

Aviation noise

Regulations & Sanctions

- France -

February 4th, 2020

Opening remarks

French noise disturbance regulations are undoubtedly among the most feared by airlines in Europe and this fear should be confirmed in the years to come.

In 2019, 529 breaches were recorded on French airports, 334 fines were imposed¹ for a total of 6.9 million euros, an average of €20,645 per fine.²

ACNUSA, the regulatory authority for airport noise responsible for enforcing airport noise regulations in France, is campaigning for a significant increase in the ceiling on fines and for an extension of its sphere of competence.

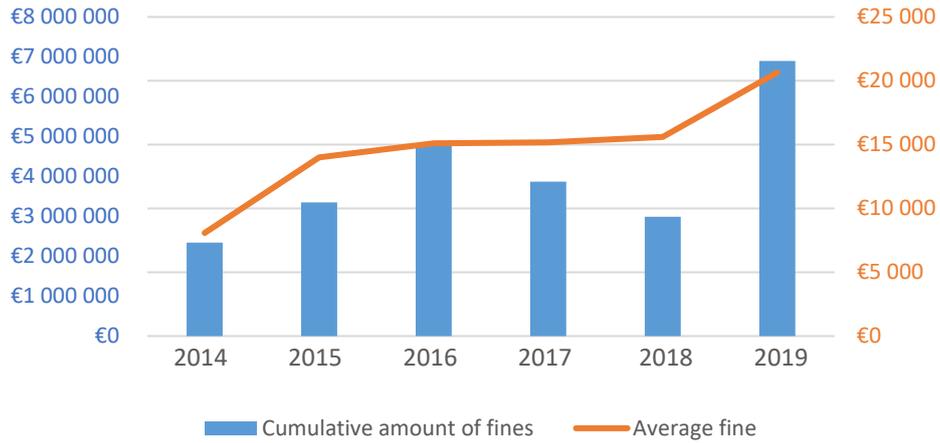
At the ceremony celebrating ACNUSA's 20th anniversary on 7 January 2020, its chairman announced: *"The priority of civil aviation in recent years has been the safety and security of air transport. In the coming years, it will be the environment, health and the climate. The challenge now is to make air transport sustainable."*³

Operators must therefore redouble their prevention measures and vigilance when operating in France.

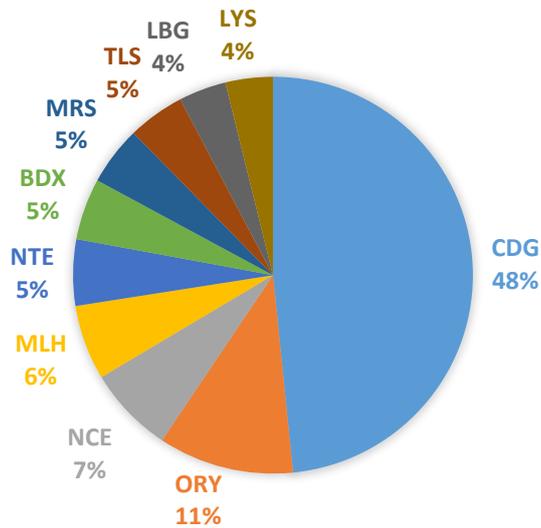
¹ Most of these 334 fines concerned breaches committed in 2017 and 2018. Breaches committed in 2019 will be fined in 2020 and 2021
² Source: ACNUSA, press release of 9 December 2019 *"The college of ACNUSA has examined the assessment of its jurisdictional activity in 2019"*
https://www.acnusa.fr/uploads/media/default/0001/02/1447_1912-09-cp-fiche-manquements-acnusa.pdf
³ https://www.acnusa.fr/uploads/media/default/0001/02/1464_2001-16-discours-douverture-du-president-20-ans.pdf

Key figures

Fines imposed between 2014 and 2019



Breakdown of breaches by airport *



* Breakdown based on 1322 breaches under investigation in December 2019 (source: ACNUSA)

Regulated airports

Aviation disturbance regulations concern aerodromes subject to restrictive ministerial orders signed by the Minister for Civil Aviation.

They thus concern the following airports:

- Paris-Charles de Gaulle (CDG)
- Paris Orly (ORY)
- Paris-Le Bourget (LBG)
- Nice-Côte d'Azur (NCE)
- Bordeaux-Mérignac (BDX)
- Toulouse-Blagnac (TLS)
- Nantes-Atlantique (NTE)
- Marseille-Provence (MRS)
- Lyon-Saint Exupéry (LYS)
- Bâle-Mulhouse (MLH)
- Beauvais-Tillé (BVA)
- Cannes-Mandelieu (CEQ)
- Issy-Les-Moulineaux (JDP)
- Toussus-Le-Noble (TNF)

The regulatory authority

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ACNUSA is an independent administrative authority. Its status thus guarantees its total independence vis-à-vis the Directorate General of Civil Aviation (DGAC) and all other authorities and courts.

ACNUSA's main attributions are as follows:

- It offers advice and recommendations on questions concerning the environmental impact of air transport on and around airports;
- It is consulted about proposed noise disturbance and exposure plans and recommends revisions thereof if it deems them necessary;
- It is consulted about draft regulatory texts laying down measures aimed at protecting the noise environment of the aerodromes concerned;
- It ascertains due observance of commitments made by stakeholders of an aerodrome's operations with a view to controlling the noise disturbance generated by such operations;
- It imposes fines in the event of breaches of noise disturbance and environmental regulations.

ACNUSA's members are appointed on the basis of their economic, legal or technical expertise or their knowledge in environmental, human health or air transport matters. It comprises:

- A chairperson appointed by executive order of the President of the Republic;
- Two members respectively appointed by the President of the National Assembly and by the President of the Senate;
- Seven members appointed by executive order on the basis of their technical skills.

The breaches

Current regulations allow six breaches to be sanctioned:

- a. **Night flights without a time slot**
 - b. The use of certain types of aircraft, at night in particular, that do not meet the requisite standards regarding **acoustic classification or airborne emissions** (for instance, aircraft coming under chapter 2 of appendix 16 of the ICAO convention signed in Chicago on 7 December 1944, or those of chapter 3, the cumulative margin of which is below a given threshold)
 - c. Non-observance of **approach and take-off procedures** (for instance, failure to observe environmental safety distances or mandatory overflight points, etc.)
 - d. **Prolonged use of APUs** (*Auxiliary Power Units*), on account of the environmental impact they cause
 - e. **Engine tests prohibited** at certain times
 - f. **Noise or polluting airborne emission** limits exceeded (however, for lack of set standards, this latter breach is not sanctioned to date)
- Non-observance of hourly restrictions

Non-observance of approach and take-off procedures

Misuse of the APU

No breaches sanctioned in 2018 and 2019

Non-observance of hourly restrictions

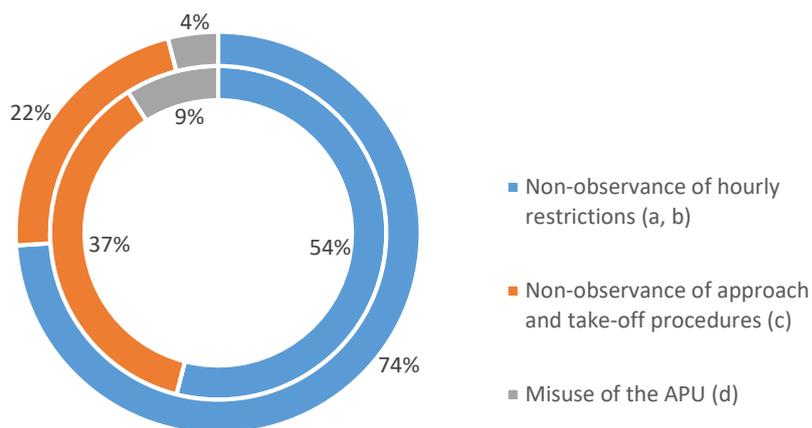
Non-observance of approach and take-off procedures

Misuse of the APU

No breaches sanctioned in 2018 and 2019

Nature of breaches sanctioned in 2019*

In € (outer circle)
In numbers (inner circle)



(* Source: ACNUSA)

The level of fines

For companies, fines are capped at:

- **€40,000** for failure to observe hourly restrictions (breaches a and b above)
- **€20,000** for other breaches (c, d, e and f above)

For individuals, fines are capped at €1,500.

When setting fines, ACNUSA makes allowance for the circumstances of each case, in particular:

- a minor flight path deviation
- very minor hourly breach
- weather conditions
- technical problems
- medical problems
- delays due to safety and security issues
- repeat offence
- constructive attitude of the airline during the case investigation phase

On the other hand, the following points are not taken into consideration:

- the unintentional nature of the breach
- the ATC's clearance for take-off or landing outside permitted hours

Please note: in its annual report for 2019, ACNUSA recommends that Parliament should modify the legislation and raise the €40,000 limit to €200,000 and the €20,000 limit to €100,000, in order to dissuade certain airlines from opting for a night-time departure without a time slot rather than cancelling the flight and compensating the passengers.

The sanction procedure

The sanction procedure takes place in four distinct phases, generally over a period of 12 to 18 months, before the DGAC (Directorate General of Civil Aviation) and ACNUSA:

- 1. Record of the breach:** the breach is recorded in a report drawn up by officials under oath. The report states the nature of the breach, its date and time, the aircraft used, the airport and the flight concerned and the regulation infringed. The report is signed by the official under oath (usually a representative of the DGAC or the *Gendarmerie des Transports Aériens* - air transport police).
- 2. Investigation of the case:** The investigation is carried out by DGAC officials, different from those who drew up the report. The investigation starts with a notification of the report to the airline concerned, which then has one month in which to submit its observations to ACNUSA's permanent Rapporteur. On receipt of these observations, the permanent Rapporteur forwards them to the DGAC officials in charge of the investigation. At the end of their investigation, these officials send their case file to the permanent Rapporteur. When the latter considers that the case file is complete, he notifies the person concerned, stating the alleged facts, their characterization, the texts that apply and the fine incurred. The airline concerned then has one month in which to submit further observations. If the permanent rapporteur considers that these follow-up

observations warrant further investigation, he forwards them to the DGAC officials. He forwards any new elements provided by the said officials to the person concerned, granting the latter a further one-month time limit to submit further observations where appropriate.

At the end of this inter partes phase, the permanent rapporteur closes the investigation.

- 3. The legal proceedings:** when he closes the investigation, the permanent Rapporteur issues a decision either to prosecute the person concerned before ACNUSA's sanctions college, in which case he forwards the complete case file to the college, or to drop the case. The Rapporteur can drop the case in the following three circumstances:
- i. The report was drawn up more than two years after the offence was committed;
 - ii. The person referred to by the report is not among those liable for sanctions within the meaning of the Code of Transport;
 - iii. In producing an official document bearing a certain date, the person concerned establishes the fact that the operations on which the report is based were permitted the date on which they occurred.

The permanent Rapporteur's decision is served to the person concerned.

Then ACNUSA sends the person concerned notice to attend a plenary session, at least one month before the session.

- 4. The sanctions:** during the session before ACNUSA's sanctions college, the permanent Rapporteur presents each case and his assessment of the circumstances de facto and the applicable rules of law. The person concerned is invited to make his or her observations.

Then the sanctions college deliberates and gives a decision. This decision is notified to the person concerned, usually within 45 days of the session before the college.

Disputing fines

The person concerned can dispute ACNUSA's decision by filing an appeal with the Administrative Court of Paris, within two months of receiving notice of the fine. This deadline is extended to four months when the person concerned is located abroad.

The procedure before the Administrative Court of Paris takes 8 to 14 months. The Court's decision can be appealed against before the Administrative Court of Appeal of Paris. The ruling of the Court of Appeal can also be appealed against before the Council of State.

There may be many reasons for the dispute, whether it be the form or the substance of the decision, or the legality of the procedure followed before ACNUSA. As the applicable regulations are particularly technical, each case warrants close examination.

Payment of fines

The fines must be paid when the sanctioned person is served a demand for payment by the tax authorities. This demand for payment is usually served two months after notice of ACNUSA's decision to fine is served.

The operator is in principle required to pay the amount of the fine stated in the demand for payment even if it has filed an appeal against ACNUSA's decision. However, the operator concerned can dispute the demand for payment by filing an objection with the tax authorities, which suspends payment of the fine. In that case, the operator concerned is not required to pay the fine, pending the decision of the courts on the validity of the fine.

In the news

Noise and environmental pollution issues feature prominently in the news. This should give rise to the emergence of new rules in the coming months, which will be more restrictive and threatening for operators.

In its 2019 annual report, ACNUSA emphasizes the need to modify regulations, and more particularly:

- Significantly increase the **fine ceiling**. ACNUSA requests that these ceilings be increased fivefold (€200,000 for breaches a and b instead of €40,000 today, and €100,000 for the other breaches instead of €20,000 today);
- Be able to sanction **night-time landings without a time slot** at Paris-Charles de Gaulle airport. To date, ACNUSA only sanctions night-time take-offs without a time slot. The power to sanction night-time landings is currently granted to the Minister for Civil Aviation; ACNUSA considers that the minister does not make enough use of this power and that the sanctions are not dissuasive;
- Extend to the main French airports the regulations applying to CDG, ORY and LBG that require a reduction in **the use of APUs**.

ACNUSA has just celebrated its 20th anniversary. On that occasion the Minister for Ecological Transition and Solidarity announced the key challenges to take up in the air transport sector, including:

- Decarbonization: optimizing flight paths by implementing the European FREE ROUTE project and deploying sustainable biofuels;
- Noise disturbance: using more acoustically efficient aircraft at night, using satellite navigation to optimize procedures and flight paths, and introducing standardized continuous descent approaches at CDG airport.
- Air quality: connecting parked aircraft to the power grid, limiting operating times of APUs and optimizing taxiing.

Applicable regulations⁴

Regulation (EU) No. 598/2014 of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach

Transport Code: articles L.6361-1 to L.6361-15

Civil Aviation Code: articles L.227-1, L.227-7, R.227-1 to R.227-5

ACNUSA's Rules & Regulations: Deliberation of 2 January 2019 implementing ACNUSA's Rules & Regulations, Official Journal of 17 January 2019

Constitutional Council: decision no. 2017-675QPC of 24 November 2017

Ministerial orders restricting operations:

CDG:

- Ministerial Order of 27 July 2012 regulating the use of equipment supplying energy, air-conditioning and heating to aircraft during stopovers at the airports of Paris-Charles-de-Gaulle, Paris-Orly and Paris-Le Bourget
- Ministerial Order of 20 September 2011 prohibiting certain aircraft from landing and taking off at night between 10 p.m. and 6 a.m.
- Ministerial Order of 6 November 2003 concerning the allocation of landing slots at night at Paris-Charles-de-Gaulle airport
- Ministerial Order of 6 November 2003 prohibiting unscheduled take-offs of aircraft between midnight and 5 a.m. at Paris-Charles-de-Gaulle airport
- Ministerial Order of 6 November 2003 restricting night-time operation of certain aircraft that exceed the noise threshold on take-off or landing at Paris-Charles-de-Gaulle airport
- Ministerial Order of 8 September 2003 extending operating restrictions to the noisiest aircraft of chapter 3 at Paris-Charles-de-Gaulle airport
- Ministerial Order of 20 June 2003 restricting operations at Paris-Charles-de-Gaulle airport
- Ministerial Order of 18 February 2003 restricting use by creating environmental safety distances at Paris-Charles-de-Gaulle airport

ORY:

- Ministerial Order of 27 July 2012 regulating the use of equipment supplying energy, air-conditioning and heating to aircraft during stopovers at the airports of Paris-Charles-de-Gaulle, Paris-Orly and Paris-Le Bourget
- Ministerial Order of 29 July 2009 amending the order of 18 February 2003 restricting use by creating environmental safety distances at Paris-Orly airport
- Ministerial Order of 19 January 2005 amending the order of 18 February 2003 restricting use by creating environmental safety distances at Paris-Orly airport
- Ministerial Order of 18 February 2003 restricting use by creating environmental safety distances at Paris-Charles-de-Gaulle airport
- Operating Order of 29 September 1999 restricting the use of Paris-Orly airport
- Operating Order of 6 October 1994 concerning landing slots at the airport (limited to 250,000 slots)
- Ministerial decision of 4 April 1968 regulating night-time use of the airport (curfew)

LBG:

- Ministerial Order of 27 July 2012 regulating the use of equipment supplying energy, air-conditioning and heating to aircraft during stopovers at the airports of Paris-Charles-de-Gaulle, Paris-Orly and Paris-Le Bourget
- Ministerial Order of 15 February 2011 restricting operations at Paris-Le Bourget airport

⁴ Non-exhaustive list

NCE:

- Ministerial Order of 2 March 2010 restricting operations at Nice-Côte d'Azur airport

MLH:

- Ministerial Order of 18 June 2015 amending the order of 10 September 2003 amended, restricting operations at Bâle-Mulhouse airport
- Ministerial Order of 26 April 2013 amending the order of 10 September 2003 restricting operations at Bâle-Mulhouse airport
- Ministerial Order of 10 September 2003 restricting operations at Bâle-Mulhouse airport

NTE:

- Ministerial Order of 3 September 2018 amending the order of 24 April 2006 restricting operations at Nantes-Atlantique airport
- Ministerial Order of 24 April 2006 restricting operations at Nantes-Atlantique airport

BDX:

- Ministerial Order of 6 March 2009 implementing low noise procedures at Bordeaux-Mérignac airport

MRS:

- Ministerial Order of 3 May 2012 restricting operations at Marseille-Provence airport

TLS:

- Ministerial Order of 28 March 2011 restricting operations at Toulouse-Blagnac airport

LYS:

- Ministerial Order of 30 June 2006 amending the order of 10 September 2003 restricting operations at Lyon-Saint-Exupéry airport
- Ministerial Order of 10 September 2003 restricting operations at Lyon-Saint-Exupéry airport

BVA:

- Ministerial Order of 26 December 2019 concerning operating restrictions at Beauvais-Tillé airport
- Ministerial Order of 25 April 2002 restricting operations at Beauvais-Tillé airport

CEQ:

- Ministerial Order of 6 December 1995 limiting operating conditions at Cannes-Mandelieu airport, amended by the orders of 20 July 2005 and 8 September 2015

JDP:

- Ministerial Order of 9 August 1994 limiting operating conditions at Paris-Issy-Les-Moulineaux airport
- Ministerial Order of 29 December 1994 limiting operating conditions at Paris-Issy-Les-Moulineaux airport on Saturdays, Sundays and public holidays

TNF:

- Ministerial Order of 23 November 1973, amended, fixing operating conditions at Toussus-Le-Noble airport



Contacts

CHESNEAU FISCHEL AARPI is a business law firm dedicated to operators in the air sector. It advises operators, airlines, charterers, brokers, stopover assistance service providers and safety and security companies on all their legal issues.

To date, our firm represents more than twenty airlines before administrative courts in disputes concerning the cancellation of ACNUSA fines. For one of our clients, our firm has recently obtained a repeal by the Constitutional Council of ACNUSA's sanctions procedure on the grounds of the latter's lack of impartiality (decision 2017-675QPC of 24 November 2017).

Our firm has been a member of the European Business Aviation Association for ten years.

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