

DIARY DATES

EU LAW IN THE MEMBER STATES

AIR PASSENGER RIGHTS, 10 YEARS ON

26-27 September 2014

College of Europe/Institute of European and Comparative Law

Bruges, Belgium

Laura Pierallini, Speaker

CONTENTS

AVIATION AUTHORITY ISSUES REGULATION ON REMOTELY PILOTED AERIAL VEHICLES

IMPLEMENTATION OF REGIONAL TAX ON CIVIL AIRCRAFT NOISE (IRESA)

ENAC'S VIEWS ON THE REVISION OF REGULATION (EC) NO. 261/2004

QATAR AIRWAYS' FIFTH FREEDOM RIGHTS CONFIRMED BY THE ADMINISTRATIVE SUPREME COURT



AVIATION AUTHORITY ISSUES REGULATION ON REMOTELY PILOTED AERIAL VEHICLES

By Gianluigi Ascenzi

The Italian civil aviation authority (ENAC) issued a Regulation on the “Remotely Piloted Aerial Vehicles” (entered into force on 30 April 2014), which provides the legal framework for the operation of the so-called “drones” on the Italian territory. The use of this kind of aircrafts has recently experienced a significant increase: their applications include, for instance, air surveillance, environmental control, public order, traffic monitoring and disaster management, and constitute a remarkable opportunity of development for the national industry. ENAC rules remedy the regulatory gap in which these professional and commercial activities were taking place. The Regulation applies to two categories of aerial objects: Remote Piloted Aerial Vehicles (RPAVs) and aircraft models. In order to distinguish the said categories, the Regulation takes a functional approach, adopting the purpose of the object rather than the key technical characteristics as relevant discriminating criterion.

Aircraft models are defined as remotely piloted devices, without people on board, used exclusively for recreational and sport purposes. On the contrary, according to Article 743 of the Italian Navigation Code, RPAVs fall within the category of aircraft and are defined as remotely piloted aerial vehicle without persons on board, not used for recreation and sports. In order to determine the operational requirements, the Regulation establishes two categories of RPAVs, depending on the maximum take-off weight: below 25 kg, and above 25 kg. For the lighter drones employed in non-critical flight operations, the responsibility to assess the airworthiness is on the operator, to be accomplished by a self-declaration of compliance with the Regulation provisions. Critical flight operations, on the other hand, must obtain prior authorization by ENAC. The criticality of a flight operation depends on the area involved in the activity, whether congested, restricted or hosting critical infrastructures, as well on the related potential risk of damages to third parties. RPAVs whose take-off weight is equal or above 25 kg always require the airworthiness certification and the ENAC authorization to the operator, irrespective of the criticality or not of their flight operations. In addition, the Regulation provides for mandatory third-party insurances and subjects the treatment of personal data - eventually collected by the operations of a RPAV - to the Italian Data Protection Code. With regard to aircraft models, instead, the Regulation sets forth a more lenient framework, by fixing only a number of technical requirements for their flight operations. No self-declaration or authorization are required. The ENAC Regulation represents one of the first legislations governing the use of drones, in the absence of a European common standard and with ICAO still committed in the revision of relevant Chicago Convention Annexes in order to include the subject devices.

IMPLEMENTATION OF REGIONAL TAX ON CIVIL AIRCRAFT NOISE (IRESA)

By Francesco Grassetti

The tax on civil aircraft noise - established at a national level by Law no. 9/2014 - was implemented in Italy at a regional level. The main declared purpose of such tax is to finance the accomplishment of airports monitoring systems and anti-pollution measures, as well as to indemnify the population leaving nearby airports potentially affected by aircraft acoustic pollution. The tax amount is based on the weight and acoustic pollution class of each aircraft and is due by the carriers in respect of take-off and landing activity at Italian airports. Since the beginning of the tax implementation by certain regions (the first were - inter alia - Lazio, Lombardia and Emilia Romagna) many concerns were raised in the aviation industry for the negative impact the tax may have on the air transport market. Most of the Italian operators are assessing the opportunity to challenge the subject tax before the competent Administrative Courts and Tax Courts, based on the common opinion that the tax may have weakness profiles, such as: (1) distortive effects on competition through different implementation of the tax from region to region. Indeed such differences seem not justified by technical or geographical reasons, but merely due to lack of coordination among the same regions. The most relevant impact will likely be on: (i) air carriers mainly operating in those airports where the tax rate is higher and cannot easily transfer their operations to another airport; (ii) passengers finding more attractive airports where the tax rate is lower, as the flight fares of airlines operating in those airports will be lower; (iii) airport managing companies affected by a higher tax rate, to face a reduction of carriers/passengers choosing relevant airport; (2) lack of efficiency in the criteria for calculation and collection of the tax. Unlike other EU member states legislations, the Italian tax regime does not consider the peculiar urban characteristic of each airport and whether the noise is caused by a day-time or night-time flight; (3) the tax seems to be inconsistent with its specific purpose, as in some regions (including Lazio) only a low percentage of the collected amounts are allocated to cover social costs arising from aircraft noise and to fund relevant reduction measures.

ENAC'S VIEWS ON THE REVISION OF REGULATION (EC) NO. 261/2004

By Marco Marchegiani

Recent internal discussions have led ENAC to raise some thoughts and considerations in relation to the

European Commission's proposed reform of EU Regulation no. 261/2004. In particular, having regard to the lastly updated text of the proposal, as submitted to the European Council on 22 May 2014, ENAC focused the following main issues: (i) the compensation right should be extended to infants; (ii) the word "flights" under the current text of article 7 should not be replaced by the proposed word "journeys" for calculating the distance and determining accordingly the amount of compensation due to passengers in case of flight delay; (iii) the nature of compensation should be expressly defined in order to make clear the distinction between the same and the damages' indemnification provided under the Montreal Convention; (iv) the minimum hours of flight delay entitling passengers to compensation should be fixed in, respectively, 5, 9 and 12 hours; (v) the period during which the air carrier is obliged to provide assistance in case of flight disruption due to extraordinary circumstances other than technical fault should be limited; (vi) in case of missed connection due to delay occurred on the original flight of the same rotation, a fair threshold before entitling passengers to compensation should be set. The remarks raised by ENAC (to be submitted to the EU institutions involved in the relevant legislative iter) are currently under further internal discussions. Moreover, a debate is now open the above illustrated issues between the same ENAC and the Italian air carriers.

QATAR AIRWAYS' FIFTH FREEDOM RIGHTS CONFIRMED BY THE ADMINISTRATIVE SUPREME COURT

by Lorenzo Sperati

Following Cargolux's challenge - before the Regional Administrative Court (TAR) - of ENAC authorization granting Qatar Airways to operate scheduled services for IATA Summer Season 2014 on a fifth freedom basis (routes DOH-MXP-ORD-MXP-DOH), pending any resolution on the merits TAR suspended the effects of the said authorization. Qatar Airways promptly appealed TAR suspension decision before the Administrative Supreme Court (Consiglio di Stato), which accepted the appellant's arguments and accordingly revoked TAR suspension decision, thus confirming the effectiveness of ENAC authorization for the Gulf carrier to operate on the said routes. The confirmation by Consiglio di Stato is mainly based on the need to protect competition in the air transport market and avoid serious damages to the national economy, in particular to the development of Malpensa Airport as key cargo hub towards the United States.