

Preserving Airspace Access for Air Sports

The international regulation of air sports

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by Dr. Ronald Schnitker and Dick van het Kaar

Including the FAI Manifesto

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Foreword

In this document, Dr. Ronald Schnitker and Mr. Dick van het Kaar are offering a well researched brief leading to a strong Manifesto for the Preservation of Airspace Access for Air Sports.



The issue of the constantly diminishing airspace available to air sports is a serious one that, to my knowledge, has never been addressed before on such a global legal basis.

This work is a serious gift from the authors and the Royal Netherlands Aeronautical Association to all air sports persons of the world and I hope that FAI and all national air sports entities will give it due consideration and support as an intellectual platform to protect and reclaim our most vital resource, our airspace.

To Ronald and to Dick I extend my grateful thoughts,

Alvaro de Orléans-Borbón
FAI Executive Director



Summary

Increasing questionable closures of airspace parts and environmental constraints raise a discussion about who in fact is the owner of the airspace? In this discussion, the crucial element is still the sovereignty of the State over its own territorial airspace.

The principle of sovereignty stems from the State's responsibility for safety, in this particular case State security in the absence of physical airspace borders (conceivable air space infringements or unlawful incursions, especially in time of war), and airplane safety risks that, among other things, necessitated already in the initial phase of aviation airworthiness requirements and rules of the air.

The Convention on International Civil Aviation (the Chicago Convention) proclaims quite clear in Article 1:

Sovereignty: The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

However, the Chicago Convention is primarily intended for commercial aviation. It is therefore not surprising that the use of national airspace is granted to commercial aviation and, as part of national defence, military aviation. Subsequently, nothing is stated about (the rights of) air sports in the Articles and Annexes of the Chicago Convention. Likewise, in EU legislation, there are no specific rules or recommendations about the use of airspace by national air sports. However, airspace is obviously within the public domain entrusted to the State to be managed in the interest of all citizens.

Air sporters and recreational aviators do have just as many rights to use the airspace as commercial and military aviation. Air sporters and recreational aviators do understand the prioritization, as well as nature protection and conservation, though that does not imply that they can just be put aside without any form of participation or consultation let alone compensation.

They should not be the victim of the impetuous growth of commercial air transport and arbitrary, stringent environmental policies of non-trans-

parent State authorities. Imposing high fees by larger airports, due to increasing air traffic intensity, is an attempt to prevent air sports and recreational flying from using the infrastructure. And then, if this attempt proves to be successful in favour of the airports, no compensation whatsoever will be provided.

There is a strong tendency by authorities/regulators of implementing restrictions to airspace, thereby limiting air sports activities and recreational flying. Available airspace is a critical resource that deserves every effort to be conserved. Unfortunately, there are numerous examples where restrictions have been implemented, which later have been proven to be unnecessary.

A common occurrence is the unnecessary allocation of airspace parts solely for commercial or military aviation activities, thereby practically blocking air sports and recreational flying activities in those specific airspace parts, often for no valid or substantiated reason.

To secure the rights of air sports and recreational flying, the interests of this aviation sector must be addressed to international organizations like the International Civil Aviation Organization (ICAO), the European Aviation Safety Agency (EASA) and the European Commission (EC) and other influential entities in the world, so that air sports and recreational flying can be conducted under proportional and simplified regulations, the greatest possible freedom and in balanced interaction with other aviation activities. In this light, the responsible regulators and authorities regarding airspace management should observe the need for flexible use of airspace. A clear high priority objective will be greater flexibility and predictability in the availability of airspace, ensuring improved, and therefore easier, airspace access for air sports and recreational flying. This is especially applicable to primarily segregated airspace unnecessarily blocked for the purpose of air transport activities and military missions. There is a strong need to simplify certification and licensing requirements as well as proportionate rules for people and equipment involved in air sports and recreational flying, mainly considering safety, effective airspace utilization and affordability.

It is common practice that National Aviation Authorities (NAAs) simply enforce the ICAO Standards for air sporters and recreational aviators, in

absence of tailored regulations. The ICAO Standards and Recommended Practices (SARPs) are considered to be the legal framework for the entire aviation industry. That may be true for certain rules, as for example Rules of the Air, Search and Rescue, Aerodromes and Aircraft Accident Investigation. Other elements of aviation regulation require simplification and proportionality to meet the need of air sports and recreational flying for special treatment and specific rules in order to reduce cost and facilitate future growth.

Since 2014, EASA is working on a Road Map for Regulation of General Aviation (GA Road Map) to create simpler, lighter and better rules for GA, including air sports and recreational flying, exclusively applicable within the EU region. EASA recognizes that existing regulation impacting GA may not necessarily be proportional to the risk exposure of GA. Some of this regulation was intended to cover more demanding, in terms of safety, activities such as commercial air transport operations. Both GA and EASA recognize that more regulation does not necessarily mean more safety.

Looking back at the early days of EASA, which overburdened the GA sector with heavy regulation and red-tape, this is quite a revolutionary recognition. For the purpose of GA, EASA proposes to introduce flexibility and simplification regarding airworthiness certification and oversight system for small and low-risk GA, to delegate licensing, certification and oversight responsibilities to approved third parties like the National Aero Clubs (NACs) or equivalent organizations, and to introduce provisions which will allow possible deviations from existing requirements, where appropriate. EASA continues to improve the regulatory framework for GA, in particular through a GA Road Map 2.0 to be released late 2018.

While in many States increasing pressure exists on the availability of airspace because of the multitude of air traffic, nature conservation organizations at the same time are claiming airspace above designated nature protection areas to restrict overflight up to a certain altitude, much higher than the code of conduct adopted by the GA on its own initiative. Everyone is convinced that nature conservation is of great importance in our society. However, this often incorrectly justified measure results

in increasing air traffic density. More diverse, mixed air traffic in less airspace. This might easily lead to a situation where nature prevails over flight safety. In some States courts have to decide on appeals about this controversial issue.

In a world where the decaying environment, the greenhouse effect and global climate change, in other words the broad impact of human activities on resources and nature, are really hot topics, air sports activities and recreational flying are in fact miniscule contributors of pollution to the environment, be it by emissions of harmful gases or through noise. This almost negligible contribution to pollution is even decreasing at a rate surpassing most other activities, mainly due to some zero emission air sports disciplines, innovative electric flying by solar and battery power and a sharp reduction in noise pollution.

Because of the soaring aviation market, in particular in the emerging economies of Asia, a shortage of qualified airline pilots and technicians is expected in the coming years. Recruiting from the pool of air sporters and recreational aviators is quite obvious. This immense group of enthusiastic and decisive young people not only promotes multi-discipline air sports throughout the world, attracting other youngsters into the world of air sports, but could be indispensable for the global aviation industry.

Introductory Note

Sport in aviation covers an area where a particular group of enthusiastic practitioners are active: in gliding, ballooning, parachuting, hang- and paragliding, microlights and paramotors, rotor craft and motor flying, aerobatics, human-powered aircraft flying and last but not least aeromodelling and drones. For those who decide to practice air sports, whatever discipline, a fascinating world opens up.

Air sports are challenging, educational and exiting. For most practitioners it is primarily the pleasure to participate, while others specially focus on performance at competitions and championships. Air sports play an important role in the personal development of, in particular, young people. They learn things as responsibility, teamwork and avoid unnecessary risks, skills that are important in a future career in aviation.

However varied and unique air sports in the world are, they have at least one thing in common: the use of airspace. Undeniably, airspace is of vital importance for air sports and recreational flying. But, when it comes to airspace use, there are strong competitors, namely commercial air traffic and military aviation.

The global demand for airspace is quite significant, due to the impressive growth of commercial air traffic in recent years and military aviation activities, as well as the intensifying protection of nature reserves and silence areas.

Obviously, the diversity and intensity of air traffic requires an optimal and equitable distribution of airspace. Considering priority, air sports disciplines occupy a fairly modest position in the overall spectrum of airspace users. Because of scarser airspace, authorities unfortunately apply more unjustifiable restrictions, thereby limiting air sports and recreational flying.

For the FAI, available airspace is a critical resource, which is fully worth it to make every effort to secure adequate access to airspace. Therefore, FAI wants to make a strong commitment, among others with a clear Manifesto, to influence international organizations, and support National Aero Clubs and regional organizations, so that air sports and recreational flying can be conducted under the greatest possible freedom and in

balanced interaction with other aviation activities.

However, in the opinion of air sports practitioners, it is not just restricted airspace that causes injustice. The FAI has observed an increasing tendency by regulators/authorities to introduce additional formal licensing requirements for air sporters and recreational aviators, often accompanied by significant cost increases, bureaucracy and additional time burdens to comply. Moreover, complying with ICAO rules, primarily intended for commercial aviation, is an unremitting and often irrational challenge.

There is a strong need to simplify relevant rules and regulations. FAI urges the aviation regulators/authorities to accept that air sports and recreational flying need special treatment and specific rules in order to reduce cost and facilitate future growth.

Meanwhile, there appear to be bright spots. The European Aviation Safety Agency (EASA) is working on a GA Road map, introducing lighter, proportionate and efficient rules for GA, including air sports and recreational flying. Hopefully this means for this aviation sector a positive turning point in the near future, not only for European but most probably for all other air sporters and recreational aviators around the world.

Summarizing, in almost all States the governments grant a high priority to air defence and to maintaining and strengthening their air transport agreements with other States. The result of this policy is the imposition of claims on airspace by commercial and military aviation, causing imposed restrictions on air sports and recreational flying. The question is: who is the owner of airspace and what rights does this aviation sector have, and most important, what is the approach to preserve access to airspace? That is what this book is about.