

Air Passenger Rights

Regulation [EC]1107/2006 "Making Regulation 1107/2006 a success:

1st NEB meeting"

3 December 2008

Brussels, Charlemagne Building, rue de la Loi 170 1049
room Lord Jenkins

MINUTES

1. INTRODUCTION

On 3 December 2008, the International Day of Persons with Disabilities, the European Commission hosted a first meeting with all the newly appointed national enforcement bodies (NEB) under Regulation 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

The meeting gathered the formally appointed NEBs, and as the case may be other national administrations involved in Regulation 1107/2006's enforcement.

The purpose of this meeting was threefold: firstly, to advance the enforcement work on Regulation 1107/2006 and get an indication of the progress of action in each Member State following its full application from 26 July 2008; secondly, to discuss cooperation means between NEB; thirdly, to raise any other issue or particular difficulty encountered by NEBs following the full application of Regulation 1107/2006.

The Commission (A.Houtman) opened the meeting by recalling that disabled persons and persons with reduced mobility (PRM) have been entitled to equal access to air travel without being discriminated and shall benefit from established rights, enabling them to receive appropriate information and assistance according to their specific needs. The Commission evoked that it had previously organised preparatory meetings to enable a smooth entry into force of Regulation 1107/2006. Each Member state will now have to face the situation as it is, and the consequences of a possible failure, including infringement procedures. But the willingness to make Regulation 1107/2006 work expressed by all operators gives to the Commission the reasonable hope that Regulation 1107/2006, so much awaited by EU citizens with reduced mobility will be a success.

2. SESSION 1: ENFORCEMENT: PRESENTATION OF THE NEBS AND OF THE REGIME OF SANCTIONS

The Commission opened this session asking NEB to clarify how three fundamental articles of Regulation 1107/2006 have been complied with at this stage: article 14 provides that the Member States shall appoint one or several NEBS to make sure that it is enforced. The Member States shall inform the Commission of the body or bodies designated; article 16 provides that the Member States shall lay down rules on penalties applicable to infringements of Regulation 1107/2006. The penalties must be effective, proportionate and dissuasive. Article 15 notably provides that the Member States shall take measures to inform disabled persons and persons with reduced mobility of their rights under this Regulation and of the possibility of complaint to this designated body or bodies.

The Commission also introduced a video produced by DG TREN services in close cooperation with stakeholders (airports, airlines, PRM associations) and intended to inform PRMs. It has been broadcasted during this session. This video is available in all EU languages on DG TREN's website on www.europa.eu, in short and longer version. NEBs have been encouraged to distribute this video that contains information which has been considered as accurate by all stakeholders.

1.1. Conclusions of the NEB 'Tour de table'

From the tour de table Article 14 seems to be formally complied with, given the fact that all NEB have now been appointed. Different models have been applied by Member states: either national Civil Aviation Authorities have been in charge, or the responsibility has been shared between subdivided structures, separating complaints handling tasks (sometimes anti-discrimination authorities) from enforcement and complaint instruction.

The activities under Article 16 have progressed also, although it has been noted that many sanctions schemes are pending before national administration for final approval and are expected to be in place by the beginning of 2009 (AT, IT, FR, LV, PL, PT, SE). By January 2009, 16 sanction schemes over 27 will be operational.

On Article 15, most NEB have already organised meetings, workshops and / or other awareness raising events at national level. Some NEBs have set a body that will meet regularly to discuss possible issues raised by Regulation 1007/2006 in practice. In a number of Member States, informative letters have been sent to all stakeholders and specialised magazines have covered the new PRM rights under this regulation. Inspections have been undertaken at airports to ensure compliance and training programmes are ongoing. Most NEBs have been in the process of updating their websites with relevant information and promotional materials, complaint forms or online forms. They are looking for ways to improve the complaint handling channels as foreseen under Article 15. Many NEBs have based their complaint handling systems on their experience from dealing with Regulation 261/2004.

1.2. Specific points raised by individual NEB

On Article 14, **NL** gave the information that an alternative dispute resolution (ADR) committee will evaluate cases and points out that its decisions will be legally binding on the air carriers that agreed on the new Body (different from the Swedish ADR system). **UK** has a divided structure which is further devolved locally; therefore a working group has been set up and meets regularly (4 -6 weeks) to discuss open issues. This exercise forms part of an active engagement to facilitate complaints handling and to bring stakeholders together. The Equality and Human Rights Commission promotes a conciliation approach and provides the passengers with advice and assistance. **NO** gave the information that a new ADR function will be in place as of 1 January 2009 to handle complaints (under regulation 1106/2007 and 261/2004). Airlines and airports are obliged to finance the ADR but will take part to the decision process in the court sessions. **CH** mentioned that Regulation 1107/2006 will be transposed into Swiss law by end of 2009. A working group already exists and ten meetings have been held with stakeholders to inform and discuss PRM rights and other national laws that can offer PRM protection.

On Article 16, **FR** has described in detail the process for imposing sanctions. Both ministries (transport and tourism) will be able to recommend the sanctioning procedure, however a final decision will be left to the discretion of an appointed committee that will decide whether or not to follow the recommendation. Its decisions can only be challenged before the Courts. **ES**

mentioned some delay in the adoption of its regime of sanctions. Several ministries are involved but only joint sanctions can be imposed. Better coordination and solutions need to be worked out before the sanction scheme is working properly and effectively. **IT** mentioned that the legislative text about sanctions, if approved in its current form, provides for the creation of a "sanctions fund" that will be used for social purposes, ie the promotion of disability inclusion in Italian society. Many countries (**IE**, **ES**, **MT**) have established an inspections programme.

On Article 15 and information, many Member states have developed extensive programmes. In **IE**, a particular effort is made to involve regional airports and local organisations and rolling campaigns are in place. The NEB website is adapted to the needs of 'blind' persons. **BU** considers it would be useful to develop a common 'inspectors handbook' that can be used by all NEB. **LV** gave the information that wide ranging trainings have been organised for staff, including pilots and cabin crew. The three international airports are well instructed and in 2009, efforts will focus on smaller airports. **LT** considers it would be useful that the Commission developed standard 'training programmes'. In **PL**, a national civil aviation programme has been designed to deal with information and training requirements. In the **UK**, a guidance document has been developed (available on their website) and in the near future, a training video will be produced and an event organised in 2009 to spread information about the regulation. **MT** has developed an 'operations manual' to achieve the required standards. The numbers of PRM assistance requests have doubled since the entry into force of Regulation 1107/2006, this probably because people are now aware of their rights. In 2009, the NEB will publish more information and plans to broadcast short TV/ radio spots on PRM rights.

3. SESSION 2: COOPERATION: HOW TO ENSURE AN EFFECTIVE AND EFFICIENT TEAM WORK BETWEEN NEBS

The Commission wants to open the reflexion on the basis of 2 questions:

3.1 Why so few complaints?

The Commission took note that very few complaints have been received so far.

It then raised the question to all NEB and would be interested to learn why so few complaints had been received by NEB since the entry into force of Regulation 1107/2006. Possible explanations could be that (1) Regulation 1107/2006 is fully implemented and everything works perfectly; (2) PRM are still lacking information about their rights and on how to complain; or (3) dispute resolution or ombudsmen channels established by operators (airports and airlines are providing passengers with an effective and satisfactory answer in case of an incident).

Member States have been invited to come back with elements of answer on this subject matter.

3.2 What is the best way to cooperate between NEBs?

The Commission wanted to know whether NEBs were interested in any common documents and standard formats that could be developed by the Commission to support NEB work, like it has been done in the past to clarify NEB procedures under Regulation 261/2004. In this respect, one can mention NEB complaints form or online form; airline contact point list; common understandings between NEB and between NEB and airlines; and the need to include Regulation 1107/2006 into the annex of Regulation 2006/2004 to enable the use of the CPC - network.

Since some NEBs have been already using a complaint form for Regulation 1107/2006, the Commission would like to know whether these forms are written in English or only in the Member State's official language, if the passenger can find them online, and if these complaint forms allow to get conclusions on the question why the amount of complaints has been so low so far.

Member States have also been invited to come back in writing asap with elements of answer on this subject matter.

4. SESSION 3: CURRENT QUESTIONS AND ISSUES

4.1 Communication from the Commission on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air - COM/2008/0510 final

The Commission informed the NEBs about its latest Communication on the level of compensation that can be deemed appropriate for destroyed, damaged or lost mobility equipment, which was adopted on 7 Aug 2008.

A study undertaken to support this communication confirmed that the scope of incidents that would fall within this category is very limited (1 to 1.000.000 passengers). The fact remains that such specialised mobility equipment could reach a value up to 20.000 € and this amount is much higher than the sums that can currently be claimed under the Montreal Convention (1000 special drawing rights as a maximum).

The Commission estimates that such incidents are likely to be more rare in the future given the training requirements under regulation 1107/2006.

There are three possible policy options to deal with PRM mobility equipment: (1) encourage airlines to waive limits for the few incidents; (2) launch discussions within ICAO to exclude mobility equipment from the definition of luggage, or waive the threshold under the Montreal Convention provisions; (3) follow the US approach if the other two options fail to address this issue.

4.2 Questions & Issues raised by NEBs

The Commission circulated a paper previously submitted by the **UK** authorities in the context of ECAC with questions that are giving rise to difficulties. These questions have been debated, and the Commission pointed out that it is ultimately up to the European Court of Justice to interpret Regulation 1107/2006. In the meantime, it can be useful to adopt common agreements and exchange best practice. Given the quality of the exchanges during this session, the Commission will consider the opportunity to come back to the NEBs with a paper consolidating the views on each problem. This paper would also be available to interested parties.

An exchange of views also took place on a number of other issues. **DE** raised the issue of the scope of this Regulation, asking how far it applies to smaller airports. The Commission took the view that no provision in the legislative text excludes the smallest airports from its application. **NO** asked for advice in cases when the passenger is unable to sit on a plane but needs to lie down, which is an issue under safety requirements. It was agreed that Regulation 1107/2006 cannot cover cases where the passenger is physically unable to sustain the flight. The Commission confirmed that this is a grey zone that has not been solved yet. The question was also raised on how to deal with 'obese persons' and if these should have the right to two seats onboard an aircraft. The issue of pre-notification 48 hours before the flight was

discussed; it was pointed out that this becomes difficult when four operators are involved. The Commission informed that a Report will be issued on this topic by 2010. **DE** and **AT** raise the issue of access to WC onboard aircrafts and at airports which are adapted to PRM needs.

Oxygen bottles carriage for PRM

NO asked whether it is acceptable to justify a denied boarding when PRMs wish to carry oxygen bottles onboard a flight.

The Commission clarified that there are different types of oxygen bottles and some of these are adapted to be carried onboard an aircraft. There is no specific EU rule that would explicitly cover the carriage of oxygen bottles onboard a flight but it may be considered as 'transportation of dangerous goods'. Under IATA's technical specifications, airlines are free to deny carriage of such material onboard their aircrafts if deemed unsafe. From a safety point of view, **FR** pointed out that it remains difficult to control the contents of passenger oxygen bottles.

Limitation of PRMs onboard

The Commission informed that under EASA certification rules for new aircrafts, a standard requirement is that an emergency evacuation of a plane shall take max 90 seconds. EASA has an ongoing call for tender to issue a study on this area which will be published by end 2009. Under the JAR OPS 1, airlines must limit the number of PRM depending on the number of cabin crew that will be available to assist PRM.

It is possible that specific legal requirements are imposed in some Member States.

NL made reference to document 'DGL 44', this guidance document specifying that the number of PRM passengers shall not exceed the maximum number of able-bodied passengers. The Commission pointed out that an 'able-bodied' person in this context does not refer to normal passenger, but has a narrower definition.

5. CLOSING BY VP TAJANI

Vice-President Tajani officially closed the meeting and announced his commitment to ensure that current air passenger rights regulations are fully respected and enforced in the EU. VP Tajani also announced the adoption, of similar sets of rights for passengers in other modes of transport, ie maritime and buses and coaches.

6. CONCLUSIONS

The Commission and the NEB highly appreciated the very fruitful and open exchange of views and information during this meeting.

Commission's commitments

- The Commission will seek possible IT solutions (possibly to include NEB under regulation 1106/2007 and regulation 261/2004) so that NEB can exchange information with each other. It was suggested that the structure could possibly be similar to ECAC website, where Member States and others' corner allows keeping updates on developments in this field.
- Open questions and interpretation issues cannot be solved yet but they are open to discussion and will be clarified in the nearest future.

- The Commission ensured NEB that a similar meeting will be held at least once a year.

Request for action for NEBs

- NEBs have been asked to communicate their sanctions schemes in place to the European Commission in writing; a detailed list together with a short explanatory note on the national sanction system has to be sent **by 15 January 2009**.
- NEBs have been asked to communicate in writing why they think so few complaints have been received so far, and to put forward their comments and proposals that could contribute to reinforce cooperation between the NEB **by 15 January 2009**.
- NEB have been asked to forward any cases received concerning compensation of destroyed, damaged or lost of mobility equipment to the Commission to inform and support its policy evaluation under the recent Communication with further evidence and confirm the limited magnitude of this issue
- NEB have been encouraged to work together in close cooperation as a network and are therefore encouraged to contact the Commission if any useful information can be circulated to all NEB.
- NEB have been encouraged to **by 15 January 2009** raise any further points or questions they are confronted with which have not been raised in the meeting.

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List of participants

Austria - Bundesministerium für Verkehr; Belgium - Direction Générale Transport Aérien, Cellule Affaires Internationales & EU; Bulgaria - International Relations & Regulations Department DG Civil Aviation Administration; Czech Republic - Civil Aviation Authority; Estonia – Consumer Protection Board; Finland - Secretary for International Affairs - Finnish Civil Aviation Authority; France - Mission du Droit des Passagers, bureau des Passagers aériens; Germany – Luftfahrtbundesamt, Customer and Citizen Services / Consumer Protection; Greece - Hellenic Civil Aviation Authority; Hungary- National Transport Authority, Directorate for Aviation; Italy – ENAC Operation Central Directorate; Ireland – Commission for Aviation Regulation; Latvia - Aircraft Operations Division – Civil Aviation Agency; Lithuania - Air Transport Division, Civil Aviation Administration; Luxemburg - Réglementation et affaires juridiques – Direction de l'Aviation Civile; Malta - Dept of Civil Aviation; Poland - Civil Aviation Security & Facilitation Department, CAA; Portugal - Portuguese Civil Aviation Institute (INAC); Slovakia - Ministry of Transport, Posts and Telecommunications of the Slovak Republic; Spain - Agencia Estatal de Seguridad Aérea – División de Calidad y Protección al Usuario; Sweden - Civil Aviation Authority; The Netherlands - Civil Aviation Authority; UK - Airline Licensing & Consumer Issues – CAA; Civil Aviation Authority, Air Travel Accessibility; Legal Directorate; Equality and Human Rights Commission; UK - Department for Transport – Aviation, Shipping and International Policy Branch, Accessibility and Equalities Unit; Norway - Civil Aviation Authority; Switzerland - Passenger Rights, NEB Switzerland;