

EVENT CALENDAR:

September 24 – October 04, 2019 – The 40th regular session of the ICAO Assembly, Montreal, Canada

October 4, 2019 – The 9th St. Petersburg Air Law Conference, St. Petersburg, Russia

October 16-18, 2019 – 31th IAWA's Annual Conference, Lima, Peru

October 18-19, 2019 – 12th Annual McGill Conference on International Aviation Liability, Insurance & Finance, Montreal, Canada

October 22, 2019 – 2019 Shanghai International Air Law Forum, Shanghai, China

November 14-15, 2019 – IIASL/Clyde&Co Air Law Workshop, Leiden, the Netherlands

EVENTS: 9th ST. PETERSBURG AIR LAW CONFERENCE

On October 4, 2019, the 9th Air Law Conference will be held in St. Petersburg

Discussion Panels:

1. Legal and operational relations of Civil and State aviation. Integration or separation?
2. Air Traffic Control in densely and thinly populated areas: similarities and differences
3. Civil Liability of Airlines and Manufacturers
4. The impact of sanctions against Russia on the international air transport market
5. Sharing airspace with manned and unmanned aircraft

Conference Website – airlaw.ru

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- 9th St. Petersburg Air Law Conference

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- Pablo Mendes de Leon & Niall Buissing, “Behind and Beyond The Chicago Convention: The Evolution of Aerial Sovereignty”

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NEWS OF THE AEROHELP INSTITUTE

THE 9TH ST. PETERSBURG
AIR LAW CONFERENCE
October 04 2019

ST. PETERSBURG
ZUBOV INSTITUTE

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ORACLE SP ATTORNEYS



RUSSIAN AIR LEGISLATION: OVERVIEW OF AUGUST 2019 CHANGES

On 2 August, the Federal Government published its Decree of 24 July establishing the requirements for online flight booking systems. Now, databases and processing computer systems (servers) of domestic passengers registration shall be located in the Russian territory.

On 2 August, amendments to the Federal law of 9 February, 2007 "On transport security" were made. The amendments, in particular, provide for introducing of "safety zone" concept; cancellation of vehicles categorization: cancellation of vulnerability assessment for certain types of transport objects; replacement of transport security plans with transport security passports for certain types of transport objects; entitlement of transport security services to purchase, store and use combat hand-held small arms; installation of video surveillance systems onboard aircraft.

On 16 August, the Russian President adopted the Decree on awarding with the State Awards the crew of Ural Airlines A321 Airbus, which made an emergency landing on a field in the Moscow region. The aircraft collided with birds during the take-off and suffered failure of both engines. In 1,5 minutes upon the take-off the flight crew managed to land the aircraft on the corn field not far from Zhukovskiy International Airport. All the 226 passengers survived.

On 19 August, the Federal Government Decree of 17 July came into force. The Decree amends the Regulations of state quarantine phytosanitary control at the RF state border checkpoints procedure. The amendments impose additional restrictions on the import in hand luggage of quarantine products of high phytosanitary risk, which do not require obtaining of phytosanitary certificates. Now the weight of imported products should not exceed 5 kg, and the number of imported flowers should not exceed 3 bouquets, providing that each bouquet consists of 15 or less pieces of cut flowers, buds, leaves, herbs and other parts of plants without flowers or buds, fresh and (or) dried collected together.

On 28 August, the Federal Government adopted several rules and regulations concerning the creation and operation of the remote sensing data federal fund, as well as the procedure of remote sensing data provision. The documents, in particular, establish requirement for remote sensing data users to obtain a license in case of receiving the data directly from state spacecraft and to perform certification or conformity declaration in respect of data receiving stations. Data acquisition from non-state spacecraft shall be carried out on the contractual basis.



EU AIR LEGISLATION: OVERVIEW OF AUGUST 2019 CHANGES

On 2 August 2019, the European Commission has found that the marketing agreements concluded between the local Association for the Promotion of Touristic and Economic Flows (APFTE) and Ryanair at the airport of Montpellier are illegal under EU State aid rules. Ryanair now has to return EUR 8.5 million of illegal State aid.

Montpellier Airport is a regional airport located in the French region of Occitanie, which served nearly 1.9 million passengers in 2018. Ryanair was present at the airport until April 2019. Between 2010 and 2017, APFTE concluded various marketing agreements with Ryanair, under which the airline and its subsidiary received payments worth around EUR 8.5 million in exchange for promoting Montpellier and the surrounding area as a touristic destination on Ryanair's website.

The Commission found that these marketing agreements did not correspond to effective marketing needs of APFTE, but only served as an incentive for Ryanair to maintain its operations at Montpellier Airport. This resulted in an undue and selective advantage to Ryanair over its competitors. On this basis, the Commission held that the agreements amounted to illegal and incompatible aid under EU State aid rules and that the advantage (quantified in EUR 8.5 million) must be recovered.

On 11 August 2019, the EU and Mexico signed an agreement to harmonize air transport regulations and standards. The working arrangement concluded between the European Union Aviation Safety Agency (EASA) and the Directorate General of Civil Aeronautics of Mexico (DGAC) secures EASA resources to help modify DGAC standards. In exchange, the DGAC will accept EASA-issued type and supplemental type certificates. The arrangement aims at pursuing regulatory convergence, an objective, which has also been repeatedly invoked by the International Civil Aviation Organization (ICAO) at a global level.

Under the agreement, EASA will provide resources, training and expertise to help the DGAC conform to EU standards. Moreover, the agreement has been concluded in the broader context of the Partnership project "EU-Latin America and Caribbean Aviation Partnership Project (EU-LAC APP), a four-year endeavour to strengthen regulatory cooperation and to promote EU standards in the whole regions of Latin America and the Caribbean.

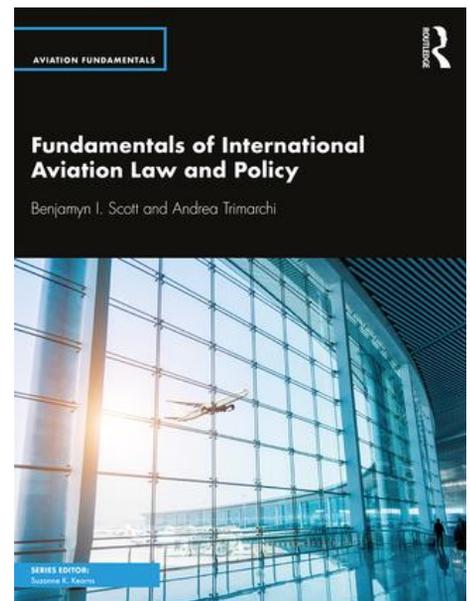
PUBLICATIONS: BENJAMYN I. SCOTT, ANDREA TRIMARCHI "FUNDAMENTALS OF INTERNATIONAL AVIATION LAW AND POLICY"

On September 30, 2019, a new work in the field of aviation law "Fundamentals of International Aviation Law and Policy" will be published. The authors of the publication are competent professionals with extensive background in aviation practice Benjamyn I. Scott and Andrea Trimarchi who are also experts of the AEROHELP Institute.

"Fundamentals of International Aviation Law and Policy" offers students a systematic, tailored and dynamic approach to understanding the legal scenario concerning international civil aviation. The book dynamically covers the major areas of international aviation law, and provides an introduction to the multifaceted international regulation of aviation activities in the sphere of public and private law.

The book is designed to provide the reader with the fundamental notions concerning international aviation law. It adopts an interactive approach, which aims at engaging the reader by way of using learning tools. The main areas of public and private aviation law are dealt with from a regulatory and practical perspective, and include detailed analyses of existing and applicable legislations, as well as landmark court cases and decisions. Each chapter is tailored to confer to readers a thorough knowledge of the international and, if any, the European applicable legislation. Delivery of these aims is attained through a dynamic and balanced use of didactic instruments and immediate information.

The book is intended for a varied audience of students and professionals involved in the aviation world, without requiring the possession of specific legal knowledge or background. It also aims to constitute a useful reference material for those who are familiar with legal terminology and aviation specifics."





CHRYSTEL EROTOKRITOU

NICOSIA (CYPRUS)

EXPERT IN AIR PASSENGERS COMPENSATION FOR CANCELLED, DELAYED AND OVERBOOKED FLIGHTS, LL.M.

The recent case of *Rusu & Anor v SC Blue Air (C-354/18)* confirmed that passengers have the possibility to claim for additional compensation under Article 12 of the Regulation EC 261 such as compensation for missed days at work.

The passengers had a confirmed reservation for a flight from Romania to London, where they lived and worked, to be operated by SC Blue Air on 6th September 2016. At the airport the passengers were denied boarding because the airline changed the aircraft allocated to fly the route to a smaller one, creating a situation where there were passengers than seats available.

The passengers were rebooked on a flight departing 5 days later. The Rusu spouses subsequently asked for 400 EUR per passenger from the airline as well as damages amounting to the wages deducted by their employers during the 5 days during which they were absent at work. Blue Air argued that the passenger were only entitled to the standard amounts of compensation laid down in article 7 of the regulation.

On 29th July 2019, the ECJ ruled that

(1) Article 7 (1) (b) of EC 261 must be interpreted as meaning that the amounts provided for in that provision are not intended to compensate for damages such as loss of wages. Such losses may be the subject of the additional compensation provided for in Article 12 (1) and it is for the national courts to determine and assess the various constituent elements of that prejudice, as well as the extent of the additional compensation.

(2) Article 12 must be interpreted as allowing the national courts to deduct the compensation awarded under that regulation from the additional compensation, but does not oblige them to do so as the regulation does not impose conditions on the competent national judge on the basis of which he could make this deduction.

(3) Article 4 (3) read in conjunction with Article 8 (1) must be interpreted as requiring the operating air carrier to provide the passengers concerned with full information on all rerouting options provided for in Article 8 (1), the passengers in question having no obligation to actively contribute to the search on rerouting possibilities.

(4) The burden of proof that a rerouting flight was offered as rapidly as possible lies with the operating air carrier.

The decision provides clarity for passengers wishing to claim for consequential losses such as lost accommodation or car rentals, insofar as the national laws of the court that hears the case provide for such remedies.

EXPERT'S OPINION: DAVID SPRECHER “THE FALL OF AIGLE AZUR – WHAT ARE THE RULES TO BE APPLIED BY TRAVEL PROFESSIONALS”



DAVID SPRECHER

ZUR HADASSA (ISRAEL)

EXPERT IN AVIATION LAW, ATTORNEY

Introduction

The French airline Aigle Azur has filed a request for Court Protection in early September 2019 and in the meantime has stopped all its flights.

Many travel professionals are facing a lot of problems as a result of this situation that is similar to the collapse of other airlines such as Cobalt, Air Berlin, Wow and others.

What can be done ?

The French Procedure

The procedure has been launched in accordance with applicable French texts.

The airline is exempt from payments to creditors including the refund of unflown segments as well as the payment of compensations and the credit of miles.

What has to be done ?

There are two clear cases: (1) sale of flights only. In such a case the travel professional is solely acting as agent of the airline with very limited liability and (2) sale of packages: in such a case as per applicable European Directive, the agent is liable for the good execution of the package including the flight which must be arranged and paid for by the agent. In such a case, agent is required to immediately secure the travel of his clients so to lower the exposure to further damages.

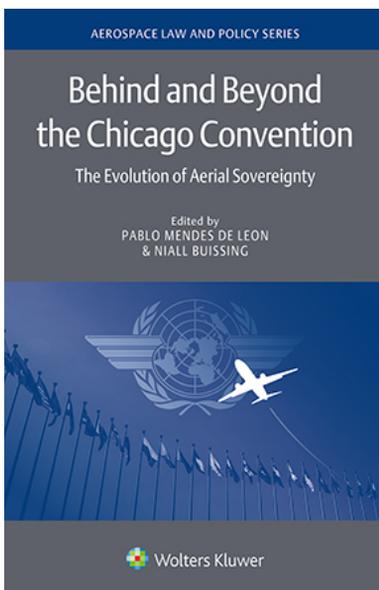
As to requests for refund, those cannot be placed with the BSP but solely with the judiciary administrator appointed by the Court of Justice who will categorize the various types of creditors.

It is strictly forbidden to deduct any amount from the BSP without approval of the administrator.

Measures for the future

It is utmost important that every travel professional always checks the viability of the carriers he wishes to contract with in order to limit the exposure to liability.

PUBLICATIONS: PABLO MENDES DE LEON & NIALL BUISSING, “BEHIND AND BEYOND THE CHICAGO CONVENTION: THE EVOLUTION OF AERIAL SOVEREIGNTY”



The new book published in 2019 by Wolters Kluwer “Behind and Beyond the Chicago Convention: The Evolution of Aerial Sovereignty”, edited by Pablo Mendes de Leon and Niall Buissing.

“Behind and Beyond the Chicago Convention” is intended to analyse the concept of sovereignty in international civil aviation, how it evolved in the course of times, how it related to European integration process and to air traffic management. The meaning of sovereignty has been analysed philosophically and linked to current conceptions in an evolutionary process. The Convention on International Civil Aviation that concluded in Chicago on 7 December 1944, commonly referred to as the Chicago Convention, is one of the most ratified multilateral agreements currently in force, with 193 States Parties. In this deeply informative book, commemorating the 75th birthday of the Convention on International Civil Aviation, thirty-three of the most distinguished authors in aviation law offer perspectives on the quality of the Convention’s achievements.

EXPERT'S OPINION: **MARIYA ZHOZE VEGAS ABOUT GROUNDHANDLING MARKET ISSUES**



MARIYA ZHOZE VEGAS

LISBON (PORTUGAL)

EXPERT IN GROUND HANDLING LEGAL ISSUES, LL.M.

Over the last years, several issues related with the function of European groundhandling market have arisen, a few of them with no clear answer in the EU legislation. Furthermore, when assessing concerns on groundhandling, one can conclude that some worries are probably crosswise to most airports regardless of its location inside or outside the EU.

One topic is related with a possible specific feature of the airport operator as a handling agent of last resort.

For instance, what should be the airport's obligation when a supplier, acting in a closed market, fails the provision of services, especially if they are critical, such as the provision of fuel and oil?

And if a supplier leaves the market – whether it is opened or not - and there are no other interested suppliers to step in? Should the airport operator have the obligation to enter and to guarantee the activity and, therefore, the functioning of the airport and the continuity of the air transportation service?

Although the EU legislation, namely the Council Directive 96/67/CE of October 15 (the Directive), does not provide a clear answer to these questions, it seems to provide legal grounds to the Member States to classify the airport operator as the ground handling agent of last resort.

Thus, Member States may establish this feature of the airport operator in its national law with a wider or narrower dimension. This facet of the managing body of the airport is, at the same time, a right and an obligation: as this undertaking represents a legal requirement to step into the market; this should be triggered when it is necessary and not just when the airport wants. The reasoning for this stems from the need to guarantee continuity of aviation service.

Similar concerns will most likely affect airports outside the EU and since there is no international law on this subject, solutions have to be found at a domestic level, namely in national legislations if that is possible by any means, which might not be the case, due to lack or regulation of national ground handling markets.

(The opinions and views given by the writer are personal and do not necessarily reflect those of any institution or corporate body.)

EXPERT'S OPINION: **ANDRE SOUTELINO “OCEANAIR (FORMER AVIANCA BRAZIL) – THE WAR KEEPS ON GOING”**



ANDRE SOUTELINO

SAO PAULO (BRAZIL)

EXPERT IN AVIATION REGULATION (AIRPORTS AND AIRLINES), CONSUMER, LABOR AND BUSINESS LAW, LL.M., ADVOCATE

On September 5th, 2019, Brazilian Civil Aviation Authority (ANAC) has suspended the maintenance certification from Oceanair Linhas Aéreas (former Avianca Brazil).

This decision was a setback in reorganization plan. Five days later (September, 10th), the Court of Appeal from São Paulo has decided that Oceanair Linhas Aéreas can go ahead with the reorganization plan.

That is the point: how the reorganization plan will work without a maintenance certification?

NEWS OF THE AEROHELP INSTITUTE



Oracle Solicitors (London) became a Partner of the 9th St. Petersburg Air Law Conference.



Expert of the AEROHELP Institute in criminal law and law enforcement, protection of passengers' rights, protection of the rights of aviation personnel staff Angela Konovalova (St. Petersburg) was awarded the Breastplate "Honorary Attorney of Russia". Congratulations to a colleague with a high award!



Studio Pierallini (Rome) became a Partner of the 9th St. Petersburg Air Law Conference.



Specialist in customs law, Attorney Kirill Lapenkov became an Expert of the AEROHELP Institute of Air and Space Law.



Norina and Partners Law Firm (Vladivostok) became a Partner of the 9th St. Petersburg Air Law Conference.



AEROHELP Institute now has an official TELEGRAM channel. On the channel, we will publish news of aviation community such as materials from the AEROHELP.today Journal. Subscribe and stay with us at t.me/AEROHELPTODAY



Sokolov, Maslov and Partners Law Firm (Moscow) became a Partner of the 9th St. Petersburg Air Law Conference.



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