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Interpretative Guidelines

on the application of Regulation (EC) N° 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air

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Introduction

These guidelines to improve and facilitate the application of Regulation (EC) N° 1107/2006 (the "Regulation") have been prepared in the form of answers to the most frequently asked questions on the Regulation. They are drawn from queries raised by National Enforcement Bodies (NEBs), from passenger complaints, as well as questions raised by the European Parliament and following discussions with organisations representing disabled persons and persons with reduced mobility, elderly people and with airport and air carrier organisations. They are not intended to be exhaustive nor to cover all scenarios in depth, but to provide a framework of principles that can guide NEBs and assist service providers in the application of the Regulation.

The Commission committed itself to providing these guidelines before the 2012 Paralympic Games in its Report to the European Parliament and the Council on the functioning and effects of Regulation (EC) N° 1107/2006². The Commission services have consulted NEBs and interested parties at European level twice, first in writing in December 2011 and January 2012, and later in the context of the Air Passenger Rights Consultative Group which met in Brussels on 16 February 2012.

These guidelines are subject to any future interpretation of the Regulation by the European Court of Justice, and do not represent an interpretation of the Regulation by NEBs, Member States or the Commission.

The term "assistance providers" used below includes in this context air carriers, airports, tour operators, service providers for disabled persons and persons with reduced mobility or, in line with their obligations under the Regulation, their agents.

Guiding principles

The intention of the legislators in drafting the Regulation was to allow disabled persons and persons with reduced mobility access to air travel on an equal footing with passengers without mobility limitations. This is achieved by providing specific rights to assistance, by assigning corresponding obligations to providers and thereby protecting disabled persons and persons with reduced mobility from discrimination in exercising their rights while booking, purchasing and using air transport services. The overriding and fundamental principle of flight safety for all passengers and crew members must, of course, be observed.

¹ OJ L 204, 26.7.2006, p. 1–9

² COM(2011)166 of 11 April 2011

Refusal to provide carriage or the requested assistance should always be exceptional. Therefore, before refusing carriage or assistance, assistance providers must consider alternative methods of providing the service requested. The provision of any service should however be proportionate to the circumstances of the request. Any refusal to provide assistance or carriage should be clearly based on a reason contained within the Regulation. It should however be noted that, in order to allow service providers to arrange for the required assistance, it is essential that disabled persons and persons with reduced mobility notify their needs at least 48 hours before the published time of departure. Where no pre-notification was given, assistance providers should make all reasonable efforts to provide the requested assistance.

Article 2(a) – Definitions

Q1: What does the term "disabled persons and persons with reduced mobility" include and how broadly should it be applied?

The definition of a disabled person or a person with reduced mobility is set out in Article 2(a)³ of the Regulation. As outlined in the Regulation's introductory recitals, the intention of the legislators was to allow any passenger whose mobility is reduced access to air transport on an equal basis to other passengers⁴. When mobility is reduced by physical disability, such disability can be either of a permanent or temporary nature. Practical considerations should be taken into account in meeting the requirements of this obligation as well as the safety needs of all passengers.

Each request for assistance should be evaluated on its respective merits to ensure that such assistance is proportionate to the reduction in mobility, but there is an expectation that assistance will be provided without undue restriction. In this context, it is worth stressing that some passengers may only need assistance at the airport⁵ and not on-board the aircraft.

This means that safety rules on-board strictly apply to those passengers that need assistance on-board. Persons with reduced mobility that only need assistance at airports cannot be counted as disabled persons or persons with reduced mobility on-board for the purpose of safety rules applied by some carriers to limit the number of these passengers on-board.

(a) Age

Impairments linked to old age, which result in greater reduced mobility when compared with the average passenger, must be addressed by providing appropriate

³ Unless otherwise mentioned, any reference in these guidelines to a provision has to be understood as a reference to the corresponding provision of Regulation (EC) N° 1107/2006.

⁴ See in particular Recitals (1), (2) and (4) of the Regulation

⁵ The size of the airport or its specific features might also be relevant.

assistance if required. Old age can decrease the speed and ability with which passengers can move within the airport or aircraft environment, and can affect their capacity to use on-board safety equipment or to evacuate the aircraft.

Situations involving young children (notably infants) whose age might limit their autonomy during air travel (for instance to cope with long distances at large airports and at connecting points), cannot be excluded from the scope of application of the Regulation. However, any assistance should always be proportionate to the actual needs of the person concerned in the specific (airport or aircraft) environment and flight conditions and should in no way be detrimental to other passengers. For instance, whenever possible, young children should be allowed to use their prams or buggies until the actual boarding and where practicable receive them returned at the aircraft door upon arrival.

(b) Unaccompanied Minors

A number of air carriers provide an unaccompanied minor (UM) service allowing children, generally between the ages of 5 - 16, to travel under the supervision of airline staff without a related adult or guardian. Such passengers are not covered by the terms of the Regulation. The Regulation cannot be used as a substitute for the UM service.

(c) Obesity

Recital 1 of the Regulation mentions "any other factor" [in addition to disability and age] as a potential cause of reduced mobility. Therefore, where the condition of an obese person clearly reduces their mobility, for example by preventing them from moving easily through the airport or aircraft environment, then they may be considered persons with reduced mobility under specific circumstances. As for any other category of persons with reduced mobility, safety requirements may limit access to air travel for obese people (for example due to the lack of availability of appropriate seating).

(d) Pregnancy

As cited above, Recital 1 of the Regulation mentions "any other factor" as a potential cause of reduced mobility. Carriers have no obligation to carry pregnant women when health or safety reasons may not allow them to fly. However, when a pregnant passenger's mobility is affected (for example preventing her from moving easily and quickly through a large airport, particularly at connecting points), then she may be considered impaired to a degree that may be covered by the Regulation. Again, each request for assistance should be considered in relation to the circumstances in which the request is made.

Q2: Is it admissible to request proof from disabled persons and persons with reduced mobility about their medical condition?

No. The Regulation does not impose any obligation on disabled persons and persons with reduced mobility to provide evidence of their disability or reduced mobility (whether medical or other) in order to justify the assistance requested. Thus, carriers are not allowed to ask for such a proof as a precondition of selling a ticket or of permitting carriage. However, in situations where the medical condition of a passenger is such that there is reasonable doubt that the passenger can complete the flight safely without requiring assistance during the flight, an air carrier may assess whether the passenger is fit-to-fly and request information to support that assessment.

Only where an assistance provider identifies an obvious situation of abuse should a more specific in-depth enquiry be undertaken. Such an investigation should be handled with the utmost care, taking into consideration the dignity and right to privacy of the passenger concerned. Article 4(4) of the Regulation requires an assistance provider to document the reason for any refusal to provide assistance (see also Q4 (a)). Since assistance providers must be able to justify to NEBs (and in any arbitration procedure and/or to a judge if necessary) the basis within the Regulation for any refusal to accept a reservation or to embark disabled persons or persons with reduced mobility, relevant information has to be retained for an adequate period of time. In the absence of express guidance in the Regulation, the Commission suggests that these bodies retain the relevant information for the timeframes specified in corresponding national legal frameworks.

Article 4 - Derogations, special conditions and information

Q3: What assistance should be provided to disabled persons and persons with reduced mobility on-board an aircraft?

Annex II of the Regulation specifies the rights to assistance that disabled persons and persons with reduced mobility are entitled to on-board an aircraft subject to the safety requirements of Article 4(1)(a). There is a distinction between requirements imposed for safety reasons (for example, the ability to evacuate the aircraft or to use on-board safety equipment, such as a safety belt, emergency oxygen mask or life jacket) and those that relate to the comfort of disabled persons and persons with reduced mobility on board an aircraft (for example eating). Comfort is not in itself sufficient grounds to deny carriage or require disabled persons and persons with reduced mobility to be accompanied. Subject to any overriding safety requirements, it is the passengers' decision on whether or not they decide to travel. (See also Q5 on accompanying persons.)

(a) Cabin crew

The primary responsibility of cabin crew⁶ is the safety of **all** passengers on-board an aircraft. Any action which could compromise the performance of their duties or their medical fitness (including health & safety considerations) could impact on the safety of all passengers on-board. Cabin crew ensure the respect of safety legislation on-board and organise safety assistance in case of emergency situations and during day-to-day operations, including providing safety information to disabled persons and persons with reduced mobility in accessible formats, in accordance with Annex II to the Regulation and the procedures specified by the operator.

The Regulation does not require cabin crew to provide specific assistance with drinks, meals or medication going beyond the service provided to other passengers.

(b) Medical assistance

If disabled persons and persons with reduced mobility need to receive medical treatment or to use a medical device during the journey, for professional and liability reasons the Regulation does not require airport or airline personnel to assist. If a passenger believes that such assistance will be necessary and cannot perform these tasks themselves, then an assistant capable of providing the assistance required should accompany the passenger (see also Q5).

(c) Toilets

According to Annex II, disabled persons and persons with reduced mobility are entitled to assistance in moving from their seat to an aircraft toilet. Such transfers are subject to the safety requirements laid out in Article 4(1) (a) of the Regulation. The Regulation does not require cabin crew to lift a passenger or provide assistance in using the toilet facilities (see also Q22).

(d) Information on limitations to travel and safety rules

According to Article 4(3) of the Regulation, air carriers shall inform disabled persons and persons with reduced mobility in advance of travel of possible limitations, such as a lack of accessible toilets, lack of moveable aisle armrests, seat and aisle size etc., related to safety requirements or the size of the aircraft, to allow them to make an informed decision on whether to travel on that flight. Air carriers should also provide accessible information about possible limitations on their websites.

Q4: Are air carriers required to publish details of any restrictions on the carriage of disabled persons and persons with reduced mobility or their

⁶ Cabin crew are required on-board aircraft to perform duties related to the safety of occupants and to the flight. For this purpose, they are required to be properly trained, competent and medically fit to perform such duties.

medical or mobility equipment, or items classified as “dangerous goods”⁷, such as batteries or oxygen?

Yes. Article 4(3) of the Regulation requires an air carrier or its agent to make publicly available the safety requirements and relevant information on restrictions related to the size of the aircraft that it applies to the carriage of disabled persons and persons with reduced mobility and their mobility equipment. According to Annex II to the Regulation, only reasons related to the size of the aircraft and the application of relevant legislation on dangerous goods can be invoked to limit the transport of mobility equipment.

The Regulation recognises that disabled persons and persons with reduced mobility may need additional support in order to allow them to travel. Given the broad spectrum of passengers the legislation seeks to cover, there is no definition of medical equipment or the quantity of such items that may be carried (in contrast to mobility equipment, which is limited to two items). The circumstances of each request to carry such items should be considered on its individual merits taking into consideration the needs of the passenger.

Distinctions can be made between situations where a disabled person or person with reduced mobility needs an additional luggage allowance for medical equipment, and a passenger, who may also be a disabled person or a person with reduced mobility, who is carrying extra regular luggage for which a charge may be made.

(a) Information

Under Article 4(3) air carriers shall make passengers aware of the safety rules they apply and of any restrictions they may impose. All relevant information has to be in accessible formats and made publicly available free of charge, to minimise situations where disabled persons and persons with reduced mobility may be denied boarding due to a lack of preparation. Even where these passengers are not aware of any restrictions and do not prepare appropriately, air carriers have to endeavour to provide any necessary assistance.

Where a reservation or transportation is refused, Article 4(4) obliges the carrier to inform the passengers **immediately** of the reasons for that refusal. Furthermore, when requested to do so, the carrier must provide the passenger with a clear, written explanation as to the grounds for the refusal within 5 working days - with specific reference to the national, EU or international law applicable to the individual case. Non-specific answers will not be considered compliant with the Regulation.

NEBs should seek to inform disabled persons and persons with reduced mobility of their rights. NEBs also have a role in raising awareness of these passengers so that they can make informed decisions with regard to their choice of air carrier.

⁷ EU registered aircraft cabin configurations are subject to European certification by EASA. Non-EU aircraft will be certified by their own national authority. The carriage of dangerous goods is also subject to EU requirements (in accordance with ICAO technical instructions).