

DIARY DATES

**WORKSHOP J MONNET
BUSINESS TRAVEL AGREEMENTS**

15 May 2014
LUISS University – Rome, Italy
Laura Pierallini, Speaker

**CONFERENCE ON “THE NEXT CHALLENGES
FOR THE AIRLINE INDUSTRY: HOW TO FACE
THE ECONOMIC CRISIS WITH A FOCUS
ON PASSENGER RIGHTS’ PROTECTION”
ORGANIZED BY LUISS UNIVERSITY AND
STUDIO PIERALLINI**

15 May 2014
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**AIRCRAFT TAKE-OFF DENIAL UNDER THE
ITALIAN NAVIGATION CODE**

By Francesco Grassetti

On 31 March 2014, the Italian Civil Aviation Authority (“ENAC”) issued the Circular EAL-22 in respect of the implementation of Article 802, second paragraph, of the Italian Navigation Code (“INC”), which provides that ENAC can prevent the departure of aircraft when certain taxes, charges and fees due by the relevant operator are outstanding. Notice of any such non-payment is given to ENAC by ENAV (the Italian Agency for the Air traffic Control), Eurocontrol or the managing company of the involved airport. The main purpose of Circular EAL-22 is to specify the application area of the mentioned provision of law. First of all it clarifies the taxes, charges and fees whose non-payment entitles the Authority to deny the aircraft take-off, in particular: (a) charges for landing, take-off and parking of aircraft; (b) taxes for embarking of passengers; (c) taxes for cargo loading and unloading; (d) fees

for safety control operations; (e) fees for using the airport infrastructures; (f) fees for ground handling services, to the extent they are performed by a sole operator; (g) route and terminal charges. According to Circular EAL-22, ENAC is also entitled to prevent the departure of any aircraft operated to/from the Italian territory by national, European or extra-EU carriers. Referring to the Italian operators, Article 802 of INC is applicable both to Italian registered aircraft and foreign registered aircraft operated under lease or charter agreements. On the contrary, no denial to take-off can be taken with respect to “public aircraft” - as defined by Article 744 of INC (i.e. military aircraft, aircraft owned by a public entity and operated by police, customs, or for firefighting/rescue/safety reasons, as well as aircraft operated to provide other public services) - or to private aircraft treated as State owned pursuant to Article 746 of INC (according to which the Ministry of Transport can equalize private aircraft to State owned aircraft, when they are used by a private operator for non-commercial public services).

CHALLENGE OF THE FIFTH FREEDOM RIGHTS GRANTED BY ENAC TO EMIRATES

By Gianluigi Ascenzi

Assaereo (the Italian Air Carrier Association) challenged before the Italian Administrative Court ("TAR") the authorization granted by ENAC to Emirates in respect of slots and traffic rights to extend its daily flights from Dubai (DXB) to Milan Malpensa (MXP) onwards to New York's John Fitzgerald Kennedy International (JFK), for a period of 18 months starting from 1 October 2013. The main argument raised by Assaereo was that such authorization would be in breach of the Bilateral Agreement in force between Italy and the United Arab Emirates (signed in Abu Dhabi on 3 April 1991). By decision dated 10 April 2014, TAR declared the mentioned authorization to the Gulf carrier as null and void, for the following reasons:

(i) the Bilateral Agreement Italy/UAE of 1991 regulates air services between the two countries, as well as toward other destinations located in Europe and North Africa. On the contrary, there are no arrangements in place with the UAE (neither bilateral nor at EU level) involving fifth freedom rights for Italian and UAE carriers – on a reciprocity basis – to US destinations, as it should be per the general rule of the Chicago Convention (article 6) applicable to scheduled flights; (ii) the ENAC temporary authorization was granted pursuant to article 19 of Law no. 2/2009, which is meant to develop the air transport to/from Italian Airports with the main target to support the whole related industry and the economic growth of the country in general, providing "In order to keep the occupational levels and the international connections necessary to develop the production and social system of the involved areas, the Ministry of Transports and the Foreign Ministry promote the execution of new air transport bilateral agreements, and the amendment of the existing ones, so to extend the number of carriers operating on national and international routes. Pending the finalization of such new agreements, and the amendment of the existing ones, ENAC can grant temporary authorizations lasting not less than 18 months". In that respect, the Administrative Court noted that, as at the date of the ENAC authorization to Emirates (dated 5 March 2013), there were no pending negotiations between the Italian and the UAE Governments for the revision of the bilateral agreement of 1991. Such TAR decision was appealed by Emirates before the Supreme Administrative Court (Consiglio di Stato), first of all claiming the suspension of its effectiveness and then, on the merits, the confirmation of the ENAC authorization. Pending the final decision

on the merits, the Consiglio di Stato allowed the suspension of the TAR decision to secure the continuation of the flight operations.

REVISION OF REGULATION (EC) NO. 261/2004 AS VOTED BY THE EUROPEAN PARLIAMENT

By Marco Marchegiani

On 13 March 2013, the European Commission published its proposal to amend Regulation (EC) 261/2004 on air passenger rights. The relevant legislative timetable has passed at European Parliament level on 5 February 2014. The main points/amendments introduced by the European Parliament with respect to the text proposed by the European Commission are as follows: (i) introduction of an exhaustive list of «extraordinary circumstances» under article 5(3); (ii) passengers' right to compensation of Euro 300 for all journeys of 2,500 km or less, in case of flight delay more than 3 hours in arrival; (iii) mandatory crew training for improving assistance to passengers with special needs; (iv) no-show policy (i.e. cancellation of return flight booking in case of no-show on the outward journey) no longer permitted to air carriers; (v) mandatory disclosure of ticket purchase price as inclusive of any extra charges (e.g. credit card surcharge, etc.); (vi) passengers' personal belongings purchased in the airport as extra to maximum cabin baggage allowance. The new Regulation is currently expected to come into force in early 2015.

ITALIAN CASE-LAW: RIGHT TO COMPENSATION FOR FLIGHT DELAY IN ADDITION TO THE INDEMNIFICATION OF FURTHER DAMAGES

by Lorenzo Sperati

Even after the EU Commission's proposal for amending Regulation (EC) no. 261/2004, the right to compensation for flight delay thereunder is considered by the Italian case-law in a prospective aggregate with the indemnification of damages under article 19 of Montreal Convention. This is confirmed by a recent decision of the Civil Court of Rome (case no. 3134/2014) stating as follows: "The most recent case law of the European Court of Justice extended the right to compensation provided in case of cancellation - or denied boarding - to passengers affected by a flight delay of at least 3 hours in arrival, and also confirmed the possibility to claim additional damages other than the said compensation, as well as the general compatibility between the Regulation (EC) no. 261/2004 and the Montreal Convention".