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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the functioning and effects of Regulation (EC) No 1107/2006 of the European
Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons
and persons with reduced mobility when travelling by air**

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1. INTRODUCTION

Regulation (EC) No 1107/2006¹ concerning the rights of disabled persons and persons with reduced mobility when travelling by air ('the Regulation') was adopted by the European Parliament and the Council on 5 July 2006. This text is part of the policy carried out by the European Commission in all areas of everyday life to combat discrimination against persons with disabilities and, more generally, with either permanent or temporary mobility problems.

It is generally estimated that one in six Europeans suffers from a disability. In addition, an ageing European population means that there will be a continuously growing number of passengers who need special assistance because of a disability or reduced mobility.

The objective of the Regulation is clear: to allow disabled persons and persons with reduced mobility (PRM) to have the same possibility to travel by air as other citizens.

The Regulation seeks a balance between the need to combat discrimination and the need to meet operational requirements by laying down a general principle of non-discrimination and by, on the one hand, imposing on operators a set of obligations relating to the information and assistance provided to passengers and, on the other, requiring PRMs to provide pre-notification of the need for assistance and allowing for strictly defined derogations from the obligation to provide assistance. The existence of and respect for this balance are essential to the functioning of the regulatory instruments.

In 2009, pursuant to Article 17 of the Regulation, the Commission launched two studies on the implementation of Regulation (EC) 1107/2006. The purpose of the first study was to evaluate the functioning of the Regulation in general, while the second study looked more specifically at the penalties applied in Member States to violations of the obligations under this Regulation. The final reports of these studies were submitted in June and September 2010 and can be consulted on the website of DG Mobility and Transport².

This report does not aim to present in detail the content of these studies, which are readily available, but rather to summarise them and draw the necessary conclusions in order to improve the functioning of the existing regulatory instruments.

¹ OJ L204, 26.7.2006, p.1.

² http://ec.europa.eu/dgs/transport/index_en.htm

2. MAIN CONCLUSIONS OF THE STUDIES

The studies on the implementation of the Regulation provide a comprehensive picture of the present situation in the European Union.

The legal framework set out in the text and the principal assistance obligations have indeed been implemented in the Member States. Consequently, conditions have improved for PRMs and this is an undeniable success.

However, the adoption of the new rules varies from Member State to Member State and from one airport and one air carrier to another. The main difficulty is the lack of harmonisation and sometimes consistency concerning the different interpretations.

2.1. The successes

The general view is that the entry into force of the Regulation has brought undeniable advantages to disabled persons and persons with reduced mobility.

They can be summarised as follows:

a) A single framework. The Regulation has imposed a minimum single framework throughout the EU³. This single protection scheme is now operational in Europe. As a result, there is a detailed list of specific assistance services that must obligatorily be made available to the persons concerned free of charge.

b) A clear division of tasks between airports and air carriers. Today everyone knows what their tasks are and how to implement and finance them.

c) The establishment of a network of National Enforcement Bodies (NEB) in all the Member States and genuine cooperation with the Commission but also with other bodies⁴ through the exchange of information and good practices.

We now have a European culture of assistance to PRMs in air travel. Today all parties are aware of this issue and are putting concrete measures in place.

Nonetheless, despite these positive aspects, the Commission also found certain problem areas.

2.2. The difficulties

The lessons learned and the different studies conducted by the Commission and other organisations⁵ show that there are some difficulties in applying the Regulation and that this might weaken its impact.

³ In addition to non-EU countries implementing European legislation.

⁴ Such as the European Civil Aviation Conference's Sub-Group on Persons with Reduced Mobility

⁵ CAA review on the implementation of European legislation on the rights of disabled and reduced mobility passengers in the UK, March 2010; work of the ECAC's Sub-Group on Persons with Reduced Mobility; replies to the public consultation on air passengers' rights carried out by the European Commission in the first half of 2010.

While statistics show that in the great majority of cases PRMs receive the assistance they are entitled to and that only a small number of cases poses problems, it is necessary to continuously strive to apply the Regulation better.

2.2.1. Difficulties related to the obligations of airports

The managing bodies of airports are in charge of much of the assistance to PRMs⁶. They are responsible for the progress of passengers through the airport infrastructure until their seat in the cabin and for handling luggage.

a) The quality of the service provided and its adaptation to PRMs' individual needs is sometimes insufficient.

The quality of the assistance services offered tends to vary, and they are sometimes poorly adapted to the specific needs of passengers, in particular of PRMs with totally or nearly totally reduced mobility, nor does the personnel always receive adequate training.

b) The need to provide better information to passengers. The information provided to passengers is often considered insufficient or inaccessible. This element, essential to the good functioning of the Regulation, remains one of the weakest points of its implementation.

c) Handling mobility equipment

The handling of mobility equipment is another source of concern. The equipment is often fragile, expensive and vitally important to the passenger.

2.2.2. Difficulties related to the obligations of air carriers

a) Restrictions on accepting reservations from or embarking PRMs on the grounds of safety.

The studies and the complaints both indicate that air carriers have particular difficulties in applying the Regulation when it comes to refusing to accept reservations from or to embark PRMs owing to safety concerns.

This includes situations where carriers require that PRMs be accompanied by a person who can assist them during the flight and make this second person pay the full price of the ticket.

Article 4.1 of the Regulation authorises air carriers to derogate from the principle of non-discrimination and either to refuse to accept a reservation from or to embark a PRM or to require that the PRM be accompanied by another person in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air carrier's certificate. This derogation is therefore subject to strict rules⁷.

There seems to be some confusion over the definition of the safety criteria authorising derogations from the principle of non-discrimination. The need to be able to follow safety

⁶ Annex I to Regulation (EC) No 1107/2006

⁷ Article 4.1 of the Regulation

instructions⁸ in the event of depressurisation, turbulence, sudden manoeuvres or an accident might in some cases justify refusing to embark a PRM or limiting the number of PRMs on board or requiring that they be accompanied by another person.

At present there are but few safety rules harmonised at EU level concerning the transport of PRMs. In addition, the application of these rules remains primarily a matter for the national authorities. Each carrier proposes rules on the basis of its own risk assessment, and these rules are approved by the competent authority.

It must be added here that some carriers tend to mix up requirements related to flight safety and issues related solely to the comfort of PRMs (eating, using the lavatories, etc.). If boarding is denied for safety reasons, this must indeed be done solely for flight safety reasons.

Harmonising safety rules is a complex task that calls for the cooperation of the competent national authorities. Nonetheless, the Commission considers that it is already possible to set out simple principles for the derogations provided for in Articles 4.1(a) and 4.2, i.e.:

- Any derogation where safety reasons are invoked to justify refusing a reservation, denying boarding or requiring the presence of an accompanying person should be based on one or more legally binding flight safety standard(s)⁹ and not on simple recommendations or on the commercial policy of the air carriers.
- If transport is denied, the detailed reasons for this and a mention of the relevant binding safety standard should be notified to the passenger.
- The national authorities should define in detail and publish any safety requirements that can serve as a basis for denying transport, as this would allow a better understanding and the gradual harmonisation of practices.

Any reasons used to justify refusal of transport should be strictly and directly related to flight safety according to the following principles:

- incapability of understanding the safety instructions given by the crew; Incapability of following the safety precautions without help (fastening and unfastening the safety belt, taking hold of and adjusting the oxygen mask or the safety vest); incapability of participating independently in the evacuation of the plane, even to a limited extent; incapability of providing the necessary treatment or medical care for oneself during the flight.
- The maximum number of PRMs allowed on a flight depends on the characteristics of the aircraft and should not exceed the number of able-bodied passengers¹⁰ capable of assisting

⁸ These basically concern the fastening and use of safety belts, oxygen masks and life jackets and the rapid evacuation of the plane via the routes indicated by the flying crew.

⁹ The mandatory standards applicable in the EU are set out in EU OPS (Operational Standards) (Regulation (EEC) 3922/1991 of 31.12.1991). This Regulation describes the common technical requirements and administrative procedures applicable to commercial air transport, including safety rules for the transport of PRMs (see, for example, OPS 1.260, p. 34, or Appendix 1 to OPS 1.1045, point 8.2.2.). These can also be national rules: for example, in the UK, the Code of Practice, p. 38; in Germany, LBA Circulars, p. 36; in Belgium, Circulaire No CIR/OPS-04 of December 2006, published by the DGTA, Centre communication Nord

¹⁰ According to the ICAO (*Doc. 7192 Training manual Part E-1*), *able-bodied passenger refers to passengers selected by crew members to assist in managing emergency situations if and as required, for example in opening doors or helping other passengers evacuate the plane.*

the PRMs in an emergency evacuation¹¹. On the basis of this, some authorities estimate that this maximum number corresponds to half of the able-bodied passengers present on the flight.

b) Issues related to in-flight assistance. There are difficulties in implementing the Regulation also as regards in-flight assistance, in particular assistance in moving to toilet facilities, which is the air carrier's responsibility. This obligation is clearly stated in Annex II to the Regulation, and air carriers must do their utmost to fulfil it, in compliance with safety standards, including by adapting equipment and training the crew.

c) Problems related to mobility equipment. The definition of mobility equipment that must be carried free of charge has resulted in conflicting interpretations. Some passengers have been denied the right to carry certain equipment free of charge for the reason that this equipment was not directly necessary for the trip for which assistance was requested.

The right to travel, as reflected in the first recital of the Regulation (principles of non-discrimination and of equal treatment), should not be limited to the physical act of being transported from one place to another but should also include the destination, which, for this category of passengers, means having at their disposal the mobility equipment and medical material necessary for their activities also after the flight.

d) Problems related to the information provided to PRMs. Finally, it is still often the case that PRMs do not receive sufficient information about their rights when making a reservation or if denied boarding.

However, the letter and spirit of the Regulation implies that PRMs should be informed of their rights and any derogations prior to making a reservation so that they can decide on making a reservation and requesting assistance in full knowledge of all the considerations involved.

2.2.3. Difficulties related to the obligations of the national authorities in charge of implementing the Regulation

Difficulties have been identified concerning the uniform interpretation of the Regulation as well as the handling of passenger complaints and the adoption and application of penalties.

Since 2006 the Commission has organised meetings of the competent national authorities to discuss any differences in the interpretation of the Regulation. The minutes of these meetings are published on the website of DG Mobility and Transport.

There are great disparities between Member States. Some of the national authorities seem to be very active, both in informing the public of its rights and supervising the implementation of the Regulation in the field and in examining complaints. Other authorities only react out of necessity.

Another problem is that these authorities do not harmonise their actions sufficiently. Therefore carriers have sometimes found that the Regulation is interpreted in contradictory ways in the Member States.

¹¹ Cf. JAA Temporary Guidance Leaflet TGL No 44

As for the penalties, they vary widely from one Member State to another. Some penalties have an administrative character while others are of a legal or penal nature.

The time it takes to handle complaints ranges from a few weeks to six months. This situation undermines the efficacy of the entire system. Likewise the degree of detail and the effectiveness of the decisions of the NEB as well as their practical consequences for passengers differ greatly between the Member States.

2.2.4. *Other difficulties identified*

2.2.4.1. Disagreements over the amount of and the method of calculating and imposing charges

In certain Member States, air carriers and airports have not been able to agree on the amount of and the method of calculating the specific charge laid down in Article 8 of the Regulation.

There are significant differences in the amount of this charge at different airports, without there always being clear reasons for this.

2.2.4.2. Difficulty in interpreting certain important definitions

Certain definitions in the Regulation have caused interpretation difficulties. For example, it has been asked whether pregnant women, overweight people or young children are included in the definition of persons with reduced mobility. While it is not always possible to give simple, precise and universal answers in such situations of uncertainty, the general principles of interpretation of the Regulation must be applied. In other words, the Regulation does not just cover handicapped persons but also protects persons with reduced mobility owing to their age or any other cause of handicap¹².

Therefore, in the absence of express exceptions, situations involving children whose age might limit their autonomy during air travel should not be excluded from the scope of application of the Regulation. Consequently, an adult travelling alone with several young children could with good reason request assistance suited to the actual circumstances of the journey.

Likewise, a situation where the overweight of a passenger significantly reduces his or her mobility should not be excluded a priori from the scope of the Regulation.

These examples show that it is necessary to assess situations case-by-case while bearing in mind the Regulation's general objective to combat discrimination. Operators should not fear that the scope of the definitions is too broad, because they are protected against abuse by the principle of proportionality of the assistance to the intended objective, meaning that the passenger must be capable of taking the flight for which he or she has a reservation¹³.

¹² Article 2(a) of the Regulation

¹³ Article 7 of the Regulation

2.2.4.3. Transporting and supplying medical oxygen

The transport and supply of medical oxygen is handled in very different ways depending on the air carrier, and this causes uncertainty and much dissatisfaction among the passengers concerned.

As currently worded, the Regulation does not provide a solution to the problem, but the use of medical oxygen on board is nonetheless an issue that must be resolved rapidly, as the present situation is unsatisfactory. Passengers who have a vital need for oxygen are either denied access to air transport or left in a situation of uncertainty concerning the conditions and costs of their transport.

The transport and use of medical oxygen must be harmonised in the European Union, having regard to passengers' rights, air safety rules and the requirements applied to air carriers.

Medical oxygen is considered medical equipment and is therefore carried free of charge in accordance with the Regulation¹⁴, but it is also subject to the legislation on dangerous goods and for this reason some airlines refuse to carry it on board and instead impose the use of their own oxygen. They consider this a service, which they provide free of charge or subject to a charge that can sometimes be high.

On many occasions, the Commission has had the chance to express its views in replies to parliamentary questions and to petitions on the subject and to deplore the differences of treatment¹⁵.

2.2.4.4. General information provided to PRMs

The Commission is presently mobilising important resources to inform the public of its rights on its website and by appearing regularly on the media. On 29 June 2010 the Commission launched an extensive two-year information campaign (*'Your Passenger Rights at Hand'*) throughout Europe¹⁶.

The objective of this campaign, through the distribution of information leaflets, display of posters in areas frequented by travellers, a website dedicated to passenger rights¹⁷, press interviews and appearances on audiovisual media, is to make citizens aware of their rights and encourage them to exercise them.

These efforts must be supported by all the parties concerned, in particular the national authorities of each Member State. The Commission will encourage local information activities at the grass-roots level.

2.2.4.5. Making pre-notification more effective

The present system of pre-notification is inadequate and inefficient. The technical and legal means of improving the situation will be examined.

¹⁴ Annex II, Paragraph 2

¹⁵ See for example: the reply of 25 March 2010 to petition No 1438/2009 filed by David Buckle and the Commission's reply on 25 March 2010. Answers to written questions E-3760/09, E-5076/09, E-5586/09 and E-2962/10

¹⁶ Cf. http://ec.europa.eu/transport/index_en.htm

¹⁷ Cf.: <http://ec.europa.eu/transport/passenger-rights>

In order to improve the rate of pre-notification, which is today about 40%, it is essential to systematically inform passengers about the assistance they can receive and the importance of giving advance notification of their assistance needs.

This information should be given as early and as clearly as possible, already when the person is preparing and reserving the trip. Actors in the sector should be trained so that they can inform passengers of their rights and obligations under the Regulation. A reminder could always be included in the tickets, purchase orders and/or invoices.

In the light of this summary of the functioning of Regulation (EC) No 1107/2006, its strengths and weaknesses, proposals for improving its implementation are presented below.

3. CONCLUSIONS AND PROPOSALS FOR THE FUTURE

Overall the implementation of the Regulation is satisfactory and will continue to improve in the future, despite certain significant differences between air carriers and Member States and despite the fact that the public is not yet sufficiently well acquainted with the text.

While the necessity of providing assistance to PRMs is today recognised throughout the European Union, we are not yet at a stage where the Regulation would be applied efficiently and uniformly so as to form a true common area in this field.

Work still remains to be done. The axes of improvement proposed, which must be developed with the active collaboration of all the interested parties (international organisations, in particular the European Civil Aviation Conference, national authorities, PRM organisations, airports, air carriers, subcontractors, etc.), should contribute to reaching this objective.

As the initial assessment shows that the implementation of the Regulation is positive overall, a legislative review it is not necessary at this stage. The legal framework in place is recent and appears sufficiently flexible to accommodate any necessary improvements without the need for a legislative process at this point.

Therefore, in its role as coordinator and supervisor, the Commission would like to propose a number of axes of improvement within the existing framework.

First axis: Uniform interpretation of the Regulation

- The Commission will propose that the NEB network be formally established as a group of experts from the national enforcement bodies.
- The Commission will discuss with this group the guidelines for interpreting the Regulation, guidelines that it will adopt in a Commission document in order to enable as uniform an interpretation as possible of the provisions of the Regulation.
- The Commission will ensure that a special effort is made to adopt a common interpretation of safety requirements that can be used to justify denial of reservation or boarding. The Commission will act in concertation with the European Aviation Safety Agency (EASA).
- The Commission will see to it that a consolidated list common to all Member States of the reasons that can serve as a basis for refusing to transport PRMs or for requiring the presence of an accompanying person is drawn up and made public.

Second axis: Improving how the regulatory instruments work in practice

- The Commission, together with the interested parties, in particular consumer organisations (for example, European Consumer Centres), will see to it that an active information policy aimed at the public concerned by the Regulation is conducted at all times, especially among those who do not consider themselves handicapped but who are nonetheless covered by the definition of PRM.
- The Commission will encourage the establishment of training programmes together with organisations representing PRMs in order to improve service and strive to apply the relevant European rules more efficiently.
- The Commission will propose that the group of experts from the national enforcement bodies adopt measures so that notification of the need for assistance is requested already when the reservation is made and that documentary evidence thereof is provided.

Third axis: Strengthening the efficacy of the penalties and their supervision by national authorities

- The Commission and the group of regulators will discuss the possibility of establishing a common database to follow up the handling of complaints and the administrative and judicial decisions concerning the implementation of the Regulation.
- The Commission also hopes that an action plan that is harmonised at the EU level and includes a detailed list of the actions national authorities should undertake (regular audits of operators, inspections in the field, etc.) will be introduced.
- The Commission will encourage airlines to appoint a person that would be in charge of dispute resolution on the spot and would be authorised to immediately take the decisions necessary to settle a dispute with a passenger.
- The Commission and the NEBs will discuss the possibility of publishing a list of the penalties imposed and the operators concerned in order to reinforce the dissuasive nature of the penalties.

Fourth axis: Handling the issue of medical oxygen

The Commission will encourage negotiations about a voluntary commitment among all parties concerning the use of medical oxygen on board. Failing this, the Commission will consider adopting a general approach, either by a non-binding act or, if it is considered appropriate, by laying down binding rules.

Any solutions should target the following three principal elements, in particular:

- Establishing certification schemes for the air transport of certain types of equipment that are allowed on board, on condition that the maintenance requirements are met.
- Setting a maximum fixed fare applicable throughout Europe for the supply of oxygen on board.
- Providing passengers with clear and detailed information on the conditions of supplying medical oxygen on board.