in touch with you in the months to come.



**MERT HIFZI**  
 Global Head of Aerospace  
 mert.hifzi@hfw.com



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## Legal news round-up

### Airbus and Air France face criminal trial over 2009 crash

Thirteen years after Air France flight 447 crashed into the Atlantic en route to Paris from Rio de Janeiro, a criminal trial against the airline and the hull manufacturer begin in Paris on 10 October. After a two-year search for the black box, air crash investigators concluded that the accident was caused by icing-over of airspeed sensors called pitot tubes. These sensors gave faulty signals to the flight crew and the resulting confusion eventually led to an aerodynamic stall from which it was not possible to recover. 228 people were killed.

Airbus and Air France are accused of involuntary manslaughter (*“homicides involontaires”*), which both deny. It has been suggested that there was

a known issue with the pitot tubes which Airbus failed to address, while it is alleged that Air France inadequately trained its pilots to respond to the situation. The trial is scheduled to last at least 8 weeks and will involve detailed technical examination of the aircraft’s manufacture and the flight’s last moments. 476 relatives of the victims are taking part in the trial as *“parties civiles”* and five half days have been devoted to those who among them wish to give witness testimony. This will be in addition to the technical and operational evidence given by witnesses summonsed by the parties and the court.

The penalty if found guilty of the offence is a fine of up to €225,000, but the reputational damage stemming from a conviction would be of considerably greater impact.

The separate civil proceedings in relation to the crash have been temporarily suspended.

### European Court clarifies rules on use of PNR data

In 2016, Belgium passed a law which created a legal framework requiring airlines and other transport operators to transfer Passenger Name Record (PNR) data on to a database managed by the Belgian Home Office. The intended purposes of the law were (i) the prevention, detection, investigation and prosecution of criminal offences or the enforcement of criminal penalties; (ii) to aid the work of the intelligence and security services; and (iii) improving external border controls and combating illegal immigration.

Gathering and use of PNR data is in turn governed by the EU PNR Directive and

“Activist groups welcome the strategy in principle but have said that technological advances will not, on their own, be enough - Net Zero cannot be achieved without encouraging people to fly less.”

the Advance Passenger Information (API) Directive, which were transposed into Belgian law by the 2016 legislation.

This law was challenged by a Belgian Human Rights organisation on the ground that infringed the right to respect for private life and the right to the protection of personal data guaranteed under the Belgian constitution and EU law. The Belgian Constitutional Court referred a number of questions in the case to the Court of Justice of the European Union (CJEU), including whether the PNR itself was valid.

The CJEU noted that the PNR Directive sought to introduce a surveillance regime that was continuous, untargeted and systematic in that it automatically assessed the personal data of everyone using air transport services. However it concluded that it was not incompatible with other EU rights as long as it was interpreted restrictively and proportionately, with its application limited to terrorist offences and serious crime having an objective link with the carriage of passengers by air. The information should not be used more generally to prevent or investigate ordinary domestic crimes, improve border controls or combat illegal immigration.

The CJEU judgment outlines a number of procedural requirements in relation to the advance assessment of PNR data, such as limiting its use to comparison with non-discriminatory databases of persons sought or under alert and not allowing the use of artificial intelligence review technology unless supplemented by human intervention.

It was also held that, despite a provision in the PNR Directive allowing data to be retained for up to 5 years, the retention requirements under the

Belgian law were incompatible with the rights guaranteed by the Charter of Fundamental Rights of the European Union (the Charter). This is because the Belgian law prescribed a general retention period of five years for all PNR data, applicable indiscriminately to all passengers, regardless of whether or not they had been linked to any terrorist offence or serious crime. It was made clear that the maximum period for such a general retention policy should be six months.

The practical consequences for air carriers are as follows:

- In their Passenger Name Record, air carriers should be aware that they can only collect data exhaustively listed in the Annex I of the PNR Directive
- Personal data transferred to national Passenger Information Units (PIU) cannot be retained, without being coded/ anonymised by the PIU for a period of 5 years in the absence of suspicions that the passengers are involved in terrorist or serious criminal activities, having an objective link with air transport. (e.g. the suspect could fly to escape the national authorities)

Other questions such as the scope of the GDPR and the use of PNR data in relation to intra-EU flights were also considered. For more information, see the [CJEU’s press release](#).

### UK Government launches Jet Zero Strategy, but is sent back to the drawing board on Net Zero

The UK Government launched its Jet Zero Strategy in July. Developed after an extensive public consultation process, it sets a trajectory for the UK aviation sector to reach net zero by 2050. Milestones along the way to 2050 include having at least 5 commercial

SAF plants under construction by 2025 and the introduction of a 10% SAF blending mandate by 2030. By 2040, the aim is for all domestic flights to achieve net zero all airport operations in England to be zero emission.

The intent is to both decarbonise and protect the UK aviation industry by allowing people to keep flying, and the tag line “guilt-free flying” has been used. SAF is high on the agenda, with production incentivised by a new Advanced Fuels Fund, launched with a £165 million competition.

Efficiency of the aviation system will be improved, with a target of improving fuel efficiency by 2% every year and provision of £3.7 million over the next year to support airports to modernise their airspace. The UK will also take a leading role in tackling international aviation emissions through ICAO.

They will expedite the development of zero-emission aircraft and invest in greenhouse gas removal technologies to drive decarbonisation and offset any residual emissions, and enhance the UK Emissions Trading Scheme (UK ETS). Further research into the non-CO2 impacts of aviation will also be commissioned.

The scheme will be reviewed against targets every 5 years. Activist groups welcome the strategy in principle but have said that technological advances will not, on their own, be enough - Net Zero cannot be achieved without encouraging people to fly less.

For further information, see the full [Jet Zero strategy paper](#).

In tandem with this aviation-specific initiative, the UK Government will now also be reviewing its overall Net Zero strategy after a number of environmental charities and campaign

groups obtained a partially successful judicial review decision against the Secretary of State for Business, Energy and Industrial Strategy. It was held that a government report mandated by the Climate Change Act 2008 (CCA) was defective and a fresh one must be published by March 2023. In particular the High Court found that the Secretary of State had not been informed of the quantitative contributions of individual policies to that budget or how the 5% shortfall for meeting the budget would be made up.

### **Brazil simplifies rules on statutory aviation liability insurance**

As of September this year, aviation insurers in Brazil now have more flexibility to write their own policy wordings, rather than having to use the unnecessarily long standard conditions previously mandated by the local regulator, the CNSP.

Insurers must comply with certain minimum requirements prescribed by the CNSP, while the Brazilian Civil Aviation Agency (“ANAC”) is responsible for setting the liability limits fixed through an extinguished monetary index (OTNs) by the Brazilian Aeronautical Code.

In theory, the current ‘liability limit’ for death or personal injury to passengers and crew is around USD 17,500 per victim. However these criteria are still being challenged through an ongoing class action filed with the São Paulo Federal Court by the Federal State Attorney and a victims’ families association in 2008.

Although the changes are positive in general terms, the new Resolution also raises some concerns. For instance, insurers are now required to cover damages arising from wrongful acts committed by “employees or individuals acting as employees” of the insured. The cover must be provided, even in cases in which the employee acted wilfully or deliberately.

Statutory coverage must also be provided for liabilities arising out of flight delays, but it is unclear as to whether insurers can restrict this coverage by excluding, as a matter of principle, delays

resulting from mechanical breakdown wear and tear or other risks usually excluded from coverage.

For more information, see this [briefing](#) by our associated Brazilian law firm, CAL.

### **Reach of English legal system extended as new rules enable disclosure orders against parties based outside the jurisdiction**

A new ‘jurisdictional gateway’ underlines the willingness of the English legal system to support victims of fraud, therefore ensuring it remains a forum of choice for these claims. From 1 October 2022, identifying wrongdoers and the location of assets hidden behind jurisdictional barriers is now an achievable goal: claimants are now able to bring disclosure applications against innocent third parties based outside England and Wales without first having to commence an action against them.

The increase of global digital-asset fraud, such as crypto currency frauds, has led to a keener focus on the gap in the ‘jurisdictional gateways’, which it is recognised is a growing obstacle preventing claimants from identifying the wrongdoer and commencing proceedings against them. The new gateway can be used to identify information regarding the identity of a potential defendant or what has become of the claimant’s property, or generally where the information is required for the purposes of proceedings in the English courts. It will still be necessary to show that England is the proper place to bring the claim, that there is a serious issue to be tried and the claim has a reasonable prospect of success.

For more information, read our [briefing](#).

### **European Court paves way for standalone mental injury claims**

The question of whether an airline passenger should be compensated for purely mental or psychological injury has long been controversial. It is well-known that the drafters of the Montreal Convention (MC99) deliberately chose not to make express reference to mental injury, confining the wording to “bodily injury”. Over the years various

courts developed a doctrine of allowing recovery for mental injury which flowed from a physical injury, but stopped short of allowing claims where no physical injury had been suffered.

This week, the CJEU has moved the debate forward significantly by holding that claims for purely mental injury should succeed as long as the claimant is able to prove that the mental injury is of such gravity or intensity as to affect his general state of health and that it cannot be reduced without medical treatment. They support their reasoning by emphasising that the objective of the Montreal Convention is to protect consumers and provide fair compensation and equal treatment: it is time to recognise that a mentally-injured passenger may suffer just as much as one who is physically injured. The requirement for solid medical evidence of the mental health impairment and treatment should protect airlines against fraudulent and frivolous claims.

This decision in *BT v Laudamotion C-111/21* is binding on courts throughout the European Union, but its reach goes further than this, thanks to established principles of international law on the interpretation of treaties. The objective of uniformity requires courts in any MC99 state party to have due regard to decisions of courts in other states and the more “senior” the court, the more weight should be given to its decision and reasoning. The repercussions will, therefore, be felt globally.

Before the final judgment was handed down, the CJEU’s advisor, Advocate-General de la Tour issued a non-binding opinion in which he observed that a compensation regime which denies the impact of mental injury was out of step with the requirements of contemporary society. In practice, it had already become less and less palatable for airlines to reject mental injury claims out of hand, using technical arguments about Convention wording. This judgment, therefore, goes some way to realign the law with the commercial and human factors that were already informing their approach to negotiation and settlement.



# Need for Cybersecurity and privacy for drones

Victor Vuillard | Chief Security Officer,  
The Parrot Group

## Evolving use cases

Drones, or UAV for Unmanned Aerial Vehicles, have long been used as toys or for filming. In the last few years, drones have been increasingly used by companies and authorities, with a view to increasing their efficiency while protecting people. For example, drones are used to search for people following a natural disaster, or to support humans in dangerous situations such as fires. Drones are also increasingly being integrated by companies, some of which operate critical infrastructure, to map their facilities, inspect infrastructure and buildings, or carry out physical or fire surveillance of their sites. Whereas cybersecurity may be considered of lesser importance when drones are used to film holidays, it is now a key point when used for public safety, homeland security, critical infrastructures, and competitiveness of a business.

## Existing risks

Existing risks were highlighted by cybersecurity researchers. Back in 2017 and 2018, they focussed on drones manufactured by a particular company and found dangerous features that sent private data abroad or made it possible for the manufacturer to install new software on the user's device without his knowledge or control. Once these

security issues were made public, the manufacturer said they removed it. However, two cybersecurity companies, analysed the manufacturer's software again and found in July 2020 that the drone manufacturer added obfuscation into the software, to hide such features. The cybersecurity companies managed to bypass obfuscation and proved that the manufacturer reintroduced similar hidden features as those spotted in 2017/2018. In particular one of the features has been sending personal data to remote servers from a Data Intelligence platform, for months and for millions of users. These security problems led several governments and companies to ensure that only trusted drones are used for important tasks.

## GDPR enforcement

Of course, privacy regulation is supposed to prevent data theft. In particular, GDPR states that personal data should be processed lawfully, fairly and in a transparent manner. However, supervisory authorities may focus their controls and sanctions mainly on European companies as well as FAMGA. They tend to overlook data processors from other geographical areas, even when cybersecurity researchers proved lack of control when using their products. To protect user's privacy, supervisory authorities should enforce GDPR equally, independently from

the data processor origin and focus on those for which lack of control over user's data was proven in the past.

## Trusted drones

Users face a huge challenge when considering how cybersecurity and privacy are implemented on drone solutions. Drone experts are a growing but limited community. Cybersecurity is a growing concern for every government and businesses, but there is a worldwide shortage of expertise. Finding the combination of both drone knowledge and cyber security expertise is a real challenge. As of today, each company or governmental entity has to define its own requirement, then check the application of each criterion for each drone manufacturer. This is a burden. Doing so would require several months of works by experts. For most if not all users, this is not applicable as is. This situation explains why cybersecurity is often underestimated in calls for tender.

The United States provided an interesting solution to this problem. In 2019, the Defense Innovation Unit (DIU) of the Department of Defense launched a new program called Blue sUAS to certify trusted drones. DIU defined cybersecurity requirements both for the embedded system and radio link, as well as for the supply

“Users face a huge challenge when considering how cybersecurity and privacy are implemented on drone solutions. Drone experts are a growing but limited community.”

chain and origin of components. They selected several manufacturers from the US (FLIR, Skydio, Teal and Vantage Robotics) and from Europe (Parrot). This trusted drones program was first intended for the US Army, but as far as the selection was made public, any other governmental entity or company could then choose a solution among the trusted drones list, without having to specify its own criteria and check them. The US had its own approach, other countries or regional areas would benefit to replicate it.

## Transparency and standards

Verifying cybersecurity isn't an easy job. Users can check boxes based on marketing brochures. This may be misleading because the devil is in the details and marketing brochures never go into the details. For example, a manufacturer may advertise an AES256 encryption for his radio link. This cryptographic algorithm is well recognised and considered as secure by the NIST. However, when applied to a communication protocol, many issues need to be addressed, such as how the encryption key is initialised and handled, what is the block mode of operation (encrypting a single piece of data is different from encrypting a flow of information) and does the communication protocol have any backdoor flaw which would allow a third-party to get access to the information without having the encryption key. If the manufacturer uses an open standard, these points can be verified. If the manufacturer implements a proprietary and closed protocol, the user is in front of a black box and won't be able to verify anything and will have no assurance of proper cybersecurity.

## Lack of cybersecurity in DRI

Drones may not be alone in the airspace. U-space is a set of new services relying on a high level of digitalisation and automation of functions and specific procedures designed to support safe, efficient, and secure access to airspace for large numbers of drones. A basic building block of U-space is the necessity for drone remote identification, a system that ensures the local broadcast of information about a drone in operation, including the marking of the drone, so that this information can be obtained without physical access to it. Several countries defined standards and regulations related to Direct Remote Identification (DRI), including the FAA in the US and EASA in the European Union. Unfortunately, DRI doesn't yet include cybersecurity by default.

Without cybersecurity designed into DRI, an attacker can send fake DRI datagrams. If an authority is operating airspace surveillance, for example of an airport or to ensure security of a public event, the attacker will be able to create hundreds of fake drone signals. The surveillance will then be saturated and ineffective. The attacker will then be able to send a real malicious drone, for example with an explosive payload, to arm people. The authority will not be able to differentiate real malicious drones and fake ones.

**Victor Vuillard is Chief Security Officer of the Parrot group, a world-leading drone manufacturer. As a Cybersecurity CTO, he defines the global security architecture and features of drones, to offer to Parrot users the highest level of cybersecurity and privacy.**

Before joining Parrot in 2018, he spent 7 years at ANSSI, the French Cybersecurity Agency, first as an auditor and pentester, then head of audit team. 15 years ago, he initiated the first SCADA security assessment of critical infrastructures. He later led the ANSSI response team, fighting against Advanced Persistent Threats (APT).

In 2013, he joined EDF (with over 50 nuclear power plants) as head of cybersecurity for the Nuclear Engineering Division. He defined the cybersecurity strategy, security architectures and led audits. He also spent some time as a French representative at the IAEA, United Nations, to contribute to define computer and information security at nuclear facilities.

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# Promotion of carbon neutrality initiatives in the airline sector: Greenwashing targeted by France's latest climate regulations

## Airlines are under increasing pressure from environmental NGOs campaigning against "greenwashing"<sup>1</sup>

In parallel, several European Union Member States enacted new additional environmental regulations, sometimes on top of the EU ETS schemes. For example, France enacted a new climate Act (Loi "Climat et Résilience") (hereinafter the "Law"), which entered into force on 24 August 2021. It (i) sets strict requirements for advertising carbon neutrality of certain services and (ii) introduces a criminal infringement related to greenwashing.

### The requirements for advertising carbon neutrality of air transport services

Article 12 of the Law introduces a prohibition to advertise that a product or a service is carbon neutral or to use any wording of equivalent meaning or scope, unless certain conditions are met.

The notion of "advertisement" must be understood broadly, as it covers the following materials under French

law: advertising correspondence and printed advertising, billboard advertising, advertising in the press, advertising in the cinema, on the television or on the radio, advertising in online communications and product packaging.

Decree No. 2022-539 of 13 April 2022 on carbon offsetting and carbon neutrality claims in advertising (herein after the "Decree") specifies the obligations applicable to advertisers who intend to use certain terms such as "carbon neutral", "zero carbon", "with a zero-carbon footprint", "climate neutral", "fully offset", "100% offset" or any formulation of equivalent meaning or scope in an advertisement.

In this respect, the Decree states that the advertiser using any formulation equivalent to carbon neutrality must, as of 1 January 2023, publish a summary report on its website describing the

carbon footprint of the product or the service being advertised and the process by which the greenhouse gas emissions related to these products and services are first avoided, then reduced, and finally offset.

The Decree also provides that this report must include three appendices, containing very specific information related to the environmental impact of the service being advertised:

- an appendix containing a balance sheet of the greenhouse gas emissions of the service concerned covering its entire life cycle, with a summary of the methodology used. Such a balance sheet must be updated every year and produced in accordance with the European standard NF EN ISO 14067 or any other equivalent standard;
- an appendix presenting the precise strategy envisioned for a duration

"Airlines should therefore take great care in measuring the environmental terms used in their advertisements to avoid any sanctions."

of 10 years, aiming at reducing the greenhouse gas emissions associated with the advertised service. According to the Decree, the strategy should be supported by precise numbers and schedules; and

- an appendix mentioning the methods for offsetting greenhouse gas emissions, which shall particularly stress out the nature and description of the offsetting projects and describe in detail the efforts made to ensure the possible coherence between the geographical areas in which the offsetting projects are carried out and where the emissions take place.

This publication must be updated on an annual basis if the advertisement containing the terms on carbon neutrality is used.

To ensure the binding effect of these provisions, the Law introduced a specific administrative fine provided in Article L.229-69 of the French Environmental Code to sanction any non-compliance with the above-mentioned provisions, with a fine amounting to 100,000 euros.

This amount may be increased to the total amount spent to set up the illegal advertisement.

### The criminalisation of greenwashing

The Law has also extended the scope of misleading commercial practices, introduced at the European level by Directive 2005/29/EC of 11 May 2005 and sanctioned under the laws of France in Article L.121-2 of the Consumer Code, to include greenwashing.

Initially, the notion of "misleading commercial practices" was applicable to any advertisement based on false or misleading claims, indications or presentations concerning, in particular, "the essential characteristics of the good or service, namely: its material

qualities; its composition, accessories, origin, quantity, method and date of manufacture, the conditions of its use and its fitness for purpose, its properties and the results to be expected from its use, as well as the results and main features of the tests and checks carried out on the good or service".

Given the broad nature of these provisions, French Courts had already sanctioned greenwashing on the basis of the criminal infringement of misleading commercial practice before the provisions introduced by the Law: for instance, an advertisement relating to hybrid vehicles was qualified by the Paris Court of Appeal on 3 October 2013 as a misleading commercial practice because the advertisement referred to the term "ecological", without supporting this assumption on scientific basis, as regards the fuel (super ethanol) used for this vehicle.<sup>2</sup>

With the provisions introduced by the Law, the new version of Article L.121-2 of the Consumer Code, applicable since 28 May 2022, expressly states that (i) the essential characteristics of the service include "the results expected from its use, in particular its environmental impact" and (ii) that a commercial practice is misleading when it misleads on the "scope of the advertiser's commitments, in particular with regard to the protection of the environment".

Even more remarkably, the Law has strengthened the sanction applicable to misleading commercial practices based on greenwashing. Article L.131-2 of the Consumer Code now provides that the sanction for such an infringement is two years' imprisonment and a fine of 300,000 euros, which can be increased to 80% of the total amount spent to set up the greenwashing.

Therefore, the new provisions introduced by the Law have greatly strengthened

the French legislative arsenal against greenwashing and render advertising in the airline sector rather challenging:

On the one hand, airlines should be careful to not overstate their carbon neutrality measures and strategy (or at least respect the conditions introduced by the Law), otherwise it could be regarded as greenwashing and thus be criminally sanctioned.

On the other hand, airlines should take environmental protection into consideration in their advertising. According to the rules of ethics in advertisement, advertising shall not promote any behaviour that is considered excessive and contrary to environmental protection: in a recent French case of May 2022<sup>3</sup> the advertisement of an airline with the following catchphrase « *Ne passez jamais vos week-ends au même endroit* » (Never spend your weekends in the same place) was judged not ethical and contrary to environmental protection. In this case, the jury considered that such an advertisement aims at inviting the passenger to fly to a different European city every weekend and that it (i) encourages excessive behaviour and (ii) contradicts environmental protection.

Airlines should therefore take great care in measuring the environmental terms used in their advertisements to avoid any sanctions.

### Footnotes:

- <sup>1</sup> New Greenpeace report finds Europe's biggest airlines failing over climate claims - Greenpeace International; Climate: Airline giant KLM to face legal action over greenwashing (cnbc.com).
- <sup>2</sup> CA Paris, 3 oct. 2013, n° 2010/08580 ; Cass.crim., 21 oct. 2014 n°13-86.881).
- <sup>3</sup> Transavia - 827/22 - 4 may 2022

# France strengthens its legal arsenal against unruly passengers

Air traffic has resumed and so has incivility in flight. According to the European Aviation Safety Agency, the safety of a flight in the European Union is jeopardised by the behaviour of some passengers every three hours.

To address this situation, France is (1) strengthening its legal arsenal against passengers who disrupt flights by (2) creating a new system of administrative and criminal sanctions.

## **French current legal framework: A missing comprehensive sanctions regime**

Disruptive behaviour by air passengers is increasing and takes various forms: from simple incivility to more or less serious offence (fights, drunkenness, refusal to follow the captain's instructions, etc.). Many factors can be at the origin of this, the main ones being alcohol, drugs, travel stress, etc.

The airlines, which have an operational and financial impact due to these disruptive passengers, are struggling to curb this phenomenon despite the legal framework, originally intended to prevent and punish this type of behaviour.

On 14 September 1963, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft was adopted to combat the phenomenon of passengers who do not comply with the rules of conduct on board aircraft or who do not follow the instructions of the crew members, i.e., disruptive, or unruly passengers.

However, various inherent loopholes and limitations of the Tokyo Convention have been identified (jurisdictional issues, lack of definition of a criminal offence, etc.). This framework eventually proved to be insufficiently dissuasive: disruptive acts related to passenger behaviour have become both more frequent and more serious.

Therefore, the Montreal Protocol - adopted on April 4, 2014<sup>1</sup> - has been designed to develop the means to dissuade the disruptive behaviour of certain passengers.

In practical terms, the Protocol extends jurisdiction to the State of landing or to a third State if the aircraft is diverted from the original State of landing, clarifies certain behaviours which should be considered, at a minimum, as offence and encourages States to take appropriate criminal or other legal proceedings, inter alia.

However, in practice, offences committed by passengers remains too rarely sanctioned by French criminal Courts.

This can be attributed to the fact that staff and passengers are by nature very mobile. Filing complaints, collect testimonies takes time and complications that may result can appear to be deterrent.

This is particularly the case for behaviours that are of medium or low severity such that victims believe - rightly or wrongly - that the prosecution will not proceed and that the case will be dismissed. As a result, many incidents caused by unruly passengers are not prosecuted or sanctioned in any way.

In brief, the French criminal arsenal is, in principle, quite complete, but its implementation is cumbersome and remains rather little dissuasive, except in cases where passengers commit serious offences.

It was therefore suggested that a system of sanctions be set up to deal as quickly and effectively as possible with the least serious acts of indiscipline.

## **The creation by ordinance<sup>2</sup> of new administrative and criminal sanctions: A necessary reinforcement**

To meet these needs and to bring French law into line with several European Regulations, France has very recently created a new ordinance amending the French Transport Code<sup>3</sup> by introducing<sup>4</sup> a general obligation for the passenger not to compromise the safety of the aircraft or that of persons or goods on board.<sup>5</sup>

On the pre-existing criminal side, the ordinance provides for a new penalty for any destruction, degradation or deterioration committed on board an aircraft<sup>6</sup>. The objective of this provision is to allow the repression of any damage to any part of the aircraft, whatever it may be, and whose deterioration is likely to affect the safety of a flight, either directly or indirectly, by focusing the attention of flight personnel on this event, reducing their ability to perform their main mission of ensuring the safety of the flight. In such a case, the passenger would face a criminal penalty of five years' imprisonment and a fine of €75,000.

On the much-anticipated administrative side, it creates<sup>7</sup> a new system of sanctions against a disruptive passenger during a commercial flight on board an aircraft operated by a French airline.<sup>8</sup>

This is a graduated system authorising the competent administrative authority to impose an administrative fine of up to €10,000 on any passenger who does not comply with the safety instructions<sup>9</sup> or to ban the passenger from boarding the aircraft. In both cases, the competent administrative authority may suspend the decision in whole or in part, and the provisions provide for an increase in the penalty in the event of a repeat offence.

Firstly, it is provided that companies shall report to the competent administrative authority the behaviour of disruptive passengers in order to allow the agents authorised to draw up<sup>10</sup>, if necessary, the statements and reports of violations.<sup>11</sup>

Secondly, to identify and contact the passengers concerned, and to notify them of any decisions to impose sanctions, the Ordinance provides for provisions authorising the authorised

agents to request from French airlines, but also from the natural or legal persons<sup>12</sup> (travel agencies, for example), the communication of any useful document or information.<sup>13</sup>

Thirdly, in order to guarantee the enforcement of the boarding ban decision, the Ordinance provides for the communication to national airlines of the identity of the passenger concerned and the duration of the boarding ban<sup>14</sup>. It requires airlines to refuse or cancel the issuance of tickets for air transport. Finally, it entrusts them with a public safety measure by providing that they verify the identity of passengers before they board the aircraft<sup>15</sup>.

However, the dissuasive effect expected from this system of administrative sanctions would only be if the sanctions were rendered within a relatively short timeframe, a few weeks to a few months. Indeed, the certainty of a relatively rapid sanction would certainly produce a positive deterrent effect.

## **Footnotes:**

- 1 Which entered into force on January 1, 2020, then ratified by in France on February 3, 2021.
- 2 Law No. 2021-1308 of October 8, 2021 (JO of October 9, 2021) on various provisions for adapting to European Union law in the areas of transport, environment, economy and finance - known as "DDADUE 2021" - empowered the government to issue four ordinances relating to civil aviation, including the said Ordinance 2022-831 dated 1 June 2022.
- 3 Chapters I "Transport of persons and baggage" of Title II "Contract of carriage", I "Police measures, powers of observation", II "Administrative sanctions" and III "Criminal provisions" of Title III "Police measures, administrative sanctions and criminal provisions" of Book IV "Air transport" of the 6th legislative part "Civil aviation" of the Transport Code
- 4 In Chapter I
- 5 Article L. 6421-5
- 6 Article L. 6433-3
- 7 In Chapter II of Title III
- 8 Articles L. 6432-4 to L. 6432-12
- 9 Set out in a, c and d of article 12 of the Law n° 2021-1308 on 8 octobre 2021 (articles L. 6432-4 to L. 6432-6)
- 10 Under Article L. 6431-1
- 11 Amendment of Article L. 6421-6
- 12 mentioned in I of Article L. 211-1 of the Tourism Code
- 13 Article L. 6421-7
- 14 Article L. 6432-9
- 15 Article L. 6432-12



## Contact us



**MERT HIFZI**  
 Global Head of Aerospace  
 T +65 6411 5303  
 E mert.hifzi@hfw.com



**AILEEN CAMACHO**  
 Partner, London  
 T +44 (0)20 7264 8105  
 E aileen.camacho@hfw.com



**JULIO COSTA**  
 Partner, CAL in cooperation with HFW, Brazil  
 T +55 (21) 97571 2658  
 E julio.costa@cal-law.com.br



**JEAN-BAPTISTE CHARLES**  
 Partner, Paris  
 T +33 (0)1 44 94 31 44  
 E jean-baptiste.charles@hfw.com



**RICHARD GIMBLETT**  
 Partner, Dubai  
 T +971 50 451 3639  
 E richard.gimblett@hfw.com



**KATE SEATON**  
 Partner, Singapore  
 T +65 6411 5317  
 E kate.seaton@hfw.com

# Sustainability Quarterly

**HFW's Sustainability Quarterly features the latest innovations, legal and regulatory updates, and sustainability-related news from across key global markets.**

In this issue, we feature a write up of the most recent in our sustainability webinar series. This session, led by Sebastian Mikosz, IATA's SVP for Environment and Sustainability, looks at the main issues faced by the aviation sector on the road to decarbonisation, including the scarcity of non-conventional fuel, the importance of agreeing global long-term goals, and why reducing plastic waste is essential.

A fascinating interview with Maersk's Global Air Freight Sustainability Manager Amit Agarwal reveals more about the need for investment into sustainable air fuel, how consistency and collaboration are key, and why he remains positive about future growth in the face of challenges still to overcome.

The Mission to Seafarers is an organisation which provides support and welfare to the 1.5 million people worldwide who work at sea and is one of HFW's global charity partners. We hear from Maurizio Borgatti, its Head of Corporate Partnerships, about the work the charity does in helping those working in dangerous, and often isolated conditions on global waters.

As well as our regular insight into the most significant legal updates, we also hear from Odfjell SE's Chief Sustainability Officer, Øistein Jensen, about climate related risk and threats, as well as learning about how best to embrace climate adaption opportunities from meteorologist and climatologist Dr Bruce Buckley. Finally, we have a round-up of our latest sustainability initiatives and news from our offices.

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