

**DIARY DATES**

**9<sup>TH</sup> ST. PETERSBURG AIR LAW  
CONFERENCE**

4 October 2019  
Saint Petersburg, Russia  
Laura Pierallini, moderator

**12<sup>TH</sup> ANNUAL MCGILL CONFERENCE ON  
INTERNATIONAL AVIATION**

18-19 October 2019  
Montreal, Canada  
Laura Pierallini, speaker

**31<sup>ST</sup> EALA ANNUAL CONFERENCE**

8 November 2019  
Paris, France  
Laura Pierallini, moderator

**AWARDS AND RECOGNITION**

**LAURA PIERALLINI RECOGNISED AS AVIATION  
LAWYER (REGULATORY) OF THE YEAR 2019  
BY WHO'S WHO LEGAL**

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**ICAO – REMARKABLE ACHIEVEMENT FOR ITALY**

*By Laura Pierallini*

It is certainly a source of pride the recognition obtained by Italy at the fortieth General Assembly of the International Civil Aviation Organization (ICAO), that has re-confirmed the key role of our country in the civil aviation sector.

On that occasion, held in Montreal on 28 September 2019, the 36 members of the Council have been elected for the next 3 years. The ICAO is one of the two governing bodies of the ICAO and, among its key functions, it is responsible to convene the Assembly, to appoint the Secretary General and to adopt international standards and recommended practices (SARPs).

The Council is divided into 3 groups of countries on the basis of their relevance in the aviation industry. Italy has been named as a member of the Council's first group (namely “*States of chief importance in air transport*”), achieving the excellent result of 160 votes out of 168 and so resulting the most voted country worldwide *ex aequo* with China (the first ranked among the

European countries).

Italy is a member of the Council since 1951 and, for more than 50 years (i.e. from 1962), it has held an important role in the first group of countries, contributing to the accomplishment of common strategic targets aimed to the development and growth of the air transport.

This result is a clear recognition by all the ICAO member States of the leadership, continuing efforts and strategic role of the Italian aviation system, specifically the Civil Aviation Authority (ENAC), the Ministry of Foreign Affairs and International Cooperation, the Ministry of Infrastructures and Transports and the permanent national delegation at the ICAO.

The forthcoming task of the newly elected Council will be to vote its President for a three-year term. In this respect the European Civil Aviation Conference (ECAC) has designated Mr. Salvatore Sciacchitano as the sole European candidate for the said position, which - by the way - would be covered for the first time by a European representative and would also confirm the prominent role of Italy within the ICAO.

**C-464/18: THE “RIGHT JUDGE” TO GET THE COMPENSATION UNDER REGULATION (EU) NO. 261/2004**

*By Marco Marchegiani*

By judgment C-464/18 the Court of Justice of the European Union stated that the competent Judge to resolve upon a passenger’s claim pursuant to Regulation (EU) No. 261/2004 is not, as a rule, that of the place where the branch of an airline is located, specifically if the ticket is purchased online. The matter is relating to a request of compensation filed before the Court of Girona (Spain) for a delay of a Ryanair flight from Porto to Barcelona. The Spanish Court questioned its competence as the claiming passenger had neither residence, nor domicile in Spain and having Ryanair its headquarter in Ireland although it also owned a branch in Girona. Ryanair did not appear and raised no objections against the jurisdiction of the Court of Girona.

The Court of Justice preliminarily observed that the matter on international jurisdiction has to be examined under Regulation (EU) No. 1215/2012, which recognises the possibility to determine the jurisdiction of the place where a branch of a Company is established (article 7, no. 5), provided that such branch can be qualified as an operating centre aimed to permanently be an extension of the parent body with own direction and resources capable to autonomously manage the business with third parties. In the case, however, the ticket had been purchased online through the airline website, so there were no elements to determine the active involvement of the Spanish branch for the execution of the air transport agreement between Ryanair and the passenger. Consequently, the Court of Justice stated that *«a Court of a member State is not competent to decide a dispute concerning a claim for compensation brought under the regulation-EU261 and directed against an airline established in the territory of another Member State, for the fact that this company has a branch in the district of the jurisdiction seised, without this branch having a role in the legal relationship between the company and the passenger»*. Moreover, referring to the absence of Ryanair objections on the competence of the Spanish Judge, the Court of Justice pointed out that, even if in principle the appearance of a defendant not challenging the specific jurisdiction could result in a silent acceptance of such jurisdiction, *«a mere absence of observations cannot be considered as an appearance and therefore as a silent acceptance by the defendant*

*of the jurisdiction of the Court seised»*. Therefore, not even this principle has been sufficient to determine the jurisdiction of the Court of Girona, which has indeed been denied.

**THE ALTERNATIVE DISPUTE RESOLUTION APPLIED TO REGULATION (EU) NO. 261/2004**

*By Gianluigi Ascenzi*

The Irish airline Ryanair and Codacons, the largest Italian consumer association, have signed a valuable partnership according to which they shall cooperate to settle the Italian passengers’ claims under the Regulation (EU) No. 261/2004 according to an Alternative Dispute Resolution (ADR) system. Effective from 2 September 2019, Ryanair and Italian customers will have the opportunity to resolve such claims in a quick, simple and out-of-court manner through an ADR platform managed and coordinated by Codacons, which will supervise the procedure in order to appropriately protect any affected consumers. This will provide passengers with an independent mechanism to resolve complaints and the certainty that they will be managed to the highest professional standards. The advantages brought by the ADR mainly consist in the speed and effectiveness on the solution of conflicts and in streamlining the judicial load, keeping at the same time the expenses of either party as low as possible. The use of the ADR mechanism applied to the resolution of claims arising from delays and cancellations of flights certainly represent a significant major innovation for the Italian civil aviation industry. The figure of the Italian “aviation mediator” launched by the above partnership in relation to passengers’ claims is envisaged to constitute an key model for other EU jurisdictions bringing substantial and valuable benefits for both airlines and consumers.

**PUBLICATIONS**

Among the initiatives to celebrate the 75<sup>th</sup> anniversary of 1944 Chicago Convention, the publication **“Behind and Beyond the Chicago Convention: The Evolution of Aerial Sovereignty”**, published by Prof. Pablo Mendes de Leon and Niall Buissing of the International Institute of Air and Space Law at Leiden University stands out. Laura Pierallini had the honour of contributing to this publication writing the chapter **“Sovereignty: The Implications of the EU Internal Air Transport Market for Air Services Agreements with Third Countries”**.