

DIARY DATES

**IBA ANNUAL CONFERENCE
AVIATION COMMITTEE SESSION**
18-23 September 2016
Washington DC, USA
Laura Pierallini, co-chair

**THE 6TH ST. PETERSBURG
AIR LAW CONFERENCE**
14 October 2016
St. Petersburg, Russia
Laura Pierallini, speaker

**EUROPEAN AIR LAW ASSOCIATION
(EALA)**
28th Annual Conference
3-4 November 2016
Warsaw, Poland
Laura Pierallini, committee member

CONTENTS

**COMMERCIAL SPACE TRANSPORTATION:
AGREEMENT BETWEEN THE FEDERAL
AVIATION ADMINISTRATION, THE ITALIAN
SPACE AGENCY (ASI) AND ENAC**

**RECENT TREND OF THE ITALIAN SUPREME
COURT ON HANDLERS' LIABILITY**

**FREIGHT AIR TRANSPORT WITH DRONES:
FIRST GREEN LIGHT BY ENAC TO PIAGGIO
AERO INDUSTRIES**



**COMMERCIAL SPACE TRANSPORTATION:
AGREEMENT BETWEEN THE FEDERAL
AVIATION ADMINISTRATION, THE
ITALIAN SPACE AGENCY (ASI) AND ENAC**
By Francesco Paolo Ballirano

On 30 June 2016 the Federal Aviation Administration (FAA), ENAC and ASI (the Italian Space Agency) entered into a cooperation agreement regarding the commercial space transportation. Among the various topics the parties discussed on the prospective creation of a site in the Italian territory to serve for the suborbital commercial flights and so to be used by shuttles travelling at never seen speeds before between different points on the earth surface (a credible achievement would be, for instance, to create the conditions for a Rome-New York transfer lasting no more than one hour). The main target of the Italian Space Agency is the building of a spaceport similar to the one located in the State of New Mexico (called Spaceport America), also thanks to the warm weather and the good visibility offered by the Italian skies most time of the year. An additional favourable condition to create a spaceport is that the majority of the Italian boundaries are surrounded by the sea.

This would be an important aspect for the safety of the shuttles' take-off and landing and it would also reduce the environmental impact of the flight operations.

On 20 July 2016 ENAC published a document on its website named "A Regulatory Policy for the Prospective Commercial Space Transportation Certification and Operations in Italy". The paper explains the basic principles of the regulatory framework that ENAC is developing in order to allow the future operation of suborbital commercial flights to and from Italy. The themes covered by the ENAC regulatory policy are various (comprising space navigation, infrastructures, traffic management, operating licenses, personnel certifications, medical checks for the crew and passengers) and they shall be further detailed with the provision of specific rules, standards and requirements to make shuttle flights above the Italian air space possible in the years to come.

The commercial space transportation represents a transition toward the exploitation of the extra-atmospheric space also by private entities and not only by public institutions, as it mainly was until now. The space transport is therefore a relevant business opportunity for the economic sector in Italy.

The space cooperation agreement between Italy and

the United States is the first one signed by the latter with a European country and it falls within the politics of economic development arising from the space activities (the so called space economy) which the Italian government is carrying out through the ASI.

RECENT TREND OF THE ITALIAN SUPREME COURT ON HANDLERS' LIABILITY

By Francesco Grassetti

The Italian Supreme Court has recently changed approach in the interpretation of the commercial relationship between airlines and ground-handling companies, with a main focus on the damages suffered by passengers as a consequence of the supply of handling services. The key factor is whether the handler can be considered an "auxiliary" entity of the airline. Pursuant to article 30 of the Montreal Convention of 1999 if an action is brought against a servant or agent of the carrier they shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under the Convention.

Until a few years ago the prevailing trend of the Supreme Court case-law was based on quite outdated precedents of the early nineties, therefore of a period when airport services were provided by monopolist entities (before the Council Directive 96/67/EC on access to the ground-handling market at EU airports). According to such case-law trend, the delivery of luggage, cargo and mail by an airline to an handling company would constitute a contract for a third party beneficiary (e.g. the passenger, the freight forwarder) and the contract purpose would be the assignment to the handler of the deposit and custody of the freight until its redelivery to the recipient. Based on this approach the handler is not an airline's auxiliary, because it would manage an autonomous organization and it would not be selected by the airline directly (exclusive access). The consequences of this assessment are that the limitations of liability set by the Montreal Convention for "a servant or agent of the carrier" does not apply to handling companies; the airline is not liable for losses/damages to the freight when under the control of the handler; the owner of the freight is entitled to act against the handler for the compensation of damages.

The above position is overcome by more recent case-law decisions of the Italian Supreme Court, which now take into consideration the liberalization of the market of ground-handling services and is so in line with the approach adopted in most of the other countries, where the Montreal Convention is

interpreted in the sense that the ground-handling companies fall within the concept of airlines' auxiliaries.

The most recent trend is also consistent with the Italian Civil Code (article 1687 on the contract transport of states that "*the carrier must render the transported goods available to the passenger in the agreed place, time and according to the terms of the contract*"). The material consequences of such tendency are that: (i) the handler is an auxiliary of the airline, as without its support the airline cannot take in charge nor redeliver the freight; (ii) the airline and the handler are jointly liable for damages/losses (namely: the airline would bear a liability in contract; the handler a liability in tort); (iii) if the Montreal Convention must apply, the handlers avail themselves of the limitations of liability provided for the airlines; (iv) the limitations of liability are excluded in the case that damages derive from an act or omission of the handlers' employees with intent to cause damage or recklessly and with knowledge that damage would probably result, pursuant to article 30 (3th par.) of the Montreal Convention.

Given the peculiar subject matter, the uncertainty on this case-law will be discussed by the so called "Sezioni Unite" (i.e. joint sections) of the Italian Supreme Court.

FREIGHT AIR TRANSPORT WITH DRONES: FIRST GREEN LIGHT BY ENAC TO PIAGGIO AERO INDUSTRIES

By Lorenzo Sperati

A remotely piloted aerial vehicle manufactured by Piaggio Aero Industries will start test flights on behalf of ENAC. The objective is to determine the requirements for a prospective European regulation regarding the air transport of freight for commercial purposes by way of drones. To date the civil sector is unregulated and drones have been used only for military scopes.

The project - financed by ENAC and approved upon the outcome of a public tender - is based on the drone P.1HH "Hammerhead" designed by Piaggio for patrol and attack missions in the military sector (the United Arab Emirates have recently placed an order of 8 drones for a value of Euro 316 million). According to internal sources of the Italian manufacturer, in the near future a civil configuration of this drone may be exploited to transport loads above 500kg (as the approximate profitable point) and for emergency services, such as medical needs and fire-fighting operations.