

# Study on the compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility

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Civic Consulting (lead)  
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#### **Document Control**

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## KEY CONCLUSIONS

1. ***There are indications that passengers with reduced mobility who require a wheelchair or other mobility equipment are travelling less than the general population by air.*** It is likely that fear of loss, damage or destruction of their wheelchairs is a contributory factor in deterring their travel. A significant level of the current EU population currently has mobility problems, including needing a wheelchair, and the proportion of PRM within the population is likely to increase as the population of the EU ages.
2. ***Airlines reported a wide range of statistical evidence on damage, loss or destruction of checked-in wheelchairs, ranging from no incidents to 0.11% of checked-in wheelchairs being damaged, lost or destroyed.*** The level of complaints or claims for compensation related to lost, damaged or destroyed wheelchairs or mobility equipment also varied widely, from 0 to a highest level at one airline of 74 claims in 2005. **Based on the available data the number of relevant complaints regarding wheelchairs could be expected to be in the EU in the range of 586 to 1,101 cases per year.<sup>1</sup>** The empirical basis for this estimate is, however, rather small and **actual figures could be significantly higher.**
3. ***There is a range of financial, practical, and safety implications associated with damage, loss or destruction of wheelchairs and other mobility equipment for PRM travelling by air.*** **The immediate difficulty of needing a replacement of what can be highly personalised equipment in order to continue everyday life is exacerbated by lack of procedural clarity.** The health and safety implications of unsatisfactory replacement equipment are considerable. **The time taken to resolve the problems associated with the damage, destruction or loss of mobility equipment is inappropriate given the urgency of the need.**
4. ***The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier.*** Most of the air carriers do provide compensation in line with Montreal Convention. **Only a minority provides higher compensation payments.** Some regional and low cost air carriers reported that they require PRM to sign a form or declaration which states that the mobility equipment is **carried at the passenger's own risk.** Voluntary schemes of air carriers such as the Airline Passenger Service Commitment mention the loss and damage of wheelchairs or other devices, but do not give details as to how to deal with related claims for compensation.
5. ***The majority of surveyed EU airports do not have a specific policy regarding claims and compensation for damaged or destroyed wheelchairs or mobility equipment.*** The provision of compensation for damaged, destroyed or lost wheelchairs and procedures whereby airports provide a replacement vary from airport to airport. **This may result in gaps and inconsistencies regarding replacement and compensation for PRM whose equipment was destroyed or damaged while the airport provides assistance.**
6. ***The majority of surveyed EU airports do not have specific procedures for handling wheelchairs or other mobility equipment.*** The absence of specific procedures for handling wheelchairs or other mobility equipment and the fact that training on handling wheelchairs and other mobility equipment is not taking place in

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<sup>1</sup> Based on the US rate of 0.83 cases per million passengers as lower limit and the median rate of EU airlines that provided data of 1.56 cases per million passengers as upper limit.

all airports, indicates that improvements could be made in the quality and consistency of service related transporting such equipment.

7. **Organisations that represent persons with reduced mobility do not believe the current situation to be appropriate.** PRM organisations believe there is a need to improve the existing legislation regarding compensation thresholds for and immediate replacement of destroyed, damaged or lost wheelchairs or other mobility equipment. There is a considerable level of support for the PRM perspective from the Civil Aviation Authorities. In particular, PRM organisations and CAAs argue that wheelchairs and other mobility equipment should not be regarded as baggage. This view is also expressed by a minority of airports and airlines. Although rather divided in their views, airports are more likely to conclude that the current situation is appropriate. On balance, the opinion of airports is that compensation thresholds are appropriate and that current practices, policies and procedures meet the needs of PRM. This is also the strongly held view of airlines.
8. **Despite the divergence of views of stakeholders, there are also measures identified by the majority of all stakeholder groups that would improve the situation with respect to PRM travel by air.** The main area of consensus is regarding the need to clarify that the airport managing body is responsible for providing immediate assistance to PRM whose wheelchair or other mobility equipment has been lost, damaged or destroyed according to Regulation 1107/2006. All stakeholders also agree that the introduction of specific procedures and training for handling wheelchairs and other mobility equipment would achieve improvements.
9. **Enhancing the threshold for compensation for damaged or lost wheelchairs or other mobility equipment in the EU can be aimed at through regulatory and non-regulatory measures.** Possible regulatory options include (A) Alleviating the burden of proof regarding the liability of the airport (B) Raising the compensation thresholds regarding the liability of the air carrier through changing the Montreal Convention (B1), introducing unlimited liability in Community legislation (B2) or introducing Community legislation to the effect that a carrier cannot ask any additional fee for PRM declaring a higher value of mobility equipment (B3). Possible non-regulatory options include (C) Additional individual insurance of PRM and (D) Voluntary commitments of the industry.

# 1 INTRODUCTION

## *Background*

A 2002 public consultation on airline contracts showed wide support from all stakeholders involved that passenger rights of persons with reduced mobility (PRM) should be further protected by Community law. It also became clear that the division of tasks and responsibilities between airlines and airports is a main obstacle for further practical improvements.

The current situation is characterised by a certain level of complexity, which is enhanced by the great diversity of airlines and airports in terms of size, operation, organisation and service levels. For example, national airlines may provide services for PRM that new low-cost carriers may not. This limits the full scale of the advantages brought by the single market such as wider choice of destinations and the accessibility to the lowest fares for PRM.

The 2002 EC consultation was followed in 2005 by a proposal for a Regulation concerning the rights of disabled persons and persons with reduced mobility when travelling by air. The proposal stressed that passengers with reduced mobility should not be discriminated against when travelling by air through the Community. On 15 December 2005, the Council and the European Parliament reached an agreement on the Regulation. The intention behind the new Regulation No 1107/2006 is to create legal clarity, as airports are made responsible for organising and financing the assistance required for PRM and there is no possibility for air companies to opt out of this system. The Regulation will enter into force from July 2008, except Articles 3 and 4, concerning prevention of refusal of carriage and derogations, special conditions and information respectively, which will apply with effect from July 2007.

During the consultation process on this Regulation, stakeholder organisations presented a requirement for unlimited liability in the case of wheelchairs or other mobility equipment being lost, damaged or destroyed during handling at an airport or during transfer on-board aircraft. The reason for this is the high cost of modern mobility equipment and the relatively low limit of current liability for luggage under the Montreal Convention. This study was commissioned in response to the consultation.

## *Aim of the study*

This report presents the results of the study to assess the possibilities to enhance existing rights under Community, national or international law of air passengers whose wheelchairs or other mobility equipment are destroyed, damaged or lost during handling at an airport or during transport on-board aircraft.

This study was conducted by the Consortium consisting of Civic Consulting (lead) and NEA Transport Research and Training on behalf of European Commission Directorate-General Energy and Transport.

### *Structure of the study*

The structure of the report is as follows: Section 2 details the methodology employed for the study. Section 3 provides an overview of the scope of the problem. Section 4 presents an analysis of the legal framework structured according to the research questions: EU and international law; the regime governing responsibility of the airport managing body; the regime governing the responsibility of the air carrier. Section 5 describes relevant provisions in third countries (the US and Canada). Section 6 reviews the current practices of airlines and airports. Section 7 details the opinions of stakeholders on the adequacy of existing rules. Section 8 presents the conclusions of the study.

Finally, the annexes provide a detailed overview of survey results (Annex 1), the stakeholder survey questionnaires (Annex 2), the list of stakeholders responding to the survey (Annex 3), EU case studies regarding the national legal framework regarding the regime governing responsibility of the airport managing body and air carrier (Annex 4), case studies third countries (Annex 5) and relevant documents (Annex 6 to 8).

### Acknowledgements

Civic Consulting would like to thank the stakeholders from airlines, airports, Civil Aviation Authorities and disability organisations for their valuable input through the EU-wide survey. For our case studies on provisions in third countries we would like to thank the Canadian Transportation Agency and the U.S. Department of Transportation.

Finally we thank the Directorate-General Energy and Transport of the European Commission for the support provided throughout the study.

## 2 METHODOLOGY

The analysis of this study has been based on the following resources:

- Review of existing studies and reports;
- Expert and stakeholder interviews;
- Survey of airlines, airports, Civil Aviation Authorities and passengers- and disability organisation in the 27 EU Member States;
- Analysis of the EU and international legal framework, including analysis of provisions in third countries;
- In-depth case studies on the legal framework in five EU Member States (Sweden, Germany, United Kingdom, Slovenia and Belgium).

### 2.1 Aspects of the study

The following aspects are addressed by the study;

- *Aspects related to the state of play* as to existing rules, including existing national (EU Member States), EU and international legislation (Montreal Convention etc.) defining liabilities of airlines and airports with regard to the handling of goods, and in particular mobility equipment of passengers with reduced mobility travelling by air; the existing provisions that passengers with reduced mobility can benefit from, in the USA and Canada<sup>2</sup>; the regime, scope and financial limits (e.g. thresholds) of possible existing voluntary airline schemes.
- *Aspects related to the adequacy of existing rules* as to the scope of the problem, including collecting data on the occurrence of wheelchairs or other mobility equipment being destroyed, damaged or lost during handling at an airport or during transport onboard aircraft; facts and figures as to specific procedures introduced by airlines to give special attention when transporting such equipment;
- *Opinion of interested parties* as to the existing national (EU Member States), EU and international legislation as to the regime, scope and financial limits (e.g. thresholds) of immediate compensation and/or replacement equipment that passengers with reduced mobility can benefit from.
- *Aspects related to possible solutions*, including provision of proposals concerning the compensation and replacement of lost or damaged wheelchairs and other mobility equipment.

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<sup>2</sup> No information was available on relevant provisions in Japan.

## 2.2 Methodological approach

For the study the following methodological tools were employed:

### *Desk research*

Desk research was conducted to collect contextual background, focusing on examining existing studies, reports and policy documents. These included EC communications, EC regulations, country perspective reports, and public announcements and information.

### *Interviews with key stakeholders*

Exploratory interviews were included in the methodology as a tool to establish a broad overview of the issues relevant for the study, finalise the methodology and specifically to refine the questionnaire for the survey of stakeholder organisations in the EU 27. As guidance for the exploratory interviews a standard list of questions was used. The interview partners included;

**Table 1: Total number of interviewed stakeholders**

Organisation	Number of interviews
Airlines and their associations	4
Airports and their associations	2
Civil Aviation Authorities in EU MS	3
Transportation authorities US and Canada	2
Disability Organisations	2
Passenger Organisations	2
Travel insurer	1
<b>TOTAL</b>	<b>16</b>

### *Surveys*

Four surveys were developed and circulated targeting the key stakeholders:

- Civil Aviation Authorities of the EU 27 Member States
- Main national carriers and a selection of low fare carriers and their EU level associations
- Main national airports and their EU level associations
- Main national disability organisations and PRM federations and their EU level association

The questionnaires were sent out by email, after comments from the stakeholder groups on the draft questionnaires had been integrated, to the relevant organisations. The response rate was very satisfactory for all different groups. The table below describes the profile of the respondents.

**Table 2: Number of respondents to the survey**

Stakeholder group	Questionnaires received
Civil Aviation Authorities	17
Transportation authorities – US and Canada	2
Airlines	18
Airports	12
Disability organisations and PRM federations	11
Other	1
TOTAL	61

Graphs in the main report and in Annex 1 present in numerical form the survey data obtained from the different stakeholder groups. A small number of questionnaires was received very late (3 airports) and could not be included in the numerical evaluation. However, detailed comments of all stakeholders that returned a questionnaire have been taken into account for the analysis.

#### *Legal analysis*

A multi-layered legal analysis was carried out, including an analysis of national, Community and international legislation to identify relevant provisions concerning definition of liabilities, and regime, scope and thresholds of immediate compensation and/or replacement equipment. Additionally, relevant provisions in the US and Canada were scrutinised in close dialogue with the US and Canadian transportation authorities. Finally, a team of legal experts scrutinised the specific and general legislation in five selected MS that represent different legislative approaches in place in the EU 27. The following countries were selected for analysis: Germany, Belgium, UK, Sweden, Slovenia.

## 3 SCOPE OF PROBLEM

### 3.1 Overview

About 10 % of the population in the EU suffer from reduced mobility – mainly the disabled and the elderly.<sup>3</sup> This represents a significant proportion of the population, and one which is likely to increase as the population across Europe is ageing.<sup>4</sup> Country based data indicates a level of over 1.5% of the population in the UK use a wheelchair, as an example.<sup>5</sup> However, the percentage of people who use a wheelchair or other mobility equipment in the EU population as a whole is not definitively established.<sup>6</sup>

The survey of air carriers conducted within the framework of this study sought to establish the total number of passengers carried from EU airports in 2006; the numbers of passengers with reduced mobility who checked in their wheelchair or other mobility equipment in 2006; the number of passengers in 2006 where a wheelchair was required in the cabin; and the number of checked in mobility equipment other than wheelchairs. It also examined the proportion of wheelchairs or other mobility equipment checked in which was damaged, destroyed or lost. The responses are indicated in Table 3 in section 3.2.

It seems that the percentage of people travelling with wheelchairs or other mobility equipment does not reflect the level of PRM or, specifically, wheelchair users in the population as a whole. According to survey results the percentage of passengers who check-in their wheelchair is between 0% and close to 0.5% of the total number of passengers carried. The percentage of passengers that checked in other types of mobility equipment is up to 0.23% of the total number of passengers carried (see Table 3). The survey did not investigate the numbers of other types of mobility equipment taken in the cabin.

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<sup>3</sup> “Passenger Rights and Air Safety - A Commission Priority”, EU press release, Brussels, 18 July 2006

<sup>4</sup> “EU25 population aged 65 and over expected to double between 1995 and 2050”, Eurostat news release 129/2006-29 September 2006.  
[http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP\\_PRD\\_CAT\\_PREREL/PGE\\_CAT\\_PREREL\\_YEAR\\_2006/PGE\\_CAT\\_PREREL\\_YEAR\\_2006\\_MONTH\\_09/3-29092006-EN-BP.PDF](http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_PRD_CAT_PREREL/PGE_CAT_PREREL_YEAR_2006/PGE_CAT_PREREL_YEAR_2006_MONTH_09/3-29092006-EN-BP.PDF)

<sup>5</sup> There are 1.2 million wheelchair users in the UK according to UK Department of Health Data from 2004, however this is based on surveys from 2000. Source: UK Department of Health [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4103389](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103389). The latest UK population census was 2001 when the population was almost 59 million. Source: UK Census 2001  
[http://news.bbc.co.uk/2/shared/spl/hi/uk/03/census\\_2001/html/population.stm](http://news.bbc.co.uk/2/shared/spl/hi/uk/03/census_2001/html/population.stm)

<sup>6</sup> Background research reveals a lack of definitive statistics on disability. These seminar papers reveal a lack of the survey research necessary to be able to establish the size and characteristics of the disability population. Statistics used to describe the characteristics of the disability population should be treated as indicative rather than precise description. Source: EU-US Seminar “Access of people with disabilities to employment”, Brussels, 17-18 November 2003.

This statistical data suggest that aspects of having reduced mobility are deterring travel by PRM. The survey questionnaire asked whether respondents from organisations representing PRM had evidence that PRM are deterred from travelling by air because of concerns about loss or damage to their wheelchair or mobility equipment. Although none provided evidence, several respondents expressed the view that this is the case and commented on personal experience. The respondent from the European Disability Forum provided this insight: “Most disabled persons have this fear...Some people have had terrible experiences and have stopped travelling because of this. Many people do not travel at all, just to avoid this happening (especially people with electric wheelchairs).”

The impact extends to friends and family also. The proportion of the population who are likely to travel or wish to travel with friends or family with reduced mobility, and whose travel decisions will be based on their needs and experiences, is also significant.

In summary:

- The percentage of people who use a wheelchair or other mobility equipment in the EU population as a whole is not definitively established. Country based data indicates a level of over 1.5% of the population in the UK, as an example, use a wheelchair, whereas those who travel by air with a wheelchair in the EU, based on survey figures, is between 0% and close to 0.5% of the total passengers carried.
- There are indications that fear of loss, damage or destruction of wheelchairs or other mobility equipment deters PRM from travel by air.
- The impact of this fear extends beyond the individual PRM to friends and family.

This leads to the following conclusion:

1. ***There are indications that passengers with reduced mobility who require a wheelchair or other mobility equipment are travelling less than the general population by air.*** It is likely that fear of loss, damage or destruction of their wheelchairs is a contributory factor in deterring their travel. A significant level of the current EU population currently has mobility problems, including needing a wheelchair, and the proportion of PRM within the population is likely to increase as the population of the EU ages.

## 3.2 Analysis of statistical data

Although PRM are travelling less than the general population by air, in absolute figures this is still a considerable number. Individual airlines responding to the survey reported up to 31,380 checked-in wheelchairs in 2006. This also implies that a significant number of wheelchairs are handled at airports. For example, Munich Airport International reports close to 125,000 cases of assistance to air passengers with reduced mobility who arrive or depart for 2006.<sup>7</sup>

In principle, there are two types of data on wheelchairs or other mobility equipment being destroyed, damaged or lost in the EU:

1. The number of destroyed, damaged or lost mobility equipment as recorded in the internal statistics of air carriers;
2. The number of complaints and/or claims for compensation regarding destroyed, damaged or lost mobility equipment addressed to both air carriers and other stakeholders.

In the following sections, both types of data are presented.

### 3.2.1 *Number of damaged or lost mobility equipment as recorded by air carriers*

The following table summarises the data provided by air carriers on the number of destroyed, damaged or lost mobility equipment as recorded in their internal statistics. Only 6 of the 18 carriers which responded to the survey provided relevant data in this respect.

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<sup>7</sup> The airport reported 47,070 transports (WCHC, WCHS, WCHR, cancelled transports) through a subcontractor and additionally approx. 77,839 WCHR by other carriers/service providers.

**Table 3: Overview of detailed data provided by air carriers (year 2006, EU)**

	Airline 1	Airline 2	Airline 3	Airline 4	Airline 5	Airline 6**
<b>Passengers carried</b>						
<b>A.</b> Total number of passengers carried from EU airports	1,100,000	1,300,000 (approx.)	38,368	6,786,387 *	19,333,911	37,525
<b>B.</b> Number of passengers who check in their wheelchair	1,300	0	22	31,380	no data available	79
<b>% B of A</b>	0.12 %	0.00%	0.06%	0.46%		0.21%
<b>C.</b> Number of passengers who check in mobility equipment other than wheelchairs.	N/A	3,000 (approx.)	0	not specified	no data available	5
<b>% C of A</b>	0.00%	0.23%	0.00%	0.00%		0.01%
<b>D.</b> Number of passengers where a wheelchair is required in the cabin	200	2,700	22	5,908	13,000 (approx.)	22
<b>% D of A</b>	0.02%	0.21%	0.06%	0.09%	0,07%	0.06%
<b>Destroyed, damaged or lost luggage, wheelchairs and other mobility equipment</b>						
<b>E.</b> Percentage of destroyed, damaged or lost luggage (compared to the total number of checked-in luggage)	0.6%	0.3%	0.75%	0.33 %	not specified	0%
<b>F.</b> Percentage of destroyed, damaged or lost wheelchairs (compared to the total number of checked-in wheelchairs)	0%	0%	0%	0.11 %	not specified	0%
<b>G.</b> Percentage of destroyed, damaged or lost mobility equipment other than wheelchairs (compared to the total number of checked-in mobility equipment other than wheelchairs)	0%	0%	0%	not specified	not specified	0%

Notes: \* Unable to make a difference between EU and NON EU \*\* EU Candidate-country airline  
Source: Stakeholder survey

The table above illustrates that the extent to which incidents of damage, destruction or loss of mobility equipment occur cannot be fully documented on basis of the data provided. Those air carriers that provided data report a wide range of statistical evidence ranging from no incidents to 0.11% of checked-in wheelchairs being damaged, lost or destroyed in 2006. This compares with rates of 0% to 0.75% of checked-in luggage being destroyed, damaged or lost.

### 3.2.2 *Number of complaints and claims regarding damaged or mobility equipment*

The four surveys conducted in the framework of this study sought to establish detailed data from airlines, airports, Civil Aviation Authorities and PRM organisations concerning the number of complaints and the number of claims for compensation related to destroyed, damaged or lost wheelchairs or other mobility equipment (see section 2 on methodology). Stakeholders were also asked whether there is any organisation or institution that collects such data other than individual airlines and airports. In almost all cases respondents indicated that **there is no organisation or institution other than airports and airlines which collects such data.**<sup>8</sup> However, **most airlines and airports responded that they did not have detailed data** on the number of complaints and number of claims for compensation regarding destroyed, damaged or lost wheelchairs or other mobility equipment in their area of responsibility. The statistics provided by airports and airlines are presented below.

There were two airports which provided statistics, Hamburg Airport and Malta International Airport, and both indicated that there were **no complaints** or claims in their area of responsibility from and including 2004 to 2006.

Other airports make specific comments. Goteborg-Landvetter Airport observe that “generally, **it is uncommon with complaint or claim regarding destroyed, damaged or lost at the airport**”. **Zurich Airport estimates that approximately one claim a month goes to the airlines’ claims office.**

Statistical evidence is also provided by two Civil Aviation Authorities. **The Polish CAA indicates that LOT airlines report 3 complaints a year** referring to destroyed, damaged or lost wheelchairs or other mobility equipment. **The Belgian CAA shows 3 incidents** in airlines’ area of responsibility in 2005.

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<sup>8</sup> Only few other data sources were mentioned: The PRM assistance provider IHD in the Netherlands and in Sweden the Goteborg-Landvetter Airport indicate that it is groundhandling companies which have this kind of information. The Swedish Federation of People with Mobility Impairments also provides information about technical aid centres in Sweden which collect information and assist people in obtaining mobility aids. One of the airlines provided information on SITA World Tracer as the body which collects the relevant data (the airline added: “The only possible way to get those figures is via SITA. ... they gave me the number of reports made the last year AHL/DPR/OHD concerning the type 91. Type 91 is wheelchairs, and devices for mobility needs”). Although SITA was contacted during the study, it was not possible to obtain further data. The Estonian Ministry of Economic Affairs and Communications expanded their response to clarify that in the near future the Estonia Consumer Protection Board will be the body collecting this data. In Luxembourg it is the Civil Aviation Authority which has this role.

Of the organisations representing passengers and PRM, only the Swedish Federation of People with Mobility Impairments provided statistics regarding the number of complaints related to destroyed, damaged or lost wheelchairs: 12 in each year 2004, 2005 and 2006.

The statistics provided by the airlines reflect higher figures for complaints and claims for compensation than shown in the statistics from other stakeholders. However, as was the case for all stakeholders, the majority of airlines also indicated that they did not have detailed data on these types of complaints or claims. This mainly implies that currently this issue is not considered a priority, because the relevant raw data could be expected to be available in principle. The data concerning the absolute numbers of PRM travelling by air should be possible to retrieve from air carrier databases, as relevant booking codes exist, at least concerning the use of wheelchairs.<sup>9</sup> Also, to collect data on the incidence of destroyed, damaged or lost luggage in general and wheelchairs and other mobility equipment in particular can be considered good management practice. The same is true for registering cases of claims for compensation.

The airlines that provided data are described in detail in the following tables. Airline A, which carried 26.5 million passengers from EU airports in 2006, reported 6 claims for compensation related to destroyed, damaged or lost wheelchairs in 2004, 19 in 2005 and 17 for 2006. The same carrier also provided information on the number of complaints related to destroyed, damaged or lost wheelchairs or other mobility equipment for the “past 366 days from today”.

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<sup>9</sup> Relevant codes include:

**WCHR** = Passenger who can walk up and down stairs and move about in an aircraft cabin, but who requires a wheelchair or other means for movements between the aircraft and the terminal

**WCHS** = Passenger who cannot walk up or down stairs, but who can move about in an aircraft cabin and requires a wheelchair to move between the aircraft and the terminal

**WCHP** = Passenger with a disability of the lower limbs who has sufficient personal autonomy to take care of him/herself, but who requires assistance to embark or disembark and who can move about in an aircraft cabin only with the help of an on-board wheelchair

**WCHC** = Passenger who is completely immobile, who can move about only with the help of a wheelchair or any other means and who requires assistance at all times

(Source: ECAC.CEAC DOC No. 30 (PART I), Classification and codification based mainly on IATA Resolution 700 and Recommended Practice 1700)

**Table 4: Airline A complaints and claims data (total number of passengers carried in 2006 from EU airports 26.5 million)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost <u>wheelchairs</u>	...destroyed, damaged or lost <u>other mobility equipment</u>	...destroyed, damaged or lost <u>wheelchairs</u>	...destroyed, damaged or lost <u>other mobility equipment</u>
2004			6	
2005			19	
2006	705 <sup>10</sup>		17	

Source: Stakeholder survey

The statistics below provided by airline B show that complaints related to destroyed, damaged or lost mobility equipment are close to numbers of claims for compensation.

**Table 5: Airline B complaints and claims data (close to 9 million passengers carried in 2006)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost <u>wheelchairs</u>	...destroyed, damaged or lost <u>other mobility equipment</u>	...destroyed, damaged or lost <u>wheelchairs</u>	...destroyed, damaged or lost <u>other mobility equipment</u>
2004	21		19	
2005	16		16	
2006	5		5	

Source: Stakeholder survey, air carrier website

Airline C, results below, reported the same number of complaints as claims for compensation.

<sup>10</sup> This figure is from reports made for the last 366 days from the date the questionnaire was completed. As this information was obtained by the Airline through SITA/IATA World Tracer and is not differentiated by type of equipment it has not been used for further calculations.

**Table 6: Airline C complaints and claims data (approx. 3.6 million passengers carried in 2004)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment
2004	6		6	
2005	3		3	
2006	12		12	

Source: Stakeholder survey

A similar picture is provided by the statistics reported by airline D (below).

**Table 7: Airline D complaints and claims data (small sized, no data provided on total number of passengers carried in 2006 from EU airports)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment
2004	2		2	
2005	2		2	
2006	1		1	

Source: Stakeholder survey

Airline E, a leisure airline, recorded 57 claims for compensation related to destroyed, damaged or lost wheelchairs in 2004, 74 in 2005 and 37 in 2006. These are the highest numbers recorded by any airline that provided data. The same airline also reported the highest number of checked-in wheelchairs.

**Table 8: Airline E complaints and claims data (total number of passengers carried in 2006 was 6.8 million)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment
2004			57	
2005			74	
2006			37	

Source: Stakeholder survey

Finally, the table below presents untypical data provided by airline F in that the number of complaints and claims are very low compared to the total number of passengers. As this airline did not provide any statistical data on the total number of wheelchairs or other mobility equipment transported, it is difficult to draw any conclusion from this.

**Table 9: Airline F complaints and claims data (total number of passengers carried in 2006 from EU airports 4.5 million)**

Year	Number of complaints related to ...		Number of claims for compensation related to ...	
	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment	...destroyed, damaged or lost wheelchairs	...destroyed, damaged or lost other mobility equipment
2004	1		1	
2005				
2006				

Source: Stakeholder survey

Looking beyond the EU, the study invited input from the United States. Data from the U.S. Department of Transportation Aviation Enforcement Office is presented in the following table:

**Table 10: US Department of Transportation complaints and claims data**

Year	Number of complaints related to ...		Number of claims for compensation related to ...		Area for which data applies
	...destroyed or damaged <u>wheelchairs</u>	...destroyed or damaged <u>other mobility equipment</u>	...destroyed, damaged or lost <u>wheelchairs</u>	...destroyed, damaged or lost <u>other mobility equipment</u>	
2004	422	120	N/A	N/A	To, from & within U.S.
2005	722	158	N/A	N/A	
2006	718	153	N/A	N/A	

Source: Stakeholder survey

This data reflects the number of complaints received by carriers alleging damage to wheelchairs or other mobility equipment, which includes instances where a wheelchair or mobility equipment is destroyed.<sup>11</sup> A comparison between the available statistics for the USA on complaints and the data provided by EU carriers is provided in the following table:

**Table 11: Compilation of data on complaints and total number of passengers**

	Average annual number of complaints (2004 –2006) related to destroyed, damaged or lost wheelchairs	Number of passengers carried during 2006 (total of PRM and other passengers)	Number of cases per million passenger
<b>US</b>			
US data*	621	744.6	0.83
<b>EU airlines</b>			
Airline A	14**	26.5***	0.53
Airline B	14	9.0	1.56
Airline C	7	3.6	1.94
Airline E	56**	6.8***	8.24
Airline F	0.3	4.5***	0.07
<i>Median</i>			1.56

\* Data does only relate to complaints regarding destroyed/damaged wheelchairs, data on complaints received by carriers alleging loss of wheelchairs are not available.

\*\* Data on claims, as only this data was available for 2004-2006. Figures from other airlines indicate that the number of claims and complaints is roughly equal.

\*\*\* From EU airports

Source: Stakeholder survey, US Bureau of Transportation Statistics [www.bts.gov](http://www.bts.gov)

<sup>11</sup> The Aviation Enforcement Office does not have data on the number of complaints received by carriers alleging loss of wheelchairs or other mobility equipment, or on the number of claims for compensation regarding destroyed, damaged or lost wheelchairs or other mobility equipment.

The data presented in the table above provides a relatively consistent picture. It can be used for an extrapolation of the expected total annual number of complaints in the EU related to destroyed, damaged or lost wheelchairs based on the total number of air passengers transported in the EU. Applying the US rate of 0.83 cases per million passengers, the total number of relevant complaints regarding wheelchairs could be expected in the EU (with 705.8 million air passengers in 2005<sup>12</sup>) to be in the range of 586 cases per year. Based on the median rate of EU airlines that provided data of 1.56 cases per million passengers, the relevant number of complaints would be nearly twice as high, i.e. in the range of 1,101 cases per year.

This estimate has to be interpreted with great care, as there are a number of limitations to the data provided:

- Only a relatively small number of EU carriers provided detailed data that could be used as basis for the extrapolation. However, in most cases no consistent data was provided regarding the total number of wheelchairs checked-in. Obviously, the number of checked-in wheelchairs has crucial influence on the possible number of complaints;
- Only wheelchairs are included, as less data was available related to other mobility equipment.

The empirical basis for this estimate is, therefore, rather small and actual figures could be significantly higher. It is unlikely that EU complaint figures would be significantly lower than the estimate based on the US rate.<sup>13</sup> The US has implemented stricter rules concerning air transport of PRM for a much longer period and does not apply compensation limits for domestic transport. Such a policy could be expected to lead to a reduction of cases in the mid- to long-term, as carriers are more likely to apply specific procedures for mobility equipment. On the other hand, one could also argue that stricter rules concerning air transport of PRM could lead in the long run to more PRM using air transport, therefore also increasing the number of wheelchairs transported and possibly the number of cases of destroyed, damaged or lost wheelchairs. As no comprehensive and comparable statistics on the number of PRM that check-in wheelchairs in the US and EU is available, it is not possible to come to a final conclusion at this stage. This discussion indicates the need for a better communication and compilation of relevant statistics from air carriers to Civil Aviation Authorities in the EU.

#### In summary:

- In almost all cases respondents indicated that there is no organisation or institution other than airports and airlines which collects data on the numbers

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<sup>12</sup> Eurostat press release 11/2007 - 19 January 2007

<sup>13</sup> Based on the assumption that the number of PRM that check-in wheelchairs is similar in the US and EU. No data was available in this respect.

of complaints or claims relating to destroyed, damaged or lost wheelchairs or other mobility equipment.

- Few respondents were able to provide statistics on complaints or claims regarding lost, damaged or destroyed wheelchairs or other mobility equipment, although in principle this data should be available to air carriers.
- Airports generally do not register numbers of complaints and claims (only Zurich airport provided an estimate of 1 claim per month based on feedback from the handling agents Swissport and Jet Aviation).
- Most Civil Aviation Authorities do not register numbers of complaints and claims.
- PRM organisations provided generally no data on complaints (only the Swedish national organisation estimated approximately one damage per month, reported to them by organisations for aids).
- The highest number of claims for compensation reported by an individual air carrier that provided data was a leisure airline that reported 74 cases for 2005. The same carrier reported 37 cases for 2006, or 0.11% of the total number of passengers who checked-in wheelchairs.
- A small number of air carriers indicated that no wheelchairs or mobility equipment that were checked in were destroyed or damaged during 2006.

This leads to the following conclusion:

2. ***Airlines reported a wide range of statistical evidence on damage, loss or destruction of checked-in wheelchairs, ranging from no incidents to 0.11% of checked-in wheelchairs being damaged, lost or destroyed.*** The level of complaints or claims for compensation related to lost, damaged or destroyed wheelchairs or mobility equipment also varied widely, from 0 to a highest level at one airline of 74 claims in 2005. Based on the available data the number of relevant complaints regarding wheelchairs could be expected to be in the EU in the range of 586 to 1,101 cases per year.<sup>14</sup> The empirical basis for this estimate is, however, rather small and actual figures could be significantly higher.

### 3.3 Description of individual cases

The survey sought to identify the level of impact for PRM when their wheelchair or other mobility equipment is lost, damaged or destroyed.

All stakeholders were asked whether they were aware of exemplary cases during the last three years in which there was a complaint or claim for compensation regarding destroyed, damaged or lost wheelchairs or other mobility equipment of PRM in their area of responsibility (e.g. country, airport, airline). If respondents were aware of

<sup>14</sup> Based on the US rate of 0.83 cases per million passengers as lower limit and the median rate of EU airlines that provided data of 1.56 cases per million passengers as upper limit.

examples, they were requested to provide details. These details provide evidence of the significant implications of loss, destruction or damage to wheelchairs and other mobility equipment for PRM.

Most of the responses on case studies were received from PRM organisations. Almost half of the PRM organisations indicated awareness of cases and provided examples from the last three years.

No airports indicated awareness of cases. Two Civil Aviation Authorities provided a case study. Two airlines provided case studies where compensation was provided under the Montreal Convention and the level was adequate. Two other airlines indicated that they were aware of cases but did not provide details.

The list of case studies provided by the European Disability Forum illustrates the range of financial, practical, health and safety implications of damage, loss or destruction of wheelchairs and other mobility equipment for the individual passenger concerned and in certain examples also for their families. Further evidence is provided by the Austrian National Council of Disabled Persons, the German Disability Council and the Belgian Disability Forum.

The financial implications of the loss, damage or destruction of wheelchairs or other mobility equipment are evident from the case studies. Airlines do not always comply with the Montreal Convention, as in this case cited by the Belgian CAA and the Belgian Disability Forum:

*“In 2005, a young Belgian national’s wheelchair (lightweight, manual-purchase value of 4000 Euros) was seriously damaged on a [...] flight. In spite of her renewed requests, she did not receive any compensation for the damage incurred as the company did not even respect the provisions of the Montreal Convention which, at best, foresees a compensation in the region of 1200 €.”*

Survey respondents indicated that the level of the compensation under the Montreal Convention is inadequate, as would have been the case in this example.

It is not always possible to obtain insurance, as the Belgian Disability Forum goes on to describe in the case of the same person:

*“In 2006, while planning a trip to Spain with [...], she tried to arrange for her own insurance of potential damage, this proved impossible. After various contacts, it appeared that the only opportunity was an offer to pay 12.50 € in order to obtain a coverage of damage limited to a maximum threshold of 1000 € and a maximum refund of 25% of the total value of the mobility equipment. This was ridiculous. She eventually left without contracting any insurance.”*

In addition, the Belgian CAA and Belgian Disability Forum state that some companies have required PRM to waive their rights to compensation by signing a limited release form which adds to the financial risk of air travel for PRM.

The extent of damage sustained to wheelchairs and other mobility equipment can be considerable which has implications not only for the cost, as outlined above, but also

for the period of time for which the PRM is unable to use their equipment. The European Disability Forum cite the following example:

*“Wheelchair user flew from Stansted to Pisa with [...]. Upon arrival, the Italian air staff and ground crew were shocked to discover that the very strong cast metal wheel on the power wheelchair had been smashed to pieces. This had obviously been done at Stansted as the wheel and all the broken parts were sitting in the seat of the wheelchair. The battery box was also smashed. This completely ruined the family’s holiday who had to wait for over a week before a replacement wheel could be sent from the UK. The family had to arrange this themselves, [the air carrier] offered no help whatsoever. Eventually the family was reimbursed the cost to repair the wheel but not the cost of the replacement chair or any other costs incurred.”*

Other case studies show that the period can be very much longer:

*“Flight from Edinburgh to Memphis via Amsterdam with [...]. In Edinburgh they had problems with the specially-designed wheelchair of a disabled passenger. Upon arrival in Amsterdam they had lost the wheel part of the wheelchair. The individuals travelling with the disabled passenger had to hold her on the back of an airport buggy as a worker ran behind with the wheelchair on three wheels. Once in the US, the family contacted [the air carrier] to obtain a new chair and were advised that it would take about a year to sort out. After many phone calls, [the carrier] finally paid for the wheelchair...”*

The implications of using temporary equipment during such a period are starkly demonstrated by the example from the European Disability Forum:

*“Wheelchair user arrived in New York JFK to discover that her electric chair had been completely damaged [...] on the flight from London. The replacement chair provided by [the air carrier] was inadequate and subsequently she sustained serious injuries when falling out of the chair.”*

PRM may face a risk to their health and safety in the case of their own mobility equipment being damaged or lost. Wheelchairs are adjusted to the needs of the individual, therefore replacements are often inadequate, even if they are provided.

The German Disability Council presents a list of examples showing the types of damage sustained:

*“2004 Airline [...], Airport Stockholm Arlanda (arrival), damaged arm rest of a wheelchair*

*2005 Airline [...], Airport Glasgow-Prestwick (arrival), damaged control device of a power wheelchair*

*2005 Airline [...], Airport Frankfurt/Hahn (arrival), damaged back rest of an individually adapted power wheelchair*

*2006 Airline [...], Airport Cologne/Bonn (arrival), damaged foot rest of a wheelchair.”*

There are indications of procedural and systems problems in case studies provided revealing repeated incidents. The Austrian National Council of Disabled Persons had

evidence of several wheelchairs being severely damaged on one flight from Berlin to Vienna. This case is of specific interest, because the exchange of letters with the carrier is well documented. Regarding the damage, which occurred on 10 December 2005, the Austrian social security organisation Wiener Gebietskrankenkasse, the owner, provided upon request the following information:

*“The Wiener Gebietskrankenkasse has, upon damage to an electro-wheelchair owned by us, covered the costs for a new electro-wheelchair of Euro 11,494.20 including 20% VAT. A request for payment was send to the [air carrier]. The carrier paid the amount of Euro 1,210.39. The remaining amount could not be recovered. The request for payment was dated 28.12.2005, the payment was received on our account on 12.7.2006.”<sup>15</sup>*

This illustrates both the long period until payment that can occur and the inadequate level of compensation.

Procedural problems are implicated also in terms of the practical difficulties for PRM in knowing how to deal with the situation when damage occurs. The difficulties of establishing where to direct complaints about damage and appeals for assistance on arrival in what is often an unfamiliar airport adds to the time and stress involved in finding even a temporary solution to the practical problems of everyday life when without mobility equipment. This is emphasised in the response from the Belgian Disability Forum who highlighted the need for PRM to have their wheelchair or other mobility equipment returned to them in working order as soon as they leave the aircraft. They comment that difficulty of finding the right person to resolve a problem is inappropriate given the urgency of need for the equipment.

In summary:

- The financial implications of the loss, damage or destruction of wheelchairs or other mobility equipment present an additional risk for PRM when travelling by air in comparison with other passengers. In the cases cited, the compensation limit of the Montreal Convention was not adequate. In some instances PRM were required to sign a limited release form waiving their rights to compensation.
- It is not always possible for PRM to obtain insurance.
- PRM face risks to their health and safety if their wheelchair or mobility equipment is lost, damaged or destroyed, as replacements are not always provided and if provided are not always suitable for the person’s needs.
- PRM experiences reveal problems in procedures and system during air travel.
- The time taken to resolve practical problems presented by the damage or loss of wheelchairs or other mobility equipment is inappropriate given the urgency of need.

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<sup>15</sup> E-mail communication to Civic Consulting 30.5.2007, translation Civic Consulting

- The loss or damage of wheelchairs or other mobility equipment takes away the independence of the PRM and affects every aspect of their daily lives until the matter is resolved appropriately.

This leads to the following conclusion:

3. ***There is a range of financial, practical, and safety implications associated with damage, loss or destruction of wheelchairs and other mobility equipment for PRM travelling by air.*** The immediate difficulty of needing a replacement of what can be highly personalised equipment in order to continue everyday life is exacerbated by lack of procedural clarity. The health and safety implications of unsatisfactory replacement equipment are considerable. The time taken to resolve the problems associated with the damage, destruction or loss of mobility equipment is inappropriate given the urgency of the need.

## 4 CURRENT PRACTICES OF EU AIRLINES AND AIRPORTS

### 4.1 Policies and procedures regarding mobility equipment introduced by airlines

#### 4.1.1 Existing voluntary airline schemes

Available sources on relevant voluntary airline schemes are limited. Airline representatives do not share a common view regarding what constitutes a voluntary scheme. Viewpoints range from national and international sector agreements to individual company policies, agreements between airline and handling agent to agreements between airline and airport. A relevant multilateral scheme is the 2001 Airline Passenger Service Commitment, which was signed by the majority of European national carriers.

##### *The Airline Passenger Service Commitment*

The Airline Passenger Service Commitment contains non-legally binding commitments to define standards of service to air passengers (see Annex 8). It covers 14 areas before, during and after travel. It describes the level of service air travellers may expect from signatory airlines. Signatory airlines will each develop their own individual service plans incorporating the Airline Passenger Service Commitment.

Article 8 of the Commitment is dedicated to “Assistance to Passengers with Reduced Mobility and Passengers with Special Needs.” According to the article each airline will publicise the services it offers for handling passengers with special needs and for assisting passengers with reduced mobility in “an appropriate manner compatible with applicable safety regulations.” The appropriate manner is specified in the attachment of the Airline Passenger Service Commitment. According to the last paragraph of the attachment: “Airlines must take all reasonable steps to avoid loss or damage to mobility equipment or other disability assistive devices. Where loss or damage occurs, airlines will make appropriate arrangements to meet the individual’s immediate mobility needs.” However, nearly half of the responding air carriers have indicated that they do not provide immediate replacement for wheelchairs and other mobility equipment that was destroyed or damaged.

##### *Individual voluntary schemes*

A number of individual airline initiatives exist alongside the Airline Passenger Service Commitment. These individual schemes may even be used as a marketing tool to attract more persons with reduced mobility as passengers on their airlines. These voluntary schemes are designed by the airline and can be broad or specific, depending on the airline. The SAPHIR Service (*Service d’Assistance aux Personnes Handicapées pour les Informations et les Réservations*) of Air France can be seen as such a scheme. This policy, however, does not include a higher compensation for loss

or damaged mobility equipment of PRMs. Many carriers do not provide information beforehand specifically for air passengers with reduced mobility. Only a few give detailed information on the requirements for PRM before ticket purchase.

#### 4.1.2 *Current practices of air carriers*

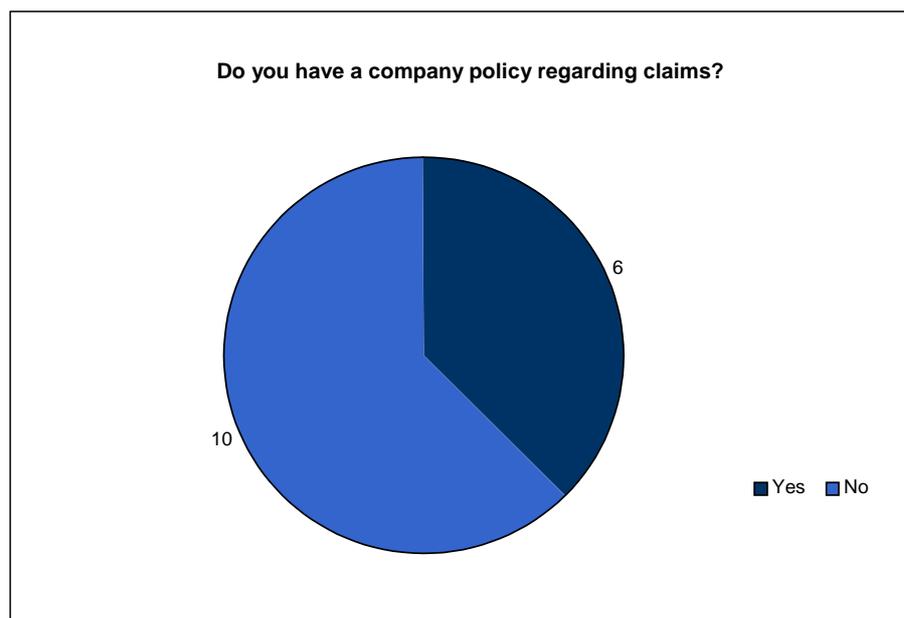
The survey has been carried out with the cooperation of airline associations, namely the Association of European Airlines (AEA), European Regions Airlines Association (ERA) and the International Air Carrier Association (IACA). At a later stage air carriers have also been contacted once again directly to assure a broader participation in the survey.

Overall there were 18 responses from air carriers, namely Air France, Alitalia, Finnair, KLM, SAS, Adria Airways, Aegan Airlines, Air Arann, Trade Air, Tyrolean Airways, Meridiana Airline, Air Berlin, Germania, My Travel UK, My Travel Denmark, Nova Airlines, Spanair and TUIfly.

The total number of passengers given by the airlines varies from several ten thousand to more than 25 million passengers per year, showing the broad range of airlines taking part in the survey between the national carriers on the one hand and the regional and leisure airlines on the other.

The survey among air carriers illustrates that the majority does not have a specific policy regarding claims for damaged or lost wheelchairs and other mobility equipment.

**Figure 1: Company policy regarding claims related to damaged or lost wheelchairs and other mobility equipment**



Source: Stakeholder survey

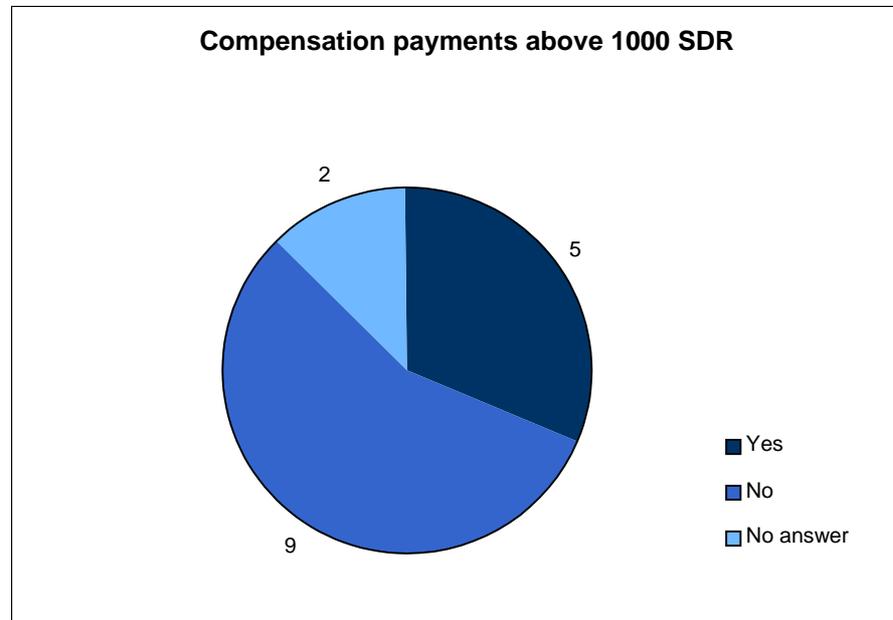
One air carrier reportedly applies US domestic rules with respect to PRM, including for compensation issues, for their US destinations and for all other destinations, partly to avoid differences between policies applying to flights to different destinations, and partly because of alliances with US carriers (see section 7.2).

### *Compensation*

The survey sought to establish whether air carriers provide compensation for wheelchairs and other mobility equipment that are destroyed or damaged. All air carriers which responded to this particular question state that they provide compensation. However, 3 of these air carriers (2 regional and 1 low cost carrier) also indicated that the PRM has to sign a form or declaration which states that the mobility equipment is carried at the passengers' own risk with respect to damage and/or loss. Air carriers that required such a form to be signed stated that they also advise the PRM to take out insurance.

Nearly one third of the air carriers do provide compensation payments above the limit specified by the Montreal Convention in case of the loss or damage being higher (see Figure 2 below). This corresponds with the number of air carriers that mentioned that they have a company policy regarding PRM. One large air carrier, for example, provides compensation for the amount of actual damage. Another stated: "In case of damage to wheelchairs or mobility equipment [we take] care of the repair. If the cost of repair is higher than the price of a new wheelchair or mobility equipment, [we provide] the passenger with a new wheelchair or mobility equipment no matter the year of the purchase of the wheelchair or of the mobility equipment." However, it is not clear in this case if this also true for expensive wheelchairs. This carrier did not provide any data on the compensation amount paid so far. On the other hand, a certain national air carrier made compensation payments above the limit specified by the Montreal Convention (highest amount indicated was € 4.000) although they have no official company policy in this regard.

**Figure 2: Compensation above the limit of liability provided for in the Montreal Convention, in case the loss or damage is higher**

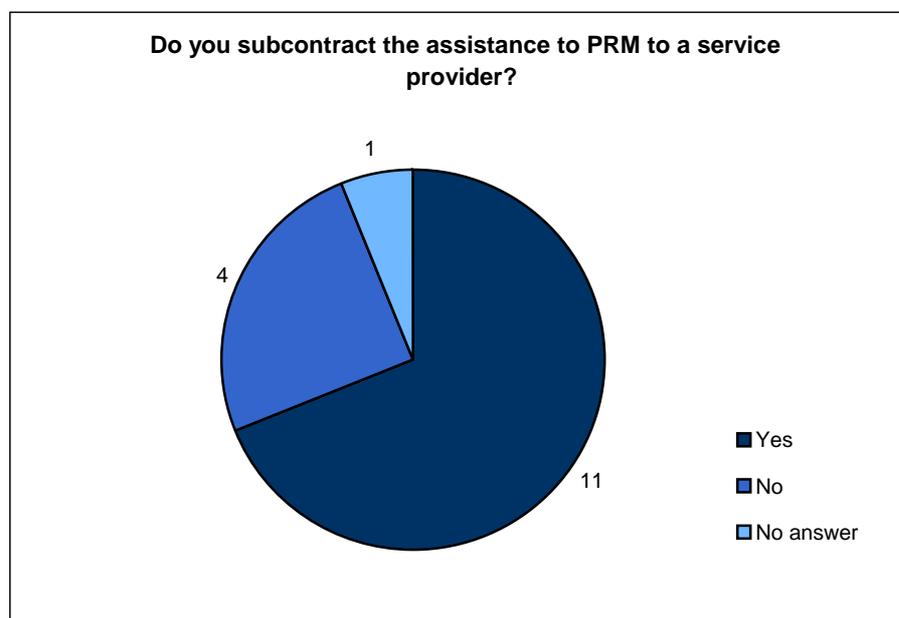


Source: Stakeholder survey

Air carriers were requested to specify the average time of replacement between the date a claim for compensation for destroyed, damaged or lost mobility equipment was made and the date of payment of compensation. The answers given indicate an extraordinarily brief time ranging from 1 to 4 weeks (provided by 8 carriers that specified a period). Others only stated “as soon as possible.” One case investigated indicates that this short period can also be much longer in practice (see section 3.3).

Nearly half of the air carriers do not provide an immediate replacement for wheelchairs and other mobility equipment, which have been destroyed or damaged. An air carrier argued that this is because of “detailed needs of PRM which vary strongly per passenger” and mentioned that “passengers normally prefer to arrange replacement themselves.”

**Figure 3: Subcontracting by airlines of the provision of assistance to PRM**



Source: Stakeholder survey

The vast majority of the air carriers subcontract the provision of PRM assistance to a service provider such as a handling agent. **The type of services subcontracted differs from destination to destination:** in some airports the air carrier assigns a handling agent only for assistance at airports (not including handling/shipping mobility equipment), in other airports this is subcontracted to the airport management body.

**Only one third of air carriers have insurance coverage for claims regarding destroyed or damaged wheelchairs and mobility equipment. It is not always possible for the PRM to declare that their luggage is of a higher value and that this can be claimed accordingly (this is only possible with less than half of the air carriers that responded). One of the air carriers, that allows for a declaration of a higher value, stated however, that the “Excess Value Declaration is limited to EUR 3000 per passenger”. Several carriers pointed out that declaring a special value involves “a supplement [that] has to be paid by the passenger”.**

**Only half of the responding air carriers stated that they provide training for their staff on handling wheelchairs and other mobility equipment. Again, only roughly half of the responding air carriers indicated that they have specific procedures for handling wheelchairs and other mobility equipment to prevent damage or loss. The specific procedures differ from one air carrier to another. One air carrier describes that “PRM equipment is treated as bulky luggage. It is checked in at the check-in desk. It is afterwards loaded separately onto the aircraft and secured in the cargo hold. The luggage is to be treated as fragile goods”. Another air carrier specified PRM equipment as “checked’ special baggage on a conveyor belt for special baggage at most of the airports”.**

In summary:

- The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier;
- Most of the air carriers do provide compensation in line with Montreal Convention, but the majority does not have a specific policy regarding claims for damaged or destroyed wheelchairs or mobility equipment. Some carriers even provide compensation above the limit of the Montreal Convention up to the actual cost;
- The majority of air carriers do not have insurance coverage for damaged or destroyed wheelchairs or mobility equipment. The insurance cover of air carriers is limited (3,000 Euro and 3,740 Euro (\$ 5000) as indicated by two air carriers).
- It is not always possible for PRM to declare that their mobility equipment has a higher value and that this can then be claimed accordingly.

This leads to following conclusions:

4. ***The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier.*** Most of the air carriers do provide compensation in line with Montreal Convention. Only a minority provides higher compensation payments. Some regional and low cost air carriers reported that they require PRM to sign a form or declaration which states that the mobility equipment is carried at the passenger's own risk. Voluntary schemes of air carriers such as the Airline Passenger Service Commitment mention the loss and damage of wheelchairs or other devices, but do not give details as to how to deal with related claims for compensation. Only half of the responding air carriers have a specific check-in procedure for PRM mobility equipment and provide training for the staff on handling wheelchairs and other mobility equipment.

## 4.2 Specific procedures introduced by airports

### 4.2.1 Existing voluntary airport schemes

#### ***The Airport Voluntary Commitment on Air Passenger Service***

The Airport Voluntary Commitment on Air Passenger Service (the Commitment) was developed by European airports under the auspices of Airports Council International Europe. The aim is for signatories to develop their own individual service plans on the basis of the Commitment.<sup>16</sup>

<sup>16</sup> ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service

The Commitment includes a Special Protocol to Meet the Needs of People with Reduced Mobility (Special Protocol), which aims “to improve the accessibility of air travel to people with reduced mobility by ensuring that their needs are understood and provided for, and that their safety and dignity are respected”.<sup>17</sup>

The basic assumptions of the Special Protocol important to highlight here as relevant to the aims of this study are:

- “PRMs have the same rights as other citizens to freedom of movement and freedom of choice. This applies to air travel as to all other areas of life.
- Airports and related service providers have a responsibility to meet the needs of PRMs. PRMs also have a responsibility to identify their needs to the proper channels at the proper time.
- Information, using accessible formats, must be made available to enable PRMs to plan and make their journey.
- Disability should not be equated with illness and therefore PRMs must not be required to make medical declarations about their disability as a condition of travel.
- Organisations representing PRMs will be consulted on all issues relevant to PRMs.
- Staff will be given appropriate training in understanding and meeting the needs of PRMs.
- Control and security checks will be undertaken in a manner which respects the dignity of PRMs.
- PRMs must be enabled to remain independent to the greatest possible extent.
- The cost of providing for the needs of PRMs must not be passed directly to PRMs”.<sup>18</sup>

The full text of the Commitment and Special Protocol are included in Annex 8.

The Special Protocol “forms the basis on which a voluntary Code (or Codes) of Practice may be prepared by Airports. When preparing Codes, the appropriate provisions of the European Civil Aviation Conference (ECAC) Document 30 (Section 5), and the International Civil Aviation Organisation (ICAO Annex 9) will be incorporated”.<sup>19</sup>

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<sup>17</sup> ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service, Special Protocol to Meet the Needs of People with Reduced Mobility

<sup>18</sup> ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service, Special Protocol to Meet the Needs of People with Reduced Mobility, Basic assumptions

<sup>19</sup> ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service, Special Protocol to Meet the Needs of People with Reduced Mobility, Introduction

The provisions of the ECAC Document 30 (Section 5 Facilitation of the Transport of Persons with Reduced Mobility), (included in this report in Annex 6) refer to recognising “the benefit of a common approach to harmonise progressively the level of accessibility to installations and services in order to satisfy the real needs of PRMs travelling by air within Europe.”<sup>20</sup> It is complemented by Annexes, two of which are particularly relevant for this study: **Annex J: Code of Good Conduct in ground handling for persons with reduced mobility (Code of Good Conduct)** and **Annex K: Guidelines on ground handling for persons with reduced mobility**. The Code of Good Conduct emphasises that “PRMs must not be charged directly for the assistance they require”.<sup>21</sup> The Code also refers to the importance of training developed “in partnership with national and European forums of disabled people.”<sup>22</sup> It includes the all-embracing general point that “all customers should be satisfied with the assistance provided”.<sup>23</sup> In addition, the Code includes the following on performance and quality monitoring: “There will be regular reviews to monitor the service provider performance against these standards and to continually improve performance-monitoring systems. **Performance against some or all of the standards should be used to publicise the services provided and these could also be included within any future passenger charter. Whilst regular market research surveys will be undertaken to measure performance, the suppliers should be expected to introduce their own performance monitoring systems and to provide reasonable data as required by the airport community.**”<sup>24</sup>

The provisions of the International Civil Aviation Organisation (ICAO Annex 9) (included in this report in Annex 7) incorporate Recommended Practice regarding information, assistance and training.<sup>25</sup> The Guidance Material For Implementing the Standards and Recommended Practices in Annex 9 elaborate the recommendations further. With respect to information provision, it is stated that “operators, airport authorities, ground handling operators and travel agents should provide those persons with disabilities who are planning to travel with all available information concerning access to air services and airport facilities by disabled persons”.<sup>26</sup> With respect to assistance, the Guidance Material states that “operators and airport authorities should

<sup>20</sup> ECAC, Document 30, Section 5 Facilitation of the Transport of Persons with Reduced Mobility, General Provisions, Item 5.1 e)

<sup>21</sup> ECAC, Document 30, Section 5 Facilitation of the Transport of Persons with Reduced Mobility, Annex J, Introduction, Item 1.2

<sup>22</sup> ECAC, Document 30, Section 5 Facilitation of the Transport of Persons with Reduced Mobility, Annex J, Operating principles, Item 1.5

<sup>23</sup> ECAC, Document 30, Section 5 Facilitation of the Transport of Persons with Reduced Mobility, Annex J, General, Item 1.8

<sup>24</sup> Ibid., Item 1.9

<sup>25</sup> ICAO, Chicago Convention, Annex 9 Facilitation, Chapter 8, Section G Facilitation of the transport of passengers requiring special assistance, I. General, Recommended Practice 8.25, 8.26

<sup>26</sup> ICAO Circular 274-AT/114 Access to air transport by persons with disabilities, Guidance Material, General Issues, Communication of information, Item 5

ensure that they properly train employees and contractors who may be required to provide services to persons with disabilities, such as assisting with special equipment.”<sup>27</sup> This is developed further<sup>28</sup> to emphasise that “in addition to general training, operators and airport authorities should ensure that they properly train employees and contractors who are required to handle different types of mobility aids so that they are familiar with the procedures for securing, carrying and stowing mobility aids, including methods of dismantling, and packing, unpacking and assembling these aids.” In addition, it is stated that “organisations that represent persons with disabilities should be consulted in the development and implementation of training programmes.”<sup>29</sup>

#### **4.2.2 Current practices of airports**

The stakeholder survey was used in order to establish current practice at airports. Overall there were 12 responses to the airport survey, from 8 countries: Belgium (Brussels Airport Company), Denmark (SAS Ground Services), France (Aéroports de Paris, Aéroport Nice Côte d'Azur), Germany (Hamburg Airport, Munich Airport International, Fraport AG Ground Services), Malta (Malta International Airport), the Netherlands (Amsterdam Schiphol Airport), Sweden (Goteborg-Landvetter Airport and Passenger Services National Association of Airports Stockholm-Arlanda Airport) and Switzerland (Zurich Airport).

##### *Current practices on claims and compensation*

The survey sought to establish whether airports provide compensation for wheelchairs and other mobility equipment that are destroyed or damaged while the airport or their subcontractor provide assistance to a PRM. Amongst these respondents, approximately half provide compensation.

The respondent from Goteborg-Landvetter Airport explained that if wheelchairs or other equipment are destroyed or damaged while assistance is being provided to a PRM, the airport authority would provide compensation because the airline buys the service from the airport authority. However, this had not yet occurred. Munich Airport International added to their response that in their case the compensation is provided through general liability insurance. Schiphol Airport expanded their response to “we will compensate but only if we are liable”.

Although respondents were requested to specify the average reimbursement in Euro and differentiate between wheelchairs and other mobility equipment, and to also

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<sup>27</sup> ICAO Circular 274-AT/114 Access to air transport by persons with disabilities, Guidance Material, General Issues, Training Programmes, Item 10

<sup>28</sup> Ibid., Item 11

<sup>29</sup> Ibid., Item 15

provide data on the highest reimbursement made so far, these details were not provided by any of the 12 airports.

The vast majority of airports do not have a policy regarding claims for damaged or lost wheelchairs and other mobility equipment. Indeed, only Munich Airport International has an airport policy covering this issue.

Only 2 of the airports which responded in this survey have insurance coverage for claims regarding destroyed or damaged wheelchairs and mobility equipment: Hamburg Airport and Munich Airport International. Hamburg Airport did not specify the ceiling of the insurance cover but Munich Airport specified that the insurance provides unlimited cover. 5 airports specifically responded that they do not have such insurance coverage.

The situation with regard to the provision of an immediate replacement for wheelchairs and other mobility equipment that is destroyed or damaged varies. Approximately half of those airports which responded to the survey provide a replacement.

The procedures whereby the PRM is provided with the replacement also varies from airport to airport, as the respondents explain in detail. Goteborg-Landvetter Airport explained that in their case the Airport Authority has their own wheelchairs, and if necessary the airport is able to provide “equally good substitutes to compensate the PRM passenger, as a loan”. A replacement is also provided at Munich Airport whereas at Zurich Airport it is the handling agent who replaces the wheelchair rather than the airport. Passenger Services at Stockholm-Arlanda Airport can provide a manual wheelchair until the passenger’s own wheelchair arrives. Aeroports de Paris responded that although the airport does not provide an immediate replacement, the airlines do this.

In summary:

- The provision of compensation for damaged, destroyed or lost wheelchairs varies from airport to airport.
- No airport respondent provided information on average reimbursement in Euro or the highest reimbursement provided so far.
- The majority of airports do not have a policy regarding claims for damaged or destroyed wheelchairs or mobility equipment.
- The majority of airports do not have insurance cover regarding damaged or destroyed wheelchairs or mobility equipment.
- The provision of an immediate replacement for damaged, destroyed or lost wheelchairs varies from airport to airport.
- The procedures whereby airports provide a replacement for damaged, destroyed or lost wheelchairs also varies from airport to airport.

This lack of consistent practices on claims and compensation can be observed despite the existence of the Airport Voluntary Commitment on Air Passengers,

including the Special Protocol to Meet the Needs of People with Reduced Mobility, aiming “to improve the accessibility of air travel to people with reduced mobility by ensuring their needs are understood and provided for, and that their safety and dignity are respected”.

This leads to the following conclusion:

**5. The majority of surveyed EU airports do not have a specific policy regarding claims and compensation for damaged or destroyed wheelchairs or mobility equipment.** The provision of compensation for damaged, destroyed or lost wheelchairs and procedures whereby airports provide a replacement vary from airport to airport. This may result in gaps and inconsistencies regarding replacement and compensation for PRM whose equipment was destroyed or damaged while the airport provides assistance.

#### *Specific handling procedures*

The majority of the airports surveyed currently provide assistance to air passengers with reduced mobility who arrive at or depart from these airports. The assistance is provided either directly by the airport itself or by subcontractors. Schiphol Airport specified that the situation for them up to 2008 is that they provide assistance (through a third party) at landside and airside and the airline is responsible for the terminal.

Most of the airports in this survey did not have specific procedures for handling wheelchairs and other mobility equipment to prevent damage or loss. Hamburg Airport does not have specific procedures but has stated that “till now no need”. Although the survey requested details on the nature of the procedures, the responses provide little information on this from the 3 airports where such procedures exist.

The majority of airports covered by the respondents have a policy to allow the PRM to remain in their own wheelchair to the door of the aircraft (on departure) or receive their own wheelchair at the same place (on arrival). Only Malta International Airport does not have such a policy. The response from Hamburg Airport was that the “Red Cross tries to meet all needs of PRM”.

The procedures involved with allowing the PRM to remain in their wheelchair to and from this point however vary from airport to airport. The respondents provide details on this aspect of travel for PRMs. At Goteborg-Landvetter Airport it is the airport PRM assistance “part of the security organisation” which transfers the passenger to the departing or from the arriving aircraft. SAS Ground Services in Denmark explain that the wheelchair is taken at the door and “manually carried to cargo hold”, and vice versa. Munich Airport International explains that this is the “general philosophy advised via Airline Operators Committee to allow this if possible, depending on the special type of wheelchair and on airline procedures”. At Zurich Airport also the wheelchair is picked up and delivered at the aircraft door by “ramp staff”. Schiphol Airport provides more detail: “Standard procedure at Schiphol: If the wheelchair is a standard wheelchair or equipped with a dry battery passengers can take their own

wheelchair to the gate. On arrival they will also receive their wheelchair.” However, they continue, “Depending on the Airline this can change, i.e. Air France will pack the wheelchair, and some airlines do not return an electric wheelchair on arrival at the gate because of the weight of the wheelchair.” Aeroports de Paris have allowed PRM to remain in their wheelchair to/from the door of the aircraft for two years. However, they also explain a security element in this procedure, explaining “The wheelchair is inspected at the security check with IONSCAN (explosive substance can be detected with this technology) otherwise the police has to control the person in case of doubt by the security agent.” Passenger Services Stockholm-Arlanda Airport also allow PRMs to remain in their wheelchair to/from the aircraft except in the case of powerdriven wheelchairs because “there are not lifts at all gates and these wheelchairs are very heavy to carry by stairs.” This poses the question as to whether all gates there are accessible to PRMs, however this question did not fall within the scope of this study.

There are 5 of the 12 airports which responded to the survey which provide training to employees on how to handle wheelchairs and other mobility equipment to prevent damage. In addition, at Hamburg Airport, **the Red Cross provides training**. Although some additional information was provided regarding the nature of the training, it is not possible from the questionnaire to ascertain the extent or quality of this training. At Goteborg-Landvetter Airport the training is “airport internal staff training, including careful handling of wheelchairs and mobility equipment”. At Zurich Airport it is “initial instruction for new employees and monthly refresher in specific topics”. At Amsterdam Airport Schiphol the training was described as “just brief, that they should be handled with care”.

In summary:

- The majority of airports provide assistance to passengers with reduced mobility.
- The majority of airports do not have specific procedures for handling wheelchairs or other mobility equipment.
- The majority of airports have a policy to allow passengers with reduced mobility to remain in their own wheelchair to the door of the aircraft (on departure) or receive their own wheelchair at the same place (on arrival).
- The procedures whereby the PRM is allowed to remain in their own wheelchair to the door of the aircraft or receive their own wheelchair there on arrival vary from airport to airport.
- Some airports provide training on handling wheelchairs and other mobility equipment at most airports, however not all airports. The quality of the training is not clear.

It is positive that the majority of airports are providing assistance to passengers with reduced mobility, and have a policy of allowing them to remain in their own wheelchair to / from the door of the aircraft. However, there are opportunities to improve the level

of service through the development of more consistency practice from airport to airport.

This leads to the following conclusion:

6. ***The majority of surveyed EU airports do not have specific procedures for handling wheelchairs or other mobility equipment.*** The absence of specific procedures for handling wheelchairs or other mobility equipment and the fact that training on handling wheelchairs and other mobility equipment is not taking place in all airports, indicates that improvements could be made in the quality and consistency of service related transporting such equipment.

## 5 ADEQUACY OF EXISTING RULES - MAIN ISSUES RAISED BY STAKEHOLDERS

The opinions of stakeholders on the adequacy of existing rules were investigated through interviews and a survey. Completed questionnaires were received from 18 airlines, 12 airports, 11 disability organisations and 17 Civil Aviation Authorities (see Annex 1 for a detailed description of stakeholder opinions and Annex 2 for the questionnaire).

The main concerns with respect to the adequacy of existing rules on lost, damaged or destroyed wheelchairs or other mobility equipment were largely highlighted by the PRM organisations in the stakeholder survey, however many of their concerns were also reflected in responses from other stakeholder groups. The summaries below cover the main issues raised.

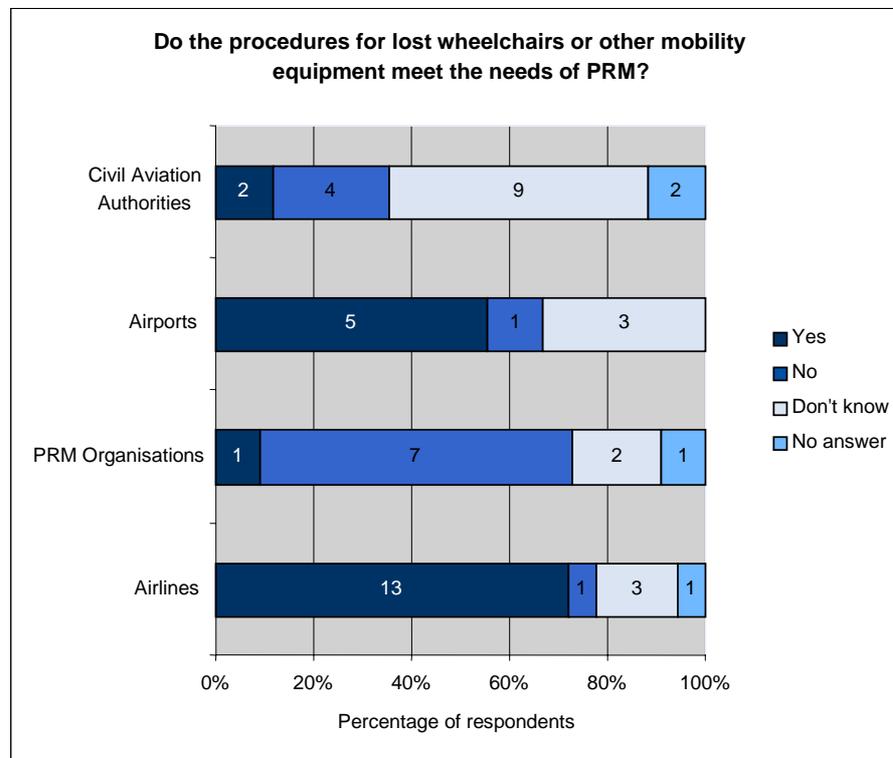
### 5.1 Procedures if a wheelchair or other mobility equipment is lost, damaged or destroyed

All stakeholder groups were asked whether the current procedures if a wheelchair or other kind of mobility equipment is lost, destroyed or damaged meet the needs of passengers with reduced mobility. Three types of procedures were differentiated:

- a) Procedures for lost wheelchairs or other mobility equipment;
- b) Procedures for damaged or destroyed wheelchairs or other mobility equipment;
- c) Procedures for immediate replacement equipment that can be used temporarily by the PRM.

The graph below allows a comparison of responses from the various stakeholder groups on current procedures if mobility equipment is lost.

**Figure 4: Stakeholder assessment of procedures for lost wheelchairs and other mobility equipment**

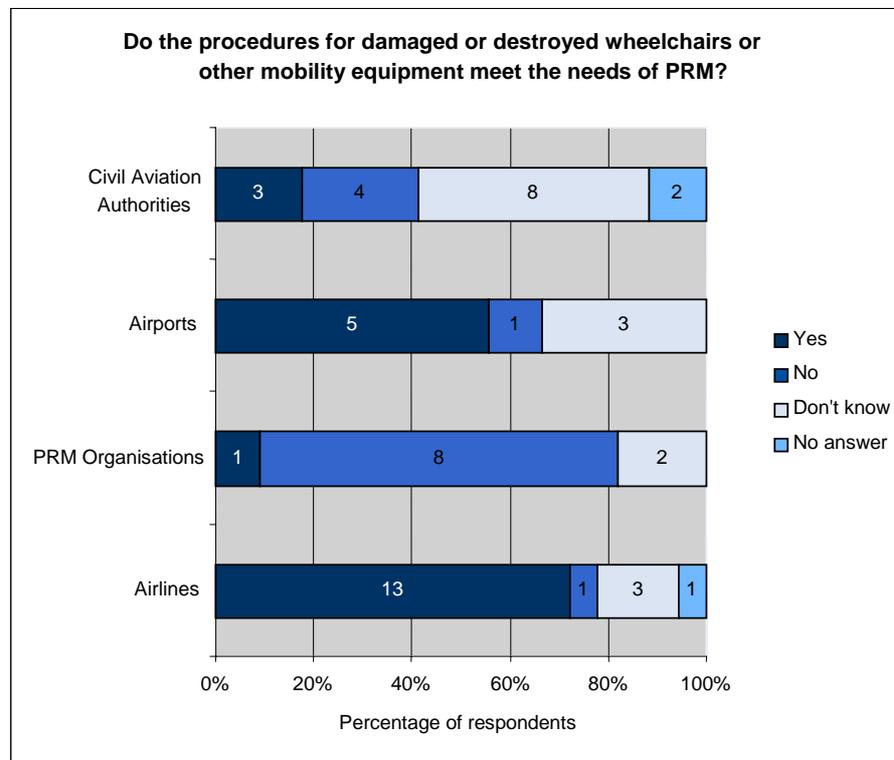


Source: Stakeholder survey

PRM organisations clearly are of the opinion that current procedures if a wheelchair or other mobility equipment is lost do not meet the needs of PRM. The responses from the Civil Aviation Authorities tend to show greater parallels with the PRM organisations' responses than with those from airlines and airports, however the largest group of CAA has no opinion. In contrast, nearly all airlines and airports assess current procedures as meeting the needs of PRM.

Very similar opinions are voiced concerning current procedures for damaged or destroyed wheelchairs or other mobility equipment, as is depicted in the following graph.

**Figure 5: Stakeholder assessment of procedures for damaged or destroyed wheelchairs and other mobility equipment**

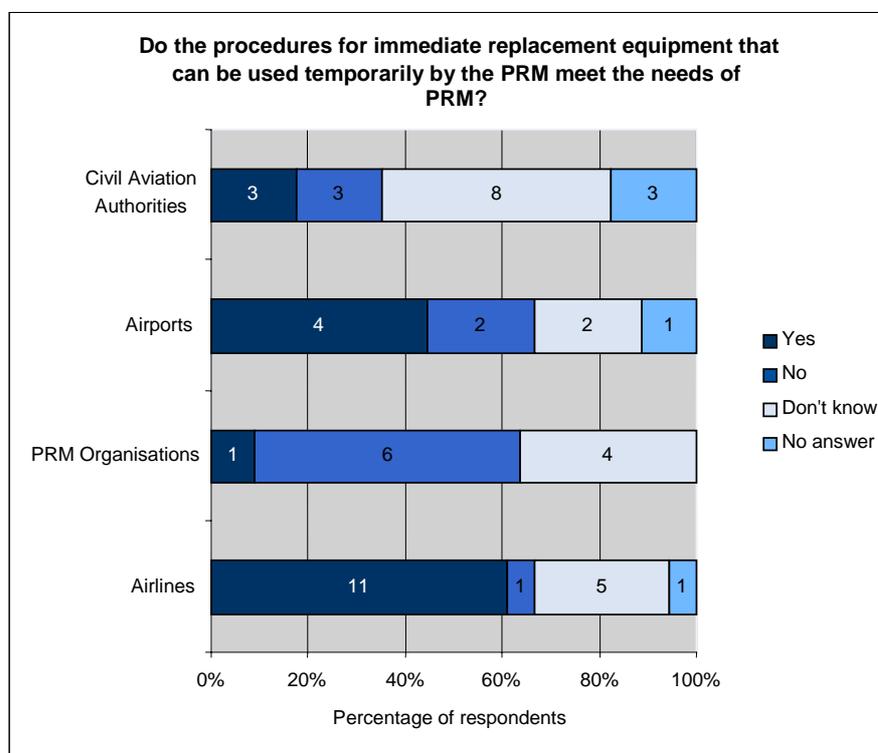


Source: Stakeholder survey

Finally, stakeholders assessed whether current procedures for immediate replacement equipment that can be used temporarily meet the needs of PRM. Representatives of PRM are clearly of the opinion that this is not the case (see following graph). The Austrian National Council of Disabled Persons explained that “wheelchairs in particular are adapted to the bodily proportions of the user. Currently there is no system in place which is able to quickly provide a suitable substitute without complications”. Also a minority of airports pointed out deficiencies in the current procedures. For example, Stockholm-Arlanda Airport stated that in their case, the airport has “two wheelchairs that the airline can offer the passenger but it isn’t always the passenger gets the information or the airline knows about it”.

In contrast, one airline provided detail on their policy which is “to assist the concerned passenger in making appropriate arrangements to meet the individual’s immediate mobility needs. Local arrangements may include lease or purchase of new equipment as deemed necessary.”

**Figure 6: Stakeholder assessment of procedures for immediate replacement equipment**



Source: Stakeholder survey

**Other detailed concerns voiced by stakeholders were:**

- The procedures overall are too slow in a situation which requires urgency, because without mobility equipment PRM are unable to lead an independent life (brought forward from both PRM organisations and Civil Aviation Authorities);
- The extensive administration required by the PRM in order to obtain a suitable replacement and have a repair carried out requires time and considerable determination (PRM organisations);
- Wheelchairs and other mobility equipment should not be regarded as baggage (PRM organisations and Civil Aviation Authorities).

**5.2 Appropriateness of current compensation limits**

All stakeholder groups were asked whether current compensation limits for lost, damaged or destroyed wheelchairs or mobility equipment are appropriate and whether complementary payments are provided to cover any difference between compensation and actual costs incurred. The issues were presented in three separate questions regarding respectively:

- a) the compensation limit of the Montreal Convention;

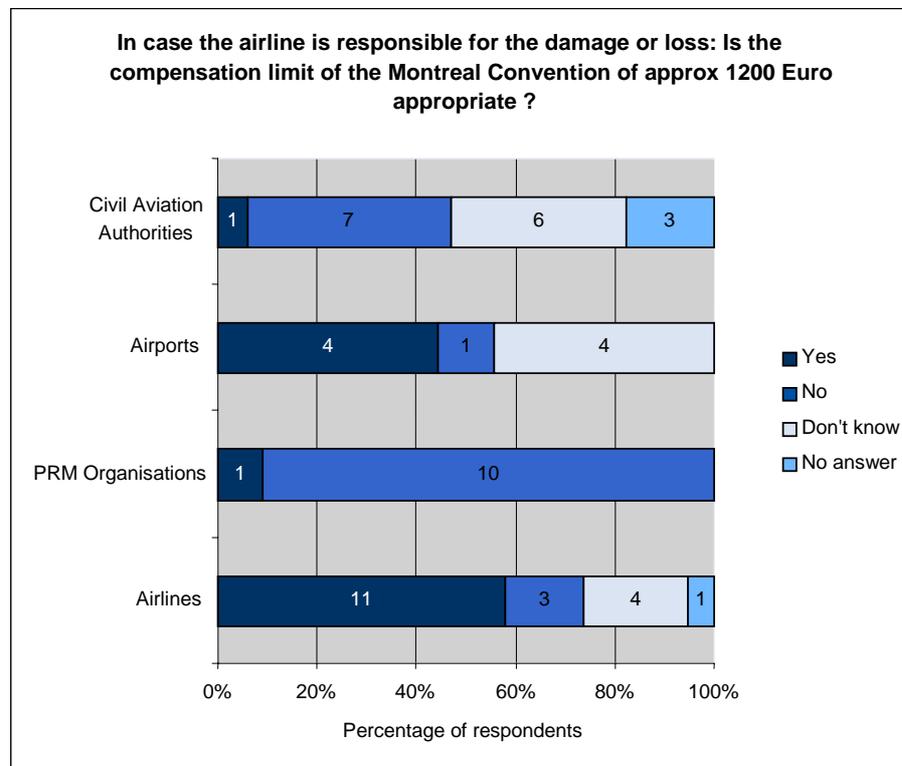
- b) complementary payments to cover the difference between the compensation on the basis of the Montreal Convention and actual replacement or repair costs;
- c) compensation according to national liability /tort law.

The graphs below allow a comparison of responses from the various stakeholder groups. **The responses from the Civil Aviation Authorities tend to show greater parallels with the PRM organisation responses than do those from airlines and airports.**

Figure 7 allows a comparison of the different stakeholder groups' views specifically on the compensation limit under the Montreal Convention in the case of the airline being responsible for the damage or loss.

There is agreement between the CAAs and the PRM organisations that it is not appropriate. PRM organisations provided detailed data on the costs of wheelchairs and mobility equipment to demonstrate the inadequacy of the current compensation limit under the Montreal Convention (see Annex 1). The UK Department for Transport respondent commented that "the costs of many pieces of mobility equipment (e.g. electric wheelchairs can cost thousands of euros) would suggest that this amount would not be adequate in all cases". There is also an awareness of this issue amongst airlines and airports, such as the Aeroports de Paris respondent who commented that "some wheelchairs can cost up to 10 000 euros", and the airline which referred to "sometimes damaged wheelchair fixing costs are more", however the majority of both airlines and airports express the view that this limit is appropriate.

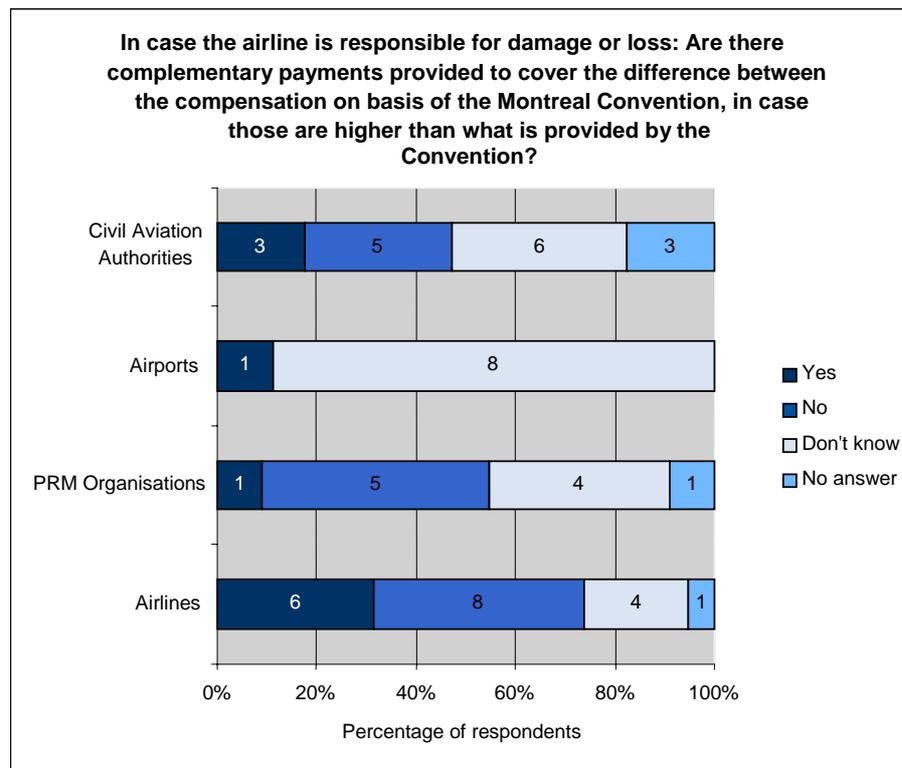
**Figure 7: Stakeholder assessment of the compensation limit under the Montreal Convention**



Source: Stakeholder survey

Regarding whether complementary payments are provided in the case of the airline being responsible for damage or loss to cover the difference between the compensation based on the Montreal Convention and actual costs incurred, the views of PRM organisations and CAAs are that this is largely not the case (see Figure 8). The Dutch Council of the Chronically Ill and the Disabled reported that “some Dutch airlines will provide complementary payments which however do not always meet the real cost”. Airports are largely not informed on this matter, but the mixed responses of airlines indicate that complementary payments are not generally or consistently provided. The lack of common practice at airlines is indicated in the comment from one that “we treat every claim individually.”

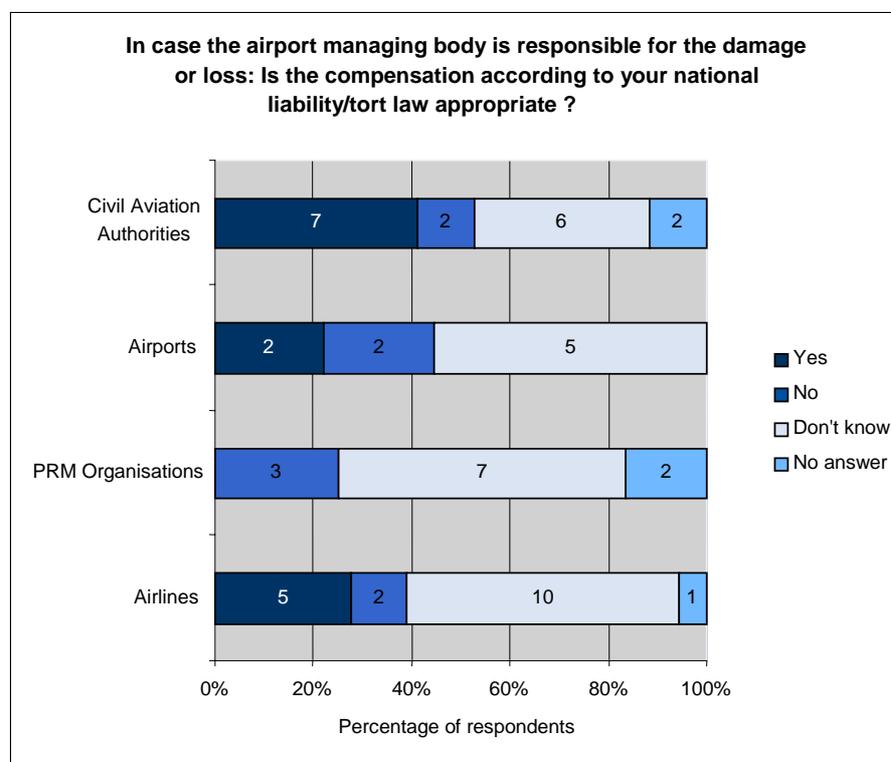
**Figure 8: Stakeholder assessment of provision of complementary payments**



Source: Stakeholder survey

There was a low level of knowledge amongst stakeholders regarding compensation according to national liability/tort law in the case of the airport managing body being responsible for damage or loss. The CAAs were largely of the view that in their respective countries compensation in this case is appropriate. However, concerns were raised also by CAAs regarding time-consuming and complicated procedures. PRM organisations which expressed a view did not consider this compensation appropriate. One airline commented that they “have not yet experienced any airport liability cases”.

**Figure 9: Stakeholder assessment of compensation under national liability/tort law**



Source: Stakeholder survey

Other detailed concerns voiced by stakeholders were:

- The approach of low cost airlines to compensation issues (raised by PRM organisations and by a respondent in the airport stakeholder group);
- The airlines attempt to oblige PRM to take out special insurance (raised by a PRM assistance provider);
- Compensation should cover the full cost of replacing/repairing lost, damaged or destroyed wheelchairs or other mobility equipment (raised by PRM organisations, CAAs, as well as by some airlines and airports).

### 6.3. Need for action

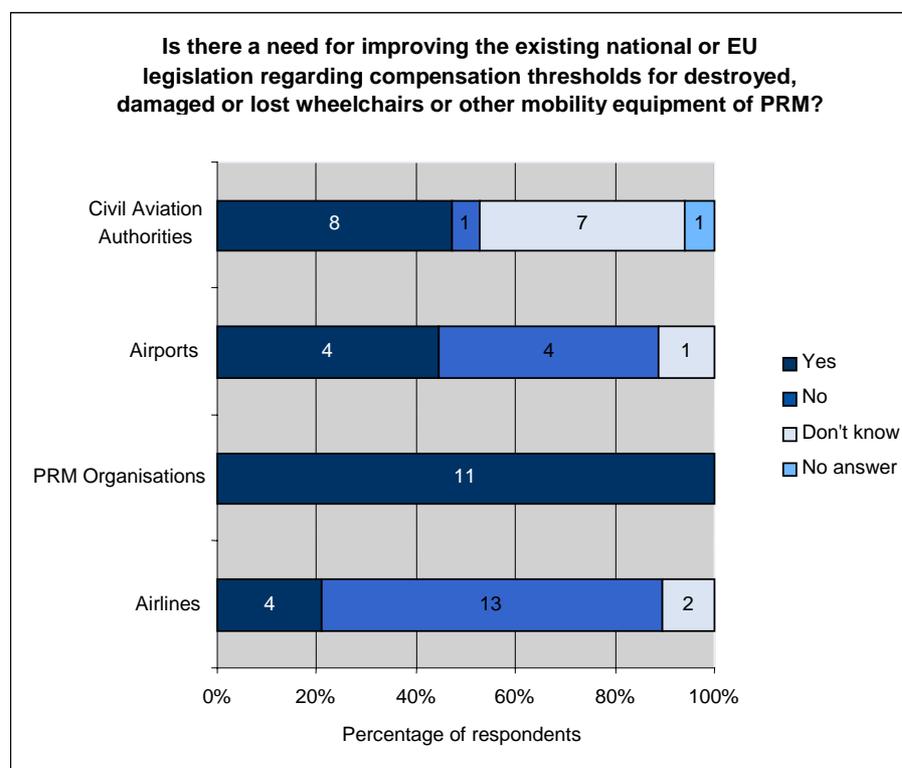
All stakeholder groups were asked whether there is a need for action related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment. The survey addressed specifically:

- a) A need for improving the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment;

- b) A need for improving the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM;
- c) A need for improving administrative enforcement (e.g. by the Civil Aviation Authorities, consumer protection authorities, designated bodies for passenger rights etc) of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment.

The graph below indicates a level of agreement from CAAs and airports, with the view of PRM organisations that there is a need to improve existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment. The key issue is that current thresholds do not cover the costs incurred. The German Disability Council commented that “it should be mandatory for any airline arriving or departing in the EU to cover the full repair or replacement costs for wheelchairs and other mobility equipment.” There is also a minority of airlines who drew attention to this problem, with one stating that PRM need “full reimbursement of destroyed or lost wheelchairs.”

**Figure 10: Stakeholder assessment of a need for improving the existing national or EU legislation regarding compensation thresholds**

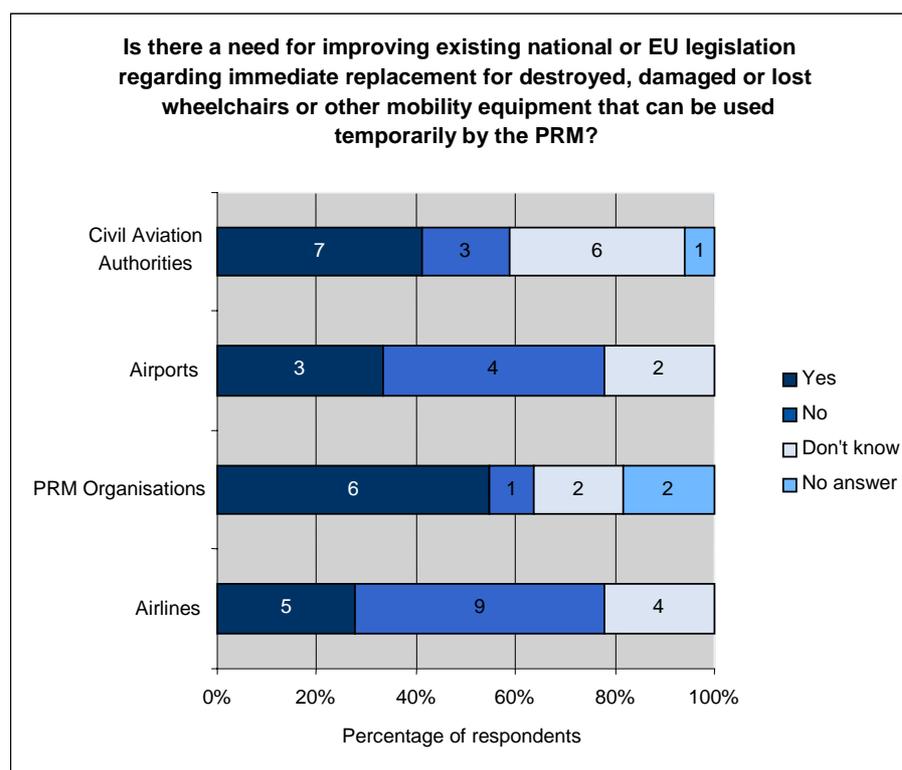


Source: Stakeholder survey

There is a support from CAAs of the PRM organisations’ position that there is also a need to improve existing national or EU legislation regarding immediate replacement of destroyed, damaged or lost wheelchairs or other mobility equipment. PRM organisations emphasised the need for PRM to be able to continue their journey using appropriate replacement equipment. The Austrian National Council of Disabled Persons commented that “airports currently only offer uniform, standardised wheelchairs which are absolutely unsuitable to be used for days up to weeks as a replacement for a personal wheelchair.”

The Passenger Services Stockholm-Arlanda Airport also emphasised the need for “everyone to have the same rules so the airlines and us know what to do if something happens and the passenger can trust us to travel.” One airline commented in support of improvement that “there currently appears to be very little information regarding this issue and further legislation would provide a more robust procedure”.

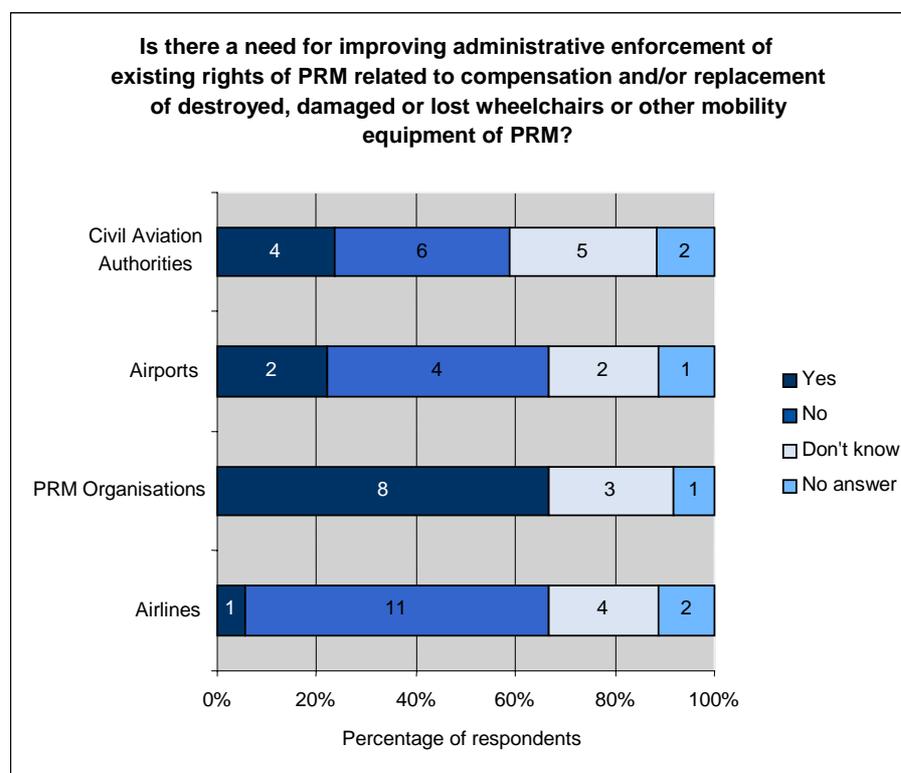
**Figure 11: Stakeholder assessment of a need for improving existing national or EU legislation regarding immediate replacement equipment**



Source: Stakeholder survey

Although PRM organisations state there is a need to improve administrative enforcement of existing rights in these respects, there is little appetite for this from other stakeholder groups.

**Figure 12: Stakeholder assessment of a need for improving administrative enforcement**



Source: Stakeholder survey

In addition, stakeholders raised concern regarding information available on services, processes and what to do in the event of a problem (emphasised by PRM organisations and raised also by airport stakeholder).

Figure 13 below is useful to identify areas of marked divergence in opinions or consensus amongst the full stakeholder group regarding measures proposed in the stakeholder survey which might improve the general situation regarding lost or damaged wheelchairs and other mobility equipment. The most consensus is achieved with respect to the need to clarify that the airport managing body is responsible for providing immediate assistance to PRM whose wheelchair/other mobility equipment has been lost or damaged according to Regulation 1107/2006.

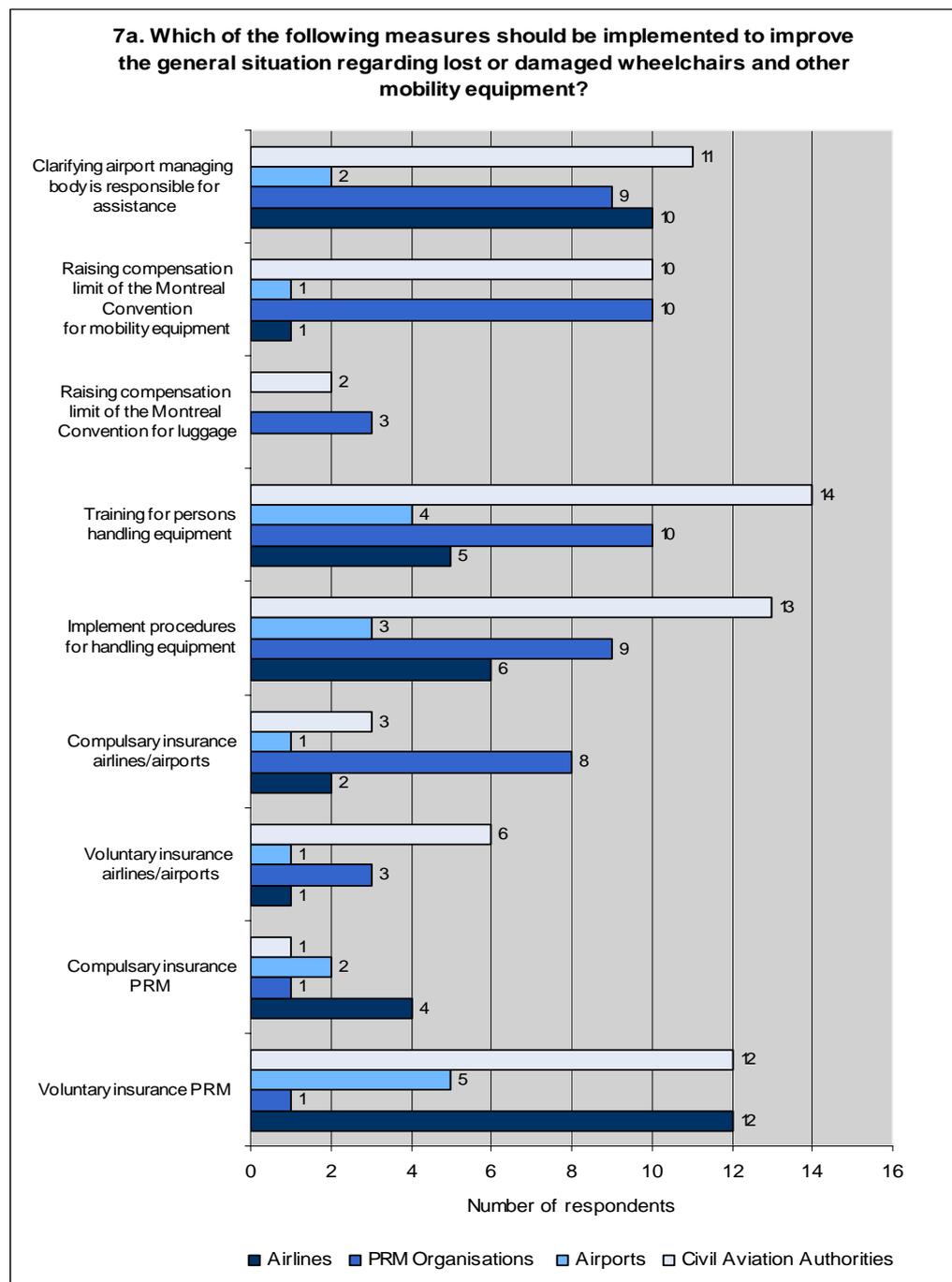
CAAs and PRM organisations largely supported the introduction of a higher compensation limit of the Montreal Convention for wheelchairs or other mobility equipment. There was extremely little support for this from airlines and airports.

CAAs and PRM organisations also largely supported the concept of introducing specific training for persons handling mobility equipment at airports/airlines. There is support for this also from both airports and airlines.

CAAs and PRM organisations largely supported the concept of implementing specific procedures at airports/airlines for handling mobility equipment. There is also support for this from both airports and airlines.

PRM organisations largely supported compulsory insurance of airlines/airports. Airlines, airports and CAAs were largely in favour of recommendation for a voluntary insurance of PRM equipment during air travel.

**Figure 13: Stakeholder views on measures to improve the general situation regarding lost or damaged wheelchairs or other mobility equipment.**



Source: Stakeholder survey

The analysis of stakeholder comments leads to the following conclusions:

**7. Organisations that represent persons with reduced mobility do not believe the current situation to be appropriate.** PRM organisations believe there is a need to improve the existing legislation regarding compensation thresholds for and immediate replacement of destroyed, damaged or lost wheelchairs or other mobility equipment. There is a considerable level of support for the PRM perspective from the Civil Aviation Authorities. In particular, PRM organisations and CAAs argue that wheelchairs and other mobility equipment should not be regarded as baggage. This view is also expressed by a minority of airports and airlines. Although rather divided in their views, airports are more likely to conclude that the current situation is appropriate. On balance, the opinion of airports is that compensation thresholds are appropriate and that current practices, policies and procedures meet the needs of PRM. This is also the strongly held view of airlines.

**8. Despite the divergence of views of stakeholders, there are also measures identified by the majority of all stakeholder groups that would improve the situation with respect to PRM travel by air.** The main area of consensus is regarding the need to clarify that the airport managing body is responsible for providing immediate assistance to PRM whose wheelchair or other mobility equipment has been lost, damaged or destroyed according to Regulation 1107/2006. All stakeholders also agree that the introduction of specific procedures and training for handling wheelchairs and other mobility equipment would achieve improvements.

## 6 ANALYSIS OF THE LEGAL FRAMEWORK

### 6.1 EU and international law

This section examines, as requested in the ToR, to what degree the rights of the PRM as defined by Regulation 1107/06 are safeguarded in the case of the equipment or assistive devices which they use, being damaged, destroyed or lost:

1. During the handling of the equipment at an airport, and;

2. During transport of the equipment on board an aircraft.

More specifically the question arises as to whether the thresholds for compensation of lost or damaged equipment are sufficient.

Regulation 1107/06 puts both the airport managing body and the air carrier under a special obligation to assist and take care of the PRM starting from the moment the PRM arrives at the designated point of arrival located on the premises of the airport.

Not only do the airport managing body and the air carrier receive an obligation of assistance towards the PRM under Regulation 1107/2006, they are also specifically made responsible to compensate sustained damage. Article 12 stipulates that the equipment or assistive devices used by PRM which are damaged or lost while being handled at the airport or transported on board the aircraft, shall be compensated in accordance with governing rules.

The responsibility of the airport managing body starts at the moment the PRM arrives at the designated place of arrival at the airport (pick-up place) which can, for instance, be the railway station if located at the airport, it can be the car park at the airport, or a specific meeting point in the airport.

Generally speaking, the responsibility of the airport managing body ends the moment the equipment is brought under the supervision of the air carrier.

The airport managing body or its agent, is responsible for any loss or damage which might occur and which is caused by its servants or agents, during that time provided that the damage was not brought about by the PRM himself/herself or by a third party for which the airport managing body is not responsible.

As from the moment the equipment is checked in by the air carrier, or the PRM boards the aircraft and carries the equipment as hand luggage with him/her, the responsibility of the airport managing body shifts to the air carrier.

The nature of the responsibility of the airport managing body is different than the one which is bestowed on the air carrier and which is regulated by International Conventions in the case the loss or damage of the equipment taking place in the framework of an international transport (as defined by the Convention).

Thus first of all, it needs to be examined whether it is the airport managing body (or its agent) who is responsible for the damage or whether the air carrier is responsible.

In practice, the point where the responsibility shifts from the airport managing body to the air carrier, can take place at different points in time.

Thus it can be:

- At a check-in counter in the departure hall of the airport.

The PRM checks in. The equipment is labelled as luggage and the person behind the check-in counter, physically takes receipt of the equipment and treats it as all other luggage.

- At the gate or at the door just before boarding the aircraft.

The PRM checks in at the check-in counter. The equipment is or is not labelled as checked-in luggage and the equipment stays with the PRM until the arrival at the gate or at the door before boarding the aircraft. The equipment is said to be “delivered at cabin” but is still treated as checked-in luggage. The PRM will board the aircraft and the equipment will be taken by special delivery to the luggage hold.

- When the PRM goes on board of the aircraft.

The PRM brings the equipment on board of the aircraft. Technically speaking the equipment then will be treated as hand luggage. The difference is important since under the Montreal Convention, there is no longer a presumption of fault on behalf of the carrier.

## 6.2 The regime governing responsibility of the airport managing body

Article 12 of Regulation 1107/2006 stipulates that the equipment or assistive devices used by PRM and which are damaged or lost while being handled at the airport or transported on board the aircraft, shall be compensated in accordance with governing rules.

As far as the responsibility of the airport managing body is concerned, no specific international or European rules exist and it will be the national liability/tort law of the different Member States that govern the situation.

A problem that may arise here is the case where the airport managing body has outsourced its responsibilities to a third party or to an airline. As a PRM, who are you allowed to sue by national law: the airport managing body, the actual wrongdoer or both? There will be differences under different national laws.

As a rule, this responsibility is based on a proven fault of the airport managing body, but the liability is not limited. This means, that the PRM will have to prove the fault of the wrongdoer (not so in case the air carrier is responsible) but can recover full damages. No matter the amount of the damage, once proven, it should be recoverable (not so if the air carrier is liable, whose liability as a rule is limited).

The national interpretations are further analysed in the country assessments (see Annex 4).

### 6.3 The regime governing the responsibility of the air carrier

The responsibility of the air carrier towards the PRM under Regulation 1107/2006 is regulated both by:

- Article 12 of Regulation 1107/2006 which stipulates that the equipment or assistive devices used by PRM which are damaged or lost while being handled at the airport or transported on board the aircraft, shall be compensated in accordance with governing rules.
- And by the rules governing the air transport in the strict sense, thus by the International Conventions in case of international carriage or in case of cabotage, by national law.

In general, when the responsibility of the air carrier is at stake, the first thing to determine is the itinerary. Depending on the itinerary, the carrier is made liable in the framework of a national or an international carriage and if the carrier will be liable in the framework of an international carriage, again the itinerary will determine which Convention is applicable.

If it concerns national carriage and thus the airport of departure and the airport of arrival are situated in the same country (true cabotage) then the national law of the country applies.

Most countries have issued national law to the extent that the regime applicable to international carriage also applies to carriage within their national boundaries. In the EU, Regulation 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Regulation 2027/97 makes the Montreal Convention regarding this subject applicable to all carriage by a Community carrier. It also extends the application of the Montreal Convention to carriage by air within a single Member State, thus to national carriage.

When the PRM is engaged in international carriage, it needs to be determined which of the international conventions is applicable.

The international conventions applicable to international carriage are:

- The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 10/1929, abbreviated: the Warsaw Convention (1929).  
The Warsaw Convention was ratified by 151 States including all EU Member States with the exception of Lithuania, who only ratified The Hague Protocol.
- The Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October

1929; signed in the Hague on 28/09/1955, abbreviated: The Hague Protocol (1955).

The Hague Protocol was ratified by 136 States including the EU member states with the exception of Malta, who only ratified the Warsaw Convention.

- The Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28/05/1999, abbreviated: the Montreal Convention (1999).

At present only 75 countries have ratified the Montreal Convention. The President of the Council on behalf of the European Community deposited the instruments of ratification of the Montreal Convention and this was done simultaneously with the instruments of ratification of all the Member States to the effect that in every Member State the Montreal Convention is in force.

Each of the above mentioned Conventions only apply in case on international law and in case both the country of departure and the country of arrival have signed the referenced Convention.

They also apply if the country of departure is the same as the country of arrival if there is an agreed stop over located in a third country, which can be a signatory State or not (the so-called return tickets).

Most tickets are return-tickets. The country of departure will thus be the same as the country of arrival, meaning that most of times only the status of one country needs to be determined. However, not all tickets are return-tickets. Low cost carriers and Internet bookings are becoming increasingly important. More and more one-way tickets are purchased in which case, the country of departure and the country of arrival both play a role to determine the legal regime to which the carrier is subject.

The 3 Conventions mentioned above are related to each other in a hierarchal manner.

In case where the country of departure and the country of arrival have not both ratified the Montreal Convention, the highest common denominator will apply.

Thus, for instance, if both the country of departure and the country of arrival have ratified Montreal, Montreal will without a doubt apply. If the country of departure, however, has ratified Warsaw, The Hague and Montreal, but the country of arrival has only ratified Warsaw, the regime of Warsaw will apply.

The 3 Conventions all work according to a same mechanism: The liability of the carrier is presumed. This means that the victim will not have to prove that the carrier committed a fault before the carrier's liability is initiated. The only thing the PRM needs to prove is the fact that the damage or loss occurred whilst the equipment was in the care of the carrier (also commonly referred to as the period of transportation).

With regard to equipment that was checked in at the check-in counter (always by or on behalf of the carrier) and consequently labelled as luggage, it is quite clear that the period of transportation starts at the moment the check-in procedure starts.

The same holds true for luggage that is “a delivery at cabin”. Although the equipment can be labelled earlier than the actual handing over of the equipment to the carrier (at the gate or at the door of the aircraft) the liability of the carrier should only be triggered the moment the equipment is physically handed over to the carrier (be it at the gate or at the door of the aircraft).

If the PRM keeps the equipment with him or her at all times, the equipment is not checked luggage but hand luggage, which comes under another regime than checked-in luggage.

Even if the basic working of the 3 Conventions is the same and they all only invoke a limited liability for loss or damage to equipment, the limitations and the defences vary.

The limits of limitation are as follows:

- Under the Warsaw Convention:

For Luggage: 250 goldfrancs per kilogramme;

For Hand luggage: 5000 goldfrancs per passenger.

Broadly speaking, the limit does not come into play in the case where:

- The proper paper work has not been made out (the carrier takes charge of the luggage without a luggage ticket having been delivered or the luggage ticket, unless combined with or incorporated in the passenger ticket, does not include certain particulars. This does not apply to hand luggage).
- In the case of proven wilful misconduct or its equivalent on the part of the carrier or his agent, which is to be determined by the law of the Court seized.

- Under The Hague Protocol:

For Luggage: 17 SDR per kilogramme

For Hand luggage: 332 SDR

Broadly speaking, the limit does not come into play in case:

- The proper paper work has not been made out;
- In case the damage results from an act or omission of the carrier or his agent, carried out with the intent to cause damage or recklessly and with knowledge that damage would probably result.

- Under the Montreal Convention:

For Luggage: 1000 SDR per passenger;

For Hand luggage: 1000 SDR per passenger, but the PRM will have to prove the fault of the carrier or his agent.

The limit does not come into play in case:

- The damage resulted from an act or omission of the carrier or his agent, carried out with the intent to cause damage or recklessly and with knowledge that damage would probably result.

This limitation of liability seems to run counter to Article 13 of Regulation 1107/2006 which foresees that obligations towards PRM shall not be limited or waived.

## 7 PROVISIONS IN THIRD COUNTRIES

### 7.1 Compensation for loss or damage of mobility equipment in Canada

Canada's Air transport Regulations were first amended in 1988 to require that Canadian carriers adopt Uniform Conditions of Carriage for Disabled Passengers by 1989. A second amendment was added in 1989 to require that air carrier personnel be trained to provide appropriate assistance to air passengers with disabilities starting January 1995.

The current Canadian legislation in place concerning PRMs is Part VII of the Air transport Regulations: Terms and Conditions of Carriage Regulations. They were issued by the Canadian Transport Agency under the authority of the Canadian Transportation Act.

The Canadian Transportation Agency is a quasi-judicial administrative tribunal of the Federal Government, which has the responsibility to ensure that persons with disabilities obtain access to Canada's transportation system by eliminating unnecessary or unjustified barriers.

On determining that there is an undue obstacle to the mobility of the PRM, the Agency may require that appropriate corrective measures be taken or direct that compensation be paid for any expense incurred by a person with a disability which arises because of the undue obstacle, or both.

Section 155 on "Damaged and lost Aid" of the Terms and Conditions of Carriage of Persons Regulations, defines the regime governing compensation and replacement regarding destroyed, damaged or lost wheelchairs and other mobility equipment. .

It stipulates:

*155. (1) Subject to subsections (2) and (3), where an air carrier accepts a person's aid referred to in paragraph 148(1)(a), (b) or (c) for carriage and the aid is damaged during carriage or is not available to the person upon the person's arrival at the person's destination, the air carrier shall, without charge, immediately provide the person with a suitable temporary replacement at the person's destination.*

*(2) Where an air carrier accepts a person's aid referred to in paragraph 148(1)(a), (b) or (c) for carriage and the aid is damaged during carriage and can be repaired promptly and adequately, the air carrier shall, in addition to complying with subsection (1), forthwith arrange for the prompt and adequate repair of the aid at the air carrier's expense and shall return it to the person at the air carrier's expense as soon as possible.*

*(3) Where an air carrier accepts a person's aid referred to in paragraph 148(1)(a), (b) or (c) for carriage and the aid is damaged during carriage and cannot be repaired promptly and adequately or the air carrier cannot locate the aid within 96 hours after the person's arrival at the person's destination and return it promptly to the person, the air carrier shall, in addition to complying with subsection (1),*

*(a) replace the damaged or lost aid with an identical one satisfactory to the person; or*

*(b) notwithstanding the limits of liability respecting goods contained in any applicable tariff, reimburse the person for the full replacement cost of the aid.*

*(4) Where an air carrier provides a person with a temporary replacement aid pursuant to subsection (1), that person shall continue to have the use of that aid*

*(a) until the time the person's aid is returned to the person, where the aid is to be repaired pursuant to subsection (2); or*

*(b) until a reasonable period for the replacement of the aid has elapsed, where the air carrier has taken steps to replace a damaged or lost aid or has reimbursed the person, pursuant to subsection (3).*

It follows that the carriers bear the full responsibility and not the managing body of the airport, which cannot be addressed in order to receive compensation. The PRM has to prove the fault by the carrier in order to receive compensation and does this in the form of notifying the carrier of the damage or loss as soon as possible upon arrival (complaint decision Marie White vs. Air Canada). Thus, the burden of proof is for the applicant, who theoretically has to outweigh the evidence by the respondent.

Although this legislation, installing unlimited liability on behalf of the air carrier, only applies to domestic transport, the Canadian Transportation Agency, in practice, extends this scope to mean International carriage.

This opinion never having been challenged, the Canadian Transportation Agency considers the Montreal Convention only to apply to baggage, not to mobility aids. It defines mobility aids as priority checked items of a personal nature and not as baggage which would be subject to the Convention.

It further imposes the regime of unlimited liability on foreign carriers though the filing of tariffs. All foreign carriers must obtain permission to serve Canadian destinations and file a tariff with the Agency. This is a document that sets out the terms and conditions of carriage, fares, rates and charges. Upon filing the tariff, the Agency requires that the foreign carrier remove the limitation of liability for the assisting devices.

In conclusion, the Canadian Transportation Agency makes no explicit distinction between international and domestic carriers, but makes decisions based on its domestic policy. It has not yet been “successfully challenged” on its mobility aids policy, possibly because it has the authority to approve or reject a foreign carrier's application to land in Canada. Upon approval, the foreign carrier is subject to Canada's national rules and regulations.

There is one case that involves compensation for a damaged mobility aid by a foreign carrier; “Lonnie Nelligan v. K.L.M. Royal Dutch Airlines”, File No. U3570/02-54. Although KLM was condemned to pay full compensation, this case does not shed any light on the application of section 155. to international carriage. **KLM was condemned to full compensation based on its own Customer Relations Manual in which it had waived the right to invoke limited liability.**

## 7.2 Compensation for loss or damage of mobility equipment in the US

US carriers have been subject to specific regulations prohibiting discrimination against disabled persons for more than 20 years.

Already in 1982, DOT's predecessor, the CAB, adopted a limited set of regulations intended to prohibit US airlines from discriminating against passengers on the basis of a handicap.

These rules were later amended and in 1990 were adopted by the Department of Transportation (DOT) as the Air Carriers Access Act (ACAA) 14 Code of Federal Regulations (CFR) Part 382.

The Air Carrier Access Act prohibits discrimination against air travellers with disabilities. The act is essentially intended to remove non-safety related barriers and to enable passengers with disabilities to enjoy equal access to the air transportation system.

In the US, as in Canada, the airline is responsible for providing enplaning, deplaning, and connecting assistance as well as checking and returning assistive devices (§382.39 and §382.41). A wheelchair or other assistive devices should be among the first items retrieved from the baggage compartment and must be returned as soon as possible to the door of the aircraft in order to allow the PRM the use of his or her own device to the greatest extent possible. However, upon the request of the PRM, the device can be returned in the baggage claim area. The carrier is responsible for the PRM at all airport facilities and services owned, leased, or operated on any basis by the air carrier at a commercial service airport, which includes parking and ground transportation facilities (§382.23).

In contrast to the EU, the airport managing body is not held accountable.

Because mobility devices had to be carried as checked baggage, PRMs complained for some time that the airlines liability limit of \$2,500 was not adequate if a wheelchair sustained damage. Therefore, in 1999, DOT issued a ruling that airlines are responsible for the repair or replacement costs of wheelchairs, whatever the cost. While most claims for assistive devices were for less than \$2,500, some motorized wheelchairs cost considerably more.

Consequently, Part 382.43 of the Air Carriers Access Act, currently in force with regards to claims for damage or loss of mobility equipment, clearly states that baggage liability limits do not apply to liability for loss, damage or delay concerning wheelchairs or other assisting devices during domestic travel.

The Stipulation that provides the limits for domestic carriage reads:

*Part 382.43 Treatment of mobility aids and assistive devices.*

*(a) Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.*

*(b) With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other*

*assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.*

*(c) Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.*

The criterion for calculating the compensation is the original purchase price of the device. This means that if an individual paid \$3,000 for a wheelchair 10 years ago, but it would cost \$5,000 to replace it today, the PRM would have to pay the additional \$2,000 to replace the wheelchair. PRMs should therefore be cautioned to know both the purchase price and the replacement cost of their assistance devices. If the difference between these two is substantial, an additional insurance to cover this gap might be recommended.

Under the ACAA, a carrier must fully compensate a passenger for repair, replacements or any other costs. Consequential damages could include appropriate wheelchair rentals, refundable tickets, tours or deposits. Compensation for immaterial damages is not included, and carriers cannot require PRMs to sign waivers of liability, except for pre-existing damage.

The ACAA does not by its terms address foreign air carriers, except in one narrow area involving the reporting of disability-related complaints received by foreign air carriers.

In April 2000, President Clinton signed into law The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, which is now referred to as AIR-21. Amongst other things, the law made the requirements of the Air Carrier Access Act applicable to foreign airlines.

In response to AIR-21, DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings issued, in May 2000, a notice informing the public of its intent to use the provisions of Part 382 as guidance for investigating any complaints of non-compliance with the ACAA by foreign carriers.

In addition, in July 2003, DOT amended Part 382 by adding a new section 382.70 that requires both US carriers and foreign carriers to record and report to DOT disability-related complaints that they receive.

In November 2004, the Department issued an NPRM proposing to amend DOT's Air Carrier Access Act regulation in 14 CFR Part 382 to cover foreign air carriers operating to and from the United States. Generally, this NPRM proposes to make foreign carriers subject to most of the disability-related requirements currently applicable to U.S. carriers under Part 382.

The proposed requirements in the recent rule can be split into three distinct categories:

- (1) Service-related requirements;
- (2) Aircraft and airport accessibility requirements; and

### (3) Administrative provisions.

The Department expects to issue a final ruling around December 31, 2007.

Although foreign carriers fall within the ambit of the Notice of Proposed Rule Making, on the subject of liability for loss or damage of assistance devices, the US has always been of the opinion that the unlimited liability in the ACAA applies only to domestic carriage.

The Notice of Proposed Rule Making, which is currently on the table, is also very clear in this respect, and states:

*284.131 With respect to domestic transportation (i.e.; transportation to which Warsaw or Montreal Convention liability limits do not apply) the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged or destroyed wheelchair or other assistive device shall be the original purchase price of the device.*

Therefore, even if most of the Air Carrier Access Act will be extended to cover foreign carriers, such coverage has not been extended and was not proposed for international carriage, which is and will remain governed by the Warsaw System or the Montreal Convention, including liability limits for mobility equipment and assistive devices of PRM.

## 8 OPTIONS FOR ENHANCING COMPENSATION

### 8.1 Overview

In principle, enhancing the threshold for compensation for damaged or lost wheelchairs or other mobility equipment in the EU can be aimed at through regulatory and non-regulatory measures. The following options are discussed in this section:

#### Possible regulatory options:

- A. Alleviating the burden of proof regarding the liability of the airport
- B. Raising the compensation thresholds regarding the liability of the air carrier
  - B1. Changing the Montreal Convention
  - B2. Introducing unlimited liability in Community legislation
  - B3. Introducing Community legislation to the effect that a carrier cannot ask any additional fee for PRM declaring a higher value of mobility equipment

#### Possible non-regulatory options:

- C. Additional individual insurance of PRM
- D. Voluntary commitments of the industry

### 8.2 Regulatory options

#### 8.2.1 *Option A: Alleviating the burden of proof regarding the liability of the airport*

The airport is liable for damage or loss to assistive devices based on tort law. As a rule, this responsibility in the Member States is based upon a proven fault of the airport managing body; the liability is, however, not limited. **This means that in the case of loss or destruction to his or her mobility equipment, the PRM will have to prove the fault of the airport managing body or of its agent, the amount of the damage, and the causal link between the two.**

**Alleviating the burden of proof required by the PRM can be done through inserting wording into the existing Regulation 1107/2006 (further relying on article 80(2) of the Treaty) to the effect that the PRM does not have to prove the fault of the airport managing body, but that such fault is presumed if the damage happens during the period that the airport managing body was responsible towards the PRM. This would be in parallel to the nature of the responsibility of the air carrier.** Thus the PRM would only have to prove that the damage or loss of his equipment occurred when the equipment was, or was supposed to be, under the supervision of the airport managing body. Contributory negligence of the PRM should exclude a full compensation of the damage or loss.

It is not expected that in this phase, there will be lots of problems concerning the determination of fault or the determination of a breach of the duty of care, making the airport managing body liable. Most of the time, during which the airport managing body has to extend its obligation towards the PRM, the PRM will remain in possession of his or her assistive equipment. Most likely it is not necessary to raise the standard of proof in this case.

If the airport managing body has outsourced its responsibilities to a third party or to an airline, it is possible that under certain circumstances, and under certain national laws, a problem might arise as to whom to sue. **Wording could be provided to the effect that even if the airport managing body has outsourced its responsibilities under Regulation 1107/2006, it remains liable towards the PRM for the compensation of loss or damage to his or her equipment.** Under no circumstances could the airport managing body invoke limited liability based on the outsourcing of its duties to an airline. The airport managing body should, however, be able to recover amounts paid out from his contractor.

**Additionally it could be unclear, or there could be a dispute, over the exact moment at which the loss or damage to the device occurred. Possibly both the airport managing body and the airline will attempt to decline responsibility. A text to eliminate the possibility of this scenario should be outlined as to who is the first-in-line for responsibility towards the PRM, whilst maintaining the possibility for the responsible entity to seek redress against the real wrongdoer. In line with the US and Canada, the airlines could be designated as the first-responsible party in-line.**

### **8.2.2 Option B: Raising the compensation thresholds regarding the liability of the air carrier**

The main concern is that air carriers can be liable towards the PRM under different legal regimes. In the EU, most of the time the Montreal Convention will rule, but situations may arise where the Warsaw Convention or The Hague Protocol apply.

No matter which Convention prevails, there is always a limitation on the carrier's liability for damages. The current study focuses on the Montreal Convention because in most of the cases it is this Convention that will apply.

**The baggage liability limitation in the Montreal Convention for both checked and for hand luggage is 1,000 SDR. This currently equals approximately 1,230 euro.**

### Option B1: Changing the Montreal Convention

It would be possible to change the Montreal Convention or to provoke a Protocol<sup>30</sup>, to install unlimited liability with regards to damages for loss or destruction of assistive devices and mobility equipment.

Such a change would not be unthinkable or unrealistic because third countries such as the US and Canada (see section 7) have no limitations of liability for mobility equipment damaged or lost during domestic carriage. Canada is also trying, via the means of filing of tariffs, to impose the same obligation on foreign carriers. It is possible that a broad consensus could be reached to change the Convention; however, changing an international instrument will take time and can only be considered a mid- to long-term perspective.

If the Commission were to take the lead in a discussion to change the Montreal Convention, this would certainly be to the benefit of the Community. However, it is recommended to take in parallel measures, which will have an effect in the short-run.

### Option B2: Introducing unlimited liability in Community legislation

A second regulatory option regarding the liability of air carriers would be to introduce unlimited liability in cases of loss of or damage to mobility equipment in Community legislation, thereby removing the limitations of the Montreal Convention for these cases. The following section will explore the legal feasibility of this approach. In practical terms, it is obvious that the removal of the protection of a limited liability can be expected to raise significant concern in the industry, even if the cause is a noble one. Relying on the adagio "pacta sunt servanda", stakeholders will argue that once a Convention is negotiated and accepted, it can only be changed by a new Convention.

Article 22 of the Montreal Convention foresees a limited liability up to 1,000 SDR for damage concerning luggage, whilst Article 25 stipulates that only the carrier might set higher limits of liability or no limits whatsoever. Any action from the EU to abolish the limits for damage to assistive devices will be challenged on this basis.

Creating legislation to the effect that assistive devices and mobility equipment does not fall under the notion of "baggage" as is used in the Montreal Convention, is also not without flaw. The Montreal Convention only regulates the carriage of passengers, baggage and cargo. Strictly speaking, if one were to remove the notion of "assistive devices and mobility equipment" from coverage under the term "baggage" and since assistive devices will not fall under the notion of "passenger", it will not be governed by the Montreal Convention, but by common tort law. (Although assistive devices could be considered as cargo, that would not be a solution either since the responsibility of the air carrier is also limited in this case.)

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<sup>30</sup> Changing the Convention by way of Protocol implies that not every signatory of the Montreal Convention itself has to agree to it. The Protocol only applies to its signatories and comes into force once a certain number of signatory countries has ratified it.

The following arguments can be considered regarding EU carriers and non-EU carriers:

EU Carriers:

Article 22.2 of the Montreal Convention states:

*2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger, ...*

And important for the case at hand, article 25 stipulates further:

*A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.*

This means that the limitations set out in article 22 are not untouchable; they merely act as a minimum standard. The International Convention has left air carriers a possibility to adapt or abandon the limits, if so desired or necessary.

It can be concluded that for EU carriers the limits can be lifted by way of a Regulation or by adding such wording to the existing Regulation 1107/2006.<sup>31</sup>

This argument is supported first by Articles 70, 71 and 80 (2) of the Treaty, which attribute power to the Community to establish a common transport policy. For the sake of adopting a Regulation, this can be done in accordance with the procedure laid down in article 252 of the Treaty. Regulation 2027/97, as amended by Regulation 889/2002, on air carrier liability in respect of the carriage of passengers and their baggage can serve as a precedent for the application of the above.

Regulation 2027/97 removed, at the time, all the existing monetary limits within the meaning of article 22 of the Warsaw Convention in regard to damages sustained in the event of the death, wounding or bodily injury of a passenger. This was carried out within the framework of establishing a common EU transport policy to improve the level of protection of passengers involved in air accidents.

Five years later, and again in the framework of a common EU transport policy, Regulation 889/2002, amongst other measures, raised the existing limits in force for the loss or damage of baggage (according to the Warsaw Convention), to limits which were projected in the Montreal Convention, although the Montreal Convention still had not come into force then.

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<sup>31</sup> If the liability limits of the air carrier will be abrogated; other relevant adjustments should be made. For instance: Article 12 of Regulation 11067/2006, where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or transported on board aircraft, the passenger to whom the equipment belongs shall be compensated in accordance with rules of international, Community and national law, except as foreseen in article.... Article 1(4) of Regulation 889/2002 would have to be adapted where it says "The liability of a Community air carrier in respect to passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability". For the sake of clarity and legal certainty, it could also be recommended to provide a list of what

### Non-EU carriers

To impose the same obligation on non-EU carriers, who depart from or land at an EU airport, could be more problematic. In principle, the EU is mandated to impose its laws on foreign entities when they are operating on EU territory (Article 71 of the Treaty). However, since we are now dealing with obligations, which are also regulated at an international level, it is not that simple to impose an obligation upon foreign carriers to give up their right to limit their liability.

There are both arguments for and against extending the rule to foreign carriers. Reasons that seem to make such an approach feasible include:<sup>32</sup>

- The goal of the Montreal Convention is stipulated as: *the protection of the interest of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.*

This means that all secondary law, in line herewith, should fit into the framework of the Montreal Convention. In the Case C-344/04 of January 10, 2006, the Court noted under point 40 that in accordance with general customary international law as expressed in Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties, a treaty is to be interpreted in good faith, in accordance with the ordinary meaning of its terms in their context, and in the light of its object and purpose. It can be argued that the inapplicability of liability limits, in respect to damage to wheelchairs or other assistive devices of PRMs, should not be regarded as being in conflict with the terms, object and purpose of the Montreal Convention.

- Article 137(j) of the Treaty requires that Community legislation support and complement the activities of the Members States concerning the combat of social exclusion. By lowering the barrier for PRMs to travel, the Community, without doubt, contributes to this goal. If the barriers for PRMs are too high, they will not travel and will become socially excluded. One of the steps to lowering the barrier for a PRM to travel is to provide a decent compensation scheme in case of loss or damage to their equipment. Wheelchairs and other assistive devices form an inherent part of the life of a PRM. PRMs are physically obliged to take their wheelchairs or assistive devices with them wherever they go; they simply cannot function properly without them. Combating the social exclusion of a PRM is undoubtedly a legitimate aim expressly provided for in the Treaty and provides for a legal basis to also put foreign carriers, using EU territory to land or take off, under the same obligation as EU carriers.

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should be understood by "mobility equipment or assistive devices". There should at least be some reference to the devices within the written text.

<sup>32</sup> These arguments also support the creation of legislation for EU carriers, but they are especially relevant for the regulation of foreign carriers.

- The Chicago Convention provides that each contracting State has "complete and exclusive sovereignty" over its territory (Article 1) and that all regulations relating to air transportation "shall be complied with by such aircraft upon entering or departing from or while within the territory of that State" (Article 11).
- Regulation 1107/2006 already acknowledges within its Article 13: *Obligations towards disabled persons and persons with reduced mobility pursuant to this Regulation shall not be limited or waived.*

This article was approved without challenge. In furtherance of the waiver of limitation, as expressed in Article 13, a later article could be incorporated into the Regulation in order to explain what this waiver means.

- If foreign carriers are obliged to waive the liability limit for assistive devices, the measure would be appropriate for attaining the objective pursued and does not go beyond what is necessary to achieve it (principle of proportionality is fulfilled). Travelling is a significant activity in a disabled person's life. Their assistive devices are also necessary to support daily activity.
- This approach is followed by Canada.

On the other hand, arguments against extending the rule to foreign carriers include:

- The Montreal Convention imposes limits on the liability, which only airlines can undo, whilst Article 29 of the Montreal Convention stipulates that any action for damages however founded, can only be brought subject to the conditions and limits set out in the Convention. The Vienna Convention on the Law of Treaties could be used to argue that the obligation cannot be extended to foreign carriers.
- The Montreal Convention was signed by the Community on 9 December 1999 on the basis of Article 300 (2) EC and was approved by a Council Decision of 5 April 2001. Article 300(7) EC provides that agreements concluded under the conditions set out in Article 300 shall be binding on the institutions of the Community and on Member States. In accordance with case law, those agreements prevail over provisions of secondary Community legislation. Case C-344/04 on a preliminary ruling concerning Montreal and denied boarding compensation and case law there cited Case C-61/94 [1996] ECR I-3989 and case C-286/02 Bellio [2004] ECR I-3465.
- ICAO grants sovereignty to States over their airspace, and the authority to regulate their own carriers.
- It could be argued that it is easy for PRM to purchase voluntary insurance to protect against the risk, and remedy any damage that might be suffered by the PRM. It could be argued that this measure would be more appropriate than the abrogation of the limits of the baggage liability.
- These arguments are reflected in the US position as it currently stands.

Option B3: Introducing Community legislation to the effect that a carrier cannot ask any additional fee for PRM declaring a higher value of mobility equipment

The theory of article 22.2 of the Montreal Convention foresees:

*2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger, unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination **and has paid a supplementary sum if the case so requires.** In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination*

And article 3a of Regulation 2027/97 as amended by Regulation 889/2202 on air carrier liability in respect of the carriage of passengers and their baggage by air, stipulates:

*The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, may be demanded by a Community carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a traffic which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.*

**In practice, this process does not seem to work.** According to the survey of air carriers, it is only possible with less than half of the air carriers that responded for the PRM to declare that their luggage is of a higher value and that this can be claimed accordingly (see section 4.1.2). However, a very large majority of PRM organisation (except the Swedish organisation) report that it is not possible according to their experience to declare a higher value.

Although frequently used in the process of forwarding cargo, if a passenger would arrive at the check-in counter and declare the value of his or her luggage, the agent might even not know what to do. In case of a “declared value”, the airline would have to calculate a fee, which is related to the value of the luggage. Instructions from airlines on how to make such a calculation may not be easily available or be given at all. In the best case scenario, the airline would give the passenger instructions on how to get extra insurance (see also section 8.3.1). **Since it is, however, technically possible, the Commission could propose relying on the declared value.**

**To reach the proposed goal, it could be protocol for the PRM to declare the value of the mobility equipment,** in which case, however, “*the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.*”

In furtherance of Articles 70, 71 and 80(2) of the Treaty, Community legislation could be adopted to the effect that the carrier cannot ask any additional fee for this.

**This obligation can be assigned to the EU carrier by way of an additional article in Regulation 1107/2006 (in accordance with article 252 of the Treaty).**

As regards objections to making this applicable to foreign carriers, reference is made to the objections enumerated in the previous section.

The major problem that has to be taken into account seems to be that “an industry practice” would have to be started.

Potentially, it could take some time before:

1. The airlines are aware of the fact that they have to accept a declared value for mobility equipment;
2. The airlines institute the necessary mechanisms to accept a “declared value” at the check-in counter; and
3. The agents at the check-in counter are sufficiently trained to handle such a request.

Problems could also arise regarding the “value” to declare. In cases of dispute, the air carrier might try to use the provision: “... unless it (the carrier) proves that the sum is greater than the passenger’s actual interest in delivery at destination.”

To avoid this type of dispute, the US practice could be endorsed where compensation is set at the original purchase price of the device, and not the replacement price. If the difference between these two is substantial then an additional insurance to cover this gap could be recommended.

### 8.3 Non-regulatory options

Non-regulatory options include additional insurance for PRM and voluntary commitments of the industry.

#### 8.3.1 Option C: Individual insurance paid by the PRM

A possible solution that does not demand legislative action per se, is the voluntary purchase of additional insurance to cover the loss or damage of a mobility device during air travel to be paid by the PRM. The majority of airlines, airports and CAAs support the concept of a recommendation for a voluntary insurance of PRM equipment during air travel. However, PRM organisations are strongly opposed to this approach, and advocate other measures including compulsory insurance of airlines/airports. Although a seemingly simple solution, this approach seems to be against the spirit of Regulation 1107/2006, which states that “disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for air travel comparable to those of other citizens.” Article 10 provides that there should not be additional costs for the PRM in regard to assistance provided by the air carrier, which includes according to Annex II of the Regulation “transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs”. On the other hand, it

could be argued that repairing sustained damaged does not fall under the heading of “the assistance”, which is provided by the carrier.

It is also not obvious that expensive equipment can be easily insured by PRM, as insurers sometimes do not cover expensive electric wheelchairs. A vast majority of PRM organisations report that it is according to their experience not possible to take out additional insurance. Only two organisations from Belgium and Austria have confirmed that in principle such insurance cover exists.

### 8.3.2 **Option D: Voluntary commitments of the industry**

The least controversial method to accomplish the goal set forward by the Commission would be to start up negotiations with the industry, in order to receive voluntary commitments (or the revision of existing commitments, see section 4) from the airlines and, where relevant, from airports. Topics that could be covered by such voluntary commitments, which would have to be binding in nature for signatories to be effective, include:

- Provision of compensation for damaged, destroyed or lost wheelchairs and other mobility equipment above the limits of liability for luggage stipulated by the Montreal Convention;
- Detailed procedures for requesting immediate and adequate assistance in case of damaged, destroyed or lost wheelchairs, including immediate provision of adequate replacement.
- Introduction of specific procedures and training for handling wheelchairs and other mobility equipment;
- Procedures for enforcing the voluntary commitment.

It remains an open question to whether the outcome of such negotiations will be binding on the whole industry. There will always be airlines, which are not connected to a trade association.

This discussion of regulatory and non-regulatory options leads to the following conclusion:

9. **Enhancing the threshold for compensation for damaged or lost wheelchairs or other mobility equipment in the EU can be aimed at through regulatory and non-regulatory measures.** Possible regulatory options include (A) Alleviating the burden of proof regarding the liability of the airport (B) Raising the compensation thresholds regarding the liability of the air carrier through changing the Montreal Convention (B1), introducing unlimited liability in Community legislation (B2) or introducing Community legislation to the effect that a carrier cannot ask any additional fee for PRM declaring a higher value of mobility equipment (B3). Possible non-regulatory options include (C) Additional individual insurance of PRM and (D) Voluntary commitments of the industry.

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## ANNEX 1: OPINIONS OF STAKEHOLDERS

The opinions of stakeholders on the adequacy of existing rules were investigated through the questionnaire based survey (see Annex 2 for the questionnaire). Responses were obtained from 18 airlines, 12 airports, 11 disability organisations and 17 Civil Aviation Authorities.

### 1. Appropriateness of current procedures

The findings presented below indicate the opinions of each stakeholder group on the procedures for: lost wheelchairs and other mobility equipment; damaged or destroyed wheelchairs or other mobility equipment and finally immediate replacement of wheelchairs or other mobility equipment for temporary use.

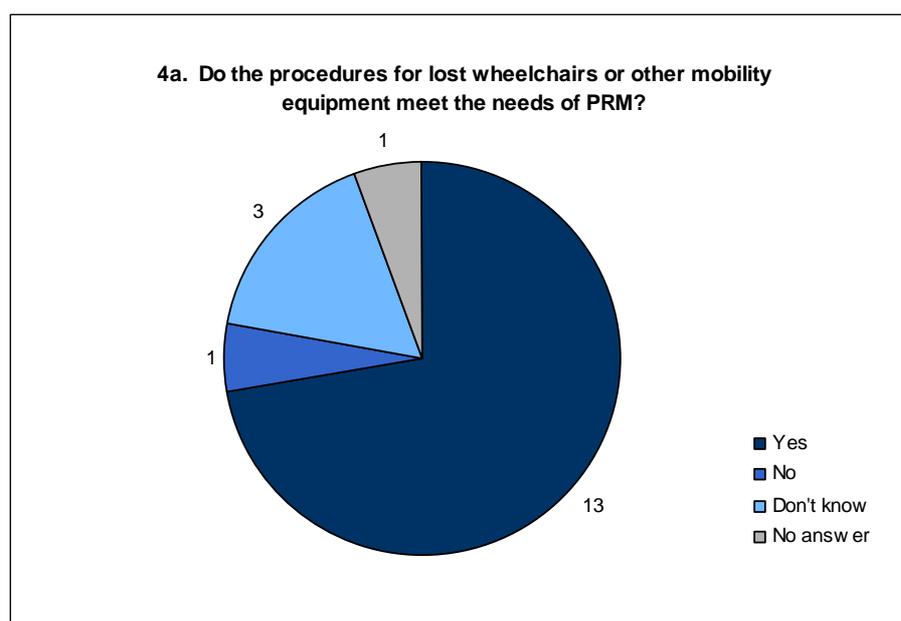
#### *Airlines*

In general, there is consensus amongst airlines that the current procedures if a wheelchair or other kind of mobility equipment is lost, damaged or destroyed meet the needs of PRM.

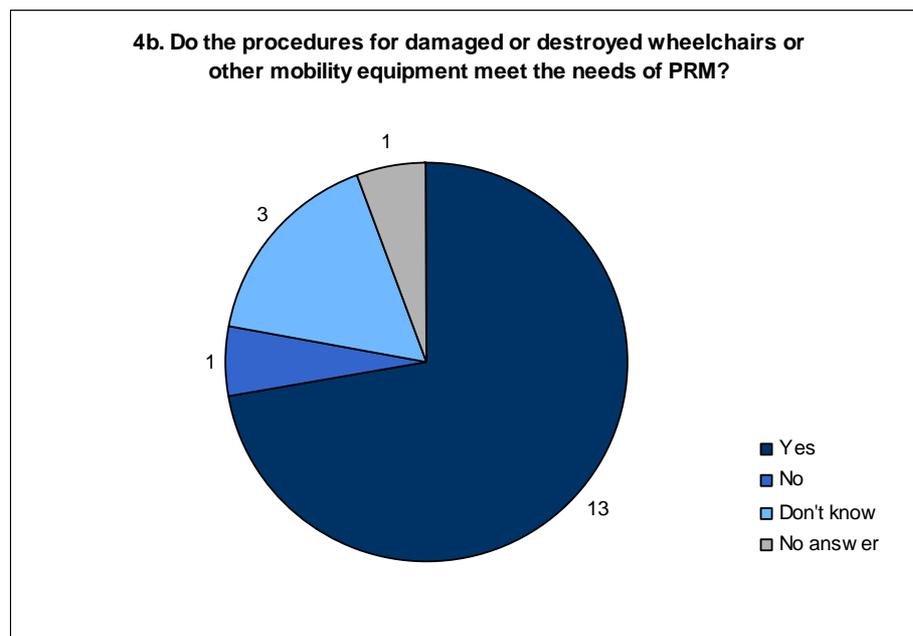
One carrier responded that the procedures meet the needs, but also included the comment that there are “no known cases”.

Only one carrier expressed the view that the procedures do not meet the needs of PRM, giving the reason as being that compensation is not sufficient.

The graph below shows the survey results specifically with respect to lost wheelchairs or other mobility equipment.



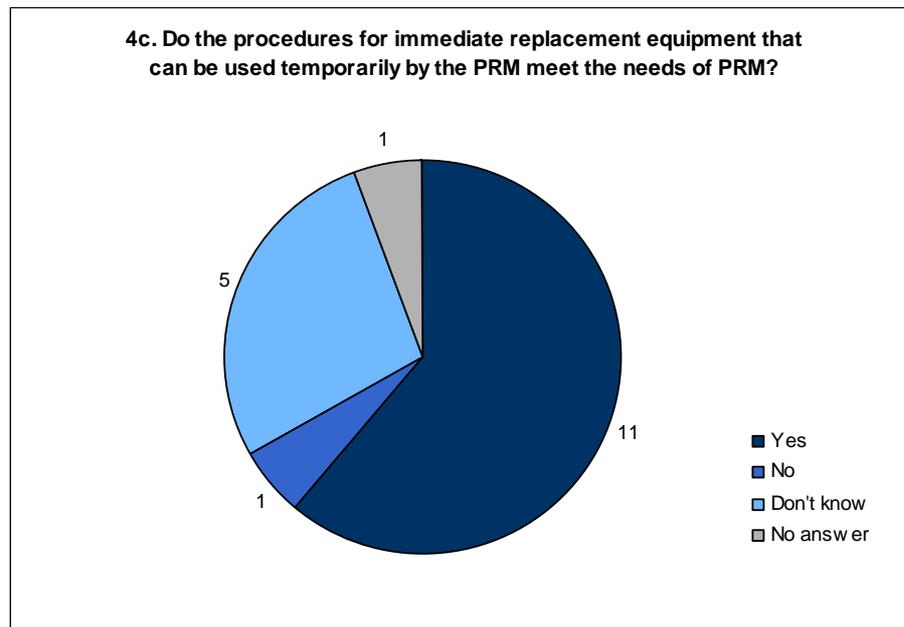
The following graph reflects the same results with respect to whether the procedures for damaged or destroyed wheelchairs or other mobility equipment meet the needs of PRM.



The procedures for immediate replacement of equipment that can be used temporarily by the PRM are also in place according to the majority of the airlines. As one national carrier stated: “It is [our] policy to assist the concerned passenger in making appropriate arrangements to meet the individual’s immediate mobility needs. Local arrangements may include lease or purchase of new equipment as deemed necessary”.

However, there is a considerable proportion of airlines who responded “don’t know” with respect to the procedures for immediate replacement equipment.

One airline commented that there is no wheelchair in stock on the airline side, and that wheelchairs are only available through the airport.



**In summary:**

- The majority of airlines state that the procedures for lost wheelchairs or other mobility equipment meet the needs of PRM.
- The majority of airlines indicate that the procedures for damaged or destroyed wheelchairs or other mobility equipment meet the needs of PRM.
- The majority of airlines believe that the procedures for immediate replacement equipment that can be used temporarily by the PRM meet the needs of PRM.

**This leads to the following conclusion:**

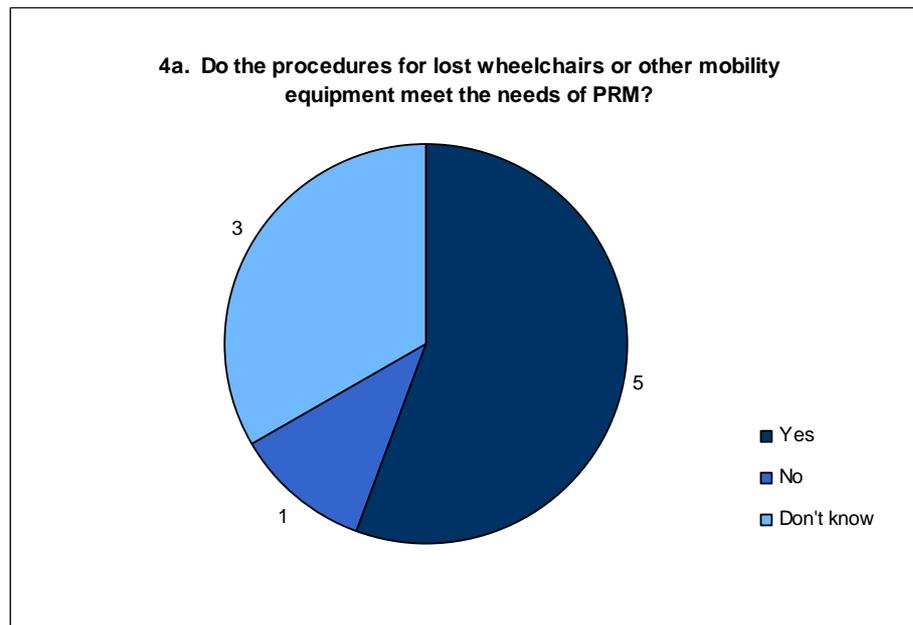
**10. The large majority of airlines believe that the current procedures with respect to lost, destroyed or damaged wheelchairs or mobility equipment meet the needs of PRM.** There is consensus regarding the adequacy of current procedures. Only one carrier expressed the view that the procedures do not meet the needs of PRM, giving the reason as being that the compensation is insufficient.

**Airports**

In general, with respect to all the survey questions regarding current procedures if a wheelchair or other kind of mobility equipment is lost, destroyed or damaged, there was a considerable proportion of airport stakeholders who felt unable to provide responses.

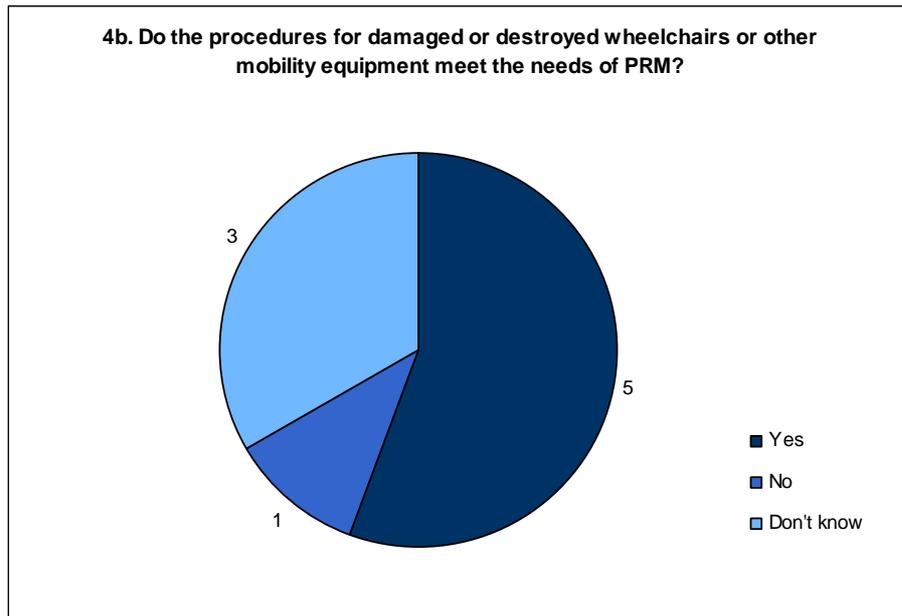
Considering whether the procedures if a wheelchair or other kind of mobility equipment is lost meet the needs of passengers with reduced mobility, approximately half the airport respondents indicated that these procedures meet the needs of PRM.

Only Stockholm-Arlanda Airport responded that the procedures for lost wheelchairs or other mobility equipment do not meet the needs of PRM. It was explained as follows: “If the wheelchair is lost the airlines can borrow one from us, but still that wheelchair may not meet the standard that the passenger needs to make it through an ordinary day”.



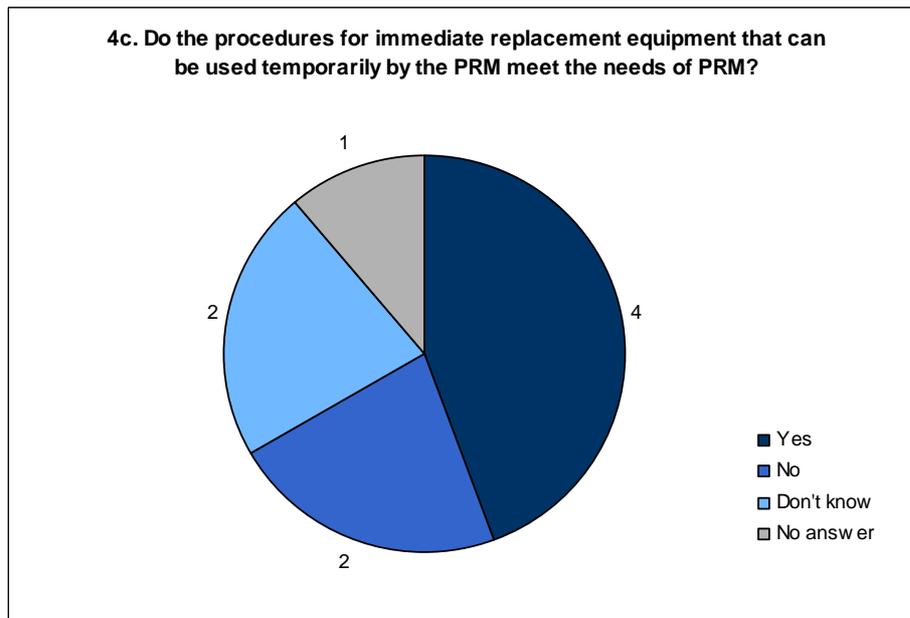
Concerning whether the procedures for damaged or destroyed wheelchairs or other mobility equipment meet the needs of PRM, also approximately half the airport stakeholders believe that the procedures meet the needs of PRM.

Only Stockholm-Arlanda Airport responded these procedures also do not meet the needs of PRM.



With respect to whether the procedures for immediate replacement equipment that can be used temporarily by the PRM meet the needs of PRM, again approximately half the airport stakeholders believe that these procedures meet the needs of PRM.

Stockholm-Arlanda Airport does not agree because, in their case, the airport has “two wheelchairs that the airline can offer the passenger but it isn’t always the passenger gets the information or the airline knows about it”.



**In summary:**

- A considerable percentage of the airports did not express a view regarding the extent to which current procedures if a wheelchair or other mobility equipment is lost, damaged or destroyed meet the needs of PRM.
- Approximately half the airport respondents believe the current procedures for lost, damaged or destroyed wheelchairs or other mobility equipment meet the needs of PRM.
- The concern was raised that replacement wheelchairs “may not meet the standard that the passenger needs to make it through an ordinary day”.
- Approximately half the airport respondents believe that the procedures for immediate replacement equipment meet the needs of PRM.
- Passengers and airlines do not always have information regarding the availability of replacement equipment.

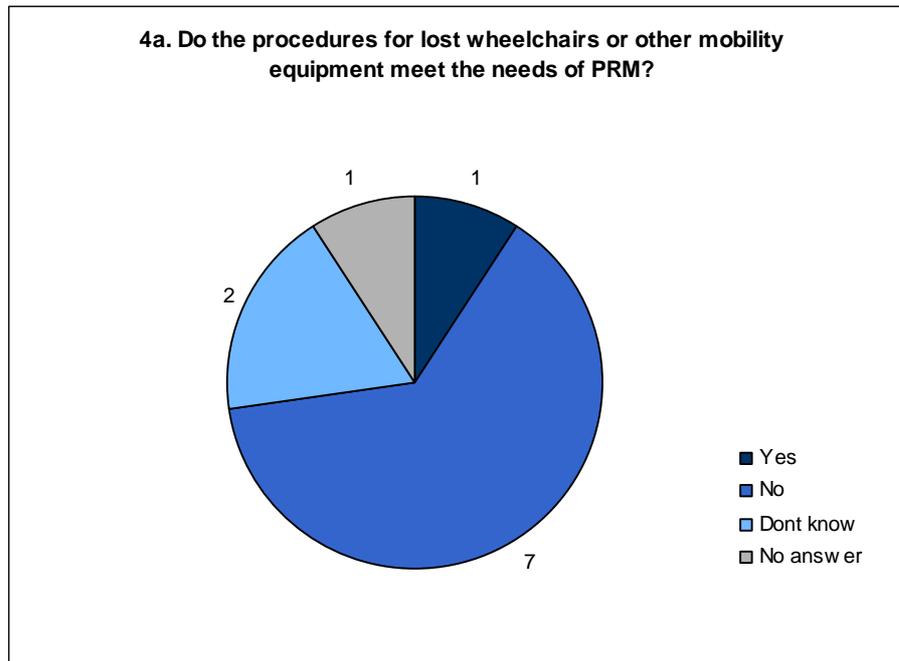
This leads to the following conclusion:

**11. Approximately half the airports surveyed are of the opinion that the current procedures if a wheelchair or other kind of mobility equipment is lost, destroyed or damaged meet the needs of PRM. However, concerns were raised regarding the appropriateness of replacement wheelchairs. There is awareness amongst airports that replacements might not be appropriate or that passengers and airlines might not have information regarding the availability of replacement equipment.**

***PRM organisations***

There was a high response rate amongst PRM organisations to the questions in the stakeholder survey referring to the current procedures regarding lost, damaged and destroyed wheelchairs and other mobility equipment. Overall, the procedures are not believed to meet the needs of PRM.

The majority of PRM organisations do not believe that the current procedures if a wheelchair or other kind of mobility equipment is lost meet the needs of passengers with reduced mobility.



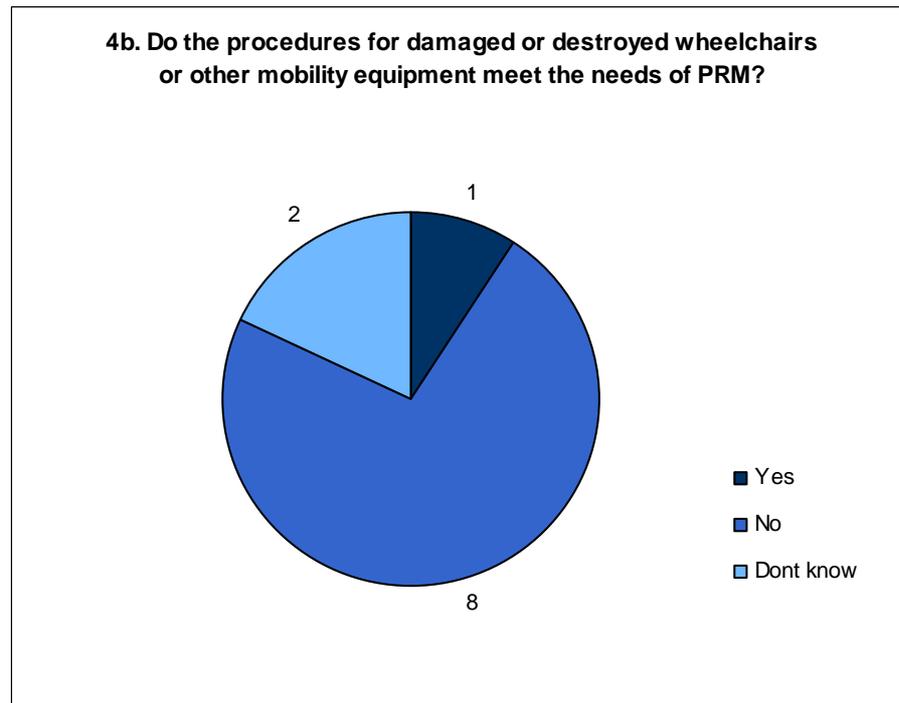
The respondents provided further explanatory information regarding why the current procedures for lost wheelchairs or other mobility equipment do not meet the needs of PRM.

The Austrian National Council of Disabled Persons commented that “wheelchairs in particular are adapted to the bodily proportions of the user. Currently there is no system in place which is able to quickly provide a suitable substitute without complications”.

There was a comment from I.LI.TEC. based in Italy that it usually takes a number of days before mobility equipment is returned to its owner. The urgency of the situation is reflected in the comment by the German Disability Council “the PRM must replace their lost mobility equipment as soon as possible...because without their mobility equipment they are often unable to leave their home, do their job, meet friends etc.”

The effort required in order to remedy the situation is reflected in the comment from the Dutch Council of the Chronically Ill and the Disabled that it “takes time and conviction to get your rights”.

Similarly, with respect to procedures for damaged or destroyed wheelchairs or other mobility equipment, the majority of PRM organisations do not think that these procedures meet the PRM needs.

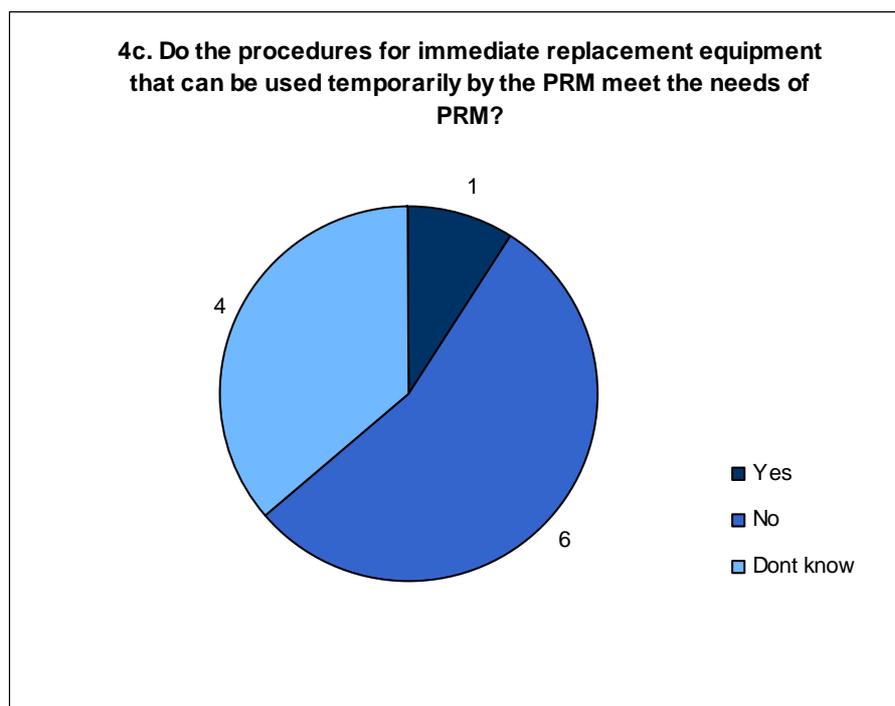


The explanatory remarks in this context refer back to the same issues referred to in response to the question regarding lost wheelchairs or mobility equipment.

Additionally, the Austrian National Council of Disabled Persons refers to the “extensive administration for the disabled person in order to obtain a suitable replacement and to have the repair carried out and paid”.

The urgency of the situation means that the PRM cannot wait for a response about where liability rests and whether compensation will be forthcoming before getting their wheelchair or mobility equipment repaired or replaced. The issue of urgency is emphasised repeatedly and summarised by the European Disability Forum by the comment “the procedures are too slow.”

Regarding the procedures for immediate replacement equipment that can be used temporarily by the PRM, again the majority of this stakeholder group do not believe that these procedures meet the needs of PRM.



It is clear that “there may not be replacement equipment at all” or, as the Italian organisation I.LI.TEC. comments, that available equipment might not be in good condition for use.

Also, the available equipment usually differs from the damaged or lost equipment and the example of a manual wheelchair being provided to replace an electric wheelchair is cited as causing considerable difficulties.

In summary:

- The majority of PRM organisations do not believe that current procedures if a wheelchair or other mobility equipment is lost, damaged or destroyed meet the needs of PRM.
- Replacement equipment may not be available.
- Replacement equipment may not be appropriate for the needs of the PRM.
- The procedures overall are too slow in a situation which requires urgency. Without mobility equipment PRM are unable to lead an independent life.
- The extensive administration required by the PRM in order to obtain a suitable replacement and have a repair carried out requires time and “conviction”.
- The procedures are seen to meet the needs of PRM in the opinion of one stakeholder when good quality equipment is available at the airport.

This leads to the following conclusion:

12. ***The majority of PRM do not believe that the current procedures if a wheelchair or other mobility equipment is lost, damaged or destroyed meet the needs of PRM. Concerns were raised regarding: the availability of replacement equipment; the suitability of replacement equipment; the slow and bureaucratic procedures.*** The urgency of resolving issues of loss, damage or destruction of wheelchairs or other mobility equipment as being crucial in allowing the PRM to lead an independent life was repeatedly highlighted by the PRM organisations.

### **Competent authorities**

Generally, a considerable proportion of stakeholders from the Civil Aviation Authorities were not informed or have chosen not to comment about the extent to which current procedures if a wheelchair or other kind of mobility equipment is lost, destroyed or damaged meet the needs of passengers with reduced mobility.

Some stated specifically that they had not received evidence or complaints from passengers on this matter.

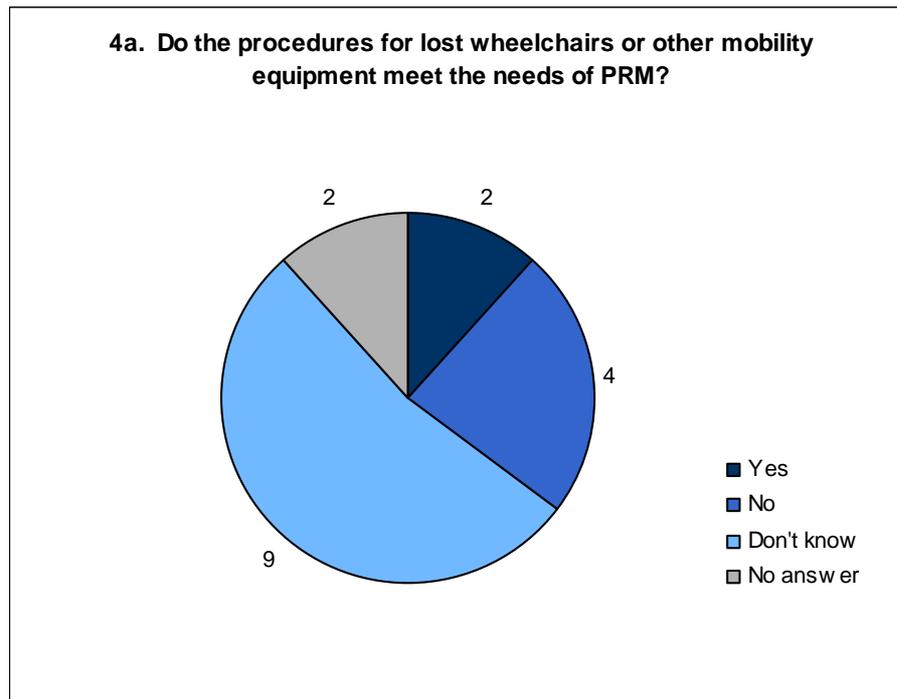
With respect specifically to whether current procedures for lost wheelchairs or other mobility equipment meet the needs of PRM, only two CAAs indicated that these procedures meet PRM needs.

The majority of those who expressed a view do not believe that procedures for lost wheelchairs or mobility equipment meet the needs of PRM.

The specific concern was raised that the compensation limit does not cover the cost of the lost equipment.

An additional concern is the lack of urgency with which the situation is addressed.

It is considered inappropriate that wheelchairs and other mobility equipment should be considered as baggage. The Belgian CAA states explicitly that “mobility equipment cannot be reduced to the status of mere luggage” and that “the procedures seldom lead to an appropriate refund or a compensation of the damage incurred by the loss”. The UK CAA commented: “Although we do not have data on the extent of the problem and cannot comment on the need for further action, we do receive occasional correspondence on this subject. It is clear from this that a lost or damaged wheelchair is a very serious matter for the person concerned and affects their ability to lead a normal life. This would suggest that there is a prima facie case for treating such equipment differently from other lost or damaged baggage.”



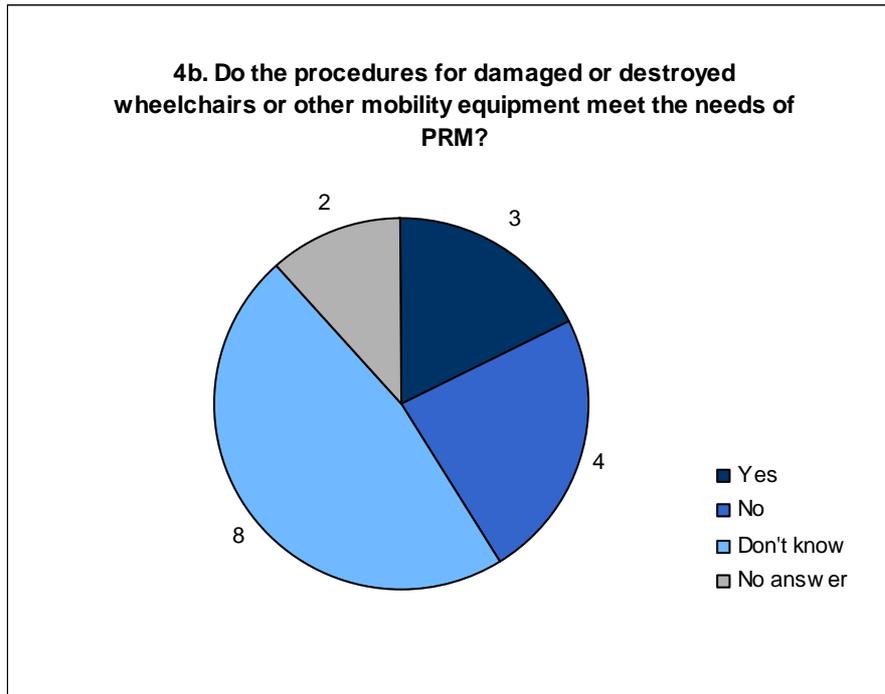
With respect to procedures for damaged or destroyed wheelchairs or other mobility equipment, more than half those CAAs which expressed a view do not believe that these procedures meet the needs of PRM.

CAAs cited the inadequacy of the Montreal Convention.

It is considered inappropriate that wheelchairs and other mobility equipment which are so vital to everyday life for PRM should be considered as baggage.

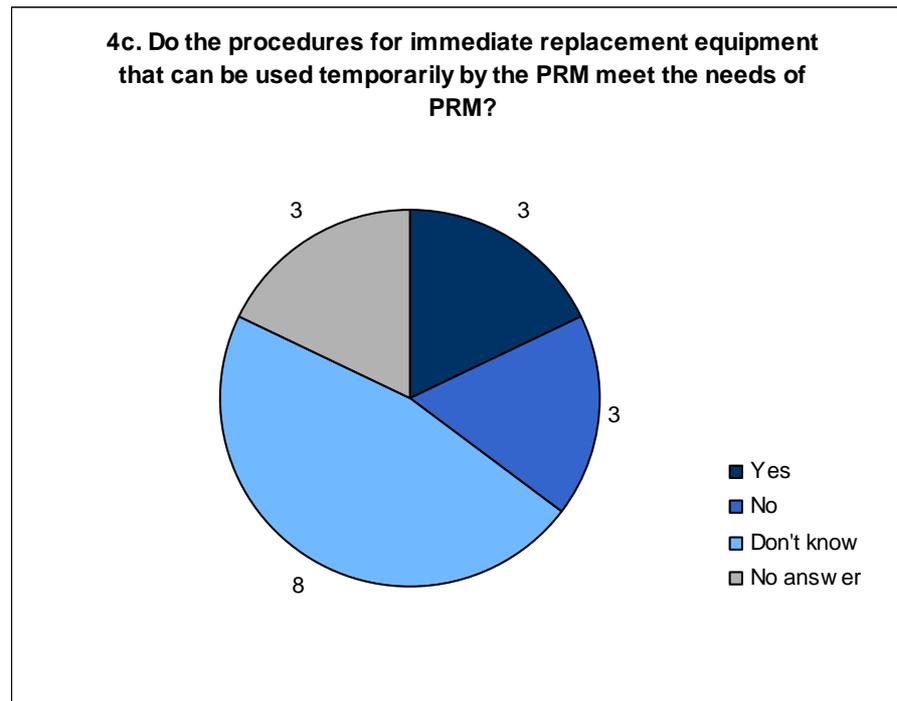
The procedures are seen as “too complicated, too slow, financially insufficient”.

However, this issue is thought to be covered in the PRM legislation according to the Netherlands CAA.



Half of those CAAs that expressed a view do not believe that procedures for immediate replacement equipment that can be used temporarily by PRM meet their needs.

The replacement equipment is often “very basic and does not correspond to the person’s specific needs”.



**In summary:**

- Civil Aviation Authorities were in general not informed or chose not to comment about the extent to which current procedures if a wheelchair or other kind of mobility equipment is lost, destroyed or damaged meet the needs of passengers with reduced mobility.
- The majority of CAAs who expressed a view do not believe that procedures for lost wheelchairs or other mobility equipment meet the needs of PRM.
- Of those CAAs who expressed a view, more than half do not think that the current procedures for damaged and destroyed wheelchairs or other mobility equipment meet the needs of PRM.
- Of those CAAs who expressed a view, half do not believe that the current procedures for immediate replacement of wheelchairs or other mobility equipment meet the needs of PRM.
- CAAs raised concerns that the current compensation limit does not cover the cost of the lost equipment and that the situation is not resolved with sufficient urgency.
- CAAs also commented that replacement equipment must be of good quality and that it is often inappropriate to PRM needs.
- It is considered inappropriate that wheelchairs and other mobility equipment should be considered as baggage.

**This leads to the following conclusion:**

**13. The views of the CAAs surveyed were largely that the current procedures for lost, damaged or destroyed wheelchairs or other mobility equipment do not meet the needs of PRM. Approximately half the CAAs do not believe that the current procedures for immediate replacement of wheelchairs or other mobility equipment meet the needs of PRM.** Concerns were expressed regarding the current compensation limit and the appropriateness of replacement equipment. CAAs mentioned that more urgency was required in current procedures. It is considered inappropriate that wheelchairs and other mobility equipment should be regarded as baggage.

## 2. Appropriateness of current compensation limits

The stakeholder survey was used to gather opinions on the compensation limits in place when a wheelchair or other mobility equipment is lost, damaged or destroyed. Stakeholders were asked: whether the compensation limit of the Montreal Convention is appropriate; whether complementary payments are provided to cover the difference between compensation on the basis of the Montreal Convention and replacement/repair costs, in case those are higher than what is provided by the Convention; and whether compensation according to national liability/tort law is appropriate in the case of the airport managing body being responsible for damage or loss.

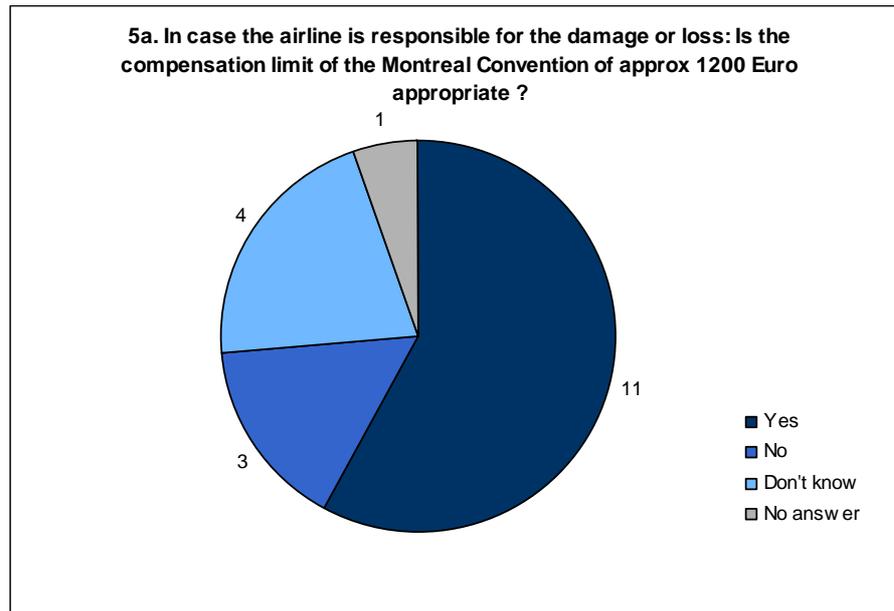
### ***Airlines***

The majority of responding airlines are of the opinion that the compensation limit of the Montreal Convention is appropriate.

There is however an awareness that wheelchairs and repairs to wheelchairs can cost more than the limit of the Montreal Convention.

Although responding that the Montreal Convention compensation limit is appropriate, one national carrier outlined their own practice in specific detail as follows: “In case of damage to wheelchairs or mobility equipment we take care of the repair. If the cost of the repair is higher than the price of a new wheelchair or mobility equipment, we provide the passenger with a new wheelchair or mobility equipment no matter the year of the purchase of the wheelchair or of the mobility equipment.”

One other carrier commented that they advise the passenger to take out personal insurance.

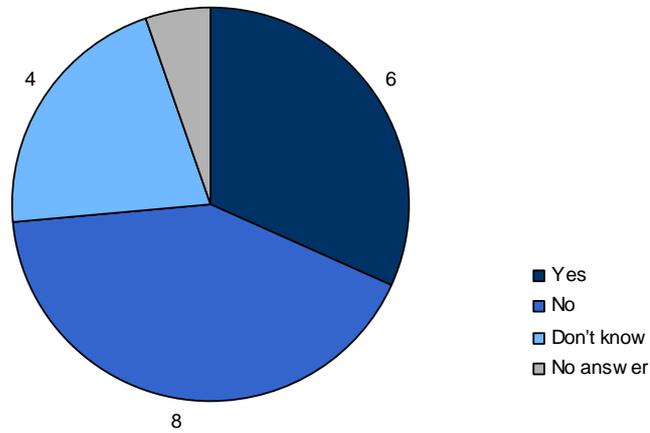


In most cases, additional payments to cover the costs of the difference between the Montreal Convention and the replacement costs are not made. However, a significant number of airlines responded that complementary payments are provided. The smaller airlines (regional and leisure) tend to adhere more strictly to the compensation limit under the Montreal Convention than the larger airlines.

The lack of common practice is reflected even at individual airline level in the comment from one carrier that “we treat every claim individually.”

There is also a level of reliance by some airlines on the PRM having taken out individual insurance which will cover such complementary payments.

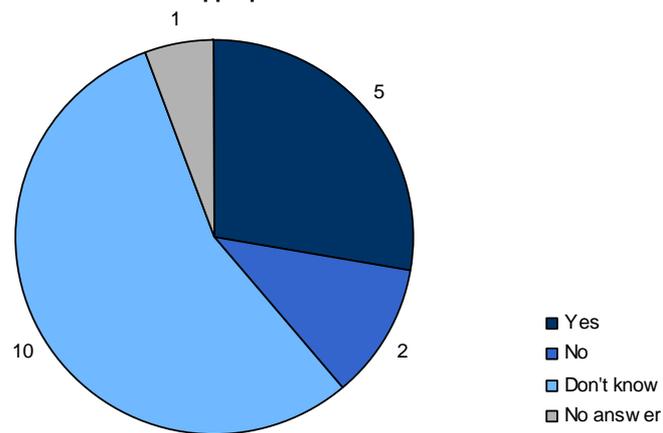
**5b. In case the airline is responsible for the damage or loss: Are there complementary payments provided to the PRM (e.g. by the airline, their insurances or social security bodies) to cover the difference between the compensation on basis of the Montreal Convention and replacement/repair costs, in case those are higher than what is provided by the Convention?**



As shown in the next graph the responsibilities of the airport managing bodies are not yet clear. Most of the airlines do not know if the compensation of these bodies is appropriate according to the national law.

One airline specifically commented that they have no experience yet of cases of airport liability.

**5c. In case the airport managing body is responsible for the damage or loss: Is the compensation according to your national liability/tort law appropriate?**



**In summary:**

- The majority of airlines believe that the compensation limit of the Montreal Convention is appropriate.
- There is however an awareness that wheelchairs and repairs to wheelchairs can cost more than the limit of the Montreal Convention.
- In most cases airlines do not provide complementary payments.
- The smaller airlines (regional and leisure) tend to adhere more strictly to the compensation limit under the Montreal Convention than the larger airlines.
- Practice with respect to complementary payments can be decided on a case by case level.
- The responsibilities of the airport managing bodies are not yet clear. Most of the airlines do not know if the compensation of these bodies is appropriate according to the national law.

This leads to the following conclusion:

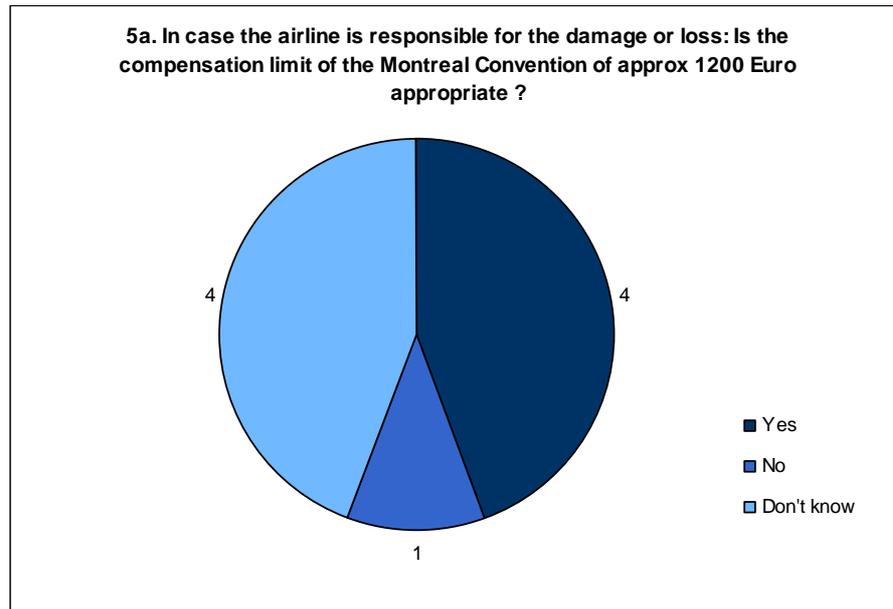
**14. The majority of airlines believe that the current compensation limit for lost, damaged or destroyed wheelchairs or mobility equipment under the Montreal Convention is appropriate.** There is nevertheless an awareness that wheelchairs and mobility equipment, and repairs, can cost more than the Montreal Convention limit. In most cases however airlines do not provide complementary payments to cover the difference between the Montreal Convention limit and actual costs incurred. This is particularly the case for regional and leisure airlines. The adequacy of compensation under national liability/tort law when the airport managing body is responsible for damage or loss is not yet clear.

### **Airports**

Generally, with respect to all the survey questions regarding the appropriateness of current compensation for lost, damaged or destroyed wheelchairs or mobility equipment, a considerable proportion of airport stakeholders were unable to provide responses.

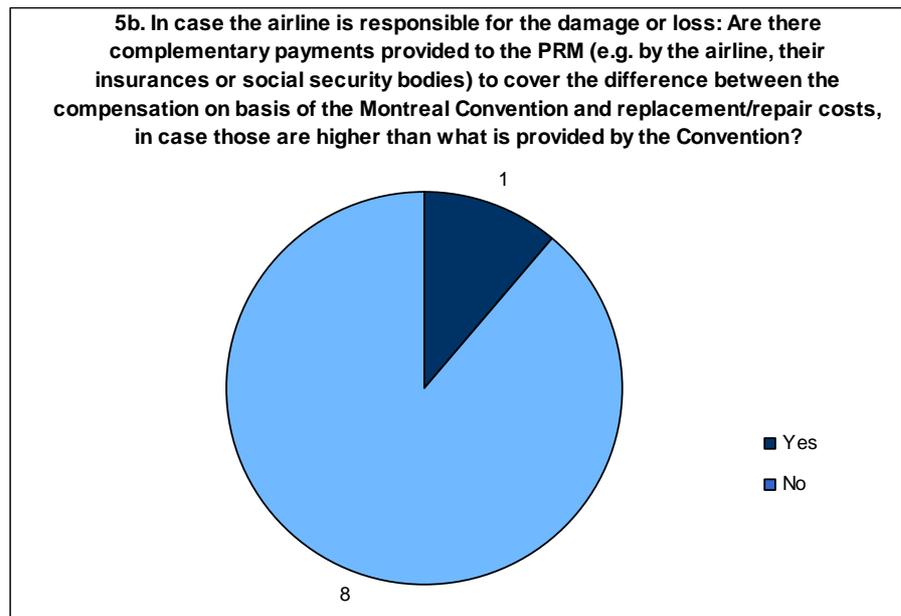
The most responses were collected with reference to the compensation limit when the airline is responsible for the damage or loss. Of those that expressed a view, the majority believe that in the case of the airline being responsible for damage or loss of a wheelchair or other mobility equipment, the compensation limit of the Montreal Convention of approximately 1200 Euro is appropriate.

However, the Aeroports de Paris respondent commented that this compensation limit is not appropriate and commented that “some wheelchairs can cost up to 10,000 Euros”.



With respect to the provision of complementary payments, the Aeroports de Paris representative indicated that in the case of the airline being responsible for the damage or loss, there are complementary payments provided to the PRM by regular airlines to cover the difference between the compensation based on the Montreal Convention and the replacement or repair costs, when these are higher than the provision under the Convention. However, “there was no answer from the low cost airlines” on this, reported Aeroports de Paris.

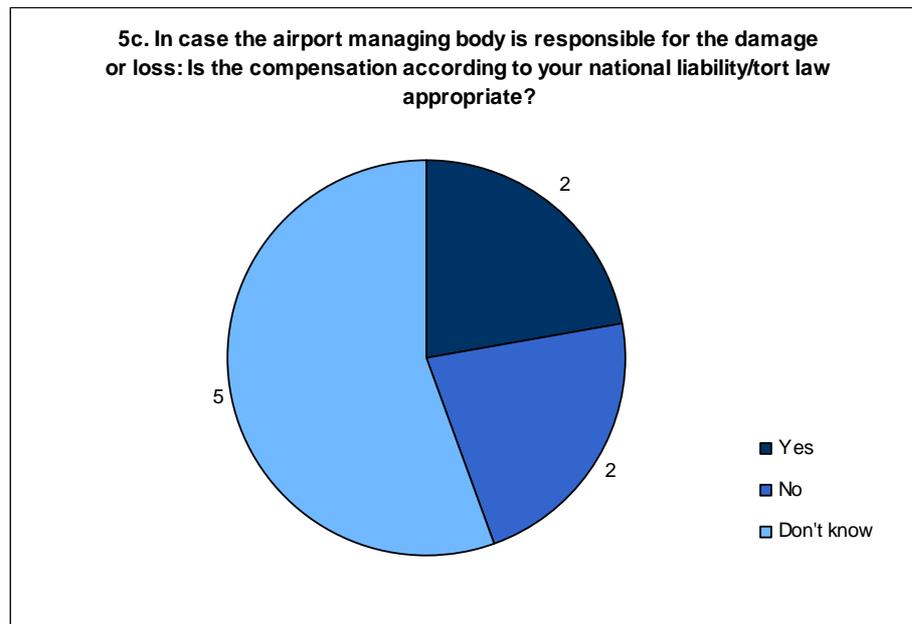
The other 8 respondents in the survey did not know whether such complementary payments are provided.



Concerning whether compensation according to their national liability/tort law is appropriate, as is the case when the airport managing body is responsible for damage or loss of a wheelchair or other mobility equipment, only 4 airports expressed a view.

In this case Hamburg Airport and Munich Airport International, believe that the compensation is appropriate. The comment from Munich Airport International summarises the situation as follows: “In case the airport is a servant of an airline: international law/Montreal Convention; in case the airport itself is responsible: national law: general liability insurance, unlimited.”

Two respondents, Goteborg-Landvetter Airport and Malta International Airport, do not believe that in this situation the compensation according to national liability/tort law is appropriate.



In summary:

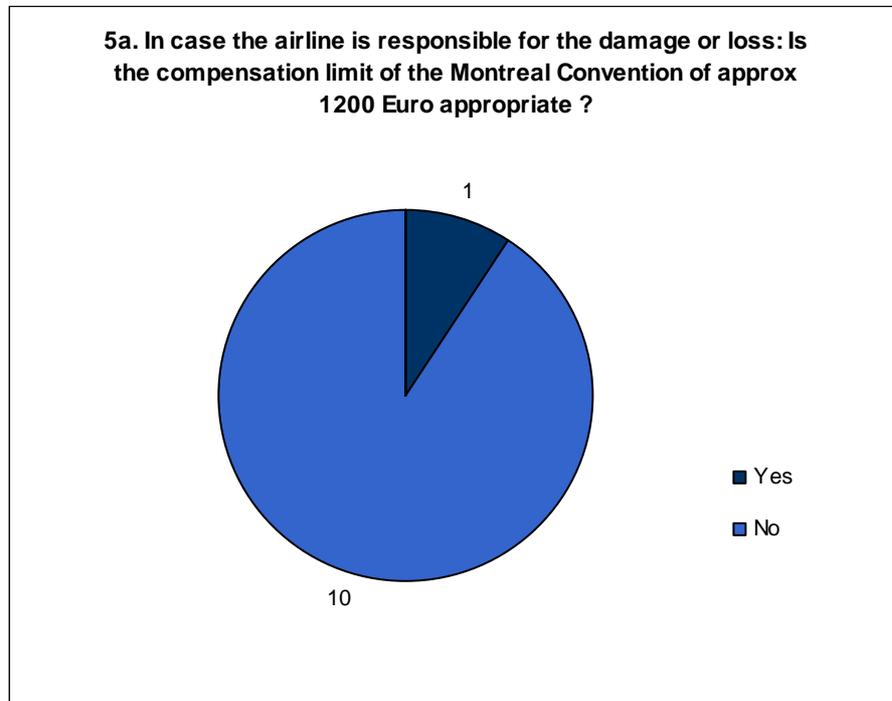
- A considerable percentage of airports did not express views regarding compensation thresholds.
- Of those that expressed a view, the majority believe that in the case of the airline being responsible for damage or loss of a wheelchair or other mobility equipment, the compensation limit of the Montreal Convention is appropriate.
- All except one airport was unaware as to whether complementary payments are provided to PRM to cover the difference between the compensation on the basis of the Montreal Convention and the replacement or repair costs, when those are higher than what is provided by the Convention. One airport commented that regular airlines provide complementary payments.
- Half the airports that expressed a view, believe that compensation according to their national liability/tort law is appropriate i.e. in the case of the airport managing body being responsible for damage or loss.

This leads to the following conclusion:

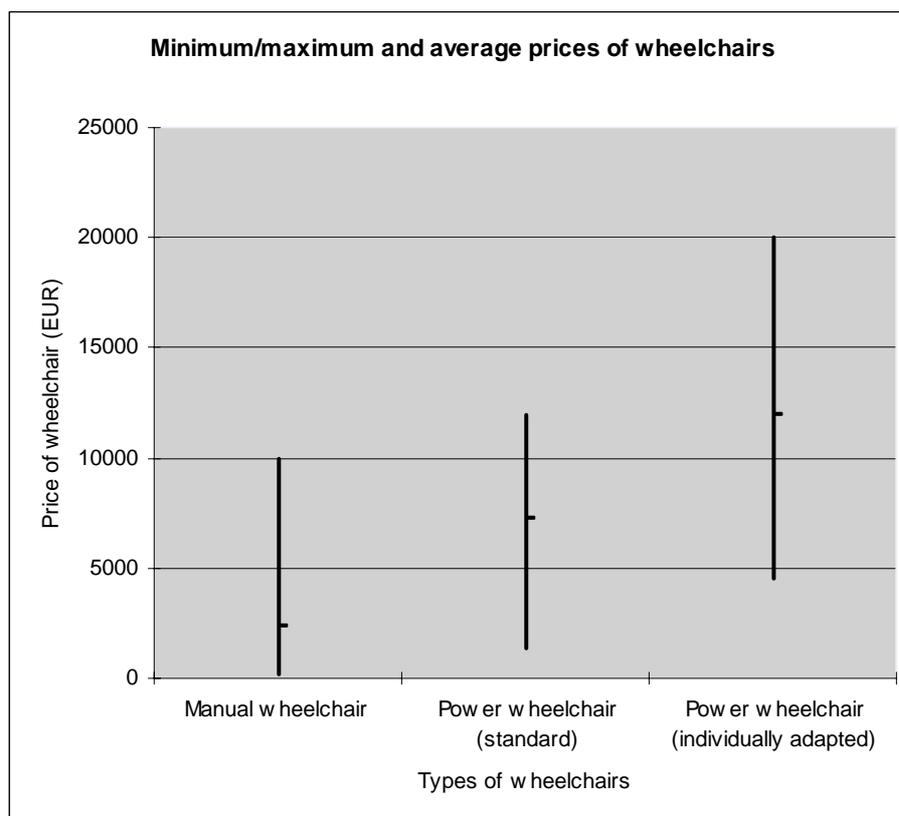
**15. The views of the airports surveyed were largely that the compensation limit of the Montreal Convention is appropriate, as is compensation according to their national liability/tort law.** Responses regarding the appropriateness of national liability/tort law in the case of the airport managing body being responsible for damage or loss were low. The airports did not express an awareness of whether complementary payments are provided to PRM generally although one respondent commented that regular airlines provide such payments.

***PRM organisations***

The overwhelming majority of PRM organisations do not believe that the compensation limit of the Montreal Convention is appropriate.



Several PRM organisations commented that the compensation should cover the cost of the wheelchair, which can be much greater than 1200 Euro, as shown in the Table below.

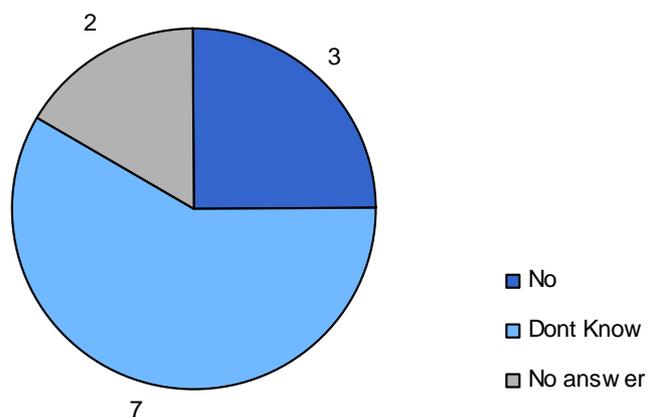


PRM organisations also commented that it is inappropriate to regard mobility equipment as luggage. **“Damaged or lost luggage is annoying – damaged or lost mobility equipment can destroy the whole journey and complicate life considerably for a long time. It is a loss of independence and dignity.”**

The majority of PRM organisations responded that complementary payments to cover the difference between the compensation based on the Montreal Convention and actual replacement or repair costs, are not provided. Only one PRM organisation knew of this happening.

The majority of PRM organisations do not know whether in the case of the airport managing body being responsible for the damage or loss of the wheelchair or other mobility equipment, the compensation according to national liability/tort law is appropriate.

**5c. In case the airport managing body is responsible for the damage or loss: Is the compensation according to your national liability/tort law appropriate ?**



**In summary:**

- The overwhelming majority of PRM organisations do not believe that the compensation limit for lost, damaged or destroyed wheelchairs or other mobility equipment under the Montreal Convention is appropriate.
- Compensation should cover the full cost of replacing/repairing lost, damaged or destroyed wheelchairs or other mobility equipment.
- PRM organisations do not believe that wheelchairs and other mobility equipment should be considered as baggage.
- The majority of PRM organisations responded that complementary payments to cover the difference between the compensation based on the Montreal Convention and actual replacement or repair costs, are not provided. Only one PRM organisation knew of this happening.
- PRM organisations largely do not know whether in the case of the airport managing body being responsible for damage or loss, compensation according to national liability/tort law is appropriate. Those that expressed a view, do not believe it to be appropriate.

This leads to the following conclusion:

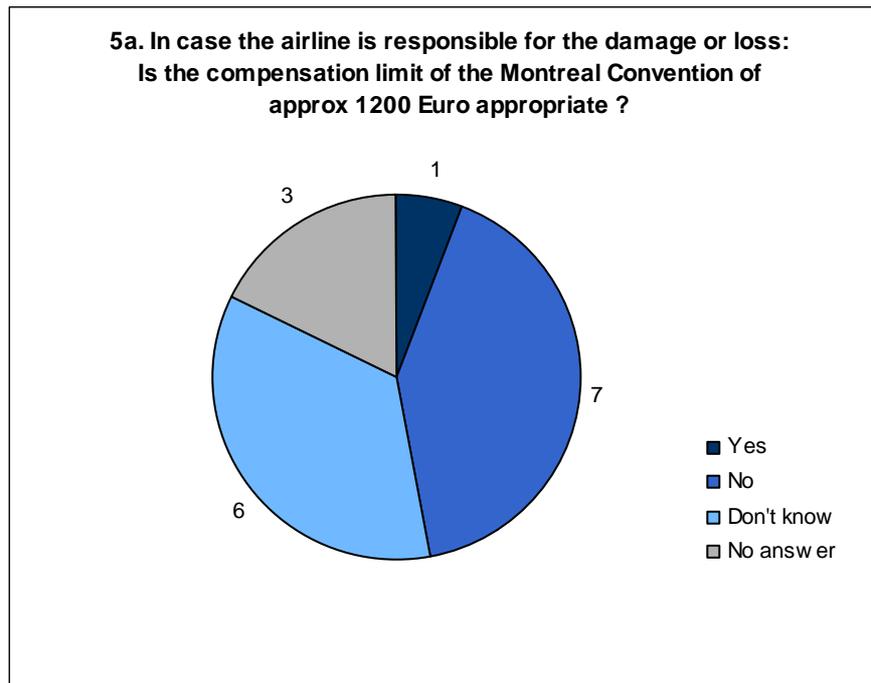
**16. PRM organisations do not believe that the current compensation limit under the Montreal Convention for lost, damaged or destroyed wheelchairs or mobility equipment is appropriate or that complementary payments are generally provided to bridge the gap.** Wheelchairs cost upwards of 1000 Euros and therefore the compensation limit of 1200 Euros under the Montreal Convention is rarely sufficient to cover the cost of replacing wheelchairs. The situation is exacerbated by the fact that there are indications of it being problematic to claim complementary payments from insurance companies. Overall, wheelchairs and mobility equipment should not be considered as baggage as their loss, damage or destruction impacts on the independence of PRM in day to day life. Compensation should cover the full cost of replacement or repair of wheelchairs or other mobility equipment.

### **Competent authorities**

Generally, a considerable proportion of stakeholders from the Civil Aviation Authorities were not informed or chose not to comment about the appropriateness of compensation.

Nevertheless, the large majority of those who expressed a view do not believe that the current compensation limit of the Montreal Convention is appropriate in the case of the airline being responsible for damage to or loss of wheelchairs or other mobility equipment.

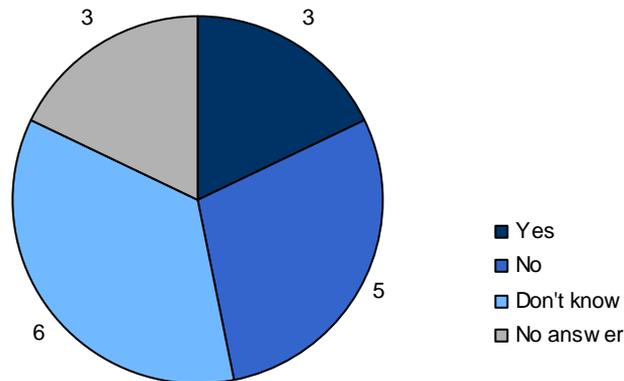
Only one respondent, CAA Greece, believes that the current compensation limit of the Montreal Convention is appropriate.



In the case of the airline being responsible for the damage or loss, complementary payments to cover the difference between the compensation on the basis of the Montreal Convention and the replacement or repair costs, in case those are higher than what is provided by the Convention, are not provided according to the majority of CAAs who responded.

The system in Sweden differs in so far as “Swedish wheelchairs are owned by the state and would be replaced or repaired by the health care system. The user has insurance.”

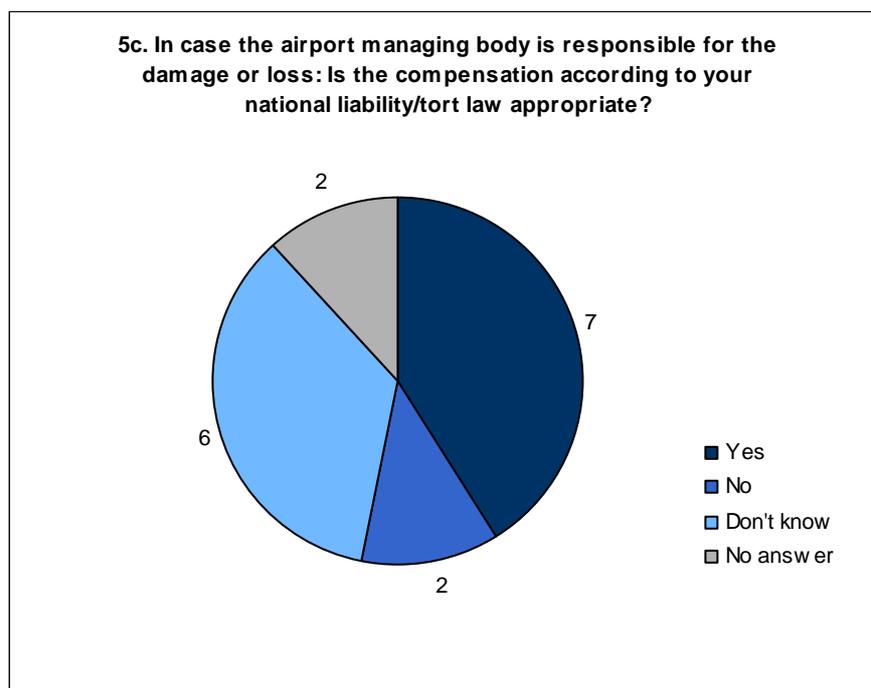
**5b. In case the airline is responsible for the damage or loss: Are there complementary payments provided to the PRM (e.g. by the airline, their insurances or social security bodies) to cover the difference between the compensation on basis of the Montreal Convention and replacement/repair costs, in case those are higher than what is provided by the Convention?**



The large majority of CAAs who expressed a view with respect to their countries believe that in the case of the airport managing body being responsible for the damage or loss, compensation according to national law/tort law is appropriate.

However, obtaining compensation may not be speedy or simple through this process. In the UK for example the CAA explained that: "In theory there is no upper limit to compensation claims. However, bringing such a claim is time consuming and, where liability is denied, would generally involve a claim through the "small claims" procedure (for claims up to £5,000) in a county court (or sheriff's court in Scotland)."

The CAA respondent from Spain commented that in case of the airport managing body being responsible for damage or loss that "nowadays there is no compensation in such a case."



**In summary:**

- Generally, a considerable proportion of stakeholders from the Civil Aviation Authorities were not informed or have chosen not to comment about the appropriateness of compensation.
- The large majority of CAAs that expressed a view do not believe that the compensation limit of the Montreal Convention for lost, damaged or destroyed wheelchairs or other mobility equipment is appropriate.
- The majority of CAAs that expressed a view do not believe that complementary payments are provided to PRM to cover the difference between the Montreal Convention and replacement/repair costs, in the case of these being higher than is provided by the Convention.
- The large majority of CAAs that expressed a view believe that compensation according to their national liability/tort law is appropriate, in the case of the airport managing body being responsible for damage or loss of a wheelchair or other mobility equipment.
- Procedures under national liability/tort law can be time-consuming and complicated.

This leads to the following conclusion:

**17. The majority of CAAs do not believe that the Montreal Convention compensation limit for lost, damaged or destroyed wheelchairs or other mobility equipment is appropriate. CAAs are of the opinion that complementary payments are not provided to PRM to cover the difference between the Montreal Convention and replacement/repair costs. The majority of CAAs believe that compensation according to their national liability/tort law is appropriate.** However, there is at least one country in the EU where compensation is not provided in the case of the airport managing body being responsible for damage or loss of a wheelchair or mobility equipment. Also, the procedures under national liability/tort law can be time-consuming and complicated.

### 3. Need for action

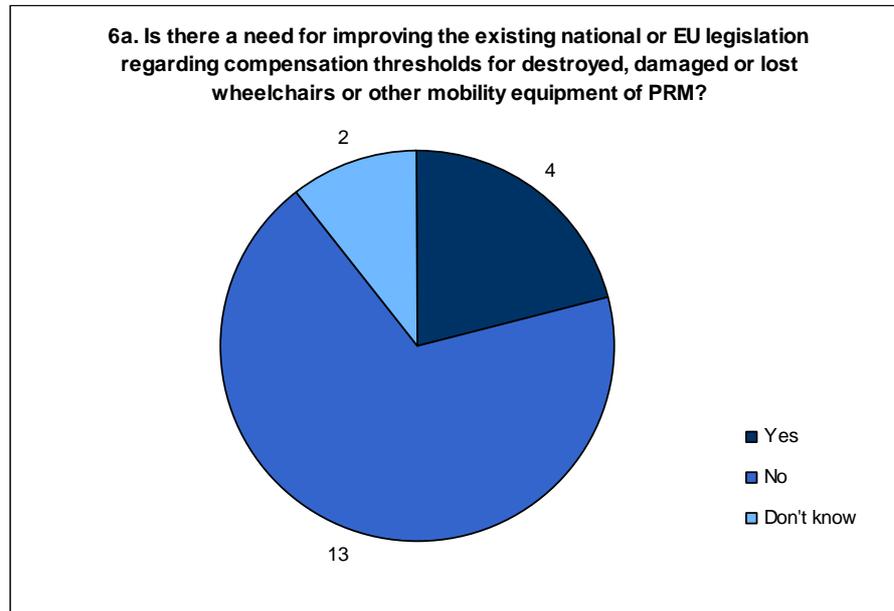
The stakeholder survey was used to establish opinions on a need for action related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment of PRM. Specific questions were asked regarding compensation thresholds, immediate replacement and administrative enforcement. Also, stakeholders were presented with a range of measures and requested to indicate which they believed should be implemented in order to improve the general situation regarding lost, damaged or destroyed wheelchairs and other mobility equipment.

#### ***Airlines***

The majority of airlines do not consider that there is a need to improve the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment.

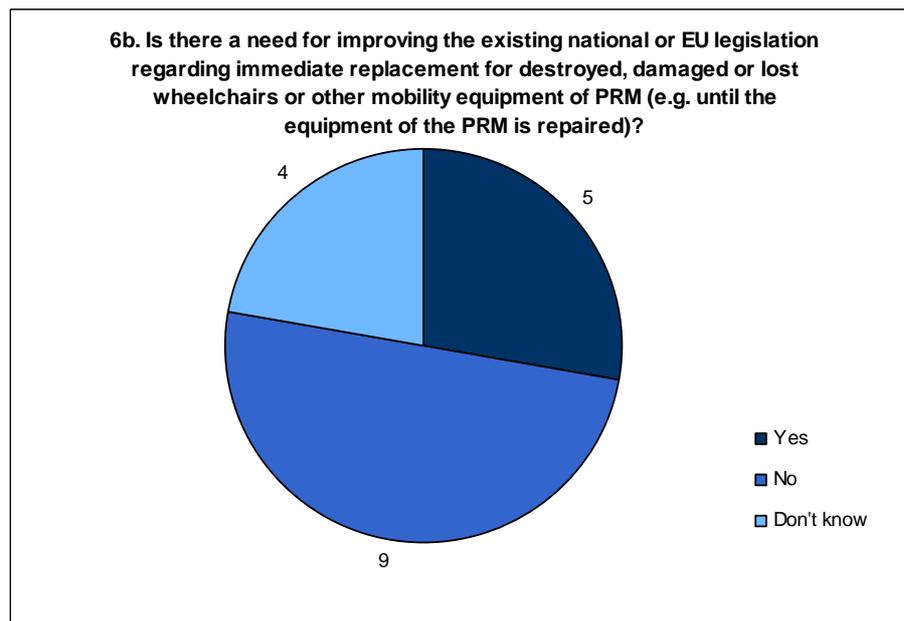
One major airline commented that “air carriers have adopted their procedures to answer the needs of PRM in case of damage, loss or immediate replacement of wheelchairs or other mobility equipment.” However, other respondents provided no further details in this respect to support their response that there is no need for action.

The minority of airlines who believe that there is a need for action in this respect supported their responses for example with references to the “difficulties in interpreting current regulations”, and the fact that “compensation thresholds currently would merely cover the costs of a fairly basic electric wheelchair”. One respondent stated categorically that PRM “need full reimbursement of destroyed or lost wheelchair”.

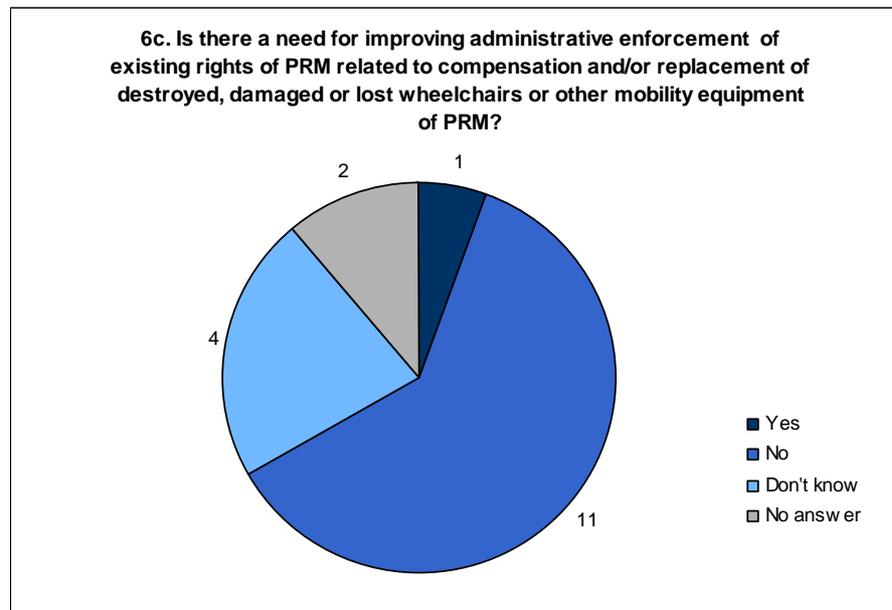


Although the majority of airlines also do not believe there is a need to improve the existing national or EU legislation regarding immediate replacement of destroyed, damaged or lost wheelchairs or other mobility equipment, there is a considerable minority who believe there is a need for action in this respect.

One respondent in favour of action commented “there currently appears to be very little information regarding this issue and further legislation would provide a more robust procedure.”



The large majority of airlines do not believe there is a need for improving administrative enforcement of existing rights of PRM with respect to compensation for and/or replacement of destroyed, damaged or lost wheelchairs or mobility equipment.



With respect to specific measures proposed in the survey as possible approaches to improving the general situation regarding lost, damaged or destroyed wheelchairs or other mobility equipment, the majority of airlines supported the concept of a recommendation for a voluntary insurance of PRM equipment during air travel.

There was also strong support for the need to clarify that the airport managing body according to Regulation 1107/2006 is responsible for providing immediate assistance to PRM whose wheelchair/other mobility equipment has been lost, damaged or destroyed.

There was some support, though from less than the majority, for implementation of specific procedures at airports/airlines for handling mobility equipment and introducing specific training for persons handling mobility equipment.

There was little support for other measures, in particular there was no support for the concept of raising the compensation limit of the Montreal Convention for luggage in general (including wheelchairs or other kinds of mobility equipment).

**In summary:**

- The majority of airlines do not believe there is a need to improve the existing national or EU legislation regarding compensation thresholds for or immediate

replacement of destroyed, damaged or lost wheelchairs or other mobility equipment.

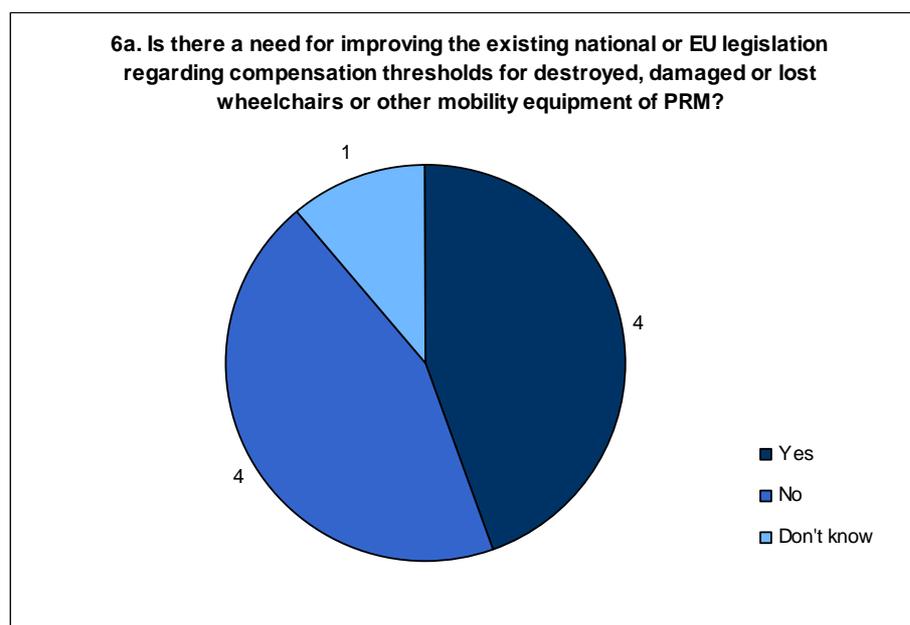
- The minority of airlines believe there is a need to improve the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment because of inadequacy of the current compensation thresholds and the difficulties of interpreting the law.
- The minority believe there is a need for improvement in legislation regarding immediate replacement, referring to further legislation providing a “more robust procedure”.
- The majority of airlines do not believe there is a need to improve administrative enforcement of existing rights of PRM in these respects.
- The majority of airlines support the concept of a recommendation for a voluntary insurance of PRM equipment during air travel.
- There is strong support amongst airlines for clarification of Regulation 1107/2006.
- There is some support for the introduction of specific procedures and training for handling of wheelchairs and mobility equipment.

This leads to the following conclusion:

**18. The majority of airlines do not believe there is a need to improve the existing national or EU legislation regarding compensation thresholds for or immediate replacement of damaged, destroyed or lost wheelchairs or other mobility equipment. The majority also do not believe there is a need to improve administrative enforcement of existing PRM rights in these respects.** Nevertheless there is an awareness and comment from the minority that the compensation thresholds do not cover the costs of wheelchairs or repairs, and that there are issues of interpretation around existing regulations. The majority of airlines support the introduction of a recommendation of a voluntary insurance of PRM equipment during air travel. There was also strong support for the need to clarify Regulation 1107/2006. Some airlines supported the concept of the introduction of special procedures and training for handling of wheelchairs and other mobility equipment.

### **Airports**

Airports are almost equally divided in their views regarding whether there is a need to improve the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.



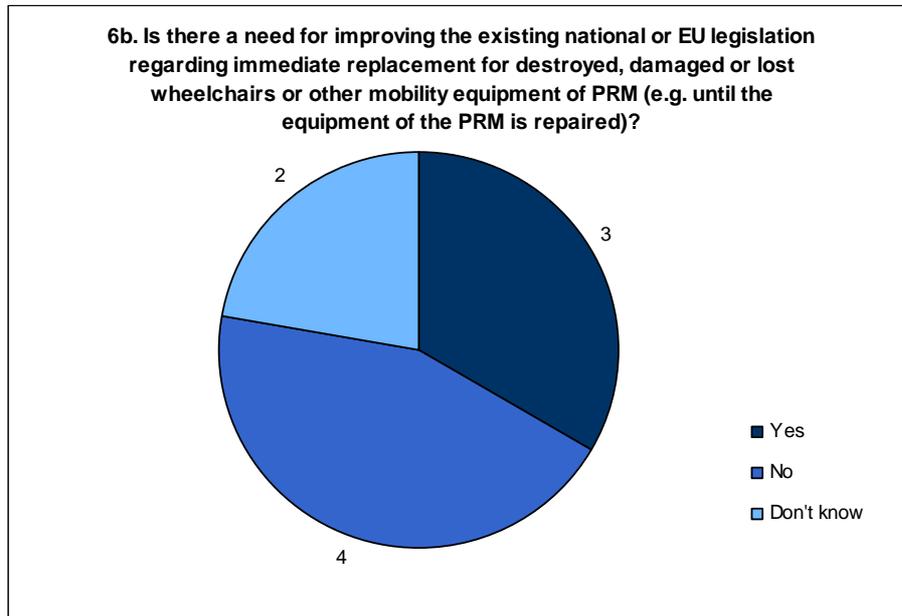
There were 3 detailed comments from those who believe action is needed, to support their responses.

The two Swedish airport representatives reflected the views that the PRM need to know that “they can travel like any other passenger” and that the compensation needs to reflect the cost of wheelchairs and other mobility equipment.

The Aeroports de Paris representative was concerned regarding the low cost airlines in particular, stating that action is needed “to be sure that the low cost airlines will have to pay” in the case of wheelchairs or other mobility equipment being destroyed, damaged or lost. The concern is that “as the airport will be responsible, they can argue that the responsibility is with the airport even if the damage has been caused by the airlines”.

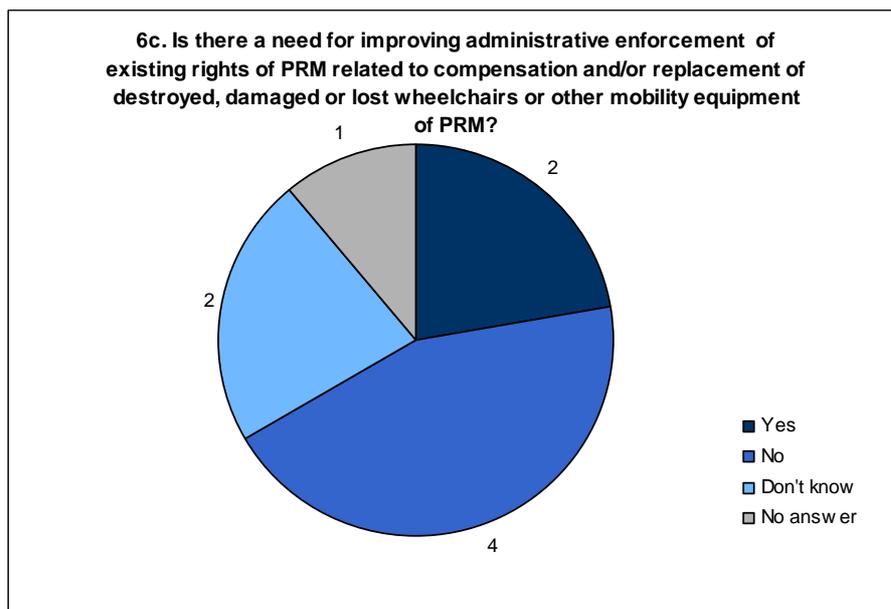
More than half those who expressed a view regarding whether there is a need to improve the existing national or EU legislation concerning immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM (e.g. until the equipment of the PRM is repaired), do not believe that action is needed.

The 3 respondents who believe that there is a need for improvement in existing national or EU legislation, commented on concerns regarding compensation thresholds: Malta International Airport, Aeroports de Paris and Passenger Services Stockholm-Arlanda Airport.



The majority of airports that expressed a view do not believe that there is a need to improve administrative enforcement (e.g. by the Civil Aviation Authorities, consumer protection authorities, designated bodies for passenger rights etc) of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment.

Malta International Airport and Aeroports de Paris believe there is a need for improving administrative enforcement in this respect.



With respect to measures proposed to the stakeholders which could be implemented to improve the general situation regarding lost or damaged wheelchairs or other mobility equipment, the majority of airports supported the concept of a recommendation for a voluntary insurance of PRM equipment during air travel.

There was also support for the introduction of specific training for persons handling mobility equipment at airports/airlines and for implementation of specific procedures at airports/airlines for handling mobility equipment.

The introduction of either compulsory or voluntary insurance of airlines/airports received very little support.

There was also very little support for the introduction of a higher compensation limit of the Montreal Convention specifically for wheelchairs or other mobility equipment.

Raising the compensation limit of the Montreal Convention for luggage in general (including wheelchairs and other kinds of mobility equipment) received no support from the airports.

**In summary:**

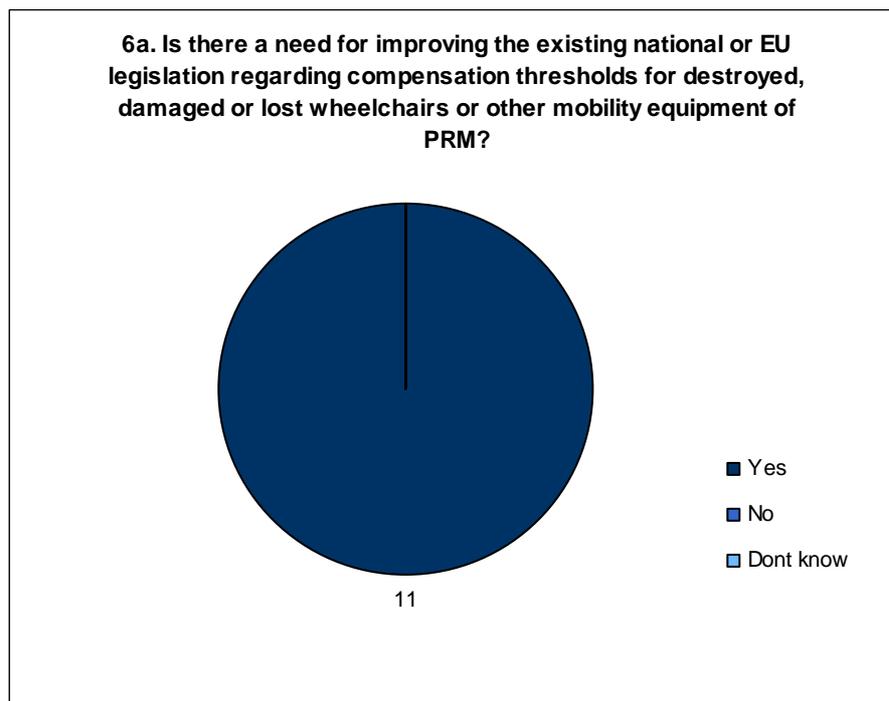
- Airports are almost equally divided in their views regarding whether there is a need to improve the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.
- Concerns were raised regarding the future when the airport will be responsible, specifically in the context of compensation when damage is caused by low cost airlines.
- More than half those who expressed a view do not believe there is a need to improve the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment.
- There are concerns about the level of compensation not being adequate to cover the costs of wheelchairs or other mobility equipment.
- There was also a plea for everyone to have “the same rules” so that airports and airlines would know what steps to take and PRM would trust them.
- The majority of airports that expressed a view do not believe there is a need for improving administrative enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.
- The majority of airports supported the concept of the recommendation for voluntary insurance of PRM equipment during air travel.
- There was also significant support for the introduction of specific procedures at airports/airlines and specific training for persons handling mobility equipment.

This leads to the following conclusion:

**19. Airports are divided in their views regarding a need for action.** On balance, airports tend to believe there is no need to improve: the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM; the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or mobility equipment or administrative enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or mobility equipment. With regard to other measures which would improve the current situation, the majority of airports supported the concept of a recommendation for voluntary insurance of PRM equipment during air travel. There was also support for the introduction of specific procedures at airports/airlines and specific training on handling mobility equipment.

**PRM organisations**

All the PRM organisations believe there is a need to improve the existing national or EU legislation regarding the compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.



PRM organisations drew attention to the fact that the cost of both manual and electric wheelchairs is higher than the compensation limit and that full costs should be reimbursed.

The German Disability Council commented that “it should be mandatory for any airline arriving or departing in the EU to cover the full repair or replacement costs for wheelchairs and other mobility equipment.” This was echoed elsewhere.<sup>33</sup> The European Disability Forum also commented that there is a “need for harmonised rules at EU level ensuring full compensation”.

The large majority of PRM organisations believe there is a need to improve the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM (e.g. until the equipment of the PRM is repaired).<sup>34</sup>

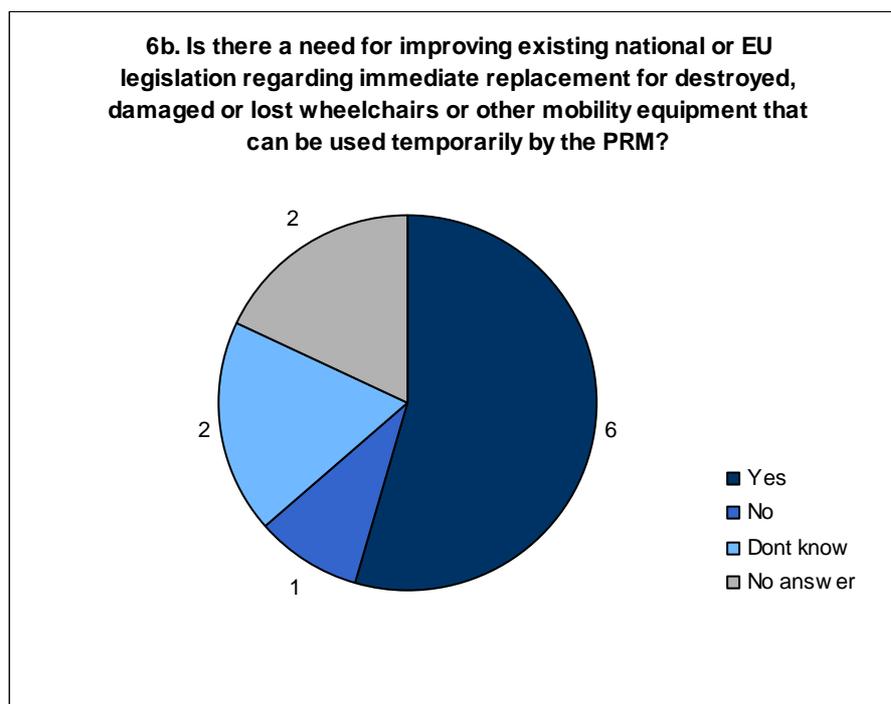
Several PRM organisations emphasised the importance of the replacement being appropriate to the needs of the PRM. PRM must be provided with a suitable replacement, including so that they can continue their journey.

The importance of PRM being able to know what to expect is stressed by the Hellenic National Confederation of Disabled People: “National legislation must be unified in order to allow disabled people to know what to expect in similar cases everywhere. Immediate replacement must be obligatory in the case of destroyed, damaged or lost wheelchair or other mobility equipment.”

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<sup>33</sup> For example the Hellenic National Confederation of Disabled People, the Belgian Disability Forum

<sup>34</sup> Only one PRM organisation, Mouvement social de personnes malades, invalides et handicapées, Belgium, commented that there is no need for action but then continued that PRM must be provided with identical equipment which in practice is difficult.



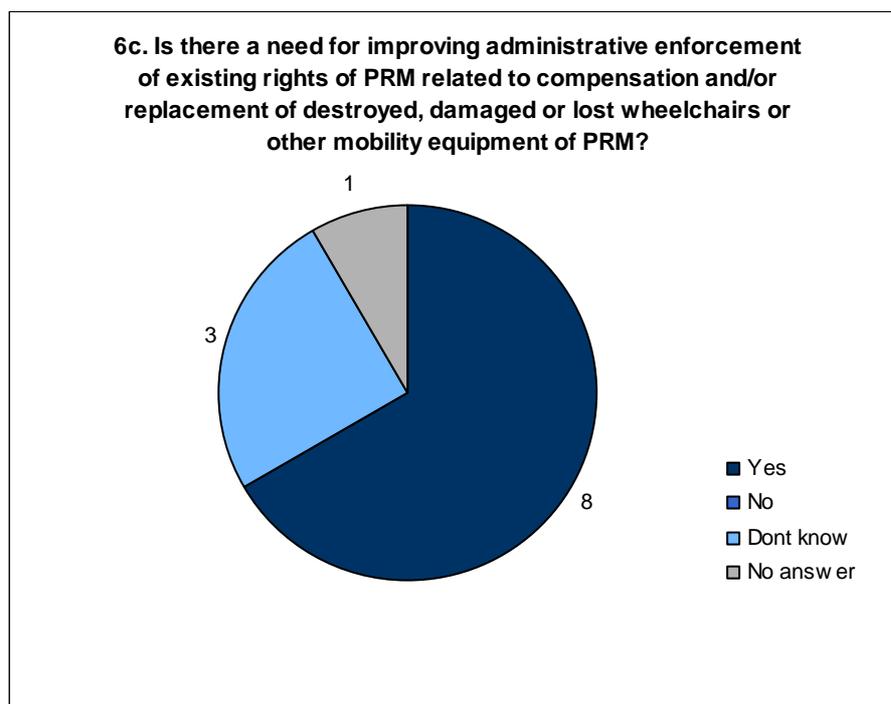
The large majority of PRM organisations believe there is a need to improve administrative enforcement (e.g. by the Civil Aviation Authorities, consumer protection authorities, designated bodies for passenger rights etc) of existing rights of PRM related to compensation and/or replacement of destroyed damaged or lost wheelchairs or other mobility equipment of PRM. As the Dutch Council of the Chronically Ill and the Disabled expressed it: “when the market does not regulate this properly the government has a task to fulfil.”

I.LI.TEC. suggested the introduction of “economic penalties [...] equal or greater than the cost of the new device.”

The Hellenic National Confederation of Disabled People proposed that administrative enforcement should specifically be improved in order to ensure that a spare wheelchair is available in every airport for immediate replacement.

In this respect, attention is drawn to the current lack of information for PRM and the need to ensure that full information is available regarding services, processes and what to do in the event of a problem.<sup>35</sup>

<sup>35</sup> The lack of information is mentioned by the Netherlands and by the Belgian Disability Forum.



Of the measures proposed in the stakeholder survey for implementation to improve the general situation regarding lost or damaged wheelchairs and other mobility equipment, PRM organisations strongly supported specific training and procedures for persons handling mobility equipment at airports/airlines and the introduction of a higher compensation limit of the Montreal Convention specifically for wheelchairs or other mobility equipment.

It was also believed that the general situation would be improved if there were clarification of the airport managing body's responsibility under Regulation 1107/2006 for providing immediate assistance to PRM whose wheelchair or other mobility equipment has been lost or damaged.

Also, there should be a compulsory requirement for airlines and airports to take out insurance.

The overwhelming majority of PRM organisations believed neither voluntary nor compulsory insurance of PRM equipment during air travel should be introduced.

**In summary:**

- All the PRM organisations believe there is a need to improve the existing national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.
- PRM organisations drew attention to the fact that the cost of both manual and electric wheelchairs is higher than the compensation limit.

- Full costs should be reimbursed in the case of loss, damage or destruction of wheelchairs or other mobility equipment.
- The need for harmonised rules at EU level was emphasised.
- The large majority of PRM organisations believe there is a need to improve the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM (e.g. until the equipment of the PRM is repaired).
- PRM should be provided with an appropriate replacement, including so that they can continue their journey.
- The large majority of PRM organisations believe there is a need to improve administrative enforcement of existing rights of PRM related to compensation and/or replacement of destroyed damaged or lost wheelchairs or other mobility equipment.
- Replacement equipment should be available at every airport.
- Economic penalties were proposed by one PRM organisation equal to or greater than the cost of the new device.
- Attention was drawn to the lack of information for PRM.
- PRM organisations believe that the introduction of specific training and procedures for persons handling mobility equipment at airlines/airports would improve the current general situation.
- PRM organisations believe that a higher compensation limit of the Montreal Convention should be introduced specifically for wheelchairs or other kinds of mobility equipment.
- The overwhelming majority of PRM organisations do not support the concept of PRM taking out insurance on their mobility equipment during air travel.
- The majority of PRM organisations believe that if airport and airlines were required to take out insurance this would improve the general situation.
- Further clarification of the airport managing body responsibility according to Regulation 1107/2006 is required.

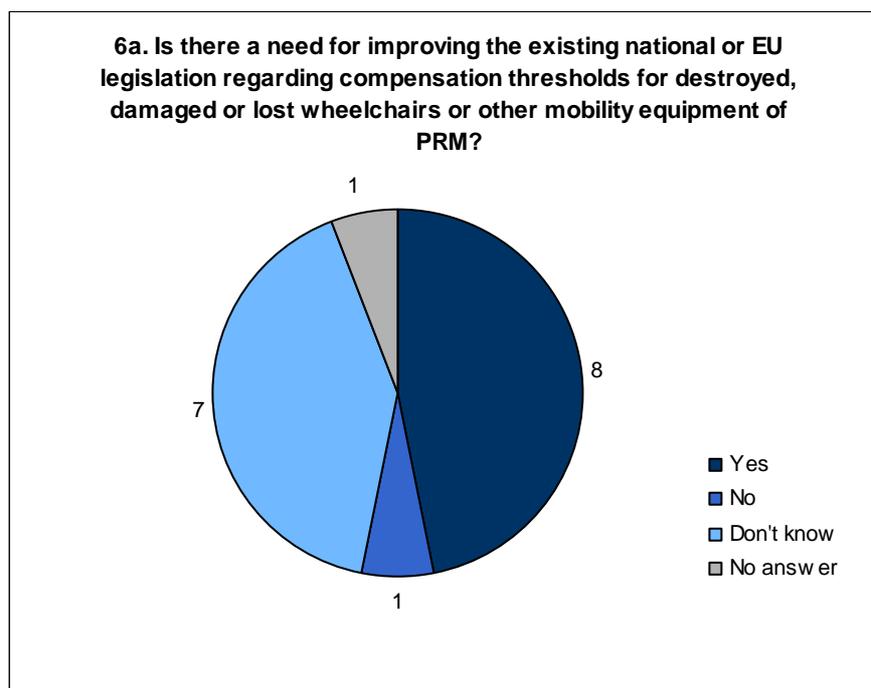
This leads to the following conclusion:

**20. PRM organisations believe there is a need to improve: the existing national or EU legislation regarding compensation thresholds for and immediate replacement of destroyed, damaged or lost wheelchairs or other mobility equipment of PRM; administrative enforcement of existing rights of PRM in these respects.** Regarding other measures which would improve the current situation, PRM organisations support the introduction of specific training and procedures for persons handling mobility equipment at airlines/airports; a higher compensation limit of the Montreal Convention specifically for wheelchairs or other mobility equipment; clarification of the airport managing body responsibility according to Regulation 1107/2006 and compulsory insurance of airlines/airports. The PRM organisations do not support either compulsory or voluntary insurance of PRM equipment during air travel.

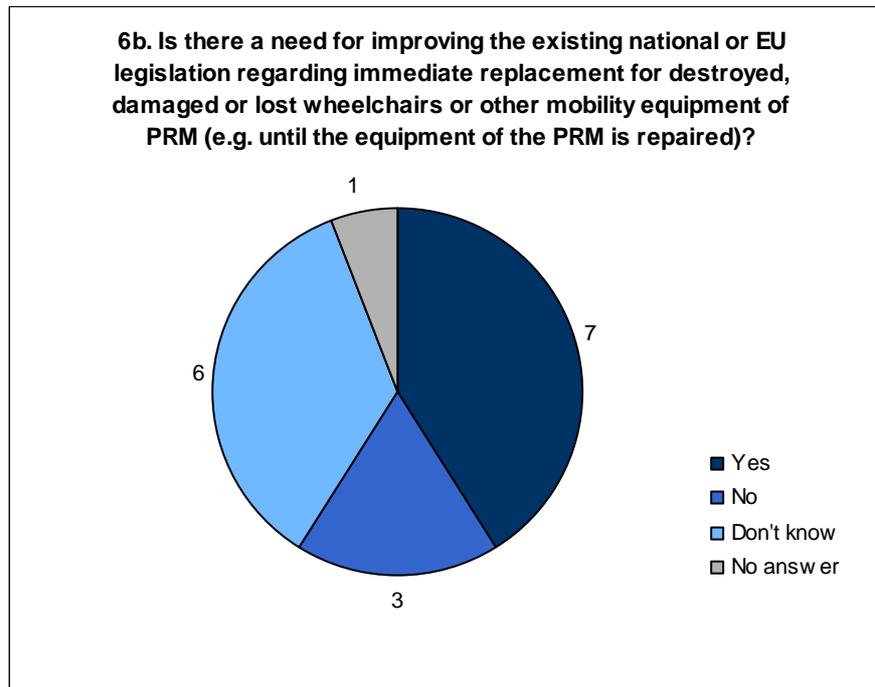
### **Competent authorities**

The strong majority of CAAs that expressed a view believe that there is a need for improving existing national or EU legislation regarding the compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment.

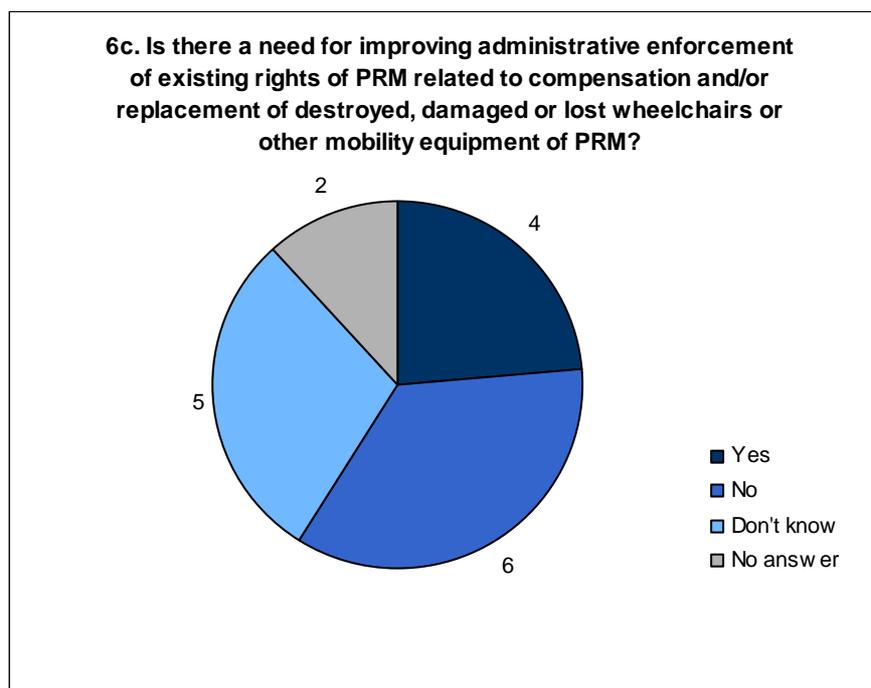
As the Spanish CAA expressed it, there is a “need to determine appropriate and common thresholds”. The Belgian CAA explicitly stated that PRM should receive compensation in full. “Payment of full compensation is needed and justified in view of the fact that mobility equipment constitutes an element which is absolutely crucial for the mobility of its owner and can be considered under no circumstances as mere luggage.



The strong majority of CAAs that expressed a view believe that there is a need to improve existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM (e.g. until the equipment of the PRM is repaired).



More than half of those who responded do not believe there is a need for improving administrative enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment (e.g. by the Civil Aviation Authorities, consumer protection authorities, designated bodies for passenger rights etc.).



In general, the CAAs responded fully to the specific measures proposed as possible approaches to improving the general situation regarding lost, damaged or destroyed wheelchairs or other mobility equipment.

The CAAs indicated strong support for the introduction of specific training and procedures at airports and airlines for handling mobility equipment.

The majority of CAAs also supported the concept of introducing a recommendation for voluntary insurance of PRM equipment during air travel.

The majority of CAAs believe it would improve the situation if the responsibility of the airport managing body according to Regulation 1107/2006 were to be clarified.

More than half the CAAs supported the introduction of a higher compensation limit of the Montreal Convention specifically for wheelchairs or other kinds of mobility equipment.

**In summary:**

- The strong majority of CAAs that expressed a view believe that there is a need for improving national or EU legislation regarding compensation thresholds for destroyed, damaged or lost wheelchairs or other mobility equipment of PRM.
- CAAs commented that there is a need for appropriate and common thresholds. Full compensation was specifically highlighted by some.
- CAAs commented that wheelchairs and other mobility equipment should not be regarded as baggage.

- The strong majority of CAAs that expressed a view believe there is a need for improving the existing national or EU legislation regarding immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment that can be used temporarily by the PRM (e.g. until the equipment of the PRM is repaired).
- More than half of those who expressed a view do not believe there is a need for improving administrative enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost wheelchairs or other mobility equipment.
- CAAs indicated strong support for the introduction of specific training and procedures at airports and airlines for handling mobility equipment.
- The majority of CAAs supported the concept of introducing a recommendation for voluntary insurance of PRM equipment during air travel.
- The majority of CAAs believe it would improve the situation if the responsibility of the airport managing body according to Regulation 1107/2006 were to be clarified.
- More than half the CAAs supported the introduction of a higher compensation limit of the Montreal Convention specifically for wheelchairs or other mobility equipment.

This leads to the following conclusion:

**21. The CAAs believe there is a need to improve national or EU legislation regarding compensation thresholds and immediate replacement for destroyed, damaged or lost wheelchairs or other mobility equipment. However, CAAs tend not to believe there is a need to improve administrative enforcement of existing rights of PRM related to compensation and/or replacement of lost, damaged or destroyed wheelchairs or other mobility equipment.** With regard to other measures which would improve the current situation, CAAs supported the introduction of specific training and procedures at airports and airlines for handling mobility equipment, a recommendation for voluntary insurance of PRM equipment during air travel and clarification of the responsibility of the airport managing body according to Regulation 1107/2006. CAAs emphasised the need to harmonise appropriate compensation levels and that mobility equipment should not be regarded as baggage, given its importance for the PRM. Specific reference was made to the need for full compensation in the case of lost, damaged or destroyed wheelchairs or other mobility equipment.

## **ANNEX 2: QUESTIONNAIRE**

## ANNEX 3: LIST OF STAKEHOLDERS RESPONDING TO SURVEY

<b>Survey of Civil Aviation Authorities</b>	<b>Location</b>
Belgian Civil Aviation Authority	Belgium
Civil Aviation Administration	Lithuania
Civil Aviation Administration	Denmark
Civil Aviation Authority	Sweden
Civil Aviation Office	Poland
Department of Civil Aviation	Malta
Department of Transport	United Kingdom
Direction de l'Aviation Civile	Luxembourg
Direction Generale de l'Aviation Civile	France
Directorate General, Civil Aviation Administration	Bulgaria
Ente Nazionale per l'Aviazione Civile (ENAC)	Italy
Hellenic Civil Aviation Authority	Greece
Instituto Nacional de Aviação Civil (INAC)	Portugal
Ministry of Economic Affairs and Communications	Estonia
Ministry of Transport	Czech Republic
Ministry of Transport	The Netherlands
Spanish Civil Aviation Authority	Spain
<b>Survey of passengers and disability organisations</b>	<b>Location</b>
Belgian Disability Forum asbl	Belgium
Cerebral Palsy - European Communities Association (CP-ECA )	EU
Dutch Council of the chronically ill and the disabled	The Netherlands
European Disability Forum	EU
German Disability Council (DBR)	Germany
Hellenic National Confederation of Disabled People	Greece
I.LI.TEC. (Independent Life Technologies)	Italy
Swedish Federation of people with mobility impairment DHR	Sweden
Malta federation of persons with disability	Malta
Mouvement social de personnes malades, valides et handicapées (ACIH-AAM asbl)	Belgium
Österreichische Arbeitsgemeinschaft für Rehabilitation (Austrian National Council of Disabled Persons)	Austria
<b>Survey of airlines</b>	<b>Location</b>
Adria Airways	Slovenia
Aegean Airlines	Greece
Aer Arann	Ireland
Air Berlin	Germany

Air France	France
Alitalia	Italy
Finnair	Finland
Germania	Germany
KLM	The Netherlands
Meridiana	Italy
My Travel Airways A/S	Denmark
MyTravel	United Kingdom
Nova Airlines	Sweden
Scandinavian Airlines System	Sweden
Spanair	Spain
Trade Air	Croatia
TUIfly	Germany
Tyrolean Airways	Austria
<b>Survey of airports and their associations</b>	<b>Location</b>
Aéroports de Paris	France
Aéroport Nice Côte d'Azur	France
Brussels Airport Company	Belgium
Fraport AG Ground Services	Germany
Hamburg Airport	Germany
LFV Group Swedish Airports - Goteborg-Landvetter Airport	Sweden
Malta International Airport PLC	Malta
Munich Airport International	Germany
Passenger Services Stockholm - Arlanda Airport	Sweden
SAS Ground Services	Denmark
Schiphol Group - Amsterdam Airport Schiphol	The Netherlands
Zurich Airport	Switzerland
<b>Other</b>	<b>Location</b>
IHD (PRM assistance provider)	The Netherlands

## ANNEX 4: EU CASE STUDIES

### 1. Sweden

#### *Prior to or immediately after the period of transportation*

##### *Liability of the airport*

An airport is under Regulation 1107/2006 obliged to assist any PRM, as defined in the Regulation, who has given sufficient notice and is departing from or arriving at the airport. The employees of the airport might whilst performing this service damage equipment belonging to a PRM.

The liability of Swedish airports who damages equipment belonging to an PRM, whilst performing the service required under Regulation 1107/2006, will be determined in accordance with the Swedish Act on Torts (Swe. Skadeståndslagen). Accordingly, any PRM who can establish that the airport has been negligent when causing such damages will, in principle, be entitled to compensation from the airport.

The Swedish Act on Torts will apply as long as the equipment has not physically been taken into the custody of the carrier or upon arrival from when it leaves the custody of the carrier.

##### *The Swedish Act on Torts*

The default regime for restitution of damages in Sweden is the Swedish Act on Torts. A claimant (the PRM) invoking the Swedish Act on Torts must in order to be successful show (i) that the defendant, (the managing body of the airport, which has a vicarious liability for its employees) has been negligent and (ii) that the claimant, as a result of this negligence has suffered a damage. There is no limitation on the amount recoverable under the Swedish Act on Torts but the claim is limited insofar that the claimant only is entitled to recover his or her losses, i.e. the value of the goods, the cost of repairing the goods or other losses which are a direct result of the negligent act of the wrongdoer.

It should moreover be noted that the Swedish Act on Torts is non-mandatory. It can therefore be amended by contract. The fact that the Swedish Act on Torts is the default regime also means that has the status of *lex generalis* and thus will be superseded, if the situation in which the damage occurred is regulated by a more specific law, which then will take precedent e.g. in transport related situations the Montreal Convention or the Swedish Maritime Code.

#### *Period of transportation*

##### *General*

Sweden has acceded the Montreal Convention (the "Convention"). Sweden has chosen to incorporate the Convention by giving Articles 1-22, Article 23.1 (the 1st, 2nd

and 3rd sentence), Articles 25-27, Articles 29-49 and Articles 51 and 52, direct applicability to international as well as national flights.<sup>36</sup>

Sweden has when making the Convention applicable also to national flights stated that Article 20 and Article 22 shall be amended.

These amendment states that;

- (i) Article 20 (the exoneration rules on personal injuries) shall be substituted by article 1, chapter 6 in the Swedish Law of Torts (Swe. *Skadeståndslagen*) and;
- (ii) Article 22.2 shall be understood to cover checked baggage only and;
- (iii) Article 22.5 shall be understood to include not only Article 22.1 and 22.2 but also Article 22.3.

#### *International flights*

The Convention is, as stated above, directly applicable to international flights. Any damage to the equipment belonging to a person with reduced mobility which occurs whilst the equipment is in the custody of an international carrier, its agents or servants is hence governed by the rules of the Convention, if the Convention applies.

A carrier is, in accordance with Article 22, entitled to limit its liability for damages to checked baggage to 1,000 SDR per passenger. This also applies to equipment checked in by a PRM. However, a PRM can, by making a declaration in accordance with Article 22.2 and paying a supplementary fee, raise the maximum level of compensation above 1,000 SDR. The PRM is, given that he or she has made a special declaration, entitled to recover an amount corresponding to the declared value of the equipment unless the carrier can prove that the declared sum is greater than the passenger's actual interest at destination.

The Convention also states that any servants or agents of the carrier are entitled to avail themselves of the same conditions and limits of liability which the carrier itself is entitled to invoke under the Convention. The purpose of this provision is to assure the servants or agents of the carrier the same protection as granted to the carrier. A PRM can, hence, not circumvent the Convention by initiating an action directly against the servants or agents responsible for the baggage handling operation.

#### *National flights*

What has been stated in section on international flight above is equally applicable to national flights. The fact that Sweden has amended the Convention does not affect

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<sup>36</sup> All Articles refers to the Convention unless otherwise stated.

the liability of the carrier in regard of checked baggage since the amendments only apply to personal injuries and non-checked baggage. However, the carrier is under Swedish law as a result of the amendment of Article 22.2 barred from limiting his liability for non-checked baggage. The reason behind the amendment is the fact that the carrier's liability for non-checked baggage is based on negligence and not, as otherwise is the case, strict liability.<sup>37</sup>

#### *Other aspects regarding Community legislation*

Sweden has incorporated Regulation 2027/97 on air carrier liability in the event of accidents and the subsequent amendments. Sweden has furthermore stated that article 3a and 5 of Regulation 2027/97 shall be equally applicable to non-community carriers. However this does not affect the liability of the carrier towards a PRM since the limitations found in Regulation 2027/97 corresponds with those of the Convention.

**¿qué quiere esto decir, que Sweden no aplica el otro reglamento del 2002, el 88alqo/2002 que implementa Montreal? Eso es un disparate. Todos los MS tienen que cumplir un reglamento.**

## 2. Germany

*Liability for period during which assistance is provided to PRM by the managing body of the airport or a sub-contractor*

**It is the prevailing view in Germany that the relationship between an air passenger and the airport is governed by general tort law (Deliktsrecht) as provided for by the German Civil Code (Bürgerliches Gesetzbuch).** Occasionally (very rarely) it has been expressed by legal authors that there is a contractual relationship between the air passenger and the airport concluded by an implied contract similar to the implied contract between the airport and the operator of an arriving aircraft. However, this view is neither shared by many authorities nor supported by case law.

The cause of action for tort law claims is provided for by S. 823 para. 1 of the German Civil Code: "Anybody who intentionally or negligently ... damages ... the property of another person, has the obligation to compensate the other person for the resulting loss."

**The burden of proof generally is on the claimant, i. e. the PRM.** He has to show that the following prerequisites are met:

- Damage to the equipment/device;
- Fault of the managing body of the airport or the subcontractor assisting the PRM;

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<sup>37</sup> Government bill (*Swe. proposition*) 2002/03:18 p. 75

- Causal link between the fault and the damage.

The fault could be the intentional or negligent breach of a general duty of care or of a specific obligation, such as specific obligations (including quality standards) provided for in the respective legislation. The managing body of the airport is also required to properly select, train and supervise the staff providing the assistance to PRM both under general tort law as well as under Regulation (EC) No. 1107/2006.

There is no limit of liability for tort claims, so that the PRM will be able to recover the entire loss.

S. 831 of the German Civil Code provides that the principal (airport managing body) is liable for the wrongdoing of its agent (employee) only under tort law if it cannot show that it properly selected and supervised its agent and provided him with the necessary equipment for carrying out his job. This means that there is the possibility for the airport managing body to exonerate itself if it can show that it has fully met its obligations in terms of selection and supervision of staff – even if the respective agent was at fault. This burden of proof is difficult to satisfy, but if the airport managing body succeeds in doing so, the PRM will be left with a claim against the respective agent only.

#### *Liability for the period of transportation on board aircraft*

In Germany different regimes may govern the liability for the period of transportation of equipment and devices of PRM on board aircraft depending on the circumstances:

#### *Domestic law*

For a limited number of cases domestic law will apply, i. e. SS. 44 et seq. of the German Aviation Act (Luftverkehrsgesetz), provided of course that German law governs under the respective conflict of law rules. These cases are mainly certain cases of domestic carriage, such as domestic carriage carried out by a carrier that is not a Community air carrier (i.e. not a carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No. 2407/92 of 23 July 1992 on licensing air carriers).

In these cases – as under the Montreal Convention – the carrier is subject to a system of no-fault liability in case of registered baggage and a liability system based on the carrier's fault in the case of baggage of which the passenger takes charge himself. In the latter case the claimant has to prove the carrier's fault.

In both cases a limit of liability of 1000 SDR per passenger will apply (unless a special declaration of interest has been made and a supplementary sum has been paid).

However, in cases of wilful misconduct this limit of liability will not apply.

### *Community law*

Regulation (EC) 2027/97 as amended by Regulation (EC) 889/2002 on air carrier liability implements the relevant provisions of the Montreal Convention with respect to all flights carried out by Community carriers.

### *International law*

Germany has ratified the Warsaw Convention (1929), the Hague Protocol (1955) and the Guadalajara Convention (1961) and on 28 June 2004 the Montreal Convention (1999) entered into force for Germany. Which of these instruments applies depends on the places of departure and destination of the respective flight. The older instruments of the so-called Warsaw System remain significant with respect to those states that have not ratified the Montreal Convention yet.

Under the older instruments of the Warsaw System liability for baggage is based on a presumption of fault and the carrier can exonerate itself e. g. by showing that it has taken all necessary measures, Art. 20.

The limit of liability under the older instruments of the Warsaw System for registered baggage is 250 gold francs (€ 27.35) per kilogram and 5000 gold francs (€ 547.08) for baggage of which the passenger takes charge himself. The limit of liability does not apply in cases of wilful misconduct (Art. 25), deficient documents (Art. 9) or special value declaration (Art. 22 para. 2).

Under the Montreal Convention the regime described above applies.

## **3. UK**

This analysis is based on the following assumptions, developed on basis of existing law and also focussed on relevant parts of Reg 1107/2006:

- Wheelchairs, mobility equipment or other assistive devices' are 'baggage' for the purposes of the International Conventions, EU and national UK law;
- PRMs have the right to 'assistance' at airports (EC Reg Art 7);
- The responsibility is on the airport managing bodies to provide that 'assistance' (EC Reg Art 8)
- The 'assistance' managing bodies have to provide is specified in the EC Reg (Annex 1);
- PRMs also have the corresponding right to get 'assistance' from air carriers (EC Reg Art 10);
- The 'assistance' air carriers have to provide is specified in the EC Reg (Annex II);
- PRMs have a right to be compensated for lost or damaged wheelchairs and other mobility equipment and assistive devices (EC Reg Art 12)

Most significant for the purposes of this study are the Annex 1 rights to:

- 'groundhandling of all necessary mobility equipment' subject to advance notice of 48 hours, and
- 'temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis'.

The effect of loss or damage to equipment differs depending on a number of circumstances, in particular whether it is *checked* or *unchecked*, whether it occurs during handling of the equipment at the airport, or during the transport of equipment on board the aircraft, etc.

The airport managing body's obligation (EC Reg Art 8) to provide the type and extent of 'assistance' specified in Annex 1, and the PRM's corresponding right (Art 7) to receive this 'assistance' are subject to the appropriate 48 hours notice being given.

Scenarios could be as follows:

1. Loss/damage of equipment between arrival at airport (i.e., point where the 'assistance' obligations under Reg 1107/2006 begin) and check-in of equipment.
2. Loss/damage between check-in and embarkation covering situations where the PRM puts the equipment into the charge of the airline at check-in, or where the PRM keeps their checked equipment up to the point of embarkation and only then hands it over to the airline.
3. Loss/damage after embarkation (i.e., on board the aircraft) where the equipment is 'checked' baggage, or where the equipment is unchecked (i.e., carry on hand baggage)

The Montreal Convention states in Article 17 (2) that the carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.

In the case of unchecked baggage on board, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

So, when the equipment is checked and while it is in the charge of the airline then the airline is responsible for any loss or damage – this is a strict liability with no need for the PRM to prove any fault on the part of the airline. This is unaffected by Reg 1107/2006. This liability is limited and these limits are as set out in the international Conventions. So where the PRM checks the equipment in and physically hands it over then it is in the charge of the airline. If the PRM checks the equipment in but retains possession of it then the airline is not in charge of it and so it not liable for any loss or damage. However, if this situation, if damage or loss occurs due to the fault of

the airport managing body (most likely to be its ground-handlers) then, subject to proof of fault the airport is liable with no limits on that liability (see below).

There is no provision in the Convention which expressly creates liability for damage or loss of unchecked baggage, so the question of actual liability is rather unclear. However, there is a limitation applied to liability for unchecked baggage by Article 22(3). Therefore it is likely that even where the equipment is in the care of PRM and is unchecked Article 17 would still apply - that is, if the loss or damage occurs while on board the aircraft or during embarkation or disembarkation (but not before or after) the airline would be liable as normal.

Similarly, during the period when equipment is not checked - either because the PRM keeps it with them to the boarding gate where it is then checked in, or the PRM keeps it as carry on baggage throughout the whole journey - then any damage to unchecked baggage is the responsibility of the person who caused it. This could be the airline if it can be proved that it was the fault of the airline or its servants or agents, or if it was the fault of the airport managing body or its servants or agents, then the airport is liable.

Is the airport managing body liable under Reg 1107/2006 for loss or damage to equipment while in the airport but before embarkation or after disembarkation?

Where the airline actually takes charge of unchecked equipment, for security reasons say, then Convention Article 18 (2) would apply - that is, the liability of the airline is not always restricted to the period from embarkation, through on board to disembarkation. But this will not be the common situation - the most common situation will be the PRM keeping charge of the equipment, or relying on the groundhandling staff providing the assistance under EC Regs Art 8 Annex 1, and the loss or damage occurs before embarkation. Here the airline will not be liable as it will not have taken charge of the equipment.

Does the obligation on the airport to provide 'assistance' mean that the airport becomes responsible for loss or damage to the equipment? In reality the answer is that it does but only if the PRM can prove that the loss or damage was due to a breach of duty of care (that it was the airport's fault).

Beyond these 'assistance' rights the Reg only provides for compensation (Art 12) according to 'international, community and national law'. Where there is no liability on the airline under international Convention then the only resort for the PRM will be 'community' and 'national law'. In the UK national law this would require the PRM to prove that they have suffered actual loss or damage, and that the airport was at fault and actually caused that damage.

#### *Exclusion of waiver*

When the international conventions apply there is a real risk that the PRM will not be adequately compensated for the real value of the lost or damaged equipment because of the limits on liability. There is also a two year period in which to start legal

action. On one level all passengers are treated equally with no discrimination - the loss of a wheelchair, dialysis machine, set of golf clubs, or pair of skis would all be treated as 'baggage' and any claim for the value of the items would be limited to the convention maximums.

The UK is party to the Warsaw Convention, the Hague Protocol and Montreal Convention. Domestic carriage and carriage to countries which are not party to either Warsaw or the Hague are nonetheless covered by the Warsaw/Hague rules due to the effect in the UK of the Carriage by Air Acts (Application of Provisions) Order 1967.

In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited (Convention Article 22 (2)) to 1,000 Special Drawing Rights for each passenger. This applies unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

What if PRMs equipment represents 'higher value' baggage? EC Ref Art 10 provides that no additional charges for the services in Annex II can be made against the PRM.

1,000 Special Drawing Rights is £770 according to the latest published conversions (Jan 07). The limit doesn't apply where there is proof of intentional or reckless misconduct. The carrier will be liable for the period in which the bag was in its charge. This of course is subject to the Convention applying.

Where equipment is checked in but the client keeps it with them this is not tantamount to being in the charge of the carrier. It could be argued that all baggage is in the charge of the carrier once it was checked in, but Convention Article 17(2) seems to allow checked baggage to be otherwise than in the charge of the carrier.

If we say this situation is not one where the baggage is in the charge of the carrier, then where the baggage is damaged in the airport or at any point before it's on board then the carrier wouldn't be liable under the Convention. The airport would be potentially liable, subject to the PRM proving a breach of its duty of care. In the UK this would be negligence claim with no limits on compensation but a 6 year limitation period to commence legal action.

#### **4. Slovenia**

At the very beginning of the analysis legal instruments which regulate air transport and are of importance for the implementation of the subject Regulation in Slovenia have to be listed:

1. Zakon o obligacijskih in stvarnopravnih razmerjih v letalstvu (ZOSRL) – Obligational and Property Law Relationships in aviation Act – adopted by the National Assembly on 26 January 2000;

2. Zakon o ratifikaciji Konvencije o poenotenju nekaterih pravil za mednarodni letalski prevoz – Convention for the Unification of certain Rules for International Carriage by Air – ratified by National Assembly on 15. February 2002;
3. Zakon o letalstvu – The Aviation act – which was adopted in National Assembly on 28. February 2001 and went through major changes which were adopted by the National Assembly on 27, July 2006.
4. The Act on Compulsory Insurance in Traffic – adopted by the National Assembly in 1994 and last time amended on 9. November 2006.<sup>38</sup>

The common characteristics of all above listed acts is that they do not distinguish between passengers and PRMs.

As far as the implementation of Regulation (EC) No 1107/2006 is concerned it is the responsibility of the Ministry of Transport, Directorate of Civil Aviation which is preparing special circular for air carriers requesting them to adopt necessary measures prescribed by it for 26. July 2006. Simultaneously with this the Directorate of civil aviation is putting together special program which will guaranty timely and correct implementation of the Regulation 1107/2006 by end of July 2008.

According to the Slovenian Obligational and Property Law Relationships in Aviation Act (OPRA) in the case of damage sustained by PRM during international air transport (for the time being there are no domestic services in Slovenia) the Montreal Convention would apply.

Art. 208 of this act reads as follows: The provisions of this act on contracts of carriage shall also apply to relations which arise within international air transport, unless otherwise determined in an international agreement.

Since Slovenia ratified the Montreal Convention this international agreement would be applicable except in cases where the old Warsaw regime might be applicable. For example foreign carrier coming from the country which has not yet ratified the Montreal Convention.

### *Airports*

It looks like that the Regulation 1107/2006 extends the area of responsibility of the managing body of the airport to and from the door of the aircraft and thus draws more precise line where the carriage begins as it is defined by Montreal Convention. Of course such a kind of reasoning is applicable only for PRM. From technological point of view such an approach is logical, since the managing body operates specialised equipment and its staff is adequately trained.

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<sup>38</sup> Translations of Slovenian laws are working materials

Designation of points of arrival and departure supposes that the managing body of the airport will render necessary assistance to PRMs the entire time when such person is in the premises of the airport. Since the airport activities, except of ground handling, cannot be submitted under the regime of air transport as it is regulated in OPRA and in Montreal Convention the general principles of liability are applicable. They are quite comprehensively regulated in the Code of Obligations which was adopted by the National Assembly of the Republic of Slovenia on 3 October 2001.

## 5. Belgium

Article 12 of Regulation 1107/2006 stipulates under the heading "Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices":

*"Where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or transported on board aircraft, the passenger to whom the equipment belongs shall be compensated, in accordance with rules of international, Community and national law."*

Thus there are 2 distinct periods during which liability towards the PRM under Regulation 1107/2006 can arise:

That is:

1. The period during which the PRM is under the responsibility of the airport managing body or his agents or subcontractor; and
2. The period of transportation, thus the time that the wheelchairs or other mobility equipment and assistive devices belonging to the PRM, have come under the supervision of the air carrier.

The nature of the liability in each of the two periods is different.

*National regime governing the responsibility of the airport managing body.*

The managing body will be made liable under the general laws of civil liability. In this case the managing body becomes responsible by virtue of article 1382 of the Civil Code which stipulates:

*"any fact that creates a damage to someone creates an obligation to repair it" .*

The extent to which one is held liable under article 1382 of the Civil Code is indicated in article 1383 of the Civil Code, which states:

*"that each and every one is responsible for the damage caused by their actions as a result of their imprudence or their negligence".*

The conditions which the plaintiff will have to prove to establish this kind of a tort liability are threefold:

- Firstly establish "the damage";

- Then the plaintiff will have to prove that the managing body committed a “fault”;
- And lastly the plaintiff needs to establish “the causal link” between the damage and the fault which the managing body committed.

Note that the burden of proof of the 3 conditions lies on the plaintiff; thus on the PRM.

Proving the “damage” in this case will be easy, but it should be fully documented. There is no limitation, and one should thus be able to recover the full amount of the damage sustained.

To prove the “fault” it is sufficient that the PRM establishes that the managing body did not live up to its general duty of care. This general duty of care, which befalls each person, is assessed against the conduct of a reasonable person placed under similar circumstances. The so-called *bonus pater familias* does not take abnormal, evident or exceptional risks. If the wrongdoer, however, is a professional (as is the case) the duty of care is set at a higher degree than the duty of care which is bestowed on a layman.

On top of this general duty of care, the text of Regulation 1107/2006, enumerates certain obligations and specific norms which should be attained by the airport managing body. The breach of any of these well described obligations, constitutes “fault” *per se*. “The casual link” between the damage and the fault will also be evident to establish.

#### *Regime governing the responsibility of the air carrier*

The moment a wheelchair or other mobility equipment or assistive device of the PRM is placed in the charge of the air carrier or of one of his servants or agents, the responsibility of the air carrier is triggered.

#### *National carriage*

Regulation 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Regulation 2027/97 makes the Montreal Convention regarding this subject applicable to all carriage by a Community carrier. It also extends the application of the Montreal Convention to carriage by air within a single Member State, thus to national carriage.

#### *International carriage*

- Belgium has ratified the Warsaw Convention (1929) for the Unification of Certain Rules Relating to International Carriage by Air, by the law of April 7, 1936.
- By the law of 30 July 1963, it also ratified The Hague Protocol (1955) which

amended the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929.

- On 1 April 1969, Belgium ratified the Guadalajara Convention (1961); which is supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier. This Convention merely states that if the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address his complaint or to make a claim for damages, against either.
- The President of the EU Council deposited the instruments of ratification of the Montreal Convention on behalf of Belgium on 29 April 2004. The Montreal Convention came into force on 28 May 2004.

Each of the above mentioned Conventions only apply if both the country of departure and the country of arrival have signed the referenced Convention. The importance for return- tickets is that they also apply if the country of departure is the same as the country of arrival, if there is an agreed stop-over located in a third country (which can be a signatory State or not). In the majority of cases, the Montreal Convention will apply. Under the Montreal Convention, the limit is set at 1000 SDR per passenger for registered luggage and for hand luggage. The fault of the carrier is presumed in case of registered luggage, in case of hand luggage the PRM will have to prove the fault of the carrier or his agent.

By a note dated 15 July 2004, the Belgian Minister of Foreign affairs, made the following declaration:

The Montreal Convention does not apply to:

2. International carriage by air performed and operated directly by Belgium for non-commercial purposes in respect to its functions and duties as a sovereign State;
3. The carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Belgium, the whole capacity of which has been reserved by or on behalf of such authorities.

## ANNEX 5: CASE STUDIES THIRD COUNTRIES

### 1. Canada

Canadian rules regulating the right to compensation for damaged or lost equipment belonging to persons with reduced mobility when travelling by air

#### *General provisions*

##### *Overview*

As a general rule, Canada does not consider the Montreal convention to apply to mobility aids, making airlines fully liable (there is no limit amount) of replacement, repair and/or reimbursement of any equipment of a PRM that could have been lost or damaged on a flight. The Canadian Transportation Agency<sup>39</sup> has specifically pointed out that the Montreal convention deals with luggage, but that in Canada, mobility aids are not considered as luggage and are therefore not included under Montreal convention rules for compensation.

##### *Responsibility*

In Canada, it is carriers, not airport managing bodies or other organisations, that are fully responsible and liable for caring for PRM's equipment and its safe delivery.

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<sup>39</sup> Mr. Chris Stark, of the Canadian Transportation Agency, answered a 'Comparative questionnaire on compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility (PRM)' designed by Civic Consulting. The questionnaire was returned to Civic Consulting on April 9, 2007, by email. A phone interview was also conducted with Mr. Stark on Friday June 1st.

### *Compensation and replacement*

Canadian air transportation regulation clearly stipulates that the carrier shall return the aid to the PRM in the same condition it was checked in and if not, replace the damaged or lost aid, reimburse the person for it, and supply a temporary aid. Because of these clear regulations, “problems can often be resolved between a traveller and the company involved”<sup>40</sup>. In the case that complaints are not dealt with to the customer’s satisfaction, they are brought to the Canadian Transportation Agency, which delivers a ruling based on Part V of the Canada Transportation Act or acts as a mediator in the conflict. It is interesting to see that relatively few cases of damaged equipment of PRM actually make it to the Canadian Transportation Agency, because of these clear regulations.

### *Basis for regulation*

#### *The Canada Transportation Act*

The national legislation in place concerning compensation and/or replacement of destroyed or lost equipment of PRM is the Terms and Conditions of Carriage Regulations issued under the authority of the Canada Transportation Act. Part V of the Act deals specifically with the transportation of persons with disabilities. Section 155 of this Part V explains the provisions for a damaged or lost aid. The regulation states:

155. (1) [...] where an air carrier accepts a person's aid [...] for carriage and the aid is damaged during carriage or is not available to the person upon the person's arrival at the person's destination, the air carrier shall, without charge, immediately provide the person with a suitable temporary replacement at the person's destination.
- (2) Where an air carrier accepts a person's aid [...]for carriage and the aid is damaged during carriage and can be repaired promptly and adequately, the air carrier shall [...] forthwith arrange for the prompt and adequate repair of the aid at the air carrier's expense and shall return it to the person at the air carrier's expense as soon as possible.
- (3) Where an air carrier accepts a person's aid for carriage and the aid is damaged during carriage and cannot be repaired promptly and adequately or the air carrier cannot locate the aid within 96 hours after the person's arrival at the person's destination and return it promptly to the person, the air carrier shall, in addition to complying with subsection (1),
  - (a) replace the damaged or lost aid with an identical one satisfactory to the

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<sup>40</sup> Quote from Air travel Accessibility regulations-summary-Canadian Transportation Agency, Government of Canada (2004), p.7. Available at [http://www.cta-otc.gc.ca/access/regs/air-regs\\_e.pdf](http://www.cta-otc.gc.ca/access/regs/air-regs_e.pdf)

person, or

- (b) notwithstanding the limits of liability respecting goods contained in any applicable tariff, reimburse the person for the full replacement cost of the aid.
- (4) Where an air carrier provides a person with a temporary replacement aid pursuant to subsection (1), that person shall continue to have the use of that aid
  - (a) until the time the person's aid is returned to the person, where the aid is to be repaired pursuant to subsection (2), or
  - (b) until a reasonable period for the replacement of the aid has elapsed, where the air carrier has taken steps to replace a damaged or lost aid or has reimbursed the person, pursuant to subsection (3).<sup>41</sup>

Each complaint is adjudicated based on the circumstances of the specific situation. Most concerns about damaged mobility aids are brought to the carrier's attention at the time they are returned to the passenger. As a quasi-judicial body, the Members of the Canadian Transportation Agency make a determination based on what actually happened. In order for the Agency to be involved, a flight must have originated or terminated in Canada.

Annex 9 of ICAO is the international guidance material the Agency uses as further justification for its approach.

### *Responsibility*

It is the carrier that is the sole responsible party for the carriage of passengers and the return of the aid in its original condition.<sup>42</sup>

### *Origin of legislation and timeframe*

The National Transportation Act dates from 1987. The amendments of the National Transportation Agency to the Air Transportation Regulations to include the section relevant to the carriage of persons with disabilities became effective January 1, 1994.

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<sup>41</sup> Quoted directly from the Canadian Transportation Act, available online at <http://www.tc.gc.ca/acts-regulations/GENERAL/c/ct/regulations/001/ct004/ct004.html> a summary by the Canadian Transportation Agency is also available online at [http://www.cta-otc.gc.ca/access/regs/air-regs\\_e.pdf](http://www.cta-otc.gc.ca/access/regs/air-regs_e.pdf).

<sup>42</sup> Answer question 5 of the Questionnaire.

### *Legislative measures with respect to foreign carriers*

The issue of foreign carriers is an important one with respect to the Canadian situation, as most other countries do not have regulations as strict as Canada's when it comes to the compensation of damaged or lost mobility aids.

However, when it comes to foreign carriers landing in or leaving from Canada, it is the Canadian regulations of full compensation, replacement, or repair of the mobility aid that apply, indicated an official from the Canadian Transportation agency. **Although there is not a specific provision regarding foreign carriers in the legislation, there is an understanding that to land in Canada, the carrier must respect the Canadian regulations. The official interviewed indicated that this way of doing things has not been challenged,** and presented cases where the Canadian Transportation Agency ordered a foreign carrier to compensate Canadian plaintiffs who were passengers with reduced mobility, although these cases did not specifically concern compensation for or replacement of damaged mobility aids.

The Canadian Transportation Agency stated that: "For Canadian carriers flying to foreign destinations and for foreign carriers landing in Canada, we use Canadian standards supported by Annex 9 of ICAO".

## **6. USA**

American rules regulating the right to compensation for damaged or lost equipment belonging to persons with reduced mobility when travelling by air.

### *General provisions*

#### *Overview*

In the United States, the domestic baggage liability limits have been waived for assistive devices and there is no longer a cap on the amount of compensation airlines have to pay passengers for a lost, damaged or destroyed assistive device (including mobility aids) on domestic flights, defined as flights within the United States.<sup>43</sup> The measure for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device is the original purchase price of the device.

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<sup>43</sup> Ms. Blane A. Workie, of **the U.S. Department of Transportation**, answered a 'Comparative questionnaire on compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility (PRM)' designed by Civic Consulting. The questionnaire was returned to Civic Consulting on April 9, 2007, by email. A phone interview was also conducted with Ms. Workie on June 8<sup>th</sup>.

### *Responsibility*

In the U.S., it is the airline that is responsible for enplaning and deplaning, as well as for checking and returning the PRM's equipment.<sup>44</sup> **There is no responsibility awarded to an airport managing body or other such organisation.**

### *Compensation and replacement*

The DOT official explained that “a U.S. carrier must fully compensate a passenger for lost, damaged or destroyed wheelchair or other assistive device (e.g. repair cost, cost of a loaner or rental wheelchair while passenger's chair is being repaired) on domestic flights”<sup>45</sup>. In the case where an assistive device is lost or destroyed, compensation is calculated based on the original purchase price of the assistive device rather than the current replacement cost of the device. In the case where an assistive device is damaged but repairable, the proper measure of compensation is the cost of the repair. U.S. carriers may also be required to compensate passengers for directly related consequential damages such as the cost of a “loaner” device during the period when the damaged device is being repaired or the lost or destroyed device is being replaced. **The domestic baggage liability limits as well as the exceptions to these limits of liability do not apply to international flights, to which the international conventions of Montreal and Warsaw concerning luggage liability limits apply.**

### *Basis for regulation*

#### *“Non-discrimination on the basis of disability in Air Travel”*

The national law in place concerning the compensation and/or replacement regarding destroyed, damaged or lost wheelchairs or other mobility equipment in a domestic flight is the **Air Carrier Access Act (ACAA)** which prohibits discrimination in air travel against individuals with disabilities and its implementing regulation in 14 CFR Part 382 (Part 382).<sup>46</sup> Part 382 explicitly refers to the treatment of mobility aids and devices. The regulation reads as follows:

#### 382.43 Treatment of mobility aids and assistive devices.

1. When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the individual with a disability. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

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<sup>44</sup> Answer to question 11 of questionnaire

<sup>45</sup> Answer to Question 3 of the questionnaire

<sup>46</sup> The text is available in full at <http://airconsumer.ost.dot.gov/rules/382short.pdf>

2. With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.
3. Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

#### *Legal responsibility*

As mentioned previously, it was clearly explained that in the United States, it is the airline that is responsible for providing enplaning, deplaning and connecting assistance, as well as checking and returning mobility devices. This is not the responsibility of the airport managing body or another organisation.

#### *Origin of legislation and timeframe*

In 1982, the predecessor of the U.S. Department of Transportation (DOT), the Civil Aeronautics Board, adopted the first regulation to prohibit US airlines from discriminating on the basis of disability based primarily on section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against individuals with disabilities by recipients of federal funds. A disability rights organization challenged the premise in the regulation that section 504 applied only to federally subsidized airlines and argued that section 504 also applies to non-subsidized airlines as these airlines receive Federal assistance in the form of air traffic control services and airport and airway improvement grants. The U.S. Supreme Court decided that non-subsidized carriers did not receive Federal financial assistance and, therefore, were not covered by section 504. In response to the Supreme Court decision, the American Congress adopted the Air Carrier Access Act of 1986 (ACAA) prohibiting discrimination on the basis of disability by all U.S. carriers. In 1990, the U.S. Department of Transportation issued a regulation (14 CFR Part 382) implementing the ACAA. In that rule, among other things, DOT established a liability limit for lost, damaged, or destroyed assistive devices of twice the normal liability limit for passengers' baggage (i.e., \$2500). Then, in August 1999, DOT amended its rule to lift the existing cap on the amount of compensation airlines pay passengers for lost, damaged or destroyed wheelchairs. The decision was made to eliminate the cap because of concern that \$2500 does not adequately compensate passengers for loss or serious damage to expensive devices such as power wheelchairs.

*Legislative measures with respect to foreign carriers*

This issue is one of particular interest in the United States, where damaged or lost wheelchairs are fully compensated on domestic flights, but subjected to the compensation limits of the Montreal and Warsaw conventions on international flights. The Wendell H. Ford Aviation Investment and Reform Act for the 21st century, referred to as AIR21, signed into law in April 2000, made the requirements of the ACAA (the Air Carrier Access Act, discussed above) applicable to foreign carriers. However, the DOT rule implementing the ACAA which is contained in 14 CFR Part 382 by in large does not apply to foreign air carriers. Nevertheless, the Department of Transportation issued a notice stating that it would use Part 382 as guidance when investigating complaints made towards foreign carriers.<sup>47</sup>

More importantly, with regards to foreign (non-U.S.) carriers flying to and from the United States, there is a current Notice of Proposed Rulemaking (NPRM) on the matter, issued in November 2004, which proposes to amend 14 CFR Part 382 “to make foreign air carriers operating to and from the United States subject to most of the disability-related requirements currently available to U.S. carriers under Part 382, including treatment of mobility aids and assistive devices”.<sup>48</sup> In section 382.131 of the proposed rule,<sup>49</sup> the U.S. Department of Transportation spells out that the domestic baggage liability limits do not apply to international transportation to which Warsaw or Montreal Convention liability limits apply. The Department sought comment from stakeholders on how liability for loss of or damage to wheelchairs and other assistive devices should be handled in the case of international transportation. A final rule on the NPRM is to be issued on or about December 31, 2007.

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<sup>47</sup> Heffernan, David. “The US government prepares to make non-US airlines subject to new rules regarding the transportation of disabled passengers”, Air and Space law, November 2004.

<sup>48</sup> Answer to Question 4 on the questionnaire

<sup>49</sup> Federal Register / Vol. 69, No. 213 / Thursday, November 4, 2004 / Proposed Rules

## **ANNEX 6: ECAC DOCUMENT 30 - SECTION 5**

## **ANNEX 7: PROVISIONS OF ICAO - ANNEX 9**

## **ANNEX 8: VOLUNTARY CODES OF AIRLINES AND AIRPORTS**