

DIARY DATES

IATA LEGAL SYMPOSIUM 2018
27 February – 1 March 2018
Bangkok, Thailand
Laura Pierallini, speaker

**EUROPEAN BUSINESS AVIATION ASSOCIATION
AMAC CONVENTION**
14 March 2018
Brussels, Belgium
Studio Pierallini, subcommittee member

TRAVEL LAW FORUM 2018
16 March 2018
Athens, Greece
Laura Pierallini, speaker

**INTERNATIONAL AIR LAW MOOT COURT OF 2018
EAST MEETS WEST: DISCOVERING
NEW HORIZONS IN GLOBAL AIR TRANSPORT**
12 April 2018
Incheon Airport, South Korea
Laura Pierallini, chair

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**LATEST CASE-LAW ON REGULATION (EC)
NO. 261/2004: PASSENGERS DO NOT NEED
TO PROVIDE EVIDENCE OF THE DELAY**
By Marco Marchegiani

By Decision No. 1584 dated 23 January 2018, the Italian Supreme Court found that in case of flight cancellation or delay at arrival the burden of proof lies with the air carrier. The Court, overturning a previous decision of the Court of Appeal of Rome, affirmed that a passenger claiming compensation under Regulation (EC) No. 261/2004 must provide documentation of the contractual source (that is to say he must provide evidence of the flight ticket) with no further need to prove that the air carrier has not properly fulfilled its obligations under the transport contract. In other words, according to the said position, the passenger must only prove the source of its right to compensation and it is not required to submit documentation concerning the delay/cancellation itself.

As the Supreme Court notably observed, while passengers cannot provide direct evidence of the delay, the air carrier, which operates under the control and supervision of regulatory and airport authorities, has simple and unconditioned access to flight data record and, therefore, it can provide official proof and indication of the arrival time.

The aforementioned decision confirms the principle

affirmed by the Court of Justice of the European Union (CJEU) in several proceedings, pursuant to which, in the context of the application of the 261 Regulation, the existence of the passenger's right to compensation is presumed unless the air carrier is able to prove: (i) the absence of grounds for compensation (for instance, the flight has not been delayed); or (ii) that the service disruption occurred due to extraordinary circumstances, as set out in Art. 5(3) of the 261 Regulation.

Furthermore, this line of reasoning is consistent with a systematic and combined reading of the 261 Regulation and the 1999 Montreal Convention, according to which the air carrier must prove that the non-performance (denied boarding and cancellation) or partial performance (delay at arrival) of the transport contract was caused by an event of force majeure or in any case beyond its control.

By corroborating the predominant European orientation, this decision of the Italian Supreme Court strengthens the favourable inclination of the CJEU towards a broader consumer protection. The European Court has indeed repeatedly intervened - essentially rewriting the 261 Regulation - with the aim to expand its scope and application. Within the aviation sector criticisms are quite common around the 261 Regulation insofar as it currently establishes a consumer-friendly environment, *de facto* disregarding the complex and dynamic nature of the air transport services.

ITALIAN GOVERNMENT'S USE OF GOLDEN POWER TO SUPPORT THE NEW BUSINESS STRATEGY OF PIAGGIO AEROSPACE

By Francesco Grassetti

The multinational aerospace manufacturing company Piaggio Aerospace - headquartered in Savona (north-west of Italy), also become famous due to its shared ancestry with motor vehicle manufacturer Piaggio - has undergone a severe financial and liquidity crisis in the last four years.

Today Piaggio Aerospace is wholly owned by Abu Dhabi state-owned Mubadala Development Company (renowned for its past investments in famous brands like *Ferrari* and *Ballantyne*), being the investment company responsible for the new and recently approved five-year industrial plan of the manufacturing company. The five-year industrial plan is built around various strategic pillars that aim to focus Piaggio Aerospace's core business on the P.1HH Hammerhead program (first deliveries of which are expected in 2018) and on the development of a new production and marketing strategy for the P.180 business aviation program. The P.180 Avanti II aircraft is globally known for its high performance, hi-tech avionics and significantly reduced operating costs.

During a shareholders' meeting in December 2017, Piaggio Aerospace's CEO explained that the industrial plan following the recent financial losses does not exclude the sale of some activities and business units of the company (including the engine and maintenance departments), as well as the intervention of new potential investors. In fact, recently, Mubadala informed the Italian authorities of the possibility to sell the intellectual property behind the production of the P.180 turbojets to PAC Investments, a Chinese state-backed consortium based in Luxembourg. However, at the end of 2017 the Italian Government has endorsed the use of its so-called "golden power" in light of concerns over the transfer of sensitive technology abroad and potential loss of jobs in the Italian plants. The "golden power" allows the government to veto or set conditions on asset sales or mergers that are deemed of strategic national importance.

As mentioned, the other objective of the five-year plan is to develop the P.1HH Hammerhead program, the multipurpose unmanned aerial vehicle (UAV) designed for aero, marine and ground surveillance and patrol purposes, which is built with a unique twin-pusher engine configuration.

The said industrial objectives clearly stress that Piaggio Aerospace will concentrate its core business on the design and production of drones. Indeed it is not by chance that, among the conditions set by the

Italian Government to finalize the sale of the P.180 business to the Chinese PAC investment firm, Piaggio shall guarantee a full separation between civil jets and the military related intellectual property, along with the commitment to invest most of the sale's proceeds into the military unit devoted to the development of a new generation of drones.

IATA - ENAV AGREEMENT TO IMPROVE THE ITALIAN NATIONAL AIR SPACE

By Andrea Trimarchi

The recently signed agreement between IATA (the International Air Transport Association) and ENAV (the Italian Air Navigation Service Provider) lays down a common strategy meant to develop and implement the Italian national airspace. The subject agreement is aimed to support the economic growth and competitiveness of the Italian aviation sector.

The new strategy is based on the achievements of recent air traffic management (ATM) instruments put in place by ENAV to implement the Single European Sky project launched by the EU Commission. The main target of this project is to support modernization and improvement of the EU aviation industry in terms of safety, environment, operations and cost efficiency. The strategy aims to shift towards a sustainable development of the airspace, in cooperation with all the stakeholders involved in the sector, to reduce fuel consumption and CO₂ emissions.

According to a trustworthy anticipation, Italy will reach an air traffic of 173 million passengers by 2036. In order to face this demand, while, at the same time, ensuring safety, emission reductions and more efficiency, Italy needs an urgent modernization of the national airspace and an adjustment of the air traffic management network. At present, the air transport contributes Euro 42,4 billion to the Italian GDP and employs almost 600.000 people. The enhancement of the air space is expected to generate significant benefits, assessable in extra Euro 27 billion in annual GDP and over 95.000 job positions.

The words of the CEO of ENAV clearly reflect the venture outlined above: *"I welcome this initiative, which is fully in line with ENAV's focus on customers and partners. We are developing an airspace strategy with the full involvement of stakeholders to further support the ongoing modernization of our technology and operations. The implementation of the free route project - in December 2016 - is one of the pillars of ENAV's ambitious targets and mission: safety and punctuality for the millions of passengers who fly in the Italian airspace. Our commitment is to contribute to the growth of the national and European air transport through efficiency and innovation"*.