

# Will the digitisation of public authorities improve aircraft registration process in Germany?

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### Introduction

The law to improve online access to administrative services (the Online Access Act)<sup>(1)</sup> obliges the federal, state and local German governments to offer administrative services digitally via administrative portals by the end of 2022. The Online Access Act is based on the EU Single Digital Gateway Regulation (2018/1724).<sup>(2)</sup>

The EU Aviation Safety Agency and its regulations ensure that the European aviation market operates as a single and integrated market with the highest safety standards throughout the European Union. However, the registration of aircraft remains governed by domestic rules and, as a result, there are many different registration requirements and standards across EU member states. The same applies to the registration of aircraft mortgages with national registries, which is also governed by domestic laws and hence different in each country. Thus, timeframes, costs and processes often vary significantly from one member state to another, particularly between the member states that have adopted an online registration process and those that have not. Germany belongs to the latter group; however, that may change in the not-so distant-future due to the aforementioned Online Access Act.

### Current requirements for aircraft registration

Germany uses an owner registry at the Luftfahrt-Bundesamt (LBA), which is located in Braunschweig. To register an aircraft in Germany, the owner has to submit the following documents to the LBA:

- LBA form No. 5 (an application for the issuance of a certificate of airworthiness, an airworthiness review certificate and a certificate of registration), duly completed and with the original signature of the owner;
- if the owner is a foreign national/company, LBA form No. 14, which appoints a German person to act as a process agent for all correspondence between the LBA and the aircraft owner, with the original signature of the owner and the German process agent;
- if another person submits/signs documents in connection with the registration for and on behalf of the owner, a power of attorney (PoA), with the original signature of the owner;
- a declaration pursuant to section 3 of the Aviation Act, with the original signature of the owner;
- if the owner has leased or otherwise provided possession and control of the aircraft to a third party (which acts as an operator of the aircraft pursuant to public law), a signed copy of the agreement between the owner and the operator;
- proof of ownership, which is usually the bill of sale through which ownership was obtained – either the original or a notarised and apostilled copy (whereby the notary confirms that it is a true copy of the original); and
- proof of the corporate existence and registered address of a company owner, which could be a commercial register extract. If, however, a company owner is from a country where a commercial register does not exist (eg, the United States), it could be a notarised and apostilled copy of the certificate of incorporation/formation or a secretary statement.

Other documents that need to be submitted to the LBA in order to register an aircraft in Germany include certain insurance proof, a continuing airworthiness management organisation contract, a maintenance programme and proof of non-registration in another state.

The LBA will review an application only if all of the documents (in the required form) have been submitted to it together with the application. Thus, providing copies of documents (by email) in advance does not help the process at all. Therefore, it is almost impossible to obtain same-day or even next-day registration on or after the date that the bill of sale for an aircraft is issued. Since July 2021, the LBA even expressly states the following in an FAQs section on its website:

*All required documents must be attached to the application. Care must be taken to ensure that originals are enclosed in the required cases. It is also important to ensure that the required signatures of the respective authorized persons or, in the case of owners' associations, all signatures are included. Incomplete applications cannot be processed! Submission of missing documents will result in a longer processing time. In case of very long waiting times, the LBA reserves the right to return applications unprocessed to the applicant. The prior sending of individual documents by e-mail also leads to additional work, since subsequent documents received by mail must be reviewed again.*

Thus, the German aircraft registry is not digitised at all and does not encourage – unlike other aircraft registries in Europe – the sending of documents in advance per email. However, the LBA has, at least, recently accepted that some aircraft registries are already fully digitised:

*There are states, such as Portugal or Switzerland, that no longer issue paper documents and rely on digital documents. If such states confirm to the LBA that they no longer issue paper documents, electronic evidence will be accepted.*

The cost for registering an aircraft in Germany depends on its maximum take-off weight (MTOW):

- for aircraft with an MTOW of up to 2,000 kg – €80;
- for aircraft with an MTOW of up to 20,000 kg – €350;
- for aircraft with an MTOW of up to 100,000 kg – €1,000;
- for aircraft with an MTOW of up to 150,000 kg – €2,500; and
- for aircraft with an MTOW of above 150,000 kg – €4,500.

#### **Current requirements for aircraft mortgage registration**

The German aircraft mortgage register is not with the LBA, but with the local court in Braunschweig (the "mortgage register"), which has even stricter requirements than the LBA as it does not accept documents solely in English. Thus, all documents have to be submitted either in German, in bilingual form or accompanied by a certified German translation. Moreover, the mortgage register requires PoAs, an affidavit regarding ownership, proof of corporate existence and the signing authority of the person signing for the aircraft owner in notarised (and apostilled/legalised form, if the notary statement comes from a foreign notary).

Further, a German aircraft mortgage is valid only when registered in the mortgage register. However, it cannot be registered prior to the aircraft being registered with the LBA and a register extract stamped by the LBA (the original) has been provided to the mortgage register with a date not older than four weeks.

In addition, prior to registration of the mortgage, the mortgage register fee needs to be paid. Such fee can be quite substantial, depending on the amount of the mortgage:

- for a mortgage of €1 million, the mortgage register fee is €1,735;
- for a mortgage of €5 million, the mortgage register fee is €8,135;
- for a mortgage of €10 million, the mortgage register fee is €11,385; and
- for a mortgage of €20 million, the mortgage register fee is €17,385.

For enforcement purposes, banks usually require that the mortgage is immediately enforceable. Therefore, it has to be established by a German notary as a notarial deed. If the submission to immediate enforcement relates to the same amount as the mortgage amount, the notary fee is as high as the fee charged by the mortgage register. Thus, the aforementioned applicable amount has to be paid twice. However, there are some methods to reduce such fees.

#### **Comment**

In Germany, it takes between two and five business days (sometimes even longer) until a certificate of registration is received. This is because the LBA:

- will review only a complete package of documents, including those for which the original copies must be provided; and
- usually sends the (original) certificates only by regular mail.

Even if specifically requested, the LBA often rejects the sending of such documents in advance by fax or email as it is considered extra work.

Moreover, obtaining proof of registration of an aircraft mortgage in Germany takes even longer: between two and four weeks from the submission of the original documents. This is because the aircraft first needs to be registered with the LBA and the mortgage register must be provided not with a copy of the certificate of registration, but with a register extract<sup>(3)</sup> with the original stamp of the LBA. Even once all documents have been submitted to the mortgage register and the fee has been paid, it takes a few days until the matter is processed and another few days until the mortgage register extract is received by mail (showing the registration of the mortgage). Parties cannot communicate with the mortgage register by email. If specifically requested by a party, the mortgage register will send the invoice and later the extract of the mortgage register in advance by fax. This says a lot about the lack of digitisation of the German authorities.

Also with regard to changes of ownership, the LBA does not accept the submission of any documents in advance by email – it reviews applications only once it has received the complete package of original documents. Thus, it could take between one and three weeks before an owner change is registered in Germany and a new certificate of registration has been received.

However, it is thought that when the LBA offers registration services through an online portal by the end of 2022, the aircraft registration and change of registry processes will be simpler and quicker.

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#### **Endnotes**

(1) *Gesetz zur Verbesserung des Onlinezugangs zu Verwaltungsleistungen* or *Onlinezugangsgesetz* (OZG).

(2) Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No. 1024/2012.

(3) Such an extract is known as "Stückauskunft" in German.