

DIARY DATES

IL TRASPORTO AEREO IN ITALIA ED IN EUROPA: PROBLEMATICHE E PROSPETTIVE

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Laura Pierallini, speaker

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GENERAL ADDRESS ACT FOR THE SETTING UP OF THE NATIONAL PLAN OF AIRPORTS DEVELOPMENT

By Laura Pierallini

On January 29, 2013, the Italian Ministry of Transport issued the General Address Act for the setting up of the National Plan of Airports development (the "Act"). The Act, which was long-awaited, sets up the grounds for reorganizing the Italian airport system. The Act – which receives the European Union and the Italian Government guidelines – shall be then converted into Presidential decree. The main guidelines of the Act are the followings:

a) List of national interest's airports

In Italy, there are 112 airports (inclusive of military airports) at present. To the aim of reorganizing the Italian airport system, the Act contains a list of national interest's airports, which will be the strategic basis for the forthcoming sector's development:

- Airports belonging to the *Core Network* (being deemed strategic airports at European Union level): Bergamo Orio al Serio, Bologna, Genova, Milan Linate and Malpensa, Naples, Palermo, Rome Fiumicino, Turin and Venice.

- Airports belonging to the *Comprehensive Network*:

- Airports with traffic higher than 1 mln passengers per year: Alghero, Bari, Brindisi, Cagliari, Catania, Florence, Lamezia Terme, Olbia, Pisa, Rome Ciampino, Trapani, Treviso, Verona.

- Airports with traffic higher than 500.000,00 passengers per year and having specific territorial peculiarities: Ancona, Pescara, Reggio Calabria, Trieste.

- Airports necessary for territorial continuity: Lampedusa, Pantelleria.

- Airports not belonging to the European network:

- Airports with traffic close to 1 mln passengers and trend of growth: Rimini.

- Airports aimed to receive the traffic of big airports: Salerno.

In relation to the above airports, the Act provides for the continuous holding of the national licence and the solution of the problems which impede the release of the total management licence.

The national interests' airports could also be interested by a plan to enhance the capacity, accessibility, intermodal transport, starting with Rome Fiumicino (a new tarmac and development of boarding areas and terminals), Milan Malpensa and Venezia (improvement of the accessibility and high-speed connection). The plan also envisage a medium-long term development for the other airports. The non-national interest's airports shall be transferred to the other competent regions that will consider a different end use or even the chance of closing down. Moreover, the Act does not consider the establishment of new airports.

b) The implementation of plan for the economic and financial rebalancing

As many Italian airports have a strong public representation within their stakeholders, the Act considers worthwhile to

proceed with a progressive disposal of the public stakes in favour of private stakeholders. Rebalancing plans to attain adequate levels of capitalization shall be implemented in the short period, as set in the national regulations.

c) Incentives for the airports' networks

The Act also promotes the realization of the so called airports' networks, managed by a single company, with the aim to fulfil advantages on the role's differentiation and specialization within the territory using dedicated infrastructures for each kind of traffic (e.g. low cost, cargo, chartered, traffic's seasonal distribution) and on the optimization of the services and goods' purchase by suppliers with economies of scale in favour of all the airports.

d) Rationalization of aviation services and customers general services

The Ministry of Transports and the other competent institutions also plan the following rationalizations:

- Procedural simplification for a more rapid approval of the planning agreements between the airports and the management companies.
- Aviation services: review of the airports' opening times and/or services' supply with the chance of possible night closing of those airports with limited traffic or with environmental impact's issues; modification of the air traffic control service to change the service tower into an AFIS (Aerodrome Flight Information Service) in those airports with limited commercial traffic; re-modulation of take-off and landing assistance's rates.
- General services to customers: re-definition of human and financial resources for fire service, security and customs controls and other kind of service.

LIMITATION PERIOD APPLICABLE TO CLAIMS BROUGHT PURSUANT TO EU REG. 261/2004

JUDGMENT OF THE EUROPEAN COURT OF JUSTICE

By Laura Pierallini

EU Regulation 261/2004 provides for passengers' right to compensation and assistance in the events of flight delay, cancellation or denied boarding. However, it does not specify the time period within which passengers must bring a court claim. A reference to the European Court of Justice was made by a Spanish Court in the proceedings between Mr Cuadrench Moré and Koninklijke Luchtvaart Maatschappij NV to clarify the limitation period applicable to claims brought pursuant to the Regulation, precisely in the context of a flight cancellation. In its judgment dated as of 22 November 2012, the European Court of Justice stated that it is undisputed that the Regulation does not contain a provision on the time-limits for bringing a claim before the national courts for compensation.

The European Court of Justice reiterated the principle that, in the absence of EU law on a matter, it is up to the domestic legal system of each Member State to lay down the procedural rules governing claims for safeguarding rights which individuals derive from EU law, provided that those rules observe the principles of equivalence and effectiveness.

As consequence of the above, the European Court of Justice ruled that EU Regulation 261/2004 must be interpreted as meaning that the time-limits for bringing court claims in respect of Article 5 (flight cancellation) and Article 7 (compensation) of the Regulation are to be determined in accordance with the rules of each Member State, provided that those rules observe the principles of equivalence and effectiveness.

Italian law system Under Italian law, article 2946, paragraphs 1, 2 and 3, of Italian Civil Code provides that "*Rights arising from forwarding agency and transport agreements are time barred after the expiration of one year. The limitation period is of eighteen months is the transport begins or ends outside of Europe. The limitation period starts from the date of which the*

person arrived at the place of destination or, in case of accident, from the date of which the accident or the good delivery at the place of destination occurred or should have occurred". In light of the above European Court of Justice's judgment, a 1 year or 18 months limitation period therefore applies to claims brought before the Italian courts. The European Court of Justice's judgment has thus settled any previous doubt that claims for compensation under the Regulation must be brought within the limitation periods applicable within each Member State. As above illustrated, the limitation period under Italian law is far smaller than that set forth in respect of other aviation claims, which continue to be governed by the Montreal Convention system.

END OF THE YEAR 2012 – MISCELLANEOUS MATERIAL OF INTEREST

1. THE 'ANTI-RYANAIR RULE': GOVERNMENT HAS IRISH AIRLINE IN ITS SIGHTS

By Laura Pierallini

On October 18, 2012 the Italian Government approved the Decree Law 179/2012 - finally converted into law by Parliament on December 13, 2012 - which amends financial regulations for the aviation sector. Article 38 sets forth: (i) a precise definition of the term 'air base' (as the premises and facilities used by an air carrier to conduct a permanent, usual and continuative air transport activity, where the employed pilots and crew members have their professional activities centre); and (ii) conditions under which an air carrier, possessing a licence granted by an EU member state and regularly operating through an air base within Italian territory, shall be considered established in Italy. The local media has named this new provision the 'anti-Ryanair rule'. This is mainly because, despite operating an important part of the Italian transportation market within Italian territory, Irish airline Ryanair does not formally have an operating office, management office or a subsidiary in the country. Consequently, Ryanair is not subject to Italian laws and regulations on tax obligations, treatment of employees, social security, passenger rights and regulatory issues.

2. NEW INSOLVENCY PROCEDURE OFFERS HOPE TO AIRLINES IN CRISIS

By Laura Pierallini

On October 23, 2012 the first application by an Italian airline was filed before the Court of Rome, Bankruptcy Division, for the "concordato preventivo in continuità" procedure - a special form of arrangement with creditors introduced by the recent Decree Law No. 83/2012 - which has similarities to US Chapter 11 bankruptcy proceedings. The main effects arising from the application for the procedure are the followings: (i) airline can continue its flight operations and keep commercial relationships with suppliers, tour operators and travel agents. Debts accrued during the course of the procedure will be duly settled and paid by the airline; (ii) airline will submit its restructuring plan within the term fixed by the competent court. Credits accrued before the date of the application will be included in the proposal for the global arrangement with creditors that is to be submitted within the above term; (iii) should the proposal for the global arrangement with creditors be accepted by the majority of the creditors admitted to the vote, the credits admitted will be repaid according to the terms and conditions provided by such proposal and the company restructuring plan; (iv) no enforcement or precautionary measures can be commenced or continued by any creditors against the airline's assets.