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# THE AVIATION LAW REVIEW

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FOURTH EDITION

EDITOR  
SEAN GATES

LAW BUSINESS RESEARCH

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# EDITOR'S PREFACE

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The reach of *The Aviation Law Review* continues to expand and I welcome contributions from Felsberg in Brazil, Conyers Dill and Pearman in Bermuda, The Air Law Firm for Spain and the Chambers of Robert Lawson QC, who now takes up the cudgels for the UK. My thanks to you all for volunteering and to our seasoned contributors for their continued support in what I believe is becoming acknowledged as a 'go-to' publication in our field.

In litigation and regulatory terms the themes of previous years continue to predominate. The Court of Justice of the European Union (ECJ) (i.e., the alternative legislature for Europe) continues to bear down on operators, and indirectly passengers, with judicial activism in the sphere of Regulation (EC) No. 261/2004. All rational defences on the basis of exceptional measures have been dismissed by the court in favour of what seems to be the theory that if it happens it was not exceptional! Ultimately passengers will bear the cost of this through increasing fares but this will be a bullet easily dodged by the judges, who, of course, have no electorate and no accountability.

Unmanned aerial vehicles also continue to be a hot topic, with regulation barely keeping up with their proliferation. The need for regulation is highlighted by ever more frequent near-miss reports; though the latest may have been in respect of an unmanned aerial plastic bag rather than one that was under control. Privacy regulations are also coming into force but the difficulty of identifying the particular operator of any unlicensed drone still poses difficulties that are likely to lead to registers created at the point of sale or by transferors to new users.

We have introduced a couple of new topics in this year's *Review* that I hope will be of interest and value to readers. The first of these concerns compensation levels for personal injury and fatal accidents in the various jurisdictions of the contributors. I first attempted an international review of comparative compensation more than 20 years ago, and looking back on it can be depressing from an inflationary prospective! The product then was greatly appreciated in various quarters of our industry and I am hopeful that we will provide a useful service with this edition.

'Just culture' remains a subject of warm debate in various quarters. The tension between confidential reporting and criminal prosecutions post-accident has in no way diminished and the International Civil Aviation Organisation and Flight Safety Foundation, among others,

are working hard in the interests of flight safety to develop the practice. As a guide to the issues I have invited contributions on issues of discoverability of reports from contributors to this edition and the responses will usefully inform the debate. The task of convincing prosecutors of the desirability of affording the greatest possible respect to the confidentiality of voluntary reporting is a considerable challenge to those of us interested in advancing safe flying and anything that assists the cause should be embraced.

This preface would not be complete without a brief mention of 'Brexit', which will continue to provide the substance of much speculation in the coming years. The precise terms of the ongoing relationship between the UK and the EU in this sphere will be the subject of prolonged negotiation. In the interests of safety and security it is clearly desirable for the UK to continue to play an important role in the oversight and regulation of aviation in the region. If Brexit means that the influence of the ECJ will be diminished for those operators in the UK, that will at least be a silver lining for them.

Finally, I would like to express my gratitude to Tom Thornton from Florida for his contribution on *forum non conveniens* in the United States. As many readers will know, after any accident, plaintiffs will seek out the jurisdiction for resolution of their claims that will afford them a combination of the highest level of compensation with the lowest upfront cost, and with a reasonably predictable outcome. These considerations lead many plaintiffs to the courts in the United States, notwithstanding the tenuous links some accidents have with that jurisdiction, where they are ably assisted by some of the most inventive plaintiff lawyers worldwide. Tom has spent a lifetime resisting those efforts on behalf of airlines and others and is an acknowledged expert as is clear from his contribution to this area in the current edition.

Again, many thanks to our contributors and I hope that our readers will derive great benefit from the fourth edition as they have from its predecessors.

**Sean Gates**

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## Chapter 24

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# PORTUGAL

*Luís Soares de Sousa*<sup>1</sup>

### I INTRODUCTION

The significant growth of tourism in the past years is having a positive effect on the domestic economy, which translates into the modernisation of the aviation legal sector.

Presently, the legal framework for civil aviation in Portugal is the product of many different sources, namely international law (conventions or treaties), EU law and national law.

The National Civil Aviation Authority (ANAC) has administrative and financial autonomy and is responsible for ensuring the proper planning of all activities regarding the civil aviation sector, as well as regulating and supervising the conditions in which they are developed. One of ANAC's most important tasks is to ensure high standards of safety.

As part of its regulatory role, ANAC is responsible for the licensing, certification, authorisation and approval of the activities and procedures, entities, personnel, aircraft, infrastructure, equipment, systems and other resources allocated to civil aviation. ANAC is under the supervision of the Ministry of Economy and Employment.

ANAC's registrations are performed by the National Aeronautical Registry, which records the following facts: the aircraft registration number, the manufacturer's serial number of the aircraft and of the engines, the name and address of the owner or lessor, and of any lessee, as well as any other interest or lien on the aircraft (co-ownership, mortgages, etc.). The obligation to register aircraft mortgages is set forth in Decree No. 20062 of 1931 – Air Traffic Regulation.

Portugal has implemented the EU Regulation on aviation market access through Decree-Law No. 116/2012, 29 May, which establishes the legal regime of market access, guided by the principle of non-discriminatory treatment, allowing Community air carriers the access to available air routes in all air service agreements signed by Portugal.

---

1 Luís Soares de Sousa is a partner at Cuatrecasas, Gonçalves Pereira. The author would like to acknowledge, with thanks, the assistance of the following colleagues: Conceição Balcão Reis, Telma Carvalho, Rita Caçador and João Ventura.

Although the Portuguese Labour Code is applicable to civil aviation employees, there are some specific aspects such as working schedules, resting periods and specific duties imposed on captains, among others.

Furthermore, Decree-Law No. 109/2008, 26 June (following Regulation (EC) No. 793/2004, 21 April 2004), sets out the coordinated and scheduled facilitated airports in Portuguese territory.

This Decree-Law also focuses on two relevant entities: ANA Airports of Portugal, recently privatised, coordinates and facilitates the slot allocation process; and the National Coordination Committee has consultancy and mediation functions on these matters.

Since 1994 Portugal is not authorised by the European Commission to grant state aid to TAP, the national airline of Portugal. Therefore, banks and financial entities are the sole recourse for financing TAP.

## II LEGAL FRAMEWORK FOR LIABILITY

### i International carriage

In Portugal, liability in the aviation sector is governed by national, international and EU law.

As regards major international air law treaties, Portugal is a party to:

- a* the 1944 Convention on International Civil Aviation (Chicago Convention), signed on 12 October 1929, ratified on 20 March 1947;
- b* the 1948 Geneva Convention on the International Recognition of Rights in Aircraft signed on 7 December 1944, ratified on 27 February 1947;
- c* the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, ratified on 20 March 1947; and
- d* the Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal on 28 May 1999 ratified on 27 November 2002.

Portugal has approved but has not yet ratified the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

Portugal is a party to the New York Convention of 1958 (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards), and will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting state.

TAP is a party to the International Air Transport Association Intercarrier Agreement on Passenger Liability and the Agreement on Measures to Implement the IATA Intercarrier Agreement.

### ii Internal and other non-convention carriage

Both domestic and EU air carriage of passengers and baggage are governed by Regulation (EC) No. 889/2002, 13 May, amending Regulation (EC) No. 2027/97, 9 October, which sets out air carrier liability in the event of accidents.

Additionally, Decree-Law No. 321/89, 25 September, contains specific provisions on liability arising from the air transportation business. For more information, see Section VII, *infra*.

Air carriage that does not fall within the scope of the aforementioned legislation, namely gratuitous air carriage by an air transport undertaking or gratuitous air carriage performed by a private entity, are governed by the general rules applicable to liability established in the Portuguese Civil Code and by the applicable conventions.

### iii General aviation regulation

The general rules set forth in the Portugal Civil Code are applicable to all flights that are not included in scheduled air services and non-scheduled operations for remuneration or hire.

In Portugal, there is a specific legal framework established for free-flight aircraft and microlights – Decree-Law No. 238/2004, 18 December, amended by Decree-Law No. 283/2007, 13 August.

Generally, free-flight aircraft and the microlights can only be used for training, recreational and sport purposes. However, provided certain conditions are met, microlights can be flown in different situations.

### iv Passenger rights

Regulation (EC) No. 261/2004, 11 February, establishing the common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, was implemented through Decree-Law No. 209/2005, 29 November, which created the legal framework for sanctions applicable to violations of the Regulation.

The supervision and administrative procedure related to passenger rights is carried out by ANAC. Air carriers have a legal duty to provide all relevant data to ANAC.

The legal regime of civil aeronautical administrative offences established by Decree-Law No. 10/2004, 9 January should be added to the administrative offences established in the above-mentioned Decree-Law No. 209/2005.

In addition, Regulation (EC) No. 1107/2006, 5 July, regarding the rights of disabled persons and persons with reduced mobility when travelling by air was adopted in Portugal through Decree-Law No. 254/2012, 28 November, which sets out the scope and conditions for the application of the said Regulation.

### v Other legislation

The aviation sector is ruled by the same general liability provisions applicable in Portugal to other activities, which besides the Civil Code, include Decree-Law No. 383/89, 6 November, regarding product liability (see Section VII.iii, *infra*), and the recently enacted Competition Act – Law No. 19/2012, 8 May – that provides several fines for cases of anticompetitive practices (see Section VI, *infra*).

Furthermore, in a chapter dedicated to crimes against the safety of communications, the Portuguese Criminal Code sets out four types of crimes involving air transport.

The Portuguese Environmental Framework enacted by Law No. 19/2014, 14 April, establishes the rights and obligations regarding environmental protection, as well as a liability principle through which compensation can be obtained from those who threaten or provoke damage to the environment.



### III LICENSING OF OPERATIONS

#### i Licensed activities

Commercial air carrier services, scheduled and non-scheduled for passengers and their baggage, mail and cargo require prior licensing by ANAC.

The main piece of legislation applicable to the licensing of aviation operations in Portugal is Regulation (EC) No. 1008/2008, 24 September, on common rules for the operation of air services in the Community.

A Portuguese air carrier must hold an operating licence as well as an air operator's certificate, which is granted by ANAC. The aircraft has to be registered and hold a valid certificate of airworthiness.

Additionally, pursuant to Decree-Law No. 275/99, 23 July and further amendments, which transposed Directive No. 96/67/CE, 15 October, handling services including self-handling are also subject to licensing.

For more information, see the 'European Union' chapter.

#### ii Ownership rules

Regulation (EC) No. 1008/2008, 24 September, is applicable and therefore for an undertaking to be granted an operating licence, Member States or nationals of Member States shall own more than 50 per cent of the undertaking and effectively control it, whether directly or indirectly, through one or more intermediate undertakings.

#### iii Foreign carriers

##### *EU carriers*

Pursuant to Article 15 of Regulation (EC) No. 1008/2008, 24 September, EU air carriers that have been granted an operating licence by another Member State are entitled to operate intra-Community services.

##### *Non-EU carriers*

In Portugal, extra-community air services are governed by the Chicago Convention, as well as by several bilateral treaties.

The rights for the conduct of international air transportation by non-EU carriers to and from Portugal airports is governed by the air transport agreements entered into by and between Portugal and certain non-EU states, or, in the case of the United States, by the European Community and its Member States on the one hand, and the United States on the other.

Traffic rights (meaning the right of an airline to carry passengers, cargo or mail on an air service between two airports) require an operating authorisation and a technical permission that must be obtained from ANAC.

Code-sharing also requires prior authorisation from ANAC.

### IV SAFETY

The main piece of legislation applicable to air safety in Portugal is Regulation (EC) No. 216/2008, 20 February, plus further amendments, on common rules in the field of civil aviation, and establishing a European Aviation Safety Agency, whose main objective is to establish and maintain a high uniform level of civil aviation safety in Europe.

Internally, Decree-Law No. 289/2003, 14 November, regarding the certification of air operators, establishes several safety requirements for operators, which include the applicable requirements for continued airworthiness of aircraft, parts and spares, maintenance and crew members training.

Furthermore, Decree-Law No. 17-A/2004, 16 January, establishes the general regime for licensing civil aeronautical personnel for the performance of the following activities: private pilot for aircraft or helicopters; commercial pilot for aircraft or helicopters; air carrier pilot for aircraft or helicopters; flight engineers; and maintenance certifying staff.

Additionally, Decree-Law No. 40/2006, 21 February, which transposes Directive No. 2004/36/CE, 21 April, provides the rules applicable to the safety of third-country aircraft using European Community airports, and creates the procedures applicable to the inspections to be conducted on such aircraft.

## V INSURANCE

The Portuguese insurance legal regime applicable to aviation is currently set forth in Decree-Law No. 321/89, 25 September, as amended by Decree Law No. 208/2004, 19 August, and in Regulation (EC) No. 785/2004, 21 April, as amended by Regulation (EC) No. 1137/2008, 22 October and by Commission Regulation (EU) No. 285/2010, 6 April, on insurance requirements for air carriers and aircraft operators.

The purpose of these pieces of legislation is to set out minimum insurance requirements for air carriers and aircraft in respect of passengers, baggage, cargo and third parties, for both commercial and private flights.

Pursuant to the applicable law, the obligation to conclude an insurance agreement is applicable irrespective of the nationality of the operator or of the aircraft, provided that the operator is authorised to operate between two or more locations situated in national territory.

Additionally, Decree Law No. 223/2005, 27 December, sets forth the insurance requirements applicable regarding non-commercial operations by aircraft with a maximum take-off mass of 2,700 kilograms or less.

Insurance and reinsurance activities are regulated and therefore the exercise of said activities by, and the incorporation of, insurance or reinsurance companies in Portugal is subject to specific requirements set forth in the Portuguese Legal Regime applicable to insurance and reinsurance activities (PLRIRA) approved by Law No. 147/2015, 9 September, which has enacted into Portuguese law Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency) (as amended).

Moreover, compliance with insurance requirements described in the provisions of Decree-Law No. 321/89, 25 September, is ensured by ANAC. The evidencing of insurance certificates or policies is mandatory whenever the supervisory authority so demands. Lack of evidence of the above-mentioned insurance documents leads to the seizure of the aircraft.

## VI COMPETITION

In Portugal there are no specific regulations regarding competition for the aviation sector. Therefore, the applicable regime is the one provided in the competition legal regime enacted by Law No. 19/2012, 8 May (the Competition Act) and EU antitrust law.

Regulation (EC) No. 487/2009, 25 May, establishes the possibility of non-application of antitrust rules in certain agreements or concerted practices in the aviation sector. These exemptions are granted only for a limited period and are only justified by the need for adaptation required by the airlines to operate in a more competitive market.

The provisions of the Competition Act are enforced by the Portuguese Competition Authority.

In general terms, in Portugal, all agreements, collective decisions and recommendations, as well as concerted practices or decisions by associations of undertakings that aim or achieve to prevent, restrict or distort competition are prohibited.

For that reason, undertakings must determine their market behaviour independently. Where this is not the case, and there is evidence of coordination or collusion, the existence of anticompetitive practices is likely and has to be corrected.

There are different kinds of anticompetitive practices. However, the most relevant concerning the civil aviation sector are probably the collusive practices, namely horizontal agreements or cartels, (i.e., coordination between competing undertakings positioned at the same level of the production or distribution chain, such as airlines).

These practices include: price-fixing; limiting or controlling production, distribution, technical development or investment; sharing markets or sources of supply or applying dissimilar conditions to equivalent transactions.

Hence, these prohibited agreements and practices, save for some exceptions, are null and void and may be punishable, depending on the severity of the restriction on competition, with fines of up to 10 per cent of the total annual turnover of the offender.

Additionally, the rules provided in the general regime of administrative offences are alternatively applicable to collusive practices.

## **VII WRONGFUL DEATH**

Please refer to Section VIII.iv, *infra*.

## **VIII ESTABLISHING LIABILITY AND SETTLEMENT**

### **i Procedure**

The Portuguese Civil Code and the Portuguese Civil Procedure Code are applicable to the procedure for establishing liability and settlement. Regarding mechanisms used to settle claims, and timelines for settlement, no further specific rules exist on civil aviation.

The limitation period for bringing claims, according to Regulation (EC) No. 889/2002, 13 May, is two years.

Pursuant to the Portuguese Civil Code, all parties (e.g., carriers, owners, pilots or manufacturers) responsible for damage caused are jointly and severally liable.

Liability is allocated according to the respective fault or negligence, and the consequences, arising from the same. Therefore, the court may allocate a share of liability to some of the parties or to all of them.

ii **Carriers' liability towards passengers and third parties**

Portuguese Law contains some specific provisions on liability arising from the air transportation business, which are set out in Decree-Law No. 321/89, 25 September, as amended by Decree Law No. 208/2004, 19 August.

For the purposes of determining potential liabilities, the law classifies three types of entities:

- a* the owner (i.e., the registered owner of the aircraft);
- b* the operator (i.e., the entity with effective control of the use of the aircraft); and
- c* the air carrier (i.e., the entity authorised to provide air services by transporting persons, luggage, cargo or mail in such an aircraft).

The owner and operator of the aircraft shall be liable, regardless of any fault or negligence:

- a* for all damage sustained by third parties at ground level caused by the flight of the aircraft or by any debris falling therefrom, including cargo dropping out, caused by force majeure circumstances; and
- b* for any damage caused by the aircraft when moving on the ground or even when immobile.

The obligation of compensation emerging from such liability shall, in principle, rank *pari passu* with the amount of damage actually originated, but the maximum aggregate amount (regardless of the number of injured parties), of such compensation is annually determined by a governmental order. This order determines also the minimum ceilings depending on the maximum weight of the aircraft on arrival, provided, however, that those ceilings shall be deemed not to apply should the injured party (or its successors or assignees) prove that the damage was caused by the wilful action or neglect of the owner, the operator or any of its representatives. Such liability is therefore, unlimited.

The owner and the operator's liability is, however, excluded in cases concerning damage caused by the aircraft as a result of acts of God or force majeure events, such as earthquakes or other natural cataclysms; armed conflicts, war, revolutions, insurrections or riots; and use by third parties of nuclear weapons or explosive devices.

In the event that the aircraft is stolen or used illicitly by an unauthorised person, the liability in first hand of its owner or operator persists, for compensation of any damage caused by such action; the owner or operator is naturally entitled to a remedy from whoever caused the situation.

The liability of the owner or operator also persists in the event of any damage caused to third parties if the aircraft was piloted or guided by the representatives of the owner or operator, even if overstepping their functions, without prejudice, of course, to the right of recourse.

If two or more aircraft collide in the air or on ground manoeuvres, the obligation of compensation for damage falls on the owner and operator of the aircraft causing the crash. If the collision was caused by more than one aircraft, the obligation of compensation shall be divided on a *pro rata* basis, except if it is impossible to accurately determine who was responsible for the accident; in such an event, liability shall fall on an equal basis on all parties involved.

Pursuant to the aforementioned legislation, air carriers are strictly liable as follows:

- a* for death or personal injuries towards passengers in relation to accidents occurring during transportation or during boarding or disembarking;

- b* for damage, loss, destruction or deterioration of baggage and cargo whenever this originated during air transportation or during boarding or disembarking; and
- c* for damage resulting from delays.

Liability may also be based on criminal grounds. Decree-Law No. 10/2004, 9 January, adapts the general regime of administrative offences (Decree-Law No. 433/82, 27 October) to the laws and regulations regarding civil aviation. The aforementioned legislation establishes the legal framework applicable to all civil aeronautical offences implicating a violation of any legal rules for which a sanction is imposed, except in relation to state aircraft.

The legal types of administrative offences range through all the legislation applicable to the aviation sector.

ANAC is the entity empowered to initiate, conduct, decide and apply sanctions in respect of legal proceedings concerning aeronautical administrative offences.

In light of this, and provided that a complaint has been sent to the air carrier and the air carrier has not answered within six weeks of the date of receipt of the complaint, or the air carrier's response did not satisfy the passenger, passengers have the right to address a complaint to ANAC, which shall then analyse the possible breach situation and may initiate an administrative offence procedure.

Passenger behaviour is also a concern in the aviation sector. Thus, Decree-Law No. 254/2003, of 18 October, was enacted to focus on the prevention and repression of unlawful acts carried out by disruptive passengers in commercial flights.

As previously mentioned, the Portuguese Criminal Code also provides for four types of crimes related to air transport. These crimes are set out in a chapter entitled 'crimes against communications'.

According to Article 287, the hijacking or capture of an aircraft shall be punishable with a penalty of five to 15 years' imprisonment.

Moreover, pursuant to Article 288, attempting an attack against the security on air transport shall be punishable with a penalty of one to eight years' imprisonment.

Pursuant to Article 289, a person who pilots an air transport and is not in a condition to comply with the required safety requirements or is in violation of the applicable piloting rules and therefore creating danger to life or the physical integrity of another person, or to high-value assets, is punishable with one to eight years' imprisonment. If the crime is committed through negligence, the penalty is one to five years' imprisonment.

### **iii Product liability**

Decree-Law No. 383/89, 6 November, transposes Council Directive 85/374/EEC, 25 July, on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. This legislation is applicable to the aviation sector although not specifically.

Pursuant to the aforementioned Decree-Law, the producer is (1) the manufacturer of a finished product, the producer of any raw material or of a component part and any person who presents him or herself as producer by trademark or name; (2) any person who imports into the Community a product for sale, hire, leasing or any form of distribution; (3) where the producer of the product cannot be identified, each supplier of the product, unless the supplier informs the injured person, within a reasonable time, of the identity of the producer or of the person who in turn supplied the product.

Pursuant to the aforementioned legislation, the producer or manufacture is liable, regardless of fault, for all damage caused by a defect in the product.

According to the legislation, the compensable damage is the one resulting from death or personal injuries or the damage caused to any item of property other than the defective product itself provided that the item of property: is of a type ordinarily intended for private use or consumption; and was used by the injured person mainly for that person's own private use or consumption.

The injured person shall be required to prove the damage, the defect and the causal relation between the defect and the damage.

Should two or more persons be liable for the same damage, they shall be severally liable and in the event of doubt, liability shall be apportioned equally. There is also a right of return that shall be decided according to the extent of the fault and its consequences.

The liability of the producer may be reduced or disallowed by the court when, having considered all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person.

This regime is applicable to the liability of the manufacturer of the aircraft or the manufacturer of its parts or spares towards passengers.

As regards the liability of the manufacturer of the aircraft or the manufacturer of its parts or spares towards operators, the general rules of the Portuguese Civil Code are applicable as well as the Conventions already mentioned.

For owners' liability, see Section V.ii, *supra*.

#### iv Compensation

In Portugal, in matters involving death or injuries, the main categories of compensatory damages are material and moral damages.<sup>2</sup>

Material damages include the reimbursement of medical costs and expenses, economic losses resulting from the damage as well as loss of income. In cases of death, funeral expenses shall also be reimbursed.

Pursuant to the applicable law, moral damages that compensate pain and suffering depend on the extent of the fault, on the economic situation of the guilty party and the victim as well as on any other justifying circumstances.

The amount of the compensation will depend, for example, on the extent and magnitude of the medical treatment, inability to work, number of dependents, psychological consequences and permanent damage.

In cases of death, the compensation for moral damage shall be assigned together to the spouse or partner, ascendants and other descendants. If the deceased had no spouse or descendants, the compensation shall be assigned to the deceased's parents or other ascending relatives, or ultimately the deceased's brothers and sisters or nephews.

According to the latest Portuguese court decisions on compensation for moral damage to the relatives of the deceased, the amounts range from €60,000 up to €100,000.

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2 Pursuant to a decision of the Lisbon Court of Appeal dated 29 April 2010, moral damages can only be awarded if the intention of causing the damage is proven, even if the damage was caused by imprudence or negligence.

Even though there is no specific state-funded social security support for the victims of aircraft accidents, the state provides proper medical care for injured or incapacitated people through public hospitals and social security.

According to Law No. 48/90, 24 August (the Basic Health Act), the national health service in Portugal is universal, providing healthcare services.

Furthermore, state employees benefit from a special assistance scheme, which also includes their respective spouses, ascendants and descendants.

If an accident results in a permanent loss of the ability to work, social security beneficiaries are awarded a disability pension.

In the event of death, subsidies are assigned regardless of the cause of the accident and regardless of the requirements applicable to civil liability. Thus, the only condition that needs to be verified for the subsidy to be assigned is the fact itself (i.e., death). In light of this, there is no record of cases in which the Portuguese social security system has recovered costs from third parties.

## **IX VOLUNTARY REPORTING**

The legislation applicable to occurrence reporting in civil aviation is Decree-Law No. 218/2005, 14 December, which transposes Directive No. 2003/42/CE 13 June, and is applicable to all occurrences related to (1) aircraft with a Portuguese registration number, (2) aircraft with a foreign registration number provided they are used by national air carriers or foreign air carriers established in Portugal, and (3) aircraft with foreign-registered numbers whenever the occurrence takes place in Portuguese national territory or airspace.

This Decree-Law is applicable to any events that endanger or, if not corrected, may endanger the aircraft, its occupants and any third parties.

Decree-Law No. 218/2005 lists a number of occurrences that shall be notified to ANAC by any entity or single person that becomes aware of such events as per the performance of their duties. Serious occurrences shall be notified within six hours. Non-serious occurrences shall be notified within 72 hours.

The information resulting from the occurrences reporting is analysed by ANAC in order to ensure, internally and externally, confidentiality of data and of information sources as well as the civil aviation personnel's trust. Also, pursuant to this diploma and without prejudice to the powers attributed by law to judicial authorities, the identification of the person communicating the occurrence or incident as well as of any other person intervening is confidential.

In addition, ANAC shall refrain from initiating any proceedings in respect to unpremeditated or negligent infringements that come to its attention only because they have been reported under the national mandatory occurrence-reporting scheme, save for cases of gross negligence.

Lastly, employees who report incidents of which they may have knowledge cannot be subjected to any disciplinary procedures.

## **X THE YEAR IN REVIEW**

As part of the financial assistance programme of the European Commission, the International Monetary Fund and the European Central Bank, which started in May 2011, Portugal agreed

to the privatisation of two state-owned companies in the aviation sector: TAP, SA (Portuguese Air Carrier) and ANA, SA (Airports of Portugal). The privatisation of ANA, SA was concluded by the beginning of 2013 and the privatisation of TAP, SA was completed on 24 June 2015.

Furthermore, Portugal has been negotiating and amending bilateral treaties with several countries, namely Panama, the United Arab Emirates, São Tomé and Príncipe and Equatorial Guinea.

Pursuant to a decision of the Portuguese Supreme Court, dated 20 May 2014, an air carrier handling agent shall only benefit from the liability limits established in the Warsaw Convention if it is proven that the damage was caused in the performance of handling duties.

## **XI OUTLOOK**

The legislative trend of reducing the involvement of courts in the judicial system has progressively extended mediation to a number of legal areas, with the firm intent of turning this mechanism into a valid and effective dispute resolution alternative.

Mediation can be public or private and makes it possible for one or several parties in dispute to voluntarily reach an agreement with the participation of one or several conflict mediators.

According to Law No. 67/2013, 28 August (which establishes the legal framework of autonomous administrative entities with regulatory functions for the economic activity of the private, public and cooperative sectors) as well as ANAC's Organic Law, ANAC may promote voluntary arbitration for the resolution of disputes and provide conflict mediation services.

Pursuant to the aforementioned Law, regulatory entities are empowered to solve conflicts between operators and consumers upon the request of the interested parties by proceeding with complaint-handling procedures through mediation, conciliation or arbitration; these procedures shall be simple, fast and generally free.

However, this mediation activity has not yet been implemented by ANAC.

Lastly, fees applicable to the licensing of activities are under review.



## Appendix 1

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# ABOUT THE AUTHORS

### **LUÍS SOARES DE SOUSA**

*Cuatrecasas, Gonçalves Pereira*

Luís Soares de Sousa has been a partner at Cuatrecasas, Gonçalves Pereira since 2001.

In recent years he has advised on matters such as incorporating and licensing charter air transport companies, including advising on regulatory law; cross-border leasing transactions; mergers and acquisitions in the transport, construction and entertainment sectors; business restructurings; structuring and developing real estate investments; and project finance.

He has also advised clients on privatisations in the Portuguese-speaking African countries and on public procurement. He advises airlines, banks, manufacturers and leasing companies on cross-border leasing transactions.

Mr Soares de Sousa is recommended by several directories, including *Chambers Europe*, for his work in the area of transportation (aviation).

He obtained his law degree from the University of Lisbon in 1984, and has been a member of the Portuguese Bar Association since 1985. He has been legal adviser to several international companies on privatisation operations in the African Countries of Portuguese Official Language (PALOPs); to airlines, banks, manufacturers and leasing companies on cross-border leasing operations; and to the Autonomous Roads Board between 1997 and 1999 on the launching of the shadow toll system.

Mr Soares de Sousa regularly publishes on the topics of cross-border leasing and aviation.

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