

**DIARY DATES**

**IATA LEGAL SYMPOSIUM 2016**  
17-19 February 2016  
Barcelona, Spain  
Studio Pierallini, Silver Sponsor  
Laura Pierallini, Speaker

**LEIDEN-SARIN**  
**INTERNATIONAL AIR LAW MOOT COURT**  
IIALS Leiden  
Sarin Foundation  
Indonesian Air Law Society  
7-10 April 2016  
Jakarta, Indonesia  
Studio Pierallini, Sponsor  
Laura Pierallini, Judge

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**THE INSURANCE OBLIGATION FOR REMOTELY PILOTED AERIAL VEHICLES (“DRONES”) AND LIABILITY IN CASE OF SURFACE DAMAGES TO THIRD PARTIES**  
*By Francesco Paolo Ballirano*

The Italian civil aviation authority (ENAC) issued a Regulation on the “Remotely Piloted Aerial Vehicles” (RPAVs) which provides the legal framework for the professional operation of the so-called “drones” on the Italian territory. Art. 32 of the Regulation introduced a mandatory insurance coverage for RPAVs stating that: “a RPAV cannot be operated without a valid, adequate third party insurance, not less than the minimum insurance coverage of the table in Article 7 of Regulation (EC) No 785/2004”. Such table sets out the minimum insurance coverage per accident, for each and every aircraft, depending on its Maximum Take Off Mass (MTOM). According to that table, for drones with a take-off weight below 500 kilos (which are the majority of the RPAVs on the market) the minimum insurance coverage per accident shall be 750.000,00 SDRs (Special Drawing Rights - equal to 962.843,24 Euro). The legal framework of the liability of the RPAVs’ operators towards third parties needs to be analysed taking into account the specific rules under the Italian Navigation Code. According to Article 743 thereof: “Remotely piloted aerial vehicles are also considered aircraft, as defined by

*special laws, ENAC regulations and, for the military, by decrees of the Ministry of Defence”. Therefore, the liability of RPAVs’ operators is governed by the same rules provided for the conventional aircraft, which are stated in the Rome Convention of 1952 on damages caused to third parties on the surface. Although the application of the Rome Convention is limited to the damages caused in the territory of a contracting State by an aircraft registered in the territory of another contracting State (Article 23), Article 965 of the Navigation Code extends its application to damages caused within the Italian territory by aircraft registered in Italy. Indeed, according to Article 965, the liability of an operator for damages caused by an aircraft on the surface is entirely governed by international rules applicable in Italy and these also apply to damages caused in the Italian territory by aircraft registered in Italy as well as to state aircraft. This regime provides a strict liability (causal link required only) upon the aircraft’s operator, who shall be liable for the damages without the need to prove its negligence or its wilful misconduct. The limitation period for actions aimed to recover damages is two years from the date on which the event causing the damages occurred. The aircraft operators’ liability for surface damages is regulated by a special liability limitation. On this point, according to Article 971 of the Navigation Code “the overall liability of the operator, responsible under Articles 965 and*

967, is limited to the amounts set forth in the EU regulation as to the minimum third party insurance for each accident accrued". Such provision makes therefore reference to the minimum insurance requirements provided for by Regulation (CE) no. 785/2004, mentioned by Article 32 of the ENAC Regulation for RPAVs, the liability limitation for surface damages caused by RPAVs to third parties shall be equal to the minimum insurance coverage provided for RPAVs according to Article 32 of ENAC Regulation. Therefore, in case of damages caused by a drone with a take-off weight under 500 kg, the liability limit is set to 962.843,24 Euro as per the minimum insurance coverage set out in the above mentioned table contained in Article 7 of Regulation (CE) no. 785/2004.

The liability for surface damages caused to third parties by aircrafts and RAPVs according to Article 965 of the Navigation code benefits of a different regime than the Civil Code liability. Although the strict liability regime implies a burden of proof more favourable for the injured party, who just needs to prove that the RAPVs caused the surface damage, it is worth to consider that the operator benefits of a more favourable regime than the one under the Civil Code.

Such regime is a sure advantage for the operators also if we take into account that damages caused by the use of RAPVs could be much higher than the limits set out by Article 971 of the Navigation Code, whereas the Civil Code rules (which do not apply to damages caused by aircraft according to the *lex specialis derogat lex generalis* principle) do not provide for any limitation on the compensation for damages. Equally, the short-term limitation period of two years for a liability action under the Navigation Code is clearly favourable for the operators as the claimant has to file the action for compensation in a shorter time.

#### **IATA LEGAL SYMPOSIUM 2016 BARCELONA, SPAIN**

*By Francesco Grassetti*

This year the Legal Symposium organized by the International Air Transport Association (IATA) will take place from the 17<sup>th</sup> to the 19<sup>th</sup> of February 2016 in Barcelona, Spain.

The conference will cover a wide range of global legal topics, from airline acquisitions and alliances to the growth of Latin America market, from actual trends in aircraft finance and leasing to recent developments in respect of insurance issues.

With a broad participation by airline counsel, private practitioners and regulators from most of the industrial countries, the IATA Legal Symposium is the world's principal aviation law conference. Our firm will contribute to the conference as silver sponsor and Ms. Pierallini will be speaker in the panel called "A 'post-mortem' for proportionality in consumer protection", focused on the actual scope and impact of Regulation (EC) No. 261/2004 for the airline industry.

#### **ENAC RELEASES A NEW CIRCULAR ON THE REQUIREMENTS TO OBTAIN AIR TRANSPORT LICENCES** *By Valentina Garbuio*

On 23 December 2015 the Italian Civil Aviation Authority (ENAC) issued the Circular EAL 16/A, concerning the procedures carried out by ENAC to evaluate the organizational, economic and financial requirements to obtain air transport licences within the framework of the Regulation (EC) No. 1008/2008.

As pointed out by the European Commission through Communication to the Parliament (COM 2013-129 final), the suitability of the organizational, economic and financial position of carriers is a necessary condition for the safety of operations and the ability to fulfil commitments taken towards users.

For this reason, the new Circular is much strict in providing requirements to be met by the operators and, in that respect, it quotes in full art. 4 of Reg. (EC) no. 1008/2008 (on the conditions for granting an operating licence). In addition to the previous ENAC provisions, it is now required that the company structure includes specific professionals in charge of the administrative, economic-financial and commercial departments, and that the company directors have not been finally convicted nor involved in bankruptcy of businesses.

Furthermore, pursuant to art. 5 of Reg. (EC) no. 1008/2008, the applicant undertaking must demonstrate that it can accomplish its actual and potential obligations for a period of 24 months from the start of operations. It must also demonstrate the capability to afford fixed and operational costs related to its business plan and established under realistic assumptions, for a period of 3 months from the start of operations and without taking into account any income from its activity.

Of course these requirements must be satisfied for the entire validity of the licence and, accordingly, at any time ENAC is entitled to suspend the same, while the revocation of the licence is resolved: (i) due to the revocation of the Air Operator Certificate; or (ii) whether upon suspension the air carrier is unable to reinstate the prescribed requirements; or (iii) the air carrier deliberately submits false information to the Authority.

#### **AIR PASSENGER RIGHTS – TEN YEARS ON**

Edited by Michal Bobek and Jeremias Prassl, the book "Air Passenger Rights – Ten Years On" is being published by 28 January 2016, focusing on the controversial application and the impact for the European airlines of Regulation (EC) 261/2004. Ms. Pierallini is the author of the 13<sup>th</sup> chapter of the book, concerning the Italian experience and trends.