

CROSSING THE AIRSPACE OF THE STATE BORDER AND STATE AIRCRAFT AIR OPERATIONS OVER THE HIGH SEAS

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Summary. The article presents legislative issues and obstacles concerning the issuance of diplomatic permits to cross the airspace state border by foreign aircraft, the actions towards the aircraft that have crossed the airspace state border without authorization and procedures concerning air operations performed by state aircraft over the high seas.

Additionally, it presents the obstacles for civilian and hazards for civilian air traffic services resulting from air operations performed by state aircraft over the high seas.

Keywords: state aircraft, state border, FIR EPWW, due regards, classes of airspace, unclassified airspace structures.

1. INTRODUCTION

The border of the Republic of Poland is the vertical surface passing through the border line separating the territory of the Polish state from the territory of other states and from the sea. The boundary of the country also divides the air, water and interior space.

The course of the state border on land and the demarcation of the internal waters and territorial sea with the neighboring countries are defined in international agreements concluded by the Republic of Poland. The state boundary at sea runs 12 nautical miles from the baseline defined in the separate regulations, or outside the roadstead included in the territorial sea.

The Republic of Poland has sovereignty over the land territory and the interior of the land beneath it, its internal territorial waters and its territorial sea, and the bottom and interior of the earth beneath them, and in the airspace above land, sea, in land and territorial waters.

2. ENTERING THE STATE AIRSPACE BY FOREIGN STATE AIRCRAFT

In accordance with the Convention on International Civil Aviation signed on December 7, 1944 (OJ of 26 June 1959), state aircraft are aircraft used in military, customs and police services.

On the other hand, according to the Act of 3 July 2002 - Aviation Law (Journal of Laws of 2002 No. 130 item 1112), the Polish state aircraft is:

A) aircraft used by the Armed Forces of the Republic of Poland (military aircraft);
B) aircraft used by the Border Guard, the Police and the State Fire Service (Law Enforcement Services).

The user of the aircraft is its owner or another person registered as a user in the appropriate aircraft register.

The above definitions exclude each other due to the fact that the Convention on International Civil Aviation signed on December 7, 1944 (OJ of 26 June 1959), defines the type of aircraft according to the user and the purpose of the flight, while the Aviation Law the Act of 3 July 2002 (Journal of Laws

of 2002 No. 130 item 1112), defines the type of aircraft, according to its entry in the relevant aircraft register.

According to the Convention on International Civil Aviation signed on December 7, 1944 (OJ of 26 June 1959), crossing the state border by foreign aircraft is allowed after a special permit has been issued, and must be carried out in accordance with the terms of such an authorization, taking into account the safety of air navigation of civil aircraft.

In accordance with Article 18a1., Act of 12 December 1990 on the protection of the state border (Journal of Laws of 2009, No. 12, item 67), crossing the state border and the flight of a foreign military aircraft in the airspace of the Republic of Poland may take place on the basis of a permit issued by the Operational Commander of the Armed Forces upon request of the entity concerned.

The Regulation of the Minister of National Defense of 5 January 2005 on the crossing of the state border and foreign flights of military aircraft in the airspace of the Republic of Poland - with subsequent amendments (Journal of Laws of 30 December 2013, item 1680) specifies:

1. Procedure for applying for permission to cross the state border and a foreign aircraft flight of a military aircraft in the airspace of the Republic of Poland;
2. Model of the application for permission to cross the state border and foreign flight of a military aircraft in the airspace of the Republic of Poland;
3. The flight conditions of a foreign military aircraft in the airspace of the Republic of Poland;

The text of the Article 149a. point. 1, Aviation Law the Act of 3 July 2002, (Journal of Laws of 2002 No. 130 item 1112) reads as follows:

International flights by foreign civilian aircraft in order to carry out tasks for the needs of the Armed Forces of the Republic of Poland concerning the transport of cargo or soldiers, officers of the Military Counterintelligence Service, Military Intelligence Service and the Government Protection Bureau, as well as the army personnel require the consent of the Operational Commander of the Armed Forces.

The above provision is inconsistent with the provisions of the Act of 12 December 1990 about the protection of the state border (Journal of Laws of 2009, No. 12, item 67), which gives the authority of the Operational Commander of the Armed Forces only with regard to military aircraft.

In order to ensure that the State fulfills its tasks in the scope of issuing diplomatic authorizations for crossing the air border by foreign civilian aircraft carrying out activities in accordance with Article 149.a. 1, and by other non-military aircraft carrying out air operations in the Polish airspace, it is necessary to grant the above permits on the basis of a compromise reached by the Civil Aviation Office or the Armed Forces Operational Command, in accordance with Fig no. 1.

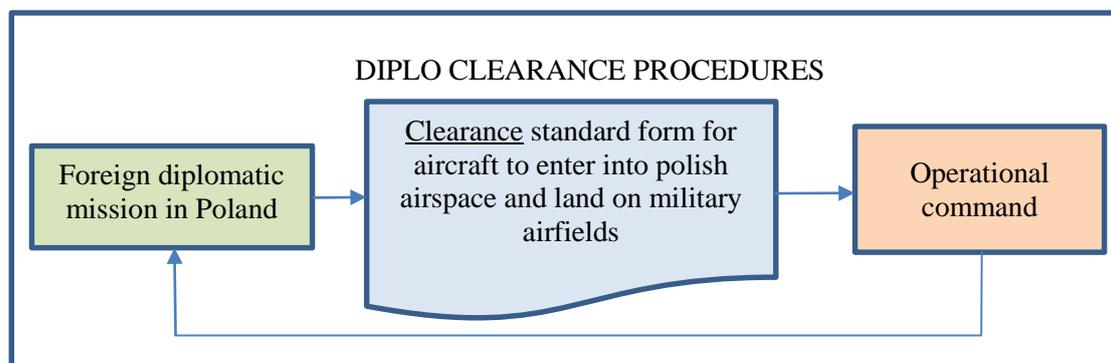


Figure 1

Procedures for the issuance of diplomatic permits for entry of foreign military aircraft into the Polish airspace.

3. CROSSING THE AIR BORDER BY UNAUTHORIZED AIRCRAFT

In accordance with the Convention on International Civil Aviation signed on December 7, 1944 (Journal of Laws of 26 June 1959) Art. 3c., *no state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.*

In the absence of the above permit, regulation that may apply is the Law of 12 December 1990 on the protection of the state border (Journal of Laws of 2009, no. 12, pos. 67), Article 18b. 1., Foreign civilian and military aircraft may be called upon by the Polish Air Traffic Management Authority (Polish Air Navigation Services Agency) to: leave the airspace of the Republic of Poland, change of direction or height of the flight, landing at the indicated aerodrome or other instructions to cease violating the airspace.

In the event of non-compliance with any of the calls, the aircraft may be intercepted by a military aircraft and identified and there will be an attempt to establish radio communications and visual contact in order to guide the aircraft to the right direction or altitude, or to force the landing at the indicated aerodrome.

If a foreign military aircraft does not conform to any of the calls and commands, the aircraft may be warned by warning shots, and if it continues to fail to comply with the instructions of the crew of the intercepting aircraft, it may be destroyed. This regulation applies to a foreign civilian aircraft with only the people who are intending to use the aircraft in a terrorist attack on board.

4. FLIGHTS OF STATE-OWNED AIRCRAFT IN THE AIRSPACE, INCLUDING THE AIRSPACE OVER THE HIGH SEAS

In order to ensure safety while flying in airspace and to maintain friendship between nations and peoples of the world, on December 7, 1944, the Chicago Convention on International Civil Aviation was signed, a document, which operates in the Republic of Poland as the Convention on International Civil Aviation, signed December 7, 1944 (Journal of Laws of June 26, 1959). The method of conducting air operations in the Polish airspace is defined by the Act of 3 July - Air Law (Journal of Laws 2002 No. 130 item 1112), which implements its directives in the scope of its regulations and provides the basis for implementing documents. However, the above documents, except for selected articles, apply only to civil aviation.

4.1 Classes of airspace

Table 1

ICAO Airspace Classification						
Class	Flight Rules	Separation	Service Provided	Speed Limit	Communication Required	ATC Clearance
A	IFR only	All Aircraft	Air Traffic Control	Not applicable	Two way	Yes
B	IFR	All Aircraft	Air Traffic Control	Not applicable	Two way	Yes
	VFR	All Aircraft	Air Traffic Control	Not applicable	Two way	Yes
C	IFR	IFR from IFR, IFR from VFR	Air Traffic Control	250 kts below 10000ft	Two way	Yes
	VFR	VFR from IFR	ATC and Traffic Information	250 kts below 10000ft	Two way	Yes
D	IFR	IFR from IFR	Air Traffic Control, Traffic Info about VFR flights	250 kts below 10000ft	Two way	Yes
	VFR	Not provided	IFR/VFR and VFR/VFR Traffic Information	250 kts below 10000ft	Two way	Yes
E	IFR	IFR from IFR	Air Traffic Control, Traffic Info as far as practicable about VFR flights	250 kts below 10000ft	Two way	Yes
	VFR	Not provided	Traffic Information as far as practicable	250 kts below 10000ft	No	No
F	IFR	IFR from IFR as far as practicable	Air Traffic Advisory, Flight Information Service	250 kts below 10000ft	Two way	No
	VFR	Not provided	Flight Information Service	250 kts below 10000ft	No	No
G	IFR	Not provided	Flight Information Service	250 kts below 10000ft	Two way	No
	VFR	nil	Flight Information Service	250 kts below 10000ft	No	No

Annex 11 to the Convention on International Civil Aviation. Air Traffic Services.

The airspace in the EPWW FIR¹ constitutes a dimension of space where the air information service and emergency services are provided from the surface of the earth or water to FL 660² and includes the Polish state border and airspace on the Baltic Sea allocated to

¹ FIR EPWW – Warsaw Flight Information Area

² FL 660 - Flight Level 20000 m above the mean sea level

Poland by EUROCONTROL to provide air traffic services. The structures of the Polish airspace include: controlled and uncontrolled airspace and unclassified airspace.

In EPPW airspace in the airspace of a controlled and uncontrolled air navigation services are provided by the Polish air traffic management authority, in accordance with the European Union law, and in particular with Regulation 550/2004 / EC and Commission Regulation No 2096/2005 / EC.

In unclassified airspace structures (except MATZ³) the institution responsible for the security and command of operations is an organizer or the appropriate territorial command of the Armed Forces of the Republic of Poland, including the Control and Reporting Centre.

Within the FIR on the high seas, flights are performed according to the airspace class only by civil aircraft, but air navigation rules should be respected by all airspace users.

State aircraft should have unrestricted access to airspace over the high seas. Other airspace users must be prepared and aware that a state aircraft can conduct aviation operations based on the principle of „*due regard*” to other users in the airspace.

State aircraft will operate in accordance with ICAO SARP⁴ as far as possible, but also if required to carry out the task, the mission will be conducted in accordance with the principle of due regard to ensure the safety of civil aircraft.

Civil Air Traffic Control Services do not provide aircraft service to state aircraft during flight operations, and crew do not respect air traffic regulations resulting from airspace classes over the high sea.

In addition, state aircraft operating on the high seas are not obliged to file an FPL⁵, maintain radio communications, and turn on a transponder. When exercising a flight over the high seas they are required to maintain a safe separation from civil aircraft flying in close proximity.

Civilian air traffic controllers are not responsible for ensuring the separation of state aircraft during flight operations according to the principle „*due regard*”; they can provide such information only to the civil airline crews in the proximity of the operating state aircraft.

All civilian airspace users must adapt to the ICAO SARPS, taking into account the provisions of ICAO Annex 2 when operating over high seas. In addition, civilian airspace users must be aware that state-operated airplanes operating in compliance with the principle of *due regard* can perform air operations at any time over high seas.

In addition, each country can introduce national laws in its own territorial waters, which can reach up to 12 NM from the shoreline towards the sea. On the other hand, in economic zones, appropriate regulations are introduced to ensure safety during patrol flights over pipelines and other obstacles for air and naval vessels.

³ MATZ - Military Air Traffic Zone

⁴ ICAO SARP - International Civil Air Organization Standards and Recommended Practices

⁵ FPI - Submit Flight Plan

In Article 3, the Chicago Convention explicitly excludes state aircraft from the scope of its application, however, obliges the state authorities to protect civil aircraft in the course of establishing regulations and rules for state aviation. In addition, it encourages efforts to allow state aircraft unrestricted access to airspace. Apart from that, regardless of the state tasks, the aircraft is required to perform operations in accordance with international and regional regulations.

5. CONCLUSION

Outside territorial waters reaching 12 NM from the sea shore, above the high seas only international law is binding. During military air training operations state aircraft are required to comply with the „due regard” principle; however, in such a way as to ensure the possibility to conduct training at all altitudes, air conditions and speed, as well as during the day and night. Additionally, State authorities must ensure the safety of air operations performed by civil aircraft over the high seas, through the implementation of principles and rules concerning the safety of air navigation. The crews of civil and state aircraft and air traffic organizations should be aware that the airspace over the high seas is not territorial area and does not undergo state regulations.

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