

**DIARY DATES**

**LUISS SCHOOL OF LAW  
CONFERENCE ON THE IMPACT  
OF BREXIT ON AVIATION**  
9 June 2017  
Rome, Italy  
Studio Pierallini, organizer  
Laura Pierallini, moderator and speaker

**2017 SHANGHAI INTERNATIONAL  
AIR LAW FORUM**  
25 May 2017  
Shanghai, China  
Laura Pierallini, speaker

**IATA RIM FORUM  
A DAY IN THE LIFE OF AN AIRLINE  
RISK AND INSURANCE MANAGER**  
11-12 May 2017  
London, UK  
Laura Pierallini, speaker

**IRANIAN AVIATION CONFEX 2017  
TRANSFORMING THE POST-SANCTIONS  
IRANIAN AVIATION LANDSCAPE**  
18-19 April 2017  
Tehran, Iran  
Laura Pierallini, speaker

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**LUISS SCHOOL OF LAW - CONFERENCE ON  
THE IMPACT OF BREXIT ON AVIATION**



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**AIRLINES' LIABILITY UNDER REGULATION  
261/2004 - BIRD-STRIKE EVENTS**  
*By Marco Marchegiani*

On 4 May 2017 the European Court of Justice (the "ECJ") issued an important decision regarding the application of article 5 of Regulation EC 261/2004, according to which the carrier is not obliged to pay compensation if it can prove that a flight cancellation (or a delay exceeding 3 hours) is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

By ruling on the Case C-315/15, the ECJ did not follow the Opinion of its Advocate General and interpreted the said article 5 in the sense that "*a collision between an aircraft and a bird is an extraordinary circumstance which may exempt the air carrier from its obligation to pay compensation in the event that a flight is delayed significantly*". The ECJ added that "*a collision between an aircraft and a bird, as well as any damage caused by that collision, are not intrinsically linked to the operating system of the aircraft, with the result that such a collision is not by its nature or origin inherent*

*in the normal exercise of the activity of the air carrier concerned and is outside its actual control*". In other words, for the ECJ the failure of mechanical parts of an aircraft does not constitute an extraordinary circumstance since it is a duty of each carrier to supervise and ensure the proper functioning of its fleet. On the contrary, a collision between an aircraft and a bird is not linked to the regular activity of a carrier and, also, it is beyond its actual control.

Therefore the ECJ stated that a delay exceeding 3 hours and caused by an extraordinary circumstance must be deducted from the total length of the delay: accordingly passengers are entitled to compensation if the 3 hours (or more) of the overall delay can be ascribed to the carrier's responsibility.

The decision taken by the ECJ is certainly remarkable and constitute a milestone for the case-law regarding passengers' claims under Regulation EC 261/2004, also considering the different conclusions previously reached by other judges at a national level, according to which bird strikes did not constitute an extraordinary circumstance and so they could not be invoked by airlines to exclude their liability for flight delays and cancellations.

## **ALITALIA UNDERGOES EXTRAORDINARY ADMINISTRATION PROCEDURE**

*By Francesco Grassetti*

By Decree dated 2 May 2017 the Ministry for the Economic Development started the extraordinary administration procedure of Alitalia pursuant to Law 39/2004 (the "Procedure") and appointed three commissioners to lead the company throughout the Procedure (Mr. Gubitosi, Mr. Laghi and Mr. Palerai). The main purpose of the Procedure is to preserve the employment levels by way of the continuation, restructuring or sale of the business.

Concurrently, by Law Decree no. 55/2017 the Government granted Alitalia a loan facility of Euro 600 million, at a market interest rate and to be repaid within 6 months. The loan shall be used to face the daily financial needs and guarantee the continuation of the flight operations during the implementation of the plan that will likely bring the commissioners to sell the airline business on the market, either as a whole or part by part. In that respect, on 17 May 2017 the commissioners published a call for the expressions of interest from any prospective bidders, who shall at first comply with financial and honourability requirements to be eligible for the acquisition of Alitalia's business. A further requirement that shall be taken into consideration is the nationality of the possible buyer, since according to Regulation EC 1008/2008 more than 50% of a EU licensed air carrier must be owned by nationals of a Member State. The same nationals must also have an effective control of the company, that is usually deemed as the right/faculty to determine the key management decisions. Therefore extra-EU entities willing to invest in Alitalia could not own a stake exceeding 49,9% of the entire share capital of the airline, nor exercise an effective control over its business.

Upon verification of the said requirements, the commissioners of Alitalia shall then examine the economic offer and the restructuring plan proposed by each bidder, with a main focus on the projects regarding the preservation of the current employment levels.

## **EASA SUBMITS A PROPOSAL ON DRONES**

*By Francesco Paolo Ballirano*

The EASA (European Aviation Safety Agency) recently submitted a proposal to regulate the operation of small drones in Europe as part of its recurring Notice of Proposed Amendment (NPA).

The proposal aims to define both technical and operative requirements for drones and pilots, focusing on the intersection of aviation and commercial law through the use of the CE marking as a common standard for drones production. Five different classes of drones are contemplated in order to clarify the boundaries of their

legitimate use (C0 to C4). In addition, in order to keep this growing industry competitive, States under the EASA competence would be entitled to a great degree of flexibility for the harmonization between their internal regulations and the technical and operative requirements set at EASA level.

All relevant stakeholders are invited to evaluate the EASA proposal through public consultation process lasting until 12 August 2017. Afterwards, the final version of the draft proposal is expected to reach the European Commission by the end of 2017.

## **TRANSPORT REGULATION AUTHORITY - INTENDED REFORM ON AIRPORT CHARGES**

*By Lorenzo Sperati*

The Italian Transport Regulation Authority TRA recently opened a public consultation aimed at updating the current model regulations for airport charges, in order to further improve its operational effectiveness on the basis of the experience acquired during 3 years since their first application.

The models were initially approved in 2014 for airports with annual traffic volumes of - respectively - less than 1 million, between 3 and 5 million and more than 5 million passengers. Until today, model regulations were implemented by 15 airport management companies, involving a total of 18 airports throughout the Italian territory.

## **STRONG TRAFFIC GROWTH AT EUROPEAN AIRPORTS DURING 2017 Q1**

Airports Council International Europe has released its air traffic report for the first quarter of 2017. The report covers over 88% of the continental passenger traffic, with 232 airports monitored during the period. It reveals an overall growth by an average + 6,9% and 11 national markets recording double-digit growth, including Cyprus, Luxembourg, Malta and Portugal. On the contrary non-EU traffic faced a slower increase by + 5.9%, mainly due to the growth of Russian, Ukrainian and Norwegian airports.

## **LUISS SCHOOL OF LAW - CONFERENCE ON THE IMPACT OF BREXIT ON AVIATION**

In the context of the executive course on air transport that is coordinated by Laura Pierallini, on 9 June next a conference will take focusing on the effects of Brexit for the air transport industry. The following topics will be presented and discussed by UK, international and Italian prominent experts: the background of the EU aviation liberalisation; the issues and possible ways forward; the UK perspective; which models may apply post Brexit from the viewpoint of regulators, experts and airlines; the consequences and alternative scenarios for operators.