

DIARY DATES

**IATA LEGAL SYMPOSIUM 2019
INTO THE FUTURE**

6-8 March 2019

Rome, Italy

Laura Pierallini, moderator

Studio Pierallini, Platinum Sponsor

EBA - AMAC CONVENTION

13 March 2019

Brussels, Belgium

Studio Pierallini, subcommittee member

**INTERNATIONAL AVIATION CONFERENCE
AEROCLUB OF INDIA/ LEIDEN UNIVERSITY**

4 April 2019

New Delhi, India

Laura Pierallini, speaker

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FOCUS ON THE IATA LEGAL SYMPOSIUM



**TOWARDS THE HARMONIZATION OF
THE EUROPEAN RULES ON UNMANNED
AIRCRAFT**

By Francesco Grassetti

Regulation (EU) 2018/1139 – referred to as the “new” Basic Regulation as it replaced Regulation (EC) No 216/2008 on common rules in the field of civil aviation – came into force on 11 Sept. 2018 and can be considered a further step ahead in view of a widely expected EU legislation on unmanned aircraft. The newly issued Regulation covers unmanned aircraft regardless of their operating mass, since its provisions are extended to all type of drones (either below or above 150 Kg operating mass). The reasoning behind the new approach is explained by Recital 26, stating that “*Since unmanned aircraft also operate within the airspace alongside manned aircraft, this Regulation should cover unmanned aircraft, regardless of their operating mass. Technologies for unmanned aircraft now make possible a wide range of operations and those operations should be subject to rules that are proportionate to the risk of the particular operation or type of operations*”. Pursuant to article 55 of the new Basic Regulation, the design, production, maintenance and operation of unmanned aircraft

(and their engines, propellers, parts, non-installed equipment and equipment to control them remotely), as well as certification and registration duties, shall comply with the essential requirements set out in Annex IX. These requirements shall apply to the design, production, operations and registration of drones. It is also provided that – taking into account the nature and risks of the activity concerned, the operational characteristics of the unmanned aircraft concerned and the characteristics of the area of operation – a certificate may be required in relation to the design, production, maintenance and operation activities. In the event that a certification is needed, additional essential requirements shall be complied with in terms of airworthiness and organization.

Furthermore, according to articles 56-57-58 of the new Basic Regulation, detailed provisions shall be laid down by way of delegated and implementing acts to be adopted by the European Commission, particularly expected with regard to rules, conditions and procedures for: (i) design, production and maintenance; (ii) registration and marking; (iii) establishing digital and harmonized national registration systems; (iv) issuing, maintaining, amending, suspending or revoking certificates (including personnel); (v) flight operations

(including personnel involved in those operations). The EU Commission will now have a period of 5 years (starting from 11 Sept. 2018) in order to adopt the mentioned implementing acts, based on the technical opinions to be released by the EASA. In the meantime, each Member State will continue to have full authority on the regulation of drones, provided that each national legislation shall comply with the general guidelines established by the new Basic Regulation.

ITALIAN ANTITRUST PROCEDURE IN RELATION TO AIRLINES' NEW HAND BAGGAGE POLICY - UPDATE

By Marco Marchegiani

By precautionary order dated 31 Oct. 2018 the Italian Antitrust Authority (AGCM) required the EU carriers Ryanair and Wizz Air to suspend the implementation of a new hand baggage policy that provides the payment of a surcharge to bring on board a standard trolley (i.e. up 55x40x23 cm) for flights departing from 1 Nov. 2018. In practice, the two airlines allow to bring on board for free only a "small" hand baggage (i.e. up to 40x30x20 cm) to be stored exclusively under the passenger seat, while for larger hand baggage customers would pay an extra-fee between Euro 5 and 25 (based on the various booking options).

The AGCM held that the mentioned new policy would cause a misleading representation of the actual price of airfares, because the operators would exclude a predictable and non-avoidable charge from the final price of the air transport service. The result of this practice would affect the decision-making of average consumers, since they would not be able to figure out the final price, nor to make a comparison with fares proposed by other carriers. On such basis, the AGCM found a breach of Article 20, 21 and 22 of the Italian Consumers Code (re: unfair commercial actions and omissions against consumers) and resolved to suspend the new hand baggage policies. Both airlines decided to challenge the AGCM precautionary orders before the Italian Administrative Court (TAR), asking for its precautionary suspension and then revocation on the merits. The arguments to support the claimants' position can be summarized as follows: (i) the possibility for each passenger to bring on board a standard trolley is often prevented by limited space availability in the cabin of aircraft used for short and medium-haul routes, thus causing at least half of the passengers' hand baggage to be stored in the cargo hold. On the contrary, under the new policies, each passenger is allowed to carry on board one trolley for free, plus a bag or personal belonging (such as

a laptop case), and a surcharge is requested only for a second trolley of larger dimensions; (ii) the new policies are compliant with article 23 of Regulation (EC) 1008/2008 in terms of information and non-discrimination to the public, as they give a clear indication of the final prices and so it does not exist any "prior separation from the fare of a predictable and non-avoidable charge", as otherwise deemed by the AGCM. Indeed passengers are informed with full transparency about the new policies at the start of the booking process on the airlines' website; (iii) the suspension of the policies for all flights departing from Italian airports to International destinations (booked on the airlines' Italian website) would have a direct impact on thousands of flights operated every week, since passengers would be exposed to a different treatment based on the country of departure and nationality of the website used to book the ticket. With separate decisions on 22 Nov. 2018 (Ryanair) and 6 Dec. 2018 (Wizzair), TAR upheld the challenge of both airlines and, accordingly, suspended the AGCM precautionary orders by way of provisional measures.

On 21 Feb. 2019 the AGCM closed the administrative procedures imposing pecuniary fines to both airlines for unfair commercial practices (in the amount of Euro 3 million to Ryanair and Euro 1 million to Wizz Air) and confirming the order to interrupt the application of the subject policies. The airlines will now challenge the AGCM final resolutions before TAR and, in view of this challenge, the same TAR has postponed the public hearing to discuss the cases on the merits from 27 Feb. 2019 to 2 Oct. 2019.

FOCUS ON THE IATA LEGAL SYMPOSIUM

The world's premier annual aviation law event will take place in Rome, Italy, from 6 to 8 March 2019. This year the IATA conference will examine the key challenges of the legal and regulatory environment with a particular focus looking into the future. Following the Legal Forum on the first day, the two days conference programme will include hot topic plenary sessions. Among the others: (1) The future of aviation - drones and new model air transport services; (2) The Future of Airline Competition: Mergers, Alliances, Antitrust Immunity, and Entry; (3) Speed networking and the future of legal services; (4) The Future of Europe; (5) Airport privatization and balanced concession contracts. In the morning of Day 2, our Firm will be the sponsor of the 'Constance O'Keefe Writing Award' that will be presented by our Name Partner Ms. Laura Pierallini.