

NOTICE TO EU CARRIERS

**RIGHT OF ESTABLISHMENT
OF EU LICENSED CARRIERS IN THE ITALIAN TERRITORY**

**ALLOCATION PROCEDURE FOR ITALIAN TRAFFIC RIGHTS RELATED TO
AIR SERVICE AGREEMENTS IN FORCE BETWEEN ITALY AND EXTRA-EU
COUNTRIES**

Legal context

- Treaty on European Union and the Treaty on the Functioning of the European Union;
- Bilateral Air Agreements in force between Italy and third countries including EU designation standard clause; "
- Regulation (EC) 847/2004, with specific regard to the consideration no. 10, that is worded as follows: « Establishment on the territory of a Member State implies the effective and real exercise of air transport activity through stable arrangements; the legal form of such an establishment, whether a branch or a subsidiary with a legal personality, should not be the determining factor in this respect. When an undertaking is established on the territory of several Member States, as defined by the Treaty, it should ensure, in order to avoid any circumvention of national law, that each of the establishments fulfils the obligations which may, in accordance with Community law, be imposed by the national law applicable to its activities»;
- Italian Navigation Code, with specific regard to "Titolo VI, Capo II";
- Article 38, first paragraph, of Law Decree 18 October 2012, n. 179, converted into Law 17 December 2012, no. 221;
- Article 1 of Regulation (EU) no. 465 of 22/5/2012;
- Council statement (15247/03 ADD1), that provides as follows: «The Member State is entitled to require, from Community carriers established on its territory, the respect of the appropriate national legislation, inter alia the applicable air transport regulations, including those concerning safety and security, as well as fiscal and social law, in conformity with Community law and its principles, in particular the principles of non-discrimination and proportionality. The Member State is also entitled, under non-discriminatory conditions, to require from the Community carrier established the permanent presence on its territory of staff responsible for safety ».

Requirements of the carriers

Certain bilateral Air Service Agreements, existing between Italy and extra-EU countries, provide for the designation of EU-licensed carriers, regularly established in the Italian territory.

In this juridical framework, the mentioned EU-carrier, may operate from Italy towards international destinations and v.v., once the Italian Authority has formally assigned



the relevant traffic rights and has communicated the designation to the the relevant Counterpartes.

In the mentioned context, Licensed EU carriers that want to operate Italian traffic rights on extra UE routes are required to:

1. be licensed, under Regulation (UE) 1008/2008, by the Aeronautical Authority of a EU Member State;
2. be regularly established in Italy, that is to say to be in compliance with the following provisions:
 - 2.1 to be enroled in the Register of Enterprises held by the Italian Chamber of Commerce in the district where the airline business activity is set up (foreign companies with secondary offices are admitted too);
 - 2.2 to have an airline's *home base* in Italy in compliance with: (A) Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991, as mentioned by Regulation (EU) no. 465/2012, Article 1 (2); (B) Article 38 of the Italian Law Decree 179/2012, converted by Law 221/2012;
 - 2.3 to be in line with safety and security law and regulation in force in the Italian territory and to be ready to submit the relevant Security Program to the Italian Aeronautical Authorities; a permanent presence of the airline's staff responsible for safety is also required.
3. to submit a formal statement (under D.P.R. no. 445 dated December 28, 2000) where all the above mentioned requirements are formally declared. The statement has to be submitted again (updated) in each following IATA Season together with the seasonal program to be authorized. The relevant form is published on ENAC website. Airlines involved in establishment procedures have to inform the Italian Authorities about any change intervned with reference to previous relevant formal statments without delay. Specific mention is to be made to the full awareness of the airline's legal representative about the consequences of making false statements, falsehood of acts and use of false facts and to the relevant punishment by law according to the provisions referred to in the articles 73, 75 and 76 of the mentioned D.P.R. 445/2000.

Procedures

A form concerning the statement mentioned at point 3 may be requested to the following Email addresses:

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