

DIARY DATES

EUROPEAN AIR LAW ASSOCIATION (EALA)
27th Annual Conference
5-6 November 2015
Edinburgh, Scotland
Laura Pierallini, speaker

INTERNATIONAL AVIATION WOMENS ASSOCIATION (IAWA)
27th Annual Conference
10-12 November 2015
Dubai, United Arab Emirates
Laura Pierallini, member

THE EUROPEAN AVIATION CLUB (EAC)
Conference on Drones
8 December 2015
Brussels, Belgium
Laura Pierallini, moderator

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**SAN MARINO AIRCRAFT REGISTRY:
RECENT DEVELOPMENTS**

By Francesco Grassetti

On the 1st of January 2015 the Republic of San Marino entered the Cape Town Convention and the associated Aircraft Protocol. Such treaty reduces creditors risks, provides internationally recognized rights in the event of a debtor's default or insolvency and allows creditors to register their acquisition of high-value property in an electronic international register to guarantee the priority of their claims against other parties. By entering the Cape Town Convention, San Marino gives the opportunity to facilitate aircraft finance, ensuring security, protection and prioritization through the international rights recognized under the Convention. Worth mentioning is also the recent amendment to the Delegated Decree no. 133/2015, introducing a series of remedies to the benefit of the mortgagees in line to those set by Cape Town, such as: to take possession of the mortgaged aircraft even if it is held by third parties; to sell the mortgaged aircraft; to carry out, in the event of the owner's inaction, all acts and operations required to maintain the airworthiness status and validity of the aircraft registration; to lease the aircraft in order to apply the relevant profits against the amounts secured by the mortgage; to collect from the mortgagor the incomes generated

by the use of the aircraft; to request the CAA to cancel the mortgaged aircraft upon submission of a specific authorization signed by the mortgagor. These remedies can be exercised without the intervention of the Judge. The exemption of VAT (so called "Monofase") is another significant element of interest, now applied to the importation of all types of aircraft in San Marino and likely to result in the increase of the number of aircraft registrations. Aircraft can be registered in San Marino for general aviation and aerial work, as well as for commercial operations under a foreign AOC by using an ICAO Article 83bis agreement on the delegation of oversight with the State of the operator. Foreign citizens and companies may register the registration of their own aircraft by electing a domicile representative residing in San Marino, serving for the correspondence with the CAA. The latest ICAO 83bis agreement was executed by the Kingdom of Saudi Arabia (represented by the General Authority of Civil Aviation, GACA) on 30 June 2015. It allows aircraft registered in San Marino to be operated for commercial purposes by Saudi Arabia operators. The San Marino CAA has also executed ICAO 83bis agreements with Nigeria and Lebanon. In addition, the commercial sector using a San Marino air operator certificate (AOC) has had a significant development in 2015. To operate aircraft in commercial air transport, carriers must

incorporate a company in San Marino and keep their principal place of business therein. This means the existence of an head office exercising directions, financial functions and operational control of the undertaking. Last September the Dubai-based company Empire Aviation Group was the first company from the Middle East to obtain an AOC for its subsidiary in San Marino.

EUCOMMISSION: INFRINGEMENT PROCEDURE AGAINST ITALY FOR AIRPORT CHARGES

By Marco Marchegiani

The EU Commission issued a formal notice to the Italian Government for failures in implementing Directive 2009/12/CE on airport charges. The Commission contested the consultation procedure aimed to approve tariffs of 5 main airports (Rome FCO and CIA; Milan MXP and LIN; Venice VCE) through the so called "contratti di programma" (planning agreements) between the airport managing bodies and ENAC. The Commission believes that, in the case, the independence requirement of the supervisory authority may be breached in detriment of the airport users. Italy has now time until 23 December 2015 to comment on the asserted non-compliance. In the meantime the challenges filed by the National Association of Air Carriers (Assaereo) against the said planning agreements are still pending before the Italian Administrative Courts.

AVIATION LAW VS SPACE LAW

By Gianluigi Ascenzi

In 1957, Russia was able to send into outer space the first human-produced object (Sputnik 1) and less than 18 months later the first international body was constituted under the patronage of the United Nations: the Committee on the Peaceful Uses of Outer Space (COPUOS). Created in 1959, it will be the father of the five most important international treaties that will form the basis of what today we call "space law": the "Outer Space Treaty" (1967); the "Rescue Agreement" (1967); the "Liability Convention" (1972); the "Registration Convention" (1974); the "Moon Treaty" (1979). Aviation and Space laws need to be distinguished. Nowadays, private and commercial aircraft fly in a portion of the atmosphere with an height of approximately 14 km. Conventionally, the "Karman Line" represents the boundary between the atmosphere and outer space. It lies at 100 km above the surface and is the point where air thinness will not be able to sustain aero dynamical flight, unless the craft's speed reaches the orbital velocity. Above that, the low Earth orbit region can be found (between 160 and 2,000 km): this is the part where the majority of satellite resides. Because of its vicinity to the surface, it is the most appealing region for telecommunications and observation, it is where the International Space Station (ISS) orbits and where all manned missions

took place. Much above this, at about 36,000 km, we can find the second most used region, the geostationary orbit: as the word itself suggests, in this area satellites' velocity equals Earth's rotation, thus appearing motionless, at a fixed position in the sky, to ground observers. This is essential for GPS technology, which nowadays can be easily found everywhere, from buses to airplanes, and constitute a fundamental infrastructure. After 6,300 launches, the latest estimates say that 3,600 satellites remain in orbit: of those, about 1,000 are operational. These have become matters of private institutions and military forces, who recognize in space a source of interests for telecommunications, astronomical and bio studies, navigational aids, reconnaissance, weather forecast and, more generally, Earth observation. If we compare it to aviation, space seems not to receive the proper attention and remains under-regulated. Of course, it could be replied that millions of passengers travels each year by air, while only few lucky men went to space. But aviation and space are also quite similar: they are both driven by private interests, they have a great amount of technical issues to standardize in order to create interconnectivity between different systems, we can talk about "slots" when we think about the complexity of a launch and the right timing needed for it, and it is also possible to talk of space rights/privileges: e.g. to tackle the problem of space debris affecting low earth orbits, a launch-license policy would make operators pay for debris mitigation. The most current problem concerning agencies around the world are debris. Low Earth Orbits are the most demanded orbits for the reasons seen above, but they are also the smallest, because of their proximity to the planet. If we consider that about 19,000 debris are tracked and they daily jeopardize satellites orbiting at the same level, we can easily spot the issue. And also privacy: the ability for the general public to access and view high resolution satellite images and photographs via the Internet raises serious privacy and safety concerns. Satellite and aerial imagery boosts a multi-billion dollar industry and is part of our routine, but it can lead to malpractices and infringement of rights. No Government has regulatory authority over what satellite images can be sold or restricted in any area, while commercial companies can control a potentially invasive technology relatively unregulated. The European Commission plans to investigate the issue of privacy as it relates to the use of civil drones but there has never been a review or even public debate about what we consider to be acceptable and intrusive monitoring from satellite technologies. Whether they are used for good or not, it may well be time to regulate the technology or at least clearly define the boundaries of privacy rights in this area. Laws are by their nature slow to evolve, but as satellite technologies could have deep social and legal impacts, both positive and negative, policymakers surely have to be bold and plan in advance future technological step-changes.