

THE AVIATION LAW  
REVIEW

EIGHTH EDITION

Editor  
Sean Gates

THE LAWREVIEWS

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REVIEW

EIGHTH EDITION

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This article was first published in July 2020  
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Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

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ISBN 978-1-83862-435-4

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ANJARWALLA & KHANNA LLP

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# PREFACE

I am delighted to continue to be associated with *The Aviation Law Review*, of which this is the eighth edition. Aviation continues to be among The Law Reviews' most successful publications; its readership has been vastly enhanced by making it accessible online to over 12,000 in-house counsel, as well as subscribers to Bloomberg Law and LexisNexis. This year I welcome new contributions from France, South Korea and Spain, plus two new chapters concerning covid-19, as well as extending my thanks and gratitude to our other new contributors and to our regular contributors for their continued support. Readers will appreciate that contributors voluntarily donate considerable time and effort needed to make these contributions as useful as possible to them. All contributors are selected based on their knowledge and experience in aviation law, and we are fortunate to enjoy their support.

Covid-19 is inevitably the focus of attention in our sector as in all others. The loss of life is the paramount concern and dominates one's thoughts. However, the commercial devastation also has consequences for the wellbeing of humanity given the financial damage it is wreaking, which is particularly pronounced in the travel industry. With airlines grounded by travel bans and the closure of airspace, all the participants in the industry at large are facing financial collapse as revenue disappears and fixed costs remain. Lessors still need to be paid, routine maintenance cannot be ignored, staff have to be paid or discharged, and even with the patchwork of governmental support around the world, there are bound to be many who fail and a few, not necessarily among the most efficient, that survive. At the time of writing, it is too early to forecast the landscape post pandemic, but it will certainly be changed forever, with probably the most significant impacts on leisure and regional carriage, the former being more expensive to address distancing practices and the latter with their smaller balance sheets being less able to withstand the loss of revenue.

Much has been written on the question of whether contractual liabilities will be impacted by the consequences of the pandemic, and in this edition I am pleased to have worked with colleagues in Belgium and Germany, to whom I extend my thanks, on articles addressing these issues and on EU 261. The latter is a work of the Commission in progress at the time of writing with short- and long-term discussions ongoing concerning the pernicious effects of this extensively juridically rewritten regulation. The outcome of those discussions is awaited, albeit with some dread!

When I last wrote this preface, the shocking B737 Max disaster was unfolding. The method of self-approval adopted by Boeing with the support of the FAA has been the subject of much criticism, the more so since approval by the FAA has routinely been followed by other regulators hitherto without serious challenge and because the FAA was the last, rather than the first, influential regulator to ground the type following the two fatal accidents. The consequences are still unfolding, but in the meantime, Boeing has managed to refinance itself

and continues to deal with the claims of airlines whose fleets were grounded pre pandemic. The intervention of that virus may have perversely given the company some relief from its continuing obligations, though the damage to its reputation for trustworthiness will take longer to repair, leaving Airbus in a much stronger position. In addition, the ending of the merger talks with Embraer may lead to the reemergence of the latter as challenger in at least the single aisle jet market. The Federal Bureau of Investigation continues its criminal investigation of the certification of the type, following the establishment of a grand jury investigation of the certification process and the investigations based on the embarrassing disclosures of emails from within Boeing graphically charting the recognition of their engineers of the unsafety of the type.

It is hoped EASA will reconsider its reliance on other regulators' type certificates, as well as any reliance it places on European manufacturers for type approval. The cost of adequate regulation in all jurisdictions must be met centrally, as was heavily recommended as long ago as 2000 in the Rand Institute's report 'Safety in the Skies' on the aviation accident investigation process. The appetite of the EU in this respect and the willingness of Member States to pay in the current financial and political environment, are not reliable grounds for optimism in this respect.

The impact of Brexit on European aviation remains unclear with the latest indications being that a comprehensive deal may not be reached, though an arrangement regarding traffic rights is likely to be made regardless. Major carriers are securing air operator certificates from within states in the EU, and some are also now ensuring they satisfy the European tests for majority ownership. How IAG manages its interests in BA and Iberia/Aer Lingus will be of particular interest.

The second European Aviation Environmental Report (EAER) was published last year and provided an updated assessment of the environmental performance of the aviation sector published in the first report of 2016. It reports that continued growth of the sector has produced economic benefits and connectivity within Europe and is stimulating investment in novel technology but recognised that the contribution of aviation activities to climate change, noise and air quality impacts had increased, thereby affecting the health and quality of life of European citizens. Indeed, air pollution has repeatedly been identified as a factor in covid-19. The impact of the pandemic on environmental pollution has been well documented, and the reduction in air travel has contributed to this. There is pressure to attempt to secure the environmental benefits of the lockdown on a more long-term basis, which might accelerate the development of new technologies. If Member States would stop pandering to solipsistic sectional national and labour interests to permit the true operation of the Single European Sky ATM Research (SESAR) programme, massive environmental advantages could be secured, but as usual incompetent short-termism seems likely to prevail in politics to the detriment of industry and the environment. It is hoped one day we will see an unfettered SESAR introduced, although the decision by the EU to prevent UK carriers from using carbon offsets does not suggest an overwhelming dedication to the environment.

The UK airline insolvency review was established by the Chancellor to research better ways to deal with the collapse of airlines following the numerous recent high profile airline bankruptcies of Monarch, Thomas Cook, Flybe and others. The review has now reported. The obvious solution adopted elsewhere of using the assets of the insolvent airline to repatriate its customers is one of the alternatives recommended and it is hoped, notwithstanding the current stasis in legislation in the UK for other reasons, will be one given urgent attention. The creation of a special administration regime changing the purpose of an

airline's administration to the repatriation of its passengers as a first priority over payment of creditors and ensuring payments of salaries and costs during rescue efforts would enormously mitigate the cost otherwise imposed on taxpayers via the UK government's current approach of arranging and paying for alternative air transport from other operators where inevitably the rates charged are at the highest end of the spectrum. The government has yet to publish a formal response. However, on 25 September 2019, in response to questions about the collapse of Thomas Cook, the Secretary of State for Transport, Grant Shapps, told the House that the government would be looking at the reforms proposed by the review. In a subsequent letter to Lilian Greenwood, Chair of the Transport Committee, the Secretary of State wrote that he was determined to bring in a better system for dealing with airline insolvency and repatriation. The Queen's Speech delivered on 14 October 2019 included proposals for legislation on airline insolvency. Subsequent events have of course delayed the process but hopefully when normal services are resumed this too will be addressed.

The pandemic has highlighted the benefits of drone technology with medical and other supplies being delivered to vulnerable individuals and population centres by use of the technology. Airport closures have of course ceased to be a factor in the current times, but seem likely to resume and possibly even increase, led by environmental groups seeking to address the perceived threat of the industry to the environment. Various jurisdictions are contemplating a range of responses including tighter regulations on the use of drones over a low mass, and registration and insurance requirements for operators of larger and commercial vehicles. New technologies to counter potentially disastrous encounters with commercial aircraft are being developed, but inevitably these solutions will be met by new challenges in the remotely piloted vehicle arms race.

Once again, I would like to extend my thanks to the many contributors to this volume and welcome those who have joined the group. Their studied, careful and insightful contributions are much appreciated by all those who now refer to *The Aviation Law Review* as one of their frontline resources.

**Sean Gates**

Gates Aviation Ltd  
London  
July 2020

# ITALY

*Anna Masutti*<sup>1</sup>

## I INTRODUCTION

The primary domestic legislation governing the aviation sector in Italy is the Navigation Code (the INC, introduced by Royal Decree No. 327/1942), which deals with the main civil, administrative, criminal and procedural aspects of this field.

The INC also regulates drones, which are classified as remotely piloted aircraft systems (RPAS). In addition to the Code, the discipline on drones is encompassed in European Regulations, precisely in Regulation (EU) No. 1139/2018, Commission Delegated Regulation (EU) 2019/945 and Commission Implementing Regulation (EU) 2019/947.<sup>2</sup> Both the Delegated Regulation and the Implementing Regulation entered into force on 1 July 2019.

The administration of Italy's air navigation sector is ensured by the Ministry of Infrastructure and Transport, the Italian Civil Aviation Authority (ENAC), the National Agency for the Safety of Flight (ANSV) and the Aero Club of Italy, while the management of air navigation in its operational profiles has been conferred to ENAC.

ENAC is the agency in charge of regulating aviation in Italy, as provided by Article 687 of the INC and by Legislative Decree No. 250/1997. It is ENAC's responsibility to supervise and regulate air carriers, as well as to fine them for breach of regulations. Furthermore, ENAC is in charge of laying down implementing rules for air traffic services.<sup>3</sup>

ENAC shall impose fines on airlines that are in breach of Regulation (EC) No. 261/2004. Additionally, ENAC drafted the Passenger's Charter and the Charter of Airport Standard Services. The Passenger's Charter is, in substance, a *vade mecum* of national, European and international regulations on air passenger protection, detailing the claims and compensation procedures available to passengers in cases of non-compliance with the rules set out in the above-mentioned Regulation. The Charter of Airport Standard Services sets out the minimum quality standards that airport operators are bound to comply with in providing their services.

In addition, Law No. 214/2011, subsequently amended by Law No. 27/2012, has established the Regulatory Transport Authority (ART). ART carries out important functions in regulating, promoting and ensuring fair competition in the transport sector. ART performs supervisory functions regarding airport charges and shall verify that tender notices do not

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1 Anna Masutti is partner at R&P Legal and tenured professor of Air Law at Bologna University.

2 The Commission has recently adopted Implementing Regulation (EU) No. 2020/639 of 12 May 2020 amending Implementing Regulation (EU) 2019/947 as regards standard scenarios for operations executed in or beyond the visual line of sight. This Regulation is not entered into force yet.

3 See ENAC Regulation of 8 June 2015 on air traffic services, 2nd Edition.

contain discriminatory conditions or obstruct other markets' competitors. With particular regard to airport charges, it should be noted that ART is currently deciding which airport charges system shall apply since there is a debate between the main Italian airports (i.e., Milan, Rome and Venice), which are in favour of the dual-till system, and the air carriers, which are asking for a single-till or hybrid approach. The Authority has established its main offices in Turin.

Another body that comes into play in regulating the aviation sector is the Italian Antitrust Authority. Established under Law No. 287/1990, it is an independent authority in charge of reporting unfair commercial practices and misleading advertisements, with the power to levy fines. The Antitrust Authority has already fined several air carriers for unfair commercial practices relating to underpricing or mispricing of tariffs and other reimbursable elements of cost, which tend to prejudice the passenger's interests in cases of flight cancellation. The Antitrust Authority also considers unfair the practice of acceptance of insurance policies by passengers, given that this service is normally preselected during the carrier's online booking process. As a consequence, consumers who are not interested in purchasing the service would be forced to opt out.

Recently, the Italian Antitrust Authority has ordered two air carriers to suspend the implementation of their new hand baggage policy providing the payment of a surcharge to bring on board the cabin luggage with standard measures. For the Antitrust Authority, this new policy would cause a misleading representation of the actual price of airfares, it would misled consumers and it would distort competition with carriers that transported cabin luggage for free. The order has been subsequently annulled by the Italian Regional Administrative Court because the new policy complies with the current regulation.

It is worth highlighting that in the Italian legal system there are the regional administrative courts and the Supreme Administrative Court. The regional administrative court has jurisdiction over ENAC's and the Antitrust Authority's decisions. The judgments issued by the Regional Administrative Court can be challenged before the Supreme Administrative Court.

## **II LEGAL FRAMEWORK FOR LIABILITY**

Air carriers' liability for death or injury to passengers, for loss of or damage to goods or baggage and for delay in international transport is governed by the Montreal Convention of 28 May 1999 on International Air Transport, which entered into force in Italy on 28 June 2004, following its simultaneous ratification by 13 Member States of the European Community (now the European Union), the Community itself and Norway. It replaced both the Warsaw Convention of 1929 and subsequent protocols, and the Guadalajara Convention of 1961.

With the entry into force of the Montreal Convention, the European Parliament and the Council adopted Regulation (EC) No. 889/2002 of 13 May 2002, which amended Regulation (EC) No. 2027/97 of 9 October 1997, so as to align European rules with those of the Convention. This Regulation broadens the extent and scope of Montreal Convention provisions on carriage of passengers, baggage and cargo.

After the adoption of Regulation (EC) No. 889/2002, the most important piece of legislation relating to the INC was modified. Section II of the INC set out rules that are entirely dedicated to aviation matters, while Section I is devoted to matters related to maritime law. In 2005 and 2006 several amendments were introduced, through Law Decrees

No. 96/2005 and No. 151/2006, to the INC's provisions governing the aviation sector, with a view to creating national rules in line with international and Community standards, and in particular, with regard to the transport of passengers (and the consequent carrier liability and protection of passengers' rights).

By means of the above-mentioned amendments, Italy has extended the enforceability of the Montreal Convention to every area of commercial aviation, which includes the ferrying of air passengers and baggage, as well as areas left out by the extension brought about by Regulation (EC) No. 2027/1997, as amended by Regulation (EC) No. 889/2002. The excluded areas concern transport services carried out by non-Community air carriers (in Italy, these services are governed by the above-mentioned ENAC Regulation of 21 December 2015) as well as services performed by unlicensed carriers (to date, non-Community air carriers are not permitted as per the cabotage rights enshrined in the Chicago Convention). Unlicensed operators include, for example, carriers operating with light aircraft, as well as those involved in transport services with points of departure and arrival at the same airport.

Article 941 of the INC, concerning air carriage of passengers and baggage, and Article 951 on the transport of goods, extend the applicability of the Convention to the entire air transport sector, to which the domestic laws – Law Decrees No. 96/2005 and No. 151/2006 – become applicable.

Article 941, Paragraph 1 of the INC has extended the applicability of the Convention to personal injury caused to passengers. Although, according to the prevailing interpretation, the Convention applies only to bodily injury and not psychological injury, under national law the notion of 'personal injury' includes psychological damage.

However, it is important to keep in mind that this extension is not applicable to areas of transport to which the Convention applies in its own right, or as a result of Community rules.

Article 949 *ter* of the INC provides that the two-year limitation period laid down by Montreal Convention applies to any passengers' claims brought before Italian judges. With regard to carrier liability, the INC provides for a compulsory insurance system (Article 942). Since Regulation (EC) No. 785/2004 on insurance requirements for air carriers and aircraft operators does not establish a complete regulatory framework on insurance, the civil liability insurance rules contained in the Italian Civil Code apply, as well as the provision contained in Article 942, Paragraph 2 of the INC, which provides that the passenger has the right to bring direct action against the carrier's insurer for any damage suffered or incurred. As for the transport of passengers and goods by air, the Italian legislator found in 2006 that the regulation on liability for damage caused to third parties on the surface was adequate and comparable to the international regulations in force. Indeed, Article 965 of the INC extends the rules of the Rome Convention 1952 to damage caused on Italian territory by aircraft registered in Italy, as well as damage caused by state aircraft.

There have been some changes in Italian law with regard to the rules on liability for collision between aircraft. These are in line with the regulation of liability of the operator for damage caused to third parties on the surface's amendments. Article 972 of the INC states that all rules governing the limitation of compensation and its implementation in the event of liability for damage caused to third parties on the surface (Rome Convention) shall also apply to liability for damage caused by collision between two aircraft in flight, or between an aircraft in flight and a moving ship (where responsibility for damage falls on the aircraft). Article 971 of the INC modifies the extent of the limits laid down in the Rome Convention (which vary according to the weight of the aircraft – Article 11 of the Convention) and fixes it

in accordance with the minimum amount of insurance required as per Article 7 of Regulation (EC) No. 785/2004. The minimum coverage is determined by the maximum take-off mass of the aircraft and ranges from 750,000 to 700 million special drawing rights.

**i International carriage**

As mentioned above, an air carrier's liability for cargo loss, damage or delay in international transport is governed by the Montreal Convention. Article 951, Paragraph 1 of the INC establishes that the air transport of goods is regulated by the rules contained in the Convention. The Montreal Convention does not apply to damages in the event of a carrier's outright non-performance in passenger carriage. In fact, the INC (Article 952) recalls the limitation of liability foreseen in the Montreal Convention for the carriage of goods but not for the carriage of passengers or baggage (Article 949 *bis* of the INC).

**ii National carriage**

Article 951 of the INC makes the liability rules set out in the Montreal Convention applicable to all air transport of goods.

The gaps in the Montreal Convention rules regarding the carriage of goods have been filled by the INC; this was done by referring to the INC rules governing the maritime transport, and by introducing some rules. In particular, the provision on non-performance of the transport services, contained in Article 952 of the INC, corresponds to the liability regime set out by the Convention regarding delay.

**iii General aviation regulation**

The law governing the liability of the operator in general aviation activities is provided for in the INC and other domestic laws (see President of the Republic's Decree No. 133 of 9 July 2010).

Article 743, Paragraph 1 of the INC sets out a broad definition of aircraft, describing it as a machine used for the transport of passengers and goods by air. Consequently, the activities performed by aircraft are subject to the rules of the INC.

With regard to aircraft used for leisure and microlight aircraft, a special regulation for insurance obligations has been introduced through Decree No. 133/2010. However, this special regulation refers to both the Community guidelines on insurance obligations, as well as to the principles established by the INC for such obligations. Decree No. 133/2010 introduces specific insurance requirements for single and double microlights without motor (two-seaters weighing up to 100 kilograms), for powered aircraft (weight not exceeding 330 kilograms for fixed-wing aircraft used for leisure flights, and not more than 450 kilograms for helicopters) and for the two-seater powered aircraft (weighing not more than 450 kilograms, and not more than 495 kilograms on devices with fixed wings used for recreational flying and helicopters). This Decree has amended Law No. 106 of 25 March 1985, in light of developments in technology and the safety needs of leisure aviation.

Article 20 of Decree No. 133/2010 establishes a compulsory insurance for civil liability of the operator for damage caused to third parties on the surface as a result of impact or collision in flight.

Article 21 introduces the requirements for insurance coverage and requires that the insurance contract must be concluded in compliance with Regulation (EC) No. 785/2004, and it foresees the extension of insurance coverage to damages caused by gross negligence. It also provides for the obligation of the insurer to directly indemnify the injured third party,

within the limit of the maximum coverage. However, this does not preclude the possibility of recourse by the insurer against the insured, to the extent and circumstances provided for in the contract.

#### **iv Passenger rights**

ENAC has issued the Passenger's Charter, which contains the rights conferred on passengers pursuant to Regulation (EC) No. 261/2004. It is a practical guide, in which ENAC has summarised useful information for those travelling by air.

The Passenger's Charter was drawn up for the first time in 2001 and distributed in all Italian airports. A new version (the fifth) was introduced in 2005, together with the introduction of new rules governing delay and cancellation of flights, with a view to report, in particular, the increase in the amount of compensation payable by carriers in the event of denied boarding owing to overbooking, introduction of forms of compensation and assistance in the event of flight cancellations or long delays, as well as the extension of such protection to passengers on charter flights.

In November 2009, ENAC issued a new version of the Passenger's Charter including information on the provisions issued by the European Union on the rights of persons with disabilities or reduced mobility, the rules on airport security checks and the surveillance of foreign operators. In this edition of the Charter, ENAC has also incorporated the principles established in the judgment of the European Court of Justice in November 2009 on passengers' compensation in the event of a long delay. The judgment upheld the rights of passengers to be compensated in the event of reaching their destinations over three hours later than the scheduled time of arrival.

In addition, the Italian legislator introduced into the INC certain provisions aimed at ensuring special protection for passenger rights. Special mention shall be made to Article 943, which imposes a specific obligation to provide information. If transport is carried out by an air carrier other than the carrier indicated on the ticket, the passenger must be adequately informed prior to the issuance of the ticket. While for ticket reservations, the information must be given at the time of booking. In the event of lack of information, a passenger may request the termination of the contract, reimbursement of the ticket fare and payment of damages. Article 943 also established that carriers cannot operate from Italian territory if they do not fulfil their obligations to provide information referred to in Article 6 of Regulation (EC) No. 2027/1997 (as amended by Regulation (EC) No. 889/2002). In addition, Article 948 introduces rules for passengers' waiting list. The carrier has the obligation to communicate to the passenger its respective waiting list number while putting up a waiting list for a certain flight. Moreover, the list must be posted in a location accessible and visible to the public. Passengers whose names have been entered on the waiting list have the right to access transport according to the assigned waiting list number.

Article 783 of the INC requires air carriers to carry out an annual check of the quality of services offered to passengers, according to indications given by ENAC, which checks compliance with promised quality, and in the event of non-compliance, enforces measures laid down in its rules that can even lead to the withdrawal of the operator's licence (Article 783 of the INC).

It should be noted that the Italian legislator, by issuance of Legislative Decree No. 53/2018, has implemented the EU Passenger Name Record Directive (Directive No. 2016/681/EC) on the use of passenger name record (PNR) data for the prevention,



detection, investigation and prosecution of terrorist offences and serious crime. According to the Directive, airlines must transfer the data collected to the competent authority (i.e., passenger information unit) in the relevant Member State.

Moreover, it is worth recalling Judgment No. 1584 of 23 January 2018, in which the Italian Supreme Court clearly stated that in the case of flight cancellation or delayed arrival, the burden of proof lies with the air carrier. Therefore, in a claim for compensation under Regulation (EC) No. 261/2004, passengers only prove their title (i.e., the flight title) while the air carriers must provide evidence of the proper fulfilment of the flight obligation.

Finally, it should be noted that, because of the covid-19 outbreak, ENAC with the press release n. 12/2020 of 29th of February 2020 informed passengers, whose flights are cancelled and passengers who are subject to the restrictions imposed by third countries, that they have the right to reimbursement of the ticket price, but do not have the right to compensation provided for in Article 5 (3) of Regulation No. 261/2004 because, in such circumstances, the cancellation of the flight – or the impossibility of flying – is not dependent on the carrier. Subsequently, Law No. 27 of 24 April 2020 – which converted into law the Law Decree No. 18 of 17 March 2020 – in Article 88 *bis*, Paragraphs 11 and 12, establishes that air carriers can offer a voucher instead of the reimbursement of the ticket's price. The voucher has a validity of one year from the date of issuance. Hence, the issuance of the voucher fulfils the reimbursement obligation and does not require any form of acceptance by the passenger. In this regard, it should be noted that ENAC, in a press release issued on 18 June 2020, established that, since the covid-19 restrictions have been lifted, the cancellations made after 3 June 2020 are not attributable, except in specific cases, to the pandemic. Hence the air carriers must reimburse the ticket price to passengers whose flight has been cancelled.

Also the European Commission addressed the matter and on 18th of March 2020 issued Interpretative Guidelines<sup>4</sup> aiming at clarifying how certain provisions of the EU passenger rights legislation apply in the context of the covid-19 outbreak. The Commission Guidelines establishes that in case of cancellation due to covid-19 restrictions passengers have the right to choose between the reimbursement or rerouting, and they must also be offered care by the operating air carrier, free of charge. In addition, and in line with ENAC press release's content, the Commission affirms that measures adopted to contain the covid-19 pandemic cannot be considered inherent in the normal exercise of the activity of carriers and they have to be seen as outside their actual control. Hence, the measures taken to contain covid-19 should be regarded as 'extraordinary circumstances' precluding the right of passengers to claim compensation as established by Article 5(3) of Regulation 261/2004.

### III LICENSING OF OPERATIONS

#### i Licensed activities

Within the EU, international and domestic air services are governed by Regulation (EC) No. 1008/2008 (and subsequent amendments), which provides market access to all carriers who have obtained an operating licence, as well as an air operator's certificate. This principle was also adopted by the Italian legislator in 2005 and 2006 as it modified the rules of the INC, stipulating services that are allowed to be performed by air carriers. These include air transport

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<sup>4</sup> Commission Notice – Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, 18.3.2020 C(2020) 1830 final.

services to passengers and carrying of mail and cargo on scheduled and non-scheduled flights on intra-Community routes by carriers who have obtained an operating licence, and previously a certificate (AOC), according to the provisions laid down in the INC and in EU legislation.

ENAC is the body responsible for the issuance of the AOC. The certificate proves that the operator has the professional ability and the organisation necessary to ensure the exercise of its aircraft in a safe condition for the aviation activities specified therein (Article 777 of the INC). ENAC establishes, through its own internal rules, the content, limitations and procedures for the issuance, renewal and changes, if any, to the AOC. The Regulation governing ENAC's issuance of a national AOC for air transport undertakings is also applicable to air carriers performing helicopter operations.

ENAC grants air carrier licences to undertakings established in Italy, according to Regulation (EC) No. 1008/2008. The conditions for issuance, formalities and validity of the licence are subject to the possession of a valid AOC specifying the activities covered by this licence.

For the issuance of the licence, ENAC requires the operator to submit evidence of the administrative, financial and insurance requirements referred to in Regulation (EC) No. 1008/2008 and Regulation (EC) No. 785/2004, proof of availability of one or more aircraft on the basis of a property deed or under a contract for the use of the aircraft previously approved by ENAC.

In accordance with Article 779 INC, within one year from the issuance of the licence, and every two years thereafter, ENAC must recheck all the requirements in terms of ownership, control, financial support, guarantees, etc.

ENAC may, at any time, suspend the licence if the carrier is unable to ensure compliance with the licensing requirements and it has the authority to revoke it if it appears that the carrier is no longer able to meet its commitments. The procedures carried out by ENAC in order to verify the licensing requirements established by Chapter II of Regulation (EC) No. 1008/2008 are laid down in ENAC Circular of the 23 December 2015.<sup>5</sup>

Furthermore, on 17 November 2017 ENAC issued a Regulation regarding fire-fighting air operations in Italy. This Regulation sets out the rules applicable to the release, maintenance, limitations and revocation of the firefighting air operator certificate (COAN). The COAN is mandatory to perform this type of flight operations, which ENAC defines as: 'air operations devoted to fire-fighting, including flights for observation and finding of fires, spread of extinguishing and retardant products, transport of specialised personnel and flight training'.

In order to obtain the COAN, the applicant must comply with several requirements regarding the place of business, citizenship and professional ethics of the legal representative and the board members, nationality of the operator, operator's financial means, registration of the aircraft, aircraft's property, airworthiness certificate and insurance coverage.

Finally, with particular regard to the drones' sector, it is worth recalling both Regulation (EC) No. 1139/2018 laying down new requirements to ensure drones' free circulation in the European Common Aviation Area, and the third edition of ENAC regulation on remotely piloted aerial vehicles' operations falling within its competence.<sup>6</sup>

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5 ENAC Circular, *Licenza di Esercizio di Trasporto Aereo*, EAL, 23 December 2015.

6 ENAC Regulation, *Remotely Piloted Aerial Vehicles*, Third edition of 11 November 2019.

## ii Ownership rules

ENAC issues the air carrier's licence according to Regulation (EC) No. 1008/2008 (Article 778 of the INC) and the EC interpretative guidelines (2017/C 191/01) dated 16 June 2017. The licence is granted to undertakings established in Italy whose effective control, through a shareholding majority, is owned directly or through majority ownership by a Member State or nationals of EU Member States and whose main activity is air transport in isolation or in combination with any other commercial operations of aircraft or the repair or maintenance of aircraft. Moreover, air carriers must own a valid certificate of airworthiness issued by ENAC and one or more aircraft being its property or leased as provided by paragraph 4 (c) of ENAC Circular No. EAL-16 of 23 December 2015. In addition, air carriers must provide satisfactory evidence of administrative, financial and insurance requirements, as provided by Regulation No. 1008/2008.

Finally, it is worth highlighting that, in its Work Programme 2020, the European Commission highlights – among the new initiatives to be taken within the aviation services package's policy objective – the necessity to revise ownership and control rules in order to help air carriers to mitigate the economic impact of the crisis on the air transport sector.

## iii Foreign carriers

Access to European routes is ensured to all air carriers (Italian and European) in possession of the AOC and the operating licence granted by ENAC (Article 776 of the INC).

The services of scheduled air transport of passengers, mail or cargo that are conducted, in whole or in part, outside the European Union are governed by bilateral agreements.

Regarding non-EU scheduled air transport services, Article 784 of the INC provides that it is an essential condition that the civil aviation authorities of the states that are parties of the agreement have a regulatory system for certification and surveillance for air transport services; this is required to ensure a level of safety as provided by the Chicago Convention standards. The air transport services are performed for the Italian part by designated air carriers, established on national territory, with a valid operating licence granted by ENAC or by a Member State of the European Union, provided with financial and technical capacity and insurance sufficient to ensure the smooth running of air services in conditions of safety and to safeguard their right to mobility of citizens (Article 784 of the INC).

With regard to the operation of extra-EU scheduled services, in December 2014 ENAC issued Circular EAL-14B encompassing guidelines on authorisation and designation procedure for both Italian and Italian-based EU carriers in accordance with international air transport agreements. The Circular aims to improve the regulatory framework and to assist the industry by broadening business opportunities. Once an EU airline has been recognised by ENAC as an established carrier, it must comply with all national laws and regulations applicable to its specific business in Italy (including any relevant fiscal and employment laws).<sup>7</sup> ENAC has also outlined the criteria in selecting carriers applying for traffic rights to and from extra-EU airports.

In 2016, ENAC issued Circular EAL-23, which determines the implementation procedures of the second edition of the ENAC Regulation on Non-scheduled Air Services between EU and Third Countries, approved in December 2015 (implementing Article 787 of

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<sup>7</sup> A minimum wage for air transport personnel has been established by Article 203 of Law Decree No. 34/2020.

the INC). The Circular aims to simplify the procedures concerning traffic rights permissions in favour of non-EU carriers operating non-scheduled services in Italy. In particular, it provides the revision of the accreditation process of non-EU operators performing services in Italy, according to the third-country operator authorisation provided for in Regulation (EU) No. 452/2014, and subsequent amendments. The Circular provides for two different authorisation procedures respectively for aircraft having a maximum operational passenger seating configuration of not less than 20 seats, and for taxi flights (performed with aircraft having configuration of maximum number of passengers' seats less than 20). The choice of carriers shall be made by ENAC on the basis of criteria established in advance and made public and through transparent and non-discriminatory procedures. Designated carriers cannot give the service hired to other air carriers without the prior written consent of ENAC, under penalty of exclusion from the hired service (Article 785 of the INC).

The Annual Report and Social Balance 2018<sup>8</sup> published by ENAC in May 2019, shows that, in Italy, a growth of the non-EU air carriers' traffic has been recorded together with an increase of accreditations and authorisation, which went from 1,220 in 2017 to 1,800 in 2018.

Traffic of the non-EU air carriers in Italy could also increase, since on 20 May 2019 China and European Union signed an agreement on civil aviation safety (BASA) and a horizontal aviation agreement to strengthen their aviation cooperation. Prior to this latter agreement, only airlines owned and controlled by a specific Member State or its nationals could fly between that Member State and China, while the new horizontal aviation agreement will allow to all EU airlines to fly to China from any EU Member State, through a bilateral air services agreement with China under which unused traffic rights are available.

In addition, on 7 March 2019, the US and the EU agreed to amend Annex 1 to the Agreement on cooperation in the regulation of civil aviation safety, and in June 2020, the European Commission signed two bilateral aviation agreements, respectively with Japan and South Korea.

#### **iv The national airport plan**

In accordance with Article 698 of INC, in 2015 the Ministry of Transport published the last version of the national airport plan, which has been formally approved by the issuance of a decree of the President of the Republic.<sup>9</sup> It aims to design a balanced development of Italian airports, offering a new governance system, identifying structural priorities and optimising the global transport offer. The plan in question also intends to prevent competition conflicts between airports located in the same region, favouring the creation of an airports system with a single governing body. The Italian airport plan has been drafted according to the EU principles included in the 2014 EU Commission Guidelines on state aid to airports and airlines. The plan identifies 10 traffic zones; each zone has one strategic airport with the sole exception of the centre–north zone, where Bologna and Pisa–Florence operate, provided that Pisa and Florence airports become totally integrated. The 10 strategic airports are: Milan Malpensa (north-west), Venice (north east), Bologna and Pisa–Florence (centre–north), Rome Fiumicino (centre), Naples (Campania), Bari (Mediterranean–Adriatic), Lamezia (Calabria), Catania (east Sicily), Palermo (west Sicily) and Cagliari (Sardinia). Other airports of national interest can be identified, provided that they can actually play an effective role in

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8 The Annual Report and Social Balance 2019 has not been published yet.

9 Decree No. 201 of the President of the Republic of 17 September 2015.

one zone and can achieve at least a break-even point in their annual accounts. The plan also envisages the strengthening of airport infrastructure, the development of intermodality, the creation of a cargo network and facilitation for general aviation.

#### IV SAFETY

Safety in the aviation field is guaranteed by the maintenance of the airworthiness of aircraft, parts and spares. Safety requires the certification of management organisations and products, as well as the qualification of technical and operating staff working in the field. Safety technical regulation is established and implemented by ENAC, which issues airworthiness certificates, air operator certificates and approves maintenance programmes in accordance with the international and European rules issued by the International Civil Aviation Organization (ICAO) and by the European Aviation Safety Agency (EASA).<sup>10</sup>

The basic Regulation (i.e., Regulation (EU) No. 1139/2018) – which repealed Regulation (EC) No. 216/2008 – whose purpose is to establish and maintain a high uniform level of civil aviation safety in the Union, restates the role covered by European Aviation Safety Agency's and expands it in drones and urban air mobility. The Regulation gives the agency a coordinating role in cybersecurity in aviation and widespread scope in research and development, international cooperation and environmental protection.

The Italian implementation process is supervised by ENAC, which issued Guidelines No. 2017/003-APT<sup>11</sup> incorporating interpretative and procedural information on aspects relating both to airport certification and to the conversion of certificates issued by ENAC on the basis of national legislation. These Guidelines are intended to provide operators with a comprehensive framework of the criteria for the application of the requirements of the Basic Regulation No. 1139/2018 and the related implementing rules.

Civil aviation safety is also ensured through the issuance of the State Safety Programme (SSP),<sup>12</sup> a project provided for by ICAO Annex 19 (entered into force in November 2019), which in Italy is governed by a special committee that includes ENAC, ANSV, the Ministry of Infrastructure and Transport, the Air Force, the ENAV and the Aero Club D'Italia. The SSP aims to determine an acceptable safety standard for the entire civil aviation system and then identify the activities that the state will have to undertake to achieve or maintain this level of safety. To this end, the SSP provides that each state is equipped with specific indicators (safety performance indicators) to assess the degree of safety achieved in the aviation sector in its national territory.

It is worth to highlight that ENAC has been the first aviation authority adopting such indicators and to subsequently issue, in 2019, the basic edition of the Safety Performance Indicators' document.

The basic edition of the SSP encompasses the requirements provided for in the new basic Regulation (EU) No. 1139/2018, and it introduces the principles of 'Just Culture', as required by Regulation (EU) No. 376/2014. With the fourth edition, the SSP fully complies with the standards defined by the second edition of ICAO Annex 19, thus completing the implementation of the safety principles in the management of Italian Civil Aviation.

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10 See Regulation (EU) No. 1139/2018 of 4 July 2018 on common rules in the field of civil aviation.

11 ENAC Guidelines No. 2017/003 – APT ed. No. 2 of 10 October 2019 – Proceeding for the conversion of the airport certificate pursuant to Regulation (EU) No. 139/2014.

12 State Safety Programme, 4th ed. of 3 February 2020.

In Italy, the accident reporting system is guaranteed by the pilot in command of the aircraft, who has the duty to record the accident or incident in the flight book immediately after landing and sending a report to ENAC. Articles 826 to 832 of the INC regulate air accidents, establishing several duties for airport management, the Italian air navigation services provider and for the ANSV. Pursuant to Article 826 of the INC, the technical investigation of air accidents and incidents is conducted by the ANSV.

On the subject of safety, Regulation (EC) No. 1139/2018 confers the power on the European Commission, with the support of EASA, to establish the requirements and technical characteristics that drones need to have in order to fly safely.

## **V INSURANCE**

The amendments to the INC, made in 2005 and 2006 (by Decree No. 96 of 9 May 2005 and Decree No. 151 of 15 March 2006), which adapted its provisions to the international and Community standards in force in Italy, have also had an impact on aviation insurance regulation.

The previous regulations on compulsory insurance for air carriers and aircraft operators have been replaced by the current obligations to insure civil liability for damage caused to passengers, baggage, cargo and third parties established at European level. The current rules oblige air carriers and aircraft operators to insure their liability for damage caused to passengers, baggage and cargo in accordance with EU legislation (Regulation No. 785/2004). In this way, Italy applies the same EU regulations, with one specific provision established in favour of passengers. Indeed, Article 942 of the INC allows passengers to exercise direct action against the insurer for compensation for damage caused by the air carrier; this action is not envisaged by Regulation No. 785/2004.

As a result of this provision, an injured person may claim compensation directly against the air carrier's insurer. With regard to the legal action against the insurer, Article 1020 of the INC provides for a limited period of one year. Since the passenger has at his or her disposal a period of two years to bring an action against the air carrier (Article 35 of the Montreal Convention), it is generally believed that if the same passenger intends to act directly against the insurer, he or she should have the same two-year term for the action against the insurer.

## **VI COMPETITION**

The Italian system does not provide specific regulation for the aviation sector. Law No. 287 of 10 October 1990, which introduced to the Italian legal system general rules on competition, is also applicable to the aviation sector.

An interesting point on the Italian aviation sector concerns the opportunity to implement public investments in small and regional airports with the aim of giving them a central role in the economic growth and regional development, without distorting competition.

In this regard, on 14 June 2017, the EU Commission adopted Regulation (EU) No 2017/1084 which amended the General Block Exemption Regulation (GBER)<sup>13</sup> and extended its scope to ports and airports. The amended Regulation's rules exempt support measures for

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13 Commission Regulation (EU) No 651/2014 of 17 June 2014 and subsequent amendments.

ports and airports from prior Commission scrutiny, thus simplifying the procedure for public investments in ports, airports. The aim of the GBER is to facilitate public investments that can create jobs and growth.

The Regulation is specifically designed for ‘regional airports’, which are defined as ‘airports with average annual passenger traffic of up to 3 million passengers’ and to reduce the regulatory burden and costs for public authorities and other stakeholders in the EU.

Prior to the issuance of GBER amending Regulation the Italian authorities presented their position concerning the first Draft of this Regulation. Following the public consultation on the Draft, the authorities considered that a real and effective simplification of the administrative burden may be realised under the condition that operating aid to airports would be exempted from the notification procedure. In addition, they underlined the need to clearly define the instances of ‘small airports’, which are exempt from the application of state rules.

On this matter, the Italian authorities consider that airports for general aviation and those with a scant economic traffic should not be considered in competition with other airports because of their small size. Therefore, any public financing given to them should not be considered a way to affect competition or trade relations between Member States.

In addition, the Italian Ministry of Infrastructure and Transport guidelines and the Italian Regulatory Transport Authority intervention on the subject may be revised, in accordance to the approved GBER amending Regulation (EC) No. 651/2014 for regional airports, as it represents an important support instrument for regional airports, which are a substantial part of airport structure in Italy.

With the 2020 budget law, measures have been introduced to ensure territorial continuity with Sicilian airports and social tariffs for certain categories of travellers to and from Sicily. In this regard, the Italian state allocated €25 million.

The 2020 Budget Law also left the regulation of the financing system for the performance of the coordination function for the slots allocation at national airports designated as coordinated or schedules facilitated to a ministerial decree. This new regulation, in order to ensure that coordination activities are carried out in an impartial, non-discriminatory and transparent manner, will also establish the distribution of the related costs for 50 per cent to be borne by the operators of the airports concerned and for the remaining 50 per cent to be borne by the operators of aircraft requesting to use those airports, without charge to the state. Finally, a fund for the preliminary study necessary for the introduction of the ‘tourist flights’ has been set up with a budget of €100,000 for each of the years 2020–2022.

The 2019 Budget Law allocated €3 million for each of the years of the three-year period 2019–2021 at Crotone Airport and, in addition, authorised an expenditure of €15 million for the year 2019 and €10 million for 2020 to allow the necessary work of restructuring and security of Reggio Calabria Airport.

With regard to the European rules on competition, the European Council adopted Regulation (No. 712/2019) to safeguard the competitiveness of EU air carriers against unfair competition and other practice implemented by non-EU airlines. The new legislation entered into force in May 2019 and goes beyond the existing Regulation (EC) No. 868/2004, which has proved to be ineffective. Under the new Regulation, if the European Commission finds that a practice distorting competition, adopted by a third country or a third-country entity, has caused an actual injury to EU air carriers, the European Commission may impose redressive measures aimed at offsetting that injury.

Those redressive measures shall take form of ‘financial duties or any operational measure of equivalent or lesser value, such as the suspension of concessions, of services owed or of other rights of the third-country air carrier’ (Article 14.4) but must, however, respect the principle of proportionality. To this aim, the measures must be provisional, limited to a specific geographic area and shall not exceed what is necessary to remedy the injury to the EU air carriers concerned and must never result in the suspension or limitation of traffic rights granted by a Member State to a third country.

For the sake of completeness, the recent introduction into Italian law of the new Code of the Crisis of Business and Insolvency (Legislative Decree No. 14/2019), which modifies the regulation of bankruptcy procedures to which airlines in precarious financial situations could have access in order to facilitate their financial recovery, should also be highlighted. Due to the covid-19 pandemic, the entry into force of the new Code has been postponed from 15 of August 2020 to 1 September 2021.

In any case, it should be noted that the applicability of the extraordinary administration of large companies contained in the Decree No. 347/2003, and further amended by Decree No. 134/2008, remains unchanged, provided that the air carrier meets the requirements for access.

In addition, on 28 January 2020, ENAC adopted the three-year plan for the prevention of corruption and transparency, aimed precisely at defining the strategy to prevent the commission of acts of corruption in public administrations that could potentially be detrimental to free competition among air carriers.<sup>14</sup>

## VII WRONGFUL DEATH

Italian law allows for the recovery of actual damages as pecuniary damages (economic loss, out-of-pocket expenses and loss of profit) and non-pecuniary damages – those resulting from wrongful death, personal injury, the loss of physical or mental integrity (or both), or pain and suffering. The Italian legal system recognises non-pecuniary damages for wrongful death, suffered by the ‘secondary victim’. Despite there being no statutory definition of ‘secondary victim’, the notion encompasses family members. A distinction is, however, made by Italian courts between secondary claimants who live in the same house as the primary victim (such as a spouse, or dependent children) and secondary claimants who are closely related to the primary victim but live separate, independent lives, when assessing the gravity of life disruption arising from the accident and the quantum of non-pecuniary damages. Secondary claimants have to demonstrate the blood relationship and the existing close and loving bond with the primary victim. This close bond may also be presumed for the spouse or young children living with the victim (although such a presumption does not exonerate the secondary claimant from the burden to prove the strength of the relationship).

For the assessment and liquidation of non-pecuniary damages for the secondary victims, Italian courts rely on parameters set out in the tables elaborated and regularly updated by the Court of Milan (the latest edition of the Milan tables was adopted in 2018). These tables contain a section for the calculation of damages secondary victims are entitled to claim for pain and suffering in the event of death or severe injury of the primary victim. The system is based on a chart containing the various hypothesis of family relationship. These tables essentially sum up compensation for either biological or psychological damage, considering

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<sup>14</sup> ENAC’s Board of Directors’ resolution no. 6/2020.



the specific circumstances and features of the case. The Milan tables have become the reference throughout Italy, following the indications given by the Italian Supreme Court. As a general rule, the compensation must be 'tailor-made'. In applying the Milan tables, the judge must consider all relevant factors (like the severity of the injury and the age of the victim) and find a figure within limits set by the chart fitting best with the circumstances of the case. These tables, in essence, contain two sections: one for the calculation of the non-pecuniary damage suffered by the primary victim, as well as the secondary victim (known as the *danno riflesso*) if he or she is physically or mentally affected by the event, in order to compensate temporary and permanent invalidity arising from the accident and another for the calculation of non-pecuniary damages for secondary victims, in the event of loss or disruption of the family relationship arising from the death or a severe permanent inability of the primary victim. A secondary victim's non-pecuniary damages must be duly proven; courts require the claimants to confirm that the event has caused such a substantial disruption in the standard and ordinary habits to impose a choice of life radically different. The Italian Supreme Court has furthermore repeatedly held that the secondary victims must prove the intensity and strength of the family bond, the sharing of life and habits.

Moreover, it is worth highlighting that under Italian law, a sudden death (that is to say a death immediately following the event) does not give rise to a right to claim transferred to heirs, on the assumption that as soon as a person dies, he or she is no longer a legal person and loses the capacity to suffer damage caused by death.

The principle was confirmed in 2015 by the Joint Chambers of the Supreme Court,<sup>15</sup> resolving a conflict emerged in case law over the years.

The successors of the primary victim are entitled to claim non-pecuniary damages suffered by the primary victim before dying, as far as a reasonable lapse of time incurs between the event and the death,<sup>16</sup> and may also claim the *danno catastrofale*, consisting in the affliction by the primary victim deriving from the awareness of the imminent death.<sup>17</sup>

## VIII ESTABLISHING LIABILITY AND SETTLEMENT

### i Procedure

Liability is allocated among the defendants according to the respective negligence in causing the accident.

### ii Carriers' liability towards passengers and third parties

See Section II.

### iii Product liability

There are no specific rules governing manufacturers' liability; the Italian regulations on product liability and the Italian Consumer Code<sup>18</sup> apply.

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15 Cassazione, Sezioni Unite, 15350/2015.

16 Among many others see Cassazione 32372/2018.

17 Among many others see Cassazione 29492/2019.

18 Legislative Decree No 206 of 6 September 2005.

**iv Compensation**

There are no sector-specific rules. The Italian regulations on product liability apply.

**IX DRONES**

Drones are remotely piloted aircraft systems considered for all intents and purposes to be aircraft by Article 743 of the INC. The use of drones is regulated by national Laws, EU Regulations, ENAC regulations and, for military drones, by the Decrees of the Ministry of Defence. The rapid evolution of the remotely piloted aircraft systems sector has led to the need to innovate the relevant legislation contained in Regulation (EC) No. 216/2008. For this reason, the European Union recently adopted Regulation No. 1139/2018, which is in the process of being implemented by the European Commission with the support of EASA, aimed at establishing common rules on the use of drones to allow their free circulation in the European Common Aviation Area. As previously said, on 12 March 2019 the European Commission adopted Delegated Regulation (EU) 2019/945<sup>19</sup> establishing common rules setting technical requirements for drones and on 24 May 2019 the it adopted the Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft. The legislation introduces common rules for operators, whether professional or recreational, enabling them to operate across borders. Once drone operators have received the authorisation in the State of registration, they are allowed to freely circulate in the European Union. The new rules include technical and operational requirements for drones defining the capabilities to be flown safely. For instance, new drones will have to be individually identifiable, allowing the authorities to trace a particular drone, if necessary. The Regulation provides rules covering each operation type, from those not requiring prior authorisation, to those involving certified aircraft and operators, as well as minimum remote pilot training requirements. It is worth highlighting that on 12 December 2019 EASA published *Easy Access Rules for the Basic Regulation (Regulation (EU) 2018/1139)* in order to provide stakeholders with an updated and easy-to-read publication.

Regarding safety matters, the approach taken by the European Commission and EASA is to apply the highest safety standards achieved in manned aviation to drones in order to prevent the occurrence of any type of accident.

Beyond the European Union institutions, in 2019 ENAC adopted the third edition of the Regulation<sup>20</sup> on Remotely Piloted Aerial Vehicles laying down requirements to be met to ensure the safety levels for the different types of RPAS operations, the provisions for operating RPAS and those regarding air navigation in national airspace and common provisions applying to RPAS. ENAC Regulation also lays down provisions and limitations that must be complied with for the operation of model aircraft in national airspace. ENAC also contributed to the development of the international UAS (Unmanned Aircraft Systems) regulation for categories A (open), B (specific) and C (certified) in the JARUS (Joint Authorities for Rulemaking on Unmanned Systems) context. In particular, ENAC, in coordination with the ICAO Remotely Piloted Aircraft Systems Panel, made a considerable contribution in

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19 Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems.

20 ENAC Regulation on '*Remotely Piloted Aerial Vehicles*', ed. 3 of 11 November 2019.

order to define the emission criteria of the Type Certificate and the Airworthiness Certificate for C Category UAS. On this occasion, preliminary discussions about the concepts and the problems of the UAS autonomous flights have also started.

## **X VOLUNTARY REPORTING**

Regulation (EC) No. 376/2014 lays down rules on the reporting, analysis and follow-up of occurrences in civil aviation. Article 3(2) of this Regulation has been recently amended by Regulation (EC) No. 1139/2018. For the purpose of this Regulation, ‘occurrence’ means any safety-related event that endangers or that, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular accidents or serious incidents. This Regulation aims to improve aviation safety by ensuring that relevant safety information relating to civil aviation is reported, collected, stored, protected, exchanged, disseminated and analysed. It provides a reporting system both mandatory (mandatory occurrence reporting (MOR) and voluntary (voluntary occurrence reporting).

Regarding the Italian system, companies in the aviation sector are required to set up a voluntary reporting system to facilitate the collection of details of occurrences that may not be captured by the mandatory reporting system and of other safety-related information that is perceived by the reporter as an actual or potential hazard to aviation safety. Any significant information shall be analysed and notified to ENAC by means of the ‘eEMOR’ system.

However, it is also possible to address the voluntary reports directly to the competent authority; in this case, the reporting process works without using the internal company reporting system. The competent authority is the National Agency for Flight Safety (ANSV). Once voluntary reports have been sent directly to the ANSV, and the agency has properly analysed them, they enter into the national events database administered by ENAC, which ensures the appropriate confidentiality and protection of the collected details of occurrences. The ANSV is also concerned with the investigation of aircraft accidents in cooperation with ENAC.

The sole objective of occurrences reporting is the prevention of accidents and incidents and not to attribute blame or liability. The absence of punitive purposes (in the name of a ‘no penalty policy’ or ‘just culture’), as well as the fact that the authors of the information remain anonymous, is intended to remove resistance and fears to communication, and also to realise more complete occurrence reporting. Voluntary reporting – also of confidential information – could bring an important contribution to operational safety in aviation. In particular, these reports may include ‘premonitory’ or ‘near-miss’ occurrences, which could lead to real incidents if not communicated in due time.

## **XI THE YEAR IN REVIEW**

### **i Key facts**

On 12 December 2019, the Ministry of Economic Development issued a Decree for the appointment of Alitalia’s special commissioner, replacing the previous three special commissioners, who resigned from their office.

Moreover, the covid-19 emergency required the adoption of Law Decree No. 18 of 17 March 2020 – then converted into Law and amended by Law No. 27 of 24 April 2020 – which lays down new provisions for the companies Alitalia SpA and Alitalia Cityliner SpA. Article 79, Paragraphs 3 to 8 of the said Law Decree, authorises the renationalisation

of Alitalia by the establishment of a new public company entirely controlled by the Ministry of Economy and Finance, or by a company with a prevalent direct or indirect public participation. Article 79, Paragraph 7 also provides for the establishment of a special fund in favour of Alitalia with a financial endowment of €500 million for the year 2020.

Furthermore, and always with the aim of addressing difficulties due to the covid-19 pandemic, another Law Decree – not yet converted into law – has been adopted (Law Decree No. 34 of 19 May 2020). It should be noted that Article 202 of this Law Decree provides for a government capital injection of €3 billion in Alitalia.

On 11 February 2020, following shareholders' meetings, Air Italy announced its entry into voluntary liquidation and the suspension of operations from 25 of February 2020. The airline has two shareholders: Alisarda, which is the majority owner with 51 per cent, and Qatar Airways, which holds its 49 per cent minority stake through AQA Holding. In a statement, Qatar Airways said that '[e]ven with the changing competitive environment and the increasingly difficult market conditions severely impacting the air transport industry, Qatar Airways has continually reaffirmed its commitment, as a minority shareholder, to continue investing in the company . . . Qatar Airways was ready once again to play its part in supporting the growth of the airline, but this would only have been possible with the commitment of all shareholders.'<sup>21</sup>

With regard to Public Service Obligations (PSOs), it should be noted that on 21 February 2020 the Minister for Infrastructure and Transport signed a Decree providing for the extension, until 31 December 2020, of the PSOs imposed on the routes connecting Sardinia to the main national airports (i.e., Rome and Milan). The routes between the main national airports and Cagliari and Alghero airports are operated by Alitalia, which was also assigned the routes to Olbia, previously operated by Air Italy. Moreover, as previously mentioned, PSOs have also been imposed for the routes connecting national airport and the Sicilian airports of Trapani and Comiso. In light of the covid-19 pandemic, these PSOs are suspended for the moment.

Lastly, on 11 May 2020, ENAC issued a decision establishing the suspension of the Italian airports' concessions' fees until 31 January 2021. This suspension is granted under the condition that airports' authorities (concessionaires) do not ask the rentals' payments to sub-concessionaires (involved in aviation activities and not in commercial ones).

## ii The covid-19 pandemic

Almost all the measures taken for the year 2020 are due to the fact that no industry has been so affected by the covid-19 pandemic such as air transport and tourism industries. Indeed, it is worth highlighting that the potential impact of the covid-19 pandemic has been determined by the IATA as a US\$252 billion loss of passenger revenue in 2020, which means some 44 per cent below 2019's figure, and a threat for 2.7 million airline employees. While the ICAO estimated an impact on scheduled international passenger traffic during first half 2020 equal to an overall reduction of 41 to 51 per cent of seats offered by airlines, a reduction of 443 to 561 million passengers and a potential loss of gross operating revenues of airlines of US\$98 to 124 billion. On 27 April 2020, air traffic in the Eurocontrol area was 86.9 per cent down on the same date in 2019.<sup>22</sup>

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21 <https://www.qatarairways.com/en/press-releases/2020/February/QatarAirwaysStatementOnAirItaly.html?activeTag=Press-releases>

22 <https://www.eurocontrol.int/covid19>.

With particular regard to Italy, the ICAO estimated the impact of the covid-19 outbreak on scheduled international passenger traffic from and to the Italy during first half 2020 as:

Impact	From Italy	To Italy
Seat capacity reduction	54 per cent	64 per cent
Passenger reduction	36 million	42 million
Loss of gross operating revenues of airlines	US\$4.3 billion	US\$5.1 billion

In light of these data, the EU decided, over the past months, to implement broad measures regarding:

- a air cargo operations;
- b slot allocation; and
- c state aid.

***Air cargo operations***

In light of the strategic importance of air cargo – which plays a vital role in the quick delivery of medicines, medical equipment and supplies needed to combat the current pandemic – the European Commission, through the issuance of Guidelines,<sup>23</sup> requested Member States to implement appropriate operational measures to facilitate air cargo transport and reduce its additional costs.

The measures listed in the Commission Guidelines include:

- a for transport from outside the EU, granting without delay all necessary authorisations and permits, including, where legally possible, temporary traffic rights for additional air cargo operations, even when conducted with passenger aircraft;
- b temporarily removing, or applying flexibly, night curfews or slot restrictions at airports for essential air cargo operations;
- c facilitating the use of passenger aircraft for cargo-only operations;
- d ensuring that air cargo crew as well as handling and maintenance personnel are qualified as critical staff in cases of lockdown or curfew; and
- e exempting from travel restrictions asymptomatic transport personnel, including aircrew, engaged in the transport of goods.

The Commission stresses that the containment measures adopted for the covid-19 emergency should be limited to the movement of passengers and they are not deemed to limit the movement of aircraft. Thus, restricting the movement of travellers rather than flights will prevent the disruption of air cargo.

***Slot allocation***

The Parliament and the Council of the EU issued Regulation (EU) No. 2020/459 aiming at ensuring airlines the access to slots for the 2020 summer season and reducing the risk of ‘ghost flights’ that would have been operated only to maintain slots. The Regulation provides for a suspension of the airport slot requirements until 24 October 2020. Until then, airlines are not, therefore, required to use at least 80 per cent of their take-off and landing

23 Communication from the Commission ‘European Commission Guidelines: Facilitating Air Cargo Operations during COVID-19 outbreak’ (2020/C 100 I/01) of 27 March 2020.

slots in order to keep them the following year. More specifically, the waiver applies from 1 March 2020 to 24 October 2020 and it has also retroactive effects – from 23 January 2020 to 29 February 2020 – for flights between the European Union and China or Hong Kong.

Regarding the above-mentioned period, the Council of the EU specified that the measure can be extended if the covid-19 situation persists, by means of European Commission delegated act. It is precisely the European Commission that shall monitor the situation and report back by 15 September 2020.

### **State aid**

Based on Article 107(3)(b) of the TFEU,<sup>24</sup> the Commission adopted a Temporary Framework for State Aid Measures<sup>25</sup> in order to support companies during the covid-19 outbreak.

The Temporary Framework allows Member States to set up schemes to direct grants, selective tax advantages and advance payments up to €800,000. Furthermore, it allows Member States to provide state guarantees on bank loans, subsidised public loans to companies and safeguards for banks that channel state aid to the real economy and to grant short-term credit insurance. Based on the exception provided for in Article 107(2)(b) TFEU, the Commission enables Member States to compensate companies for the damage directly caused by exceptional occurrences even if they have received rescue aid in the past 10 years.

To date, several European airlines (for example, Lufthansa group, EasyJet, Virgin Atlantic and Air France–KLM) have requested state aid from their respective governments. As previously mentioned, the Italian government announced its decision to renationalise Alitalia – which is currently undergoing a restructuring procedure – by the establishment of a new company entirely controlled by the Ministry of Economy and Finance or by a company with a prevalent direct or indirect public participation. In 2020, the new company will receive up to €500 million for the fulfilment of the financial commitments and until the completion of the sale procedure plus €3 billion of the above-mentioned government capital injection.

In conclusion, it is worth highlighting that, in light of the current scenario due to the covid-19 pandemic, on 13 May 2020 the European Commission issued guidelines laying down general principles applicable to all transport services and specific recommendations designed to address the characteristics of each mode of transport. These guidelines aim to provide a common framework to support authorities, stakeholders, social partners and businesses operating in the transport sector during the gradual re-establishment of connectivity and free movement while protecting the health of transport workers and passengers.<sup>26</sup>

## **XII OUTLOOK**

The European Commission, in its Work Programme 2020, indicated that initiatives for the amendment of ownership and control rules as well as of those on PSOs should be taken. Among the future initiatives – within the aviation services package’s policy objective (i.e.,

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24 Article 107(3)(b) TFEU provides for an exception of aid to remedy a serious disturbance in the economy of a Member State.

25 Communication from the Commission ‘Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak’ (C(2020) 1863 final) of 19 March 2020.

26 Communication from the Commission, ‘COVID-19: Guidelines on the progressive restoration of transport services and connectivity’, 13 May 2020, C(2020) 3139 final.

revision of airport charges and of the provision of air services) – there is the necessity to revise ownership and control rules in order to help air carriers to mitigate the economic impact of the crisis on the air transport sector. The current rules related to ownership and control are provided for in Regulation (EC) No 1008/2008 which establishes that a Community carrier must be more than 50 per cent owned and effectively controlled by Member States or nationals of Member States. It precisely regarding this strict rule, which ensures the preservation of the majority of shares and the exercise of the control by EU nationals, that the EC aims to adopt a ‘more relaxed approach’. This is an important objective that the EU would like to pursue in order to ensure an increased globalisation of the airlines based in Europe.

With regard to Italy, it should be noted that in July 2020 the Italian Regulatory Transport Authority (ART) should issue its Decision – which follows the call for inputs launched by ART on 2019<sup>27</sup> – determining the airport charges system to apply (i.e., dual-till system versus single-till or hybrid approach).

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<sup>27</sup> ART Resolution No. 118/2019.

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ISBN 978-1-83862-435-4