

Italy

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General

1 Which bodies regulate aviation in your country, and under what basic laws?

In Italy, aviation is regulated by the Italian Civil Aviation Authority (ENAC), as provided by article 687 of the Italian Navigation Code and Legislative Decree No. 250/1997. The principal law on aviation is the Italian Navigation Code, approved by Royal Decree dated 30 March 1942 No. 327, as recently amended by Legislative Decree dated 9 May 2005, No. 96 and Legislative Decree dated 15 March 2006 No. 151.

Regulation of aviation operations

2 How is air transport regulated in terms of safety?

Safety regulation falls within the institutional duties of ENAC. ENAC is appointed for the regulation of the assessment of crew skill. It also deals with planning, construction and the maintenance and operation of aircraft in accordance with the international rules.

In particular, ENAC carries out inspections and controls on aircraft, operated for private and public use, issues and renews airworthiness certificates and air operator certificates and approves maintenance programmes. Air traffic control is entrusted to ENAV (Ente Nazionale Assistenza Volo).

Italy applies all the international rules issued by the International Civil Aviation Organisation (ICAO) (ie, annex 17), and by JAR 145 as amended by the European Aviation Safety Agency Implementation Rules, JAR-OPS No. 1 and No. 3, as well as European regulations including:

- Regulation No. 2320/2002 of 16 December 2002 establishing common rules in the field of civil aviation safety;
- Regulation No. 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation safety;
- Regulation No. 473/2006 of 22 March 2006 laying down implementation rules for the European Community list of air carriers which are subject to an operating ban within the European Community referred to in chapter II of Regulation No. 2111/2005;
- Regulation No. 474/2006 of 22 March 2006, establishing the European Community list of air carriers which are subject to an operating ban within the European Community;
- Regulation No. 910/2006 of 20 June 2006, amending Regulation No. 474/2006 establishing the list of air carriers which are subject to an operating ban within the European Community, referred to in Chapter II of Regulation No. 2111/2005;
- Regulation No. 1543/2006 of 12 October 2006, amending

Regulation No. 474/2006, as amended by Regulation No. 910/2006, establishing the list of air carriers which are subject to an operating ban within the European Community referred to in chapter II of Regulation No. 2111/2005; and

- Regulation No. 1546/2006 of 4 October 2006 amending Regulation No. 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

3 What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

The safety requirements governing commercial and private flights are the same. They cover the technical requirements of aircraft, air traffic control and public safety requirements. The differences relate to administrative, organisational and financial regulations.

4 Is access to the market for the provision of air transport services regulated, and if so how?

Access to the market for the provision of air transport services is regulated. In particular, air carriers must obtain the licence to operate from ENAC. According to article 778 of the Italian Navigation Code, ENAC issues air carriers' licences to enterprises established in Italy in compliance with EU Regulation 2407/92.

5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

Air carriers must:

- be enterprises located in Italy and whose effective control is owned and must be continued to be owned directly or through majority ownership by member states or nationals of member states;
- have as their main objective, air transport in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft; and
- provide satisfactory evidence of administrative, financial and insurance requirements, as provided by EU Regulation No. 2407/92 and EU Regulation No. 785/2004.

6 What procedures are there to obtain licences or other rights to operate particular routes?

For national and European routes, air carriers must submit an application to the local coordinator in charge of the allocation of the slots according to international rules provided by IATA con-

ferences (clearance). According to Ministerial Decree No. 44/T dated 4 August 1997, Assoclearance has been appointed as the local coordinator for Italian airports. Assoclearance is responsible for the allocation of slots. To perform this activity, it has to meet the principles of transparency, neutrality, non-discrimination and 'use it or lose it'.

When an air carrier has operated the slots allocated for at least 80 per cent during the relevant season, it will be entitled to operate the same slots during the next equivalent period (the so-called 'grandfather's right'). If an air carrier cannot evidence such use then the slots are placed in a slot pool and reallocated by the local coordinator on application unless the air carrier can justify not having met the target on the basis of any reasons pointed out by article 10 of EU Regulation No. 95/93 as amended by Regulation No. 793/04.

Traffic rights on non-European routes are governed by the Chicago Convention 1944 (which came into effect on 4 April 1947 and was approved in Italy by Legislative Decree dated 6 March 1948, No. 616) and by the relevant treaties. To operate such routes, Italian air carriers must be designated by the ENAC in compliance with the applicable treaty; designation may be single or multiple. Once designated, an air carrier must apply for its relevant slots.

7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Any decision made by ENAC or Assoclearance concerning a licence application or other rights to operate particular routes can be challenged by the interested air carrier by hierarchical petition before the superior administrative entity or before the competent administrative court. The judgments or orders can then be challenged before the Supreme Administrative Court.

8 Is there a declared policy on airline access or competition, and if so what is it?

There is no declared policy on airline access. In relation to competition, the competent antitrust authority, Autorità Garante della Concorrenza e del Mercato, has expressed several principles about airline competition. These include abolishing burdens, opening the market and avoiding concentrations that could have the effect of restricting competition.

9 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy (public service obligations)?

According to article 782 of the Italian Navigation Code, as amended by Legislative Decree No. 96/2005 and Legislative Decree No. 151/2006, the Italian government may impose public service obligations to guarantee the right of mobility provided by article 16 of the Italian constitution. Article 782 of the Italian Navigation Code complies with EU Regulation No. 2408/92 and No. 95/1993. The Italian government may impose public service obligations in respect of domestic scheduled air services serving a peripheral or developing region or on a thin route to any regional airport, when such route is considered vital for the economic development of the region in which the airport is located. The Italian government imposed public service obligations from and to Sicily and Sardinia pursuant to, respectively, article 36 of Law No. 144/99, EU Communication No. 2006 C 305/05 published in the European Official Journal on 14 December 2006, and EU

Communication No. 2006 C 93/08 published in the European Official Journal on 21 April 2006.

10 Are charter services specially regulated?

Charter services were governed by the Decree of the Ministry of Transport dated 18 June 1981 (regulation of non-scheduled services), which covered:

- taxi flights;
- own use charter;
- inclusive tour charter;
- advance booking charter;
- special event charter;
- student charter;
- affinity charter;
- migrant workers charter; and
- charter cargo.

Most of the rules, especially those concerning charter flights within the EU, have been superseded by EU regulations, international conventions and treaties.

11 Are airfares regulated, and if so, how?

According to Regulation No. 2409/1992 on fares and rates for air services, EU air carriers are able to freely set air fares. ENAC, acting within its general powers of control of the Italian air carriers, oversees the fares determined by air carriers with respect to extra EU long-haul routes operated with scheduled flights.

Aircraft

12 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

Depending on the circumstances, the owner and the operator are entitled to be mentioned in the aircraft register. Registration in the Italian Aircraft Registry is governed by article 750 of the Italian Navigation Code, which states: "Aircraft can be registered under the National Aircraft Registry held by ENAC provided that nationality requirements set forth in article 756 of the Italian Navigation Code are met."

Referring to the nationality requirements of the owner, article 756 paragraph I of the Italian Navigation Code states:

In order to satisfy the nationality requirements for registration in the National Aircraft Registry, aircraft should be whole or major property of:

- a) states, regions, provinces, municipalities and any other Italian or European Union member state's public or private body; or
- b) Italian citizens or citizens of other European Union member states; or
- c) companies established or with registered offices in Italy or other European Union member states, whose share capital is whole or major property of Italian or other European Union states' citizens, or Italian or other European Union member states' body corporate with the same characteristics of shareholding and whose president and most part of the directors, including the managing director are Italian or other European Union member states' citizens.

Article 756 paragraph II, concerning registration in the name of the operator, states:

ENAC may, derogating from the provisions of the paragraph above, by grounded rulings, allow the registration in the National Aircraft Registry of aircraft that are effectively used by, but not property of, companies holding the air carrier licence. In such case, the title different from property, based upon which the registration is made, shall result from the National Aircraft Registry and the registration certificate.

- 13** Is there a register of aircraft mortgages or charges, and if so how does it function?

Mortgages are registered with the Italian Aircraft Registry kept by ENAC. Registration is made by filing the mortgage deed duly certified by a notary public with the relevant department of ENAC. ENAC records the mortgage on both the Aircraft Registry and the Certificate of Registration of the relevant aircraft. Failing registration, the mortgages are null and void. A mortgage is the most common priority on aircraft and the only one which can be voluntarily granted. Other lien on an aircraft can only arise by law or by judicial order.

- 14** What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

The Italian courts may order the attachment on any Italian or foreign aircraft for unpaid charges provided under article 6 of Law No. 324 dated 5 May 1976, which states joint liability of the owner of the aircraft and the operator for the payment of any rights, taxes and interests to the airports. Moreover, in Italy an aircraft can be attached, pursuant to article 1023 of the Italian Navigation Code, which provides certain liens on the aircraft by cause of its operation.

- 15** Do specific rules regulate the maintenance of aircraft?

ENAC has issued technical regulations about maintenance programmes as well as various circulars (ie, NAV 26C dated 24 January 2007, NAV 6A, NAV 13, NAV 26B, NAV 31A and NAV 42) regulating aircraft maintenance operations. Moreover, ENAC applies international rules governing the maintenance of aircraft (ie, JAR/EASA 145).

Airports

- 16** Who owns the airports?

Most of the Italian Commercial Airports are state-owned and managed by concessions from the State to private companies, according to article 2 of Ministerial Decree No. 521 dated 12 November 1997. Such companies can be participated by a public entity, such as regional, provincial, municipal or other local public entities (eg, the chamber of commerce).

There are many private aerodromes devoted to activities such as general aviation, flying schools, parachuting, etc.

- 17** What system is there for the licensing of airports?

The interested party must file an application pursuant to Ministerial Decree No. 521 dated 12 November 1997. Provided that all the necessary requirements are met, the Ministry of Transport entrusts the management of the relevant airport by decree.

- 18** Is there a system of economic regulation of airports, and if so, how does it function?

A system of economic regulation for airports is provided by Law No. 324 dated 5 May 1976 and by Law No. 537 dated 24 December 1993, as amended by article 11 of Law No. 248 dated 2 December 2005.

According to the above rules, aircraft and passenger traffic to and from national airports are subject to the following charges and duties fixed by law:

- landing and departure charges;
- parking charges; and
- boarding of passengers charges.

Pursuant to article 11 of Law No. 248 dated 2 December 2005, airport charges are fixed by a Decree of the Ministry of Transport on the basis of certain criteria established by a government committee called the Comitato Interministeriale Programmazione Economica (CIPE).

- 19** Are there laws or rules restricting or qualifying access to airports?

Yes. In particular, in relation to handlers and other service providers, the relevant rules are contained in Legislative Decree No. 18 dated 13 January 1999, implementing Directive 96/67/EC. Which allows only ENAC-licensed handlers and service providers access to airports. The ENAC licences are granted on the basis of the requirements set out in section 13 of Legislative Decree No. 18/99 and in Circolare APT 02A issued by ENAC on 25 January 2007. Additionally, Circolare APT-19 issued by the ENAC on 26 October 2005, section 2.2 about the airport regulation system, governs handlers' and service providers' access to airports. It also sets out regulations that each airport has to implement.

- 20** How are slots allocated at congested airports?

At congested airports, slots are allocated in accordance with EU Regulation No. 95/93, as amended by EU Regulation No. 793/04 and in particular article 6. As already mentioned, in special cases, such as for Milan Linate airport, slot allocation is further governed by ministerial decrees (Ministerial Decree dated 3 March 2000 (Bersani I) and Ministerial Decree dated 5 January 2001 (Bersani II)) restricting the slot allocation to European Union carriers and limiting the number of slots to the requested destination on the basis of the number of passengers with the destination airport (article 1 of Bersani II).

- 21** Are there any laws or rules specifically relating to ground handling?

EU Directive No. 96/97 of 15 October 1996 on access to the ground handling market at European Community airports has been implemented in Italy by Legislative Decree No. 18 dated 13 January 1999.

Additionally, ENAC has issued the Circolare APT 02A on 25 January 2007.

- 22** Who provides air traffic control services and how are they regulated?

ENAV SpA is the Italian company in charge of controlling and supporting air traffic. It became a publicly controlled joint-stock company on 1 January 2001, according to Law No. 665 dated 21 December 1996, as amended by Law No. 144 dated 17 May 1999.

ENAV's aim is to:

- allow aircraft to fly within the assigned airspace with constantly enhanced levels of safety, optimising the effectiveness of the service provided and the efficiency of the company; and
- handle the airspace safely and consistently, guaranteeing operational continuity and regularity.

ENAV provides three main types of service:

- air space management (ASM);
- air traffic flow management (ATFM); and
- air traffic services (ATS).

Based on the requirements of the International Civil Aviation Organisation (ICAO), the tasks of the ATS are to:

- prevent collisions between aircraft;
- prevent collisions between aircraft in the manoeuvring area and obstructions in that area;
- expedite and maintain an orderly flow of air traffic;
- provide advice and information useful for the safe and efficient conduct of flights; and
- notify appropriate organisations regarding aircraft in need of search and rescue aid, and assist such organisations when required.

Liability and accidents

- 23** Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Liability of air carriers for the death of, or injury to, passengers and loss or damage to baggage or cargo in respect of domestic carriage is governed by the Montreal Convention dated 28 May 1999 (Convention for the unification of certain rules for international carriage by air), which entered into force in Italy on the 60th day (28 June 2004) after the 30th ratification (article 56, paragraph 6), as implemented and integrated by EU Regulation No. 889/2002 dated 13 May 2002.

- 24** Are there any special rules about the liability of aircraft operators for surface damage?

Liability of aircraft operators for surface damage is regulated by article 965 of the Italian Navigation Code. According to article 965, the liability of an aircraft operator for surface damage caused by an aircraft is entirely governed by international rules applicable in Italy. These also apply to damage caused in Italian territory by aircraft registered in Italy as well as to state aircraft.

- 25** What system is there for the investigation of air accidents, including procedures?

Air accidents are regulated by articles 826 to 833 of the Italian Navigation Code.

The airport manager and public security authorities have to immediately inform the judicial authority and the Agenzia Nazionale per la Sicurezza del Volo, the national agency for flight safety, of any accidents (Legislative Decree No. 66 dated 25 February 1999 which implemented EU Directive No. 94/56 containing the basic principles governing the investigations of civil aviation accidents and incidents).

Pursuant to article 826, the technical investigations of air accident and incidents, if any, are conducted or supervised by the

Agenzia Nazionale per la Sicurezza del Volo in cooperation with the authorities responsible for the judicial inquiry.

According to Legislative Decree No. 66/99 any investigation of an accident or incidents shall be the subject of a report in a form appropriate to the type and seriousness of the accident.

- 26** Is there a mandatory accident and incident reporting system, and if so, how does it operate?

The captain of the aircraft concerned has to record the accident or incident in the flight book and report it to the ENAC (local airport) immediately after landing.

Additionally, according to articles 828 and 829 of the Italian Navigation Code, as amended by article 17 of Legislative Decree No. 66 dated 25 February 1999, the airport director and any other public authority, upon knowledge of an accident or incident, have to immediately report it to the competent judicial authority, the Agenzia Nazionale per la Sicurezza del Volo and the ENAC.

Competition law

- 27** Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

General competition law rules apply to the aviation sector. No special rules are in force.

- 28** Is there a sector-specific regulator or are competition rules applied by the regular competition authority?

The competition rules are applied by the regular competition authority, ie, the Autorità Garante della Concorrenza e del Mercato.

- 29** How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

In the aviation sector, the Autorità Garante della Concorrenza e del Mercato has distinguished between the charter and scheduled flights markets. For charter flights, the geographical market is divided into long-haul routes and medium or short-haul routes that are then divided into areas thus: European countries and the Mediterranean Sea. The relevant market for scheduled flights is defined on the basis of the single routes operated by air carriers involved in a competition assessment.

- 30** What are the main standards for assessing the competitive effect of a transaction?

The Autorità Garante della Concorrenza e del Mercato takes into account the following standards:

- the possibilities of substitution available to suppliers and users;
- the market position of the undertakings;
- the access conditions to suppliers or markets;
- the structure of the relevant markets;
- the competitive position of the domestic industry;
- barriers to the entry of competing undertakings; and
- the evolution of supply and demand for the relevant goods or services.

della Concorrenza e del Mercato after an investigation has been performed:

- in the event of an alleged infringement of section 2 (Agreements restricting freedom of competition) or section 3 (Abuse of a dominant position) of Law No. 287/1990; or
- if the authority considers that a concentration may be subject to prohibition under section 6 (Prohibition on concentrations restricting free competition) of Law No. 287/1990.

In the event of infringements under the first of these points, the authority sets a deadline within which the undertakings and entities concerned have to remedy the infringements. In the most serious cases it may decide, depending on the gravity and duration of the infringement, to impose a fine up to 10 per cent of the turnover of each undertaking or entity during the previous financial year. In the case of non-compliance, the authority shall impose a fine of up to 10 per cent of the turnover of each undertaking or entity during the prior financial year. In the case of non-compliance, the authority shall impose a fine up to 10 per cent of the turnover. The authority shall also set a time limit for the payment of a fine. In cases of repeated non-compliance, the authority may decide to order the undertaking to suspend activities for up to 30 days.

If, following an investigation under the second point, the authority ascertains that a concentration falls within the scope of section 6 of Law No. 287/1990, it shall prohibit the same. If the concentration has already taken place, the authority may require measures to be taken in order to restore conditions of effective competition, and remove any effects that distort the same (for example it may order the acquiring party not to exercise the acquired voting rights).

The authority imposes administrative fines on undertakings which implement a concentration in violation of the prohibitions above, ranging from a minimum of one per cent to a maximum of 10 per cent of the turnover of the business forming the object of the concentration. The authority may also impose administrative fines on undertakings that fail to comply with the prior notification requirements in the amount of 1 per cent of the turnover of the year before the year in which the undertaking is challenged, over and above any other penalties for which it may be liable.

Financial support and state aid

- 32** Are there sector-specific rules regulating direct or indirect financial support to individual companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, are there general state aid rules that apply?

General state aid rules provided by the EC Treaty are applied in Italy and in the aviation sector. No sector-specific rules regulating direct or indirect financial support to individual companies by the government or government-controlled agencies or companies exist.

- 33** What are the main principles of the state aid rules applicable to the aviation sector?

No special rules regulating the state aid exist in the aviation sector.

The main principles of the state aid rules are contained in article 87 of the EC Treaty. Pursuant to article 87, any aid granted

the production of certain goods.

- 34** Are there exemptions from the state aid rules or situations in which they do not apply?

There are some circumstances in which the state aid rules do not apply, such as in the case of de minimis aid. The threshold of €100,000 in a three-year period, as considered by the European Commission, is applied in Italy.

Moreover, certain exemptions are provided under laws issued by Italy in accordance with article 87 paragraph III of the EC Treaty (ie, Law No. 808 dated 24 December 1985, on the public funding subsidies granted to promote the technologic development of the aeronautic industry as well as to increase relevant employment). Other situations in which the state aid rules do not apply are provided on a case-by-case basis in compliance with EU exemption regulations.

- 35** Must clearance from the competition authorities be obtained before state aid may be granted?

Clearance from the Autorità Garante della Concorrenza e del Mercato does not have to be obtained before state aid can be granted. Instead, the European Commission must be informed about any potential new aid or about plans to grant or alter aid. If the European Commission determines that such aid or plans are not compliant with the common market, having regard to article 87, it shall impose that the state concerned must withdraw or alter such aid, fixing the relevant term.

- 36** If so, what are the main procedural steps to obtain clearance?

See question 35.

- 37** If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

Upon a negative decision of the European Commission in cases of unlawful aid, Italy is required, pursuant to article 14 of EU Regulation No. 659/1999, to take all necessary measures, in compliance with Italian laws, to recover the aid from the beneficiary, except when the recovery is contrary to a general principle of EU law. The recovery measure is usually adopted by an administrative act, which can be challenged by the beneficiary of the aid before the competent Italian courts.

Miscellaneous

- 38** Is there any aviation-specific passenger protection legislation?

ENAC has issued regulations, in particular Circolare APT 23 dated 23 June 2006, implementing EU Regulation No. 261/04, establishing common EU rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delays of flights. Package travel, holiday and tours are regulated, including liability, by Legislative Decree No. 206/2005. The same decree provides a special fund to reimburse passengers in case of bankruptcy (limited to passengers having purchased package tours). With reference to disabled passengers, ENAC, according to Law No. 104/1992 and Presidential Decree No. 503/1996,

Update and trends

The most important airports management company has challenged before the competent administrative court some acts issued by ENAC implementing the provisions set forth by Law No. 248 dated 2 December 2005 (Law No. 248/2005).

Law No. 248/2005 has introduced certain provisions intended to support the development of airports and air traffic control and to optimise the costs for the airlines in connection therewith:

In particular, Law no. 248/2005 provides:

- for the reduction of airport charges to 75 per cent of the previous ones;
- a new calculation for fees related to passengers and luggage control, to be shared between airports and airlines; and
- that airports and suppliers of services cannot charge royalties on services set forth in Council Directive 96/67/CE dated 15 October 1996, apart from when such royalties reflect the costs actually borne to perform the services.

Recently, the competent administrative court (Tribunale Amministrativo Regionale del Lazio) has rejected the airports' challenges. The decision of the administrative court can be still appealed before the Supreme Administrative Court (Consiglio di Stato).

has issued a regulation (Circolare EAL-11, dated 17 December 2003) regarding the assistance of passengers with reduced mobility. Moreover, the European Parliament has issued Regulation No. 1107/2006, dated 5 July 2006, about the rights of disabled persons with reduced mobility when travelling by air, applicable from 26 July 2008, except for articles 3 and 4, which will enter into force from 26 July 2007.

EU Regulation No. 2299/89, as amended by EU Regulation No. 323/1999, which sets out the code of conduct for computer reservation systems, is applied in Italy.

39 Are there mandatory insurance requirements to operate aircraft?

Insurance for hull-risk, hull war-risk, and liability for damage incurred by crew and passengers is mandatory (articles 935 and 941 of the Italian Navigation Code).

40 What legal requirements are there with regard to aviation security?

Article 5 of Law No. 217, dated 28 February 1992, provides certain rules about aviation security services activities. The rules have been then implemented by Ministerial Decree No. 85 dated 29 January 1999, which set forth the legal requirements that the suppliers of security services are required to meet in order to be licensed by the ENAC. The following requirements are provided:

- professional, technical, insurance and financial capabilities;
- reliability in carrying on the activities;
- the registered office to be located in Italy; and
- share capital not to be lower than €50,000.

The ENAC has also issued Circulars SEC-01, SEC-02 and SEC-03, dated 10 October 2004, which provide technical regulation of the activities of the aviation security services.

41 What serious crimes exist with regard to aviation?

The Italian Navigation Code provides some crimes specific to aviation (see sections 1080 to 1248). In particular, the following have to be noted in term of seriousness:

- defection (article 1091 of the Italian Navigation Code);
- a passenger disregarding an order given by the crew (articles 1094 and 1095 of the Italian Navigation Code);
- abandonment of an aircraft in distress by the captain or by the crew (articles 1097 and 1098 of the Italian Civil Code);
- offences against the captain or officer (article 1104 of the Italian Civil Code);
- mutiny (article 1105 of the Italian Navigation Code); and
- piracy (article 1135 of the Italian Navigation Code).

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