

DIARY DATES

**SIXTH AIR LAW CONFERENCE
LUISS SCHOOL OF LAW**

21 June 2019

Rome, Italy

Studio Pierallini, co-organizer

Laura Pierallini, moderator

Marco Marchegiani, moderator

2ND TRAVEL LAW FORUM

16 May 2019

Athens, Greece

Laura Pierallini, speaker

**12 TH MUNICH LIABILITY SEMINAR
EUROPEAN AIR LAW ASSOCIATION**

28 June 2019

Munich, Germany

Laura Pierallini, speaker

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**EU REGULATION 2019/712 SAFEGUARDING
COMPETITION IN AIR TRANSPORT**

By Francesco Grassetti

In the absence of an international framework that sets out the conditions governing competition in air transport, practices regarding the treatment of airlines may differ from one country to another and affect competition at a global level. While in the EU all national carriers are granted the same rights and same opportunity to access air transport services, this may not be the case in some third countries where discriminatory practices and subsidies may give unfair competitive advantages to operators based in such third countries.

On 14 March 2019 the EU Parliament gave its consent to a new Regulation (2019/712) on safeguarding competition in air transport and repealing Regulation (EC) 868/2004. As commonly known in the aviation sector, the aim of Reg. 868/2004 was to protect EU airlines against practices defined as “unfair” and “discriminatory” (such as subsidisation and pricing policies) which caused damages to EU airlines in the supply of air services to and from third countries. Reg. 868/2004 enabled the EU Commission (EUC)

to take measures to compensate for subsidies or unfair pricing that cause damages to the air transport industry in Europe. However, since its adoption 15 years ago, Reg. 868/2004 was never applied (there were no formal complaints from EU carriers nor direct actions from the EUC).

The purpose of the new Regulation is to lay down (art. 1) “rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers”.

An investigation shall be initiated on the basis of a written complaint submitted by a Member State, one or more EU air carriers, an association of EU air carriers, or by the EUC itself, if there is *prima facie* evidence of the existence of all the following circumstances: (a) a practice distorting competition, adopted by a third country or a third country entity; (b) injury or threat of injury to one or more EU airlines; and (c) a causal link between the alleged practice and the alleged injury or threat of injury. The EUC shall decide not to initiate an investigation where the facts reported in the complaint neither raise a systemic issue nor have

a significant impact on one or more EU airlines. Where the existence of the above mentioned circumstances is confirmed at the outcome of the investigation phase, the EUC may adopt redressive measures by way of implementing acts, in the form of either financial duties or any operational measure of equivalent or lesser value. It must be noted that operational measures shall not consist of the suspension or limitation of traffic rights granted under air service agreements (ASAs).

The Regulation also highlights the intention of the EUC to strengthen its efforts to support the adoption of international rules on fair competition between air carriers, to simplify the negotiation of fair competition clauses in existing and future ASAs. Indeed, on several occasions during the legislative process, the EU institutions stated that the new Regulation is not intended for an immediate use but, rather, it should in the first instance serve as a deterrent against unfair practices.

NEW ENAC CIRCULAR ON THE AIRSPACE USE BY REMOTELY PILOTED AIRCRAFT

By Francesco Paolo Ballirano

On 24 May 2019 the Italian Civil Aviation Authority (ENAC) has issued a new air traffic management (ATM) circular dealing with the use of the national airspace by remotely piloted aircraft (drones). The ATM Circular is a step forward to guarantee safe and responsible operations of drones in the Italian territory. The aim is to determine specific criteria for the use of the airspace and facilitate flight authorization procedures with ENAC and/or the Italian Air Force, depending on whether the involved areas of operation are located nearby civil (i.e. airports) or military zones.

Among the various provisions, according to article 6.2. of the ATM Circular flight operations with drones having a maximum take-off weight (MTOW) of less than 25kg are now permitted: (i) outside the controlled traffic regions (CTR – i.e. a volume of controlled airspace, normally around an airport, which extends from the surface to a specified upper limit, established to protect air traffic operating to and from that airport) up to a maximum height of 120m and at a maximum horizontal distance of 500m from the remote pilot; (ii) inside the CTRs subject to more restrictive operational requirements and limits, increasing for areas located nearby airports and military bases.

The above mentioned operations are permitted to the extent that they are performed in visual line

of sight (VLOS) or extended visual line of sight (EVLOS). In addition, drones with MTOW of 4kg (or more) shall be allowed to fly in the said areas only if equipped with an height limitation device and a drone rescue system in case of loss of control (so called “return to home” mode).

ENAC PUBLISHES AIR TRAFFIC DATA FOR 2018

ENAC has recently published the official data regarding air transport to and from national airports in 2018. With more than 184 million passengers and a traffic increase of 5.8% compared to 2017, the positive trend of the industry confirms a fair recovery which make the stakeholders confident for the years to come.

The busiest national airport is still Rome Fiumicino, with a traffic share of 23.2% and 43 million passengers in transit, then followed by Milan Malpensa (24 million and 13.3% market share), Bergamo Orio al Serio (12.8 million - 6.9% market share) and Venice Marco Polo (11 million – 6% market share). In terms of passengers carried on both domestic and international flights, the first airline is Ryanair (37.8 million), the second one Alitalia (21.9 million) and the third one EasyJet (18.4 million).

On the other hand the cargo air transport has been stationary, counting 1.090.699 tons of cargo and mail carried (on aggregate), in line with 2017. The main cargo hubs remain Rome Fiumicino and Milan Malpensa (the latter with a market share of 52.5%).

LUISS SCHOOL OF LAW – SIXTH AIR LAW CONFERENCE ON HOW FACING THE NEW CHALLENGES IN THE AVIATION INDUSTRY

On 21 June 2019 the sixth air law conference organized by LUISS School of Law and Studio Pierallini will take place in Rome. The conference will focus on how regulators and air law experts are facing the new challenges in the aviation industry. In particular, the following panels will be presented and discussed by EU, international and Italian prominent experts: (i) Investments in airline, a balancing act between attractions and obstacles; (ii) When is competition fair and how to regulate it?; (iii) What about drones?; (iv) Brexit, what is next?; (v) Passenger protection, does the court in Luxemburg put a new light on it? – This last panel will also deal with the industry trend towards greater automation of aircraft and its liability implications.