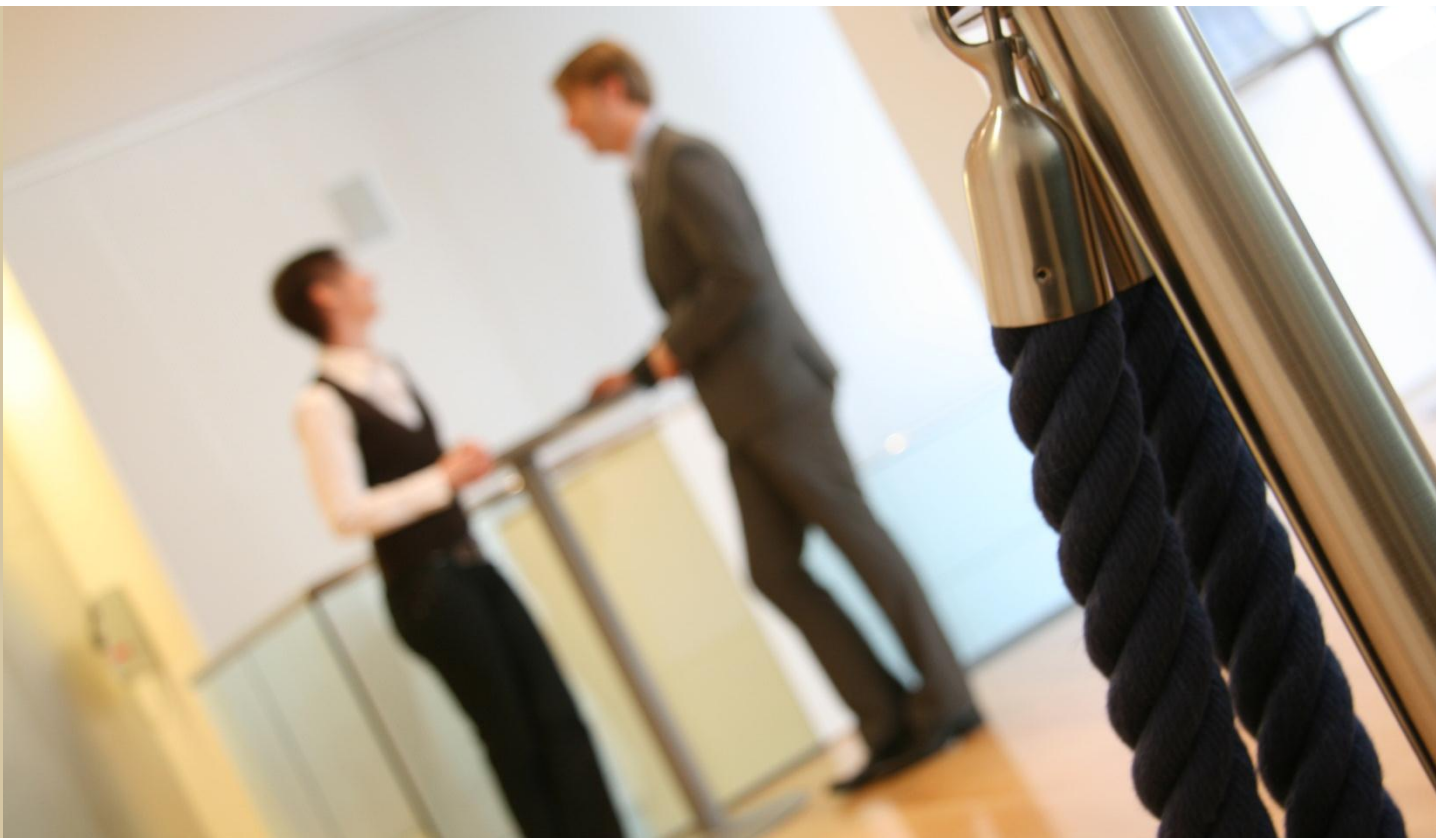


DOCUMENTATION

EU DISABILITY LAW AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES



412DV02 Trier, 23-24 April 2012

Table of Contents

EU Disability Law and the UN CRPD

Trier, 23-24 April 2012

Table of contents

I. General information

- List of speakers
- List of participants
- Travelling expenses claim form
- Workshop case studies

II. Speakers' contributions

Shivaun Quinlivan

- CV
- Introduction to the UN Convention on the Rights of Persons with Disabilities: development, purpose and general principles
- Specific substantive obligations under the UNCRPD: education, health, participation, privacy and data protection, standard of living, social protection

André Gubbels

- CV
- The implications of the UNCRPD for EU Disability Law: the creation of a new legal framework; the role of the CFR; the UNCRPD as an interpretation tool and its legal status under EU law – is there room for direct effect?

Richard Whittle

- CV
- Non-discrimination, reasonable accommodation and the burden of proof in disability proceedings in EU law and beyond: definition, scope, interpretation and the impact of the UNCRPD

Inmaculada Placencia Porerro

- CV
- Accessibility legislation in the EU outside the field of employment

John Horan

- CV
- The reality of the UNCRPD and its (potential) impact in practice

Oliver Lewis

- CV
- Legal capacity considerations for persons with disabilities in light of the UNCRPD

Constantin Cojocariu

- CV
- Ensuring access to justice for persons with disabilities under the UNCRPD

José Gutierrez Fons

- CV
- Using the preliminary reference procedure in EU law to advance the rights of persons with disabilities

III. Background Documentation

A. Primary legislation

		Page
1.	Articles 2, 3, 6 and 19 of the Treaty on European Union (TEU)	1
2.	Articles 10, 19 and 267 of the Treaty on the Functioning of the European Union (TFEU, ex EC Treaty)	4
3.	Articles 20, 21, 22, 25, 26 of the EU Charter of Fundamental Rights of the European Union.	7

B. European Disability Strategy 2010-2020

		Page
4.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions - European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, Brussels, 15.11.2010. COM(2010) 636 final	11

C. UN CRPD and the EU

		Page
5.	Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities	23
6.	Optional Protocol	51
7.	Information Note from the European Commission on progress in implementing the UN Convention on the Rights of Persons with Disabilities to the EPSCO Council, Brussels, 7 June 2011	57

D. Non-discrimination

	Council Directive 2000/78	Page
8.	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	65
	ECJ case law	
9.	Judgment of the Court of 11 July 2006, Case C-13/05, <i>Sonia Chacón Navas v Eurest Colectividades SA</i>	73
10.	Judgment of the Court of 17 July 2008, Case C-303/06, <i>S. Coleman v Attridge Law and Steve Law</i>	83

11.	Action brought on 1 July 2011, Case C-335/11, <i>Jette Ring v Dansk almennyttigt Boligselskab DAB</i>	95
12.	Action brought on 20 June 2011, Case C-312/11, <i>European Commission v Italian Republic</i>	97
	Jurisprudence of the European Court of Human Rights	
13.	Case of <i>D.D. v. Lithuania</i> (Application no. 13469/06) Judgment of the Court (Second Section) of 14 February 2012	99
	Proposal for a new Directive	
14.	Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. COM(2008) 426 final. Brussels, 2.7.2008	155
	Code of Good Practice	
15.	Code of good Practice for the employment of people with Disabilities, Bureau Decision of 22 June 2005	179

E. Transport

		Page
16.	Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004	189
17.	Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004	201
18.	Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations	217
19.	Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air	245
20.	Communication from the Commission Communication on the cope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air. COM/2008/0510 final	255
21.	Evaluation of Regulation 1107/2006 Final report Main report and Appendices A-B June 2010 – Executive Summary	265

F. Telecommunication

		Page
22.	Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions - "Towards an accessible information society" COM/2008/0804 final.	429
23.	Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions - eAccessibility [SEC(2005)1095] COM/2005/0425 final.	443

G. Other

		Page
24.	List of secondary legislation relevant to "disability"	455

H. Information note

		Page
25.	Information note on references from national courts for a preliminary ruling	461

General Information

**EU Disability Law and the UN Convention on the Rights of Persons with Disabilities
23 - 24 April 2012, Trier**

**Le droit européen des personnes handicapées et la convention de l'ONU
23 - 24 avril 2012, Trèves**

412DV02

List of speakers / Liste des intervenants

Constantin Cojocariu
Lawyer
Interights
Tottenham Road
UK-LONDON N14ER

André Gubbels
Direction Générale Personnes Handicapées
Service Public Fédéral Sécurité Sociale
Boulevard du Jardin Botanique 50
BE-1000 BRUXELLES

José A. Gutiérrez-Fons
Law Clerk
Cabinet of Judge Lenaerts
Court of Justice of the European Union
Rue du Fort Niedergrünwald
LU-2925 LUXEMBOURG

John Horan
Barrister
Chambers of Robin Allen QC, Cloisters
1 PUMP COURT, TEMPLE
UK-LONDON EC4Y 7AA

Oliver Lewis
Executive Director
Mental Disability Advocacy Centre MDAC
Hercegrímás utca 11
HU-1051 BUDAPEST

Inmaculada Placencia Porrero
Head of Unit
Rights of Persons with Disabilities
European Commission-DG JUST
BE-1049 BRUSSELS

Shivaun Quinlivan
Lecturer
National University of Ireland
University Road
IE-GALWAY

Richard Whittle
Senior Lecturer in Law
Sheffield Hallam University
Southbourne, Collgate Crescent
UK-SHEFFIELD S10 2BP

**EU Disability Law and the UN Convention on the Rights of Persons with Disabilities
23-24 April 2012, Trier**

**Le droit européen des personnes handicapées et la convention de l'ONU
23-24 avril 2012, Trèves**

412DV02

List of participants / Liste des participants

Alejandro Alama Parreño
Juzgado de lo Social Numero 1 de Melilla
Quinto Centenario
Torre Norte 4a Plta.
ES-52071 MELILLA

Laimutis Alechnavičius
Judge
The Supreme Administrative Court of Lithuania
Zygimantu str. 2
LT-01102 VILNIUS

Iskra Alexandrova
Juge
La Cour Supreme Administrative
18, bulevard Al Stamboliiski
BG-1000 SOFIA

Tatyana Andonova
Judge
Blagoevgrad District Court
Vasii Levski 1
BG-2700 BLAGOEVRAD

Maryana Bahchevan
Judge
Administrative Court
Nikola Vaptzarov str. 3
BG-9000 VARNA

Laura Adriana Banu
Judge
Dambovita Grand Instance Tribunal
Calea Bucuresti 3
RO-1000 TARGOVIST

Julie Beranger
Le Défenseur des Droits
11, rue Saint Georges
FR-75009 PARIS

Dr Nóra Bérces
Juge
Cour de Budapest
Marko 27
HU-1055 BUDAPEST

Hanna Blanz
Richterin
Amtsgericht Tiergarten
Turmstraße 91
DE-10559 BERLIN

Cristea Bogdan
Judge
Bucharest County Court
Calea Victoriei No.12A bl.b, ap.6
RO- BUCURESTI

Walter Böttiger
Richter
Landessozialgericht Baden-Württemberg
Hauffstraße 5
DE-70190 STUTTGART

Luís Miguel Caldas
Judge
Supremo Tribunal de Justica
Praca do Comércio
PT-1149-012 LISBOA

Veselina Cholakova
Judge
Administrative Court
Nikola Vaptzarov str. 3
BG-9000 VARNA

Chavdar Dimitrov
Judge
Bourgaz Regional Court
Alexandrovskia 101
BG-8000 BOURGAS

**EU Disability Law and the UN Convention on the Rights of Persons with Disabilities
23-24 April 2012, Trier**

**Le droit européen des personnes handicapées et la convention de l'ONU
23-24 avril 2012, Trèves**

412DV02

List of participants / Liste des participants

Gregorio Dominguez Silva
Prosecutor
Fiscalía Provincial de Girona
Plaza de la Catedral 2
ES-17071 GIRONA

Inita Dzerkale
Judge
Jelgava Court
Dambja iela 12
LV-3001 JELGAVA

Dr Judit Erdős
PKKB
Markó Str. 27
HU-1055 BUDAPEST

Tanya Evtimova
Chairman
Administrative District Court Bourgas
Alexandrovska 101
BG-8000 BOURGAS

Giovanni Fanticini
Judge
Tribunale di Reggio Emilia
Via A. Paterlini 1
IT-42124 REGGIO EMILIA

Zsófia Gál
Metropolitan Court
Markó utca 27
HU-1055 BUDAPEST

Lucia Augustina Galetan
Juge
Court Caracal
Iancu Jianu nr. 37
RO-235200 CARACAL

Miguel Angel Garcia Alonso
Sala de lo Contencioso Administrativo del
Tribunal Superior de Justicia de Madrid
C/ General Castaños 1
ES-28071 MADRID

Lúcia Chandra Gracias
Judge
Supremo Tribunal de Justica
Praca do Comércio
PT-1149-012 LISBOA

Dr Bettina Günther
Richterin am Arbeitsgericht
Hessisches Ministerium der Justiz, für
Integration und Europa
Luisenstraße 13
DE-65185 WIESBADEN

Dr. Gabor Kádár
Vizepräsident
Amtsgericht Szeged
Szechenyi Tér 4
HU-6724 SZEGED

Mindaugas Klemenis
Judge
District Court Mazeikiai Region
Urvikiu 18
LT-89213 MAZEIKIAI

Achim Kling
Richter am Amtsgericht
Amtsgericht Wedding
Brunnenplatz 1
DE-13357 BERLIN

Torsten Knobloch
Executive Officer / Judge at District Court
Bundesministerium der Justiz
Mohrenstraße 37
DE-10117 BERLIN

**EU Disability Law and the UN Convention on the Rights of Persons with Disabilities
23-24 April 2012, Trier**

**Le droit européen des personnes handicapées et la convention de l'ONU
23-24 avril 2012, Trèves**

412DV02

List of participants / Liste des participants

Jurgita Kolyčienė
Judge
The District Court of Siauliai
Vilniaus 247
LT-76343 SIAULIAI

Renate Krasovska
Judge
Dobeles District Court
Muldavas 16
LV-3701 DOBELE

Dr. Jana Kraus
Richterin
Arbeitsgericht Frankfurt/Main
Gutleutstraße 130
DE-60327 FRANKFURT / MAIN

Dr Diogo Leitão
Judge
Tribunal do Trabalho de Lisboa
Rua Febo Moniz 27 B
PT-1150-052 LISBOA

Emil Lukacs
Vice President / Judge
Tribunal Militar Cluj
Dorobantilor nr. 8
RO-400117 CLUJ-NAPOCA

Fernando Martins Duarte
Judge
Administrative Court of Lisbon
Av. D. Joao II, Bloco G, piso 6-8 n° 1.080.01.1
PT-1050-113 LISBOA

Rui Manuel Matos dos Vultos
Judge
Civil Court
Sociedade Farmaceutica 17, 1
PT-1150-337 LISBOA

Charlotte May-Simera
National University of Ireland
Centre for Disability Law and Policy
University Road
IE-GALWAY

Elisavet Mela
Judge
First Instance Court
Lahana 19
GR-15232 ATHINA

Katja Meyerhoff
Richterin
Landessozialgericht Hamburg
Kapstadtring 1
DE-22297 HAMBURG

Agnieszka Miernik
Judge
Voivodship Administrative Court in Warsaw
Jasna 2/4
PL-00-013 WARSZAWA

Nikolova Miglena
Judge
Administrative Court in Varna
Nikola Vaptzarov str. 3 A
BG-9000 VARNA

Charia Papageorgiou
Judge
Industrial Dispute Court
Viandos Str. 17
CY-2042 STROVOLOS/ NICOSIA

Nancy Poser
Richterin am Amtsgericht
Amtsgericht Trier
Justizstr. 2-6
DE-54290 TRIER

**EU Disability Law and the UN Convention on the Rights of Persons with Disabilities
23-24 April 2012, Trier**

**Le droit européen des personnes handicapées et la convention de l'ONU
23-24 avril 2012, Trèves**

412DV02

List of participants / Liste des participants

Dicu Razvan Cosmin
Prosecutor Judicial Inspector
Superior Council of Magistracy
Calea Plevnei 141 b
RO-060011 BUCURESTI

Velichka Simeonova
Judge
Court of Blagoevgrad
Vasil Levski 1
BG-2700 BLAGOEVGRAD

Areti Skafida
Prosecutor
Eisaggeli Protodikon Pirée
41, Kyprou
GR-15235 VRILISSIA - ATHINA

Zoltán Somogyi
Strafrichter
Landgericht Győr
Orgona st. 8
HU-9172 GYÖRZÁMOLY

Falk Frithjof Spruth
Richter am Amtsgericht
Amtsgericht Darmstadt
Mathildenplatz 12
DE-64283 DARMSTADT

Svetoslav Stoynov
Prosecutor
Prosecutor's Office
Podvis Str, bl. 33, entr. A, fl. 5, ap. 74
BG-9010 VARNA

Conrado Tromp
European Commission
DG Human Resources/ Unit B5
Roi de la Loi 200
BE-1049 BRUSSELS

Dumitriu Vaduva
Juge
Cour d'Appel de Bucharest
Splaiul Independentei, Nr. 5, Sector 4
RO- BUCURESTI

Travelling expenses claim form

Original receipts only please



Seminar title EU Disability Law and the UN Convention on the Rights of Persons with Disabilities

Event number 412DV02/sj 23-24 April 2012)

Mr/Mrs				
Institution				
Address				
Postal code	City		Country	
Telephone	Fax		Email	

Account in Germany	Account in foreign country		
Account No.		IBAN	
Sort code		BIC/SWIFT	
Bank			
Address of the bank			
Account holder			
Address of the Account holder			

Participation as Speaker Delegate

Travel expenses:	Number of vouchers		Amount in €
Air ticket	<input style="width: 20px; height: 20px;" type="text"/>		
Rail ticket	<input style="width: 20px; height: 20px;" type="text"/>		
Car (€0,22/Km) <small>(Please issue an invoice)</small>		Km. <input style="width: 50px;" type="text"/>	
Bus/Taxi	<input style="width: 20px; height: 20px;" type="text"/>		
Hotel	<input style="width: 20px; height: 20px;" type="text"/>		
Other expenses	<input style="width: 20px; height: 20px;" type="text"/>		
Total	<input style="width: 20px; height: 20px;" type="text"/>		

I have incurred the above expenses, and enclose original receipts and tickets. I vouch the for accuracy of this claim.

Place, Date Signature

To be completed by ERA!	
<i>ERA Ledger Entry</i>	<i>Approved</i>
	Date Signature

Case Study 1 – Ms. White

Ms. White worked for a public authority in a position that required her to carry out manual labour. In early 2010, she suffered a non-work-related injury which resulted in an infection. This required surgery and, due to complications, Ms. White was left with reduced mobility rendering her unable to carry out the functions of her job. This injury and the subsequent complications meant that Ms. White missed some 18 months of work continuously. She received “sick pay” for six months, in accordance with the employer’s policy.

Once Ms. White’s condition had stabilised, she was placed on a list of re-deployees within the public authority and she interviewed for administrative positions that would have required her to carry out general clerical work. These positions would have amounted to a promotion given that the pay and benefits on offer were preferential. However, Ms. White was not successful in her application and better qualified candidates were chosen.

In March 2012, Ms. White was dismissed from her position. The authority reasoned that there was no realistic prospect of her making a return to work. Ms. White intends to bring a claim in the labour court.

1. Would the employer have been justified if it had terminated her employment any earlier as Ms. White was incapable of performing the main functions of her job? If yes, at what point would it be justified?

2. Was her employer under an obligation to make a reasonable accommodation even if nothing could be done to enable Ms. White to perform her job.

3. Could Ms. White be required to go through a competitive interview process for the alternative administrative roles or should she have simply been put into one of those jobs, even though there were better qualified candidates?

4. Was the employer under an obligation to provide Ms. White with additional training so that she might be better suited to carry out an administrative role?

Case Study 2 – Mr. Green

Mr. Green suffers from a spastic paralysis and he is unable to walk long distances or stand for long periods of time. He generally does not use a wheelchair unless he will be travelling significant distances and he does not own a wheelchair of his own.

Mr. Green is a keen amateur historian and he is particularly interested in the study of Roman monuments. To satisfy his hunger for knowledge, he regularly takes trips to various destinations across the EU, travelling from a state-owned airport near his home with a commercial airline.

The airport near Mr. Green's home is housed in an older building. After check-in, there is a long walk to the departure gate. Mr. Green requires the use of a wheelchair to overcome this distance. Wheelchair users are permitted by the airport authority to use their own personal wheelchair to get from check-in to the door of the aircraft. For passengers travelling without their own wheelchair, the airport authority makes a small number of wheelchairs available, but it charges 20€ for the use of the chair. The airport authority indicates that there are many seats and benches along the way as well as a large selection of bars and cafes where weary passengers might take a rest. There is no need to make one's way to the gate in a single go.

Mr. Green has, however, often discovered that there are insufficient chairs available and, even when one is available, he resents having to pay the airport's fee. He argues that passengers without a disability are not charged to move around the airport and neither should he be charged for that same privilege.

Mr. Green's friendly airline does not provide assistance. It deems the airport authority responsible for ensuring Mr. Green's mobility in the airport concourse.

The airline has a provision allowing for four wheelchair users at a time to travel on an aircraft. Mr. Green, on his latest trip, was not seated next to his wife, who usually provides him assistance if he is having mobility problems.

Fed up, Mr. Green decides to sue both the airport authority and the airline

1. Can the airport authority require passengers in need of the use of wheelchair to negotiate around the airport to provide their own?
2. Where a wheelchair should be provided, who should be responsible for doing so; the airport, the airline, both?
3. How should the number of wheelchairs to be provided be determined?
4. Is the provision of a series of seats and benches along the route to the gate sufficient so that it is not necessary for Mr. White to have to use a wheelchair?
5. Is the airport entitled to charge for the use of the chair?
6. Is the airline under a duty to provide a seat for Mr. Green's wife next to him?

Case Study 3 – Mr. Grey

Mr. Grey is employed by the local authority as a park-keeper. He resides with his son Jack in a house within the park grounds. Jack has a medical condition resulting in severely restricted mobility and the house is adapted to cater for this fact. Following an incident involving a group of teenagers in the park, Mr. Grey's contract of employment was terminated. The park authority seeks to obtain possession of the house for the new park-keeper. At first instance, the park authority is granted possession and Mr. Grey appeals.

1. Is Jack's disability relevant to Mr. Grey's case?
2. How, if at all, could the UNCRPD or EU disability law be relied upon to undermine the authority's decision?
3. What could the authority do to demonstrate compliance with any obligations under the UNCRPD/EU law?
4. How might a judge deal with this case given that s/he must have regard to both the need of the park to fill the vacant position and Jack's needs as a person with a disability.

Speakers' Contributions

Shivaun Quinlivan

Shivaun Quinlivan

Shivaun Quinlivan is a graduate of NUI, Galway, King's College London and The Honourable Society of King's Inns. Shivaun is the Director of the LL.M. in International and Comparative Disability Law and Policy, which is a taught Masters in Law that addresses various legal and policy issues in relation to disability law.

Shivaun is currently undertaking a PhD in Trinity College Dublin; her research addresses the efficacy of public interest litigation in the context of the right to education for children with disabilities. Shivaun has been a lecturer at the School of Law, NUI Galway since September 2000 where she teaches primarily in the area of Constitutional Law and Disability Law and Policy to the BCL, B.Corp, LL.B and LL.M. in Public Law and other graduate and post-graduate courses.

Shivaun's research interests focus on the rights of people with disabilities, with a particular focus on education and employment. In that capacity Shivaun has worked with and for a range of statutory and other agencies in Ireland and Europe: including the Equality Authority, the National Council for Special Education, the Association of Higher Education Access and Disability, the Health Service Executive as well as working on a number of European Commission funded projects. Guided by both her practical and academic knowledge in this area Shivaun has developed, on her own and in conjunction with colleagues a number of new courses over her time in the School of Law including Education Law and Policy and Disability Law: Contemporary Law Reform Challenges in the National and International Sphere.

Introduction to the UN Convention on the Rights of Persons with Disabilities: development and purpose of the UNCRPD, general principles and obligations for the contracting States

Shivaun Quinlivan
Centre for Disability Law and Policy
School of Law
NUI, Galway

“Paradigm Shift”

- Persons with Disabilities have traditionally been addressed through:
 - Charity
 - Paternalism and
 - Social Policy
- The underlying presumption within the UN CRPD is on ensuring respect for human rights, regardless of the difference of disability.

UN CRPD – A Response

- American's with Disabilities Act, 1990
- Member State actions
- Framework Employment Directive 2000/78/EC
- EU Disability Action Plan 2003-2010 (COM/2003/650)
- EU Disability Strategy (COM/2010/636)
- Proposed New Equal Treatment Directive (COM/2008/426)

UN CRPD

- Adopted by UN General Assembly – 13 December 2007
- Opened for signature - 30 March 2007
- Entry into force – 03 May 2008
 - Convention - 153 signed 106 parties
 - Optional protocol - 90 signed 63 parties
- Ratified by the European Union – 23 December 2010

Why the necessity for a Convention?

- Estimated 10% of world's population have a disability.
- Existing human rights conventions were not responding to the needs of people with disabilities.
- CRPD does not create new rights, instead focusing existing human rights to the needs of people with disabilities.

“Paradigm Shift” – What is it?

- The shift is from the medical model of disability to the social model of disability.
- Focus on societal barriers as opposed to the individual and their perceived limitations.
- There is a distinction between “impairment” and “disability”

Article 1 – UNCRPD - Disability

- Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

UN CRPD

- 25 paragraphs in the preamble
- Article 1 – The purpose of the convention
- Article 2 – Key definitions
- Article 3-9 – Articles of general application
- Articles 10-30 – Substantive rights
- Articles 41-50 – Implementation and monitoring

CRPD

Preamble

1. Purpose
2. Definitions
3. General principles
4. General obligations
5. Equality and non-discrimination
6. Women with disabilities
7. Children with disabilities
8. Awareness-raising
9. Accessibility
10. Right to life
11. Situations of risk and humanitarian emergencies
12. Equal recognition before the law
13. Access to justice
14. Liberty and security of the person
15. Freedom from torture or cruel, inhuman or degrading treatment or punishment
16. Freedom from exploitation, violence and abuse
17. Protecting the integrity of the person
18. Liberty of movement and nationality

CRPD (2)

19. Living independently and being included in the community
 20. Personal mobility
 21. Freedom of expression and opinion, and access to information
 22. Respect for Privacy
 23. Respect for home and family
 24. Education
 25. Health
 26. Habilitation and rehabilitation
 27. Work and employment
 28. Adequate standard of living and social protection
 29. Participation in political and public life
 30. Participation in cultural life, recreation, leisure and sport
 31. Statistics and data collection
 32. International cooperation
 33. National implementation and monitoring
- Articles 34-50 provide for Implementation and monitoring
Optional Protocol

Purpose of the CRPD – Article 1

- Promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity.

Discrimination – Article 2

- means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation

Reasonable Accommodation – Article 2

- means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

General Principles – Article 3

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

General Principles (2)

- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

General Obligations – Article 4

Include:

- To adopt all appropriate legislative ...
- To take all appropriate measures, including modifying, abolishing existing laws ...
- To protect and promote human rights for persons with disabilities in all activities
- To take appropriate measures to eliminate discrimination
- To take various actions to ensure accessibility

General Obligations (2)

- Economic, Social and Cultural Rights
- Commitment to progressive realization
 - Minimum Core obligations
 - Some with immediate effect
 - Progressive realization measurement indicators
 - (Respect, Protect, Fulfill)

- Duty to consult and involve people with disabilities

Equality and non-discrimination

- All equal before and under the law

- State Parties shall prohibit all discrimination and guarantee ... equal and effective legal protection

- State Parties shall ensure reasonable accommodation is provided

- Positive action permissible

Awareness-raising – Article 8

- Adopt immediate, effective and appropriate measures to:
 - Raise awareness
 - Foster respect
 - Combat stereotypes
 - Promote positive awareness

Awareness raising – Article 8(2)

- Measures to include:
 - Initiating and maintaining public awareness campaigns
 - Nurture receptiveness
 - Promote positive perceptions
- Foster respect for the rights of persons with disabilities

- Impact in particular on the right to Public and Cultural Life, and the right to Education

Accessibility – Article 9

- To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures
 - Ensure that the ‘environment’ is accessible
 - Identify and eliminate obstacles and barriers to accessibility

- Terms are broadly defined.

Structural Importance

- Articles 3-9 are cross-cutting principles to be applied in all aspects and rights contained in the convention
- Broadly speaking:
 - Articles 10-23 and 29 are civil and political rights
 - Articles 24-28 and 30 are economic, social and cultural rights.

Implementation and Monitoring

- **Conference of States Parties**
 - Meet to consider matters with regard to implementation of the Convention
 - 4th meeting held in September 2011
- **Committee on the Rights of Persons with Disabilities**
 - Body of independent experts which monitor implementation of the Convention by States Parties
 - States parties are obliged to submit regular reports to the Committee on how the rights are being implemented.
 - Optional Protocol

Optional Protocol

- This gives the Committee on the Rights of Persons with Disabilities to examine individual complaints of alleged violations of the the Convention.
- Committee members may also conduct inquiries into allegations of grave or systemic violations of the Convention.

National Monitoring and Implementation – Article 33

- National focal points within government for the implementation of the Convention
- Maintain or develop independent mechanisms to “promote, protect and monitor,” the implementation of the convention.
- Involve civil society, particularly persons with disabilities ...

**Specific substantive obligations under the
UNCRPD: education, health, participation,
privacy and data protection, standard of living,
social protection**

Shivaun Quinlivan
School of Law
Centre for Disability Law and Policy
NUI, Galway

UNCRPD

- Imposes duties on the State
- Does not bestow individual rights

No New Rights

- UNCRPD
 - Complement existing human rights treaties
 - Clarifies the obligations and legal duties of states
 - Ensure the equal enjoyment of human rights by all persons with disabilities

UNCRPD

- 25 paragraphs in the preamble
- Article 1 - The purpose of the Convention
- Article 2 - Key Definition
- Articles 3-9 - Articles of general application
- Article 10-30 - Substantive rights
- Article 34-50 - Implementation and Monitoring

Structure of the CRPD

- Articles 3-9 are cross-cutting principles to be applied in all aspects and rights contained in the Convention.

General Principles - Article 3

- Respect for inherent **dignity**, ... including freedom to make one's own choices ...
- **Non-discrimination**
- Full and effective **participation** and **inclusion**
- **Respect** for difference
- **Equality of Opportunity**
- **Accessibility**
- Equality between men and women
- Respect for evolving capacities of children ...

General Obligations

- Numerous duties imposed upon States Parties including the obligation to legislate
- Economic, Social and Cultural Rights, duty to progressively realize these rights
 - Some are immediately applicable
- Duty to consult

General Principles apply to the range of Rights

- Civil and Political
 - Articles 10-23 and 29
- Economic, Social and Cultural
 - Articles 24-28 and 30

Civil and Political Rights

- Traditionally viewed as rights that protect the individual's freedom from unwarranted State infringement
- Often described as
 - Negative State obligations
 - Minimal Cost implications
 - Capable of immediate enforcement

Economic, Social and Cultural Rights

- These rights are described as positive rights that require State action, thought to have significant cost implications. As a result the legal obligations is often of a different nature, States have a duty to:
 - Respect, protect and fulfill
 - Progressive realization

Civil and Political Rights

- Privacy
- Participation in political and public life
- Participation in cultural life

Respect for privacy – Article 22

- Regardless of where a person lives or their living arrangements they should not be subject to:
 - Arbitrary or unlawful interference with privacy
 - Unlawful attacks on honour or reputation
 - Right to protection from same
- State parties will protect privacy of personal, health, and rehabilitation information on an equal basis with others.

Participation in political and public life – Article 29

- State parties shall guarantee ...
 - Right to vote and be elected
 - Voting procedures are accessible
 - Protect secret ballot
 - Voting assistance
- Actively promote participation ...
 - Non-governmental organizations
 - Forming and joining organizations of persons with disabilities

Participation in Cultural Life, Recreation, Leisure and Sport

- This right contains a number of elements:
 - Access to cultural materials
 - Access to television, film,
 - Access to theatre, museums, libraries ... as far as possible
- The opportunity to develop and utilize Persons with disabilities own creative and artistic abilities
- Address the issue of intellectual property rights

Participation in Cultural Life, Recreation, Leisure and Sport (2)

- Recognition of Linguistic identity
- State Parties shall
 - Promote mainstream sporting activities
 - Disability specific sporting activities
 - Access to sporting, recreational venues
 - Children with disabilities have equal access and participation rights
 - Access to services

Economic, Social and Cultural Rights

- Education
- Health
- Adequate standard of living and social protection

Education – Article 24

- Focus is on inclusive education directed to;
 - The full development of human potential
 - The development by persons with disabilities of their personality, talents ... to their fullest potential;

Education (2)

- State Parties shall ensure that Persons with Disabilities are not:
 - Excluded from the general education system, particularly from **free and compulsory** primary education
 - Access quality education equally with others
 - Reasonable accommodation provided
 - Receive support required ... to facilitate education

Education (3)

- Life and social development skills
 - Braille and alternative methods
 - Sign language
 - Education in the most appropriate setting for blind, deaf and deafblind
 - This provision provides a challenge to the notion of mainstreaming

Health – Article 25

- State Parties, recognize the right to attainable standard of health without discrimination
 - Same range, quality and standard of free or affordable health care
 - Provide disability specific services such as early intervention
 - Services close to peoples home
 - Requirement on health professionals
 - Prohibit and prevent discrimination

Adequate standard of living and social protection – Article 28

- Adequate standard of living including:
 - Food
 - Clothing
 - Housing
- Social Protection including:
 - Clean water
 - Appropriate and affordable services
 - Respite, training, counseling ...
 - Housing

Progressive Realization

- Article 4(2)
- To take measures to the maximum of their available resources ... with a view to achieving progressively the full realization of these rights
- Some obligations have immediate effect

ICESCR - General Comment No. 3

- Full realization may be achieved progressively
- “Steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”

Eide’ s formulation

- Ensure
- Protect
- Promote

Articles 3-9 apply to all rights

- Discrimination is prohibited on the basis of disability in relation to the full spectrum of rights within the Convention
- Discrimination includes the duty to provide reasonable accommodation.

- Articles 3-9 provide significant potential in assisting in the progressive realization of these rights.

Conclusion

- UN CRPD is in its infancy

- EU ratifying human rights Treaties also new

- Two ways to go:
 - Minimalist and attempt to avoid implications of UN CRPD
 - Generous and attempt to fulfill human rights of all.

André Gubbels

André Gubbels

André Gubbels is the Director General of the Service for People with Disabilities which is an integral part of the Belgian Federal Public Service for Social Security.

The Service pays the following benefits:

- Disability income replacement and integration allowances (under 65 years of age) - paid at different rates depending on the extent of the disability
- Elderly support allowances (over 65 years of age) paid at different rates depending on the extent of the disability

Formerly, he has been Inspector General in the Walloon Agency for the Integration of People with Disabilities (AWIPH) in Belgium.

He also worked previously in the Disability Unit of the Directorate General for Employment and Social Affairs of the European Commission.

He has also been Deputy Chief Cabinet Officer to the Belgian Minister for Health and Disability Policy and Administrator in the Belgian Department of Labour.

He graduated in law at the University of Liège and edits a law review which focuses on Belgian disability legislation.

The implications of the UNCPRD for EU Disability Law

Is there room for direct effect?

Is there room for direct effect ?

Since its ratification by the EU, the UNCPRD has become an integral part of the EU law. Therefore, can individuals make claims to individual rights based on the UNCPRD which their national courts must directly apply as part of the EU law ?

What if UNCPRD provisions have direct effect ?

- The UNCPRD provisions create rights which individuals may rely on before domestic courts
- The domestic courts must apply them
- They are supreme to any conflicting national provisions

Direct effect in the international legal order

A matter of national legal tradition

- “Dualist” tradition : international laws does not exist for citizens as laws. International law has to be national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law but citizens cannot rely on it and judges cannot apply it.
- “Monist” tradition : a citizen who is being prosecuted by his state for violating a national law, can invoke the human rights treaty in a domestic court and can ask the judge to apply this treaty and to decide that the national law is invalid. He or she does not have to wait for national law that translates international law.

Direct effect in European Union law

In the Van Gend and Loos Case (case 26/62), ECJ ruled that the Community legal order constitutes a “*new legal order of international law*” in which the EC Treaty imposes legal obligations and confers legal rights on individuals and these obligations/rights are enforceable in the national courts.

About Van Gend and Loos

- ❑ Article 30 (then Art 12) of the Treaty : “*Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States*”
- ❑ Mr Van Gend was charged an 8% import tariff on good X from Germany into Netherlands based on a Dutch regulation in force since 1960. The EC Treaty had come into force in 1958. Mr Van Gend challenged tariff as unlawful.
- ❑ Preliminary ruling from Dutch Court under Art 234 (ex 177) : “Does article 30 (ex 12) have direct application in national law in the sense that nationals of Member states may, on the basis of this Article, lay claim to rights which the national court must protect?”

The Van Gend and Loos ruling

- ❑ The Treaty does not have a provision on direct effect.
- ❑ For the ECJ, it is necessary to consider the “spirit, the general scheme and the wording” of these provisions.
- ❑ Objective of the Treaty is to create a common market-of direct concerned to interested parties. This implies the Treaty is more than just an agreement between states
- ❑ The Community constitutes a new legal order for the benefit of which States have limited their sovereign rights...the subjects of which comprise the Member States and their nationals. Independently of national legislation, Community law therefore imposes obligations on individuals and also confers individual rights.

But they are restrictive conditions for direct effect

The provision in the Treaty :

- ❑ must be clear, unconditional, negative
- ❑ must require no legislative intervention by states
- ❑ must be capable of same interpretation in all Member States

Some provisions have also a “Horizontal direct effect”

Defrenne v Sabena (case 43/75) :

- ❑ Art 157 (then 119) states that Member States “*shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied*”
- ❑ Article 157 (then 119) confers individual rights which must be protected. The fact that the Article is addressed to Member States does not prevent such rights being conferred on individuals
- ❑ Art 157 (then 119), being mandatory, extends to all agreements intended to regulate paid labour collectively.

Direct effect of EU Secondary legislation

- ❑ Decisions
 - Binding in their entirety upon those to whom it is addressed (not general, but specific)
- ❑ Regulations
 - Directly applicable in all member states. They are self-executing
- ❑ Directives
 - Not directly applicable-no self-executing character. Transposition is in principle required but they are exceptions (non implementation, precise and clear)

About the status of international agreements in the EU legal order

- ❑ Article 216 of the Treaty : the international agreements concluded by the Community are binding for both the EC institutions and the Member States
- ❑ As a general rule, international agreements properly concluded by the Community prevail over EC secondary law and national provisions
- ❑ Once included in the EC legal order, international agreements are subject to the judicial control of the ECJ

Status of the UNCPRD in the EU legal order

- ❑ The European Union acceded to UN Convention on the Rights of Persons with Disabilities, with the Council Decision 2010/48/EC, formally adopted on 26 November 2009
- ❑ The instrument of ratification was deposited in December 2010, after the adoption of a Code of Conduct by the Council.

The UNCPRD ratification as a first time in history

- ❑ The EU competence to conclude the UNCPRD derives from Article. 19 TFEU which addresses disability discrimination and article 114 TFEU which addresses the internal market.
- ❑ It is the first time ever that the EU becomes a party to an international human rights treaty
- ❑ It is also the first time that an intergovernmental organization join a United Nations human rights treaty.

The UNCPRD as a mixed agreement

- ❑ Mixed agreements are signed and concluded by the EU and its Member States on the one hand, and by a Third Party on the other hand
- ❑ Mixity is due to the fact that. part of an international agreement falls within the scope of the EU powers and part within the scope of the powers of the Member States
- ❑ The UNCPRD, as other multilateral agreements that make provision for participation by regional organisations such as the EU alongside its Member States, provides for a Declaration of competence by the regional organization, specifying which areas of the agreement fall within the competence of the Regional organization and which within that of its Member States

The EU competences with regard to matters governed by the CPRD

- Exclusive competence of the EU : the compatibility of State aid with the common market, the Common Customs Tariff, and obligations with respect to the EC/EU's own public administration
- Shared competence : combating discrimination on the grounds of disability; free movement of goods, persons, services and capital; agriculture; transport; taxation; internal market; equal pay for men and women; trans-European network policy; and statistics.
- Supporting or coordinating competence : employment; education; vocational training policy; actions strengthening economic and social cohesion; and cooperation with third countries

Scope of the control of the ECJ on mixed agreements

The ECJ have no right to rule on them :

- If there is truly no Union law on the matter (Case C-431/05 *Merck Genericos*)
- If it deals with area largely covered by Community Law, but not the precise subject matter (Case C-239/03 *Commission v France -Etang de Berre*)

Effects of international agreements concluded by the Community in the EC's legal order

- ❑ The ECJ has adopted a “monist” approach for evaluating the legal effects of international agreements: an international agreement has legal effect in the EU legal order and does not require further acts of implementation, as a regulation or directive (Case 181/73, Haegeman/ État Belge)
- ❑ **AND** Under certain condition can international agreements be invoked before the court by an individual; there is **direct effect** (Demirel - Case 12/86)

About Demirel

- ❑ The Agreement Establishing an Association between the European Economic Community and Turkey provides some key provisions regarding the free movement of workers (admission and residence , right to equal treatment...)
- ❑ The ECJ stated that many provisions of the agreement are programmatic in nature and “*are not sufficiently precise and unconditional to be capable of governing directly movement of workers*” (Case 12/86 Demirel)
- ❑ However some provisions are sufficiently precise and can thus be relied upon directly by workers (Case C-192/89 Sevince)

Precision and unconditionality

- ❑ Example of provision not having direct effect : Art. 12 AA: *The Contracting Parties agree to be guided by Articles 48, 49 and 50 the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.*
- ❑ Example of provision having direct effect : Art 37 AP: *“As regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community”.*

In a nutshell

- ❑ Have direct effect the provisions of the CRPD which
 - ❑ address areas already largely covered by Community law
 - are sufficiently clear, precise and unconditional so as to have direct effect under the standard established by the ECJ
- ❑ Are there any ?
 - ❑ *“All provisions of the CPRD are directed to States Parties and none seems to be clear and unconditional.”*

The UNCPRD has an interpretation tool of European Union law

- The primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (ECJ Case C-61/94)
- The accession to the UN CRPD creates therefore an obligation to interpret EU law in manner that is consistent with the Convention

The UNCPRD has an interpretation tool of European Union law (cont)

- The ECJ case law leaves the door open to the review of EU measures in light of the UNCPRD, in particular when interpreting EU and national anti-discrimination laws in respect to disability as it was introduced in the European Union through the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- The UNCPRD may require a much more vigorous consideration of the need to incorporate disability accessibility standards in internal market harmonisation legislation.

The role of the EU Charter of fundamental rights

Article 6 (1) EU Treaty:

“The Union recognises the rights, freedoms and principles set out in the *Charter of Fundamental Rights of the European Union* of 7 December 2000, as adapted at Strasbourg on 12 December 2007, which shall have the **same legal value** as the Treaties”.

Disability in the Charter

- The Charter includes two explicit references to disability and contains other provisions which are of interest for persons with disabilities
 - Art. 21 of the Charter lists disability as one of the grounds on which discrimination must be prohibited
 - Art. 26 deals with the *“Integration of persons with disabilities”* and states: *“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”*.

Scope of application of the Charter

Art. 51 : “The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law”

“This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties”

Conclusion

- ❑ The inclusion of fundamental rights into primary EU law could lead the ECJ to attribute binding ‘direct effect’, vertical and horizontal, to provisions of the Charter.
- ❑ However those provisions would have to meet at least the same standards as those of the UNCRPD.
- ❑ The ECJ may be aided by the provisions of the UNCRPD in interpreting the scope of the Charter.

Richard Whittle

Richard Whittle

Senior lecturer in law, LLB(Hons), LLM, PGC Res, Law Department
Sheffield Hallam University

Richard is the BA (Hons) Law and Criminology course leader. He joined the Law Research Group in 2007. Prior to this appointment he was a Jean Monnet Lecturer in EU Law at the University of Leeds.

His principal research interest is in EC disability law and policy. Between 1998 and 1999 he represented the Disability Unit of the EU Commission in the development of what is now Directive 2000/78/EC (the Employment Framework Directive).

Richard is an expert advisor to the British Disability Rights Commission (recently subsumed within the Equality and Human Rights Commission) and the European Disability Forum. He has acted as a consultant for various groups and institutional bodies in and out of Europe and is a regular contributor to academic journals and symposia at national and international levels. Since 2003, Richard has been a registered expert on the EU Commission's DG Employment and Social Affairs AMI-INT Expert database (registration number: 20030225-0560).

He is also a regular speaker on equality and disability law at the Academy of European Law (ERA) in Trier, Germany.

Research

Key areas of interest

- EC disability law and policy
- EC equality law
- EC legislative powers and the decision-making process
- comparative disability equality law
- international human rights law and disability

Non-discrimination, reasonable accommodation & the burden of proof in disability proceedings – EU Law & beyond

Richard Whittle, Sheffield Hallam University, UK

LawSync

www.LawSync.com

Equipping students and practitioners to innovate in the rapidly changing world of legal services



Disability non-discrimination law in context

- Non-discrimination law (the prohibition of discrimination) – **just one element** of an effective disability policy.
 - Note, in particular, disability assistance & insurance programmes at a national level.
- The **material scope** of the prohibition – variations exist depending on the legal system.
- The **qualitative scope** of the prohibition - variations exist depending on the legal system.

Disability non-discrimination law in context: the **material scope**

- **National system** - varied material scope but a **common minimum** of coverage exists among EU Member States, driven by their EU obligations (see next bullet point).
- **EU system** - *explicitly* applying to the context of employment & occupation (Directive 2000/78/EC). But note:
 - potential judicial expansion via general principles & the EU Charter of Fundamental Rights.
 - COM (2008) 426 proposal (Goods, Facilities, Services) + possibility of a European Accessibility Act.
 - potential expansion of EU disability law flowing from the EU's commitments under the UNCRPD.

Disability non-discrimination law: the **material scope** cont.

- **Global international system** - a material scope that is as *extensive* as the UNCRPD.
 - reaching beyond the common minimum of the EU Member States to encompass equality of access to, and enjoyment of, a full range of public and private goods and services.

Disability non-discrimination law: **qualitative scope**

- **National system** - *varied* but:
 - The '**equal treatment**' objective forms a **common minimum standard** among EU Member States in the context of employment & occupation (driven by their EU obligations).
 - Beyond employment & occupation, EU Member States enjoy discretion subject to their commitments under the ECHR & the UNCRPD. But note the potential expansion of EU disability law flowing from the EU's commitments under the UNCRPD.

Disability non-discrimination law: **qualitative scope cont. (a)**

- **EU system** - demands *effective remedies* at Member State level to realise the 'equal treatment' objective in the context of employment & occupation. Note also:
 - A higher level of protection is permitted in this context and arguably as far as 'positive discrimination' (Art. 7(2) of Directive 2000/78/EC).
 - Beyond that context, the concept of disability discrimination is yet to be formally articulated either by the EU legislator or by the CJEU.

Disability non-discrimination law: **qualitative scope** cont. (b)

- **Global international system** - UNCRPD requires signatories (nation States & the EU) to implement:
 - a conception of the '**equal treatment**' objective (Articles 3e & 5) that was arguably intended by the drafters of the disability provisions in Directive 2000/78/EC.
 - a conception of '**accessibility**' (Articles 3f & 9) that logically assumes an anticipatory duty and applies to both civil & political and socio-economic type rights

The 'equal treatment' objective

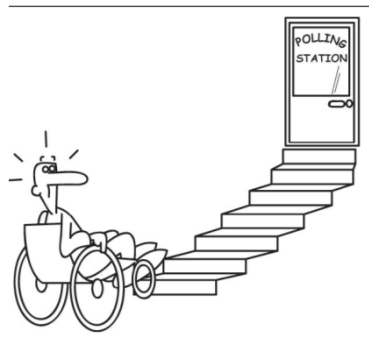
- **Directive 2000/78/EC** (the framework directive)
 - Direct discrimination
 - Indirect discrimination
 - The Reasonable Accommodation duty (final slide)
 - Harrassment
 - Victimisation

Whittle, R. (2002) 'The Framework Directive for equal treatment in employment and occupation: an analysis from a **disability rights** perspective' 27 *European Law Review* 303

The central component: the 'duty'

- Synonymous with disability
- New to the majority of EU Member States
- Seen as a 'specialist' issue
- Attracting an uncertain & inconsistent interpretation within and among the Member States
 - threatens to undermine the policy value (and consequently the success) of the prohibition in the context of disability
- Ultimately - is the duty an integral part of the equal treatment objective or an exception to it?

The challenge with the duty: **changing mindsets**



Securing a better fit between the individual, their physical & organisational environments as well as the products & services they interact with ('design for all')

The operation of the 'duty'

- 'Reasonable'?
 - Need only be an 'effective' accommodation (not the best)
 - Must not: (i) impose an undue/disproportionate burden on the respondent (ii) change the nature or purpose of the job or service sought
- Procedural as well as substantive elements to be followed
- Only applies to an 'otherwise qualified' individual
- Once triggered, the duty renders what might appear to be a 'relevant' consideration 'irrelevant'
 - recognising that the barrier to participation exists because of poor design which, in turn, results in less favourable treatment (discrimination). A failure to recognise human difference (where reasonable) in a new design or to remove an existing barrier is itself discrimination.

The purpose of the prohibition & the 'duty'

- Removing *irrelevant* considerations from the decision making process:
 - No white people (e.g., of 'direct' race discrimination) – *removal of rule*.
 - No beards (e.g., of 'indirect' race/religious discrimination) – *removal of rule unless objective justified*.
 - Must work on Fridays (application of the 'duty' – religious discrimination) – *retention of general rule but adaptation to the individual where 'reasonable'*.

The 'opening stages' of a discrimination claim

- Burden of proof – its reversal in discrimination claims:
 - Article 10 of Directive 2000/78/EC (two stage test)
 - Burden of proof shifts where there are facts supporting an inference of discrimination
 - Case C-415/10 *Meister v SDCS*
- The prohibited ground of 'disability'
 - Article 1 of Directive 2000/78/EC (“...on grounds of...”)
 - Case C-13/05 *Chacón Navas*
 - Case C-303/06 *Coleman v Attridge Law*

'disability': a problematic term

WHO's *International Classification of Functioning, Disability & Health* (ICF, 2001) employs 'disability' as an umbrella term for:

- **Impairment** (deviation or loss in terms of body function and/or structure)
- **Activity limitation** (person level impact of such deviation or loss)
- **Participation restrictions** (barriers to participation in the social and built environment)

Asking for trouble?: the Americans with Disabilities Act (ADA, 1990)

- Prior to the ADA Amendment Act (effective January 2009), the ADA defined **disability** as:
 - A physical or mental impairment that *substantially limits* one or more of the *major life activities* of such an individual;
 - A record of *such* impairment; or
 - Being regarded as having *such* an impairment
- * many types of impairments - including epilepsy, diabetes, multiple sclerosis, intellectual disabilities, major depression, and bipolar disorder were excluded by the Courts

Non-discrimination, disability & EU Law: the future impact of the UNCRPD

- Realising the intended **qualitative scope** of the prohibition
 - E.g. of the ECtHR: *Glor v Switzerland* (App No. 13444/04)
 - Securing an appropriate definition of disability?
 - Failure to accommodate = discrimination (Article 2 UNCRPD)
- Expanding the **material scope** of the prohibition
 - The general principle of equality: Case C-555-07 *Seda Kucukdeveci* and Case C-236/09 *Test-Achats*
 - 'Accessibility' (Articles 3f & 9 UNCRPD)
- Extra leverage
 - National level leverage - Articles 4 & 33 of the UNCRPD.
 - The CRPD Committee (General Comments; Reviews & Recommendations and the Optional Protocol).
 - International leverage - Articles 32 & 40 UNCRPD.

Australian Disability Discrimination Act (Cth) 1992

disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or (i) previously existed but no longer exists; or (j) may exist in the future; or (k) is imputed to a person.

The 'duty' and its legislative provisions: Directive 2000/78/EC

- **Article 5:** to guarantee compliance with the principle of *equal treatment*; employers shall take *appropriate* measures (where needed in a particular case); unless such measures would impose a *disproportionate burden*; it will not be disproportionate when sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned
- **Recital 17:** This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the *essential functions* of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- **Recital 20:** Appropriate measures; i.e. effective and practical measures to adapt the workplace to the disability, for example, adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
- **Recital 21:** (disproportionate burden) account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.

Inmaculada Placencia Porrero

Inmaculada Placencia

Inmaculada Placencia is Deputy Head of Unit, for Rights of Persons with Disabilities within the Directorate General for Justice. The unit is in charge of the coordination of the European policies for people with disabilities and responsible for the European Disability Strategy 2010-2020 and the implementation of the UN Convention on the rights of persons with disabilities at EU level. She is graduated in Physics and Computer Science and work in RTD activities in industry. Since 1991 she joined the European Commission and worked in several research programmes addressing accessibility and applications for older persons and people with disabilities. The focus of her recent work in the "e-Inclusion" unit of the Directorate General Information Society and Media as well as in the Integration of people with disabilities unit in Directorate General for European Employment social affairs and equal opportunities addressed policy related activities in the area of accessibility at European and international level, as well as eAccessibility and eInclusion and work related to Design for All and Assistive technologies.



Accessibility legislation in the EU outside the field of employment

Inmaculada Placencia Porrero
Deputy Head of Unit
Inmaculada.placencia-porrero@ec.europa.eu

European Commission
Directorate General for Justice
Unit D3 Rights of Persons with Disabilities



OUTLINE

- *CONCEPTS*
 - Accessibility
 - Reasonable accommodation
 - Design for all / universal design
- *EXISTING LEGISLATION*
 - EU conclusion UNCRPD -> declaration of competences
- *COM proposals*





Accessibility

- *Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures.*
- *UNCRPD provide no definition!*



UNCRPD Article 1

- **Purpose**
 - The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
- Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which **in interaction with various barriers** may hinder their full and effective participation in society on an equal basis with others.
- Preamble
 - (v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,



Accessibility and UNCRPD



UN Convention on the Rights of Persons with Disabilities

- *Article 3 Accessibility as a general principle*
- *Article 9 Accessibility*
- *State parties to undertake appropriate measures to ensure equal access for persons with disabilities to:*
 - the physical environment
 - transportation
 - information and communications,
 - **including information and communications technologies and systems & internet**
 - other facilities and services open or provided to the public, both in urban and in rural areas



UNCRPD art 9



- 2. States Parties shall also take appropriate measures:
- (a) To develop, promulgate and monitor the implementation of
- **minimum standards and guidelines for the accessibility** of facilities and services open or provided to the public;
- (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account **all aspects of accessibility** for persons with disabilities;
- (c) To provide **training for stakeholders on accessibility** issues facing persons with disabilities;
- (d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) To promote the design, development, production and distribution **of accessible information and communications technologies and systems** at an early stage, so that these technologies and systems become accessible at minimum cost.





UN Convention & Standards

- **General obligations...realisation of Human rights**
- *legislative, administrative measure, policies and programmes;*
 - (f) To undertake or promote research and development of **universally designed goods**, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
 - (g) To undertake or **promote research and development** of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
 - (h) To provide **accessible information to persons with disabilities** about mobility aids, devices and assistive technologies, including new technologies as well as other forms of assistance, support services and facilities;



Concepts: DFA - UD

- **UNCRPD art 2 “Universal design”** means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.
- **CEN Guide 6 accessible design**
- design focussed on principles of extending standard design to people with some type of performance limitation to maximize the number of potential customers who can readily use a product or service.
- NOTE 1 Accessible design is a subset of universal design. Terms such as design for all, barrier-free design, inclusive design, transgenerational design (see 3.7) are used similarly but in different contexts.
- NOTE 2 Design for all is more commonly used in Europe. It refers to designing mainstream products and services to be accessible by as broad a range of users as possible. It can be achieved through one of three ways:
 - a) by designing products, services and environments that are readily usable by most users without any modification;
 - b) by making them adaptable to different users (adapting user interfaces); and
 - c) by having standardized interfaces to be compatible with special products for people with disabilities.
- NOTE 3 Barrier-free design is more commonly used in codes and standards documents, and often in reference to the
- removal of barriers in buildings, whether physical or sensory.



Reasonable accommodation

- **UNCRPD**
- *Article 2*
- *"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms"*



Reasonable accommodation Dir 2000/78

- **Article 5 – Reasonable accommodation for disabled persons**
- *In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.*





COM 2008/ 426

- **Recital 19** "The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities."
- **Article 2**
- **Concept of discrimination**
- ...
- **5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.**



Art 19 TFEU Treaty proposal COM (2008) 426

- **Scope**
 - **Social protection, including social security and healthcare;**
 - **Social advantages;**
 - **Education;**
 - **Access to and supply of goods and other services which are available to the public, including housing.**
- **Principle of equal treatment of persons with disabilities**
- **Art 4**
 - **Effective non-discriminatory access (*accessibility*)**
 - **Anticipatory**
 - **Conditions:**
 - Disproportionate burden
 - Fundamental alteration
 - Provisions of alternatives
 - **Reasonable accommodation**
 - **Conditions:**
 - Disproportionate burden

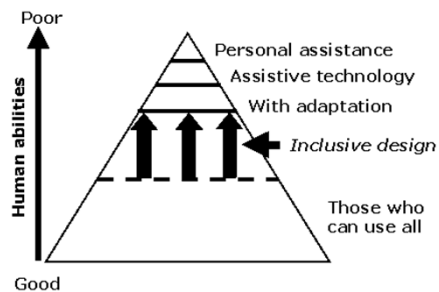


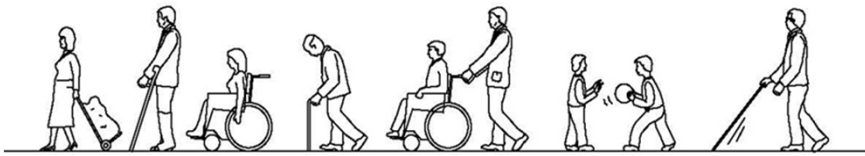
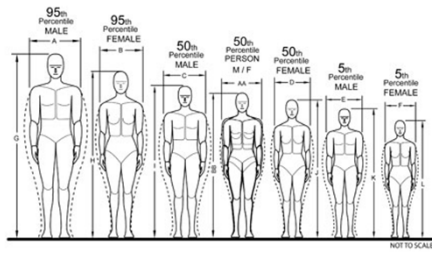


Concepts

- *Accessibility*
 - anticipatory manner (preventive, proactive)
 - most common problems
 - General group
 - design and functioning of the product
 - general guidelines or standards
 - Link with discrimination

- *Reasonable accommodation*
 - Reactive
 - Individual persons
 - Particular problems
 - Disproportionate burden





Concepts

- *Accessibility*
- *(following design for all)*
- *+ reasonable accommodation*
- *(including assistance)*

- *-> equal access ????*



AT ↔ **Accessibility**





Drivers for accessibility

- **UN Convention on the Rights of Persons with Disabilities**
- **Ageing of the population**



Accessibility

- *Legislation*





EU competence in the disability field

- *No specific single legal basis providing for legislative or other action in the disability field*
- *Art. 19 TFEU Non-discrimination on the basis of disability*
- *Other legal bases can be relevant, e.g. Transport (Art. 90-100 TFEU), State Aid (107-109 TFEU) Employment (145-150 TFEU), Social Policy (151, 153 TFEU) Education (Art. 165 TFEU), Public health (Art. 168 TFEU)*

06/26/11



EU competence in UNCRPD matters





Declaration of competence

- *18 legal acts dealing with accessibility*
- *10 legal acts dealing with independent living, social inclusion work and employment*
- *9 dealing with personal mobility*
- *5 dealing with access to information*
- *5 dealing with statistics and data collection*
- *3 dealing with development cooperation*



EU Declaration of Competences UNCRPD Accessibility



- *UNCRPD EU declaration of competences*
- *...regarding accessibility*
- **DG ENTR**
 - (radio & terminal equipment, Lifts, machinery (platforms) Busses, Medical products)
- **DG MOVE**
 - high-speed rail system, inland waterway vessels and passenger ships , motor vehicles and their trailers, and of systems, technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system , rights of disabled persons and persons with reduced mobility when travelling by air
- **DG INFSO**
 - regulatory framework for electronic communications networks and services, universal service and users' rights relating, television broadcasting activities
- **DG MARKT**
 - 4 PP directives (water, energy, transport and postal services sectors water, energy, transport and telecommunications sectors, public works contracts, public supply contracts and public service contracts, postal services and the improvement of quality of services), information society services, in particular electronic commerce, in the Internal Market harmonisation of certain aspects of copyright and related rights in the information society
- **DG REGIO**
 - European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation





Other relevant EU legal acts relevant and responsible services

- **DG MOVE**
- *Rights of passengers in bus and coach and by sea and inland waterway*
- **DG INFSO**
- *amending a common regulatory framework for electronic communications networks and services,*
- **DG ENTR**
- *REGULATION (EU) No 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC*



Transport

- *Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air OJ L 204, 26.7.2006, p. 1-9.*
- *Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations OJ L 315, 3.12.2007, p. 14-41*
- *Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system (notified under document C(2007) 6633), OJ L 64, 7.3.2008, p. 72-207*
- *Directive 2001/85/EC of the European Parliament and the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, amending Directives 70/156/EEC and 97/27/EC (OJ L 125, 13.2.2002, p.1)*
- *Legislative proposal in maritime transport and for busses and coaches.*





Transport Rights PRM

- The managing body of an airport, port terminal, staffed rail stations or train and appointed coach station shall be responsible to provide assistance up to seats inside the vehicle/ship/plane.
- Carriers are mainly responsible for allocating seats in order to meet passenger needs and the carriage of mobility equipment, plus assistance to move inside the vehicle/ship/plane if necessary/ feasible.
- No *opt-out* for carriers – but infrastructure managing bodies can subcontract for the supply of assistance.
- Assistance without additional charge to PRMs.



Transport Rights PRM

Special conditions in case of refusal **ASSISTANCE**

Accessibility and information

- Carriers, rail operators and terminal/stations operators shall have in place non-discriminatory access conditions.
- The access conditions shall be made publicly available.
- Information on conditions of carriage, journey conditions and access conditions are to be made available in appropriate and accessible formats for disabled persons and PRM (“where feasible” for coach).
- Confirmation of assistance by any means available including SMS (maritime).

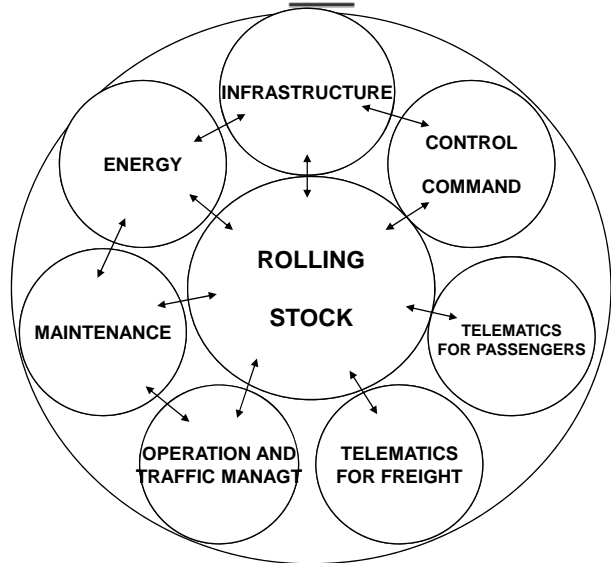


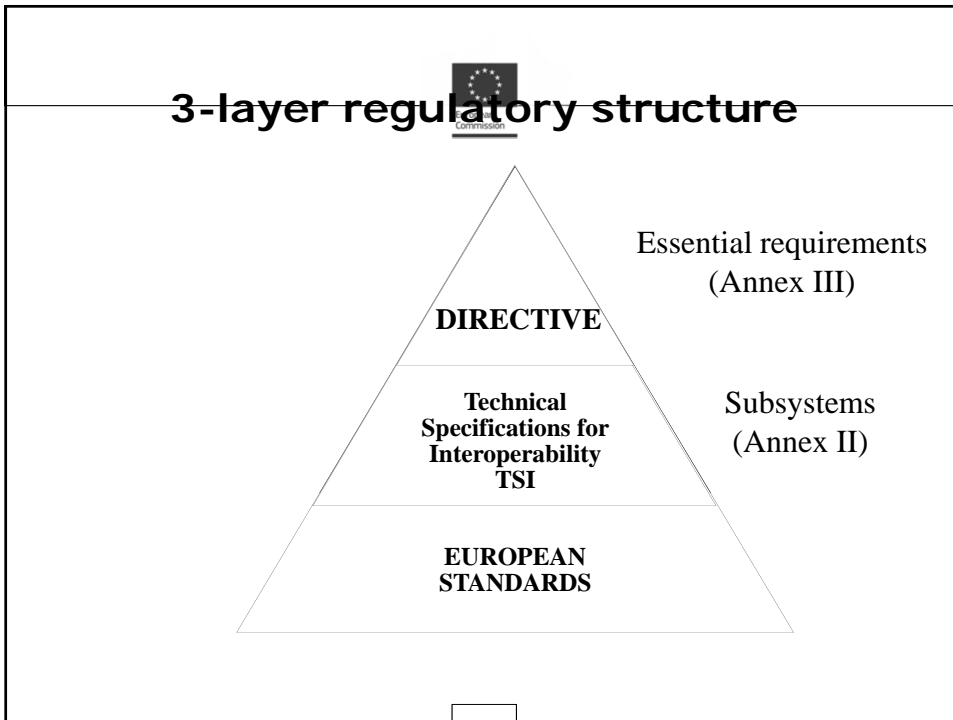
Interoperability Directives



- Directive 96/48: Interoperability on the High Speed TEN
- Directive 2001/16: Interoperability on the Conventional TEN
- Directive 2004/50 modifying 96/48 and 2001/16
- Directive 2007/32 amending Annex VI of 96/48 and 2001/16
- Directive 2008/57/EC on the Interoperability of the Rail System within the Community (covering both HS and CR and extended to the whole of the European Network)

Sub-systems





-
- High-Speed and Conventional rail TSI s**
- *Commission Decision 2008/217/EC of 20 December 2007 on the TSI "safety in railway tunnels"*
 - *Commission Decision 2008/164/EC of 21 December 2007 on the TSI "accessibility for persons with reduced mobility"*
 - *Commission Regulation (EU) No 454/2011 of 5 May 2011 on the TSI "telematics applications for passenger services"*



ICT

- *Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)*
- *Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).*
- *These 2 Directives are currently under revision and the accessibility provisions have been reinforced in the Commission proposals.*
- *Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity*
- *Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.*



Revision of EU telecoms package

- *Revision of 5 Directives - EU framework for electronic communications*
- *Adopted November 2009, implementation deadline is 25 May 2011*
- *Most relevant:*
 - *Universal Service Directive – universal service and end-user rights*
 - *Framework Directive – inclusion of issues related to users with disabilities in the general policy aims*





Universal service *mandatory provisions*

- *Universal service: safety net of minimum set of services defined at EU level to be available to all, independently of geographical location, at an affordable price.*
- *Provision universal service by designated undertakings may be financed from public funds/sector specific funding.*
- Universal service for disabled end-users:
- *New mandatory provisions*
- *- equivalent access and affordability of publicly available telephone service provided over network connection at a fixed location*
- *- equivalent access and affordability of comprehensive directories and directory enquiry services*
-



Universal service *other provisions*

- *Other provisions*
- *- measures to allowing disabled end-users to take advantage of the choice of undertakings and service providers*
- *- accessibility of public payphones to disabled end-users*
- *NRAs may assess the general need and design specific requirements*





End-user rights

transparency

- Transparency and publication of information:
- - regular information to disabled subscribers on details of products and services designed for them
- - publication of information on measures taken to ensure equivalent access for disabled end-users
- - information on quality of service parameters so that (disabled) end-users have access to comprehensive, reliable, comparable and user-friendly information
- (possible NRA requirements on providers of electronic communications networks/services)



End-user rights

harmonised numbers

- 112 and emergency services
- - equivalent access for disabled end-users to emergency services, including measures enabling access to emergency services while travelling in other MS (e.g. SMS service, text-relay, video-relay or other real-time functionalities)
- 116xxx numbers for harmonised services of social value
- - access for disabled end-users to services provided under '116' numbering range (to the greatest extent possible), incl. when travelling
- - Commission may adopt technical implementing measures
- Must carry obligations
- - possibility to impose transmission of complementary services, particularly accessibility services to enable appropriate access for disabled end-users





End-user rights

equivalent access and choice

- *Requirements that may be imposed by relevant national authorities on all undertakings providing electronic communications services:*
- *Ensuring equivalence in access and choice for disabled end-users*
- *- access to electronic communications service equivalent to that enjoyed by majority of end-users (i.e. functionally equivalent access allowing same usability of services but by a different means, e.g. accessible information on services, billing, customer services, design for all, terminal equipment)*
- *- benefit from choice of undertakings and services available to majority of end-users (i.e. consumer protection requirements such as e.g. equivalent terms and conditions of services, incl. prices and tariffs)*



End-user rights

terminal equipment

- *MS to encourage availability of terminal equipment offering necessary services and functions (i.e. better end-to-end solutions for disabled and more incentives to invest in new technology and services for manufacturers of goods and service providers)*
- *Inclusive Communications Experts Group (INCOM)*
- *BEREC's report on ensuring equivalence for disabled end-users*
- *http://www.erg.eu.int/doc/berec/bor_10_47Rev1.pdf*





Public Procurement Directives 2004/18/EC & 2004/17/EC

- *The preambles to the revised Directives (paragraph 29 and paragraph 42):*
- "Contracting authorities should, **whenever possible**, lay down **technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users.**"
- *Articles on technical specifications (Article 23, and Article 34):*
- "Whenever possible [these] technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users."
- Award phase...(art 53)
the criteria on which the contracting authorities shall base the award of public contracts shall either:
 - (a) *when the awards is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject matter of the public contract in question, for example quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics,....*
 - (b) *the lowest price*



European
Commission

Staff working paper on SOCIAL CONSIDERATIONS IN PUBLIC PROCUREMENT - SEC(2010) 1258.

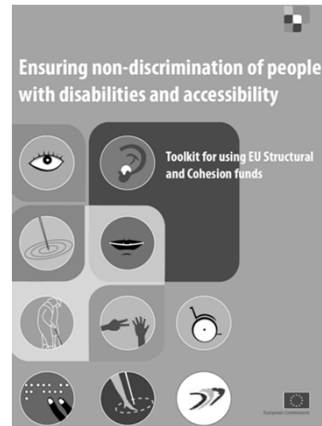
- *Key issues*
- *Objectives*
- *legal framework*
- *Overview of the procurement process*
- *Identifying the needs-> subject matter of the contract*
- *Technical specifications*
- *Technical capacity*
- *Exclusion selection and award criteria*
- *Contract performance*
- *http://ec.europa.eu/internal_market/publicprocurement/other_aspects/index_en.htm#social*





Structural Funds General regulation: Article 16 on accessibility and non-discrimination

- **Article 16 Regulation 1083/2006**
- *The Member States and the Commission shall take **appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds** and, in particular, in the access to them.*
- *In particular, **accessibility** for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.*



Recent developments

- *Revision of the Public Procurement Directives COM(2011) 896*
 - *article 40 technical specifications*
 - *article 61 quality assurance standards (accessibility)*
 - *article 66 award of contracts (accessibility)*
 - *article 84 public oversights (report includes accessibility)*
- *New Structural Funds regulation COM(2011) 615*
 - *Article 7 on discrimination*
 - *Article 87 operational programmes: description disability and accessibility*
 - *article 100 monitoring: disability and accessibility*
 - *article 101 reporting: disability and accessibility*
 - *ex ante conditionalities: UN Convention and accessibility*
- *Proposal for Trans European Networks*
 - *article 4 objectives (accessibility)*
 - *article 10 priorities (accessibility)*
 - *article 39 use of new technologies (accessibility)*
 - *article 43 accessibility for all users*



Accessibility

- *Non legislative measures*
- *Standardisation*



Accessibility related standardization work at EU level

- ***Mandate 376:** Accessibility requirements for public procurement of products and services in the **ICT** domain*
- ***Mandate 420:** Accessibility requirements for public procurement in the **Built Environment** (including **transport infrastructures**)*
- ***Mandate 473** to include Accessibility following **Design For All** in relevant standardization activities*





Accessibility in the EDS 2010-2020 (1)

- **Problem:**
 - not enough accessible goods and services in the European market;
 - fragmentation of markets to be removed through harmonisation
 - barriers for free movement of persons with disabilities
- **EDS 2010-2020**
 - developing specific standards for particular sectors
 - improve the proper functioning of the internal market
 - use legislative and other instruments, such as standardisation
 - optimise the accessibility of the built environment, transport and ICT
 - explore the merits of adopting regulatory measures, based on the principles of smarter regulation, to ensure accessibility of products and services, including measures to step up the use of public procurement.



Member States	General legislation	Transport		Built environment		ICT	
		Legislation	Standards	Legislation	Standards	Legislation	Standards
		Regulation	Guidelines	Regulation	Guidelines	Regulation	Guidelines
Austria AT	N+R		N	R	N	N	
Belgium (federal) BE		N+R	N+R	R	R	N+R	N+R
Bulgaria BG		N	N	N	N	N	N
Cyprus CY	X	X		X			
Czech Republic CZ		X		X	X	X	
Germany DE	N+R	R		N+R	N+R	N+R	
Denmark DK		N	N	N			N
Estonia EE		N		N		N	N
Greece EL		N					
Spain ES	N	N+R		N+R		N	
Finland FI				X	X		
France FR	N	N	N	N	N	N	N
Hungary HU				X		X	
Ireland IE	N		N	N	N+R		N
Italy IT		N		N+R		N	
Luxembourg L		N		N	N		N
Lithuania LT							
Latvia LV		X	X	X	X	X	X
Malta MT	N			N	N		N
The Netherlands NL		N	N	N	N	N+R	
Poland PL		N		N		N	
Portugal PT	N	N	N	N+R	N	N	N
Sweden SE		N		N	N	N	N
Slovenia SI			N	N	N	N	
Slovak Republic SK		N		N		N	
United Kingdom UK	N	N		N	N		



•Steps towards a European Accessibility Act

- Launch a study on cost-benefit analysis and data collection on accessibility of goods and services in the area of ICT, built environment and transport
- Consult Member States, civil society, businesses
- Impact Assessment
- European Accessibility Act (2012). Its nature, scope and content will depend on the Impact Assessment with results of the study and the consultation



EC work programme 2012 item 99

- European Accessibility Act: improving accessibility of goods and services in the Internal Market
- *"Proposal for a Directive to improve the market of goods and services that are accessible for persons with disabilities and elderly persons, based on a "design for all" approach. This business friendly initiative will include binding measures to promote procurement and harmonisation of accessibility standards."*
- http://ec.europa.eu/atwork/programmes/docs/cw_p2012_annex_en.pdf





Roadmap

- **A. Context, problem definition**
 - **B. Objectives of the initiative**
 - **C. Options**
 - **D. Initial assessment of impacts**
 - **E. Evidence base, planning of further work and consultation**
- http://ec.europa.eu/governance/impact/planned_ia/docs/2012_just_025_european_accessibility_act_en.pdf



Access City Award

- Awareness raising on urban accessibility: (transport, buildings and public spaces, ICT, public services provision)
- Commitment to improvements in accessibility
- Role model to inspire other cities
- Promote best practices
 - First Launch of the competition 2010
 - Award 2011 Avila,
 - Award 2012 Salzburg,



John Horan

John Horan

"On the day before the millennium John Horan had a stroke - it changed his life and made him a better discrimination lawyer. His extensive experience in battling for the rights of disabled people has led to expertise in employment, goods and services, education and public authorities.

He also has a particular interest in other kinds of anti-discrimination work and employment law generally. It has taken him to Trinidad, successfully changing the state honour system as fostering difference and not in compliance with the international law; its has taken him to the Croydon ET where he successfully challenged the terms offer to part time high court judges as discriminatory, and to Hull where he was the first advocate to persuade the ET to recommend reinstatement of a police office.

His views have lead to him being interviewed by the BBC's Ouch and being the subject of stories by The Guardian and The Times. He champions the rights of the disability community and was awarded Bar Council "Pro Bono Lawyer for the Year" in 2003.

John appears frequently for law centres, the FRU, ELAAS, Bar Pro Bono Unit and the Disability Law Association as well as well-known solicitors firms."

"John's approach to disability discrimination is absolutely inspirational. His expertise is second to none and together with his experience, he is a formidable force in the fight to eradicate discrimination based on disability." Les Willans (represented by John in a goods and services discrimination case)

In the matter of Horan [2011] EqLR 473

[printer friendly version](#)

Topic(s):

Disability: services & functions; Services & public functions: disability

Date:

01/05/2011

Issue:

May 2011

Bar Standards Board Review Panel (M Blair QC - Chairman; R de Lacy QC, S Lambert, J Holmes)

22 November 2010

Summary

The Review Panel allowed an appeal from a decision of a Medical Panel of the Bar Standards Board imposing conditions on John Horan's right to continue to practise as a barrister. That decision followed a complaint by the Court of Appeal of his conduct of a case before them. The Review Panel concluded that Mr Horan's abilities and faculties are substantially impaired as a result of a stroke, but that impairment did not amount to an "incapacity" and his fitness to practise was not seriously impaired.

[Link to Michael Rubenstein's commentary.](#)

The facts

John Horan is a barrister at Cloisters Chambers, specialising in discrimination and employment law. On 31 December 1999, he suffered a severe stroke. This resulted in weakness in one side of the body and dysphasia, which affects his readiness of response when conducting oral advocacy. He was able to resume practice, however, and was named by the Bar Council as Pro Bono Lawyer of the Year in 2004.

In April 2008, Mr Horan appeared for the appellant in the Court of Appeal in *Bone v London Borough of Newham* [2008] IRLR 546. Although he successfully overturned the decision of the EAT, the presiding Lord Justice, Lord Justice Buxton, was dissatisfied with Mr Horan's conduct of the oral hearing of the appeal. With the support of the other two members of the Court - Lady Justice Smith and Lord Justice Wall - Lord Justice Buxton made a complaint to the Bar's Complaints Commissioner.

The matter was referred to the Medical Panel of the Bar Standards Board to determine whether Mr Horan was "unfit to practise". This is defined by the board's "Fitness to Practise" rules as meaning that the barrister is "incapacitated by reason of ill health and: (1) The

barrister is suffering from serious incapacity due to his physical or mental condition ... and (2) As a result, the barrister's fitness to practise is seriously impaired; and (3) His suspension or the imposition of conditions is necessary for the protection of the public."

The Medical Panel decided that:

1. Mr Horan should be prohibited from accepting instructions to appear as an advocate in the High Court, Court of Appeal, Supreme Court or Privy Council, or their overseas equivalents, until he had been assessed by an appointed medical assessor.
2. The prohibition should continue until its relaxation was approved by a panel convened under the relevant rules.
3. Mr Horan should be required to give notice in writing of his medical history before accepting instructions to appear as an advocate, both to his client and to the relevant court or tribunal.

Mr Horan applied to the Bar Standards Board's Review Panel under the Fitness to Practise Rules. The proceedings before the Review Panel are by way of rehearing. The Review Panel asked Antony White QC to provide it with an independent written analysis in relation to issues of disability discrimination law that might be relevant to the appeal. Mr White submitted that Mr Horan's fitness to practise had to be considered on the assumption that reasonable adjustments would be made. He pointed out that "the reasonable adjustment which Mr Horan contends for is patience" and that "it seems difficult to argue with the proposition that patience shown towards a disabled barrister whose speech is seriously impaired is a reasonable adjustment." Mr White concluded that a finding that Mr Horan was unfit to practise was inappropriate.

Decision

The Review Panel allowed the appeal and discharged the restrictions.

The Review Panel HELD:

(1) Whether a barrister is "incapacitated by reason of ill health" does not mean "completely disabled". It means that the barrister's ability to carry on practice to the standards expected of a barrister is seriously impaired by his physical or mental condition.

(2) Although the Appellant's stroke left him with a significant impairment of his faculties of working memory and speech, that impairment is not "incapacity" within the meaning of the rules and his fitness to practise is not seriously impaired. His impairment did not have the effect of rendering him incapable in oral advocacy of meeting the standard of reasonable competence as an advocate, provided that suitable adjustments and allowances are made to accommodate his disability thus enabling satisfactory functioning.

(3) The exception in Schedule 3, para. 3 to the Equality Act 2010 relating to the exercise of "a judicial function" applies to the management of a hearing by a judge. However, judges and magistrates can be expected to observe the Equal Treatment Bench Book as a matter of judicial conduct and that imposes a parallel duty of compensation for disability, including an obligation to make reasonable adjustments when hearing a case presented by a barrister with a disability.

(4) A partial restriction relating to some courts only, such as that imposed by the Medical Panel on the Appellant, is very hard to justify in principle. Either the barrister in question is or is not unfit to practise.

Cases referred to

Appearances

For the Appellant: Alison Foster QC, instructed by Bar Mutual
Amicus curiae: Antony White QC

DECISION

1. This is the reasoned decision of a Review Panel convened pursuant to rule 22 of the Fitness to Practice Rules ('the Rules'). The panel consists of Michael Blair QC (Chairman), Richard de Lacy QC, Sophia Lambert, lay member, and Jain Holmes, occupational therapist. The appeal is from a decision of a Medical Panel (David Woolley QC (Chairman), Nigel Baker QC, Camilla Wells, barrister, Joanna Sweetland, medical member and occupational therapist, and William Henderson, lay member). Their reasoned decision was dated 3 December 2009, and was given after a very detailed inquiry.

2. The decision of the Medical Panel was that:

(1) Mr Horan should be prohibited from accepting instructions to appear as advocate in the High Court, Court of Appeal, Supreme Court or Privy Council, or their overseas equivalents, until he had been assessed by an appointed medical assessor who has 'seen the Court of Appeal, Supreme Court or Privy Council in session before conducting the assessment'.

(2) The prohibition should continue until a Panel convened under the Rules had approved its relaxation.

(3) Mr Horan be required to give notice in writing of his medical history before accepting instructions to appear as advocate to his client and to the relevant Court or tribunal.

3. In its reasons, the Medical Panel also mentioned that 'it would be right to give formal effect to some of the limits on practice which the barrister imposes on himself.' If these go any further than the matters at paragraph 2(3) above, we have found no trace of a document giving such effect to any such further limits.

Introduction

4. Mr Horan suffered a cerebro-vascular accident (stroke) on 31 December 1999 when he was aged 31. The stroke resulted in impairments identified as a right hemiparesis and dysphasia. These impairments have impacted in how Mr Horan participates in certain activities. The circumstances which gave rise to these proceedings involve both aspects of these impairments to some extent, but principally his dysphasia and readiness of response when conducting oral advocacy.

5. Mr Horan appeared as counsel in the Court of Appeal, acting on the instructions of the Citizens' Advice Bureau (CAB) at the Royal Courts of Justice, for the appellant employee Mrs Bone in *Bone v Newham LBC*, an appeal from the Employment Appeal Tribunal in a case concerning both unfair dismissal and sex discrimination. The hearing took place on 15 April 2008. Mr Horan's client was successful in her appeal: [2008] EWCA Civ 435.

6. The presiding Lord Justice was dissatisfied with Mr Horan's conduct of the oral hearing of the appeal (though not with any aspect of his written argument) and wrote with the support of the other two members of the Court to Mr Horan's head of Chambers, Robin Allen QC, on 30 April 2008 mentioning a number of heads of concern. Mr Allen responded after inquiry into

the matter on 11 July 2008. This letter did not satisfy the concerns of the Lord Justice, and he referred the matter to the Complaints Commissioner on 23 July 2008. In the result, the question of Mr Horan's fitness to practice was referred to a preliminary hearing of a Medical Panel appointed by the President of the Council of the Inns of Court (COIC). The Panel directed the making of a medical report on him on 8 May 2009. The further consideration of the matter was fixed for 11 August 2009. In the meantime, in lieu of the imposition of conditions by the Medical Panel, Mr Horan gave an undertaking pursuant to rule 13(e) not to accept any instructions involving oral advocacy in the High Court, the Court of Appeal, the House of Lords or the Privy Council, until 11 August 2009. In the event, the medical report was not ready for that date, and the hearing was adjourned by order of the President of COIC to 13 October 2009. Mr Horan's undertaking was extended until the disposal of the Medical Panel's hearing.

7. The hearing on 13 October 2009 resulted in the decision of 3 December 2009.

Procedure leading to this decision

8. This decision is rendered nearly a year after the finalisation of the Medical Panel's decision, and this fact in itself requires explanation. We hope that no such delay will occur again in any similar case relating to the health or welfare of a practising barrister whose practice has been restricted or terminated under the Rules.

9. The Review Panel was originally convened to conduct the rehearing on 15 and 16 March 2010. In February 2010, solicitors on behalf of Mr Horan sought an adjournment, on the ground that they intended to issue proceedings for judicial review directed to the Bar Standards Board (BSB), seeking principally the quashing of the decision of the Medical Panel. The Chairman of the review panel refused the adjournment by a letter dated 4 March 2010 addressed to Mr Horan's solicitors, indicating that the question whether the review panel should proceed could be addressed at the hearing fixed for 15 March.

10. Mr Horan then proceeded with his judicial review application, and also sought an interim order from the Administrative Court, which made an order 'staying' the proceedings of the BSB. Although the proceedings of the review panel are not proceedings of the BSB, but those of an independent panel, which had not been joined in the judicial review proceedings, the Chairman determined that the making of the order against the BSB made it sensible for the Review Panel to grant an adjournment of the review panel proceedings.

11. The Administrative Court refused permission for judicial review in September 2010. (At this point the solicitors then acting for Mr Horan left the scene.) It then became necessary for the hearing to be reconvened. The Review Panel considered that the matter should be considered urgently. By reason of the commitments of counsel representing Mr Horan, it proved impossible to agree a date for that hearing before December 2010. We were informed by the BSB's solicitors by letter of 17 September 2010 that Mr Horan had received instructions to appear in the Court of Appeal, and that the proposed hearing date might prove to be too late to enable him to undertake the work. The BSB proposed, with the agreement of Mr Horan's representative acting for him through the Bar Mutual Indemnity Fund (BMIF), that we should consider the review in the first instance on paper, and make a decision whether the review could and should result in removal of the restriction imposed by the Medical Panel, or should continue with an oral hearing on the basis that we were not satisfied merely on the papers that the restriction ought to be removed. Our thought was that, in this way, it might be possible to reach a decision before Mr Horan was due to appear in the Court of Appeal.

12. We agreed to take that course and the Chairman gave directions for the lodging of a bundle of all the relevant papers (to be certified as complete by both the BSB and Mr Horan's advisers).

13. The BSB made no submissions to the Medical Panel or to us, and because of the extent and nature of the submissions which had been made to the Medical Panel and the

Administrative Court, we had already determined that the services of an advocate to the review panel would be desirable, to ensure that we had the benefit of an independent analysis of, in particular, the legislation on Disability Discrimination.. Pursuant to our request, Antony White QC undertook that task and prepared a submission in writing for the purposes of our consideration of the review on paper. We are most grateful to him for all that he has done to assist us in carrying out our task.

14. After the receipt of Mr White's submission, it appeared that he had originally included, in response to the Chairman's directions, a passage concerning the possibility of our making an interim order, and had analysed the rules with a view to demonstrating that we might make such an order pending an oral hearing if we had any doubts about the wisdom of proceeding with the 'on paper' consideration of removing the Medical Panel's restriction. The BMIF representative then, in our view regrettably, sought to remove this aspect of Mr White's submissions from our consideration. A letter from BMIF of 12 November 2010 to the Chairman characterised the work of Mr White as 'advice' and argued that the possibility of interim determination should not be within our purview.

15. The Chairman rejected this approach and required the production to the review panel of the further submission on the topic of interim relief together with any further submissions which Mr Horan wished to lodge on that question. In the event, however, in view of the conclusion which we have formed, (and because we were informed on 19 November that Mr Horan was no longer instructed to appear in the Court of Appeal case), the issue about an interim determination does not arise.

16. We have now considered all the material put before us and have reached a conclusion on which we are unanimous.

The regulatory context and the issues

17. The power to impose conditions on the practice of a barrister depends upon a finding that 'the Defendant is or may become unfit to practise' (rule 16). 'Unfit to practise' in relation to a barrister means (rule 4) that he is 'incapacitated by reason of ill health and:

(1) The barrister is suffering from serious incapacity due to his physical or mental condition ... and

(2) As a result the barrister's fitness to practise is seriously impaired; and

(3) His suspension or the imposition of conditions is necessary for the protection of the public.'

18. 'Incapacitated' in this rule clearly does not bear its ordinary meaning of 'completely disabled'. The sub-paragraphs in the definition import the meaning that the barrister's ability to carry on practice to the standards expected of a barrister is seriously impaired by his physical or mental condition.

19. The standards expected of a barrister are to be found in the Code of Conduct and the written standards of work. Paragraph 5.4 of those standards provides:

5.4 A barrister must in all his professional activities act promptly, conscientiously, diligently and with reasonable competence and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled. He must not undertake any task which:

(a) he knows or ought to know he is not competent to handle;

(b) he does not have adequate time and opportunity to prepare for or perform; or

(c) he cannot discharge within a reasonable time having regard to the pressure of other work.

20. We therefore consider that the threshold questions are whether on the evidence:

(1) Mr Horan is suffering from a serious incapacity due to his physical and mental condition; and

(2) Mr Horan's ability to meet the relevant standard has been seriously impaired by reason of that condition. In relation to the second question, we will have to consider whether and to what extent the relevant legislation on disability requires us to determine that his ability is not, or is not seriously, impaired because reasonable modifications can be made to compensate for the impairment.

21. If the answers to both these questions are 'yes', but only in that event, we must consider whether that impairment means that his suspension or the imposition of conditions on his practice is necessary for the protection of the public.

22. We consider the evidence in the following order:-

(1) The medical and occupational therapy evidence.

(2) Mr Horan's evidence as to the conduct of his practice since the stroke.

(3) The evidence of his actual performance as observed by others.

The medical and occupational therapy evidence

23. The Appointed Medical Advisor is Sue Barnard Gillmer, an occupational therapist and vocational rehabilitation consultant. We will refer to her (we hope without disrespect) as 'the AMA'. Her report was submitted in July 2009, and she answered a series of questions raised by the Medical Panel at its preliminary hearing. Mr Horan had exhibited to his witness statement dated 7 May 2009 a report from a consultant neuropsychologist, Dr Nathaniel-James ('the consultant'), which was prepared at the insistence of Mr Horan's head of chambers on 14 February 2006 in order to assess whether Mr Horan could effectively return to full-time practice.

24. Dealing first with the consultant's report, he found that Mr Horan's performance in tests of intellectual ability provided evidence of 'mild but significant under-functioning in his working memory abilities. However, there is no other evidence of under-functioning in his general intellectual abilities'. He further found that Mr Horan was functioning for the most part at pre-injury expectations, with two exceptions, namely working memory and expressive language during conversational speech. The weakness in working memory was a relative weakness, since his working memory abilities were as good as 50% of his age peers in the general population. In this context of course we observe that one's "age peers" are not those of any particular intellectual attainment, but part of the population as a whole.

25. The consultant expressed an overall opinion that the impairment which Mr Horan has suffered was not such as to prevent his functioning as a barrister. He offered suggestions to improve Mr Horan's performance which include the use of gesture, facial expressions and drawings in order to put across his arguments. Like the Medical Panel, we do not consider that the last part of this evidence assists, as it is not based on a realistic assessment of the function of an advocate performing oral advocacy.

26. The AMA's evidence on Mr Horan's functioning accorded substantially with that of the consultant. Her material findings are that Mr Horan's speed of oral delivery and formulation of certain words and phrases are significantly impaired due to his permanent expressive dysphasia. In respect of functional memory, concentration and attention, the AMA found a

good but not exceptional performance, and that Mr Horan had learned compensatory strategies which improved his practical memory presentation over the scores in tests. Accordingly the AMA remarked that the consultant's finding of significant underfunctioning in measured working memory abilities had not taken into account compensatory strategies.

Mr Horan's evidence

27. The process in which we are engaged is not adversarial. We therefore approach Mr Horan's evidence on the basis that we should accept it unless it is inherently improbable or contradicted by other material put before us. His account of his medical and professional history is candid and coherent, and he has not attempted to brush aside or belittle the real difficulties which he has faced and the consequences of his condition. We accept his evidence.

28. There is no doubt that before the stroke, Mr Horan was an individual fully qualified by reason of his intellect and training to be a fully competent barrister and, in particular, a practitioner of oral advocacy.

29. The cerebro-vascular accident occurred on 31 December 1999. Its immediate aftermath was disastrous: according to Mr Horan's brother (as reported by the consultant) it was doubtful whether Mr Horan would survive, and if he did, whether he would recover any speech or (possibly) mobility. In the event Mr Horan recovered both mobility and, by virtue of intense therapy, his speech and was able to resume limited work as a barrister from April 2001. As we have recorded above, he submitted to a detailed investigation by the consultant in February 2006, after which his head of chambers was presumably satisfied that he was capable of returning to full-time practice, as he did.

30. Mr Horan's witness statement of 7 May 2009 addresses the numerous points made about his performance in Mrs Bone's case in the letters of the presiding Lord Justice and in the letter of the Complaints Commissioner of 7 January 2009 to the President of COIC. We do not need to deal with any points other than those which relate to his general ability to conduct oral advocacy in any court. We deal with those matters when considering the perception of Mr Horan's performance as perceived by others.

31. Mr Horan accepts that his speech ability has reached a plateau and is unlikely to improve further, and also that it is impaired. He states that he has appeared both without complaint and with success in numerous cases since 2006 and has re-established a regular client base of solicitors.

The evidence of Mr Horan's performance as perceived by others

32. We are in no doubt that Mr Horan's professional performance has in general been up to an adequate standard since his resumption of full time practice in 2006. Numerous witnesses attest to his continuing ability. They include judges and practitioners. We do not propose to lengthen these reasons by reciting their evidence in full.

33. The critical event is the hearing of Mrs Bone's appeal on 15 April 2008. We have listened (separately) to the recording of this hearing, and we have read the transcript. There is no doubt that Mr Horan's narrative and argumentative advocacy are impeded by the impairment of his speech. The hesitations which his dysphasia imposes are evident.

34. Mr Horan's performance led the three judges of the Court of Appeal to conclude (enclosure to the letter of 23 July 2008) that his oral submissions 'were effectively of no help at all in moving the case forward'. The Medical Panel said (substantive decision para 16) that the account of the hearing given by the judges, the recording and the transcript persuaded them that on that day, at least, 'the barrister's fitness to practise was seriously impaired to the point where it had virtually disappeared'.

35. These are extreme conclusions. As they would in principle support a decision that Mr Horan should not practise advocacy *at all* (whereas the Medical Panel were prepared to allow him to practise under conditions) we have considered them carefully.

36. This requires some consideration of the questions which the Court of Appeal had to consider in Mrs Bone's case. They were not simple.

(1) The Employment Tribunal (ET) at first instance had rendered a decision which found as a fact that Mrs Bone had been the victim of sexual discrimination and victimisation.

(2) The ET had summarised its findings at the end of its written decision to the effect that Mrs Bone had been unfairly dismissed, but it did not transpose its findings as to discrimination or victimisation into the relevant conclusion.

(3) When it came to consider the remedies to be awarded to Mrs Bone, the ET realised that (or perhaps was asked to consider whether) it should correct the summary of findings to show that Mrs Bone was not merely unfairly dismissed (the employer having shown no reason for dismissal) but was dismissed by reason of direct sexual discrimination or victimisation. It did so by means of a Certificate of Correction under rule 37 of the Employment Tribunal rules.

(4) The employer appealed to the Employment Appeal Tribunal (EAT) on the ground that the ET had no power to make the rule 37 certificate at that stage in the proceedings (and on other grounds which failed). The EAT decided that the ET was not entitled to make the certificate but made no consequential order which would enable Mrs Bone to have her remedies determined on the basis of a dismissal by reason of discrimination or victimisation.

37. Mr Horan's task was to advocate Mrs Bone's appeal against this decision. His fundamental point was, as we see it, expressed at page 12 of the transcript, where he pointed out that the ET had realised that there had been an error which resulted from the expression of the decision, which in its correct form, as he vividly put it 'was their judgment, and had ever been their judgment'.

38. This remark appears after about 45 minutes of the hearing, after Mr Horan has made his submissions on the authorities relating to the 'slip rule', which he has sought to apply to the making of a certificate under the Tribunal rule 37. We consider that a barrister who did not have Mr Horan's disability would have made a submission to that effect at some time in the hearing: but we cannot say when.

39. The issue in the appeal can be seen (with the benefit of the Court of Appeal's judgments) to have been whether the EAT was entitled to require the ET to reconsider its decision *without reliance on the 'slip rule'*. We accept that Mr Horan did not take this point expressly in the terms which we have formulated. Importantly, however, his opponent did not refer the Court of Appeal to the authority which justified that power. That line of authority was referred to in, and was the basis of, the judgment of Lord Justice Wall in the disposition of the appeal in favour of Mrs Bone, with the agreement of the other members of the Court. The reasoning is to be found at [2008] EWCA Civ 435 para 27ff.

40. We think it important that Wall LJ said this (para 27):

"Although a great deal of erudition was on display both in the submissions made to the EAT and in this court, neither we nor, we think, the EAT was [*sic*] referred to the decision of this court in *Barke* or to the decision of the former President of the EAT, Burton J in *Burns v Consignia (No 2)* [2004] IRLR 425, (also reported as *Burns v Royal Mail Group* [2004] ICR 425) or to the *Employment Appeal Tribunal Practice Direction and Practice Statement* made under the *Practice Direction (Employment Appeal Tribunal - Procedure) 2004* which came into effect on 9 December 2004."

41. The evidence before us is therefore that neither counsel had been able to identify the crucial power of the EAT to invite the ET to amplify or correct its findings. This power, in the judgment of the Court of Appeal, would have enabled the EAT to require the ET to make further findings which would remedy the apparent injustice to Mrs Bone which had resulted from a purely procedural problem.

42. We can well understand the frustration created by Mr Horan's obvious inability to arrive at this conclusion in his oral argument. But this was not in our view the result of his dysphasia, but of his ignorance of the relevant authority, which we must assume he shared with his opponent who, if she had known of this line of authority, was obliged to refer to the Court to it.

43. Because of the procedure which we have agreed to adopt, we do not have the benefit of having seen and heard Mr Horan in person. We have, however, been able to form a view of his deportment and fluency from the recording, and the evidence of the witnesses, including the medical witnesses.

Conclusions on the evidence

44. There is no doubt that Mr Horan's stroke has left him with a significant impairment of his faculties of working memory and speech. On this the consultant and the AMA are agreed and, we think, Mr Horan accepts that this is so. In relation to a barrister practising oral advocacy this is in our judgment an important impairment of his abilities.

45. The question remains whether that impairment has had the effect of rendering him incapable in oral advocacy of meeting the standard of reasonable competence as an advocate. On this point, the evidence is virtually all one way: he is capable of meeting that standard, provided that suitable adjustments and allowances are made to accommodate his disability thus enabling satisfactory functioning. The only point of dissent arises from his conduct of Mrs Bone's case.

46. In our judgment, while the delivery and fluency of Mr Horan's addresses to the Court of Appeal were obviously impaired, we cannot characterise that performance as 'of virtually no help in moving the case forward' or conclude that his ability as an advocate had virtually disappeared. So far as the progress of the case is concerned, by comparison with that of Mr Horan, the performance of counsel for the respondent local authority, while fluent and unimpaired, did not, to our minds, lead the Court to any new insight into the solution of the problem posed by the procedural errors of the Tribunals below.

47. On analysis, we have concluded that Mr Horan's advocacy did provide some assistance to the Court of Appeal in revising its view of the substance of the ET's decision (in particular the passage at pp 12 and following of the transcript) and the nature of the error below in expressing their conclusion. As we have said, none of the participants in that hearing had at that stage alighted on the key process of referral of questions by the EAT to an ET which the Court ultimately held to be an appropriate way of doing justice on the basis of the ET's findings.

48. We also note that, until well into the hearing (when he mentioned that he had suffered from a stroke), the Court of Appeal was unaware of Mr Horan's disability. If they had been aware from the outset, they might have made adjustments for it which might have led to smoother proceedings. For example, we consider that the fact that the presiding Lord Justice was obviously irritated at the beginning by Mr Horan's late appearance and early presentation of the case may well have made him less able to perform up to his normal standard.

49. So far as we differ from the views of three judges of the Court of Appeal and of the Medical Panel, we do only after careful thought and with proper respect for their opinions. We consider that there are reasons of principle for doing so.

(1) The presiding Lord Justice had arrived at the conclusion that it was questionable whether Mr Horan should be practising at all: see the fourth paragraph of his letter to Mr Allen of 30 April 2008. However, he used the word "questionable", and the purpose of the later reference which the Lords Justices made to the BSB was to ensure that the matter was considered in the appropriate way; neither he nor they were expressing a concluded view on the matter.

(2) The Medical Panel itself differed from what may have been the preference of the Court of Appeal in that they considered that Mr Horan's abilities were not impaired so far as concerned all Courts and tribunals other than the High Court and Court of Appeal, etc.

(3) There is only one standard for the professional conduct of barristers and it applies in all Courts. The standard is reasonable competence and the variable factor is the difficulty of the case: see the written standards para 5.4.

(4) Employment Tribunals and the Employment Appeal Tribunal may be intended to be relatively informal in procedure, but the competence required of counsel is the same as in the High Court and the Court of Appeal. The same is also true of other Courts and Tribunals, such as for example, the Crown Court itself, and other Tribunals, whether "Upper" or otherwise, though we accept that Mr Horan may not ever wish to practice there.

50. On the medical and legal professional evidence we find that Mr Horan's ability to discern accurately whether he should or should not accept instructions to perform oral advocacy in a given matter (the only faculty which is in question in his case) is not impaired at all. Neither is his intellectual ability to give sound advice. Indeed there is evidence to suggest that he is an innovative legal thinker in the field of disability law.

51. We have concluded that Mr Horan's abilities and faculties are substantially impaired by reason of dysphasia, but that that impairment is not incapacity within the meaning of the Rules and his fitness to practise is not seriously impaired. This conclusion is the stronger when account is also taken of the facts that those concerned are made aware of his disability and that appropriate adjustments have to be made to assist him. We note that Mr Horan has already, in consultation with his Head of Chambers, imposed some special requirements in his Chambers and on himself in relation to his practice, in the interests of giving both his clients and the relevant Court or Tribunal some advance knowledge of his disability. These seem to us to be sensible and not unduly onerous. For example, the courts would naturally expect to be made aware of his disability, so that they understand why his advocacy is as it is, and can make whatever adjustments they consider necessary in the conduct of the case.

52. In view of the careful and helpful submissions made by Mr White, we go on briefly to consider what impact the legislation would have if we had reached the conclusion that the first threshold test had been met. For this purpose we will assume that Mr Horan's disability meant that his discourse required to be listened to over a longer time than a barrister in the same case without his disability, and without undue pressure of questions.

53. We accept Mr White's submission that the Equality Act 2010 is the relevant Act, even though it has only recently come into force, as our decision must be made as a rehearing of the question whether Mr Horan is or may become unfit to practise.

54. Our findings mean that Mr Horan is a person with a disability within the meaning of the 2010 Act and we accept the submission to that effect. We also accept that the BSB is both a qualifications body within the meaning of the 2010 Act and a public authority within the meaning of the 1995 Act. A decision as to fitness to practise is not, however, a decision of the BSB, but of a body in the nature of a judicial body (a Medical or a Review Panel). The relevant decision of the BSB is either that of the Complaints Commissioner to refer the matter to a panel under rule 7(a) or the standing requirement to refer in some of the circumstances set out in rules 7(b) or (c).

55. In relation to the conduct of proceedings in a Court, Mr White submits that the management of the hearing by a judge (as opposed to a decision in a case before the judge on the evidence adduced) is not the exercise of a judicial function for the purpose of the exception in sch 3 para 3 to the 2010 Act. We are not persuaded by this submission. It is extremely difficult to distinguish between the management of a hearing and the decision-making process. We derive no assistance from the express provision relating to entry to and practice in the barristers' profession. Mr White suggests that Parliament cannot have intended not to put an obligation on the courts to make reasonable adjustments for disabled barristers, having placed a duty on the profession. We think that the answer is that Parliament has indeed put some obligations on the courts by placing the relevant duty on a public authority, HM Courts Service, which provides the physical environment in which the judicial function is normally carried out. It does not follow, however, that Parliament intended to place a statutory duty on judges to make adjustments in all and any facets of the hearing process. Mr White's submission appears to overlook the fact that an act of discrimination affecting the outcome of a case can be made a ground for appeal or review of the decision or of a complaint about judicial conduct. The decision which he cites (*R v Isleworth Crown Court*) is itself an example of this. The decision of the Administrative Court in that case enjoined observance of the Equal Treatment Bench Book on judges and magistrates as a matter of judicial conduct, but did not (and, we think, could not) elevate observance of that Book into a statutory duty. As Parliament can be taken to have known of these principles of law, the exception for the performance of judicial functions can be taken to have been enacted in the knowledge that the judiciary imposes a parallel duty of compensation for disability.

56. It does not follow, however, that a barrister should be treated as unfit to practise in a given Court merely because he does not have a statutory right to treatment which compensates for his disability. We accept that in determining the question of fitness to practise the relevant panel must take account of adjustments which judges can be expected reasonably to make in compliance with the Equal Treatment Bench Book. We therefore differ from the Medical Panel in their treatment of the submission of Ms Foster QC on behalf of Mr Horan before them, as set out in para 28 of Mr White's submission. Equally we accept the submission of Ms Foster, provided that it is understood as grounded on the judicial obligation to make reasonable adjustments when hearing a case presented by a barrister with a disability, a duty imposed otherwise than by the statute.

57. Apart from this single point of difference, it will be apparent from the substance of this decision that we have in general followed the remainder of Mr White's helpful submissions.

58. We also wish to make some observations about the form of the restriction imposed on Mr Horan by the Medical Panel. We consider that a partial restriction relating to some Courts only is very hard to justify in principle. Either the barrister in question is or is not unfit to practise. The necessary understanding and competence to conduct a case vary with the complexity of the case, not the level of the Court in the appellate hierarchy. It is as necessary to understand and expound the principles of law accurately and clearly in the ET as in the Supreme Court. This is why the grant of the degree of barrister and the subsequent possession of a practising certificate is unique: it authorises the conduct of cases in any Court in England and Wales, subject, as we have said, to observance of the overriding rule of conduct that the barrister must not accept instructions in a case if it is beyond his competence.

59. This leaves for comment the Medical Panel's requirement for formalisation of the arrangements that Mr Horan has imposed on himself in relation to his practice (which we mentioned at paragraph 51 above). We have already expressed our approval of his decision to give both to his clients and to the relevant Court or Tribunal advance knowledge of his disability. In Mrs Bone's case he can be said to have brought many difficulties on himself by failing to inform the Court of Appeal of this before the hearing. It should be obvious to him that a person with a disability which is 'invisible' must make known the disability in order that reasonable adjustments can be made. We urge him to be mindful that it is incumbent upon him to secure such adjustments in the interests of his client, the proper use of Court time, and the public.

60. We are in no doubt of Mr Horan's ability to measure his own competence within the Code of Conduct. He has, with help from his very experienced Head of Chambers, decided what should be done about an appropriate supply of information. We have no power to 'formalise' the limits on his practice which he has imposed on himself, in the absence of a finding of unfitness. Even if we had found a degree of unfitness to practice, however, the imposition of detailed conditions as to the work he should take would pose a significant problem. The conditions would have to have a degree of precision, as they are intended to be enforceable as part of the Code of Conduct, which we think very difficult to achieve. A condition requiring Mr Horan, or an undertaking by him, to notify relevant courts in advance of his disability does not pose this problem.

61. Our conclusion in paragraph 51 above means that neither of the threshold tests imposed by the Rules has been met and we must allow the appeal and discharge the restrictions. We take no further action.

*Michael Blair QC, Richard de Lacy QC,
Sophia Lambert, Jain Holmes*

22 November 2010

IN THE MATTER OF

JOHN HORAN Esq
1st Floor
Cloisters
Temple EC4Y 7AA

(Inner Temple, February 1993)

REVIEW PANEL

DECISION

1. This is the reasoned decision of a Review Panel convened pursuant to rule 22 of the Fitness to Practice Rules ('the Rules'). The panel consists of Michael Blair QC (Chairman), Richard de Lacy QC, Sophia Lambert, lay member, and Jain Holmes, occupational therapist. The appeal is from a decision of a Medical Panel (David Woolley QC (Chairman), Nigel Baker QC, Camilla Wells, barrister, Joanna Sweetland, medical member and occupational therapist, and William Henderson, lay member). Their reasoned decision was dated 3 December 2009, and was given after a very detailed inquiry.
2. The decision of the Medical Panel was that:
 - (1) Mr Horan should be prohibited from accepting instructions to appear as advocate in the High Court, Court of Appeal, Supreme Court or Privy Council, or their overseas equivalents, until he had been assessed by an appointed medical assessor who has 'seen the Court of Appeal, Supreme Court or Privy Council in session before conducting the assessment'.
 - (2) The prohibition should continue until a Panel convened under the Rules had approved its relaxation.
 - (3) Mr Horan be required to give notice in writing of his medical history before accepting instructions to appear as advocate to his client and to the relevant Court or tribunal.

3. In its reasons, the Medical Panel also mentioned that ‘it would be right to give formal effect to some of the limits on practice which the barrister imposes on himself.’ If these go any further than the matters at paragraph 2(3) above, we have found no trace of a document giving such effect to any such further limits.

Introduction

4. Mr Horan suffered a cerebro-vascular accident (stroke) on 31 December 1999 when he was aged 31. The stroke resulted in impairments identified as a right hemiparesis and dysphasia. These impairments have impacted in how Mr Horan participates in certain activities. The circumstances which gave rise to these proceedings involve both aspects of these impairments to some extent, but principally his dysphasia and readiness of response when conducting oral advocacy.
5. Mr Horan appeared as counsel in the Court of Appeal, acting on the instructions of the Citizens’ Advice Bureau (CAB) at the Royal Courts of Justice, for the appellant employee Mrs Bone in *Bone v Newham LBC*, an appeal from the Employment Appeal Tribunal in a case concerning both unfair dismissal and sex discrimination. The hearing took place on 15 April 2008. Mr Horan’s client was successful in her appeal: [2008] EWCA Civ 435.
6. The presiding Lord Justice was dissatisfied with Mr Horan’s conduct of the oral hearing of the appeal (though not with any aspect of his written argument) and wrote with the support of the other two members of the Court to Mr Horan’s head of Chambers, Robin Allen QC, on 30 April 2008 mentioning a number of heads of concern. Mr Allen responded after inquiry into the matter on 11 July 2008. This letter did not satisfy the concerns of the Lord Justice, and he referred the matter to the Complaints Commissioner on 23 July 2008. In the result, the question of Mr Horan’s fitness to practice was referred to a preliminary hearing of a Medical Panel appointed by the President of the Council of the Inns of Court (COIC). The Panel directed the making of a medical report on him on 8 May 2009. The further consideration of the matter was fixed for 11 August 2009. In the meantime, in lieu of the imposition of conditions by the Medical Panel, Mr Horan gave an undertaking pursuant to

rule 13(e) not to accept any instructions involving oral advocacy in the High Court, the Court of Appeal, the House of Lords or the Privy Council, until 11 August 2009. In the event, the medical report was not ready for that date, and the hearing was adjourned by order of the President of COIC to 13 October 2009. Mr Horan's undertaking was extended until the disposal of the Medical Panel's hearing.

7. The hearing on 13 October 2009 resulted in the decision of 3 December 2009.

Procedure leading to this decision

8. This decision is rendered nearly a year after the finalisation of the Medical Panel's decision, and this fact in itself requires explanation. We hope that no such delay will occur again in any similar case relating to the health or welfare of a practising barrister whose practice has been restricted or terminated under the Rules.
9. The Review Panel was originally convened to conduct the rehearing on 15 and 16 March 2010. In February 2010, solicitors on behalf of Mr Horan sought an adjournment, on the ground that they intended to issue proceedings for judicial review directed to the Bar Standards Board (BSB), seeking principally the quashing of the decision of the Medical Panel. The Chairman of the review panel refused the adjournment by a letter dated 4 March 2010 addressed to Mr Horan's solicitors, indicating that the question whether the review panel should proceed could be addressed at the hearing fixed for 15 March.
10. Mr Horan then proceeded with his judicial review application, and also sought an interim order from the Administrative Court, which made an order 'staying' the proceedings of the BSB. Although the proceedings of the review panel are not proceedings of the BSB, but those of an independent panel, which had not been joined in the judicial review proceedings, the Chairman determined that the making of the order against the BSB made it sensible for the Review Panel to grant an adjournment of the review panel proceedings.
11. The Administrative Court refused permission for judicial review in September 2010. (At this point the solicitors then acting for Mr Horan left the scene.) It then became necessary for the hearing to be reconvened. The Review Panel considered that the matter should be considered urgently. By reason of the

commitments of counsel representing Mr Horan, it proved impossible to agree a date for that hearing before December 2010. We were informed by the BSB's solicitors by letter of 17 September 2010 that Mr Horan had received instructions to appear in the Court of Appeal, and that the proposed hearing date might prove to be too late to enable him to undertake the work. The BSB proposed, with the agreement of Mr Horan's representative acting for him through the Bar Mutual Indemnity Fund (BMIF), that we should consider the review in the first instance on paper, and make a decision whether the review could and should result in removal of the restriction imposed by the Medical Panel, or should continue with an oral hearing on the basis that we were not satisfied merely on the papers that the restriction ought to be removed. Our thought was that, in this way, it might be possible to reach a decision before Mr Horan was due to appear in the Court of Appeal.

12. We agreed to take that course and the Chairman gave directions for the lodging of a bundle of all the relevant papers (to be certified as complete by both the BSB and Mr Horan's advisers).
13. The BSB made no submissions to the Medical Panel or to us, and because of the extent and nature of the submissions which had been made to the Medical Panel and the Administrative Court, we had already determined that the services of an advocate to the review panel would be desirable, to ensure that we had the benefit of an independent analysis of, in particular, the legislation on Disability Discrimination.. Pursuant to our request, Antony White QC undertook that task and prepared a submission in writing for the purposes of our consideration of the review on paper. We are most grateful to him for all that he has done to assist us in carrying out our task.
14. After the receipt of Mr White's submission, it appeared that he had originally included, in response to the Chairman's directions, a passage concerning the possibility of our making an interim order, and had analysed the rules with a view to demonstrating that we might make such an order pending an oral hearing if we had any doubts about the wisdom of proceeding with the 'on paper' consideration of removing the Medical Panel's restriction. The BMIF representative then, in our view regrettably, sought to remove this aspect of Mr White's submissions from our consideration. A letter from BMIF of 12

November 2010 to the Chairman characterised the work of Mr White as ‘advice’ and argued that the possibility of interim determination should not be within our purview.

15. The Chairman rejected this approach and required the production to the review panel of the further submission on the topic of interim relief together with any further submissions which Mr Horan wished to lodge on that question. In the event, however, in view of the conclusion which we have formed, (and because we were informed on 19 November that Mr Horan was no longer instructed to appear in the Court of Appeal case), the issue about an interim determination does not arise.
16. We have now considered all the material put before us and have reached a conclusion on which we are unanimous.

The regulatory context and the issues

17. The power to impose conditions on the practice of a barrister depends upon a finding that ‘the Defendant is or may become unfit to practise’ (rule 16). ‘Unfit to practise’ in relation to a barrister means (rule 4) that he is ‘incapacitated by reason of ill health and:
 - (1) The barrister is suffering from serious incapacity due to his physical or mental condition ... and
 - (2) As a result the barrister’s fitness to practise is seriously impaired; and
 - (3) His suspension or the imposition of conditions is necessary for the protection of the public.’
18. ‘Incapacitated’ in this rule clearly does not bear its ordinary meaning of ‘completely disabled’. The sub-paragraphs in the definition import the meaning that the barrister’s ability to carry on practice to the standards expected of a barrister is seriously impaired by his physical or mental condition.
19. The standards expected of a barrister are to be found in the Code of Conduct and the written standards of work. Paragraph 5.4 of those standards provides:

5.4 A barrister must in all his professional activities act promptly, conscientiously, diligently and with reasonable competence and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled. He must not undertake any task which:

- (a) he knows or ought to know he is not competent to handle;
- (b) he does not have adequate time and opportunity to prepare for or perform; or
- (c) he cannot discharge within a reasonable time having regard to the pressure of other work.

20. We therefore consider that the threshold questions are whether on the evidence:

- (1) Mr Horan is suffering from a serious incapacity due to his physical and mental condition; and
- (2) Mr Horan's ability to meet the relevant standard has been seriously impaired by reason of that condition.

In relation to the second question, we will have to consider whether and to what extent the relevant legislation on disability requires us to determine that his ability is not, or is not seriously, impaired because reasonable modifications can be made to compensate for the impairment.

21. If the answers to both these questions are 'yes', but only in that event, we must consider whether that impairment means that his suspension or the imposition of conditions on his practice is necessary for the protection of the public.

22. We consider the evidence in the following order:-

- (1) The medical and occupational therapy evidence.
- (2) Mr Horan's evidence as to the conduct of his practice since the stroke.
- (3) The evidence of his actual performance as observed by others.

The medical and occupational therapy evidence

23. The Appointed Medical Advisor is Sue Barnard Gillmer, an occupational therapist and vocational rehabilitation consultant. We will refer to her (we

hope without disrespect) as ‘the AMA’. Her report was submitted in July 2009, and she answered a series of questions raised by the Medical Panel at its preliminary hearing. Mr Horan had exhibited to his witness statement dated 7 May 2009 a report from a consultant neuropsychologist, Dr Nathaniel-James (‘the consultant’), which was prepared at the insistence of Mr Horan’s head of chambers on 14 February 2006 in order to assess whether Mr Horan could effectively return to full-time practice.

24. Dealing first with the consultant’s report, he found that Mr Horan’s performance in tests of intellectual ability provided evidence of ‘mild but significant under-functioning in his working memory abilities. However, there is no other evidence of under-functioning in his general intellectual abilities’. He further found that Mr Horan was functioning for the most part at pre-injury expectations, with two exceptions, namely working memory and expressive language during conversational speech. The weakness in working memory was a relative weakness, since his working memory abilities were as good as 50% of his age peers in the general population. In this context of course we observe that one’s “age peers” are not those of any particular intellectual attainment, but part of the population as a whole.
25. The consultant expressed an overall opinion that the impairment which Mr Horan has suffered was not such as to prevent his functioning as a barrister. He offered suggestions to improve Mr Horan’s performance which include the use of gesture, facial expressions and drawings in order to put across his arguments. Like the Medical Panel, we do not consider that the last part of this evidence assists, as it is not based on a realistic assessment of the function of an advocate performing oral advocacy.
26. The AMA’s evidence on Mr Horan’s functioning accorded substantially with that of the consultant. Her material findings are that Mr Horan’s speed of oral delivery and formulation of certain words and phrases are significantly impaired due to his permanent expressive dysphasia. In respect of functional memory, concentration and attention, the AMA found a good but not exceptional performance, and that Mr Horan had learned compensatory strategies which improved his practical memory presentation over the scores in tests. Accordingly the AMA remarked that the consultant’s finding of

significant underfunctioning in measured working memory abilities had not taken into account compensatory strategies.

Mr Horan's evidence

27. The process in which we are engaged is not adversarial. We therefore approach Mr Horan's evidence on the basis that we should accept it unless it is inherently improbable or contradicted by other material put before us. His account of his medical and professional history is candid and coherent, and he has not attempted to brush aside or belittle the real difficulties which he has faced and the consequences of his condition. We accept his evidence.
28. There is no doubt that before the stroke, Mr Horan was an individual fully qualified by reason of his intellect and training to be a fully competent barrister and, in particular, a practitioner of oral advocacy.
29. The cerebro-vascular accident occurred on 31 December 1999. Its immediate aftermath was disastrous: according to Mr Horan's brother (as reported by the consultant) it was doubtful whether Mr Horan would survive, and if he did, whether he would recover any speech or (possibly) mobility. In the event Mr Horan recovered both mobility and, by virtue of intense therapy, his speech and was able to resume limited work as a barrister from April 2001. As we have recorded above, he submitted to a detailed investigation by the consultant in February 2006, after which his head of chambers was presumably satisfied that he was capable of returning to full-time practice, as he did.
30. Mr Horan's witness statement of 7 May 2009 addresses the numerous points made about his performance in Mrs Bone's case in the letters of the presiding Lord Justice and in the letter of the Complaints Commissioner of 7 January 2009 to the President of COIC. We do not need to deal with any points other than those which relate to his general ability to conduct oral advocacy in any court. We deal with those matters when considering the perception of Mr Horan's performance as perceived by others.
31. Mr Horan accepts that his speech ability has reached a plateau and is unlikely to improve further, and also that it is impaired. He states that he has appeared both without complaint and with success in numerous cases since 2006 and has re-established a regular client base of solicitors.

The evidence of Mr Horan's performance as perceived by others

32. We are in no doubt that Mr Horan's professional performance has in general been up to an adequate standard since his resumption of full time practice in 2006. Numerous witnesses attest to his continuing ability. They include judges and practitioners. We do not propose to lengthen these reasons by reciting their evidence in full.
33. The critical event is the hearing of Mrs Bone's appeal on 15 April 2008. We have listened (separately) to the recording of this hearing, and we have read the transcript. There is no doubt that Mr Horan's narrative and argumentative advocacy are impeded by the impairment of his speech. The hesitations which his dysphasia imposes are evident.
34. Mr Horan's performance led the three judges of the Court of Appeal to conclude (enclosure to the letter of 23 July 2008) that his oral submissions 'were effectively of no help at all in moving the case forward'. The Medical Panel said (substantive decision para 16) that the account of the hearing given by the judges, the recording and the transcript persuaded them that on that day, at least, 'the barrister's fitness to practise was seriously impaired to the point where it had virtually disappeared'.
35. These are extreme conclusions. As they would in principle support a decision that Mr Horan should not practise advocacy *at all* (whereas the Medical Panel were prepared to allow him to practise under conditions) we have considered them carefully.
36. This requires some consideration of the questions which the Court of Appeal had to consider in Mrs Bone's case. They were not simple.
 - (1) The Employment Tribunal (ET) at first instance had rendered a decision which found as a fact that Mrs Bone had been the victim of sexual discrimination and victimisation.
 - (2) The ET had summarised its findings at the end of its written decision to the effect that Mrs Bone had been unfairly dismissed, but it did not transpose its findings as to discrimination or victimisation into the relevant conclusion.

- (3) When it came to consider the remedies to be awarded to Mrs Bone, the ET realised that (or perhaps was asked to consider whether) it should correct the summary of findings to show that Mrs Bone was not merely unfairly dismissed (the employer having shown no reason for dismissal) but was dismissed by reason of direct sexual discrimination or victimisation. It did so by means of a Certificate of Correction under rule 37 of the Employment Tribunal rules.
- (4) The employer appealed to the Employment Appeal Tribunal (EAT) on the ground that the ET had no power to make the rule 37 certificate at that stage in the proceedings (and on other grounds which failed). The EAT decided that the ET was not entitled to make the certificate but made no consequential order which would enable Mrs Bone to have her remedies determined on the basis of a dismissal by reason of discrimination or victimisation.
37. Mr Horan's task was to advocate Mrs Bone's appeal against this decision. His fundamental point was, as we see it, expressed at page 12 of the transcript, where he pointed out that the ET had realised that there had been an error which resulted from the expression of the decision, which in its correct form, as he vividly put it 'was their judgment, and had ever been their judgment'.
38. This remark appears after about 45 minutes of the hearing, after Mr Horan has made his submissions on the authorities relating to the 'slip rule', which he has sought to apply to the making of a certificate under the Tribunal rule 37. We consider that a barrister who did not have Mr Horan's disability would have made a submission to that effect at some time in the hearing: but we cannot say when.
39. The issue in the appeal can be seen (with the benefit of the Court of Appeal's judgments) to have been whether the EAT was entitled to require the ET to reconsider its decision *without reliance on the 'slip rule'*. We accept that Mr Horan did not take this point expressly in the terms which we have formulated. Importantly, however, his opponent did not refer the Court of Appeal to the authority which justified that power. That line of authority was referred to in, and was the basis of, the judgment of Lord Justice Wall in the disposition of

the appeal in favour of Mrs Bone, with the agreement of the other members of the Court. The reasoning is to be found at [2008] EWCA Civ 435 para 27ff.

40. We think it important that Wall LJ said this (para 27):

“Although a great deal of erudition was on display both in the submissions made to the EAT and in this court, neither we nor, we think, the EAT was [*sic*] referred to the decision of this court in *Barke* or to the decision of the former President of the EAT, Burton J in *Burns v Consignia (No 2)* [2004] IRLR 425, (also reported as *Burns v Royal Mail Group* [2004] ICR 425) or to the *Employment Appeal Tribunal Practice Direction and Practice Statement* made under the *Practice Direction (Employment Appeal Tribunal – Procedure) 2004* which came into effect on 9 December 2004.”

41. The evidence before us is therefore that neither counsel had been able to identify the crucial power of the EAT to invite the ET to amplify or correct its findings. This power, in the judgment of the Court of Appeal, would have enabled the EAT to require the ET to make further findings which would remedy the apparent injustice to Mrs Bone which had resulted from a purely procedural problem.

42. We can well understand the frustration created by Mr Horan’s obvious inability to arrive at this conclusion in his oral argument. But this was not in our view the result of his dysphasia, but of his ignorance of the relevant authority, which we must assume he shared with his opponent who, if she had known of this line of authority, was obliged to refer to the Court to it.

43. Because of the procedure which we have agreed to adopt, we do not have the benefit of having seen and heard Mr Horan in person. We have, however, been able to form a view of his deportment and fluency from the recording, and the evidence of the witnesses, including the medical witnesses.

Conclusions on the evidence

44. There is no doubt that Mr Horan’s stroke has left him with a significant impairment of his faculties of working memory and speech. On this the consultant and the AMA are agreed and, we think, Mr Horan accepts that this

is so. In relation to a barrister practising oral advocacy this is in our judgment an important impairment of his abilities.

45. The question remains whether that impairment has had the effect of rendering him incapable in oral advocacy of meeting the standard of reasonable competence as an advocate. On this point, the evidence is virtually all one way: he is capable of meeting that standard, provided that suitable adjustments and allowances are made to accommodate his disability thus enabling satisfactory functioning. The only point of dissent arises from his conduct of Mrs Bone's case.
46. In our judgment, while the delivery and fluency of Mr Horan's addresses to the Court of Appeal were obviously impaired, we cannot characterise that performance as 'of virtually no help in moving the case forward' or conclude that his ability as an advocate had virtually disappeared. So far as the progress of the case is concerned, by comparison with that of Mr Horan, the performance of counsel for the respondent local authority, while fluent and unimpaired, did not, to our minds, lead the Court to any new insight into the solution of the problem posed by the procedural errors of the Tribunals below.
47. On analysis, we have concluded that Mr Horan's advocacy did provide some assistance to the Court of Appeal in revising its view of the substance of the ET's decision (in particular the passage at pp 12 and following of the transcript) and the nature of the error below in expressing their conclusion. As we have said, none of the participants in that hearing had at that stage alighted on the key process of referral of questions by the EAT to an ET which the Court ultimately held to be an appropriate way of doing justice on the basis of the ET's findings.
48. We also note that, until well into the hearing (when he mentioned that he had suffered from a stroke), the Court of Appeal was unaware of Mr Horan's disability. If they had been aware from the outset, they might have made adjustments for it which might have led to smoother proceedings. For example, we consider that the fact that the presiding Lord Justice was obviously irritated at the beginning by Mr Horan's late appearance and early

presentation of the case may well have made him less able to perform up to his normal standard.

49. So far as we differ from the views of three judges of the Court of Appeal and of the Medical Panel, we do only after careful thought and with proper respect for their opinions. We consider that there are reasons of principle for doing so.

(1) The presiding Lord Justice had arrived at the conclusion that it was questionable whether Mr Horan should be practising at all: see the fourth paragraph of his letter to Mr Allen of 30 April 2008. However, he used the word “questionable”, and the purpose of the later reference which the Lords Justices made to the BSB was to ensure that the matter was considered in the appropriate way; neither he nor they were expressing a concluded view on the matter.

(2) The Medical Panel itself differed from what may have been the preference of the Court of Appeal in that they considered that Mr Horan’s abilities were not impaired so far as concerned all Courts and tribunals other than the High Court and Court of Appeal, etc.

(3) There is only one standard for the professional conduct of barristers and it applies in all Courts. The standard is reasonable competence and the variable factor is the difficulty of the case: see the written standards para 5.4.

(4) Employment Tribunals and the Employment Appeal Tribunal may be intended to be relatively informal in procedure, but the competence required of counsel is the same as in the High Court and the Court of Appeal. The same is also true of other Courts and Tribunals, such as for example, the Crown Court itself, and other Tribunals, whether “Upper” or otherwise, though we accept that Mr Horan may not ever wish to practice there.

50. On the medical and legal professional evidence we find that Mr Horan’s ability to discern accurately whether he should or should not accept instructions to perform oral advocacy in a given matter (the only faculty which is in question in his case) is not impaired at all. Neither is his intellectual

ability to give sound advice. Indeed there is evidence to suggest that he is an innovative legal thinker in the field of disability law.

51. We have concluded that Mr Horan's abilities and faculties are substantially impaired by reason of dysphasia, but that that impairment is not incapacity within the meaning of the Rules and his fitness to practise is not seriously impaired. This conclusion is the stronger when account is also taken of the facts that those concerned are made aware of his disability and that appropriate adjustments have to be made to assist him. We note that Mr Horan has already, in consultation with his Head of Chambers, imposed some special requirements in his Chambers and on himself in relation to his practice, in the interests of giving both his clients and the relevant Court or Tribunal some advance knowledge of his disability. These seem to us to be sensible and not unduly onerous. For example, the courts would naturally expect to be made aware of his disability, so that they understand why his advocacy is as it is, and can make whatever adjustments they consider necessary in the conduct of the case.
52. In view of the careful and helpful submissions made by Mr White, we go on briefly to consider what impact the legislation would have if we had reached the conclusion that the first threshold test had been met. For this purpose we will assume that Mr Horan's disability meant that his discourse required to be listened to over a longer time than a barrister in the same case without his disability, and without undue pressure of questions.
53. We accept Mr White's submission that the Equality Act 2010 is the relevant Act, even though it has only recently come into force, as our decision must be made as a rehearing of the question whether Mr Horan is or may become unfit to practise.
54. Our findings mean that Mr Horan is a person with a disability within the meaning of the 2010 Act and we accept the submission to that effect. We also accept that the BSB is both a qualifications body within the meaning of the 2010 Act and a public authority within the meaning of the 1995 Act. A decision as to fitness to practise is not, however, a decision of the BSB, but of a body in the nature of a judicial body (a Medical or a Review Panel). The

relevant decision of the BSB is either that of the Complaints Commissioner to refer the matter to a panel under rule 7(a) or the standing requirement to refer in some of the circumstances set out in rules 7(b) or (c).

55. In relation to the conduct of proceedings in a Court, Mr White submits that the management of the hearing by a judge (as opposed to a decision in a case before the judge on the evidence adduced) is not the exercise of a judicial function for the purpose of the exception in sch 3 para 3 to the 2010 Act. We are not persuaded by this submission. It is extremely difficult to distinguish between the management of a hearing and the decision-making process. We derive no assistance from the express provision relating to entry to and practice in the barristers' profession. Mr White suggests that Parliament cannot have intended not to put an obligation on the courts to make reasonable adjustments for disabled barristers, having placed a duty on the profession. We think that the answer is that Parliament has indeed put some obligations on the courts by placing the relevant duty on a public authority, HM Courts Service, which provides the physical environment in which the judicial function is normally carried out. It does not follow, however, that Parliament intended to place a statutory duty on judges to make adjustments in all and any facets of the hearing process. Mr White's submission appears to overlook the fact that an act of discrimination affecting the outcome of a case can be made a ground for appeal or review of the decision or of a complaint about judicial conduct. The decision which he cites (*R v Isleworth Crown Court*) is itself an example of this. The decision of the Administrative Court in that case enjoined observance of the Equal Treatment Bench Book on judges and magistrates as a matter of judicial conduct, but did not (and, we think, could not) elevate observance of that Book into a statutory duty. As Parliament can be taken to have known of these principles of law, the exception for the performance of judicial functions can be taken to have been enacted in the knowledge that the judiciary imposes a parallel duty of compensation for disability.
56. It does not follow, however, that a barrister should be treated as unfit to practise in a given Court merely because he does not have a statutory right to treatment which compensates for his disability. We accept that in

determining the question of fitness to practise the relevant panel must take account of adjustments which judges can be expected reasonably to make in compliance with the Equal Treatment Bench Book. We therefore differ from the Medical Panel in their treatment of the submission of Ms Foster QC on behalf of Mr Horan before them, as set out in para 28 of Mr White's submission. Equally we accept the submission of Ms Foster, provided that it is understood as grounded on the judicial obligation to make reasonable adjustments when hearing a case presented by a barrister with a disability, a duty imposed otherwise than by the statute.

57. Apart from this single point of difference, it will be apparent from the substance of this decision that we have in general followed the remainder of Mr White's helpful submissions.
58. We also wish to make some observations about the form of the restriction imposed on Mr Horan by the Medical Panel. We consider that a partial restriction relating to some Courts only is very hard to justify in principle. Either the barrister in question is or is not unfit to practise. The necessary understanding and competence to conduct a case vary with the complexity of the case, not the level of the Court in the appellate hierarchy. It is as necessary to understand and expound the principles of law accurately and clearly in the ET as in the Supreme Court. This is why the grant of the degree of barrister and the subsequent possession of a practising certificate is unique: it authorises the conduct of cases in any Court in England and Wales, subject, as we have said, to observance of the overriding rule of conduct that the barrister must not accept instructions in a case if it is beyond his competence.
59. This leaves for comment the Medical Panel's requirement for formalisation of the arrangements that Mr Horan has imposed on himself in relation to his practice (which we mentioned at paragraph 51 above). We have already expressed our approval of his decision to give both to his clients and to the relevant Court or Tribunal advance knowledge of his disability. In Mrs Bone's case he can be said to have brought many difficulties on himself by failing to inform the Court of Appeal of this before the hearing. It should be obvious to him that a person with a disability which is 'invisible' must make known the disability in order that reasonable adjustments can be made. We

urge him to be mindful that it is incumbent upon him to secure such adjustments in the interests of his client, the proper use of Court time, and the public.

60. We are in no doubt of Mr Horan's ability to measure his own competence within the Code of Conduct. He has, with help from his very experienced Head of Chambers, decided what should be done about an appropriate supply of information. We have no power to 'formalise' the limits on his practice which he has imposed on himself, in the absence of a finding of unfitness. Even if we had found a degree of unfitness to practice, however, the imposition of detailed conditions as to the work he should take would pose a significant problem. The conditions would have to have a degree of precision, as they are intended to be enforceable as part of the Code of Conduct, which we think very difficult to achieve. A condition requiring Mr Horan, or an undertaking by him, to notify relevant courts in advance of his disability does not pose this problem.
61. Our conclusion in paragraph 51 above means that neither of the threshold tests imposed by the Rules has been met and we must allow the appeal and discharge the restrictions. We take no further action.

Michael Blair QC
Richard de Lacy QC
Sophia Lambert
Jain Holmes

22 November 2010

What does *In the matter of Horan* tell us about judges and barristers?

Judges and barristers, and their organisations, could learn lessons about how to treat disabled people from the case of **John Horan**, who is suing the Bar Standards Board. In this article he gives a personal view, but it is the view of a disabled barrister – which, he points out, is still a rare beast.

First, there are two things that this article is not about. It is not about the Bar Standards Board (BSB) itself: I am suing the BSB for disability discrimination and have no comment to make now about its conduct throughout, for obvious reasons. It is also not about the legal ramifications of the case, although there remains an article to be written about the conduct of judges towards disabled advocates, the material provisions of the Equality Act 2010 relating to the BSB and disabled barristers and the standards of advocacy expected of a disabled advocate. This article looks at the implications of the decision of the BSB Review Panel in *In the matter of Horan* [2010] EqLR 473.

Personal history

On the day before the Millennium I had a stroke and it changed my life. I have fought for 11 years to build up again my practice at the Bar. I have made new friends, and old friends have turned into enemies due to my disability. This is known about me by a considerable proportion of the Bar, particularly those that specialise in employment work.

What is less well known is that in lieu of the imposition of conditions by the Medical Panel of the BSB, on the 8 May 2009 I gave an undertaking not to accept instructions involving advocacy in the High Court, the Court of Appeal, the Supreme Court or the Privy Council. Then, on 3 December 2009, the BSB ordered that I continue to turn down advocacy work before the “upper courts” and, in addition, required that I give notice in writing of my medical history before accepting instructions to appear as an advocate in the lower courts both to my client and to the relevant court or tribunal. This lasted until 11 October 2010 when it was successfully appealed to the Review Panel of the BSB. The complaint to the BSB that set this procedure in motion originated with a judge of the Court of Appeal who, with support of two other members of the Court, made a complaint about my advocacy in the case of *Bone v London Borough of Newham* [2008] IRLR 546, a case in which my client was successful.

I cannot describe how undermining and soul-destroying the original BSB decision was – having to write to my client and the judge or employment judge in every case that went to court or tribunal. I would not wish it on my colleagues at the Bar; fortunately, most able-bodied barristers will never have to experience it.

Prejudice against disabled people

In my pupillage I learnt to view disabled people with derision and laughter. I copied the attitude of some more senior barristers towards them. In particular, there were one or two who relied for their work upon personal injury claims brought by physically and mentally disabled people. Doubtless their standard of work, of itself, was very good – but the attitude towards disabled people was demeaning. The tone taken by them was, at the best, to laugh at them and, at the worst, to belittle their chances of having the court do anything about their lot. They were “other” – not “our kind” of people – expecting from their life something other than we, with our posh cars and natty clothes, expected.

It is hard to say these things. I certainly would not have admitted it at the time, even to myself – I was, after all, a barrister.

What has made the difference is the stroke and what happened to me professionally afterwards. I felt isolated and alone much of the time. I felt that my aspirations as a disabled barrister were different from my aspirations as an able-bodied barrister – they had vanished like a puff of smoke, and through no fault of my own. I now knew what it feels like to have able-bodied people assume that you are “not like them”.

Maybe I was unlucky and had a unique experience with the barristers that I learned from. But I doubt it. Does the Bar Council and most sets of Chambers provide the right environment to make it any different for disabled would-be barristers? Surely, the goal of a modern judiciary and a modern set of chambers is to leave it in no doubt, with a raft of objectively justifiable policies, training and monitoring, available for public scrutiny, that they are above reproach in their attitude towards disabled people.

The equality committee – a sort of triumph?

Mrs Justice Laura Cox is to be applauded for her strides in making the judiciary more open to training and to reflect society’s concerns about equality, so that judges have it in mind as a central concept of what it is to act judicially.

However, in her article on p.24, she points out a concern about higher judges and the difficulties that she has had in making equality training mandatory. This is a concern which I share.

It is right that we have judges who are brilliant – this is one of the pleasures of working at the Bar of England and Wales. But does brilliance as a judge mean that, without training, they know the rights and wrongs of equality legislation and what makes an institution compliant? There were bright judges in England and Wales before the abolition of slavery. There were bright judges in South Africa who tried cases under the apartheid regime. There were bright judges that tried cases in England before there was anything unlawful about sex discrimination, let alone disability discrimination.

As Laura Cox points out, the attitude of the judiciary is changing for the better. But, is change happening quickly enough when members of the senior judiciary still insist that they should not be required to undergo equalities training? The three judges of the Court of Appeal in my case acted, I am sure, with the best of motives in reporting me to the BSB. But the fact that the BSB thought that they should have exercised “patience” with me and therefore, impliedly, that they did not, underlines the fact that many disabled people feel that they run a risk of not getting a fair hearing before judges in this country

Equal opportunities training is not about the detail of the law; it is about opening the recipient’s mind to “real people” – in all their glorious diversity – and the barriers they face because of inequality and different needs.

I know of no Employment Judge who would do anything other than utter an exasperated cry when he learnt that senior members of the management in a big firm did not have equal opportunities training. Why should judges be different?

Statutory codes of practice

There are statutory codes of practice on implementation of statutory equality duties which are binding on the courts as employer and as provider of public functions and goods and services. There is also a statutory duty to implement a disability equality plan. The codes, both under the old legislation and the new statutory codes of practice, describe what a good employer or public function provider or service provider should have in place to ensure equality of treatment and avoid discrimination claims. These contain a checklist of straightforward things that the management of the organisation should bring about, for example:

- establish a policy to ensure equality of access to and enjoyment of their services by potential service users or customers from all groups in society;
- communicate the policy to all staff, ensuring that they know that it is unlawful to discriminate when they are providing services;
- train all staff, including those not providing a direct service to the public, to understand the policy, the meaning of equality in this context and their legal obligations;
- monitor the implementation and effectiveness of the policy ...
- consult customers, staff and organisations representing groups who share protected characteristics about the quality and equality of their services and how they could be made more inclusive.” (See Code of Practice on Services, Public Functions and Associations, paragraph 3.41 to 3.42.)

These requirements have been in place in one form or another for 15 years. What steps have the courts or Bar Council taken to comply with these provisions? The judiciary and the Bar Council both have public duties as well as private duties towards disabled members of the public and towards disabled barristers. Sadly, there exists among the disabled community a perception that their concerns are belittled by the Bar and the judiciary. Surely the time has come for the Bar Council and the judiciary to take action on these things to ensure that they exercise good practice on anti-discrimination issues.

Judicial discretion

It matters not whether dealing with my disability in my case was an exercise of public functions under the Equalities Act 2010 or an exercise in the common law judicial discretion to apply the Judge’s Handbook – what matters is that disabled people have the right to have reasonable adjustments made to their advocacy dealt with in such a way as to be predictable, consistent and dealt with in good time. Although my case is the first case in 15 years where the judgment of a quasi-judicial board has been reported, it is likely that situations arise day-to-day in courts up and down the country where a disabled person – whether professional advocate, litigant in person, expert witness or witness – coming before the court has, for whatever reason, difficulty in making themselves plainly understood.

Way forward

What is needed is a system in place for dealing with the particular problems by way of one Order – either a change in the Civil Procedure Rules or a judicial pronouncement from the senior Judges – which affects the advocate rather than each individual case. The Order would need to be flexible so that in each particular case:

- the judges have knowledge of the fact that the individual was disabled and needed reasonable adjustments to be made;
- it would have a senior judge’s input as to what those reasonable adjustments should be; but
- judges would retain discretion over what reasonable adjustments should be made in the case, taking into account, for example, the disabled advocate’s rights and the rights of the other party.

Judicial discretion has, on many occasions, been exercised in favour of disabled people. However, the mere fact that an individual judge on a particular case should use his discretion wisely is not an answer to the systemic problem; what needs to happen is for the above system to become a feature of every case in which the disabled community has a part.

It is striking that, since its inception, the Civil Procedure Rules, the judicial guidance and the explanatory notes have never mentioned disabled people at all. Judicial guidance that implements the best practice set out in the codes of practice would go a long way to reassure disabled people that all judges involved in all cases are aware, and taking account, of the difficulties disabled people face in their day-to-day life. ■

Can Judges Learn Something from Blue Peter?: Attitudes toward Disability

1. If you were lucky in Christmas 2010, you will have received a glorious and disgusting handmade Christmas card from a child at school – all glitter and coloured paper. Many of you will have had the experience at home, when your glorious and disgusting son or daughter, niece or nephew, came back school, smiling as they thrust the card into you hand.
2. This was part of the 2010 Blue Peter Charity Appeal – an idea as old as the programme itself. But look a little closer and you would see how things have changed. The charity, Wheelie Kids, is about helping disabled children with access problems by providing them with electric wheelchairs. Naturally, this is good for the disabled students – electric wheelchairs are generally much faster than ones which are manually powered - but also for other students and the school as a whole. It allows the students to take ownership of the problem by take owner of the solution – a charitable task which the school are uniquely equipped to do. The charity is direct and nearby – it is something that children will see as having a real effect on their peers in real time – cause (glorious and disgusting) has a real effect (electric change). Glorious!
3. But the Blue Peter also got “the solution” right on an even more profound level. They interviewed a number of kids who had been

earmarked for a Wheelie Kid upgrade to their wheelchair – and then showed the school where the kids were settling down to a cardboard-based, messy activity of putting together homemade Christmas cards with their able-bodied peers. The curious thing was that, amid the card and glue and coloured paper and the glitter, you could not tell who were the disabled students and who were their able-bodied peers. They were just students, having a good time. The effect on the self-esteem of the disabled kids, their families and the disabled community at large was palpable. It was gloriously disgusting.

4. Now perhaps to contrast the producers of Blue Peter's approach to the one adopted by Judges within this jurisdiction is unfair. It may be that the BBC is inherently a public media organisation and is bound to be open with its decisions; contrast to the judicial system in England and Wales and the decision-making process, both in an individual case and in committee where the rules are decided seems closed and not in the public domain. I, for one, hope that individual Judges and their peers have taken the Government's detailed guidance in the Codes of Practice which govern the rights of disabled people when considering public authority functions, the duty to promote disability equality and the new guidance over the new Codes of Practice over the Equality Act 2010. But I cannot definitively say "yes" or "no" because the various Committees go about their business without a meaningful right to members of the public for scrutiny and comment.

5. This seems wrong to me. As I have argued in another article in the Equal Opportunities Review (page 213, June 2011), it is surely the goal of a modern judiciary to leave no doubt in the public's mind that they are above reproach in their attitude towards disabled people. To do this they need to have a raft of objectively justifiable policies, training and monitoring, available for public scrutiny.

6. The International Convention on the Rights of Persons with Disabilities¹ has been around for a number of years. **Article 13, Access to Justice** should be required bedtime reading for Judges and Magistrates throughout the European Union; it is a necessary tool for ensuring that all the other rights are recognised and given effect to in a concrete way – particularly **Equality and Non-discrimination (Article 5)** and **Awareness-Raising (Article 8)**. **Article 13(2)** says this:-

“In order to help ensure effective access to justice for persons with disabilities, states parties shall promote appropriate training for those working in the field of administration of justice,... .”

Now it seems to me that looking at the text, the duty on Judges to have appropriate training is clear. But, more importantly, the European Foundation Centre, a European Union think-tank, agree.

¹ www.un.org/disabilities/convention/conventionfull.shtml

In their “Study on Challenges and Good Practices in the Implementation of ICRPD”², they say:-

“Training is an essential component of Article 13 and should be provided to all justice agency personnel so far as to facilitate access to justice for persons with a disability. Therefore training should be provided to...legal practitioners, magistrates and judges...and should cover human rights and access to justice for persons with disabilities. Additionally, training for justice agency personnel should include the identification of persons with disabilities involved in the legal process, adjustments required to ensure access, and training in communication skills for work with persons with disabilities.”

7. The British Judges’ insistence that appropriate training in disabilities related issues should not be mandatory in High Court, Court of Appeal, Privy Counsel and Supreme Court Judges appears to be a breach of International law, as well as nonsensical; however, I did not realise myself, until doing the preparatory work for a talk I gave in Trier³, Germany to Judges from around the European Union, that the innocuous Council decision 2010/48 of November of last year has the effect of also meaning that what was International law is now also European law⁴.

² www.study-uncrpd.eu/files/repository/20110126180047_VC20081214_FINAL_REPORT_ExSummary_EN_111010.pdf Oct 2010, page 116

³ 20th and 21st June 2011

⁴ The ICRPD is a “mixed international agreement” i.e. a convention where both the EU and Member States are contracting parties to it. Under Article 216 of the Treaty on the Functioning of the European Union the Treaty is binding as European law just as much as the Council Directives or Treaties.

8. The implications of that are profound, as any constitutional lawyer will tell you. From being a useful guidance to what the domestic law must mean applying the approach in **Brind**⁵, the law as best interpreted should surely be that wherever domestic legislation and the IPRPD clash, the IPD “wins” and the domestic legislation is struck out⁶.

9. This has profound implications for the law in relation to disabled people, indeed, so much so, that I will not go into any of the ramifications here. But, for a start, it means that High Court Judges must get training in equal opportunities and disability rights soon or risk a judicial review. What training and in what timescale must be for the Judges with their various Committees to sort out themselves. Indeed, the Judges may be tempted to leave that question, along with the fine detail of the interpretation of Article 13(2) of the ICRPD, to a domestic case to “sort the matter out”. And that would be a real pity.

10. The Times gave it’s front page to a piece call “Verdict on the judges: too male, too white, too elitist”. “Leading figures” of the top judiciary – among them Lord Falconer, Lord Judge and Lord McNally – have given evidence in front of House of Lords about the “stranglehold” of white

⁵ R v Home Secretary ex parte Brind [1991] 1 AC 696

⁶ See e.g. Marleasing SA v La Comercial Internacional de Alimentacion SA (C-106/89) European Court of Justice (Sixth Chamber)

Oxbridge males on the judicial system. The resistance of mandatory training of the higher courts is a prime example.

11. All is need to change is sufficient will from the top of the judicial professional. To allow the situation to go on until successfully challenged by the disabled community is to not take seriously the proactive duty to actively promote rights of people with a disability. Training of Judges, who must deal with case involving disabled people, is a fundamental requirement, “an essential component” - and not training as to the law but as to real people, real cases and real situations so that Judges can come up with real solutions to real problems. To expect disabled people to have to wait for 10 years until the domestic courts have ruled on the matter is to ignore the rights of disabled people, rights which the Government has affirmed in the ICRPD.
12. The movers and shakers from our judiciary need a lead, they should remember the example of the produces of Blue Peter and the three lessons they teach us:
 - a. the time for making a decision is now, not in the future;
 - b. sometimes the decision can be made on its own because it's clearly right, without waiting for supportive case law; and

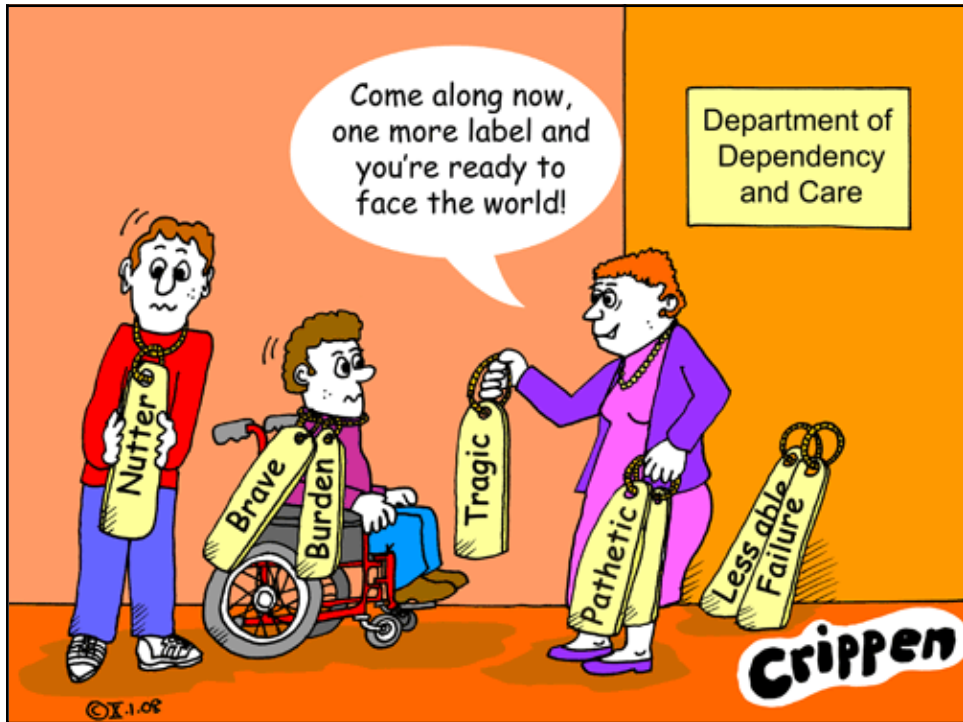
- c. the correct attitude should be proper acceptance of the equal role that disabled people have in all aspect of our life, not the minimum that case law dictates decision makers can get away with.
13. Mandatory training in disability practice for all Judges is a simple change to make – simple and disgustingly glorious.

Oliver Lewis

Oliver Lewis

Oliver Lewis is Executive Director of the Mental Disability Advocacy Center, an international human rights organisation, based in Budapest, Hungary. He studied law at the London School of Economics and Political Science and has Masters degrees in medical ethics and law from King's College, London, and in public administration from the Open University Business School.

Oliver is a member of the Bar of England and Wales and is an Associate Member of the human rights barristers' set Doughty Street Chambers, London. Oliver has been recurrent Visiting Professor at the Legal Studies Department, Central European University in Budapest since 2002, where he teaches a course entitled "Mental Disability Law and Advocacy" to postgraduate human rights students. Oliver has given lectures and presentations at several universities around the world, and is a faculty member of the International Diploma on Mental Health Law and Human Rights, run by the Indian Law Society. Oliver serves on the editorial board of the European Yearbook on European Disability Law and is author of several papers on disability and human rights, including (with Peter Bartlett and Oliver Thorold) the book *Mental Disability and the European Convention on Human Rights*, Martinus Nijhoff, 2007, and most recently "Advancing legal capacity jurisprudence", *European Human Rights Law Review* (2011) 6, 700-714.



Right to
legal
capacity

Oliver Lewis

mdac
mental disability
advocacy centre

Today...

1. What is legal capacity?
2. What does CRPD say?
3. What are alternatives?
4. What can judges do?



mdac
mental disability
advocacy center







Are YOU always capable of...

- rationally apprehending the world
- rationally processing information
- knowing all consequences for self and others
- rationally forming own preferences
- clearly able to express preferences
- hold an identity that is stable through time

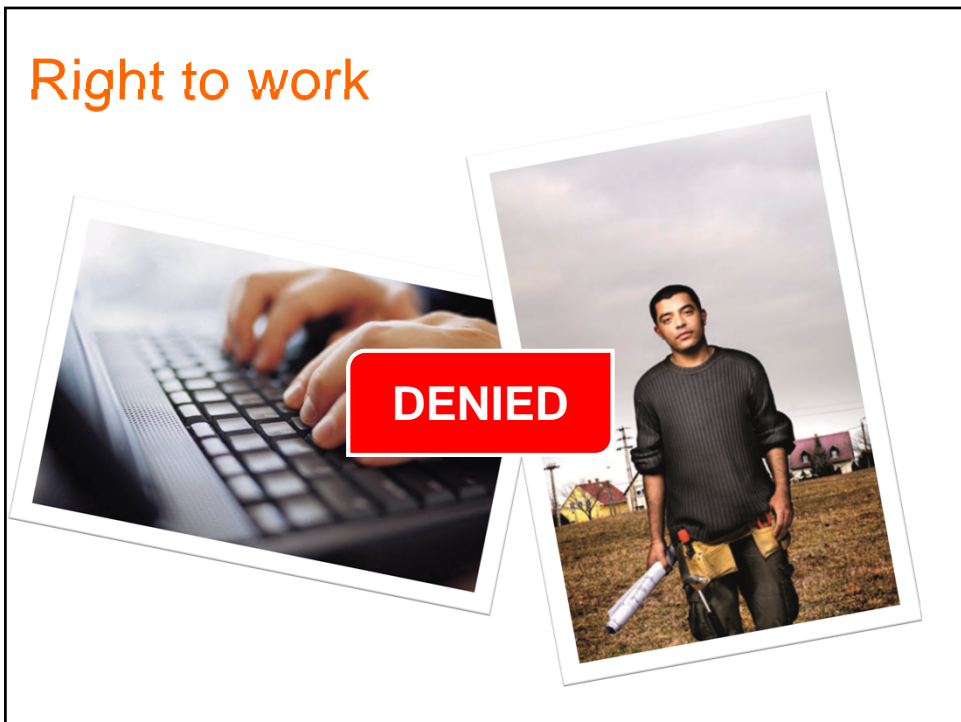
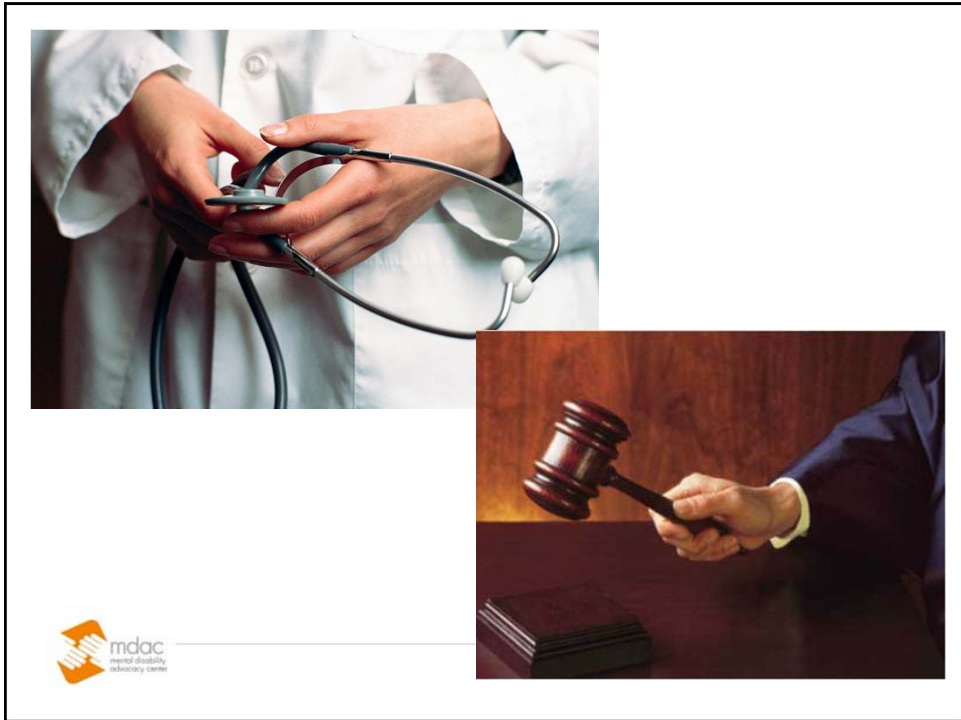
...?



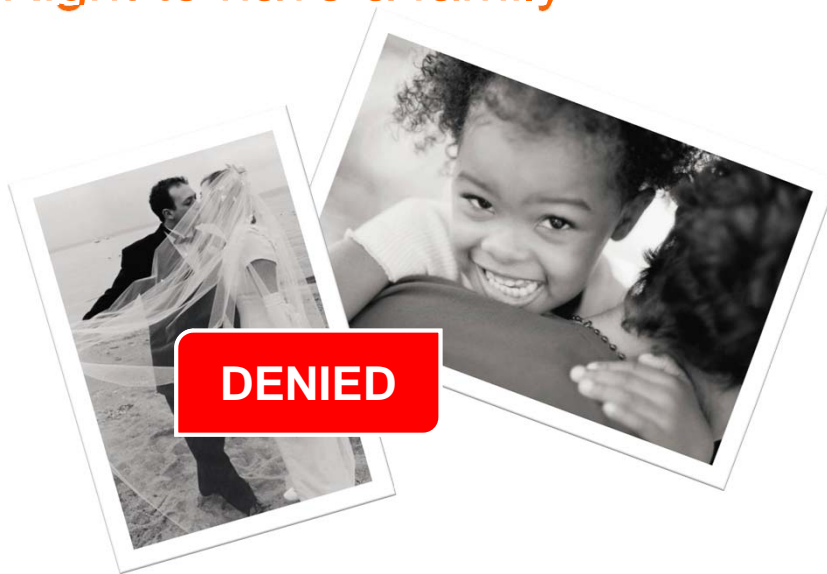
Functional approach

- Understanding relevant information
- Appreciating consequences of a decision
- Acting voluntarily, autonomously
- Communicating decisions





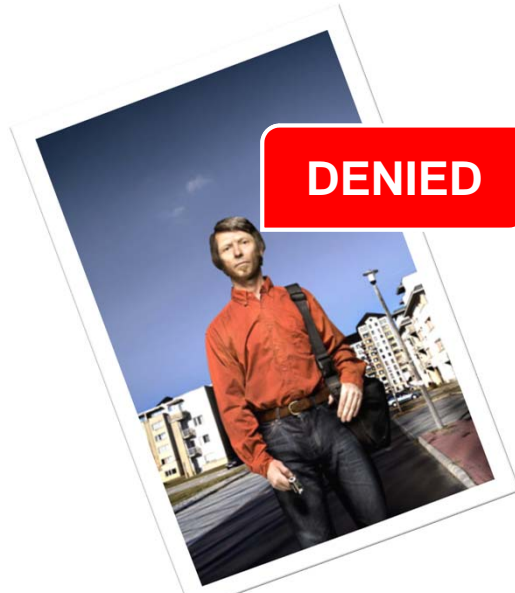
Right to have a family



Right to use money and property



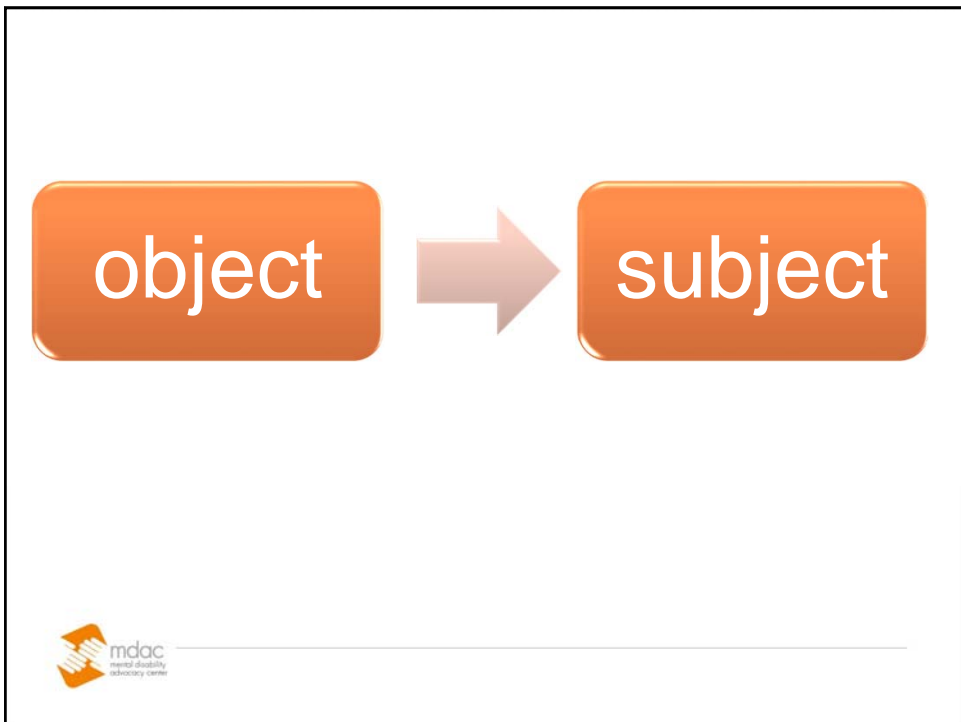
Right to live in the community



Right to vote







Two premises

We have the **right to make our own decisions** (autonomous decision-making)



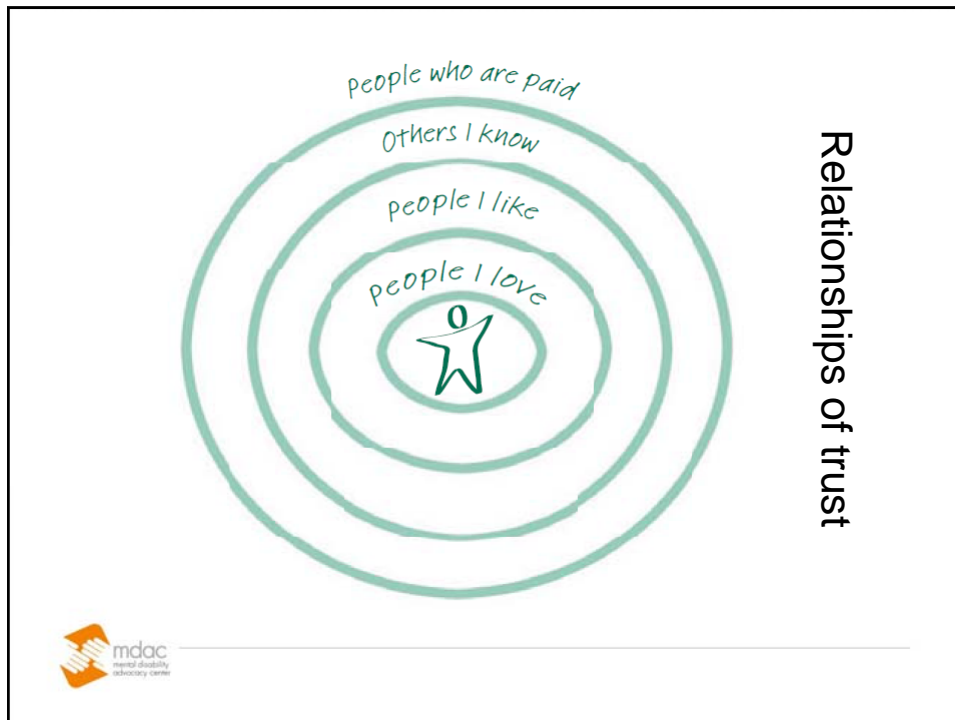
We have the **right to receive adequate support** to do so (supported decision-making).



CRPD Committee

“take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.” (CRPD/C/ESP/CO/1, Para 34.)





Supported decision-making

- An accommodation in legally-regulated decision-making processes to protect the right to exercise self-determination for those vulnerable to losing this right
 - Provides legal recognition and status to trusted others to assist in any aspect of protecting the personhood of an individual
 - Decision-making
 - Reflective capacity
 - Personal identity – weaving narrative coherence
- mdac
mental disability
advocacy center

Principles (1)

- Right to self-determination irrespective of disability
- Presumption of capacity and identity], and to decision-making supports necessary to exercise capacity and reveal identity
- Decisions are made interdependently with others



Principles (2)

- Everyone has will and intentions
- Everyone is entitled to the supports and services necessary for full participation and equality.
- Interests and liability of others do not provide a valid justification for removing a person's decision-making rights.



Protection.... From

- A person's own decisions
- Decisions which we think are 'bad'
- Against exploitation, violence and abuse (Article 16 CRPD)



How can judges...

1. Maximize autonomy?
2. Prevent and remedy exploitation, violence and abuse?
3. Ensure that supports are in place?
4. Create jurisprudence to abolish blanket forms of control?
5. Weave CRPD in your deliberations?



“Eventually the folly of this will dawn on people and we shall all joyously realize that we are all abnormal, disabled, impaired, deformed and functionally limited, because, truth be told, that is what it means to be a human being.”

JE Bickenbach, ‘Minority Rights or Universal Participation: The Politics of Disablement’



olewis@mdac.info

www.mdac.info



mentaldisabilityadvocacy



Constantin Cojocariu

Constantin Cojocariu

Constantin Cojocariu holds a bachelor's degree in law from the University of Iasi, Romania (2000), a MA in Public Policies from the same university (2002) and a LLM in Human Rights from the Central European University in Budapest, Hungary (2003). In 2003 he was admitted as a qualified lawyer to Iasi Bar Association, Romania. Previously he worked for various Romanian human rights organisations active among others on women's rights and civic participation. Between 2005 and 2007 Constantin worked as Staff Attorney for the European Roma Rights Centre, where he was involved in a number of topical Strasbourg cases concerning Roma rights. He joined INTERIGHTS as a lawyer in 2007, where he handles the work on LGBT and disability rights in Europe. Constantin has extensive experience in developing human rights litigation before domestic and international courts and conducting trainings for lawyers on various aspects of human rights law and practice. His latest publication is an article titled: "Handicapping Rules: The Overly Restrictive Application of Admissibility Criteria by the European Court of Human Rights to Complaints concerning Disabled People" in the European Human Rights Law Review. He is a member for Romania of the European Commission for Sexual Orientation Law.

Ensuring access to justice for persons with disabilities under the UNCRPD

Constantin Cojocariu
Lawyer, INTERIGHTS

Overview

- The notion of “access to justice” in international law
- Article 13 of the CRPD
- Case-studies



Access to justice – general principles

- The CRPD is the first UN human rights treaty which explicitly includes “access to justice” as a free-standing substantive right.
- Other human rights treaties commonly refer to the “right to equality before the law”
- The European Convention on Human Rights: right to a fair trial (Art. 6) and right to an effective remedy (Article 13).



Access to justice – general principles

- ‘Access to justice’ may be granted in relation to the rights included in the document in question but also to any rights and obligations more generally.
- The substantive contents of “access to justice” in international law was developed through jurisprudence, with the full extent of obligations derived from it yet to be fully determined.
- Possible components of the right of “access to justice”:
 - equality before the courts and tribunals;
 - fair and public hearings, including the right to be heard in person;
 - right to legal aid;
 - A competent, impartial and independent judiciary;
 - Right to an effective remedy;
 - A right of access to international justice?



Article 13 of the CRPD

- Effective access to justice on an equal basis with others.
- Effective access to justice at all phases of the administration of justice, including at preliminary stages, such as initial investigations.
- To be both direct and indirect participants, including being witnesses.
- To receive procedural and age-appropriate accommodations to facilitate access to justice.
- To provide training to those working in the administration of justice, including police and prison staff, in order to help ensure effective access to justice for persons with disabilities.



Article 13 of the CRPD

- Art 13 was incorporated in an earlier version of an article titled “Equal recognition of a Person before the Law”.
- Closely related to
 - Article 12 (Equal recognition before the law);
 - Provisions regarding accessibility (Article 9, or Article 21);
 - The obligations to take into account the situation of women and children with disabilities (Article 6 and 7);
 - Article 33 (national implementation and monitoring)
 - Optional Protocol to the CRPD setting out an individual petition procedure



Article 13 of the CRPD

- The meaning of “justice”
- The types of interaction between persons with disabilities and the justice system envisaged
- The obligations included



Farcas v Romania

(App. No. 32596/04, dec. of 14.09.2010)

- The applicant had muscular dystrophy since childhood, that severely impaired his mobility.
- In 2004 he was constructively dismissed from his job after 20 years' employment, on the basis that he could not access the new premises at which he was expected to work.
- He sought to challenge his dismissal in court for his employers' failure to provide reasonable accommodation.
- However, he was prevented from doing so since the buildings housing local courts as well as local law offices were not accessible for people with disabilities.



Farcas v Romania (ctd.)

- Restrictions on access to justice are permissible as long as “the very essence of the right is [not] impaired” (*Ashingdane v UK*).
- The Court stated that there were other feasible steps that the applicant could have taken to access courts indirectly - through other people or by post.
- Complaint was declared inadmissible and rejected
- *Malone v UK* (1996): accessibility of court facilities to a wheelchair user – no violation
- *Stanford v UK* (1994): the defendant in a rape trial, with a severe hearing impairment, was not able to hear the victim’s testimony – no violation



Djordjevic and Djordjevic v Croatia (Application no. 41526/10, pending)

- The victims are mother and son, living in a high-rise building in Zagreb; son has intellectual and physical impairments.
- Since 2006 they have suffered ongoing abuse and harassment from a group of youths who live in the same neighborhood, ranging from anti-social behavior (such as name-calling, spitting, lewd comments, yelling, drawing insulting messages on the pavement in front of the victims’ flat, causing damage) to acts of physical violence.
- The authorities (police, prosecutors, school, social services) failed, over a long period of time, to respond effectively to the victims’ complaints and put a stop to the offensive behavior.



Djordjevic and Djordjevic v Croatia (ctd.)

There are indications that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher than the rate for the general population, and higher in women with disabilities, particularly women with severe disabilities, where the percentages of abuse far exceed those of non-disabled women. Such abuse can occur in institutions or other types of care and situations, including the family environment. It can be inflicted by strangers or persons known to the individual and can take many forms, for instance verbal abuse, violent actions, or refusal to meet basic needs (CoE Disability Action Plan)



Djordjevic and Djordjevic v Croatia (ctd.)

- Low rates of reporting and recording of disability hate crime.
- Lack of recognition of disability hate crime.
- Lack of skills from the part of police forces to deal with disabled victims of crime.
- Failure to prevent escalation; poor inter-agency coordination.
- Disabled victims and witnesses dismissed as unreliable.
- Low conviction rate.



Malacu and others v Romania
Campeanu v Romania (pending)

- People with disabilities who lived for very lengthy periods or even their whole lives in a psychiatric hospital.
- De facto deprivation of liberty, no legal guardian assigned.
- The victims died because of substandard living conditions and poor care and treatment.
- Superficial official investigation into their deaths; no criminal charges were brought against the perpetrators.



Malacu and others v Romania
Campeanu v Romania (ctd.)

In Europe today, thousands of people with disabilities are still kept in large, segregated and often remote institutions. In a number of cases they live in substandard conditions, suffering abject neglect and severe human rights abuses. In too many cases, premature deaths are not investigated or even reported. (CoE Human Rights Commissioner, 2010).



Malacu and others v Romania
Campeanu v Romania (ctd.)

- Applying procedural rules (for ex. standing or time limits) with flexibility, in consideration of the victims' circumstances.
- the obligation to ensure that closed psychiatric establishments are effectively monitored by independent authorities, aiming at preventing ill-treatment and other forms of abuse, and which are entitled to receive complaints.
- Automatic review of measures resulting in deprivation of rights.
- Other safeguards aimed at preventing abuse in psychiatric institutions.



Thank you

www.interights.org

José Gutierrez Fons

José A Gutiérrez-Fons

Licenciado en Derecho (Universidad Autónoma de Madrid); Master of European Law (College of Europe, Bruges); PhD in Law (Queen Mary & Westfield College, University of London), teaching and research assistant (2005-2008), post-doctoral visiting researcher (University of Michigan) (2008-2009); Visiting Lecturer at the Universidad Autónoma de Madrid (since 2010), Law Clerk at the cabinet of judge K. Lenaerts since April 2009.

Preliminary Ruling Procedures and the Integration of Persons with Disabilities

Dr José A. Gutiérrez-Fons

Article 267 TFEU: General aspects

- The jurisdiction of the Court of Justice of the European Union
- Scope
 - The problem posed by mixed agreements
- Article 267 TFEU and national courts

Article 267 TFEU: Primacy and direct effect

- General aspects
- Primacy
- Direct effect
- Types of direct effect:
 - Vertical
 - Horizontal
- The Court's judgment of 19 January 2010, Küçükdeveci, C-555/07, ECR p. I-365

The integration of persons with disabilities and the primary law

- Article 19 TFEU

"1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1."

- The Charter

- Cf. Article 21

“Any discrimination based on [...] disability is prohibited.”

- Cf. Article 26

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”

The UN Convention on the Rights of Persons with Disabilities

- Mixed Agreement

- Jurisdiction of the Court

- Direct effect?
- Consistent interpretation?

Secondary law

■ Directive 2000/78

– Cf. Article 1

“The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.”

– Cf. Article 5

“In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.”

■ CJEU case-law on Directive 2000/78

– Cf. the Court’s judgment of 11 July 2006, Chacón Navas, C-13/05, ECR p. I-6467.

– Cf. the case pending of Jette Ring (C-335/11)

Background Documentation

CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION 30.3.2010

Official Journal of the European Union C 83, 30.3.2010

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3 *(ex Article 2 TEU)*

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

1. The Union shall establish an economic and monetary union whose currency is the euro.
2. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty

and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

3. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 6
(*ex Article 6 TEU*)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

1. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.
2. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 19

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:
- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
 - (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
 - (c) rule in other cases provided for in the Treaties.

CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Official Journal of the European Union C 83, 30.3.2010

Article 10

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 19 *(ex Article 13 TEC)*

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

Article 267 *(ex Article 234 TEC)*

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2000/C 364/01)

CHAPTER III

EQUALITY*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.



EUROPEAN COMMISSION

Brussels, 15.11.2010
COM(2010) 636 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**European Disability Strategy 2010-2020:
A Renewed Commitment to a Barrier-Free Europe**

{SEC(2010) 1323}
{SEC(2010) 1324}

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**European Disability Strategy 2010-2020:
A Renewed Commitment to a Barrier-Free Europe**

TABLE OF CONTENTS

1.	Introduction.....	3
2.	Objectives and actions.....	4
2.1.	Areas for action.....	5
2.2.	Implementation of the Strategy.....	9
3.	Conclusion.....	11

1. INTRODUCTION

One in six people in the European Union (EU) has a disability¹ that ranges from mild to severe making around 80 million who are often prevented from taking part fully in society and the economy because of environmental and attitudinal barriers. For people with disabilities the rate of poverty is 70 % higher than the average² partly due to limited access to employment.

Over a third of people aged over 75 have disabilities that restrict them to some extent, and over 20 % are considerably restricted³. Furthermore, these numbers are set to rise as the EU's population ages.

The EU and its Member States have a strong mandate to improve the social and economic situation of people with disabilities.

- Article 1 of the Charter of Fundamental Rights of the EU (the Charter) states that ‘Human dignity is inviolable. It must be respected and protected.’ Article 26 states that ‘the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.’ In addition, Article 21 prohibits any discrimination on the basis of disability.
- The Treaty on the Functioning of the EU (TFEU) requires the Union to combat discrimination based on disability when defining and implementing its policies and activities (Article 10) and gives it the power to adopt legislation to address such discrimination (Article 19).
- The United Nations Convention on the Rights of Persons with Disabilities (the UN Convention), the first legally-binding international human rights instrument to which the EU and its Member States are parties, will soon apply throughout the EU⁴. The UN Convention requires States Parties to protect and safeguard all human rights and fundamental freedoms of persons with disabilities.

According to the UN Convention, people with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Commission will work together with the Member States to tackle the obstacles to a barrier-free Europe, taking up recent European Parliament and Council resolutions⁵. This

¹ EU Labour Force Survey ad hoc module on employment of disabled people (LFS AHM), 2002.

² EU Statistics on Income and Living Conditions (EU-SILC), 2004.

³ LFS AHM and EU- SILC 2007.

⁴ Agreed in 2007 and signed by all Member States and the EU; ratified by October 2010 by 16 Member States (BE, CZ, DK, DE, ES, FR, IT, LV, LT, HU, AT, PT, SI, SK, SE, UK) while the rest are in the process of doing so. The UN Convention will be binding on the EU and will form part of the EU legal order.

⁵ Council Resolutions (SOC 375 of 2 June 2010) and 2008/C 75/01 and European Parliament Resolution B6-0194/2009, P6_TA(2009)0334.

Strategy provides a framework for action at European level, as well as with national action to address the diverse situation of men, women and children with disabilities.

Full economic and social participation of people with disabilities is essential if the EU's Europe 2020 strategy⁶ is to succeed in creating smart, sustainable and inclusive growth. Building a society that includes everyone also brings market opportunities and fosters innovation. There is a strong business case for making services and products accessible to all, given the demand from a growing number of ageing consumers. For example, the EU market for assistive devices (with an estimated annual value of over €30 billion⁷) is still fragmented, and the devices are expensive. Policy and regulatory frameworks do not reflect the needs of people with disabilities adequately, neither do product and service development. Many goods and services, as well as much of the built environment, are still not accessible enough.

The economic downturn has had an adverse impact on the situation of people with disabilities, making it all the more urgent to act. This Strategy aims to improve the lives of individuals, as well as bringing wider benefits for society and the economy without undue burden on industry and administrations.

2. OBJECTIVES AND ACTIONS

The overall aim of this Strategy is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market. Achieving this and ensuring effective implementation of the UN Convention across the EU calls for consistency. This Strategy identifies actions at EU level to supplement national ones, and it determines the mechanisms⁸ needed to implement the UN Convention at EU level, including inside the EU institutions. It also identifies the support needed for funding, research, awareness-raising, statistics and data collection.

This Strategy focuses on eliminating barriers⁹. The Commission has identified eight main areas for action: **Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action**. For each area, key actions are identified, with the overarching EU-level objective highlighted in a box. These areas were selected on the basis of their potential to contribute to the overall objectives of the Strategy and of the UN Convention, the related policy documents from EU institutions and the Council of Europe, as well as the results of the EU Disability Action Plan 2003-2010, and a consultation of the Member States, stakeholders and the general public. The references to national actions are intended to supplement action at EU level, rather than to cover all national obligations under the UN Convention. The Commission will also tackle the situation of people with disabilities through the Europe 2020 strategy, its flagship initiatives and the relaunch of the single market.

⁶ COM(2010) 2020.

⁷ Deloitte & Touche, Access to Assistive Technology in the EU, 2003, and BCC Research, 2008.

⁸ Article 33 UN Convention.

⁹ 2006 Eurobarometer: 91 % find that more money should be spent on eliminating physical barriers for people with disabilities.

2.1. Areas for action

1 — Accessibility

'Accessibility' is defined as meaning that people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems (ICT), and other facilities and services. There are still major barriers in all of these areas. For example, on average in the EU-27, only 5% of public websites comply fully with web accessibility standards, though more are partially accessible. Many television broadcasters still provide few subtitled and audio-described programmes¹⁰.

Accessibility is a precondition for participation in society and in the economy, but the EU still has a long way to go in achieving this. The Commission proposes to use legislative and other instruments, such as standardisation, to optimise the accessibility of the built environment, transport and ICT in line with the Digital Agenda and Innovation Union flagships. Based on smarter regulation principles, it will explore the merits of adopting regulatory measures to ensure accessibility of products and services, including measures to step up the use of public procurement (proven to be very effective in the US¹¹). It will encourage the incorporation of accessibility and 'design for all' in educational curricula and training for relevant professions. It will also foster an EU-wide market for assistive technology. Following further consultations with Member States and other stakeholders, the Commission will consider whether to propose a 'European Accessibility Act' by 2012. This could include developing specific standards for particular sectors to substantially improve the proper functioning of the internal market for accessible products and services.

EU action will support and supplement national activities for implementing accessibility and removing existing barriers, and improving the availability and choice of assistive technologies.

Ensure accessibility to goods, services including public services and assistive devices for people with disabilities.

2 — Participation

There are still many obstacles preventing people with disabilities from fully exercising their fundamental rights - including their Union citizenship rights - and limiting their participation in society on an equal basis with others. Those rights include the right to free movement, to choose where and how to live, and to have full access to cultural, recreational, and sports activities. For example a person with a recognised disability moving to another EU country can lose access to national benefits, such as free or reduced-cost public transport.

The Commission will work to:

- overcome the obstacles to exercising their rights as individuals, consumers, students, economic and political actors; tackle the problems related to intra-EU mobility and facilitate and promote the use of the European model of disability parking card;

¹⁰ EC (2007), SEC(2007) 1469, p. 7.

¹¹ Section 508 of Rehabilitation Act and Architectural Barriers Act.

- promote the transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people;
- improve the accessibility of sports, leisure, cultural and recreational organisations, activities, events, venues, goods and services including audiovisual ones; promote participation in sports events and the organisation of disability-specific ones; explore ways of facilitating the use of sign language and Braille in dealing with the EU institutions; address accessibility to voting in order to facilitate the exercise of EU citizens' electoral rights; foster the cross-border transfer of copyright works in accessible format; promote use of the scope for exceptions provided by the Directive on copyright¹².

EU action will support national activities to:

- achieve the transition from institutional to community-based care, including use of Structural Funds and the Rural Development Fund for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers;
- make sports, leisure, cultural and recreational organisations and activities accessible, and use the possibilities for exceptions in the Directive on copyright.

Achieve full participation of people with disabilities in society by:

- enabling them to enjoy all the benefits of EU citizenship;
- removing administrative and attitudinal barriers to full and equal participation;
- providing quality community-based services, including access to personal assistance.

3 — Equality

Over half of all Europeans consider discrimination on grounds of disability or age to be widespread in the EU¹³. As required by Articles 1, 21 and 26 of the EU Charter and by Articles 10 and 19 TFEU, the Commission will promote the equal treatment of people with disabilities through a two-pronged approach. This will involve using existing EU legislation to provide protection from discrimination, and implementing an active policy to combat discrimination and promote equal opportunities in EU policies. The Commission will also pay attention to the cumulative impact of discrimination that people with disabilities may experience on other grounds, such as nationality, age, race or ethnicity, sex, religion or belief, or sexual orientation.

It will also ensure that Directive 2000/78/EC¹⁴ banning discrimination in employment is fully implemented; it will promote diversity and combat discrimination through awareness-raising

¹² Directive 2001/29/EC. A Stakeholder Memorandum of Understanding signed on 14.9.2009.

¹³ Special Eurobarometer 317.

¹⁴ Council Directive 2000/78/EC (OJ L 303, 2.12.2000, p. 16).

campaigns at EU and national level, and support the work of EU-level NGOs active in the area.

EU action will support and supplement national policies and programmes to promote equality, for instance by promoting the conformity of Member State legislation on legal capacity with the UN Convention.

Eradicate discrimination on grounds of disability in the EU.

4 — Employment

Quality jobs ensure economic independence, foster personal achievement, and offer the best protection against poverty. However, the rate of employment for people with disabilities is only around 50%¹⁵. To achieve the EU's growth targets, more people with disabilities need to be in paid employment on the open labour market. The Commission will exploit the full potential of the Europe 2020 Strategy and its Agenda for new skills and jobs by providing Member States with analysis, political guidance, information exchange and other support. It will improve knowledge of the employment situation of women and men with disabilities, identify challenges and propose remedies. It will pay particular attention to young people with disabilities in their transition from education to employment. It will address intra-job mobility on the open labour market and in sheltered workshops, through information exchange and mutual learning. It will also address the issue of self employment and quality jobs, including aspects such as working conditions and career advancement, with the involvement of the social partners. The Commission will step up its support for voluntary initiatives that promote diversity management at the workplace, such as diversity charters signed by employers and a Social Business Initiative.

EU action will support and supplement national efforts to: analyse the labour market situation of people with disabilities; fight those disability benefit cultures and traps that discourage them from entering the labour market; help their integration in the labour market making use of the European Social Fund (ESF); develop active labour market policies; make workplaces more accessible; develop services for job placement, support structures and on-the-job training; promote use of the General Block Exemption Regulation¹⁶ which allows the granting of state aid without prior notification to the Commission.

Enable many more people with disabilities to earn their living on the open labour market.

5 — Education and training

In the 16-19 age group the rate of non-participation in education is 37% for considerably restricted people, and 25% for those restricted to some extent, against 17% for those not restricted¹⁷. Access to mainstream education for children with severe disabilities is difficult and sometimes segregated. People with disabilities, in particular children, need to be integrated appropriately into the general education system and provided with individual support in the best interest of the child. With full respect for the responsibility of the Member

¹⁵ LFS AHM 2002.

¹⁶ Commission Regulation (EC) No 800/2008 (OJ L 214, 9.8.2008, p. 3).

¹⁷ LFS AHM 2002.

States for the content of teaching and the organisation of education systems, the Commission will support the goal of inclusive, quality education and training under the Youth on the Move initiative. It will increase knowledge on levels of education and opportunities for people with disabilities, and increase their mobility by facilitating participation in the Lifelong Learning Programme.

EU action will support national efforts through ET 2020, the strategic framework for European cooperation in education and training¹⁸, to remove legal and organisational barriers for people with disabilities to general education and lifelong learning systems; provide timely support for inclusive education and personalised learning, and early identification of special needs; provide adequate training and support for professionals working at all levels of education and report on participation rates and outcomes.

Promote inclusive education and lifelong learning for pupils and students with disabilities.

6 –Social protection

Lower participation in general education and in the labour market lead to income inequalities and poverty for people with disabilities, as well as to social exclusion and isolation. They need to be able to benefit from social protection systems and poverty reduction programmes, disability-related assistance, public housing programmes and other enabling services, and retirement and benefit programmes. The Commission will pay attention to these issues through the European Platform against Poverty. This will include assessing the adequacy and sustainability of social protection systems and support through the ESF. In full respect of the competence of the Member States, the EU will support national measures to ensure the quality and sustainability of social protection systems for people with disabilities, notably through policy exchange and mutual learning.

Promote decent living conditions for people with disabilities.

7 — Health

People with disabilities may have limited access to health services, including routine medical treatments, leading to health inequalities unrelated to their disabilities. They are entitled to equal access to healthcare, including preventive healthcare, and specific affordable quality health and rehabilitation services which take their needs into account, including gender-based needs. This is mainly the task of the Member States, which are responsible for organising and delivering health services and medical care. The Commission will support policy developments for equal access to healthcare, including quality health and rehabilitation services designed for people with disabilities. It will pay specific attention to people with disabilities when implementing policies to tackle health inequalities; promote action in the field of health and safety at work to reduce risks of disabilities developing during working life and to improve the reintegration of workers with disabilities¹⁹; and work to prevent those risks.

¹⁸ Council conclusions of 12 May 2009 on ET 2020 (OJ C 119, 28.5.2009, p. 2).

¹⁹ EU Strategy on Health and Safety at Work 2007-2012 - COM(2007) 62.

EU action will support national measures to deliver accessible, non-discriminatory health services and facilities; promote awareness of disabilities in medical schools and in curricula for healthcare professionals; provide adequate rehabilitation services; promote mental health services and the development of early intervention and needs assessment services.

Foster equal access to health services and related facilities for people with disabilities.

8 — External action

The EU and the Member States should promote the rights of people with disabilities in their external action, including EU enlargement, neighbourhood and development programmes. The Commission will work where appropriate within a broader framework of non-discrimination to highlight disability as a human rights issue in the EU's external action; raise awareness of the UN Convention and the needs of people with disabilities, including accessibility, in the area of emergency and humanitarian aid; consolidate the network of disability correspondents, increasing awareness of disability issues in EU delegations; ensure that candidate and potential candidate countries make progress in promoting the rights of people with disabilities and ensure that the financial instruments for pre-accession assistance are used to improve their situation.

EU action will support and complement national initiatives to address disability issues in dialogues with non-member countries, and where appropriate include disability and the implementation of the UN Convention taking into account the Accra commitments on aid-effectiveness. It will foster agreement and commitment on disability issues in international fora (UN, Council of Europe, OECD).

Promote the rights of people with disabilities within the EU external action.

2.2. Implementation of the Strategy

This Strategy requires a joint and renewed commitment of the EU institutions and all Member States. The actions in the main areas above need to be underpinned by the following general instruments:

1 — Awareness-raising

The Commission will work to ensure that people with disabilities are aware of their rights, paying special attention to accessibility of materials and information channels. It will promote awareness of 'design for all' approaches to products, services and environments.

EU action will support and supplement national public awareness campaigns on the capabilities and contributions of people with disabilities and promote exchange of good practices in the Disability High Level Group (DHLG).

Raise society's awareness of disability issues and foster greater knowledge among people with disabilities of their rights and how to exercise them.

2 — Financial support

The Commission will work to ensure that EU programmes in policy areas relevant to people with disabilities offer funding possibilities, for example in research programmes. The cost of measures to enable people with disabilities to take part in EU programmes should be eligible for reimbursement. EU funding instruments, particularly the Structural Funds, need to be implemented in an accessible and non-discriminatory way.

EU action will support and supplement national efforts to improve accessibility and combat discrimination through mainstream funding, proper application of Article 16 of the Structural Funds General Regulation²⁰, and by maximising requirements regarding accessibility in public procurement. All measures should be implemented in accordance with European competition law, in particular State aid rules.

Optimise use of EU funding instruments for accessibility and non-discrimination and increase visibility of disability-relevant funding possibilities in post-2013 programmes.

3 — Statistics and data collection and monitoring

The Commission will work to streamline information on disability collected through EU social surveys (EU Statistics on Income and Living Conditions, Labour Force Survey ad hoc module, European Health Interview Survey), develop a specific survey on barriers for social integration of disabled people and present a set of indicators to monitor their situation with reference to key Europe 2020 targets (education, employment and poverty reduction). The EU Fundamental Rights Agency is requested to contribute to this task, within the framework of its mandate, by data collection, research and analysis.

The Commission will also establish a web-based tool giving an overview of the practical measures and legislation used to implement the UN Convention.

EU action will support and supplement Member States' efforts to collect statistics and data that reflect the barriers preventing people with disabilities from exercising their rights.

Supplement the collection of periodic disability-related statistics with a view to monitoring the situation of persons with disabilities.

4 — Mechanisms required by the UN Convention

The governance framework required under Article 33 of the UN Convention (focal points, coordination mechanism, independent mechanism and involvement of people with disabilities and their organisations) needs to be addressed on two levels: *vis-à-vis* the Member States in a wide range of EU policies, and within EU institutions. At EU level, mechanisms for coordination based on existing facilities will be established both between the Commission services and the EU institutions, and between the EU and the Member States. The implementation of this Strategy and of the UN Convention will be regularly discussed at the DHLG with representatives of the Member States and their national focal points, the Commission, disabled people and their organisations and other stakeholders. It will continue to provide progress reports for informal ministerial meetings.

²⁰ Council Regulation (EC) No 1083/2006 (OJ L 210, 31.7.2006, p. 25).

Also, a monitoring framework including one or more independent mechanisms will be established to promote, protect and monitor implementation of the UN Convention. After the UN Convention is concluded and after considering the possible role of a number of existing EU bodies and institutions, the Commission will propose a governance framework without undue administrative burden to facilitate implementation of the UN Convention in Europe.

By the end of 2013, the Commission will report on progress achieved through this Strategy, covering implementation of actions, national progress and the EU report to the UN Committee on the Rights of Persons with Disabilities²¹. The Commission will use statistics and data collection to illustrate changes in disparities between people with disabilities and the population as a whole, and to establish disability-related indicators linked to the Europe 2020 targets for education, employment and poverty reduction. This will provide an opportunity to revise the Strategy and the actions. A further report is scheduled for 2016.

3. CONCLUSION

This Strategy is intended to harness the combined potential of the EU Charter of Fundamental Rights, the Treaty on the Functioning of the European Union, and the UN Convention, and to make full use of Europe 2020 and its instruments. It sets in motion a process to empower people with disabilities, so that they can participate fully in society on an equal basis with others. As Europe's population ages, these actions will have a tangible impact on the quality of life of an increasingly large proportion of its people. The EU institutions and the Member States are called upon to work together under this Strategy to build a barrier-free Europe for all.

²¹ Articles 35 and 36 UN Convention.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COUNCIL DECISION

of 26 November 2009

concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities

(2010/48/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 13 and 95 in conjunction with the second sentence of the first paragraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) In May 2004, the Council authorised the Commission to conduct negotiations on behalf of the European Community concerning the United Nations Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (hereinafter referred to as the UN Convention).
- (2) The UN Convention was adopted by the United Nations General Assembly on 13 December 2006 and entered into force on 3 May 2008.
- (3) The UN Convention was signed on behalf of the Community on 30 March 2007 subject to its possible conclusion at a later date.
- (4) The UN Convention constitutes a relevant and effective pillar for promoting and protecting the rights of persons with disabilities within the European Union, to which both the Community and its Member States attach the greatest importance.
- (5) The UN Convention should be thus approved, on behalf of the Community, as soon as possible.

- (6) Such approval should, however, be accompanied by a reservation, to be entered by the European Community, with regard to Article 27(1) of the UN Convention, in order to state that the Community concludes the UN Convention without prejudice to the Community law-based right, as provided under Article 3(4) of Council Directive 2000/78/EC ⁽²⁾, of its Member States not to apply to armed forces the principle of equal treatment on the grounds of disability.
- (7) Both the Community and its Member States have competence in the fields covered by the UN Convention. The Community and the Member States should therefore become Contracting Parties to it, so that together they can fulfil the obligations laid down by the UN Convention and exercise the rights invested in them, in situations of mixed competence in a coherent manner.
- (8) The Community should, when depositing the instrument of formal confirmation, also deposit a declaration under Article 44.1 of the Convention specifying the matters governed by the Convention in respect of which competence has been transferred to it by its Member States,

HAS DECIDED AS FOLLOWS:

Article 1

1. The UN Convention on the Rights of Persons with Disabilities is hereby approved on behalf of the Community, subject to a reservation in respect of Article 27.1 thereof.
2. The text of the UN Convention is set out in Annex I to this Decision.

The text of the reservation is contained in Annex III to this Decision.

⁽¹⁾ Opinion delivered on 27 April 2009, not yet published in the Official Journal.

⁽²⁾ OJ L 303, 2.12.2000, p. 16.

Article 2

1. The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the European Community, the instrument of formal confirmation of the Convention with the Secretary-General of the United Nations, in accordance with Articles 41 and 43 of the UN Convention.

2. When depositing the instrument of formal confirmation, the designated person(s) shall, in accordance with Articles 44.1 of the Convention, deposit the Declaration of Competence, set out in Annex II to this Decision, as well as the Reservation, set out in Annex III to this Decision.

Article 3

With respect to matters falling within the Community's competence and without prejudice to the respective competences of the Member States, the Commission shall be a focal point for matters relating to the implementation of the UN Convention in accordance with Article 33.1 of the UN Convention. The details of the function of focal point in this regard shall be laid down in a Code of Conduct before the deposition of the instrument of formal confirmation on behalf of the Community.

Article 4

1. With respect to matters falling within the Community's exclusive competence, the Commission shall represent the Community at meetings of the bodies created by the UN Convention, in particular the Conference of Parties referred to in Article 40 thereof, and shall act on its behalf as concerns questions falling within the remit of those bodies.

2. With respect to matters falling within the shared competences of the Community and the Member States, the Commission and the Member States shall determine in advance the appropriate arrangements for representation of the Community's position at meetings of the bodies created by the UN Convention. The details of this representation shall be laid down in a Code of Conduct to be agreed before the deposition of the instrument of formal confirmation on behalf of the Community.

3. At the meetings referred to in paragraphs 1 and 2 the Commission and the Member States, when necessary in prior consultation with other institutions of the Community concerned, shall closely cooperate, in particular as far as the questions of monitoring, reporting and voting arrangements are concerned. The arrangements for ensuring close cooperation shall also be addressed in the Code of Conduct referred to in paragraph 2.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 26 November 2009.

For the Council
The President
J. BJÖRKLUND

ANNEX I

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**Preamble**

THE STATES PARTIES TO THE PRESENT CONVENTION,

- (a) Recalling the principles proclaimed in the Charter of the United Nations which recognise the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- (b) Recognising that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- (c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- (d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- (e) Recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,
- (f) Recognising the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalise opportunities for persons with disabilities,
- (g) Emphasising the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
- (h) Recognising also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,
- (i) Recognising further the diversity of persons with disabilities,
- (j) Recognising the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,
- (k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,
- (l) Recognising the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,
- (m) Recognising the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment of the full participation by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,
- (n) Recognising the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- (o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,
- (p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

- (q) Recognising that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
- (r) Recognising that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,
- (s) Emphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
- (t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognising the critical need to address the negative impact of poverty on persons with disabilities,
- (u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,
- (v) Recognising the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
- (w) Realising that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the International Bill of Human Rights,
- (x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,
- (y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2

Definitions

For the purposes of the present Convention:

'Communication' includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

'Language' includes spoken and signed languages and other forms of non-spoken languages;

'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

'Universal design' means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. 'Universal design' shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3

General principles

The principles of the present Convention shall be:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4

General obligations

1. States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention;
- (b) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) to refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- (f) to undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in Article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) to undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) to promote the training of professionals and staff working with persons with disabilities in the rights recognised in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realisation of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognised or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognise such rights or freedoms or that it recognises them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

Article 5

Equality and non-discrimination

1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6

Women with disabilities

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7

Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

*Article 8***Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - (a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
 - (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
 - (c) to promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
 - (a) initiating and maintaining effective public awareness campaigns designed:
 - (i) to nurture receptiveness to the rights of persons with disabilities;
 - (ii) to promote positive perceptions and greater social awareness towards persons with disabilities;
 - (iii) to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
 - (b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
 - (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
 - (d) promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

*Article 9***Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - (b) information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures:
 - (a) to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
 - (b) to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
 - (c) to provide training for stakeholders on accessibility issues facing persons with disabilities;
 - (d) to provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
 - (e) to provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

- (f) to promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10

Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11

Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 12

Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13

Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14

Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) enjoy the right to liberty and security of person;

(b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

Article 15

Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16

Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 17

Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 18

Liberty of movement and nationality

1. States Parties shall recognise the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- (a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- (b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification, or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (c) are free to leave any country, including their own;
- (d) are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 19

Living independently and being included in the community

States Parties to the present Convention recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20

Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21

Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in Article 2 of the present Convention, including by:

- (a) providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) recognising and promoting the use of sign languages.

*Article 22***Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.
2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

*Article 23***Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
 - (a) the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised;
 - (b) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided;
 - (c) persons with disabilities, including children, retain their fertility on an equal basis with others.
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

*Article 24***Education**

1. States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - (c) enabling persons with disabilities to participate effectively in a free society.

2. In realising this right, States Parties shall ensure that:
 - (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - (c) reasonable accommodation of the individual's requirements is provided;
 - (d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - (e) effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - (a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - (b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - (c) ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development.
4. In order to help ensure the realisation of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 25

Health

States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range, quality and standard of free or affordable healthcare and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons;
- (c) provide these health services as close as possible to people's own communities, including in rural areas;
- (d) require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private healthcare;

- (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) prevent discriminatory denial of healthcare or health services or food and fluids on the basis of disability.

Article 26

Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- (a) begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
- (b) support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Article 27

Work and employment

1. States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- (e) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (f) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- (g) employ persons with disabilities in the public sector;
- (h) promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (i) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (j) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (k) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28

Adequate standard of living and social protection

1. States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.
2. States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures:
 - (a) to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - (b) to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - (c) to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - (d) to ensure access by persons with disabilities to public housing programmes;
 - (e) to ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29

Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- (a) to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - (i) participation in non-governmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - (ii) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

*Article 30***Participation in cultural life, recreation, leisure and sport**

1. States Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
 - (a) enjoy access to cultural materials in accessible formats;
 - (b) enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
 - (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
 - (a) to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
 - (b) to ensure that persons with disabilities have an opportunity to organise, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
 - (c) to ensure that persons with disabilities have access to sporting, recreational and tourism venues;
 - (d) to ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
 - (e) to ensure that persons with disabilities have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

*Article 31***Statistics and data collection**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
 - (a) comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
 - (b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

*Article 32***International cooperation**

1. States Parties recognise the importance of international cooperation and its promotion, in support of national efforts for the realisation of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organisations and civil society, in particular organisations of persons with disabilities. Such measures could include, inter alia:

- (a) ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- (b) facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) facilitating cooperation in research and access to scientific and technical knowledge;
- (d) providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

*Article 33***National implementation and monitoring**

1. States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process.

*Article 34***Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as the Committee), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of 12 experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of 18 members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognised competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in Article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilisation and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35

Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in Article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36

Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialised agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37

Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38

Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

- (a) the specialised agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialised agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) the Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39

Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40

Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

Article 41

Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42

Signature

The present Convention shall be open for signature by all States and by regional integration organisations at United Nations Headquarters in New York as of 30 March 2007.

*Article 43***Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organisations. It shall be open for accession by any State or regional integration organisation which has not signed the Convention.

*Article 44***Regional integration organisations**

1. 'Regional integration organisation' shall mean an organisation constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organisations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to 'States Parties' in the present Convention shall apply to such organisations within the limits of their competence.

3. For the purposes of Article 45, paragraph 1, and Article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organisation shall not be counted.

4. Regional integration organisations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organisation shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

*Article 45***Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the 20th instrument of ratification or accession.

2. For each State or regional integration organisation ratifying, formally confirming or acceding to the present Convention after the deposit of the 20th such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

*Article 46***Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

*Article 47***Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to Articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49

Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective governments, have signed the present Convention.

ANNEX II

DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

(Declaration made pursuant to Article 44(1) of the Convention)

Article 44(1) of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention) provides that a regional integration organisation in its instrument of formal confirmation or accession is to declare the extent of its competence with respect to matters governed by the Convention.

The current members of the European Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

The European Community notes that for the purpose of the Convention, the term 'State Parties' applies to regional integration organisations within the limits of their competence.

The United Nations Convention on the Rights of Persons with Disabilities shall apply, with regard to the competence of the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof.

Pursuant to Article 299, this Declaration is not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such act or positions as may be adopted under the Convention by Member States concerned on behalf and in the interests of those territories.

In accordance with Article 44(1) of the Convention, this Declaration indicates the competences transferred to the Community by the Member States under the Treaty establishing the European Community, in the areas covered by the Convention.

The scope and the exercise of Community competence are, by their nature, subject to continuous development and the Community will complete or amend this Declaration, if necessary, in accordance with Article 44(1) of the Convention.

In some matters the European Community has exclusive competence and in other matters competence is shared between the European Community and the Member States. The Member States remain competent for all matters in respect of which no competence has been transferred to the European Community.

At present:

1. The Community has exclusive competence as regards the compatibility of State aid with the common market and the Common Custom Tariff.

To the extent that provisions of Community law are affected by the provision of the Convention, the European Community has an exclusive competence to accept such obligations with respect to its own public administration. In this regard, the Community declares that it has power to deal with regulating the recruitment, conditions of service, remuneration, training etc. of non-elected officials under the Staff Regulations and the implementing rules to those Regulations⁽¹⁾.

2. The Community shares competence with Member States as regards action to combat discrimination on the ground of disability, free movement of goods, persons, services and capital agriculture, transport by rail, road, sea and air transport, taxation, internal market, equal pay for male and female workers, trans-European network policy and statistics.

⁽¹⁾ Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ L 56, 4.3.1968, p. 1).

The European Community has exclusive competence to enter into this Convention in respect of those matters only to the extent that provisions of the Convention or legal instruments adopted in implementation thereof affect common rules previously established by the European Community. When Community rules exist but are not affected, in particular in cases of Community provisions establishing only minimum standards, the Member States have competence, without prejudice to the competence of the European Community to act in this field. Otherwise competence rests with the Member States. A list of relevant acts adopted by the European Community appears in the Appendix hereto. The extent of the European Community's competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules.

3. The following EC policies may also be relevant to the UN Convention: Member States and the Community shall work towards developing a coordinated strategy for employment. The Community shall contribute to the development of quality of education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. The Community shall implement a vocational training policy which shall support and supplement the action of the Member States. In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. The Community conducts a development cooperation policy and economic, financial and technical cooperation with third countries without prejudice to the respective competences of the Member States.

Appendix

COMMUNITY ACTS WHICH REFER TO MATTERS GOVERNED BY THE CONVENTION

The Community acts listed below illustrate the extent of the area of competence of the Community in accordance with the Treaty establishing the European Community. In particular the European Community has exclusive competence in relation to some matters and in some other matters competence is shared between the Community and the Member States. The extent of the Community's competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules that are affected by the provisions of the Convention.

— regarding accessibility

Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10)

Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, amending Directives 70/156/EEC and 97/27/EC (OJ L 42, 13.2.2002, p. 1)

Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6), as amended by Directive 2004/50/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 114)

Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L 110, 20.4.2001, p. 1), as amended by Directive 2004/50/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 114)

Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC (OJ L 389, 30.12.2006, p. 1)

Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships (OJ L 123, 17.5.2003, p. 18)

Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1)

Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72)

Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 213, 7.9.1995, p. 1), as amended by Directive 2006/42/EC of the European Parliament and of the Council on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24)

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33)

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51)

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of services (OJ L 15, 21.1.1998, p. 14), as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21), and as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ L 52, 27.2.2008, p. 3)

Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25)

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1)

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114)

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007, p. 31)

Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007, p. 31)

— in the field of independent living and social inclusion, work and employment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16)

Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3)

Commission Regulation (EEC) No 2289/83 of 29 July 1983 laying down provisions for the implementation of Articles 70 to 78 of Council Regulation (EEC) No 918/83 establishing a Community system of duty-free arrangements (OJ L 220, 11.8.1983, p. 15)

Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (OJ L 105, 23.4.1983, p. 38)

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23)

Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ L 105, 23.4.1983, p. 1)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), as amended by Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax (OJ L 116, 9.5.2009, p. 18)

Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1)

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51)

— in the field of personal mobility

Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ L 237, 24.8.1991, p. 1)

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18)

Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4)

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1)

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Text with EEA relevance (OJ L 204, 26.7.2006, p. 1)

Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ L 377, 27.12.2006, p. 1)

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14)

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1)

Commission Regulation (EC) No 8/2008 of 11 December 2007 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane (OJ L 10, 12.1.2008, p. 1)

— regarding access to information

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council (OJ L 136, 30.4.2004, p. 34)

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27)

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1)

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10)

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22)

— regarding statistics and data collection

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data (OJ L 281, 23.11.1995, p. 31)

Council Regulation (EC) No 577/98 of 9 March 1998 on the organisation of the Labour Force Sample Survey in the Community (OJ L 77, 14.3.1998, p. 3) with related implementing Regulations

Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC); text with EEA relevance (OJ L 165, 3.7.2003, p. 1) with related implementing regulations

Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS) (OJ L 113, 30.4.2007, p. 3) with related implementing regulations

Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70)

— in the field of international cooperation

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ L 378, 27.12.2006, p. 41)

Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (OJ L 386, 29.12.2006, p. 1)

Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-accession Assistance (IPA) (OJ L 170, 29.6.2007, p. 1)

ANNEX III

RESERVATION BY THE EUROPEAN COMMUNITY TO ARTICLE 27(1) OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The European Community states that pursuant to Community law (notably Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation), the Member States may, if appropriate, enter their own reservations to Article 27(1) of the Disabilities Convention to the extent that Article 3(4) of the said Council Directive provides them with the right to exclude non-discrimination on the grounds of disability with respect to employment in the armed forces from the scope of the Directive. Therefore, the Community states that it concludes the Convention without prejudice to the above right, conferred on its Member States by virtue of Community law.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The States Parties to the present Protocol have agreed as follows:

Article 1

1. A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.
2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 2

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1. “Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol.

Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to “States Parties” in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be

submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 June 2011

11125/11

**SOC 460
COHOM 156**

NOTE

from: The Commission
to: COUNCIL (Employment, Social Policy, Health and Consumer Affairs)
Subject: Ratification and implementation of the UN Convention on the Rights of People
with Disabilities
- Information from the Commission
(Any other business item)

Delegations will find attached a note from the Commission in preparation for the EPSCO Council meeting on 17 June.

**Information Note from the European Commission
on progress in implementing the UN Convention
on the Rights of Persons with Disabilities to the EPSCO Council**

1. Introduction

This note is based on the 4th Disability High Level Group Report¹ and reports on progress in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities. It provides an update of developments in the national implementation of the Convention, with a more detailed reference to the governance structures required by Article 33 of the UNCRPD. The report of this year also examines the interface between implementation of the UNCRPD and the headline targets set in the context of the Europe 2020 Strategy for education, employment and poverty.

The annual progress reporting by the Disability High-Level Group was triggered by the Council Conclusions adopted under the German Presidency in 2007. The first joint Report was discussed by the ministers responsible for disability issues on 22 May 2008 under the Slovenian Presidency. The second Report responded to the Council's request in the Resolution adopted under the Slovenian Presidency for an assessment as to how national actions reflect the commitments entered into by the European Union and the Member States with a view to implementing the UNCRPD. The Report identified seven priority areas where collaboration at EU level could be useful and highlighted progress in the nine priorities for joint action that were identified in the first report. The second Report also highlighted the importance of four key matters for the implementation of the UNCRPD that were presented at the EPSCO Council in June 2009. The third Report was presented on 19 May 2010 at the third informal ministerial meeting on disability issues organised under the Spanish Presidency in Zaragoza. It complemented the two previous Reports but also had a stronger focus on procedural matters and governance aspects.

¹ Available online at: <http://ec.europa.eu/social/BlobServlet?docId=6851&langId=en>

2. Ratification/formal confirmation/accession

Since the previous Report from the Disability High Level Group (March 2010), further progress has been achieved, three additional Member States having ratified the Convention,² and three Member States having ratified the Optional Protocol.³ In addition, one Member State has finished the internal ratification procedure for the Convention and the Optional Protocol and is awaiting deposit with the UN.⁴ One Member State⁵ signed the Optional Protocol. Moreover, in 2010, the EU formally confirmed the Convention.

The current situation is as follows:

All Member States and the EU have signed the Convention,
22 Member States have signed the Optional Protocol,
17 Member States have ratified the Convention, (Austria, Belgium, Czech Republic, Denmark, Germany, France, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK),
1 Member State has finished the internal ratification procedure for the Optional Protocol and the Convention and is in the process of depositing the ratification instruments at the UN Headquarters (Cyprus),
14 Member States have ratified the Optional Protocol (Austria, Belgium, France, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Spain, Sweden, UK), and
The EU has formally confirmed the Convention.

On 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC). Before final confirmation of the Convention on behalf of the EU, the Commission, Council and Member States needed to agree on a Code of Conduct (see Article 3 and 4 of the Council Decision) setting out the framework for implementation of the Convention within the EU and, *inter alia*, the applicable coordination, representation, voting and speaking arrangements in the UN.

² Lithuania, Slovakia, Romania.

³ Latvia, Lithuania, Slovakia.

⁴ Cyprus.

⁵ Greece.

The Code of Conduct was agreed on the 2 December 2010,⁶ enabling the EU to complete the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010.

The Convention entered into force with respect to the EU on 22 January 2011. The EU is bound by the Convention to the extent of its competences as these are listed in an Annex to the Decision 2010/48/EC. The EU will have to submit its first Report to the UN Committee in Geneva by 22 January 2013.

With respect to the Representation of the EU *vis-à-vis* the UN in UNCPRD matters within EU competence, the Member States and the EU are bound by the principle of loyal cooperation and the principle of unity of external representation and these principles should permeate their cooperation. It is essential to build up good cooperation practices in line with the provisions of the Code of Conduct.

The proposal for EU accession to the Optional Protocol, adopted by the Commission on 29 August 2008⁷ and transmitted to the European Parliament and the Council is still with the Council. Before pursuing the discussion on the Optional Protocol, it was decided to give priority to the procedure of formal confirmation of the Convention and to the adoption of a Code of Conduct. Now that these two procedures have been completed, the Commission considers that the process of accession of the EU to the Optional Protocol should be continued.

The process of ratification of the Convention is ongoing in 9 Member States. As the UN Convention came into force on 3 May 2008 the Commission encourages its swift ratification by the remaining Member States.

⁶ Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the UNCPRD, Council of the European Union, 16243/10.

⁷ COM (2008) 530 final. The proposal was endorsed by the European Parliament on 24 April 2009.

3. Progress on implementation and monitoring of the UNCRPD

The effective implementation of the UNCRPD requires a proper *governance structure*. To that end, Article 33.1 UNCRPD directly obliges the State Parties, to designate one or more focal points within government for matters relating to the implementation of the UNCRPD, and to give due consideration to the establishment of a coordination mechanism to facilitate related action in different sectors and at different levels. The efforts to put effective governance structures in place in the Member States are ongoing and advancing. Some Member States have very recently established structures and processes, while others are at the beginning or in the midst of the implementation process.

It was therefore very timely that the first Work Forum, organised in November 2010, focused on the implementation of Article 33 of the UNCRPD, and on the involvement of persons with disabilities in those structures. The Work Forum provided examples of good practices such as: effective methods of involvement and consultation with people with disabilities, action plans which work across Ministries, consultative structures, legislative instruments and multi annual funding programs.

Most Member States have designated the Focal Point within their Ministry of Welfare, Labour or Social Affairs while it is interesting to note that in a recent report of the UN-OHCHR there was a recommendation to nominate the Focal Point in the Ministry of Justice.

The establishment of a *Coordination Mechanism* is optional, but a majority of the Member States has chosen to establish such a mechanism.⁸ Many Member States combine the lead for the Coordination Mechanism and Focal Point into one body.

⁸ AT, BE, CY, CZ, DK, DE, ES, FR, HU, IT, IE, LU, LV, NL, PT, RO, SE, UK.

For the EU the European Commission is the Focal Point⁹. Certain aspects of the coordination between the Council, the Member States and the Commission in the implementation of the Convention are covered by the Code of Conduct, adopted on 2 December 2010. The Code contains provisions on representation of the EU *vis-à-vis* the UN in UNCRPD matters, how to coordinate the establishment of positions (point 6), speaking arrangements (points 7 and 9), voting arrangements (point 8), nominations (point 10) reporting and monitoring (point 12).

Article 33.2 of the UNCRPD obliges State Parties to maintain, strengthen, designate or establish a framework, including one or more independent mechanism, to promote, protect and monitor the implementation of the Convention in accordance with their legal and administrative systems.

A majority of the Member States having ratified report that they have established an independent mechanism. While all Member States recognise the importance of involving civil society in developing and implementing laws relating to persons with disabilities, only some of them have arrangements for involving civil society in the monitoring process.

At the EU level, the Commission has announced that it will present during 2011 its proposal on a framework for the purposes of Article 33 UNCRPD.

4. The interface between implementation of the UNCRPD and Europe 2020

The fourth Disability High Level Group Report highlights the link between the implementation of the UNCRPD and the goals of the Europe 2020 Strategy for education, employment and poverty reduction. The three relevant headline targets are: raising to 75% the **employment rate** for women and men aged 20-64; **improving education levels**, in particular by aiming to reduce school drop-out rates to less than 10% and by increasing the share of 30-34 years old having completed tertiary or equivalent education to at least 40%; and promoting **social inclusion**, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.

⁹ Article 3, Decision 2010/48/EC, point 11, Code of Conduct.

On the basis of the EU Statistics on Income and Living Conditions (SILC) from 2008, it is estimated that the percentage of persons with disabilities having completed tertiary education or equivalent in the age group 30-34 is around 19%, while for those without disabilities the figure is around 31%. The employment rate (from the same source) among those between 20-64 years old with disabilities is 45 % compared to 73% for persons without disabilities. The poverty risk for persons with disabilities older than sixteen years is 21% while for those without disabilities it is about 15%. The situation of persons with disabilities therefore has to improve in order to contribute to reaching the headline targets. This means that the Member States should include measures addressing the situation of persons with disabilities when they prepare their programmes aiming to reach the Europe 2020 headline targets.

In this respect, the Disability High Level Group Report shows some interesting examples and practices, for example involving the Member State's UNCRPD focal point in the preparation of the National Reform Programmes (NRP), and setting specific targets for persons with disabilities in the NRP. The overall picture so far, however, is that few NRPs contain specific measures for persons with disabilities. Moreover, the existing measures and national plans do not appear to address disability mainstreaming objectives in the actions designed to reach the three headline targets. Member States are therefore encouraged to mainstream disability concerns in their general measures but also to consider the inclusion of specific measures in their NRPs to improve the situation of persons with disabilities. This process could be underpinned by the setting of national disability targets in these three areas, in order to strengthen the disability-relevant contribution to the policies aimed at reaching the headline targets.

In order to be able to monitor progress as regards the position of persons with disabilities in the context of these three headline targets, it is of great importance that the Member States and the EU improve their relevant data and statistics. While some efforts are being made, the Member States' answers to the questionnaire reveal that there are insufficient statistics and data on disability-related issues with regard to the three above-mentioned headline targets.

While there is a need for more and better disability related data from the Member States, the European Commission will use annual SILC data to report regularly on the situation of persons with disabilities in education, employment and poverty, compared to the figures for the rest of the population.

At the same time, the Member States are encouraged to improve their data collection, statistics and the development of disability related indicators.

COUNCIL DIRECTIVE 2000/78/EC**of 27 November 2000****establishing a general framework for equal treatment in employment and occupation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Having regard to the Opinion of the Economic and Social Committee ⁽³⁾,

Having regard to the Opinion of the Committee of the Regions ⁽⁴⁾,

Whereas:

- (1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
- (2) The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ⁽⁵⁾.
- (3) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human

Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

- (5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.
- (6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.
- (7) The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.
- (8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential.
- (10) On 29 June 2000 the Council adopted Directive 2000/43/EC ⁽⁶⁾ implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. That Directive already provides protection against such discrimination in the field of employment and occupation.
- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social

⁽¹⁾ OJ C 177 E, 27.6.2000, p. 42.

⁽²⁾ Opinion delivered on 12 October 2000 (not yet published in the Official Journal).

⁽³⁾ OJ C 204, 18.7.2000, p. 82.

⁽⁴⁾ OJ C 226, 8.8.2000, p. 1.

⁽⁵⁾ OJ L 39, 14.2.1976, p. 40.

⁽⁶⁾ OJ L 180, 19.7.2000, p. 22.

- protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.
- (13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.
- (14) This Directive shall be without prejudice to national provisions laying down retirement ages.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- (18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.
- (19) Moreover, in order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of this Directive concerning disability and age to all or part of their armed forces. The Member States which make that choice must define the scope of that derogation.
- (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
- (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.
- (22) This Directive is without prejudice to national laws on marital status and the benefits dependent thereon.
- (23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (24) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.
- (25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.
- (26) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation, and such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

- (27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community ⁽¹⁾, the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities ⁽²⁾, affirmed the importance of giving specific attention *inter alia* to recruitment, retention, training and lifelong learning with regard to disabled persons.
- (28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (30) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.
- (31) The rules on the burden of proof must be adapted when there is a *prima facie* case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.
- (32) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.
- (33) Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination at the workplace and to combat them.
- (34) The need to promote peace and reconciliation between the major communities in Northern Ireland necessitates the incorporation of particular provisions into this Directive.
- (35) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

- (36) Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.
- (37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
 - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

⁽¹⁾ OJ L 225, 12.8.1986, p. 43.

⁽²⁾ OJ C 186, 2.7.1999, p. 3.

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Article 3

Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

4. Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

Article 4

Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

Article 5

Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

Article 6

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate

aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- (b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- (c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

Article 7

Positive action

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.
2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Article 8

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II

REMEDIES AND ENFORCEMENT

Article 9

Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 10

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

Article 11

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 12***Dissemination of information**

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

*Article 13***Social dialogue**

1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.

2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

*Article 14***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

CHAPTER III

PARTICULAR PROVISIONS*Article 15***Northern Ireland**

1. In order to tackle the under-representation of one of the major religious communities in the police service of Northern Ireland, differences in treatment regarding recruitment into that service, including its support staff, shall not constitute discrimination insofar as those differences in treatment are expressly authorised by national legislation.

2. In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in

schools in Northern Ireland in so far as this is expressly authorised by national legislation.

CHAPTER IV

FINAL PROVISIONS*Article 16***Compliance**

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.

*Article 17***Sanctions**

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 18***Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2003 at the latest or may entrust the social partners, at their joint request, with the implementation of this Directive as regards provisions concerning collective agreements. In such cases, Member States shall ensure that, no later than 2 December 2003, the social partners introduce the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

In order to take account of particular conditions, Member States may, if necessary, have an additional period of 3 years from 2 December 2003, that is to say a total of 6 years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 19

Report

1. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this

report shall include, if necessary, proposals to revise and update this Directive.

Article 20

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2000.

For the Council

The President

É. GUIGOU

JUDGMENT OF THE COURT (Grand Chamber)

11 July 2006 (*)

(Directive 2000/78/EC – Equal treatment in employment and occupation – Concept of disability)

In Case C-13/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Social No 33 de Madrid (Spain), made by decision of 7 January 2005, received at the Court on 19 January 2005, in the proceedings

Sonia Chacón Navas

v

Eurest Colectividades SA,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, J.-P. Puissechet, N. Colneric (Rapporteur), K. Lenaerts, P. Kūris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,

Advocate General: L.A. Geelhoed,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Eurest Colectividades SA, by R. Sanz García-Muro, abogada,
- the Spanish Government, by E. Braquehais Conesa, acting as Agent,
- the Czech Government, by T. Boček, acting as Agent,
- the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,
- the Netherlands Government, by H. G. Sevenster, acting as Agent,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the United Kingdom Government, by C. White, acting as Agent, and T. Ward, Barrister,
- the Commission of the European Communities, by I. Martínez del Peral Cagigal and D. Martín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2006,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation, as regards discrimination on grounds of disability, of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and, in the alternative, possible prohibition of discrimination on grounds of sickness.
- 2 The reference was made in the course of proceedings between Ms Chacón Navas and Eurest Colectividades SA ('Eurest') regarding her dismissal whilst she was on leave of absence from her employment on grounds of sickness.

Legal and regulatory context

Community law

- 3 The first paragraph of Article 136 EC reads:

'The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.'

- 4 Article 137(1) and (2) EC confers on the Community the power to support and complement the activities of the Member States with a view to achieving the objectives of Article 136 EC, inter alia in the fields of integrating persons excluded from the labour market and combating social exclusion.

- 5 Directive 2000/78 was adopted on the basis of Article 13 EC in the version prior to the Treaty of Nice, which provides:

'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

- 6 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

- 7 That directive states in its recitals:

'(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.

(17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

...

(27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities, affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.'

8 Article 2(1) and (2) of Directive 2000/78 provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

9 Under Article 3 of that directive:

'1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...'

10 Article 5 of that directive reads:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo

training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.'

- 11 The Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989, to which Article 136(1) EC refers, states in point 26:

'All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration.

These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.'

National legislation

- 12 Under Article 14 of the Spanish Constitution:

'Spanish people are equal before the law; there may be no discrimination on grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance.'

- 13 Legislative Royal Decree No 1/1995 of 24 March 1995 approving the amended text of the Workers' Statute (Estatuto de los Trabajadores, BOE No 75 of 29 March 1995, p. 9654; 'the Workers' Statute') distinguishes between unlawful dismissal and void dismissal.

- 14 Article 55(5) and (6) of the Workers' Statute provides:

'5. Any dismissal on one of the grounds of discrimination prohibited by the Constitution or by law or occurring in breach of the fundamental rights and public freedoms of workers shall be void.

...

6. Any dismissal which is void shall entail the immediate reinstatement of the worker, with payment of unpaid wages or salary.'

- 15 It follows from Article 56(1) and (2) of the Workers' Statute that, in the event of unlawful dismissal, save where the employer decides to reinstate the worker, he loses his job but receives compensation.

- 16 As regards the prohibition of discrimination in employment relationships, Article 17 of the Workers' Statute, as amended by Law 62/2003 of 30 December 2003 laying down fiscal, administrative and social measures (BOE No 313 of 31 December 2003, p. 46874), which is intended to transpose Directive 2000/78 into Spanish law, provides:

'1. Regulatory provisions, clauses in collective agreements, individual agreements, and unilateral decisions by an employer, which involve direct or indirect unfavourable discrimination on grounds of age or disability, or positive or unfavourable discrimination in employment, or with regard to remuneration, working hours, and other conditions of employment based on sex, race, or ethnic origin, civil status, social status, religion or beliefs, political opinions, sexual orientation, membership or lack of membership of trade unions or compliance with their agreements, the fact of being related to other workers in the undertaking, or language within the Spanish State, shall be deemed void and ineffective.

...'

The main proceedings and the questions referred for a preliminary ruling

- 17 Ms Chacón Navas was employed by Eurest, an undertaking specialising in catering. On 14 October 2003 she was certified as unfit to work on grounds of sickness and, according to the

public health service which was treating her, she was not in a position to return to work in the short term. The referring court provides no information about Ms Chacón Navas' illness.

- 18 On 28 May 2004 Eurest gave Ms Chacón Navas written notice of her dismissal, without stating any reasons, whilst acknowledging that the dismissal was unlawful and offering her compensation.
- 19 On 29 June 2004 Ms Chacón Navas brought an action against Eurest, maintaining that her dismissal was void on account of the unequal treatment and discrimination to which she had been subject, stemming from the fact that she had been on leave of absence from her employment for eight months. She sought an order that Eurest reinstate her in her post.
- 20 The referring court points out that, in the absence of any other claim or evidence in the file, it follows from the reversal of the burden of proof that Ms Chacón Navas must be regarded as having been dismissed solely on account of the fact that she was absent from work because of sickness.
- 21 The referring court observes that, according to Spanish case-law, there are precedents to the effect that this type of dismissal is classified as unlawful rather than void, since, in Spanish law, sickness is not expressly referred to as one of the grounds of discrimination prohibited in relationships between private individuals.
- 22 Nevertheless, the referring court observes that there is a causal link between sickness and disability. In order to define the term 'disability', it is necessary to turn to the International Classification of Functioning, Disability and Health (ICF) drawn up by the World Health Organisation. It is apparent from this that 'disability' is a generic term which includes defects, limitation of activity and restriction of participation in social life. Sickness is capable of causing defects which disable individuals.
- 23 Given that sickness is often capable of causing an irreversible disability, the referring court takes the view that workers must be protected in a timely manner under the prohibition of discrimination on grounds of disability. Otherwise, the protection intended by the legislature would, in large measure, be nullified, because it would thus be possible to implement uncontrolled discriminatory practices.
- 24 Should it be concluded that disability and sickness are two separate concepts and that Community law does not apply directly to sickness, the referring court suggests that it should be held that sickness constitutes an identifying attribute that is not specifically cited which should be added to the ones in relation to which Directive 2000/78 prohibits discrimination. This follows from a joint reading of Articles 13 EC, 136 EC and 137 EC, and Article II-21 of the draft Treaty establishing a Constitution for Europe.
- 25 It was in those circumstances that the Juzgado de lo Social No 33 de Madrid decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - (1) Does Directive 2000/78, in so far as Article 1 thereof lays down a general framework for combating discrimination on the grounds of disability, include within its protective scope a ... [worker] who has been dismissed by her employer solely because she is sick?
 - (2) In the alternative, if it should be concluded that sickness does not fall within the protective framework which Directive 2000/78 lays down against discrimination on grounds of disability and the first question is answered in the negative, can sickness be regarded as an identifying attribute in addition to the ones in relation to which Directive 2000/78 prohibits discrimination?'

The admissibility of the reference for a preliminary ruling

- 26 The Commission casts doubt on the admissibility of the questions referred on the ground that the facts described in the order for reference lack precision.

- 27 In this respect, it must be observed that despite the absence of any indication of the nature and possible course of Ms Chacón Navas' sickness, the Court has enough information to enable it to give a useful answer to the questions referred.
- 28 It is apparent from the order for reference that Ms Chacón Navas, who was certified as unfit for work on grounds of sickness and was not in a position to return to work in the short term, was, according to the referring court, dismissed solely on account of the fact that she was absent from work because of sickness. It is also apparent from that order that the referring court takes the view that there is a causal link between sickness and disability and that a worker in the situation of Ms Chacón Navas must be protected under the prohibition of discrimination on grounds of disability.
- 29 The question principally referred concerns in particular the interpretation of the concept of 'disability' for the purpose of Directive 2000/78. The Court's interpretation of that concept is intended to enable the referring court to decide whether Ms Chacón Navas was, at the time of her dismissal, on account of her sickness, a person with a disability for the purpose of that directive who enjoyed the protection provided for in Article 3(1)(c) thereof.
- 30 The question referred in the alternative relates to sickness as an 'identifying attribute' and therefore concerns any type of sickness.
- 31 Euresc maintains that the reference for a preliminary ruling is inadmissible since the Spanish courts, in particular the Tribunal Supremo, have already ruled, in the light of Community legislation, that the dismissal of a worker who has been certified as unfit to work on grounds of sickness does not as such amount to discrimination. However, the fact that a national court has already interpreted Community legislation cannot render inadmissible a reference for a preliminary ruling.
- 32 As regards Euresc's argument that it dismissed Ms Chacón Navas without reference to the fact that she was absent from work on grounds of sickness because, at that time, her services were no longer necessary, it must be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, *inter alia*, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33).
- 33 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 25).
- 34 Since none of those conditions have been satisfied in this case, the reference for a preliminary ruling is admissible.

The questions

The first question

- 35 By its first question, the referring court is asking, in essence, whether the general framework laid down by Directive 2000/78 for combating discrimination on the grounds of disability confers protection on a person who has been dismissed by his employer solely on account of sickness.
- 36 As is clear from Article 3(1)(c) of Directive 2000/78, that directive applies, within the limits of the areas of competence conferred on the Community, to all persons, as regards inter alia dismissals.
- 37 Within those limits, the general framework laid down by Directive 2000/78 for combating discrimination on grounds of disability therefore applies to dismissals.
- 38 In order to reply to the question referred, it is necessary, first, to interpret the concept of 'disability' for the purpose of Directive 2000/78 and, second, to consider to what extent disabled persons are protected by that directive as regards dismissal.
- Concept of 'disability'
- 39 The concept of 'disability' is not defined by Directive 2000/78 itself. Nor does the directive refer to the laws of the Member States for the definition of that concept.
- 40 It follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-323/03 *Commission v Spain* [2006] ECR I-0000, paragraph 32).
- 41 As is apparent from Article 1, the purpose of Directive 2000/78 is to lay down a general framework for combating discrimination based on any of the grounds referred to in that article, which include disability, as regards employment and occupation.
- 42 In the light of that objective, the concept of 'disability' for the purpose of Directive 2000/78 must, in accordance with the rule set out in paragraph 40 of this judgment, be given an autonomous and uniform interpretation.
- 43 Directive 2000/78 aims to combat certain types of discrimination as regards employment and occupation. In that context, the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.
- 44 However, by using the concept of 'disability' in Article 1 of that directive, the legislature deliberately chose a term which differs from 'sickness'. The two concepts cannot therefore simply be treated as being the same.
- 45 Recital 16 in the preamble to Directive 2000/78 states that the 'provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability'. The importance which the Community legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time. In order for the limitation to fall within the concept of 'disability', it must therefore be probable that it will last for a long time.
- 46 There is nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness.
- 47 It follows from the above considerations that a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78.

Protection of disabled persons as regards dismissal

- 48 Unfavourable treatment on grounds of disability undermines the protection provided for by Directive 2000/78 only in so far as it constitutes discrimination within the meaning of Article 2(1) of that directive.
- 49 According to Recital 17 in the preamble to Directive 2000/78, that directive does not require the recruitment, promotion or maintenance in employment of an individual who is not competent, capable and available to perform the essential functions of the post concerned, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- 50 In accordance with Article 5 of Directive 2000/78, reasonable accommodation is to be provided in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities. That provision states that this means that employers are to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer.
- 51 The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.
- 52 It follows from all the above considerations that the answer to the first question must be that:
- a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78;
 - the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.

The second question

- 53 By its second question, the referring court is asking whether sickness can be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.
- 54 In this connection, it must be stated that no provision of the EC Treaty prohibits discrimination on grounds of sickness as such.
- 55 Article 13 EC and Article 137 EC, read in conjunction with Article 136 EC, contain only the rules governing the competencies of the Community. Moreover, Article 13 EC does not refer to discrimination on grounds of sickness as such in addition to discrimination on grounds of disability, and cannot therefore even constitute a legal basis for Council measures to combat such discrimination.
- 56 It is true that fundamental rights which form an integral part of the general principles of Community law include the general principle of non-discrimination. That principle is therefore binding on Member States where the national situation at issue in the main proceedings falls within the scope of Community law (see, to that effect, Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraphs 30 and 32, and Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 75, and the case-law cited). However, it does not follow from this that the scope of Directive 2000/78 should be extended by analogy beyond the discrimination based on the grounds listed exhaustively in Article 1 thereof.

- 57 The answer to the second question must therefore be that sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.

Costs

- 58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.**
- 2. The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.**
- 3. Sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.**

[Signatures]

* Language of the case: Spanish.

JUDGMENT OF THE COURT (Grand Chamber)

17 July 2008 (*)

(Social policy – Directive 2000/78/EC – Equal treatment in employment and occupation – Articles 1, 2(1), (2)(a) and (3) and 3(1)(c) – Direct discrimination on grounds of disability – Harassment related to disability – Dismissal of an employee who is not himself disabled but whose child is disabled – Included – Burden of proof)

In Case C-303/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Employment Tribunal, London South (United Kingdom), made by decision of 6 July 2006, received at the Court on 10 July 2006, in the proceedings

S. Coleman

v

Attridge Law

and

Steve Law,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, M. Ilešič, J. Klučka, A. Ó Caoimh (Rapporteur), T. von Danwitz and A. Arabadjiev, Judges,

Advocate General: M. Poiares Maduro,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 October 2007,

after considering the observations submitted on behalf of:

- Ms Coleman, by R. Allen QC and P. Michell, Barrister,
- the United Kingdom Government, by V. Jackson, acting as Agent, and N. Paines QC,
- the Greek Government, by K. Georgiadis and Z. Chatzipavlou, acting as Agents,
- Ireland, by N. Travers, BL,
- the Italian Government, by I.M. Braguglia, acting as Agent, and W. Ferrante, avvocato dello Stato,
- the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,
- the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,
- the Swedish Government, by A. Falk, acting as Agent,

- the Commission of the European Communities, by J. Enegren and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The reference was made in the course of proceedings between Ms Coleman, the claimant in the main proceedings, and Attridge Law, a firm of solicitors, and Mr Law, a partner in that firm (together, the 'former employer'), concerning Ms Coleman's claim of constructive dismissal.

Legal context

Community legislation

- 3 Directive 2000/78 was adopted on the basis of Article 13 EC. Recitals 6, 11, 16, 17, 20, 27, 31 and 37 in the preamble to the directive are worded as follows:
 - '(6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.
 - ...
 - (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
 - ...
 - (16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
 - (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
 - ...
 - (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
 - ...
 - (27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline

framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities [OJ 1999 C 186, p. 3], affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.

...

- (31) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.

...

- (37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.'

- 4 Article 1 of Directive 2000/78 states that '[t]he purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

- 5 Article 2(1) to (3) of the directive, headed 'Concept of discrimination', states:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

...'

- 6 Article 3(1) of Directive 2000/78 provides:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...'

- 7 Article 5 of Directive 2000/78, headed 'Reasonable accommodation for disabled persons', provides:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. ...'

- 8 Article 7 of Directive 2000/78, headed 'Positive action', is worded as follows:

'1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.'

- 9 Article 10 of Directive 2000/78, headed 'Burden of proof', provides:

'1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.'

- 10 In accordance with the first paragraph of Article 18 of Directive 2000/78, Member States were required to adopt the laws, regulations and administrative provisions necessary to comply with that directive by 2 December 2003 at the latest. Nevertheless, the second paragraph of Article 18 states:

'In order to take account of particular conditions, Member States may, if necessary, have an additional period of three years from 2 December 2003, that is to say a total of six years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.'

- 11 As the United Kingdom of Great Britain and Northern Ireland requested such an additional period for the implementation of the directive, that period did not expire until 2 December 2006 as regards that Member State.

National legislation

- 12 The Disability Discrimination Act 1995 ('the DDA') essentially aims to make it unlawful to discriminate against disabled persons in connection, inter alia, with employment.
- 13 Part 2 of the DDA, which regulates the employment field, was amended, on the transposition of Directive 2000/78 into United Kingdom law, by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, which came into force on 1 October 2004.
- 14 According to section 3A(1) of the DDA, as amended by those 2003 Regulations ('the DDA as amended in 2003'):
- '... a person discriminates against a disabled person if –
- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and
- (b) he cannot show that the treatment in question is justified.'
- 15 Section 3A(4) of the DDA as amended in 2003 none the less specifies that the treatment of a disabled person cannot be justified if it amounts to direct discrimination falling within section 3A(5), according to which:
- 'A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.'
- 16 Harassment is defined in section 3B of the DDA as amended in 2003 as follows:
- '(1) ... a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of –
- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.'
- 17 Under section 4(2)(d) of the DDA as amended in 2003, it is unlawful for an employer to discriminate against a disabled person whom he employs by dismissing him or by subjecting him to any other detriment.
- 18 Section 4(3)(a) and (b) of the DDA as amended in 2003 provides that it is also unlawful for an employer, in relation to employment by him, to subject to harassment a disabled person whom he employs or a disabled person who has applied to him for employment.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 19 Ms Coleman worked for her former employer as a legal secretary from January 2001.
- 20 In 2002, she gave birth to a son who suffers from apnoeic attacks and congenital laryngomalacia and bronchomalacia. Her son's condition requires specialised and particular care. The claimant in the main proceedings is his primary carer.

- 21 On 4 March 2005, Ms Coleman accepted voluntary redundancy, which brought her contract of employment with her former employer to an end.
- 22 On 30 August 2005, she lodged a claim with the Employment Tribunal, London South, alleging that she had been subject to unfair constructive dismissal and had been treated less favourably than other employees because she was the primary carer of a disabled child. She claims that that treatment caused her to stop working for her former employer.
- 23 The order for reference states that the material facts of the case in the main proceedings have not yet been fully established, since the questions referred for a preliminary ruling arose only as a preliminary issue. The referring tribunal stayed that part of the action concerning Ms Coleman's dismissal, but held a preliminary hearing on 17 February 2006 to consider the discrimination plea.
- 24 The preliminary issue raised before that tribunal is whether the claimant in the main proceedings can base her application on national law, in particular those provisions designed to transpose Directive 2000/78, in order to plead discrimination against her former employer on the ground that she was subjected to less favourable treatment connected with her son's disability.
- 25 It is apparent from the order for reference that, should the Court's interpretation of Directive 2000/78 contradict that put forward by Ms Coleman, her application to the referring tribunal could not succeed under national law.
- 26 It is also apparent from the order for reference that, under United Kingdom law, where there is a preliminary hearing on a point of law, the court or tribunal hearing the case assumes that the facts are as related by the claimant. In the main proceedings, the facts of the dispute are assumed to be as follows:
- On Ms Coleman's return from maternity leave, her former employer refused to allow her to return to her existing job, in circumstances where the parents of non-disabled children would have been allowed to take up their former posts;
 - her former employer also refused to allow her the same flexibility as regards her working hours and the same working conditions as those of her colleagues who are parents of non-disabled children;
 - Ms Coleman was described as 'lazy' when she requested time off to care for her child, whereas parents of non-disabled children were allowed time off;
 - the formal grievance which she lodged against her ill treatment was not dealt with properly and she felt constrained to withdraw it;
 - abusive and insulting comments were made about both her and her child. No such comments were made when other employees had to ask for time off or a degree of flexibility in order to look after non-disabled children; and
 - having occasionally arrived late at the office because of problems related to her son's condition, she was told that she would be dismissed if she came to work late again. No such threat was made in the case of other employees with non-disabled children who were late for similar reasons.
- 27 Since the Employment Tribunal, London South, considered that the case before it raised questions of interpretation of Community law, it decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- (1) In the context of the prohibition of discrimination on grounds of disability, does [Directive 2000/78] only protect from direct discrimination and harassment persons who are themselves disabled?
- (2) If the answer to Question (1) above is in the negative, does [Directive 2000/78] protect employees who, though they are not themselves disabled, are treated less

favourably or harassed on the ground of their association with a person who is disabled?

- (3) Where an employer treats an employee less favourably than he treats or would treat other employees, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that treatment direct discrimination in breach of the principle of equal treatment established by [Directive 2000/78]?
- (4) Where an employer harasses an employee, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that harassment a breach of the principle of equal treatment established by [Directive 2000/78]?’

Admissibility

- 28 While accepting that the questions put by the referring tribunal are based on an actual dispute, the Netherlands Government called into question the admissibility of the reference for a preliminary ruling on the basis that, given that these are preliminary questions raised at a preliminary hearing, all the facts at issue have not yet been established. It points out that, for the purposes of such a preliminary hearing, the national court or tribunal presumes that the facts are as related by the claimant.
- 29 It must be borne in mind that Article 234 EC establishes the framework for a relationship of close cooperation between the national courts or tribunals and the Court of Justice based on the assignment to each of different functions. It is clear from the second paragraph of that article that it is for the national court or tribunal to decide at what stage in the proceedings it is appropriate for that court or tribunal to refer a question to the Court of Justice for a preliminary ruling (see Joined Cases 36/80 and 71/80 *Irish Creamery Milk Suppliers Association and Others* [1981] ECR 735, paragraph 5, and Case C-236/98 *JämO* [2000] ECR I-2189, paragraph 30).
- 30 In the case in the main proceedings, the referring tribunal found that, if the Court of Justice should decide not to interpret Directive 2000/78 in accordance with Ms Coleman’s submissions, her case would fail in the material respects. The referring tribunal therefore decided, as permitted under United Kingdom legislation, to consider whether that directive must be interpreted as being applicable to the dismissal of an employee in Ms Coleman’s situation, before establishing whether, in fact, Ms Coleman did suffer less favourable treatment or harassment. It is for that reason that the questions referred for a preliminary ruling were based on the presumption that the facts of the dispute in the main proceedings are as summarised in paragraph 26 of this judgment.
- 31 Where, as here, the Court receives a request for interpretation of Community law which is not manifestly unrelated to the reality or the subject-matter of the main proceedings and it has the necessary information in order to give appropriate answers to the questions put to it in relation to the applicability of Directive 2000/78 to those proceedings, it must reply to that request and is not required to consider the facts as presumed by the referring court or tribunal, a presumption which it is for the referring court or tribunal to verify subsequently if that should prove to be necessary (see, to that effect, Case C-127/92 *Enderby* [1993] ECR I-5535, paragraph 12).
- 32 In those circumstances, the request for a preliminary ruling must be held to be admissible.

The questions referred for a preliminary ruling

The first part of Question 1, and Questions 2 and 3

- 33 By these questions, which should be examined together, the referring tribunal asks, in essence, whether Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a), must be interpreted as prohibiting direct discrimination on grounds of disability only in respect of an employee who is himself disabled, or whether the principle of equal treatment and the prohibition of direct discrimination apply equally to an employee who is not himself disabled

but who, as in the present case, is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.

- 34 Article 1 of Directive 2000/78 identifies its purpose as being to lay down, as regards employment and occupation, a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation.
- 35 Article 2(1) of Directive 2000/78 defines the principle of equal treatment as meaning that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1, including, therefore, disability.
- 36 According to Article 2(2)(a), direct discrimination is to be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on the grounds, *inter alia*, of disability.
- 37 Article 3(1)(c) of Directive 2000/78 provides that the directive is to apply, within the limits of the areas of competence conferred on the Community, to all persons, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including dismissals and pay.
- 38 Consequently, it does not follow from those provisions of Directive 2000/78 that the principle of equal treatment which it is designed to safeguard is limited to people who themselves have a disability within the meaning of the directive. On the contrary, the purpose of the directive, as regards employment and occupation, is to combat all forms of discrimination on grounds of disability. The principle of equal treatment enshrined in the directive in that area applies not to a particular category of person but by reference to the grounds mentioned in Article 1. That interpretation is supported by the wording of Article 13 EC, which constitutes the legal basis of Directive 2000/78, and which confers on the Community the competence to take appropriate action to combat discrimination based, *inter alia*, on disability.
- 39 It is true that Directive 2000/78 includes a number of provisions which, as is apparent from their very wording, apply only to disabled people. Thus, Article 5 provides that, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation is to be provided. This means that employers must take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.
- 40 Article 7(2) of Directive 2000/78 also provides that, with regard to disabled persons, the principle of equal treatment is to be without prejudice either to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting the integration of such persons into the working environment.
- 41 The United Kingdom, Greek, Italian and Netherlands Governments contend, in the light of the provisions referred to in the two preceding paragraphs and also of recitals 16, 17 and 27 in the preamble to Directive 2000/78, that the prohibition of direct discrimination laid down by the directive cannot be interpreted as covering a situation such as that of the claimant in the main proceedings, since the claimant herself is not disabled. Only persons who, in a comparable situation to that of others, are treated less favourably or are placed in a disadvantageous situation because of characteristics which are particular to them can rely on that directive.
- 42 Nevertheless, it must be noted in that regard that the provisions referred to in paragraphs 39 and 40 of this judgment relate specifically to disabled persons either because they are provisions concerning positive discrimination measures in favour of disabled persons themselves or because they are specific measures which would be rendered meaningless or could prove to be disproportionate if they were not limited to disabled persons only. Thus, as recitals 16 and 20 in the preamble to Directive 2000/78 indicate, the measures in question are intended to accommodate the needs of disabled people at the workplace and to adapt the workplace to their disability. Such measures are therefore designed specifically to facilitate and promote the integration of disabled people into the working environment and,

for that reason, can only relate to disabled people and to the obligations incumbent on their employers and, where appropriate, on the Member States with regard to disabled people.

- 43 Therefore, the fact that Directive 2000/78 includes provisions designed to accommodate specifically the needs of disabled people does not lead to the conclusion that the principle of equal treatment enshrined in that directive must be interpreted strictly, that is, as prohibiting only direct discrimination on grounds of disability and relating exclusively to disabled people. Furthermore, recital 6 in the preamble to the directive, concerning the Community Charter of the Fundamental Social Rights of Workers, refers both to the general combating of every form of discrimination and to the need to take appropriate action for the social and economic integration of disabled people.
- 44 The United Kingdom, Italian and Netherlands Governments also contend that it follows from the judgment in Case C-13/05 *Chacón Navas* [2006] ECR I-6467 that the scope *ratione personae* of Directive 2000/78 must be interpreted strictly. According to the Italian Government, in *Chacón Navas*, the Court opted for a strict interpretation of the concept of disability and its implications in an employment relationship.
- 45 The Court defined the concept of 'disability' in its judgment in *Chacón Navas* and, in paragraphs 51 and 52 of that judgment, it found that the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post. However, it does not follow from this interpretation that the principle of equal treatment defined in Article 2(1) of that directive and the prohibition of direct discrimination laid down by Article 2(2)(a) cannot apply to a situation such as that in the present case, where the less favourable treatment which an employee claims to have suffered is on grounds of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.
- 46 Although the Court explained in paragraph 56 of the judgment in *Chacón Navas* that, in view of the wording of Article 13 EC, the scope of Directive 2000/78 cannot be extended beyond the discrimination based on the grounds listed exhaustively in Article 1 of the directive, with the result that a person who has been dismissed by his employer solely on account of sickness cannot fall within the scope of the general framework established by Directive 2000/78, it nevertheless did not hold that the principle of equal treatment and the scope *ratione personae* of that directive must be interpreted strictly with regard to those grounds.
- 47 So far as the objectives of Directive 2000/78 are concerned, as is apparent from paragraphs 34 and 38 of the present judgment, the directive seeks to lay down, as regards employment and occupation, a general framework for combating discrimination on one of the grounds referred to in Article 1 – including, in particular, disability – with a view to putting into effect in the Member States the principle of equal treatment. It follows from recital 37 in the preamble to the directive that it also has the objective of creating within the Community a level playing field as regards equality in employment and occupation.
- 48 As Ms Coleman, the Lithuanian and Swedish Governments and the Commission maintain, those objectives, and the effectiveness of Directive 2000/78, would be undermined if an employee in the claimant's situation cannot rely on the prohibition of direct discrimination laid down by Article 2(2)(a) of that directive where it has been established that he has been treated less favourably than another employee is, has been or would be treated in a comparable situation, on the grounds of his child's disability, and this is the case even though that employee is not himself disabled.
- 49 In that regard, it follows from recital 11 in the preamble to the directive that the Community legislature also took the view that discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty, in particular, as regards employment.
- 50 Although, in a situation such as that in the present case, the person who is subject to direct discrimination on grounds of disability is not herself disabled, the fact remains that it is the disability which, according to Ms Coleman, is the ground for the less favourable treatment

which she claims to have suffered. As is apparent from paragraph 38 of this judgment, Directive 2000/78, which seeks to combat all forms of discrimination on grounds of disability in the field of employment and occupation, applies not to a particular category of person but by reference to the grounds mentioned in Article 1.

- 51 Where it is established that an employee in a situation such as that in the present case suffers direct discrimination on grounds of disability, an interpretation of Directive 2000/78 limiting its application only to people who are themselves disabled is liable to deprive that directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee.
- 52 As to the burden of proof which applies in a situation such as that in the present case, it should be observed that, under Article 10(1) of Directive 2000/78, Member States are required to take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it is for the respondent to prove that there has been no breach of that principle. According to Article 10(2), Article 10(1) does not prevent Member States from introducing rules on the burden of proof which are more favourable to plaintiffs.
- 53 In the case before the referring tribunal, it is therefore for Ms Coleman, in accordance with Article 10(1) of Directive 2000/78, to establish, before that tribunal, facts from which it may be presumed that there has been direct discrimination on grounds of disability contrary to the directive.
- 54 In accordance with Article 10(1) of Directive 2000/78 and recital 31 in the preamble thereto, the rules on the burden of proof must be adapted when there is a prima facie case of discrimination. In the event that Ms Coleman establishes facts from which it may be presumed that there has been direct discrimination, the effective application of the principle of equal treatment then requires that the burden of proof should fall on the respondents, who must prove that there has been no breach of that principle.
- 55 In that context, the respondents could contest the existence of such a breach by establishing by any legally permissible means, in particular, that the employee's treatment was justified by objective factors unrelated to any discrimination on grounds of disability and to any association which that employee has with a disabled person.
- 56 In the light of the foregoing considerations, the answer to the first part of Question 1 and to Questions 2 and 3 must be that Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).

The second part of Question 1, and Question 4

- 57 By these questions, which should be examined together, the referring tribunal asks, in essence, whether Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as prohibiting harassment related to disability only in respect of an employee who is himself disabled, or whether the prohibition of harassment applies equally to an employee who is not himself disabled but who, as in the present case, is the victim of unwanted conduct amounting to harassment related to the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.
- 58 Since, under Article 2(3) of Directive 2000/78, harassment is deemed to be a form of discrimination within the meaning of Article 2(1), it must be held that, for the same reasons as those set out in paragraphs 34 to 51 of this judgment, that directive, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as not being limited to the prohibition of harassment of people who are themselves disabled.

- 59 Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the principle of equal treatment enshrined in Directive 2000/78 and, in particular, to the prohibition of harassment laid down by Article 2(3) thereof.
- 60 In that regard, it must nevertheless be borne in mind that, according to the actual wording of Article 2(3) of the directive, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
- 61 With regard to the burden of proof which applies in situations such as that in the main proceedings, it must be observed that, since harassment is deemed to be a form of discrimination within the meaning of Article 2(1) of Directive 2000/78, the same rules apply to harassment as those set out in paragraphs 52 to 55 of this judgment.
- 62 Consequently, as is apparent from paragraph 54 of this judgment, in accordance with Article 10(1) of Directive 2000/78 and recital 31 in the preamble thereto, the rules on the burden of proof must be adapted when there is a prima facie case of discrimination. In the event that Ms Coleman establishes facts from which it may be presumed that there has been harassment, the effective application of the principle of equal treatment then requires that the burden of proof should fall on the respondents, who must prove that there has been no harassment in the circumstances of the present case.
- 63 In the light of the foregoing considerations, the answer to the second part of Question 1 and to Question 4 must be that Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).

Costs

- 64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).**
- 2. Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).**

[Signatures]

* Language of the case: English.

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Prorail NV v Xpedys NV and Others

(Case C-332/11)

(2011/C 269/59)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Prorail NV

Respondents: Xpedys NV

FAG Kugelfischer GmbH

D B Schenker Rail Nederland NV

Nationale Maatschappij der Belgische Spoorwegen NV

Question referred

Must Articles 1 and 17 of Council Regulation (EC) No 1206/2001⁽¹⁾ of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, in the light, inter alia, of European legislation concerning the recognition and enforcement of judgments in civil or commercial matters, and of the principle expressed in Article 33(1)⁽²⁾ that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, be interpreted as meaning that the court which orders an investigation by a judicial expert whose task is to be carried out partly in the territory of the Member State to which the court belongs, but partly also in another Member State, must, for the direct performance of the latter part of the task, make use only and therefore exclusively of the method created by Regulation No 1206/2001 as referred to in Article 17 thereof, or as meaning that the judicial expert assigned by that country may also be charged with an investigation which is to be partly carried out in another Member State of the European Union, outside the provisions of Regulation No 1206/2001?

⁽¹⁾ OJ 2001 L 174, p. 1.

⁽²⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra) v Belgische Staat

(Case C-333/11)

(2011/C 269/60)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra)

Respondent: Belgische Staat

Questions referred

1. Must Article 37 of the TIR Convention and the second subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93⁽¹⁾ of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, in the absence of an official finding as to the place where the offence or irregularity was committed, and of any proof to the contrary furnished within the specified period by the guarantor, the Member State where the existence of the offence or irregularity is detected is deemed to be the Member State where the offence or irregularity was committed, even if it is possible, on the basis of the place where the TIR carnet was accepted and where the goods were sealed, without further investigation, to ascertain via which Member State situated at the external border of the Community the goods were unlawfully introduced into the Community?
2. If the first question is answered in the negative, must the same Articles, in conjunction with Articles 6(1) and 7(1) of Council Directive 92/12/EEC⁽²⁾ of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, be interpreted as meaning that the Member State situated at the external border of the Community where the goods were unlawfully introduced is also competent to collect the excise duty when the goods have in the meantime been taken to another Member State, where they were discovered, confiscated and forfeited?

⁽¹⁾ OJ 1993 L 253, p. 1.

⁽²⁾ OJ 1992 L 76, p. 1.

Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab DAB

(Case C-335/11)

(2011/C 269/61)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicant: HK Danmark, acting on behalf of Jette Ring

Defendant: Dansk almennyttigt Boligselskab DAB

Questions referred

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* ⁽¹⁾ covered by the concept of disability within the meaning of the directive?
 - (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?
 - (c) Can a condition caused by a medically diagnosed temporary illness be covered by the concept of disability within the meaning of the directive?
2. Should a permanent reduction in functional capacity which does not entail a need for special aids or the like but means only that the person concerned is not capable of working full-time be regarded as a disability in the sense in which that term is used in Council Directive 2000/78/EC ⁽²⁾?
3. Is a reduction in working hours among the measures covered by Article 5 of Directive 2000/78/EC?
4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where
 - (a) the absence was caused by the disability

or
 - (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

⁽¹⁾ [2006] ECR I-6467.

⁽²⁾ OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Cour d'appel de Lyon (France), lodged on 1 July 2011 — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects v Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

(Case C-336/11)

(2011/C 269/62)

Language of the case: French

Referring court

Cour d'appel de Lyon

Parties to the main proceedings

Appellants: Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

Respondents: Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

Question referred

Should the combined nomenclature [set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ⁽¹⁾ as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 ⁽²⁾ and Commission Regulation (EC) No 1214/2007 of 20 September 2007 ⁽³⁾] be interpreted as meaning that polishing pads, intended for a polishing machine for working semiconductor materials — as such coming under tariff heading 8460 — imported separately from the machine, in the form of discs perforated in the centre, made up of a hard polyurethane layer, a layer of polyurethane foam, an adhesive layer and a protective plastic film, which do not contain any metal part or any abrasive substance and are used to polish 'wafers', in association with an abrasive liquid, and must be replaced at a frequency determined by their level of wear, come under tariff heading 8466 [...], as parts or accessories suitable for use solely or principally with the machines classified under headings 8456 to 8465, or, on the basis of their constituent material, under tariff heading [3919], as self-adhesive flat shapes made of plastic?

⁽¹⁾ OJ 1987 L 256, p. 1.

⁽²⁾ OJ 2006 L 301, p. 1.

⁽³⁾ OJ 2007 L 286, p. 1.

Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Lone Skouboe Werge v Pro Display A/S in liquidation

(Case C-337/11)

(2011/C 269/63)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicant: HK Danmark, acting on behalf of Lone Skouboe Werge

Defendant: Pro Display A/S in liquidation

**Action brought on 20 June 2011 — European Commission
v Italian Republic****(Case C-312/11)**

(2011/C 226/36)

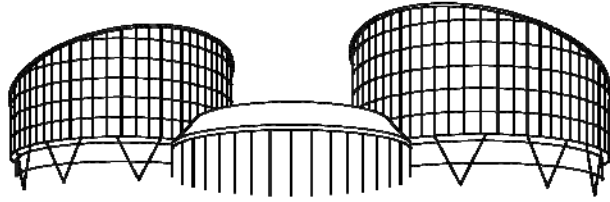
*Language of the case: Italian***Parties***Applicant:* European Commission (represented by: J. Enegren and C. Cattabriga, acting as Agents)*Defendant:* Italian Republic**Form of order sought**

The applicant claims that the Court should:

- declare that, by not placing all employers under an obligation to make reasonable accommodation for all disabled persons, the Italian Republic has failed to fulfil its obligation to implement, fully and correctly, Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

1. By not placing all employers under an obligation to make reasonable accommodation for all disabled persons, the Italian Republic has failed to fulfil its obligation to implement, fully and correctly, Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
2. Article 5 of Directive 2000/78 places Member States under an obligation of general application to make reasonable accommodation to enable persons with a disability to have access to, to participate in, or to advance in employment, or to undergo training. Those measures must apply — consistently with the principle of proportionality and depending upon the specific circumstances — to all disabled persons and must concern all aspects of the employment relationship and all employers.
3. There is no trace in the Italian legislation of measures implementing that general obligation. Admittedly, there are the provisions of Law No 68/1999, which, in a number of areas, offer a level of assurance and facilitation which is higher even than that required under Article 5 of Directive 2000/78. However, those provisions do not concern all disabled persons; they are not enforceable against all employers; they do not concern all the various aspects of the employment relationship; or they merely indicate an objective which requires subsequent implementing measures if it is to be achieved.



**EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME**

SECOND SECTION

CASE OF D.D. v. LITHUANIA

(Application no. 13469/06)

JUDGMENT

STRASBOURG

14 February 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of D.D. v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 24 January 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13469/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Ms D.D. (“the applicant”), on 28 March 2006. The President of the Chamber acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court, as in force at the material time).

2. On 8 January 2008 the applicant, who had been granted legal aid, signed a power of attorney in favour of Mr H. Mickevičius, a lawyer practising in Vilnius, giving him authority to represent her before the Court. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant complained that her involuntary admission to a psychiatric institution was in breach of Article 5 §§ 1 and 4 of the Convention. She further alleged that she had been deprived of the right to a fair hearing, in breach of Article 6 § 1.

4. On 20 November 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Written submissions were received from the European Group of National Human Rights Institutions and from the Harvard Project on Disability, which had been granted leave by the President to intervene as third parties (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court, as in force at the material time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and currently lives in the Kėdainiai Social Care Home (hereinafter “the Kėdainiai Home”) for individuals with general learning disabilities.

A. The circumstances of the case

7. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant’s psychiatric treatment, guardianship and care

8. The applicant has had a history of mental disorder since 1979, when she experienced shock having discovered that she was an adopted child. She is classed as Category 2 disabled.

9. In 1980, the applicant was diagnosed with schizophrenia simplex. In 1984 she was diagnosed with circular schizophrenia. In 1999, the applicant was diagnosed with paranoid schizophrenia with a predictable course. She has been treated in psychiatric hospitals more than twenty times. During her most recent hospitalisation at Kaunas Psychiatric Hospital in 2004, she was diagnosed with continuous paranoid schizophrenia (*paranoidinė šizofrenija, nepertraukiama eiga*). The diagnosis of the applicant remains unchanged.

10. In 2000 the applicant’s adoptive father applied to the Kaunas City District Court to have the applicant declared legally incapacitated. The court ordered a forensic examination of the applicant’s mental status.

11. In their report (no. 185/2000 of 19 July 2000), the forensic experts concluded that the applicant was suffering from “episodic paranoid schizophrenia with a predictable course” (*šizofrenija/paranoidinė forma, epizodinė liga su prognozuojančiu defektu*) and that she was not able “to understand the nature of her actions or to control them”. The experts noted that the applicant knew of her adoptive father’s application to the court for her incapacitation and wrote that she “did not oppose it”. The experts also wrote that the applicant’s participation in the court hearing for incapacitation was “unnecessary”.

12. On 15 September 2000 the Kaunas City District Court granted the request by the applicant’s adoptive father and declared the applicant legally incapacitated. In a one-page ruling, the court relied on medical expert report no. 185/2000. Neither the applicant nor her adoptive father was present at the hearing. The Social Services Department of the Kaunas City Council was represented before the court.

13. On 17 May 2001 the applicant's adoptive father requested her admission to the Kėdainiai Home for individuals with general learning disabilities. The applicant's name was put on a waiting list.

14. On 13 August 2002 the Kaunas City District Court appointed D.G., the applicant's psychiatrist at the Kaunas out-patient health centre (*Kauno Centro Poliklinika*), as her legal guardian. The applicant was present at the hearing. Her adoptive father submitted that "he himself did not agree with being appointed her guardian because he was in disagreement with his daughter (*jis pats nepageidauja būti globėju, nes su dukra nesutaria*)". Nonetheless, he promised to take care of her in future and to help her financially.

15. By a decision of 24 March 2003, the director of the health care centre dismissed D.G. from her work for a serious violation of her working duties. The decision was based on numerous reports submitted by D.G.'s colleagues and superiors.

16. On 16 July 2003 D.G. wrote to the Kaunas City District Court asking that she be relieved of her duties as the applicant's guardian. She mentioned that she had only agreed to become the applicant's guardian because she had observed a strained relationship between the applicant and her adoptive father. However, D.G. claimed that the applicant's adoptive father had asked her to hand over the applicant's pension to him, even though the applicant had been receiving her pension and had been using the money perfectly well on her own for many years. D.G. also contended that the applicant's adoptive father had attempted to unlawfully appropriate the applicant's property.

17. On 1 October 2003 the Kaunas City District Court relieved D.G. of her duties as the applicant's guardian at her own request. In court D.G. had argued that as she was litigating for unlawful dismissal she could not take proper care of the applicant.

18. By letter of 9 December 2003, the Kaunas City Social Services Department suggested to the district court that the applicant's adoptive father be appointed her guardian, although the Department noted that relations between the two of them were tense.

19. On 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The court relied on the request by the Kaunas City Council Department of Health, which was represented at the hearing. The applicant's adoptive father did not object to the appointment. The applicant was not present at the hearing.

20. Upon the initiative and consent of the applicant's adoptive father, on 30 June 2004 the applicant was taken to the Kaunas Psychiatric Hospital for treatment. The applicant complained that she had been treated against her will. A letter by the hospital indicates that the applicant's adoptive father had asked the hospital staff to ensure that her contacts with D.G. were limited on the ground that the latter had had a negative influence on the

applicant. However, on 3 September 2004 the prosecutor for the Kaunas City District dismissed the applicant's allegations, finding that she had been hospitalised due to deterioration in her mental state upon the order of her psychiatrist. The applicant had also expressed her consent to being treated.

21. On 8 July 2004 a panel designated by Kaunas City Council to examine cases of admission to residential psychiatric care (*Kauno miesto savivaldybės asmenų su proto negalia siuntimo į stacionarias globos įstaigas komisija*) adopted a unanimous decision to admit the applicant to the Kėdainiai Home.

22. On 20 July 2004 a medical panel of the Kaunas Psychiatric Hospital concluded that the applicant was suffering from "continuous paranoid schizophrenia" (*paranoidinė šizofrenija nepertraukiama eiga*). The commission also stated that it would be appropriate for the applicant to "live in a social care institution for the mentally handicapped".

23. On 28 July 2004 a social worker examined the conditions in which the applicant lived in her apartment in Kaunas city. The report reads that "the applicant is not able to take care of herself, does not understand the value of money, does not clean her apartment, is not able to cook on her own and wanders in the city hungry. Sometimes the applicant gets angry at people and shouts at them without a reason; her behaviour is unpredictable. The applicant does not have bad habits and likes to be in other persons' company". The social worker recommended that the applicant be placed in a social care institution because her adoptive father could not "manage" her.

24. On 2 August 2004 an agreement was concluded between the Kėdainiai Home, the Guardianship Department of Kaunas City Council and the Social Services Department of the Kaunas Regional Administration. On the basis of that agreement, the applicant was transferred from the Kaunas Psychiatric Hospital to the Kėdainiai Home, where she continued her treatment.

25. On 6 October 2004 the applicant signed a document stating that she agreed to be examined by the doctors in the Kėdainiai Home and to be treated there.

26. On 10 August 2004 the applicant's adoptive father wrote to the director of the Kėdainiai Home with a request that during the applicant's settling into the Kėdainiai Home she should be temporarily restricted from receiving visits by other people. The director granted the request. Subsequently, the Kaunas District Administration upheld the director's decision on the ground that the latter was responsible for the safety of patients in the Kėdainiai Home and thus was in a better position to determine what steps were necessary.

27. On 18 August 2004, upon the decision of the Kėdainiai Home director, D.G. was not allowed to visit the applicant. The applicant's medical record, which a treating psychiatrist signed the following day, states that "[the applicant] is acclimatising at the institution with difficulties, as

her former guardian and former doctor [D.G.] keeps calling constantly and telling painful matters from the past (...) [the applicant] is crying and blaming herself for being not good, for not preserving her mother, for having lived improperly. Verbal correction is not effective”.

28. According to a document signed by Margarita Buržinskienė on 23 February 2005, she had called the Kėdainiai Home to speak to the applicant but the employees had told her that, on the director’s orders, the applicant was not allowed to answer the phone (*vykdant direktorės nurodymą Daivos prie telefono nekviečia*).

29. On 15 June 2006 the applicant’s adoptive father removed her from institutional care and taken her to his flat. On 15 July 2006 the applicant left his home on her own. A police investigation was started following a report by the applicant’s adoptive father of the allegedly unlawful deprivation of the applicant’s liberty. She was eventually found and apprehended by the police on 31 October 2006, and was taken back to the Kėdainiai Home.

30. On 6 September 2007 the applicant left the Kėdainiai Home without informing its management. She was found by the police and taken back to the institution on 9 October 2007.

31. As can be seen from a copy of the record of the Kėdainiai Home’s visitors submitted by the Government, between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. In particular, her adoptive father saw her thirteen times, her friends and other relatives visited her twenty-six times and she was visited by D.G. on twelve occasions.

2. *Proceedings regarding the change of the applicant’s guardianship*

32. On 15 July 2004 the applicant asked the Kaunas Psychiatric Hospital to initiate a change of guardianship from her adoptive father to D.G. The applicant wrote that her adoptive father had had her admitted to the psychiatric hospital by force and deception, thus depriving her of her liberty. The hospital refused her request as it did not have competence in guardianship matters.

33. The applicant states that a similar request was rejected by the Kėdainiai Home.

34. On 2 September 2005, assisted by her former guardian and then friend, D.G., the applicant brought an application before the courts, requesting that the guardianship proceedings be reopened and a new guardian appointed. She submitted that she had been unable to state her opinion as to her guardianship, because she had not been informed of and summoned to the court hearing during which her adoptive father had been appointed her guardian. The applicant relied on Article 507 § 3 of the Code of Civil Procedure and stated that her state of health in the previous year could not have been an obstacle to her expressing her opinion as to the appropriateness of the guardian proposed at the court hearing. She claimed

that in 2004 she had used to visit her friend in a village for a couple of weeks at a time. The applicant also noted that when she returned to Kaunas, her adoptive father had often threatened to have her committed to a mental asylum.

35. The applicant also argued that by appointing her adoptive father to be her guardian without informing her and without her being able to state her opinion as to his prospective appointment, in contravention of Article 3.242 of the Civil Code and Article 507 § 4 of the Code of Civil Procedure, the court had disregarded the strained relationship between the two of them. The applicant drew the court's attention to the ruling of the Kaunas City District Court of 13 August 2002, in which the applicant's adoptive father had himself stated that their relationship had been tense. The applicant drew the court's attention to Article 491 § 2 of the Code of Civil Procedure, stipulating that the court had to take all necessary measures to avoid a possible conflict between the incapacitated person and her potential guardian.

Lastly, she stated that she had only learned of her adoptive father's appointment in April 2004.

36. By a ruling of 29 September 2005 the Kaunas City District Court decided to accept the applicant's request for examination.

37. On 27 October 2005 the applicant wrote to the Chairman of the Kaunas City District Court. She complained of her incapacitation on her adoptive father's devious initiative without having being informed of the incapacitation proceedings. The applicant also pleaded that she had been unlawfully deprived of her liberty and involuntarily admitted to the Kėdainiai Home for an indefinite time and where she had been unable to obtain legal aid.

38. On 7 November 2005 judge R.A. of the Kaunas City District Court held a closed hearing in which the applicant, her guardian (her adoptive father) and his lawyer, and D.G. took part. The relevant State institutions were also represented at the hearing: the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor and the Social Services Department of Kaunas City Council. The applicant's doctor did not take part in the hearing. The court noted that the doctor had been informed of it and had asked the court to proceed without him.

39. In her application form to the Court, the applicant alleged that at the beginning of the hearing the judge had ordered her to leave her place next to D.G. and to sit next to the judge. The judge had also ordered D.G. "to keep her eyes off the applicant". Given that this was not reflected in the transcript of the hearing, on 19 November 2005 D.G. had written to the court asking that the transcript be rectified accordingly.

40. According to the transcript of the hearing, at the beginning thereof D.G. requested that an audio recording be made. The judge refused the request. The applicant asked to be assisted by a lawyer. The judge refused

her request, deeming that her guardian was assisted by a lawyer before the court. Without the agreement of her guardian, a separate lawyer could not be appointed. The lawyer hired by the applicant's guardian was held to represent both the interests of the applicant and her guardian.

41. As the transcript of the hearing shows, the applicant went on to unequivocally state that she stood by her request that the guardianship proceedings be reopened. She argued that she had neither been informed of the proceedings as to her incapacitation, nor those pursuant to which her guardian had been appointed. The decisions had been taken while she had been in hospital. During the hearing, the applicant expressed her willingness to leave the Kėdainiai Home and stated that she was being kept and treated there by force. She submitted that she would prefer to live at her adoptive father's home and to attend a day centre (*lankys dienos užimtumo centras*). The applicant also argued that D.G. had been forced to surrender her duties as her guardian and to allow the applicant's adoptive father to become her guardian because of pressure from him with the aim of transferring the applicant's flat to him. The applicant also noted that in the Kėdainiai Home she was cut off from society and had been deprived of the opportunity to make telephone calls. Her friends could not visit her and she was not allowed to go to the cinema. In the Kėdainiai Home "she was isolated and saw only a fence". The other parties to the proceedings opposed the applicant's wish that the guardianship proceedings be reopened.

42. In her application to the Court, the applicant alleged that during a break in the hearing she had been ordered to follow the judge to her private office. When the applicant had refused, she had been threatened with restraint by psychiatric personnel. In private, the judge had instructed her not to say anything negative about her adoptive father and that, should she not comply, her friend D.G. would also be declared legally incapacitated. As stated in D.G.'s letter seeking rectification of the transcript (paragraph 39 above), after the break was announced the applicant had wished to stay in the hearing room. However, she had been taken away and had returned very depressed (*prislėgta*). Responding to a question by the judge as to her guardianship, the applicant replied: "I agree that [my adoptive father] should be my guardian, because God asks that people be forgiving. I just wish that he [would] take me [away] from [the Kėdainiai Home] to Kaunas, to his place... and let me see D.G. and my friends".

43. It appears from the transcript of the hearing that after the break, when giving her submissions to the court, the applicant agreed to keep her adoptive father as guardian, but insisted on being released from institutional care in order to live with her adoptive father. The relevant State institutions – the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor, the Social Services Department of Kaunas City Council – and the applicant's guardian's lawyer each argued that the applicant's request for reopening was clearly unfounded and should be dismissed.

44. On 17 November 2005 the Kaunas City District Court refused to reopen the guardianship proceedings on the basis of Article 366 § 1 (6) of the Code of Civil Procedure, ruling that there were no grounds to change the guardian (see Relevant domestic law part below). The court noted that before appointing the applicant's adoptive father as her guardian, the Kaunas City Council Department of Health had prepared a report on the proposed appointment of the applicant's guardian and had questioned the applicant, who had not been able to provide an objective opinion about that appointment. The court confirmed that the applicant had not been summoned to the hearing of 21 January 2004, when her guardian was appointed, as the court had taken into consideration the applicant's mental state and, on the basis of the findings of the relevant health care officials, had not considered her involvement in the hearing necessary. The court further noted that the findings had disclosed tense relations between the applicant and her adoptive father. Even so, the applicant's adoptive father had been duly performing his duties. The court also referred to statements of the representatives of the Kaunas Psychiatric Hospital and the director of the Kėdainiai Home to the effect that the applicant's contact with D.G. had had a negative influence on her mental health.

45. The Kaunas City District Court proceeded to fine D.G. 1,000 Lithuanian litai (LTL) (approximately 290 euros (EUR)) for abuse of process. It noted that D.G. had filed numerous complaints before various State institutions and the courts of alleged violations of the applicant's rights. Those complaints had prompted several inquiries which had revealed a lack of substantiation. The court noted:

“... by such an abuse of rights, [D.G.] caused damage to the State, namely the waste of time and money of the court and the participants in the proceedings. The court concludes that [D.G.] has abused her rights ... and the vulnerability of the incapacitated person”.

46. D.G. appealed against the above decision. She noted, *inter alia*, that the 21 January 2004 ruling to appoint the applicant's adoptive father as her guardian had been adopted by judge R.A. The same judge had dismissed the applicant's request that the court proceedings be reopened, although this was explicitly prohibited by Article 370 § 5 of the Code of Civil Procedure.

The applicant also submitted a brief in support of D.G.'s appeal, arguing that persons admitted to psychiatric institutions should have a right to know the reasons for their admission. Moreover, they should be able to contact a lawyer who is independent from the institution to which they have been admitted.

47. The appeal by D.G. was dismissed by the Kaunas Regional Court on 7 February 2006 in written proceedings. The court did not rule on the plea that the district court judge R.A. had been partial.

48. On 11 May 2006 the Supreme Court declared D.G.'s subsequent appeal on points of law inadmissible, as it had not been submitted by a lawyer and raised no important legal issues.

49. By a ruling of 7 February 2007 the Kaunas City District Court, following a public hearing attended by social services representatives and the applicant's legal guardian, granted the guardian's request to be relieved from the duties of guardian and property administrator. The applicant's adoptive father had argued that he was no longer fit to be her guardian because of his old age (seventy-seven years at that time) and state of health. The Kėdainiai Home was appointed temporary guardian and property administrator. The applicant was not present at the hearing.

50. On 25 April 2007, the Kaunas City District Court held a public hearing and appointed the Kėdainiai Home as the applicant's permanent guardian and administrator of her property rights. The applicant was not present at that hearing; the court did not give reasons for her absence.

3. Criminal inquiry

51. On 1 February 2006 a criminal inquiry was opened on the initiative of some of the applicant's acquaintances, who alleged that the applicant had been the victim of Soviet-style classification of illnesses which was designed to repress those who fall foul of the regime. The complainants submitted that, as a result of the persistent diagnoses of schizophrenia, the applicant had been unlawfully deprived of her liberty, had been ill-treated and had been overmedicated in the Kėdainiai Home, and that her property rights had been violated by her guardian.

52. On 31 July 2006 the investigation was discontinued, no evidence having been found of an abuse of the applicant's interests, either pecuniary or personal. It was established that the immovable property belonging to the applicant had been let to a third person, with the proceeds used to satisfy the applicant's needs. The applicant had had a bank account opened in her name on 6 October 2005, and the deposit made on that date had since been left untouched. Moreover, the applicant's guardian had transferred to her account the sum received from the sale of their common property. There was thus no indication that the applicant's adoptive father had abused his position as guardian.

53. As regards the deprivation of the applicant's liberty, the prosecutor noted that the applicant had been admitted to an institutional care facility in accordance with the applicable legislation. The prosecutor acknowledged that the freedom of the applicant "to choose her place of residence [was] restricted (*laisvė pasirinkti buvimo vietą yra ribojama*)", but further noted that she was:

"... constrained to an extent no greater than necessary in order to take due care of her as a legally incapacitated person. The guardian of [the applicant] can change her place of residence without first obtaining a separate official decision; she is not unlawfully

hospitalised. Therefore, her placement in the Kėdainiai Home cannot be classified as an unlawful deprivation of liberty, punishable under Article 146 § 2 (3) of the Criminal Code”.

54. The prosecutor had also conducted an inquiry into an incident which had occurred at the Kėdainiai Home on 25 January 2005. After questioning the personnel of the Home, it was established that on that day the applicant had been placed in the intensive supervision ward (*intensyvaus stebėjimo kambarys*), had been given an additional dose of tranquilisers (2 mg of Haloperidol) and had been tied down (*fiksuota*) for fifteen to thirty minutes by social care staff.

55. The prosecutor noted the explanation of the psychiatrist at the Home, who admitted that the applicant’s restraint had been carried out in breach of the applicable rules, without the approval of medical personnel. However, after having read written reports on the incident produced by the social care personnel, he considered the tying down to have been undertaken in order to save the applicant’s life and not in breach of her rights.

56. Questioned by the prosecution as witnesses, social workers at the Kėdainiai Home testified that 25 January 2005 had been the only occasion on which the applicant had been physically restrained and placed in isolation. The measures had only been taken because at that particular time the applicant had shown suicidal tendencies.

57. The prosecutor concluded that the submissions made by the complainants were insufficient to find that the applicant’s right to liberty had been violated by unnecessary restraint or that she had suffered degrading treatment.

58. On 30 August 2006 the higher prosecutor upheld that decision.

4. *Complaints to other authorities*

59. With the assistance of D.G., the applicant addressed a number of complaints to various State authorities.

60. On 30 July 2004, in reply to a police inquiry into the applicant’s complaint of unlawful detention in the Kėdainiai Home, the Kaunas City Council Social Services department wrote that “[in] the last couple of years, relations between the applicant and her adoptive father have been tense. Therefore, on the wish of both of them, until 21 January 2004 [the applicant’s] legal guardian was D.G. and not her adoptive father”.

61. The Ministry of Social Affairs also commissioned an inquiry, including conducting an examination of the applicant’s living conditions at the Kėdainiai Home and interviews with the applicant and the management of the Home. The commission established that the applicant’s living conditions were not exemplary (*nėra labai geros*), but it was promised that the inhabitants would soon move to new premises with better conditions. However, it was noted that the applicant received adequate care. The commission opined that it was advisable not to disturb the applicant, given

her vulnerability and instability. It was also emphasised that the State authorities were under an obligation to be diligent as regards supervision of how the guardians use their rights.

62. On 6 January 2005 D.G. filed a complaint with the police, alleging that the applicant had been unlawfully deprived of her liberty and of contact with people from outside the Kėdainiai Home. By letter of 28 February 2005, the police replied that no violation of the applicant's rights had been found. They explained that, in accordance with the internal rules of the Kėdainiai Home, residents could be visited by their relatives and guardians, but other people required the approval of the management. At the request of the applicant's guardian, the management had prohibited other people from visiting her.

63. On 17 May 2005 upon the inspection performed by food safety authorities out-of-date frozen meat (best before 12 May 2005) was found in the Kėdainiai Home. However, there was no indication that that meat would have been used for cooking. On 20 February 2006 the Kaunas City Governor's office inspected the applicant's living conditions in Kėdainiai and found no evidence that she could have been receiving food of bad quality.

64. On 28 April 2006 the applicant complained to the Ministry of Health about her admission to long-term care. By letter of 12 May 2006, the Ministry noted that no court decision to hospitalise the applicant had been issued, and that she had been admitted to the Kėdainiai Home after her adoptive father had entrusted that institution with her care.

65. On 6 October 2006, the Ministry of Health and Social Services, in response to the applicant's complaints of alleged violations of her rights, wrote to the applicant stating that it was not possible to investigate her complaints because she had left the Kėdainiai Home and her place of living was unknown. Prosecutors were in the middle of a pre-trial investigation into the circumstances of the applicant's disappearance from where she had previously been living.

66. By a decision of 18 December 2006, the Kaunas City District prosecutor discontinued a pre-trial investigation into alleged unlawful deprivation of the applicant's liberty.

II. RELEVANT DOMESTIC LAW AND PRACTICE

67. Article 21 of the Lithuanian Constitution prohibits torture or degrading treatment of persons. Article 22 thereof states that private life is inviolable.

68. The Law on Mental Health Care provides:

Article 1

“1. Main Definitions

...

5. “Mental health facility” means a health care institution (public or private), which is accredited for mental health care. If only a certain part (a “unit”) of a health care institution has been accredited to engage in mental health care, the term shall only apply to the unit. In this Law, the term is also applicable to psychoneurological facilities...”

Article 13

“The parameters of a patient’s health care shall be determined by a psychiatrist, seeking to ensure that the terms of their treatment and nursing offer the least restrictive environment possible.

The actions of a mentally ill person may be subject to restrictions only provided that the circumstances specified in section 27 of this Law are manifest. A note to that effect must be promptly made in the [patient’s] clinical record.”

Article 19

“In emergency cases, in seeking to save a person’s life when the person himself is unable to express his will and his life is seriously endangered, necessary medical care may be taken without the patient’s consent.

Where instead of a patient’s consent, the consent of his representative is required, the necessary medical care may be provided without the consent of such person provided that there is insufficient time to obtain it in cases where immediate action is needed to save the life of the patient.

In those cases when urgent action must be taken in order to save a patient’s life, and the consent of the patient’s representative must be obtained in lieu of the patient’s consent, immediate medical aid may be provided without the said consent, if there is not enough time to obtain it.”

69. Article 24 of the Law on Mental Health Care stipulated that if a patient applied with a request to be hospitalised, he or she could be hospitalised only provided that: 1) at least one psychiatrist, upon examining the patient, recommended that he or she had to be treated as an inpatient at a mental health facility; 2) he or she had been informed about his or her rights at a mental health facility, the purpose of hospitalisation, the right to leave the psychiatric facility and restrictions on the right, as specified in Article 27 of the law. The latter provision read that a person who was ill with a severe mental illness and refused hospitalisation could be admitted involuntarily to the custody of the hospital only if there was real danger that

by his or her actions he or she was likely to commit serious harm to his or her health or life or to the health or life of others. When the circumstances specified in Article 27 of that law did exist, the patient could be involuntarily hospitalised and given treatment in a mental health facility for a period not exceeding 48 hours without court authorisation. If the court did not grant the authorisation within 48 hours, involuntary hospitalisation and involuntary treatment had to be terminated (Article 28).

70. As concerns legal incapacity and guardianship, the Civil Code provides:

Article 2.10. Declaration of incapacity of a natural person

“1. A natural person who, as a result of mental illness or imbecility, is not able to understand the meaning of his actions or control them may be declared incapacitated. The incapacitated person shall be placed under guardianship.

2. Contracts on behalf and in the name of a person declared incapacitated shall be concluded by his guardian...

3. Where a person who was declared incapacitated gets over his illness or the state of his health improves considerably, the court shall reinstate his capacity. After the court judgement becomes *res judicata*, guardianship of the said person shall be revoked.

4. The spouse of the person, parents, adult children, a care institution or a public prosecutor shall have the right to request the declaration of a person’s incapacity by filing a declaration to the given effect. They shall also have the right to apply to the courts requesting the declaration of a person’s capacity.”

Article 3.238. Guardianship

“1. Guardianship shall be established with the aim of exercising, protecting and defending the rights and interests of a legally incapacitated person.

2. Guardianship of a person subsumes guardianship of the person’s property, but if necessary, an administrator may be designated to manage the person’s property.”

Article 3.240. Legal position of a guardian or curator

“1. Guardians and curators shall represent their wards under law and shall defend the rights and interests of legally incapacitated persons or persons of limited active capacity without any special authorisation.

2. The guardian shall be entitled to enter into all necessary transactions in the interests and on behalf of the represented legally incapacitated ward...”

Article 3.241. Guardianship and curatorship authorities

“1. Guardianship and curatorship authorities are the municipal or regional [government] departments concerned with the supervision and control of the actions of guardians and curators.

2. The functions of guardianship and curatorship in respect of the residents of a medical or educational institution or [an institution run by a] guardianship (curator) authority who have been declared legally incapacitated or of limited active capacity by a court shall be performed by the respective medical or educational establishment or guardianship (curator) authority until a permanent guardian or curator is appointed...”

Article 3.242. Appointment of a guardian or a curator

“1. Having declared a person legally incapacitated or of limited active capacity, the court shall appoint the person’s guardian or curator without delay.

...

3. Only a natural person with legal capacity may be appointed a guardian or a curator, [and] provided he or she gives written consent to that effect. When appointing a guardian or curator, account must be taken of the person’s moral and other qualities, his or her capability of performing the functions of a guardian or curator, relations with the ward, the guardian’s or curator’s preferences and other relevant circumstances...”

Article 3.243. Performance of the duties of a guardian or a curator

“...

6. After the circumstances responsible for the declaration of the ward’s legal incapacity or limited active capacity [are no longer in existence], the guardian or curator shall apply to the courts for the cancellation of guardianship or curatorship. Guardianship and curatorship authorities, as well as prosecutors, shall also have a right to apply to the courts for the cancellation of guardianship or curatorship.”

Article 3.277. Placing under guardianship or curatorship

“1. An adult person declared legally incapacitated by the courts shall be placed under guardianship by a court judgment.”

Article 3.278. Monitoring of the guardian’s or the curator’s activities

“1. Guardianship and curatorship authorities shall be obliged to monitor whether the guardian/curator is fulfilling his or her duties properly.”

71. The Code of Civil Procedure stipulates that rights and interests of [disqualified] natural persons protected by law shall be defended in court by their representatives (parents, foster-parents, guardians) (Article 38 § 2). A

prosecutor has the right to submit a claim to protect the public interest (Article 49).

72. Article 366 § 1 (6) of the Code of Civil Procedure provides that proceedings may be reopened if one of the parties to them was incapacitated and did not have a representative.

Article 370 § 5 stipulates that when deciding upon a request that proceedings be reopened, the judge who took the decision against which the request has been lodged may not participate.

73. An application to declare a person legally incapacitated may be submitted by a spouse of that person, his or her parents or full-age children, a guardianship/care authority or a public prosecutor (Article 463). The parties to the proceedings for incapacitation consist, besides the applicant, of the person whose legal capacity is at issue, as well as the guardianship (care) authority. If it is impossible, due to the state of health, confirmed by an expert opinion, of the natural person whom it has been requested to declare incapacitated, to call and question him or her in court or to serve him or her with court documents, the court shall hear the case in the absence of the person concerned (Article 464 §§ 1 and 2).

74. Article 491 § 2 of the Code of Civil procedure stipulates that the courts are obliged to take all measures necessary to ensure that the rights and interests of persons who need guardianship are protected.

75. Pursuant to Article 507 § 3 of the Code of Civil Procedure, a case concerning the establishment of guardianship and the appointment of a guardian shall be heard by means of oral proceedings. The guardianship authority, the person declared incapacitated, the person recommended to be appointed as guardian and any parties interested in the outcome of the case must be notified of the hearing.

The case is to be heard with the attendance of a representative of the guardianship authority, who is to submit the authority's opinion to the court. The person to be appointed the guardian must also attend.

The person declared incapacitated is entitled to give his or her opinion at the hearing, if his or her health allows, as regards the prospective appointment of the guardian. The court may hold that it is necessary that the person declared incapacitated attend the hearing.

Article 507 § 4 provides that in appointing a guardian his moral and other qualities, his capability to perform the functions of a guardian, his relationship with the person who requires guardianship, and, if possible, the wishes of the person who requires guardianship or care shall be taken into consideration.

76. The Law on Prosecutor's Office provides that prosecutors have the right to protect the public interest, either on their own initiative or if the matter has been brought to their attention by a third party. In so doing, prosecutors may institute civil or criminal proceedings.

77. In a ruling of 9 June 2003 the Supreme Court stated that a public prosecutor could submit an application for reopening of proceedings, if the court's decision had been unlawful and had infringed the rights of a legally incapacitated person having limited opportunity to defend his or her rights or lawful interests.

78. The Law on Social Services provides that the basic goal of social services is to satisfy the vital needs of an individual and, when an individual himself is incapable of establishing such conditions, to create living conditions for him that do not debase his dignity (Article 2 (2)).

79. The Requirements for residential social care institutions and the Procedure for admission of persons thereto, approved by Order No. 97 of the Minister of Social Security and Labour on 9 July 2002 and published in State Gazette (*Valstybės žinios*) on 31 July 2002, regulate the methods of admission to a social care institution. The rules provide that an individual is considered to be eligible for admission to such an institution, *inter alia*, if he or she suffers from mental health problems and therefore is not able to live on his or her own. The need for care is decided by the municipal council of the place of his or her residence in cooperation with the founder of the residential care institution (the county governor). Individuals are admitted to care institutions in the event that the provision of social services at their home or at a non-statutory care establishment is not possible. A guardian who wishes to have a person admitted to a residential care institution must submit a request in writing to the social services department of the relevant municipal council. The reasons for and motives behind admission must be indicated. An administrative panel of the municipal council, comprising at least three persons, is empowered to decide on the proposed admission. Representatives of the institution to which the person is to be admitted as well as the founder (the governor) must participate.

80. The Government submitted to the Court an application by the Kėdainiai Home of 6 October 2009 to the Kaunas City District Court for the restoration of capacity (*dėl neveiksnumo panaikinimo*) of an individual, G.P. The Kėdainiai Home had been G.P.'s guardian. The director of the Kėdainiai Home had noted that after G.P.'s condition had become better and he had become more independent, it had accordingly become necessary for the court to order a fresh psychiatric examination and make an order restoring G.P.'s legal capacity.

81. The Bylaws of the Kėdainiai Home (*Kėdainių pensionato gyventojų vidaus tvarkos taisyklės*), as approved by an order of the director dated 17 March 2003, provide that the institution shall admit adults who suffer from mental health problems and are in need of care and medical treatment. A patient may leave the institution for up to ninety days per year, but only to visit his or her court-appointed guardian. The duration and conditions of such leave must be confirmed in writing. The rules also stipulate that a patient is not allowed to leave the grounds of the facility without informing

a social worker. If a patient decides to leave the Kėdainiai Home on his or her own, the management must immediately inform the police and facilitate finding him or her. A patient may be visited by relatives and guardians. Other visitors are allowed only upon the management's approval. The patients may have personal mobile phones. They may follow a religion, attend church services and receive magazines.

82. In a ruling of 11 September 2007 in civil case No. 3K-3-328/2007, the Supreme Court noted that the person whom it is asked to declare incapacitated is also a party to the proceedings (Article 464 § 1 of the Code of Civil Procedure). As a result, he or she enjoys the rights of an interested party, including the right to be duly informed of the place and time of any hearing. The fact that the case had been heard in the absence of D.L. – the person whom the court had been asked to declare incapacitated – was assessed by the Supreme Court as a violation of her right to be duly informed of the place and time of court hearings, as well as of other substantive procedural rights safeguarding her right to a fair trial. The Supreme Court also found that by failing to hear the person concerned and without making sure that she had been aware of the proceedings, the first-instance court had breached the principle of equality of arms, as well as D.L.'s right to appeal against the decision to declare her incapacitated, because the decision had not been delivered to her. The Supreme Court also referred to Principle no. 13 of Recommendation No. R (99) 4 by the Committee of Ministers of the Council of Europe (see paragraph 85 below), stating that the person concerned should have the right to be heard in any proceedings which could affect his or her legal capacity. This procedural guarantee should be applicable to the fullest extent possible, at the same time bearing in mind the requirements of Article 6 of the European Convention on Human Rights. In this regard, the Supreme Court also referred to the Court's case-law to the effect that a mental illness could result in appropriate restrictions of a person's right to a fair hearing. However, such measures should not affect the very essence of that right (*Golder, Winterwerp*, both cited below, and *Lacárce Menéndez v. Spain*, no. 41745/02, 15 June 2006).

83. In the same ruling, the Supreme Court also emphasised that determining whether the person can understand his or her actions was not only a scientific conclusion, namely that of forensic psychiatry. It was also a question of fact which should be established by the court upon assessing all other evidence and, if necessary, upon hearing expert evidence. Taking into consideration the fact that the declaration of a person's incapacity is a very serious interference into his or her right to private life, one can only be declared incapacitated in exceptional cases.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)

84. This Convention entered into force on 3 May 2008. It was signed by Lithuania on 30 March 2007 and ratified on 18 August 2010. The relevant parts of the Convention provide:

Article 12 Equal recognition before the law

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

Article 14 Liberty and security of person

“1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”

B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)

85. The relevant parts of this Recommendation read as follows:

Principle 2 – Flexibility in legal response

“1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations.

...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned.”

Principle 3 – Maximum reservation of capacity

“1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

Principle 6 – Proportionality

“1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ...”

Principle 13 – Right to be heard in person

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

Principle 14 – Duration review and appeal

“1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.

...

3. There should be adequate rights of appeal.”

C. The 25 June 2009 report on visit to Lithuania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), visit from 28 to 30 April 2008

86. This report outlines the situation of persons placed by the public authorities in social care homes for people with mental disorders or mental deficiency. Part C of the report (paragraphs 120, 125-132) analyses situation in the Skemai Residential Care Home.

87. The CPT noted that Lithuanian legislation does not provide for an involuntary placement procedure in social welfare establishments. At Skemai Residential Care Home, residents were admitted on their own application or that of their guardian through the competent district authority (Panevėžys District Administration). The decision on the placement was taken by the social affairs unit of Panevėžys District Administration on the basis of a report drawn up by a social worker and a medical certificate issued by a psychiatrist stating that the applicant’s mental health permitted his/her placement in a social welfare institution of this type. An agreement was then signed between the applicant and the authorised representative of the local government for an indefinite period.

That said, it appeared that even legally competent residents admitted on the basis of their own application were not always allowed to leave the home when they so wished. The delegation was informed that their discharge could only take place by decision of the social affairs unit of the Panevėžys District Administration. This was apparently due to the need to ascertain that discharged residents had a place and means for them to live in the community; nevertheless, this meant that such residents were *de facto* deprived of their liberty (on occasion for a prolonged period).

88. Specific reference was made to the situation of residents deprived of their legal capacity. Such persons could be admitted to the Skemai Home solely on the basis of the application of their guardian. However, they were

considered to be voluntary residents, even when they opposed such a placement. In the CPT's view, placing incapacitated persons in a social welfare establishment which they cannot leave at will, based solely on the consent of the guardian, entailed a risk that such persons will be deprived of essential safeguards.

89. It was also a matter of concern that all 69 residents who were deprived of their legal capacity were placed under the guardianship of the Home. In this connection, the delegation was surprised to learn that in the majority of these cases, the existing guardianship arrangements had been terminated by a court decision upon admission to the establishment and guardianship of the person concerned entrusted to the Home.

The CPT stressed that one aspect of the role of a guardian is to defend the rights of incapacitated persons *vis-à-vis* the hosting social welfare institution. Obviously, granting guardianship to the very same institution could easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. The CPT reiterated its recommendation that the Lithuanian authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.

90. In the context of discharge from psychiatric institution procedures, the CPT recommended that the Lithuanian authorities took steps to ensure that forensic patients were heard in person by the judge in the context of judicial review procedures. For that purpose, consideration may be given to the holding of hearings at psychiatric institutions

91. Lastly, the CPT found that at the establishment visited the existing arrangements for contact with the outside world were generally satisfactory. Patients/residents were able to send and receive correspondence, have access to a telephone, and receive visits.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The parties' submissions

92. The Government argued, first, that the present application had been entirely based on knowingly untrue facts and therefore should be declared inadmissible for "abuse of the right of individual petition", pursuant to Article 35 § 3 of the Convention. For the Government, the content of the present application was contrary to the purpose of the right of individual application, as the information provided therein was untrue or insidious. An

appropriate and carefully selected form of social care for the applicant had been portrayed as detention. Appropriate medical care and striving to save her life had been presented as her torture. The facts concerning the reopening of the guardianship proceedings were also untrue, as well as those related to the applicant's complaints of the alleged refusal of the Kėdainiai Home's management to allow the applicant to have personal visits and of the censorship of her communications.

93. Alternatively, the Government submitted that the application had been prepared in its entirety and lodged by D.G. and not by the applicant. They held highly critical views of D.G., claiming that she had been "not only deceiving the Court but also harming a vulnerable, mentally-ill person". The Government contended in the present case that the term "applicant" referred to D.D. only in a formal sense, as in reality the person whose will the application reflected had been D.G., and, moreover, that will had clearly contradicted the interests of D.D., who had been misled and manipulated by D.G. It followed that the application as a whole was incompatible *ratione personae* with the provisions of the Convention.

94. The applicant's lawyer considered that the Government's allegation of factual inaccuracy was best understood by reference to the fact that the parties to this application held diametrically opposed perspectives in relation to the facts presented. Both the applicant and the Government saw the same facts in a totally different light and held incompatible views on the way in which the rights of persons with psychosocial disabilities should be respected under the Convention.

95. As to the Government's second argument, the applicant's lawyer submitted that the application had been lodged with D.D.'s fully-informed consent. D.D. had been keenly aware of the proceedings and had spoken of them frequently. Attention had to be drawn to the vulnerability and isolation of persons in the applicant's position, as well as the fact that domestic legislation had denied her legal standing to initiate any legal proceedings whatsoever. Consequently, it was ironic that the Government had not recognised D.D.'s ability to represent herself in domestic proceedings, requiring by law that she did so via another person, but that before the Court the Government seemed to insist that the applicant should act alone.

Lastly, the applicant's lawyer pointed out that D.G. was the applicant's closest friend, former psychotherapist and her first guardian. Moreover, since 8 January 2008 the applicant had been represented before the Court by a legal team.

B. The Court's assessment

96. The Court first turns to the Government's objection as to the applicant's victim status, and, in particular, their allegation that the application does not express the true will of D.D. In this connection, it

recalls that the existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Poznanski and Others v. Germany*, (dec.), no. 25101/05, 3 July 2007).

97. Having regard to the documents presented, the Court notes that the original application form bears D.D.'s signature, without any indication that that signature could be forged (see, by converse implication, *Poznanski*, cited above). In paragraph 13 of the application, D.D. wrote that back in 2000, on her adoptive father's initiative, she had been unlawfully declared incapacitated and in 2004 admitted to the Kėdainiai Home "for an indefinite duration". She asked that, for the purposes of the proceedings before this Court, her adoptive father not be considered her legal representative, requesting that D.G. take on that role. After the application was communicated to the Government, the applicant was reminded that, in accordance with paragraph 4 (a) of Rule 36 of the Rules of Court, she had to designate a legal representative, which she did by appointing a lawyer, Mr H. Mickevičius. In his observations in reply to those of the Government, the applicant's lawyer followed the initial complaints as presented by D.D. In the light of the above, the Court holds that D.D. has validly lodged an application in her own name and thus has the status of "victim" in respect of the complaints listed in her application. The Government's objection as to incompatibility *ratione personae* should therefore be dismissed.

98. The Court further considers that the Government's objection as to the applicant's alleged abuse of the right to petition, on account of allegedly incorrect information provided in her application form, is closely linked to the merits of her complaints under Articles 3, 5, 6, 8 and 9 of the Convention. The Court thus prefers to join the Government's objection to the merits of the case and to examine them together.

99. Lastly, the Court observes that the applicant submitted several complaints under different Convention provisions. Those complaints relate to the proceedings concerning her involuntary admission to a psychiatric institution, the appointment of her guardian, her inability to receive personal visits, interference with her correspondence, involuntary medical treatment, and so forth. Whilst noting that the complaint as to the initial appointment of a guardian has been raised outside the six months time-limit (see paragraph 19 above), the Court sees fit to start with the complaint related to the court proceedings for a change of her legal guardian and then to examine the applicant's admission to the Kėdainiai Home and the complaints stemming from it.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PROCEEDINGS FOR A CHANGE OF LEGAL GUARDIAN

100. The applicant complained that she had not been afforded a fair hearing in respect of her application for reopening of her guardianship proceedings and had not been able to have her legal guardian changed. In support of her complaints, the applicant cited Articles 6 § 1 and 8 of the Convention. In addition, relying upon Article 13 of the Convention, the applicant argued that she had not been afforded an effective remedy to complain of the alleged violations.

The Court considers that the applicant's complaints fall to be examined under of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. Submissions by the parties

1. *The applicant*

101. The applicant submitted that the blanket ban on her right of access to court went to the heart of her right to a fair hearing and had been in breach of Article 6 § 1 of the Convention. She pointed out that on 15 September 2000 she had been declared incapacitated during proceedings that had been initiated by her adoptive father. Solely on the basis of the medical report of 19 July 2000, the Kaunas City District Court had deemed that the applicant was not to be summoned. As a result she had not taken part in those proceedings. The local authority, whose presence had been obligatory, had not made a significant contribution during the hearing and had endorsed the conclusions of the medical report. The Kaunas District Court had not provided any reasons for its decision, other than reiterating the conclusions of the forensic experts. The district court had chosen not to assess other evidence which could have potentially shed light on the applicant's circumstances, such as that which could have arisen by summoning the applicant or other witnesses, or by questioning the authors of the psychiatric report in person. The judge had not found it necessary to examine whether any ulterior reasons had underlain the incapacitation request.

102. The applicant argued, further, that she had not been given the opportunity to participate in any of the guardianship proceedings. She had never been notified of or summoned to any of the four sets of proceedings concerning the appointment or discharge of her guardian/property

administrator. For the applicant, there had been no medical or other reasons relating to her health that would have precluded her from participating. Nonetheless, the courts had invariably based their decisions on the views of the local authority without examining the personal circumstances of the applicant. The proceedings had been very summary in nature, the hearings had been brief and the rationale underpinning judgments had been almost non-existent. On 15 September 2000 the Kaunas City District Court had appointed her adoptive father as her guardian without any involvement on her part. As a result, not only had she been unable to object to his appointment, but she had also been barred from appealing against that decision.

103. The applicant emphasised that the review proceedings in 2005 initiated by her with the assistance of D.G. had been the only opportunity that she had ever had to put her point of view across before a court of law. On this occasion, she had personally addressed the Kaunas City District Court on a number of issues of the utmost importance to her, such as her incapacitation, the identity of her guardian and her admission to an institution. However, the district court had chosen to dismiss her action on narrow procedural grounds.

104. The applicant's main objection with regard to the review proceedings lay in the district court's decision to turn down her express request to be provided with independent legal aid. The explanation that the applicant was already represented by her guardian's lawyer had misunderstood the competing interests of the two parties. The effect had been to severely prejudice the ability of the applicant to engage with the procedural aspects of the hearing on which the district court's decision had turned.

105. Lastly, the applicant argued that she had been financially able to afford to employ a lawyer to represent her at that or any other of the hearings. However, she had been denied access to her own money, and at many of the hearings her interests and those of the person with control over her funds had been divergent. She concluded that in view of her vulnerable position, the procedural complexity of the proceedings and the high stakes thereof, Article 6 § 1 of the Convention had required that she be provided with free legal aid.

2. *The Government*

106. As to the applicant's complaint that she had not been afforded a fair hearing in relation to her request that the proceedings by which her guardian was appointed be reopened, the Government referred to the Court's case-law to the effect that the right of access to court is not absolute and that the States have a certain margin of appreciation in assessing what might be the best policy in this field (*Golder v. the United Kingdom*, 21 February 1975, § 38, Series A no. 18). That was especially true as regards persons of

unsound mind, and the Convention organs had acknowledged that such restrictions were not in principle contrary to Article 6 § 1 of the Convention, where the aim pursued was legitimate and the means employed to achieve that aim were proportionate (*G.M. v. the United Kingdom*, no. 12040/86, Commission decision of 4 May 1987, Decisions and Reports (DR) 52, p. 269).

107. Turning to the particular situation of the applicant, the Government noted that domestic law did not allow a legally incapacitated person to lodge a petition seeking that his or her guardianship be changed. As the applicant had deemed that her adoptive father was not a suitable person to be her guardian, the authorities responsible for oversight of guardians (the Social Services Department of Kaunas City Council) or a public prosecutor could have submitted an application for reopening of the proceedings. Nevertheless, the Kaunas City District Court had accepted the applicant's request for reopening for examination and on 7 November 2005 had reviewed her case with a high degree of care.

108. The hearing of 7 November 2005 at the Kaunas City District Court had taken place in the presence of the applicant, her guardian (her adoptive father) and his lawyer, and D.G., as well as in the presence of the representatives of the relevant State authorities. Whilst admitting that at that hearing the applicant had asked to be assisted by a separate lawyer, the Government submitted that the court had not been able to grant the applicant's request because of the decision of 15 September 2000 declaring her legally incapacitated. Even so, the applicant's interests had been defended by the representative of the Kėdainiai Home, the representative of the Social Services Department and the public prosecutor.

109. The Government contended that during the hearing of 7 November 2005 the applicant had not sustained her request that D.G. be appointed as her new guardian. Contrary to what the applicant had stated to the European Court, in her submissions at the hearing at issue she had agreed to keep her adoptive father as her guardian, saying that she loved him, but had expressed her wish to be released from the Kėdainiai Home. For the Government, it appeared from the transcript of the hearing that this statement had been made by the applicant before the break, but not after, contrary to her allegation of being "threatened with restraint" for disobedience.

110. The Government pointed out that, pursuant to Article 507 § 3 of the Code of Civil Procedure, the appointment of a guardian required to be heard in the presence of a representative of the authority overseeing guardians, who was required to submit the authority's conclusions to the court, and the person to be appointed as guardian. Given that both of these persons had taken part in the hearing of 21 January 2004, the Kaunas City District Court in its decision of 17 November 2005 had reasonably found that the applicant had been properly represented at the hearing of 21 January 2004, and thus

the provision on which the applicant had based her request to reopen the proceedings had not been breached.

111. Lastly, in their observations of 15 September 2008 the Government noted that as regards incapacitation proceedings the ministries had prepared legislative amendments to the Civil Code and the Code of Civil Procedure, which would be submitted to Parliament. The proposed amendments provide for compulsory representation of a person facing incapacitation proceedings before a court by a lawyer.

In the light of the preceding arguments, the Government considered that the applicant's complaint was manifestly ill-founded.

3. The intervening parties

112. The representatives of Harvard Law School submitted that in all cases a court or other judicial authority must ensure that a representative acts solely in the interests of the incapacitated person. In any case in which it is objectively apparent that the person being represented does not accept or assent to the steps taken by a representative, those matters must be explored by the judicial authorities. The judicial authorities must exercise thorough, additional supervision in all cases in which there is a filter between a person and a court, such as when a person is represented by another individual. This remains true even where the representative was appointed by a court.

113. The European Group of National Human Rights Institutions noted that the European Convention on Human Rights guaranteed rights and freedoms that must be protected regardless of an individual's level of capacity. They also saw it important to mention the Court's judgment in *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33), where the Court concluded that although mental illness may render legitimate certain limitations upon the exercise of the "right to access to court", it could not warrant the total absence of that right as embodied in Article 6 § 1.

B. The Court's assessment

1. Admissibility

114. The parties did not dispute the applicability of Article 6, under its "civil" head, to the proceedings at issue, and the Court does not see any reason to hold otherwise (see *Winterwerp*, cited above, § 73, and *Matter v. Slovakia*, no. 31534/96, § 51, 5 July 1999).

115. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It

further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) General principles

116. In most of the previous cases before the Court involving “persons of unsound mind”, the domestic proceedings concerned their detention and were thus examined under Article 5 of the Convention. However, the Court has consistently held that the “procedural” guarantees under Article 5 §§ 1 and 4 are broadly similar to those under Article 6 § 1 of the Convention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 232, 17 January 2012 and the case-law cited therein). Therefore, in deciding whether the proceedings in the present case for the reopening of the guardianship appointment were “fair”, the Court will have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention.

117. In the context of Article 6 § 1 of the Convention, the Court accepts that in cases involving a mentally-ill person the domestic courts should also enjoy a certain margin of appreciation. Thus, for example, they can make appropriate procedural arrangements in order to secure the good administration of justice, protection of the health of the person concerned, and so forth (see *Shtukaturov v. Russia*, no. 44009/05, § 68, ECHR 2008).

118. The Court accepts that there may be situations where a person deprived of legal capacity is entirely unable to express a coherent view or give proper instructions to a lawyer. It considers, however, that in many cases the fact that an individual has to be placed under guardianship because he lacks the ability to administer his affairs does not mean that he is incapable of expressing a view on his situation and thus of coming into conflict with the guardian. In such cases, when the conflict potential has a major impact on the person’s legal situation, such as when there is a proposed change of guardian, it is essential that the person concerned should have access to court and the opportunity to be heard either in person or, where necessary, through some form of representation. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right, except in very exceptional circumstances such as those mentioned above. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental health issues, are not fully capable of acting for themselves (see, *mutatis mutandis*, *Winterwerp*, cited above, § 60).

119. The Court reiterates that the key principle governing the application of Article 6 is fairness. Even in cases where an applicant appears in court notwithstanding lack of assistance by a lawyer and manages to conduct his or her case in the face of all consequent difficulties, the question may

nonetheless arise as to whether this procedure was fair (see, *mutatis mutandis*, *McVicar v. the United Kingdom*, no. 46311/99, §§ 50-51, ECHR 2002-III). The Court also recalls that there is the importance of ensuring the appearance of the fair administration of justice and a party to civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward the matters in support of his or her claims. Here, as with other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, ECHR 2002-VI).

(b) Application to the present case

120. Turning to the circumstances of the instant case, the Court again notes that it cannot examine the applicant's initial placement under guardianship (see paragraph 99 above). Even so, the Court cannot overlook the fact that back in 2000 the applicant did not participate in the court proceedings for her incapacitation. In particular, nothing suggests that the court notified the applicant of its own accord of the hearing at which her personal autonomy in almost all areas of life was at issue, including the eventual limitation of her liberty (see paragraph 12 above). Furthermore, as transpires from the decision of the Kaunas City District Court of 15 September 2000, it ruled exclusively on the basis of the medical panel's report, without having summoned the medical experts who authored the report for questioning. Neither did the court call to testify any other witnesses who could have shed some light as to the personality of the applicant. Accordingly, the applicant was unable to participate in the proceedings before the Kaunas City District Court in any form. Given that the potential finding of the applicant being of unsound mind was, by its very nature, largely based on the applicant's personality, her statements would have been an important part of the applicant's presentation of her case, and virtually the only way to ensure adversarial proceedings (see, *mutatis mutandis*, *Kovalev v. Russia*, no. 78145/01, §§ 35-37, 10 May 2007; also see Principle 13 of the Recommendation No. R (99) 4 by the Council of Europe).

121. The Court also notes that on 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The applicant was again not summoned because the court apparently considered her attendance to be unnecessary.

122. Next, the Court turns to the proceedings regarding the change of the applicant's guardianship in 2005. The Court notes that there is no indication that at that moment in time the applicant was suffering from an incapacity of such a degree that her personal participation in the proceedings would have been meaningless. Although health care officials had considered that her involvement in the proceedings relating to her initial placement under

guardianship in 2000 was unnecessary, as she had apparently been unable to provide them with an objective opinion (see paragraph 11 above), she did in fact participate in the hearing relating to the change of guardian on 7 November 2005. Indeed, she not only stated unequivocally that she maintained her request that the guardianship proceedings be reopened and asked to be assisted by a lawyer but also made a number of other submissions about the proceedings and expressed a clear view on various matters. In particular, the applicant emphasised that she had not been summoned to the hearing during which her adoptive father had been appointed her guardian. She also expressed her desire to leave the Kėdainiai Home. Taking into account the fact that the applicant was an individual with a history of psychiatric troubles, and the complexity of the legal issues at stake, the Court considers that it was necessary to provide the applicant with a lawyer.

123. The Government argued that the Kaunas City District Court's finding that the applicant, who lacked legal capacity, had been properly represented by her adoptive father's lawyer had been correct and in compliance with domestic law. However, the crux of the complaint is not the legality of the decision under domestic law but the "fairness" of the proceedings from the standpoint of the Convention and the Court's case-law.

124. As emerges from the materials before the Court, the relationship between the applicant and her adoptive father has not always been positive. Quite the contrary, on numerous occasions the applicant had contacted State authorities claiming that there was a dispute between the two of them, which culminated in her being deprived of legal capacity and her liberty (see paragraphs 32, 33 and 60 above). What is more, the social services had also noted disagreement between the applicant and her adoptive father (see paragraph 18 above). Lastly, on at least one occasion the applicant's adoptive father had himself acknowledged their strained relationship (see paragraph 14 above). Accordingly, the Court finds merit in the applicant's argument that, because of the conflicting interests of her and her legal guardian, her guardian's lawyer could in no way have represented her interests properly. In the view of the Court, the interests of a fair hearing required that the applicant be granted her own lawyer.

125. The Government suggested that a representative of the social services and the district prosecutor attended the hearing on the merits, thus protecting the applicant's interests. However, in the Court's opinion, their presence did not make the proceedings truly adversarial. As the transcript of the hearing of 7 November 2005 shows, the representatives of the social services, the prosecutor, the doctors from the Kėdainiai Home and the Kaunas Psychiatric Hospital clearly supported the position of the applicant's adoptive father – that he should remain D.D.'s legal guardian.

126. Finally, the Court recalls that it must always assess the proceedings as a whole (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001). In particular, and turning to the spirit in which the hearing of 7 November 2005 was held, the Court notes that the judge refused a request by D.G. that an audio recording be made. Be that as it may, the Court is not able to overlook the applicant's complaint, although denied by the Government, that the judge did not allow her to sit near D.G., the only person whom the applicant trusted. Neither can the Court ignore the allegation that during the break the applicant was forced to leave the hearing room and to go to the judge's office, after which measure the applicant declared herself content (see paragraphs 41 and 42 above). Against this background, the Court considers that the general spirit of the hearing further compounded the applicant's feelings of isolation and inferiority, taking a significantly greater emotional toll on her than would have been the case if she would have had her own legal representation.

127. In the light of the above considerations and taking into account the events that preceded the examination of the applicant's request for reopening of her guardianship proceedings, the Court concludes that the proceedings before the Kaunas City District Court on 7 November 2005 were not fair. Accordingly, the Government's preliminary objection of abuse of application must be dismissed. The Court holds that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

128. Under Article 5 § 1 of the Convention the applicant complained that her involuntary admission to the Kėdainiai Home had been unlawful. Article 5, in so far as relevant, provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons ... of unsound mind...”

A. Submissions by the parties

1. *The applicant*

129. The applicant maintained her claims. She alleged that her involuntary admission to the Kėdainiai Home after 2 August 2004 had

amounted to a “deprivation of liberty” within the meaning of Article 5 § 1 of the Convention.

130. With regard to the objective element of her complaint, the applicant argued that her liberty had been restricted on account of her complete confinement and the extreme degree of control over her daily life. The applicant, like other residents, had not been able to leave the grounds of the Kėdainiai Home. If a resident left without permission, the director was bound to inform the police immediately. The applicant had tried to abscond twice, in 2006 and 2007, only to be brought back by the police. Furthermore, the applicant had been entirely under the control of staff at the institution, who had been able to medicate her by force or coercion, place her in isolation or tie her down, as exemplified by the incident of 25 January 2005. According to the findings of the Prosecutor’s Office, on that day the applicant had been tied down to a bed in the isolation room and forcibly medicated, in contravention of the internal rules of the institution. It would be plain upon visiting the Kėdainiai Home that the vast majority of residents are heavily medicated.

131. Further, the applicant complained that all aspects of her life are controlled by the staff. Although in theory she is allowed to receive visits from people outside the institution, this right is subject to approval from the director. Upon her admission to the Kėdainiai Home in 2004, all visits other than those from her guardian had been restricted for a lengthy period of time.

The applicant submitted that she cannot decide whether or when to stay in bed, there is a limited range of activities for her to take part in, she is not free to make routine choices like other adults – for example, about her diet, daily activities and social contacts. She is subject to constant supervision.

132. With respect to the subjective element of her complaint, the applicant noted that her case was diametrically opposite to that of *H.M. v. Switzerland* (no. 39187/98, § 47, ECHR 2002-II), where the applicant had agreed to her admission to a nursing home. In the present case, the applicant’s views had not been sought, either at the time of her admission or during her continued involuntary placement in the Kėdainiai Home. However, under Lithuanian law it had, in fact, been irrelevant whether she had consented or not to her detention, because an individual lacking legal capacity and placed under guardianship becomes a non-entity under the law and loses the capacity to take any decisions. Even so, whilst she had been incapable *de jure*, she had still, in fact, been capable of expressing her consent. She had expressed strong objections about her continued involuntary admission to the institution, most emphatically by running away twice, in her arguments before the domestic court, in her correspondence with various State authorities and, finally, by submitting a complaint to the Court.

133. In sum, the applicant's involuntary admission to and continued residence in the Kėdainiai Home after 2 August 2004 constituted a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

134. Lastly, the applicant submitted that her admission to the Kėdainiai institution was not lawful. The authorities involved in placing her in a psychiatric institution or those supervising the guardian's activities failed to consider whether other less restrictive community-based arrangements would have been more suitable to address the applicant's mental health problems. Instead they simply acquiesced in the guardian's request to have the applicant placed in an institution. Most importantly, the applicant was excluded from this decision-making process altogether. Consequently, the applicant saw her detention as arbitrary, in contradiction with Article 5 § 1 (e) of the Convention.

2. *The Government*

135. The Government argued, first, that Article 5 of the Convention was not applicable to the instant case. They submitted that the Kėdainiai Home was an institution for providing social services and not forced treatment under a regime corresponding to that of a psychiatric institution. Whilst admitting that certain medical services continued to be provided in the Kėdainiai Home, the institution at issue was not primarily used for the purposes of hospitalisation or medical treatment. Having regard to the fact that the Kėdainiai Home had to take care of adults suffering from mental health problems, it followed that the limited restrictions on the applicant had corresponded to the nature of the facility and had been no more than normal requirements (*Nielsen v. Denmark*, 28 November 1988, § 72, Series A no. 144).

136. Turning to the particular situation of the applicant, the Government submitted that until September 2007 the applicant had lived in a part of the Kėdainiai Home called "Apytalaukis", which had been an open facility. Although its grounds had been fenced, the gates had not been locked and residents had been able to leave the territory as they wished. The doors of the building had stayed unlocked. The same conditions had remained after the applicant's resettlement, except that the grounds had not even been fenced. According to the personnel of the Kėdainiai Home, the applicant had not always adhered to the internal rules of the institution and had failed to inform the staff before leaving the grounds and going for a walk. Even so, this had neither been considered as absconding, nor had the applicant been sanctioned in any way. Also, similarly to the facts in *H.M. v. Switzerland* (cited above), and with the exception of the incident of 25 January 2005, the applicant had never been placed in a secure ward. Moreover, she had been free to maintain personal contacts, to write and receive letters, to practise her religion and to make phone calls.

137. As to the medical treatment the applicant had received in the Kėdainiai Home, the Government submitted that, except for the incident of 25 January 2005, she had not been forcefully medicated. Each time she had been required to take medicine a psychiatrist had talked to her and had explained the need for treatment. There had been periods when the applicant had refused to take medicine; those periods had always been followed by the deterioration of her mental health. However, after some time the applicant had usually accepted the doctors' arguments and had agreed to continue treatment. The social and medical care she had received in the Kėdainiai Home had had a positive effect on the applicant, because her mental state had stabilised. Since her admission to the Kėdainiai Home she had never been hospitalised, whereas prior to that she had used to be hospitalised at least once a year.

In sum, the limited restrictions to which the applicant had been subjected in the Kėdainiai Home had all been necessary due to the severity of her mental illness, had been in her interests and had been no more than the normal requirements associated with the responsibilities of a social care institution taking care of inhabitants suffering from mental health problems.

138. The Government also noted that the admission of the applicant to the Kėdainiai Home had stemmed from her guardian's decision and not from a decision of the State or the municipal authorities. The applicant's adoptive father, as her guardian, had been empowered to act on her behalf and with the aim of exercising and protecting her rights and interests. In addition, the involvement of the municipal and State authorities in examining the applicant's situation and state of mind had played an important role in verifying the best interests of the applicant and had provided necessary safeguards against any arbitrariness in the guardian's decisions.

139. Turning to the subjective element of the applicant's case, the Government submitted that the applicant was legally incapacitated and had thus lacked the decision-making capacity to consent or object to her admission. Her guardian and not the authorities had been able to decide on her place of residence.

140. In the light of the above considerations, the Government argued that this part of the application was incompatible *ratione materiae* with Article 5 § 1 of the Convention.

141. Alternatively, should the Court find that Article 5 § 1 was applicable to the applicant's complaints, the Government contended that they were not founded. The applicant's admission to the Kėdainiai Home had been lawful, given that it had been carried out in accordance with the procedure established by domestic law. Under the law, a person can be admitted to an institution at the request of the guardian, provided that the person is suffering from a mental disorder. The applicant was admitted to the hospital at the request of her official guardian in relation to a worsening

of her mental condition. Furthermore, in the view of the Government, the involvement of the authorities in the procedure for the applicant's admission had provided safeguards against any possible abuses.

142. In the further alternative, the Government submitted that even if the restrictions on the applicant's movement could be considered as falling within Article 2 of Protocol No. 4 to the Convention, those restrictions had been lawful and necessary.

B. The Court's assessment

1. Admissibility

143. The Government argued that the conditions in which the applicant is institutionalised in the Kėdainiai Home are not so restrictive as to fall within the meaning of "deprivation of liberty" as established by Article 5 of the Convention. However, the Court cannot subscribe to this thesis.

144. It reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the concrete situation of the individual concerned. Account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39; and *Ashingdane v. the United Kingdom*, 28 May 1985, § 41, Series A no. 93).

145. The Court further recalls that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, cited above, § 46).

146. In the instant case the Court observes that the applicant's factual situation in the Kėdainiai Home is disputed. Be that as it may, the fact whether she is physically locked in the Kėdainiai facility is not determinative of the issue. In this regard, the Court notes its case-law to the effect that a person could be considered to have been "detained" for the purposes of Article 5 § 1 even during a period when he or she was in an open ward with regular unescorted access to unsecured hospital grounds and the possibility of unescorted leave outside the hospital (see *H.L. v. the United Kingdom*, no. 45508/99, § 92, ECHR 2004-IX). As concerns the circumstances of the present case, the Court considers that the key factor in determining whether Article 5 § 1 applies to the applicant's situation is that the Kėdainiai Home's management has exercised complete and effective control by medication and supervision over her assessment, treatment, care, residence and movement from 2 August 2004, when she was admitted to

that institution, to this day (*ibid.*, § 91). As transpires from the rules of the Kėdainiai Home, a patient therein is not free to leave the institution without the management's permission. In particular, and as the Government have themselves admitted in their observations on the admissibility and merits, on at least one occasion the applicant left the institution without informing its management, only to be brought back by the police (see paragraph 29 above). Moreover, the director of the Kėdainiai Home has full control over whom the applicant may see and from whom she may receive telephone calls (see paragraph 81 above). Accordingly, the specific situation in the present case is that the applicant is under continuous supervision and control and is not free to leave (see *Storck v. Germany*, no. 61603/00, § 73, ECHR 2005-V). Any suggestion to the contrary would be stretching credulity to breaking point.

147. Considerable reliance was placed by the Government on the Court's judgment in *H.M.* (cited above), in which it was held that the placing of an elderly applicant in a foster home in order to ensure necessary medical care as well as satisfactory living conditions and hygiene did not amount to a deprivation of liberty within the meaning of Article 5 of the Convention. However, each case has to be decided on its own particular "range of factors" and, while there may be similarities between the present case and *H.M.*, there are also distinguishing features. In particular, it was not established that H.M. was legally incapable of expressing a view on her position. She had often stated that she was willing to enter the nursing home and, within weeks of being there, she had agreed to stay, in plain contrast to the applicant in the instant case. Further, a number of safeguards – including judicial scrutiny – were in place in order to ensure that the placement in the nursing home was justified under domestic and international law. This led to the conclusion that the facts in *H.M.* were not of a "degree" or "intensity" sufficiently serious to justify a finding that H.M. was detained (see *Guzzardi*, cited above, § 93). By contrast, in the present case the applicant was admitted to the institution upon the request of her guardian without any involvement of the courts.

148. As to the facts in *Nielsen*, the other case relied on by the Government, the applicant in that case was a child, hospitalised for a strictly limited period of time of only five and a half months, on his mother's request and for therapeutic purposes. The applicant in the present case is a functional adult who has already spent more than seven years in the Kėdainiai Home, with negligible prospects of leaving it. Furthermore, in contrast to this case, the therapy in *Nielsen* consisted of regular talks and environmental therapy and did not involve medication. Lastly, as the Court found in *Nielsen*, the assistance rendered by the authorities when deciding to hospitalise the applicant was "of a limited and subsidiary nature" (§ 63), whereas in the instant case the authorities contributed substantially to the applicant's admission to and continued residence in the Kėdainiai Home.

149. Assessing further, the Court draws attention to the incident of 25 January 2005, when the applicant was restrained by the Kėdainiai Home staff. Although the applicant was placed in a secure ward, given drugs and tied down for a period of only fifteen to thirty minutes, the Court notes the particularly serious nature of the measure of restraint and observes that where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion (see *X v. Germany*, no. 8819/79, Commission decision of 19 March 1981, DR 24, pp. 158, 161; and *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003).

150. The Court next turns to the “subjective” element, which was also disputed between the parties. The Government argued that the applicant lacked *de jure* legal capacity to decide matters for herself. However, this does not necessarily mean that the applicant was *de facto* unable to understand her situation (see *Shtukurov v. Russia*, no. 44009/05, § 108, ECHR 2008). Whilst accepting that in certain circumstances, due to severity of his or her incapacity, an individual may be wholly incapable of expressing consent or objection to being confined in an institution for the mentally handicapped or other secure environment, the Court finds that that was not the applicant’s case. As transpires from the documents presented to the Court, the applicant subjectively perceived her compulsory admission to the Kėdainiai Home as a deprivation of liberty. Contrary to what the Government suggested, she has never regarded her admission to the facility as consensual and has unequivocally objected to it throughout the entire duration of her stay in the institution. On a number of occasions the applicant requested her discharge from the Kėdainiai Home by submitting numerous pleas to State authorities and, once she was given the only possibility to address a judicial institution, to the Kaunas City District Court (see paragraphs 34 and 37 above). She even twice attempted to escape from the Kėdainiai facility (see, *a fortiori*, *Storck*, cited above, § 73). In sum, even though the applicant had been deprived of her legal capacity, she was still able to express an opinion on her situation, and in the present circumstances the Court finds that the applicant had never agreed to her continued residence at the Kėdainiai Home.

151. Lastly, the Court notes that although the applicant’s admission was requested by the applicant’s guardian, a private individual, it was implemented by a State-run institution – the Kėdainiai Home. Therefore, the responsibility of the authorities for the situation complained of was engaged (see *Shtukurov*, cited above, § 110).

152. In the light of the foregoing the Court concludes that the applicant was “deprived of her liberty” within the meaning of Article 5 § 1 of the Convention from 2 August 2004 and remains so to this day.

153. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

154. The Government argued that the applicant had been admitted to the Kėdainiai Home lawfully. The Court accepts that the applicant's involuntary admission was "lawful", if this term is construed narrowly, in the sense of the formal compatibility of the applicant's involuntary admission with the procedural and material requirements of domestic law (see paragraph 79 above). It appears that the only condition necessary for the applicant's admission was the consent of her official guardian, her adoptive father, who was also the person who had initially sought the applicant's admission to the Kėdainiai Home.

155. However, the Court reiterates that the notion of "lawfulness" in the context of Article 5 § 1 (e) has also a broader meaning. The notion underlying the term "procedure prescribed by law" is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp*, cited above, § 45).

156. The Court also recalls that in *Winterwerp* (paragraph 39) it set out three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

157. Turning to the present case, the Court notes that just a few weeks before her placement in the Kėdainiai Home on 2 August 2004, the applicant had been admitted to and examined at the Kaunas Psychiatric Hospital (see, by converse implication, *Stanev*, cited above, § 156). A medical panel of that hospital concluded that at that time the applicant suffered from "continuous paranoid schizophrenia". The doctors' commission deemed it appropriate for the applicant to live in a "social care institution for the mentally handicapped". The Court further observes that soon thereafter a social worker concluded that the applicant was not able to live on her own, as she could not take care of herself, did not understand the value of money, did not clean her apartment and wandered in the city hungry. The Court also notes the social worker's testimony as to the unpredictability of the applicant's behaviour, given that sometimes she would get angry at people and shout at them without a reason (see

paragraphs 22 and 23 above). That being so and recalling the fact that the applicant had a history of serious mental health problems since 1979, the Court is ready to find that the applicant has been reliably shown to have been suffering from a mental disorder of a kind and degree warranting compulsory confinement and the conditions as defined in *Wintertwerp* had thus been met in her case. Furthermore, the Court also considers that no other measures were available in the circumstances. As noted by the social worker, the applicant's adoptive father, who was her legal guardian, could not "manage" her (see paragraph 23 above). On this point the Court also takes notice of the fact that even being removed from institutional care and taken to her adoptive father's apartment, the applicant escaped and was found by the police only three months later (see paragraph 29 above). In these circumstances the Court concludes that the applicant's compulsory confinement was necessary (see *Stanev*, cited above, § 143) and no alternative measures had been appropriate in the circumstances of the case. The Court lastly observes, and it has not been disputed by the applicant, that in situations such as hers the domestic law did not provide that placement in a social care institution would be decided by a court (see, by converse implication, *Gorobet v. Moldova*, no. 30951/10, § 40, 11 October 2011).

158. In the light of the above, the Court cannot but conclude that the applicant's confinement to the Kėdainiai Home on 2 August 2004 was "lawful" within the meaning of Article 5 § 1 (e) of the Convention. Accordingly, there has been no violation of Article 5 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

159. The applicant complained that she is unable to obtain her release from the Kėdainiai Home. Article 5 § 4, relied on by the applicant, provides as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

160. The applicant submitted that she had been admitted to the Kėdainiai Home upon her guardian's request and with the authorisation of an administrative panel. The lawfulness of her involuntary hospitalisation had not been reviewed by a court, either upon her admission or at any other subsequent time. Being deprived of her legal capacity, the applicant submitted that she is prevented from independently pursuing any judicial legal remedy to challenge her continued involuntary hospitalisation. In

relation to the possibility supposedly at the applicant's disposal of asking for a prosecutorial inquiry, this remedy could not be regarded *per se* as judicial review satisfying the requirements of Article 5 § 4. As for the possibilities identified by the Government, namely to ask social services or a prosecutor to initiate a review of the applicant's medical condition, these procedures were discretionary. In any event, the applicant had filed a number of complaints with the prosecutor's office and other authorities, which had unanimously concluded that her hospitalisation in the Kėdainiai Home had been carried out in accordance with the domestic law, thus being disinclined to take any action to override the will of her adoptive father, acting as her legal guardian. Once the Kėdainiai Home had become her guardian, it had been clear that that facility clearly had an interest in stifling any of the applicant's complaints and in keeping her in the institution. The applicant therefore submitted that her rights under Article 5 § 4 of the Convention had been breached.

161. The Government maintained that the applicant had had an effective remedy to challenge her hospitalisation at the Kėdainiai facility. Thus, she had been able to apply for release or complain about the actions of the medical staff through her guardians, who had represented her in dealings with third parties, including the courts. Further, the applicant had been able to ask the social services authorities or a prosecutor to initiate a review of her situation. For the Government, the applicant's complaint was unfounded.

B. The Court's assessment

1. Admissibility

162. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

163. Among the principles emerging from the Court's case-law on Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires that the procedure followed have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A; also see *Stanev*, cited above, § 171).

164. This is so in cases where the original detention was initially authorised by a judicial authority (see *X v. the United Kingdom*, 5 November 1981, § 52, Series A no. 46), and it is all the more true in the circumstances of the present case, where the applicant's placement in the Kėdainiai Home was initiated by a private individual, namely the applicant's guardian, and decided upon by the municipal and social care authorities without any involvement on the part of the courts.

165. The Court accepts that the forms of judicial review may vary from one domain to another and may depend on the type of the deprivation of liberty at issue. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in this sphere. However, in the present case the courts were not involved in deciding on the applicant's placement in the Kėdainiai Home at any moment or in any form. It appears that, in situations such as the applicant's, Lithuanian law does not provide for automatic judicial review of the lawfulness of admitting a person to and keeping him in an institution like the Kėdainiai Home. In addition, a review cannot be initiated by the person concerned if that person has been deprived of his legal capacity. In sum, the applicant was prevented from independently pursuing any legal remedy of a judicial character to challenge her continued involuntary institutionalisation.

166. The Government claimed that the applicant could have initiated legal proceedings through her guardians. However, that remedy was not directly accessible to her: the applicant fully depended on her legal guardian, her adoptive father, who had requested her placement in the Kėdainiai Home in the first place. The Court also observes that the applicant's current legal guardian is the Kėdainiai Home – the same social care institution which is responsible for her treatment and, furthermore, the same institution which the applicant had complained against on many occasions, including in court proceedings. In this context the Court considers that where a person capable of expressing a view, despite having

been deprived of legal capacity, is deprived of his liberty at the request of his guardian, he must be accorded an opportunity of contesting that confinement before a court, with separate legal representation. Lastly, as to the prospect of an inquiry carried out by the prosecuting authorities, the Court shares the applicant's observation that a prosecutorial inquiry cannot as such be regarded as judicial review satisfying the requirements of Article 5 § 4 of the Convention (see *Shtukaturov*, cited above, § 124).

167. In the light of the above, the Court dismisses the Government's preliminary objection of abuse of application and holds that there has also been a violation of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

168. Relying on Articles 3 and 8 of the Convention, the applicant complained of having been physically restrained on 25 January 2005, when she had been tied to a bed in an isolation room, and of the overall standard of medical treatment in the Kėdainiai Home. She also argued that she had been given poor quality food.

The Court considers that in the particular circumstances of the present case these complaints fall to be examined under Article 3 of the Convention, which reads, in so far as relevant as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

169. The applicant submitted that she had been forced to take medication provided by the Kėdainiai Home with little or no information about its use. On occasions she had refused medication, but had generally acquiesced to its administration because of persistent pressure from the staff. The incident of 25 January 2005 had exemplified that pressure at its worst, though the coercion is generally less dramatic and persistent.

170. The applicant also complained that at the Kėdainiai institution she had been given out-of-date products to eat.

171. The Government argued that the measures used in respect of the applicant had been therapeutic and necessary. Turning to the events of 25 January 2005, they submitted that the social workers had decided on their own to tie down the applicant as they had been afraid for her life. Although the exact length of time that the applicant had been tied up for was not clear, it could have lasted for only fifteen to thirty minutes and had not continued any longer than necessary. During the incident the applicant had been forcibly injected with 10 mg of Haloperidol, whilst the average

therapeutic dosage of the said medication is 12 mg. Haloperidol is a common antipsychotic medicament prescribed for individuals suffering from schizophrenia in order to eliminate the symptoms of psychosis. According to the generally accepted principles of psychiatry, medical necessity had fully justified the treatment in issue. The Government also drew the Court's attention to the prosecutor's decision of 31 July 2006 to discontinue the pre-trial investigation in connection with the applicant's forced restraint. They also noted the absence of any other similar incidents at the Kėdainiai Home in respect of the applicant. The Government summed up that even if the treatment of the applicant on 25 January 2005 had had unpleasant effects, it had not reached the minimum level of severity required under Article 3 of the Convention.

172. As to the applicant's complaint that she had been provided poor quality food, the Government submitted that although the authorities had found out-of-date meat in the Kėdainiai Home, the meat had been frozen and had never been used for cooking. A follow-up report of 20 February 2006 did not contain any evidence that the applicant had complained of failure to provide any medical assistance to her in respect of alleged food poisoning. For the Government, the applicant's accusations towards the care institution were unsubstantiated and hence manifestly ill-founded.

B. The Court's assessment

173. Referring to its settled case-law the Court reiterates that the position of inferiority and powerlessness which is typical of patients admitted on an involuntary basis to psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of derogation.

The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

174. In this case it is above all the applicant's restraint on 25 January 2005 which appears worrying. However, the evidence before the Court is not sufficient to disprove the Government's suggestion that, according to the psychiatric principles generally accepted at the time, medical necessity justified the treatment in issue. Moreover, the applicant's allegations that the

use of restraint measures had been unlawful were dismissed by the prosecutors and the Court sees no valid reason to dispute their findings (see paragraphs 54-58 above). The Court also notes the Government's affirmation that there were no more similar incidents in the Kėdainiai Home in which physical restraint and supplementary medication had been used in respect of the applicant.

175. Turning to the applicant's submission of allegedly poor quality food and food poisoning, the Court notes with concern that out-of-date meat was found at the Kėdainiai Home (see paragraph 63 above). However, that fact alone is not sufficient to substantiate the applicant's accusations of inhuman or degrading treatment, as directed towards the Kėdainiai institution, to such an extent that an issue under Article 3 of the Convention would arise.

176. The Court accordingly finds that the above complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Censorship of correspondence

177. The applicant alleged that the Kėdainiai Home had censored her correspondence, in breach of Article 8 of the Convention, which reads insofar as relevant as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties' submissions

178. The applicant argued that her correspondence, including that with the Court, and her telephone conversations, as illustrated by the incident of 18 January 2005, had been censored by the Kėdainiai Home. She also submitted that she had been denied books and newspapers.

179. The Government disputed the applicant's submissions and argued that the residents of the Kėdainiai Home were guaranteed the right to receive periodicals and personal correspondence. There were no requirements that the residents should send or receive their correspondence through the personnel of the facility.

180. As to the particular situation of the applicant, the Government underlined that there had been neither stopping nor censorship of any of her communications, such as telephone conversations or letters, including those with the Court. Such allegations were totally unsubstantiated and there was no proof that any acts of interception of communications had occurred. As regards the only specified incident involving the telephone call from Ms M. Buržinskienė on 18 January 2005, which the applicant had not been invited to answer, the Government noted that in the context of a more intensified deterioration of the applicant's health, the Kėdainiai Home personnel might have decided not to have the applicant temporarily disturbed. Nonetheless, since 2005 the applicant had possessed several of her own mobile phones and had used them at her own convenience and without hindrance. Furthermore, the applicant had not indicated either the addressees of her supposedly intercepted correspondence, or, at least, the approximate dates of such letters. Lastly, the Government submitted that the Kėdainiai Home had a room with newspapers, periodicals and books, to which all the residents, including the applicant, had unrestricted access.

Relying on the above considerations, the Government argued that the applicant's complaint was manifestly ill-founded.

2. The Court's assessment

181. The Court recalls its case-law to the effect that telephone calls made from business premises, as well as from the home, may be covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see *Halford v. the United Kingdom*, 25 June 1997, § 44, *Reports of Judgments and Decisions* 1997-III). Turning to the applicant's situation, it observes that on 18 January 2005 the applicant was indeed prevented from receiving a telephone call from Ms Buržinskienė. However, taking into account the applicant's medical diagnosis and the explanations provided by the Government, the Court is not ready to hold that on that occasion the applicant's rights under Article 8 were limited more than was strictly necessary. The Court also notes that this part of the complaint has been raised out of time, as required by Article 35 § 1 of the Convention.

182. Furthermore, having examined the materials submitted by the parties, the Court finds the applicant's other complaints in this part of the application not sufficiently substantiated and therefore rejects them as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Visits

1. The parties' submissions

183. The applicant further argued that her ability to build and sustain relationships had also been limited due to restrictions placed on her capacity to receive visitors and telephone calls. The applicant has had very little contact with members of the community outside the facility. Outsiders' visits are generally limited and most visitors may not be received in private. The director of the Kėdainiai Home had in the past restricted visits from outsiders after the applicant's institutionalisation, upon a request from her guardian. The list of visitors maintained by the Kėdainiai Home showed that between 2 August 2004 and 25 December 2006 only the applicant's adoptive father had visited her, with few exceptions. Before the applicant got her own mobile phone, she had had to use the facilities provided by the institution. At that time, she had only been able to receive calls through the Kėdainiai Home's switchboard. She relied upon the right to respect for private and family life under the above-cited Article 8 of the Convention.

184. The Government pointed out that the applicant, as with the other residents of the Kėdainiai Home, was entitled to unrestricted visits by her relatives and her court-appointed guardians. As to other visitors, such individuals could visit residents upon having obtained the management's permission, which was required in order to protect the interests and the safety of the residents of the institution.

185. The Government submitted that the applicant's adoptive father, as her guardian, had requested that the Kėdainiai Home prevent D.G.'s negative influence over the applicant and restrict her visits in order to avoid the applicant's destabilisation. Only once on 18 August 2004, in accordance with that request and also having the oral consent of the in-house psychiatrist, had D.G.'s permission to visit been denied. In that connection, the Government also referred to a doctor's report concerning the negative influence of D.G. over the applicant. Relying on the record of visitors to the Kėdainiai Home, the Government asserted that, contrary to what had been said by the applicant, she had received visitors. In contrast to what had been suggested by the applicant, it had not been her relatives, but rather her friends who had most often visited her.

186. In the light of the above, the Government submitted that the applicant's complaint was manifestly ill-founded.

2. The Court's assessment

187. The Court reiterates that Article 8 of the Convention is intended to protect individuals from arbitrary interference by the State in their private and family life, home and correspondence. The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of

“private life”. However, it would be too restrictive to limit the notion to an “inner circle” in which the individual may live his own personal life as he chooses and to entirely exclude therefrom the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

188. Turning to the applicant’s case, the Court notes that, except for one occasion on which D.G. was not allowed to see her on 18 August 2004, the applicant has not substantiated her pleas of social isolation and restrictions on having people visit her. Even assuming that these matters have been raised in time, the Court is not ready to disagree with the Government’s suggestion that that single restriction was aimed at the protection of the applicant’s mental health and was thus in compliance with the requirements of Article 8 of the Convention.

189. The applicant complained that by her admission to the Kėdainiai Home she had been segregated from society and cut off from social networks. Whilst acknowledging that because of her involuntary stay in the institution the applicant indeed could have faced certain restrictions in contacting others, the Court nonetheless observes that between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. Of those visits, her friends, relatives and D.G. saw the applicant thirty-eight times (see paragraph 31 above). Lastly, the applicant had herself admitted that at one point she had got a mobile phone, which helped her to maintain contact with the outside world.

190. In the light of the foregoing, the Court considers that this part of the applicant’s complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

191. The applicant complained that she had been prevented from practising her religion whilst resident in the Kėdainiai Home, in breach of Article 9 of the Convention.

192. The Government submitted that the applicant’s complaint was purely abstract in nature. It was not indicated in the applicant’s complaint when in particular she had been barred or impeded from practising her religion. Pursuant to the Bylaws of the Kėdainiai facility, the residents thereof had the right to practise their chosen religion and to attend a place of worship.

193. The Court has examined the above complaint as submitted by the applicant. However, having regard to all the material in its possession, it finds the complaint wholly unsubstantiated and therefore rejects it as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

194. Relying upon Article 13 of the Convention, the applicant also complained that she had had no effective domestic remedies at her disposal to seek redress for the alleged violations of which she had complained to the Court. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties’ submissions

1. *The applicant*

195. The applicant submitted at the outset that she is a very vulnerable individual. She is legally incapacitated with a history of mental health problems and has been admitted to a psychiatric institution against her will for an indeterminate period. The applicant’s guardian, who has the power to take decisions on all her aspects of life, is the care institution itself. In the applicant’s view, on account of her vulnerability, Article 13 of the Convention required that the State take supplementary measures to make sure that she could have benefited from effective remedies for the violations of her rights.

196. The applicant pointed out that she does not have independent standing to initiate any civil proceedings. Only once had she been successful in initiating court proceedings, namely those before the Kaunas District Court in 2005 concerning the change of guardianship. However, even then it had been not possible to pursue that remedy in full, given that the Kaunas District Court had decided to refuse the applicant’s request for legal assistance on the grounds that she had been represented by her legal guardian, who already had a lawyer.

197. The applicant further submitted that neither could she exercise her right to an effective domestic remedy through other persons. As concerns her guardian, who was her legal representative in accordance with the law, this remedy had been purely discretionary. More importantly, it was difficult to conceive how this remedy could have worked with regard to complaints challenging decisions taken by the guardian him, her or itself on the applicant’s behalf, such as the decision to hospitalise the applicant in the

institution, or the decision by the Kėdainiai Home to restrict visitors' access to the applicant.

198. The applicant also argued that she could not effectively act through the Social Services Department or the public prosecutor either. As concerns the first body, she emphasised the purely discretionary powers of the social services department and doubted the impartiality of an institution which had to a large degree been responsible for the appointment of her guardians and for her hospitalisation in the institution. As concerns the prosecutor, in the applicant's view, his decisions were not binding and, as practice had showed, the prosecutor had invariably rejected the applicant's complaints, mostly deferring to the decisions taken by the guardians or the social service authorities.

199. Lastly, the applicant submitted that decisions to remove incapacitation, although theoretically possible, were exceptional. Most importantly, the ability to bring an action to restore legal capacity did not belong to incapacitated persons themselves, but rather to their guardian. For most people, incapacitation is for life.

2. The Government

200. The Government contested the applicant's arguments. Whilst acknowledging that the applicant had no independent standing in the domestic proceedings, the Government contended that she had been able to effectively act through her guardian, who had been her legal representative. They also pointed to the Kaunas City District Court's decision of 7 November 2007 to accept the applicant's application for change of her guardian for examination. For the Government, it could be presumed that the district court had reviewed the applicant's request to reopen the proceedings with a high degree of care because of the essence of the applicant's request – appointment of a guardian. Even though the court had refused the applicant's request to have separate legal assistance, that refusal had been based on domestic law, pursuant to which a guardian is the legal representative of an incapacitated person. Furthermore, the actions of the applicant's guardian had been supervised by the social services authorities, thus protecting the interests of the applicant.

201. The Government next argued that the protection of the rights and interests of the applicant fell within the notion of public interest. Thus the applicant had been able to apply to the prosecutor, who, in turn, had been entitled to file a civil claim or an administrative complaint. In this context the Government referred to the decisions of 3 September 2004 and 31 July 2006, by which the prosecutors had discontinued the official investigation into the complaints about alleged deprivation of liberty of the applicant. However, having considered the complaints to be unfounded, the prosecutors saw no reason to apply to the domestic courts in order to protect the public interest.

202. As to an effective remedy for the applicant to complain of the alleged violations of Articles 8 and 9 of the Convention regarding her living conditions, the Government contended that, pursuant to the Law on Social Services, the applicant could have complained to social care officials, and, in the event that they dismissed her complaint, to the courts. Various complaints made by the applicant regarding her allegedly inadequate living conditions and ill-treatment in the Kėdainiai Home had been investigated by a number of municipal officials and interdepartmental panels, which had found no violations of the applicant's rights. Moreover, neither a prosecutor nor the applicant's guardian had ever applied to the courts with a claim for damages for any alleged violations of the applicant's rights.

In sum, the applicant had had domestic remedies which were effective, available in theory and in practice, and capable of providing redress in respect of the applicant's complaints and which had offered reasonable prospects of success.

203. Lastly, the Government submitted that declaration of the recovery of a person's legal capacity upon the amelioration of his or her mental health was quite common practice in Lithuania. Such requests could be submitted by a social care institution, acting as a guardian, on its own motion. Moreover, a request to annul an incapacitation decision could also be lodged by a prosecutor in the public interest. Nonetheless, as regards the applicant, the circumstances warranting her incapacitation have never disappeared as no amelioration of her mental state has ever been established that would give her guardian, be it her adoptive father or the Kėdainiai Home, or the prosecutor grounds to apply to a court for the reinstatement of her legal capacity.

B. The Court's assessment

204. The Court finds that this complaint is linked to the complaints submitted under Articles 5 and 6 of the Convention, and it should therefore be declared admissible.

205. The Court recalls its case-law to the effect that Article 5 § 4 provides a *lex specialis* in relation to the more general requirements of Article 13 (see *Chahal v. the United Kingdom*, 15 November 1996, § 126, *Reports of Judgments and Decisions* 1996-V). It also reiterates that the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 (see, among many authorities, *Kamasinski v. Austria*, 19 December 1989, § 110, Series A no. 168). The Court further notes that, in analysing the fairness of the civil proceedings concerning the applicant's guardianship and the lawfulness of the applicant's involuntary placement in the Kėdainiai Home, it has already taken account of the fact that the applicant is deprived of legal capacity and thus is not able to initiate any legal proceedings before the domestic courts. When analysing the above

complaints, the Court has also noted that the other remedies suggested by the Government, be it a possibility to act through her guardians or a request by the applicant to complain to a prosecutor or her complaints to the social care authorities, have not been proved to be feasible in the applicant's case. This being so, having regard to its conclusions under Articles 5 § 4 and 6 of the Convention, the Court does not consider it necessary to re-examine these aspects of the case separately through the prism of the "effective remedies" requirement of Article 13.

IX. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

206. Relying upon Article 2 of the Convention, the applicant also complained that, due to overmedication, her life is at risk. Relying on Article 10 of the Convention, the applicant alleged that one of the reasons for her involuntary psychiatric hospitalisation had been her bold poetic expression. Finally, without citing any Article of the Convention or its Protocols, the applicant complained of a violation of her property rights by her State-appointed guardian.

207. Having examined the materials submitted by the parties, the Court finds that the applicant has not provided sufficient evidence to substantiate her claims. It notes that, according to the Government, the applicant had received and had had access to newspapers and reading materials (see paragraph 180 above). It further observes that the applicant's complaints as to alleged breach of her property rights were dismissed by the prosecutors (see paragraph 52 above). The Court therefore rejects this part of the application as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

208. Relying upon Article 3 of the Convention, the applicant complained of her involuntary hospitalisation and treatment in the Kaunas Psychiatric Hospital from 30 June 2004 to 2 August 2004. The Court notes, however, that the applicant submitted this complaint on 28 March 2006. Accordingly, this part of the application has not been lodged within six months of the final effective measure or decision, as required by Article 35 § 1 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

209. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

210. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

211. The Government submitted that the above claim was wholly unsubstantiated.

212. The Court notes that it has found a violation of Article 5 § 4 as well as a violation of Article 6 § 1 in the present case. As regards the non-pecuniary damage already sustained, the Court finds that the violation of the Convention has indisputably caused the applicant substantial damage. In these circumstances, it considers that the applicant has experienced suffering and frustration, for which the mere finding of a violation cannot compensate. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

213. The applicant claimed the sum of EUR 16,609.85 for costs and expenses before the Court, broken down as follows: EUR 62 for secretarial costs; EUR 3,500 in relation to legal fees for preparation of the submissions made by the applicant's lawyer; and EUR 13,047.85 for fees for legal advice from *Interrights*.

214. The Government submitted that the sum was excessive.

215. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme, under which the sum of EUR 850 has been paid to the applicant's lawyer to cover the submission of the applicant's observations and additional expenses.

216. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Ruling on an equitable basis and taking into account the sums already paid to the applicant by the Council of Europe in legal aid, the Court awards the applicant EUR 5,000.

C. Default interest

217. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection concerning the applicant's victim status;
2. *Joins to the merits* the Government's preliminary objection of abuse of application and *dismisses* it;
3. *Declares* the complaints under Article 5 § 1 and 4 (concerning involuntary placement in the Kėdainiai Home and the applicant's inability to obtain judicial review of her continuous placement), Article 6 § 1 (concerning the proceedings for change of guardianship), and Article 13 (concerning the absence of effective remedies) admissible, and the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's involuntary placement in the Kėdainiai Home;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's inability to obtain her release from the Kėdainiai Home;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account the unfairness of the guardianship proceedings;
7. *Holds* that there is no need to examine the applicant's complaint under Article 13 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.7.2008
COM(2008) 426 final

2008/0140 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**on implementing the principle of equal treatment between persons irrespective of
religion or belief, disability, age or sexual orientation**

(presented by the Commission)

{SEC(2008) 2180}

{SEC(2008) 2181}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market. It sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered such discrimination.

This proposal supplements the existing EC legal framework under which the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation applies only to employment, occupation and vocational training¹.

General context

The Commission announced in its legislative and work programme adopted on 23 October 2007² that it would propose new initiatives to complete the EU anti-discrimination legal framework.

The current proposal is presented as part of the 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe'³, and accompanies the Communication 'Non-Discrimination and Equal Opportunities: A Renewed Commitment'⁴.

The UN Convention on the Rights of Persons with Disabilities has been signed by the Member States and the European Community. It is based on the principles of non-discrimination, participation and inclusion in society, equal opportunities and accessibility. A proposal for the conclusion of the Convention by the European Community has been presented to the Council⁵.

Existing provisions in the area of the proposal

This proposal builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC⁶ which prohibit discrimination on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief⁷. Discrimination based on race or ethnic origin is prohibited in employment, occupation and vocational training, as well as in non-employment areas such as

¹ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19.7.2000, p.22 and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000, p. 16

² COM (2007) 640

³ COM (2008) 412

⁴ COM (2008) 420

⁵ [COM (2008) XXX]

⁶ Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21.12.2004, p.37

⁷ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19.7.2000), Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000)

social protection, health care, education and access to goods and services, including housing, which are available to the public. Discrimination based on sex is prohibited in the same range of areas, with the exception of education and media and advertising. However, discrimination based on age, religion and belief, sexual orientation and disability is prohibited only in employment, occupation and vocational training.

Directives 2000/43/EC and 2000/78/EC had to be transposed into national law by 2003, with the exception of those provisions dealing with age and disability discrimination, for which an extra three years was available. A report on the implementation of Directive 2000/43/EC was adopted by the Commission in 2006⁸ and a report on the implementation of Directive 2000/78/EC was adopted on 19 June 2008⁹. All except one Member State have transposed these directives. Directive 2004/113/EC had to be transposed by the end of 2007.

As far as possible, the concepts and rules provided for in this proposal build on those used in the existing Directives based on Article 13 EC.

Consistency with other policies and objectives of the Union

This proposal builds upon the strategy developed since the Amsterdam Treaty to combat discrimination and is consistent with the horizontal objectives of the European Union, and in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. It will help to further the fundamental rights of citizens, in line with the EU Charter of Fundamental Rights.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation

In preparing this initiative, the Commission sought to associate all stakeholders with a potential interest and care was taken to ensure that those who might want to comment would have the opportunity and time to respond. The European Year of Equal Opportunities for All provided a unique opportunity to highlight the issues and encourage participation in the debate.

Particular mention should be made of the public on-line consultation¹⁰, a survey of the business sector¹¹, and a written consultation of, and meetings with, the social partners and European level NGOs active in the non-discrimination field¹². The results of the public consultation and that of the NGOs were a call for legislation at EU level to increase the level of protection against discrimination although some argued for ground-specific directives in the area of disability and of sex. The European Business Test Panel consultation indicated that businesses believe it would be helpful to have the same level of protection from discrimination across the EU. The social partners representing business were against new legislation in principle, which they saw as increasing red tape and costs, while the trade unions were in favour.

⁸ COM (2006) 643 final

⁹ COM (2008) 225

¹⁰ The full results of the consultation can be accessed at:

http://ec.europa.eu/employment_social/fundamental_rights/news/news_en.htm#rpc

¹¹ http://ec.europa.eu/yourvoice/ebtp/consultations/index_en.htm

¹² http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm#ar

The responses to the consultation highlighted concerns about how a new Directive would deal with a number of sensitive areas and also revealed misunderstandings about the limits or extent of Community competence. The proposed Directive addresses these concerns and makes explicit the limits of Community competence. Within these limits the Community has the power to act (Article 13 EC Treaty) and believes that action at EU level is the best way forward.

The responses also emphasised the specific nature of disability-related discrimination and the measures needed to address it. These are addressed in a specific Article.

Concerns have been expressed that a new Directive would bring costs for business but it should be emphasised that this proposal builds largely on concepts used in the existing directives with which economic operators are familiar. As to measures to deal with disability discrimination, the concept of reasonable accommodation is familiar to businesses since it was established in Directive 2000/78/EC. The Commission proposal specifies the factors to be taken into account when assessing what is 'reasonable'.

It was pointed out that, unlike the other two Directives, Directive 2000/78/EC does not require Member States to establish equality bodies. Attention was also drawn to the need to tackle multiple discrimination, for example by defining it as discrimination and by providing effective remedies. These issues go beyond the scope of this Directive but nothing prevents Member States taking action in these areas.

Finally, it was pointed out that the scope of protection from sex discrimination under Directive 2004/113/EC is not as extensive as in Directive 2000/43/EC and that this should be addressed in new legislation. The Commission does not take up this suggestion now since the date for transposition of Directive 2004/113/EC has only just passed. However the Commission will report in 2010 on the Directive's implementation and can propose modifications then, if appropriate.

Collection and use of expertise

A study¹³ in 2006 showed that, on the one hand, most countries provide legal protection in some form that goes beyond the current EC requirements in most of the areas examined, and on the other hand, there was a good deal of variety between countries as to the degree and nature of the protection. It also showed that very few countries carried out ex-ante impact assessments on non-discrimination legislation. A further study¹⁴ looked at the nature and extent of discrimination outside employment in the EU, and the potential (direct and indirect) costs this may have for individuals and society.

In addition, the Commission has used the reports from the European Network of Independent Experts in the non-discrimination field, notably their overview 'Developing Anti-Discrimination Law in Europe'¹⁵ as well as a study on 'Tackling Multiple Discrimination: practices, policies and laws'¹⁶.

¹³ http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf

¹⁴ Will be available on: http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

¹⁵ http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#leg

¹⁶ http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multidis_en.pdf

Also relevant are the results of a special Eurobarometer survey¹⁷ and a Eurobarometer flash survey in February 2008¹⁸.

Impact assessment

The impact assessment report¹⁹ looked at evidence of discrimination outside the labour market. It found that, while non-discrimination is recognised to be one of the fundamental values of the EU, in practice the level of legal protection to secure these values differs between Member States and between discrimination grounds. As result, those at risk of discrimination often find themselves less able to participate fully in society and the economy, with negative effects both for the individual and for broader society.

The report defined three objectives which any initiative should meet:

- to increase protection from discrimination ;
- to ensure legal certainty for economic operators and potential victims across the Member States;
- to enhance social inclusion and promote the full participation of all groups in society and the economy.

Of the various measures identified that could help reach the objectives, six options were selected for further analysis, notably no new action at EU level; self-regulation; recommendations; and one or more directives prohibiting discrimination outside the employment sphere .

In any event, Member States will have to implement the UN Convention on the Rights of Persons with Disabilities which defines the denial of reasonable accommodation as discrimination. A legally binding measure which prohibits discrimination on grounds of disability entails financial costs because of the adaptations needed but there are also benefits from the fuller economic and social inclusion of groups currently facing discrimination.

The report concludes that a multi-ground directive would be the appropriate response, designed so as to respect the principles of subsidiarity and proportionality. A small number of Member States already have rather complete legislative protection while most others have some, but less comprehensive, protection. The legislative adaptation arising from new EC rules would therefore vary.

The Commission received many complaints about discrimination in the insurance and banking sector. The use of age or disability by insurers and banks to assess the risk profile of customers does not necessarily represent discrimination: it depends on the product. The Commission will initiate a dialogue with the insurance and banking industry together with other relevant stakeholders to achieve a better common understanding of the areas where age or disability are relevant factors for the design and pricing of the products offered in these sectors.

¹⁷ Special Eurobarometer Survey 296 on discrimination in the EU:
http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm and
http://ec.europa.eu/public_opinion/archives/eb_special_en.htm

¹⁸ Flash Eurobarometer 232; http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf

¹⁹ Will be available on:http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

3. LEGAL ASPECTS

Legal base

The proposal is based on Article 13(1) EC Treaty.

Subsidiarity and proportionality

The principle of subsidiarity applies insofar as the proposal does not fall under the exclusive competence of the Community. The objectives of the proposal cannot be sufficiently achieved by the Member States acting alone because only a Community-wide measure can ensure that there is a minimum standard level of protection against discrimination based on religion or belief, disability, age or sexual orientation in all the Member States. A Community legal act provides legal certainty as to the rights and obligations of economic operators and citizens, including for those moving between the Member States. Experience with the previous directives adopted under Article 13(1) EC is that they had a positive effect in achieving a better protection against discrimination. In accordance with the principle of proportionality, the proposed directive does not go beyond what is necessary to achieve the objectives set.

Moreover, national traditions and approaches in areas such as healthcare, social protection and education tend to be more diverse than in employment-related areas. These areas are characterised by legitimate societal choices in areas which fall within national competence.

The diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity. Issues such as the organisation and content of education, recognition of marital or family status, adoption, reproductive rights and other similar questions are best decided at national level. The Directive does not therefore require any Member State to amend its present laws and practices in relation to these issues. Nor does it affect national rules governing the activities of churches and other religious organisations or their relationship with the state. So, for example, it will remain for Member States alone to take decisions on questions such as whether to allow selective admission to schools, or prohibit or allow the wearing or display of religious symbols in schools, whether to recognise same-sex marriages, and the nature of any relationship between organised religion and the state.

Choice of instrument

A directive is the instrument that best ensures a coherent minimum level of protection against discrimination across the EU, whilst allowing individual Member States that want to go beyond the minimum standards to do so. It also allows them to choose the most appropriate means of enforcement and sanctions. Past experience in the non-discrimination field is that a directive was the most appropriate instrument.

Correlation table

Member States are required to communicate to the Commission the text of national provisions transposing the directive as well as a correlation table between those provisions and the directive.

European Economic Area

This is a text of relevance to the European Economic Area and the Directive will be applicable to the non-EU Member States of the European Economic Area following a decision of the EEA Joint Committee

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS

Article 1: Purpose

The main objective of the directive is to combat discrimination based on religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment, outside the field of employment. The directive does not prohibit differences of treatment based on sex which are covered by Articles 13 and 141 of the EC Treaty and related secondary legislation.

Article 2: Concept of discrimination

The definition of the principle of equal treatment is based on that contained in the previous directives adopted under Article 13(1) EC [as well as relevant case law of the European Court of Justice].

Direct discrimination consists of treating someone differently solely because of his or her age, disability, religion or belief and sexual orientation. Indirect discrimination is more complex in that a rule or practice which seems neutral in fact has a particularly disadvantageous impact upon a person or a group of persons having a specific characteristic. The author of the rule or practice may have no idea of the practical consequences, and intention to discriminate is therefore not relevant. As in Directives 2000/43/EC, 2000/78/EC and 2002/73/EC²⁰, it is possible to justify indirect discrimination (if "that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary").

Harassment is a form of discrimination. The unwanted conduct can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment. This definition is identical to the definitions contained in the other Article 13 directives.

A denial of reasonable accommodation is considered a form of discrimination. This is in line with the UN Convention on the rights of people with disabilities and coherent with Directive 2000/78/EC. Certain differences of treatment based on age may be lawful, if they are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test).

²⁰ OJ L269 of 5.10.2002

In the existing Article 13 EC directives exceptions to the prohibition of direct discrimination were allowed for "genuine and determining occupational requirements", for differences of treatment based on age, and in the context of sex discrimination, in access to goods and services. Although the current proposal does not cover employment, there will be differences of treatment in the areas mentioned in Article 3 that should be allowed. However, as exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required.

A special rule is added for insurance and banking services, in recognition of the fact that age and disability can be an essential element of the assessment of risk for certain products, and therefore of price. If insurers are not allowed to take age and disability into account at all, the additional costs will have to be entirely borne by the rest of the "pool" of those insured, which would result in higher overall costs and lower availability of cover for consumers. The use of age and disability in the assessment of risk must be based on accurate data and statistics.

The directive does not affect national measures based on public security, public order, the prevention of criminal offences, the protection of health and the rights and freedoms of others.

Article 3: Scope

Discrimination based on religion or belief, disability, age or sexual orientation is prohibited by both the public and private sector in:

- social protection, including social security and health care;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

In terms of access to goods and services, only professional or commercial activities are covered. In other words, transactions between private individuals acting in a private capacity will not be covered: letting a room in a private house does not need to be treated in the same way as letting rooms in a hotel. The areas are covered only to the extent that the subject matter falls within the competences of the Community. Thus, for example, the organisation of the school system, activities and the content of education courses, including how to organise education for persons with disabilities, is a matter for the Member States, and they may provide for differences in treatment in access to religious educational institutions. For example, a school could arrange a special presentation just for children of a certain age, while a faith based school would be allowed to arrange school trips with a religious theme.

The text makes it clear that matters related to marital and family status, which includes adoption, are outside the scope of the directive. This includes reproductive rights. Member States remain free to decide whether or not to institute and recognise *legally* registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies²¹.

²¹ Judgment of the ECJ of 1.4.2008 in case C-267/06 Tadao Maruko

Article 3 specifies that the directive does not cover national laws relating to the secular nature of the State and its institutions, nor to the status of religious organisations. Member States may thus allow or prohibit the wearing of religious symbols in schools. Differences in treatment based on nationality are also not covered.

Article 4: Equal treatment of persons with disabilities

Effective access for disabled people to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, shall be provided by anticipation. This obligation is limited by the defence that if this would impose a disproportionate burden or would require major changes to the product or service, it does not need to be done.

In some cases individual measures of reasonable accommodation may be necessary to ensure effective access for a particular disabled person. As above, this is only the case if it would not impose a disproportionate burden. A non-exhaustive list is given of factors that could be taken into account in assessing whether the burden is disproportionate, thus allowing the specific situation of small and medium sized, and micro enterprises, to be taken into account.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States and businesses therefore have experience in applying it. What might be appropriate for a large corporation or public body may not be for a small or medium-sized company. The requirement to make reasonable accommodation does not only imply making physical changes but may entail an alternative means of providing a service.

Article 5: Positive action

This provision is common to all Article 13 directives. It is clear that in many cases, formal equality does not lead to equality in practice. It may be necessary to put in place specific measures to prevent and correct situations of inequality. The Member States have different traditions and practices regarding positive action, and this article lets Member States provide for positive action but does not make this an obligation.

Article 6: Minimum requirements

This provision is common to all Article 13 directives. It allows Member States to provide a higher level of protection than that guaranteed by the Directive, and confirms that there should be no lowering of the level of protection against discrimination already afforded by Member States when implementing the Directive.

Article 7: Defence of rights

This provision is common to all Article 13 directives. People should be able to enforce their right to non-discrimination. This article therefore provides that people who believe that they have been the victim of discrimination should be able to use administrative or judicial procedures, even after the relationship in which the discrimination is alleged to have taken place has ended, in accordance with the ruling of the European Court of Justice in the Coote²² case.

²² Case C-185/97 [1998] ECR I-5199

The right to effective legal protection is strengthened by allowing organisations, which have a legitimate interest in the fight against discrimination, to help victims of discrimination in judicial or administrative procedures. National rules on time limits for initiating actions are unaffected by this provision.

Article 8: Burden of proof

This provision is common to all Article 13 directives. In judicial procedures, the general rule is that a person who alleges something must prove it. However, in discrimination cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. This problem was recognised by the European Court of Justice²³ and the Community legislator in Directive 97/80/EC²⁴.

The shift of the burden of proof applies to all cases alleging breach of the principle of equal treatment, including those involving associations and organisations under Article 7(2). As in the earlier directives, this shift in the burden of proof does not apply to situations where the criminal law is used to prosecute allegations of discrimination.

Article 9: Victimisation

This provision is common to all Article 13 directives. Effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights due to the risk of retaliation, and it is therefore necessary to protect individuals against any adverse treatment due to the exercise of the rights conferred by the Directive. This article is the same as in Directives 2000/43/EC and 2000/78/EC.

Article 10: Dissemination of information

This provision is common to all Article 13 directives. Experience and polls show that individuals are badly or insufficiently informed of their rights. The more effective the system of public information and prevention is, the less need there will be for individual remedies. This replicates equivalent provisions in Directives 2000/43/EC, 2000/78/EC and 2002/113/EC.

Article 11: Dialogue with relevant stakeholders

This provision is common to all Article 13 directives. It aims to promote dialogue between relevant public authorities and bodies such as non-governmental organisations which have a legitimate interest in contributing to the fight against discrimination on grounds of religion or belief, disability, age or sexual orientation. A similar provision is contained in the previous anti-discrimination directives.

Article 12: Bodies for the promotion of equal treatment

This provision is common to two Article 13 directives. This article requires the Member States to have a body or bodies ("Equality Body") at national level to promote equal treatment of all persons without discrimination on the grounds of religion or belief, disability, age or sexual orientation.

²³ Danfoss, Case 109/88, [1989] ECR 03199

²⁴ OJ L.14, 20.1.1998

It replicates the provisions of Directive 2000/43/EC in as far as they deal with access to and supply of goods and services, and builds on equivalent provisions in Directives 2002/73/EC²⁵ and 2004/113/EC. It sets out minimum competences applicable to bodies at national level which should act independently to promote the principle of equal treatment. Member States may decide that these bodies be the same as those already established under the previous directives.

It is both difficult and expensive for individuals to mount a legal challenge if they think they have been discriminated against. A key role of the Equality Bodies is to give independent help to victims of discrimination. They must also be able to conduct independent surveys on discrimination and to publish reports and recommendations on issues relating to discrimination.

Article 13: Compliance

This provision is common to all Article 13 directives. Equal treatment involves the elimination of discrimination arising from any laws, regulations or administrative provision and the directive therefore requires the Member States to abolish any such provisions. As with earlier legislation, the directive also requires that any provisions contrary to the principle of equal treatment must be rendered null and void or amended, or must be capable of being so rendered if they are challenged.

Article 14: Sanctions

This provision is common to all Article 13 directives. In accordance with the case law of the Court of Justice²⁶, the text provides that there should be no upper limit on the compensation payable in cases of breach of the principle of equal treatment. This provision does not require criminal sanctions to be introduced.

Article 15: Implementation

This provision is common to all Article 13 directives. It gives the Member States a period of two years to transpose the directive into national law and to communicate to the Commission the texts of the national law. Member States may provide that the obligation to ensure effective access for disabled persons only applies four years after the adoption of the Directive.

Article 16: Report

This provision is common to all Article 13 directives. It requires the Commission to report to the European Parliament and the Council on the application of the Directive, on the basis of information from Member States. The report will take account of the views of the social partners, relevant NGOs and the EU Fundamental Rights Agency.

Article 17: Entry into force

This provision is common to all Article 13 directives. The Directive will enter into force on the day it is published in the Official Journal.

²⁵ Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269 of 5.10.2002, p.15

²⁶ Cases C-180/95 Draehmpaehl, ECR 1997 I p.2195 and C-271/91 Marshall ECR 1993 I P.4367

Article 18: Addressees

This provision is common to all Article 13 directives, making it clear that the Directive is addressed to the Member States.

Proposal for a

COUNCIL DIRECTIVE

on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13(1) thereof,

Having regard to the proposal from the Commission²⁷,

Having regard to the opinion of the European Parliament²⁸,

Having regard to the opinion of the European Economic and Social Committee²⁹,

Having regard to the opinion of the Committee of the Regions³⁰,

Whereas:

- (1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
- (2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, to which [all] Member States are signatories. In particular, the UN Convention on the Rights of Persons with Disabilities includes the denial of reasonable accommodation in its definition of discrimination.

²⁷ OJ C , , p. .

²⁸ OJ C , , p. .

²⁹ OJ C , , p. .

³⁰ OJ C , , p. .

- (3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.
- (4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.
- (5) The European Council, in Brussels on 14 December 2007, invited Member States to strengthen efforts to prevent and combat discrimination inside and outside the labour market³¹.
- (6) The European Parliament has called for the extension of the protection of discrimination in European Union law³².
- (7) The European Commission has affirmed in its Communication 'Renewed social agenda: Opportunities, access and solidarity in 21st century Europe'³³ that, in societies where each individual is regarded as being of equal worth, no artificial barriers or discrimination of any kind should hold people back in exploiting these opportunities.
- (8) The Community has adopted three legal instruments³⁴ on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.
- (9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.
- (10) Directive 2000/78/EC prohibits discrimination in access to vocational training; it is necessary to complete this protection by extending the prohibition of discrimination to education which is not considered vocational training.
- (11) This Directive should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without

³¹ Presidency conclusions of the Brussels European Council of 14 December 2007, point 50.

³² Resolution of 20 May 2008 P6_TA-PROV(2008)0212

³³ COM (2008) 412

³⁴ Directive 2000/43/EC, Directive 2000/78/EC and Directive 2004/113/EC

prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

- (12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.
- (13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination should remain a matter for the national judicial or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.
- (16) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. This Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their professional or commercial activity.
- (17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context, the freedom of religion, and the freedom of association. This Directive is without prejudice to national laws on marital or family status, including on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.
- (18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21st Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. . Member States may also allow or prohibit the wearing or display of religious symbols at school.
- (19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In neither case are measures

required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of a number of factors including the size, resources and nature of the organisation. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.

- (20) Legal requirements³⁵ and standards on accessibility have been established at European level in some areas while Article 16 of Council Regulation 1083/2006 of 11 July 2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999³⁶ requires that accessibility for disabled persons is one of the criteria to be observed in defining operations co-financed by the Funds. The Council has also emphasised the need for measures to secure the accessibility of cultural infrastructure and cultural activities for people with disabilities³⁷.
- (21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation. Such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.
- (22) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (23) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.
- (25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including

³⁵ Regulation (EC) No. 1107/2006 and Regulation (EC) No 1371/2007

³⁶ OJ L 210, 31.7.2006, p.25. Regulation as last amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p.6)

³⁷ OJ C 134, 7.6.2003, p.7

organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels.

- (27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.
- (28) In exercising their powers and fulfilling their responsibilities under this Directive, these bodies should operate in a manner consistent with the United Nations Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights.
- (29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (30) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives.
- (31) In accordance with paragraph 34 of the interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.

HAS ADOPTED THIS DIRECTIVE:

Chapter 1

GENERAL PROVISIONS

Article 1 *Purpose*

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

Article 2 *Concept of discrimination*

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.

Article 3 *Scope*

1. Within the limits of the powers conferred upon the Community, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) Social protection, including social security and healthcare;

(b) Social advantages;

(c) Education;

(d) Access to and supply of goods and other services which are available to the public, including housing.

Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.

2. This Directive is without prejudice to national laws on marital or family status and reproductive rights.

3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief.

4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.

5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Article 4

Equal treatment of persons with disabilities

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.

b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.

2. For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.

Article 5
Positive action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.

Article 6
Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II **REMEDIES AND ENFORCEMENT**

Article 7
Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 8
Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

4. Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with Article 7(2).

Article 9
Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 10
Dissemination of information

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.

Article 11
Dialogue with relevant stakeholders

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

Article 12
Bodies for the Promotion of Equal treatment

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

2. Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.

CHAPTER III

FINAL PROVISIONS

Article 13 *Compliance*

Member States shall take the necessary measures to ensure that the principle of equal treatment is respected and in particular that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

Article 14 *Sanctions*

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.

Article 15 *Implementation*

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest [two years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to provide effective access as set out in Article 4 has to be complied with by ... [at the latest] four [years after adoption].

Member States wishing to use this additional period shall inform the Commission at the latest by the date set down in paragraph 1 giving reasons.

Article 16 *Report*

1. Member States and national equality bodies shall communicate to the Commission, by at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Article 17
Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 18
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

**CODE OF GOOD PRACTICE FOR THE EMPLOYMENT OF PEOPLE
WITH DISABILITIES**

BUREAU DECISION

OF 22 JUNE 2005

THE BUREAU of the European Parliament

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to Article 1d of the Staff Regulations,

Having regard to the Council Directive establishing a general framework for equal treatment in employment and occupation¹,

Having regard to the existing Code of Good Practice for the Employment of People with Disabilities, adopted by the Bureau of the European Parliament in January 2000²

Having regard to the Commission Decision of 25 November 2003 on a Revised Code of Good Practice for the Employment of People with Disabilities,

Having regard to the opinion of the Legal Service,

Whereas:

(1) The Commission's *Consultative Document on Improving Working Arrangements and Career Perspectives for People with Disabilities*³ provides that "a more pro-active approach should be adopted to the implementation, evaluation and monitoring of the Code of Good Practice, with greater involvement of disabled staff",

(2) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability,

(3) The Council Directive establishing a general framework for equal treatment in employment and occupation and the Employment Guidelines for 2000 do not apply to the Community Institutions, the Commission has stated in the Reform that it should "offer its staff at least the same opportunities and levels of protection in these areas as apply in Member States"

(4) The European Parliament's resolution of 9 March 2005 on budget guidelines 2006 and on the European Parliament's preliminary draft estimates⁴, calls on the institutions to give an

¹ 2000/78/EC

² PE 282.903/BUR

³ SEC (2000) 2084/4

⁴ A6-0043/2005, paragraph 9

overview by 1 September 2005 of measures taken to overcome obstacles to equal treatment as defined in Article 13 of the EC Treaty, taking account of the possibilities offered by the new Staff Regulations,

ADOPTS THE FOLLOWING CODE OF GOOD PRACTICE:

Article 1 - Introduction

The European Institutions are committed to providing equality of access to employment in the European Public Service. A Public Service that reflects the diversity of the community it serves is better able to deliver quality services to the European citizens. Apart from the objective merits of equality, any organisation that claims to be progressive and forward-looking must seek to optimise the potential contribution of its entire recruitment base by ensuring equal access.

European statistics show that there are too few people with disabilities in employment by comparison with the number of people with disabilities of working age. It is the European Institutions' policy to promote a diverse and skilled workforce, to improve employment access and participation by people with disabilities, to eliminate discrimination in the workplace and to promote a workplace culture based on fair workplace practices and behaviour.

In pursuing this policy, due regard should be given to the Commission Communication "Towards a Barrier Free Europe for People with Disabilities"⁵. The "Design for All" principle must also be applied. "Design for All" is a relatively new approach that consists of designing, developing and marketing mainstream products, services, systems and environments that are accessible by as broad a range of users as possible. Failure to apply the design for all principle and to take peoples' needs into account in the planning, design and adaptation of environments can force people unnecessarily into a situation of dependency and social exclusion.

The purpose of this CODE OF GOOD PRACTICE is to provide a clear statement of the European Institutions' policy in relation to the employment of people with disabilities and ensure that all staff in the European Institutions comply with their legal and statutory obligations under anti-discrimination provisions and carry out their duties in a manner which is consistent with good equal opportunities practice. To this end, adequate resources will be re-allocated, wherever necessary, by all DGs and services in order to ensure the effective implementation of this Code of Good Practice.

⁵ COM(2000) 284 final of 12.05.2000

POLICY STATEMENT⁶

The European Institutions are committed to promoting equal treatment, irrespective of gender, race, colour, ethnic or social origin, genetic features, language, religion, convictions, political opinions or any other opinions, membership of a national minority, wealth, birth, age, disability or sexual orientation, by adopting workplace rules, policies, practices and behaviour, where all workers are valued and respected and have opportunities to develop their full potential and pursue a career of their choice. They are entitled to a working environment free from discrimination and harassment and where barriers to participation are identified and removed. These principles help the European Institutions to attract and retain the best people to deliver a high-quality service to European citizens.

In pursuit of these standards, the following provisions relating to the employment of people with disabilities have been inserted into Article 1d (4) of the Staff Regulations⁷:

“... a person has a disability if he has a physical or mental impairment that is, or likely to be, permanent. The impairment shall be determined according to the procedure set out in Article 33.

A person with a disability meets the conditions laid down in Article 28(e) if he can perform the essential functions of the job when reasonable accommodation is made.

“Reasonable accommodation”, in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, to participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.”

Article 2 - Scope of the Code

People with disabilities are not only those whose disability is immediately apparent. While many disabilities are not obvious they may, nonetheless, require certain accommodation. It is also recognised that the same disability can vary in its severity and affect the individual to a different degree and at different times and that a disability may be temporary in nature.

This code covers those who have a disability during the recruitment process, those who have a disability at the time of initial appointment and those in whom the disability develops during employment. The European Institutions will seek to adjust to any new circumstances in a supportive and sensitive manner.

The scope of the code does not encompass topics such as the special medical allowance for people with disabilities or the special budget for officials' children who have disabilities and related school allowances.

⁶ The 'discriminatory grounds' set out in this Policy Statement are those included in the current Staff Regulations, which entered into force on 1st May 2004.

⁷ Cf. article 1c of the Staff Regulations: “Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.” In consequence, while the Code is drafted in gender-neutral terms, extracts from the Staff Regulations are not.

Article 3 - Work-related accommodation

It is the European Institutions' policy to provide reasonable accommodation in employment in order to meet the needs of people with disabilities and of the Institutions. For the purposes of the present code, it shall be for the Institution to demonstrate that providing the necessary accommodation imposes an unreasonable burden.

It is recognised that the majority of people with disabilities do not require any form of special aid or adaptation to perform their work. However, people can do the same job in different ways to achieve the same result. Enabling a member of staff to perform well in a job by making a work-related accommodation is therefore entirely consistent with the merit principle. In order to ensure and facilitate the provision of accessible accommodation, the Institutions will have to anticipate some fundamental well-known needs following the "Design for All" principles, especially when new infrastructures are being developed.

Directive 2000/78/EC, establishing a general framework for Equal Treatment in Employment and Occupation, states that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This is also the basis of the European Institutions' policy on work-related accommodation.

Accommodation applies to all areas of employment, including:

- recruitment, selection and appointment,
- career development,
- training, and
- promotion, transfers or any other employment benefit
- social relationships within the Institutions.

Accommodation is a way of changing the workplace and may include:

- job redesign,
- purchasing or modifying equipment,
- flexible working arrangements.

The accommodation required is to be determined by the particular needs of the individual and will normally be provided. If providing accommodation would impose a disproportionate burden on them, the European Institutions may decline to offer employment to a person with a disability. Stringent standards, which have to be defined, are to be applied when assessing what is a disproportionate burden for the European Institutions. This is without prejudice to the right of administrative appeal.

Article 4 - Recruitment

The European Institutions have a policy of equality of opportunity and selection on merit by means of fair and open competitions. Recruitment and selection procedures are adapted to ensure that they do not disadvantage candidates with disabilities. People with disabilities are also encouraged to apply by a positive reference to the equal opportunities policy in advertisements for posts and by the dissemination of notices about forthcoming competitions to specialist publications and organisations such as the European Disability Forum, which is representative of NGO disability groups in the Member States and the European Agency for

the Development of Special Needs Education. Positive action shall also be taken in the field of administrative ‘stagiaire’ recruitment as well as at the level of interim or temporary contracts.

Accordingly, recruitment procedures will include the following:

- **Press publicity** for competitions will include a statement affirming the Institutions’ commitment to equality of opportunity for all candidates.
- **The Guide for Candidates** appearing in the Official Journal with the Notice of Competition will contain a paragraph specifically aimed at candidates with disabilities, mentioning the CODE OF GOOD PRACTICE.
- **Application forms** will request candidates with disabilities to detail the accommodation they require to enable them to participate in the tests on an equal basis with other candidates and every effort will be made to satisfy all reasonable requests.
- When a person with a disability is attending for **competition or interview**, the Secretary of the Selection Board, under the authority of the Chairperson, is responsible for ensuring that appropriate arrangements are made for the reception of that person and for the provision of any assistance that may be required, e.g. access to buildings, special equipment, extra time during competitions, etc.
- **Training** given to members of Selection Boards will include a module on disability awareness and the contents of this CODE OF GOOD PRACTICE. .
- A **website** will be set up in accordance with the most up-to-date accessibility standards, to enable access by the widest possible audience.

Article 5 - Careers

Once candidates with disabilities are on a reserve list, they may avail themselves of specialist advice in securing a post. DG Personnel of the European Parliament and EPSO will conduct an ongoing audit of the number of candidates with disabilities in competitions, the number who pass and the number who are subsequently recruited.

Having been recruited, officials with disabilities have the right to fully develop their potential. Care is taken at all stages during the career of an official with disabilities to ensure the avoidance of job requirements that, whether intentionally or otherwise, are not job-related and therefore discriminate against people with disabilities.

- **Initial Appointment and Probation:** The Appointing Authority uses its best endeavours, in co-operation with the Medical Services and/or the Equal Opportunities Service of DG Personnel, to ensure that candidates with disabilities placed on a competition reserve list are offered appropriate posts. In accordance with Staff Regulations, all successful candidates in a competition have their capacity to carry out their duties confirmed by a medical assessment. When appointing a person with a disability or determining their capacity to continue duty, care is taken to avoid discrimination based on disability. The aim is to ensure that the person is qualified for employment and to verify that he/she can perform the essential functions of the job, without prejudice to the obligation of providing reasonable

accommodation and having regard to the kind of disability. If, during the probationary period, it is verified that the job assigned to a successful candidate is incompatible with his/her disability, mobility will be considered.

- **Career Guidance:** The Career Guidance and Counselling Service can play an important role in counselling staff with disabilities on their career development and they should receive the appropriate training. The best approach would be to recruit a counsellor specialised in vocational and rehabilitation counselling, who would link, as appropriate, with other relevant services.

- **Career development:** Every effort is made to ensure that staff with disabilities have the same opportunities as others to increase their experience and develop their career by means of mobility within the Institutions. Providing for career development may include adjusting other posts so that members of staff with a disability can act in different or higher positions to develop new skills.

- **Training:** Staff with disabilities have the same access to training as other staff. The acquisition of new skills and knowledge is an important prerequisite for the career development of all officials. Every effort is made to enable staff with disabilities to participate in training courses and programmes organised by the particular institution. Where in-house training is unavailable or inappropriate, reasonable measures may be taken to provide training externally.

- **Staff assessment and Promotion:** disability does not constitute a reason for assessors and promotion committees to depart from the normal objective criteria used to judge the merits of officials.

- **Retention of Staff:** If a staff member acquires a disability, or an existing disability becomes more severe, the European Institutions take steps to try to enable the staff member to remain in employment. In consultation with the person, accommodation to facilitate their retention is considered, including restructuring that person's job, providing retraining or redeployment to a suitable post. Where necessary, such arrangements can be reviewed. Medical retirement procedures are undertaken in full consultation with the staff member where it is decided that adjustments cannot be made to allow the employee to remain in his/her post and a suitable, alternative, post is not available.

Article 6 - Working environment

The Institutions ensure that all reasonable measures are taken to eliminate physical or technical environmental barriers that may face some staff with disabilities:

- **Buildings:** All new buildings to be occupied by employees of the Institutions have to comply with the relevant national local legislation in respect of the access and utilisation of public buildings by people with disabilities in order to ensure seamless mobility. Buildings without suitable access, or buildings falling below a reasonable level in this respect, are progressively improved, subject to the availability of budgetary provision, or abandoned. Pending the adoption by the Institutions of revised criteria governing the adaptation of their buildings, the principles contained in the latest edition of the Commission document "Immeuble-type" will apply. The Institutions are taking all reasonable measures to ensure that officials with disabilities are allocated office accommodation compatible with their particular

needs, including the provision of designated parking, where necessary. Emergency facilities must be appropriate to all officials with disabilities. The Unit for Prevention and Well-Being at Work will continue to regularly audit buildings to determine improvements that should be made.

- **Office environment:** Care must be taken to ensure that the office environment is suited to a person with specific needs. The European Parliament will designate a specialist who will make an ergonomic appraisal of the office environment prior to newly-recruited staff members with disabilities commencing their employment and whenever a staff member with disabilities moves office.

The specialist will periodically inspect the office of all staff members with disabilities, will recommend appropriate changes, as needed, and will regularly inform the Directorate-General for Personnel, as well as the Interservice Working Party on the Accessibility of People with Disabilities, of the relevant findings.

To ensure the provision of reasonable accommodation, specific technical measures need to be taken as a precondition to an accessible environment. It is essential that information technology tools, including Intranet, applications and databases are developed following “Design for All” principles and accessibility guidelines. Electronic information and data should be available in accessible formats. The purchase of the appropriate tools and the training of personnel is an essential precondition.

Officials with disabilities are consulted about special equipment or furniture that might enhance their efficiency and effectiveness in the performance of their duties. The Institutions accept all reasonable requests for such items.

- **Meetings, etc.:** Care is taken to ensure that people with disabilities can fully participate in meetings or other fora by avoiding the inappropriate use of presentation aids or other media and by ensuring the availability of relevant material in accessible formats.

- **Flexible work:** Where reasonable, flexible working arrangements are made to meet both the Institution’s work requirements and the particular needs of an official with a disability. Examples are:

- *flexible starting and finishing times to accommodate the difficulties some people with a disability have getting to and from work using public transport,*

- *regular short breaks to assist people who require periodic medication or rest periods,*

- *part-time work; teleworking, with adequate technological supports provided by the employer.*

Article 7 - Information and Awareness Training

This CODE OF GOOD PRACTICE will be brought to the attention of all staff by the Equal Opportunities Service and by the human resources units of DGs. It is available in all EU languages on the EUROPA web site, on the Intranets of the Institutions and their Offices and Agencies and is distributed to all Human Resources Management staff and to senior and middle management staff. Wherever possible, the Institutions will seek to make information services and documentation accessible to different groups of people with disabilities, taking into account language and cultural needs.

Training courses which deal with the question of disabilities in depth will be targeted at those most particularly involved, e.g. staff with HR responsibilities, local career guidance staff, relevant Heads of Units, and members of Selection Boards.

Article 8 - Monitoring

An essential element in the implementation of this CODE OF GOOD PRACTICE is continuous monitoring of how it is performing, thus ensuring that improved procedures for its better application are introduced at all levels, including the recruitment process and throughout an official's career. In the event of complaints, it will be for DGs to show that they meet the requirements of people with disabilities. The Equal Opportunities Service and the Interservice Working Party on the Accessibility of People with Disabilities will discuss and fix targets to achieve barrier-free conditions.

A disability audit, under which directorates-general conduct a survey of their employees, who will declare if they believe that they have a disability, is conducted regularly and the results reported to DG Personnel. The purpose of collecting this information is to:

- ensure that appropriate consultation takes place with all relevant staff;
- eliminate discrimination and barriers to equal opportunities for staff with disabilities;
- identify what accommodation might need to be provided when interviewing or employing a person with a disability;
- develop the full potential of all staff and ensure equality of opportunity in career development.

The data are used to produce anonymous statistical reports to enable Institutions to assess if the non-discrimination policy and this Code are working effectively and to help frame new initiatives. Having due regard to the provisions of the Data Protection Regulation concerning the processing of personal data by the Community Institutions⁸, the information gathered in

⁸ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L8, 12.01.2001, p. 1)

the audit will not be used for any other purpose. Statistics regarding the number of staff with disabilities will be published.

The **Interservice Working Party on the Accessibility of People with Disabilities** is also forwarding the direct input received from staff with disabilities in the DGs on questions of working conditions, accessibility, recruitment and career development to DG Personnel.

Additionally, the Equal Opportunities service of DG Personnel may be approached on a confidential basis if matters of dissatisfaction arise in relation to the implementation of this Code in the European Parliament. The Service pursues the issues discreetly, with due regard to the level of confidentiality sought.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 181/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 February 2011
concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No
2006/2004
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure, in the light of the joint text approved by the Conciliation Committee on 24 January 2011 ⁽²⁾,

Whereas:

- (1) Action by the Union in the field of bus and coach transport should aim, among other things, at ensuring a high level of protection for passengers, that is comparable with other modes of transport, wherever they travel. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Since the bus or coach passenger is the weaker party to the transport contract, all passengers should be granted a minimum level of protection.

- (3) Union measures to improve passengers' rights in the bus and coach transport sector should take account of the specific characteristics of this sector, which consists largely of small- and medium-sized undertakings.
- (4) Passengers and, as a minimum, persons whom the passenger had, or would have had, a legal duty to maintain should enjoy adequate protection in the event of accidents arising out of the use of the bus or coach, taking into account Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability ⁽³⁾.
- (5) In choosing the national law applicable to compensation for death, including reasonable funeral expenses, or personal injury as well as for loss of or damage to luggage due to accidents arising out of the use of the bus or coach, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ⁽⁴⁾ and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ⁽⁵⁾ should be taken into account.
- (6) Passengers should, in addition to compensation in accordance with applicable national law in the event of death or personal injury or loss of or damage to luggage due to accidents arising out of the use of the bus or coach, be entitled to assistance with regard to their immediate practical needs following an accident. Such assistance should include, where necessary, first aid, accommodation, food, clothes and transport.

⁽¹⁾ OJ C 317, 23.12.2009, p. 99.

⁽²⁾ Position of the European Parliament of 23 April 2009 (OJ C 184 E, 8.7.2010, p. 312), position of the Council at first reading of 11 March 2010 (OJ C 122 E, 11.5.2010, p. 1), position of the European Parliament of 6 July 2010 (not yet published in the Official Journal), decision of the Council of 31 January 2011 and legislative resolution of the European Parliament of 15 February 2011 (not yet published in the Official Journal).

⁽³⁾ OJ L 263, 7.10.2009, p. 11.

⁽⁴⁾ OJ L 199, 31.7.2007, p. 40.

⁽⁵⁾ OJ L 177, 4.7.2008, p. 6.

- (7) Bus and coach passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using bus and coach services that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (8) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for bus and coach travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or reduced mobility, except for reasons which are justified on the grounds of safety or of the design of vehicles or infrastructure. Within the framework of relevant legislation for the protection of workers, disabled persons and persons with reduced mobility should enjoy the right to assistance at terminals and on board vehicles. In the interest of social inclusion, the persons concerned should receive the assistance free of charge. Carriers should establish access conditions, preferably using the European standardisation system.
- (9) In deciding on the design of new terminals, and as part of major refurbishments, terminal managing bodies should endeavour to take into account the needs of disabled persons and persons with reduced mobility, in accordance with 'design for all' requirements. In any case, terminal managing bodies should designate points where such persons can notify their arrival and need for assistance.
- (10) Similarly, without prejudice to current or future legislation on technical requirements for buses and coaches, carriers should, where possible, take those needs into account when deciding on the equipment of new and newly refurbished vehicles.
- (11) Member States should endeavour to improve existing infrastructure where this is necessary to enable carriers to ensure access for disabled persons and persons with reduced mobility as well as to provide appropriate assistance.
- (12) In order to respond to the needs of disabled persons and persons with reduced mobility, staff should be adequately trained. With a view to facilitating the mutual recognition of national qualifications of drivers, disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers ⁽¹⁾. In order to ensure coherence between the introduction of the training requirements and the time-limits set out in that Directive, a possibility for exemption during a limited period of time should be allowed.
- (13) Organisations representative of disabled persons or persons with reduced mobility should be consulted or involved in preparing the content of the disability-related training.
- (14) Rights of bus and coach passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to bus and coach passengers should also be provided, upon request, in alternative formats accessible to disabled persons and persons with reduced mobility, such as large print, plain language, Braille, electronic communications that can be accessed with adaptive technology, or audio tapes.
- (15) This Regulation should not restrict the rights of carriers to seek compensation from any person, including third parties, in accordance with the applicable national law.
- (16) Inconvenience experienced by passengers due to cancellation or significant delay of their journey should be reduced. To this end, passengers departing from terminals should be adequately looked after and informed in a way which is accessible to all passengers. Passengers should also be able to cancel their journey and have their tickets reimbursed or to continue their journey or to obtain re-routing under satisfactory conditions. If carriers fail to provide passengers with the necessary assistance, passengers should have the right to obtain financial compensation.
- (17) With the involvement of stakeholders, professional associations and associations of customers, passengers, disabled persons and persons with reduced mobility, carriers should cooperate in order to adopt arrangements at national or European level. Such arrangements should aim at improving the information, care and assistance offered to passengers whenever their travel is interrupted, in particular in the event of long delays or cancellation of travel, with a particular focus on passengers with special needs due to disability, reduced mobility, illness, elderly age and pregnancy, and including accompanying passengers and passengers travelling with young children. National enforcement bodies should be informed of those arrangements.

⁽¹⁾ OJ L 226, 10.9.2003, p. 4.

- (18) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the bus or coach transport service.
- (19) Passengers should be fully informed of their rights under this Regulation, so that they can effectively exercise those rights.
- (20) Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers or, as the case may be, by submission of complaints to the body or bodies designated to that end by the relevant Member State.
- (21) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (22) Taking into account the procedures established by Member States for the submission of complaints, a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the boarding point or alighting point is situated.
- (23) Member States should promote the use of public transport and the use of integrated information and integrated tickets in order to optimise the use and interoperability of the various transport modes and operators.
- (24) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (25) Since the objective of this Regulation, namely to ensure an equivalent level of protection of and assistance to passengers in bus and coach transport throughout the Member States, cannot sufficiently be achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (26) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾.

- (27) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection law (the Regulation on consumer protection cooperation) ⁽³⁾. That Regulation should therefore be amended accordingly.
- (28) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union, bearing in mind also Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ⁽⁴⁾ and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ⁽⁵⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules for bus and coach transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) rights of passengers in the event of accidents arising out of the use of the bus or coach resulting in death or personal injury or loss of or damage to luggage;
- (c) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;
- (d) rights of passengers in cases of cancellation or delay;
- (e) minimum information to be provided to passengers;
- (f) handling of complaints;
- (g) general rules on enforcement.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 364, 9.12.2004, p. 1.

⁽⁴⁾ OJ L 180, 19.7.2000, p. 22.

⁽⁵⁾ OJ L 373, 21.12.2004, p. 37.

*Article 2***Scope**

1. This Regulation shall apply to passengers travelling with regular services for non-specified categories of passengers where the boarding or the alighting point of the passengers is situated in the territory of a Member State and where the scheduled distance of the service is 250 km or more.

2. As regards the services referred to in paragraph 1 but where the scheduled distance of the service is shorter than 250 km, Article 4(2), Article 9, Article 10(1), point (b) of Article 16(1), Article 16(2), Article 17(1) and (2), and Articles 24 to 28 shall apply.

3. In addition, with the exception of Articles 9 to 16, Article 17(3), and Chapters IV, V and VI, this Regulation shall apply to passengers travelling with occasional services where the initial boarding point or the final alighting point of the passenger is situated in the territory of a Member State.

4. With the exception of Article 4(2), Article 9, Article 10(1), point (b) of Article 16(1), Article 16(2), Article 17(1) and (2), and Articles 24 to 28, Member States may, on a transparent and non-discriminatory basis, exempt domestic regular services from the application of this Regulation. Such exemptions may be granted as from the date of application of this Regulation for a period no longer than 4 years, which may be renewed once.

5. For a maximum period of 4 years from the date of application of this Regulation, Member States may, on a transparent and non-discriminatory basis, exempt from the application of this Regulation particular regular services because a significant part of such regular services, including at least one scheduled stop, is operated outside the Union. Such exemptions may be renewed once.

6. Member States shall inform the Commission of exemptions of different types of services granted pursuant to paragraphs 4 and 5. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By 2 March 2018, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4 and 5.

7. Nothing in this Regulation shall be understood as conflicting with or introducing additional requirements to those in current legislation on technical requirements for buses or coaches or infrastructure or equipment at bus stops and terminals.

8. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC and shall not apply in case where a package tour referred to in that Directive is cancelled for reasons other than cancellation of a regular service.

*Article 3***Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'regular services' means services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- (b) 'occasional services' means services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;
- (c) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more regular or occasional services;
- (d) 'ticket' means a valid document or other evidence of a transport contract;
- (e) 'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public;
- (f) 'performing carrier' means a natural or legal person other than the carrier, who actually performs the carriage wholly or partially;
- (g) 'ticket vendor' means any intermediary concluding transport contracts on behalf of a carrier;
- (h) 'travel agent' means any intermediary acting on behalf of a passenger for the conclusion of transport contracts;
- (i) 'tour operator' means an organiser or retailer, other than the carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (j) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;

- (k) 'access conditions' means relevant standards, guidelines and information on the accessibility of buses and/or of designated terminals including their facilities for disabled persons or persons with reduced mobility;
- (l) 'reservation' means a booking of a seat on board a bus or coach for a regular service at a specific departure time;
- (m) 'terminal' means a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;
- (n) 'bus stop' means any point other than a terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight;
- (o) 'terminal managing body' means an organisational entity in a Member State responsible for the management of a designated terminal;
- (p) 'cancellation' means the non-operation of a regular service which was previously scheduled;
- (q) 'delay' means a difference between the time the regular service was scheduled to depart in accordance with the published timetable and the time of its actual departure.

Article 4

Tickets and non-discriminatory contract conditions

1. Carriers shall issue a ticket to the passenger, unless other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers shall be offered to the general public without any direct or indirect discrimination based on the nationality of the final customer or on the place of establishment of the carriers, or ticket vendors within the Union.

Article 5

Other performing parties

1. If the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal managing body, who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party.
2. In addition, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal managing body shall be subject to the provisions of this Regulation with regard to the obligation entrusted.

Article 6

Exclusion of waiver

1. Obligations to passengers pursuant to this Regulation shall not be limited or waived, in particular by a derogation or restrictive clause in the transport contract.
2. Carriers may offer contract conditions that are more favourable for the passenger than the conditions laid down in this Regulation.

CHAPTER II

COMPENSATION AND ASSISTANCE IN THE EVENT OF ACCIDENTS

Article 7

Death or personal injury to passengers and loss of or damage to luggage

1. Passengers shall, in accordance with applicable national law, be entitled to compensation for death, including reasonable funeral expenses, or personal injury as well as to loss of or damage to luggage due to accidents arising out of the use of the bus or coach. In case of death of a passenger, this right shall as a minimum apply to persons whom the passenger had, or would have had, a legal duty to maintain.
2. The amount of compensation shall be calculated in accordance with applicable national law. Any maximum limit provided by national law to the compensation for death and personal injury or loss of or damage to luggage shall on each distinct occasion not be less than:

- (a) EUR 220 000 per passenger;
- (b) EUR 1 200 per item of luggage. In the event of damage to wheelchairs, other mobility equipment or assistive devices the amount of compensation shall always be equal to the cost of replacement or repair of the equipment lost or damaged.

Article 8

Immediate practical needs of passengers

In the event of an accident arising out of the use of the bus or coach, the carrier shall provide reasonable and proportionate assistance with regard to the passengers' immediate practical needs following the accident. Such assistance shall include, where necessary, accommodation, food, clothes, transport and the facilitation of first aid. Any assistance provided shall not constitute recognition of liability.

For each passenger, the carrier may limit the total cost of accommodation to EUR 80 per night and for a maximum of 2 nights.

CHAPTER III

RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY*Article 9***Right to transport**

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility.
2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

*Article 10***Exceptions and special conditions**

1. Notwithstanding Article 9(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility:
 - (a) in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities;
 - (b) where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner.
2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall inform the person concerned about any acceptable alternative service operated by the carrier.
3. If a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements of point (a) of Article 14(1), is nonetheless refused permission to board on the grounds of his disability or reduced mobility, that person and any accompanying person pursuant to paragraph 4 of this Article shall be offered the choice between:
 - (a) the right to reimbursement, and where relevant a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity; and
 - (b) except where not feasible, continuation of the journey or re-routing by reasonable alternative transport services to the place of destination set out in the transport contract.

The right to reimbursement of the money paid for the ticket shall not be affected by the failure to notify in accordance with point (a) of Article 14(1).

4. If a carrier, travel agent or tour operator refuses to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility for the reasons set out in paragraph 1, that person may request to be accompanied by another person of his own choosing who is capable of providing the assistance required by the disabled person or person with reduced mobility in order that the reasons set out in paragraph 1 no longer apply.

Such an accompanying person shall be transported free of charge and, where feasible, seated next to the disabled person or person with reduced mobility.

5. When carriers, travel agents or tour operators have recourse to paragraph 1, they shall immediately inform the disabled person or person with reduced mobility of the reasons therefor, and, upon request, inform the person in question in writing within 5 working days of the request.

*Article 11***Accessibility and information**

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal managing bodies shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility.
2. The access conditions provided for in paragraph 1, including the text of international, Union or national laws establishing the safety requirements, on which these non-discriminatory access conditions are based, shall be made publicly available by carriers and terminal managing bodies physically or on the Internet, in accessible formats on request, in the same languages as those in which information is generally made available to all passengers. When providing this information particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.
3. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.
4. The information on access conditions referred to in paragraphs 2 and 3 shall be physically distributed at the request of the passenger.

5. Carriers, travel agents and tour operators shall ensure that all relevant general information concerning the journey and the conditions of carriage is available in appropriate and accessible formats for disabled persons and persons with reduced mobility including, where applicable, online booking and information. The information shall be physically distributed at the request of the passenger.

Article 12

Designation of terminals

Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided. Member States shall inform the Commission thereof. The Commission shall make available a list of the designated bus and coach terminals on the Internet.

Article 13

Right to assistance at designated terminals and on board buses and coaches

1. Subject to the access conditions provided for in Article 11(1), carriers and terminal managing bodies shall, within their respective areas of competence, at terminals designated by Member States, provide assistance free of charge to disabled persons and persons with reduced mobility, at least to the extent specified in part (a) of Annex I.

2. Subject to the access conditions provided for in Article 11(1), carriers shall, on board buses and coaches, provide assistance free of charge to disabled persons and persons with reduced mobility, at least to the extent specified in part (b) of Annex I.

Article 14

Conditions under which assistance is provided

1. Carriers and terminal managing bodies shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility on condition that:

- (a) the person's need for such assistance is notified to carriers, terminal managing bodies, travel agents or tour operators at the latest 36 hours before the assistance is needed; and
- (b) the persons concerned present themselves at the designated point:
 - (i) at the time stipulated in advance by the carrier which shall be no more than 60 minutes before the published departure time, unless a shorter period is agreed between the carrier and the passenger; or
 - (ii) if no time is stipulated, no later than 30 minutes before the published departure time.

2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, travel agent or tour operator at the time of reservation or advance purchase of the ticket of their specific seating needs, provided that the need is known at that time.

3. Carriers, terminal managing bodies, travel agents and tour operators shall take all measures necessary to facilitate the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility. This obligation shall apply at all designated terminals and their points of sale including sale by telephone and via the Internet.

4. If no notification is made in accordance with point (a) of paragraph 1 and paragraph 2, carriers, terminal managing bodies, travel agents and tour operators shall make every reasonable effort to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to alight from the arriving service for which he has purchased a ticket.

5. The terminal managing body shall designate a point inside or outside the terminal at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. The point shall be clearly signposted and shall offer basic information about the terminal and assistance provided, in accessible formats.

Article 15

Transmission of information to a third party

If travel agents or tour operators receive a notification referred to in point (a) of Article 14(1) they shall, within their normal office hours, transfer the information to the carrier or terminal managing body as soon as possible.

Article 16

Training

1. Carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, and ensure that:

- (a) their personnel, other than drivers, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in parts (a) and (b) of Annex II; and
- (b) their personnel, including drivers, who deal directly with the travelling public or with issues related to the travelling public, are trained or instructed as described in part (a) of Annex II.

2. A Member State may for a maximum period of 5 years from 1 March 2013 grant an exemption from the application of point (b) of paragraph 1 with regard to training of drivers.

*Article 17***Compensation in respect of wheelchairs and other mobility equipment**

1. Carriers and terminal managing bodies shall be liable where they have caused loss of or damage to wheelchairs, other mobility equipment or assistive devices. The loss or damage shall be compensated by the carrier or terminal managing body liable for that loss or damage.
2. The compensation referred to in paragraph 1 shall be equal to the cost of replacement or repair of the equipment or devices lost or damaged.
3. Where necessary, every effort shall be undertaken to rapidly provide temporary replacement equipment or devices. The wheelchairs, other mobility equipment or assistive devices shall, where possible, have technical and functional features similar to those lost or damaged.

*Article 18***Exemptions**

1. Without prejudice to Article 2(2), Member States may exempt domestic regular services from the application of all or some of the provisions of this Chapter, provided that they ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation.
2. Member States shall inform the Commission of exemptions granted pursuant to paragraph 1. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By 2 March 2018, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraph 1.

CHAPTER IV

PASSENGER RIGHTS IN THE EVENT OF CANCELLATION OR DELAY*Article 19***Continuation, re-routing and reimbursement**

1. Where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than 120 minutes or in the case of overbooking, the passenger shall immediately be offered the choice between:
 - (a) continuation or re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity;
 - (b) reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first

point of departure, as set out in the transport contract, at the earliest opportunity.

2. If the carrier fails to offer the passenger the choice referred to in paragraph 1, the passenger shall have the right to compensation amounting to 50 % of the ticket price, in addition to the reimbursement referred to in point (b) of paragraph 1. This sum shall be paid by the carrier within 1 month after the submission of the request for compensation.
3. Where the bus or coach becomes inoperable during the journey, the carrier shall provide either the continuation of the service with another vehicle from the location of the inoperable vehicle, or transport from the location of the inoperable vehicle to a suitable waiting point or terminal from where continuation of the journey becomes possible.
4. Where a regular service is cancelled or delayed in departure from a bus stop for more than 120 minutes, passengers shall have the right to the continuation or re-routing or reimbursement of the ticket price from the carrier, as referred to in paragraph 1.
5. The payment of reimbursement provided for in point (b) of paragraph 1 and paragraph 4 shall be made within 14 days after the offer has been made or request has been received. The payment shall cover the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan. In case of travel passes or season tickets the payment shall be equal to its proportional part of the full cost of the pass or ticket. The reimbursement shall be paid in money, unless the passenger accepts another form of reimbursement.

*Article 20***Information**

1. In the event of cancellation or delay in departure of a regular service, passengers departing from terminals shall be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.
2. If passengers miss, according to the timetable, a connecting service due to a cancellation or delay, the carrier or, where appropriate, the terminal managing body, shall make reasonable efforts to inform the passengers concerned of alternative connections.
3. The carrier or, where appropriate, the terminal managing body, shall ensure that disabled persons and persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

4. Where feasible, the information required under paragraphs 1 and 2 shall be provided by electronic means to all passengers, including those departing from bus stops, within the time-limit stipulated in paragraph 1, if the passenger has requested this and has provided the necessary contact details to the carrier.

Article 21

Assistance in case of cancelled or delayed departures

For a journey of a scheduled duration of more than 3 hours the carrier shall, in case of cancellation or delay in departure from a terminal of more than 90 minutes, offer the passenger free of charge:

- (a) snacks, meals or refreshments in reasonable relation to the waiting time or delay, provided they are available on the bus or in the terminal, or can reasonably be supplied;
- (b) a hotel room or other accommodation as well as assistance to arrange transport between the terminal and the place of accommodation in cases where a stay of 1 or more nights becomes necessary. For each passenger, the carrier may limit the total cost of accommodation, not including transport to and from the terminal and place of accommodation, to EUR 80 per night and for a maximum of 2 nights.

In applying this Article the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

Article 22

Further claims

Nothing in this Chapter shall preclude passengers from seeking damages in accordance with national law before national courts in respect of loss resulting from cancellation or delay of regular services.

Article 23

Exemptions

1. Articles 19 and 21 shall not apply to passengers with open tickets as long as the time of departure is not specified, except for passengers holding a travel pass or a season ticket.
2. Point (b) of Article 21 shall not apply where the carrier proves that the cancellation or delay is caused by severe weather conditions or major natural disasters endangering the safe operation of bus or coach services.

CHAPTER V

GENERAL RULES ON INFORMATION AND COMPLAINTS

Article 24

Right to travel information

Carriers and terminal managing bodies shall, within their respective areas of competence, provide passengers with

adequate information throughout their travel. Where feasible, this information shall be provided in accessible formats upon request.

Article 25

Information on passenger rights

1. Carriers and terminal managing bodies shall, within their respective areas of competence, ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on departure. This information shall be provided at terminals and where applicable, on the Internet. At the request of a disabled person or person with reduced mobility the information shall be provided, where feasible, in an accessible format. This information shall include contact details of the enforcement body or bodies designated by the Member State pursuant to Article 28(1).

2. In order to comply with the information requirement referred to in paragraph 1, carriers and terminal managing bodies may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

Article 26

Complaints

Carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in this Regulation.

Article 27

Submission of complaints

Without prejudice to claims for compensation in accordance with Article 7, if a passenger covered by this Regulation wants to make a complaint to the carrier, he shall submit it within 3 months from the date on which the regular service was performed or when a regular service should have been performed. Within 1 month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 3 months from the receipt of the complaint.

CHAPTER VI

ENFORCEMENT AND NATIONAL ENFORCEMENT BODIES

Article 28

National enforcement bodies

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards regular services from points situated on its territory and regular services from a third country to such points. Each body shall take the measures necessary to ensure compliance with this Regulation.

Each body shall, in its organisation, funding decisions, legal structure and decision making, be independent of carriers, tour operators and terminal managing bodies.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint, in accordance with national law, to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

A Member State may decide that the passenger as a first step shall submit a complaint to the carrier in which case the national enforcement body or any other appropriate body designated by the Member State shall act as an appeal body for complaints not resolved under Article 27.

Article 29

Report on enforcement

By 1 June 2015 and every 2 years thereafter, the enforcement bodies designated pursuant to Article 28(1) shall publish a report on their activity in the previous 2 calendar years, containing in particular a description of actions taken in order to implement this Regulation and statistics on complaints and sanctions applied.

Article 30

Cooperation between enforcement bodies

National enforcement bodies as referred to in Article 28(1) shall, whenever appropriate, exchange information on their work and decision-making principles and practices. The Commission shall support them in this task.

Article 31

Penalties

Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take

all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 1 March 2013 and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER VII

FINAL PROVISIONS

Article 32

Report

The Commission shall report to the European Parliament and the Council by 2 March 2016 on the operation and effects of this Regulation. The report shall be accompanied, where necessary, by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

Article 33

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

- '19. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport (*).

(*) OJ L 55, 28.2.2011, p. 1'.

Article 34

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 March 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 February 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
MARTONYI J.

ANNEX I

ASSISTANCE PROVIDED TO DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY**(a) Assistance at designated terminals**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at the terminal and their request for assistance at designated points,
- move from the designated point to the check-in counter, waiting room and embarkation area,
- board the vehicle, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- load their luggage,
- retrieve their luggage,
- alight from the vehicle,
- carry a recognised assistance dog on board a bus or coach,
- proceed to the seat;

(b) Assistance on board

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- be provided with essential information on a journey in accessible formats subject to request made by the passenger,
- board/alight during pauses in a journey, if there are personnel other than the driver on board.

ANNEX II

DISABILITY-RELATED TRAINING**(a) Disability-awareness training**

Training of staff that deal directly with the travelling public includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation, or communication may be reduced,
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers,
- recognised assistance dogs, including the role and the needs of an assistance dog,
- dealing with unexpected occurrences,
- interpersonal skills and methods of communication with deaf people and people with hearing impairments, people with visual impairments, people with speech impairments, and people with a learning disability,
- how to handle wheelchairs and other mobility aids carefully so as to avoid damage (if any, for all staff who are responsible for luggage handling);

(b) Disability-assistance training

Training of staff directly assisting disabled persons and persons with reduced mobility includes:

- how to help wheelchair users make transfers into and out of a wheelchair,
- skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs,
- techniques for escorting visually impaired passengers and for the handling and carriage of recognised assistance dogs,
- an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to handle such an equipment,
- the use of boarding and alighting assistance equipment used and knowledge of the appropriate boarding and alighting assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility,
- understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided,
- a knowledge of first aid.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1177/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 24 November 2010
concerning the rights of passengers when travelling by sea and inland waterway and amending
Regulation (EC) No 2006/2004
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91(1) and 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Action by the Union in the field of maritime and inland waterway transport should aim, among other things, at ensuring a high level of protection for passengers that is comparable with other modes of transport. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Since the maritime and inland waterway passenger is the weaker party to the transport contract, all passengers

should be granted a minimum level of protection. Nothing should prevent carriers from offering contract conditions more favourable for the passenger than the conditions laid down in this Regulation. At the same time, the aim of this Regulation is not to interfere in commercial business-to-business relationships concerning the transport of goods. In particular, agreements between a road haulier and a carrier should not be construed as transport contracts for the purposes of this Regulation and should therefore not give the road haulier or its employees the right to compensation under this Regulation in the case of delays.

- (3) The protection of passengers should cover not only passenger services between ports situated in the territory of the Member States, but also passenger services between such ports and ports situated outside the territory of the Member States, taking into account the risk of distortion of competition on the passenger transport market. Therefore the term 'Union carrier' should, for the purposes of this Regulation, be interpreted as broadly as possible, but without affecting other legal acts of the Union, such as Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ⁽³⁾ and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ⁽⁴⁾.

⁽¹⁾ OJ C 317, 23.12.2009, p. 89.

⁽²⁾ Position of the European Parliament of 23 April 2009 (OJ C 184 E, 8.7.2010, p. 293), position of the Council at first reading of 11 March 2010 (OJ C 122 E, 11.5.2010, p. 19), position of the European Parliament of 6 July 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

⁽³⁾ OJ L 378, 31.12.1986, p. 4.

⁽⁴⁾ OJ L 364, 12.12.1992, p. 7.

- (4) The internal market for maritime and inland waterway passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using passenger services and cruises that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (5) Member States should promote the use of public transport and the use of integrated tickets in order to optimise the use and interoperability of the various transport modes and operators.
- (6) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for maritime and inland waterway travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport, except for reasons which are justified on the grounds of safety and established by the competent authorities. They should enjoy the right to assistance in ports and on board passenger ships. In the interests of social inclusion, the persons concerned should receive this assistance free of charge. Carriers should establish access conditions, preferably using the European standardisation system.
- (7) In deciding on the design of new ports and terminals, and as part of major refurbishments, the bodies responsible for those facilities should take into account the needs of disabled persons and persons with reduced mobility, in particular with regard to accessibility, paying particular consideration to 'design for all' requirements. Carriers should take such needs into account when deciding on the design of new and newly refurbished passenger ships in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels ⁽¹⁾ and Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships ⁽²⁾.
- (8) Assistance given at ports situated in the territory of a Member State should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at a port to a passenger ship and from a passenger ship to a designated point of departure at a port, including embarking and disembarking.
- (9) In organising assistance to disabled persons and persons with reduced mobility, and the training of their personnel, carriers should cooperate with organisations representative of disabled persons or persons with reduced mobility. In that work they should also take into account the relevant provisions of the International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers as well as the Recommendation of the International Maritime Organisation (IMO) on the design and operation of passenger ships to respond to elderly and disabled persons' needs.
- (10) The provisions governing the embarkation of disabled persons or persons with reduced mobility should be without prejudice to the general provisions applicable to the embarkation of passengers laid down by the international, Union or national rules in force.
- (11) Legal acts of the Union on passenger rights should take into account the needs of passengers, in particular those of disabled persons and persons with reduced mobility, to use different transport modes and to transfer smoothly between different modes, subject to the applicable safety regulations for the operation of ships.
- (12) Passengers should be adequately informed in the event of cancellation or delay of any passenger service or cruise. That information should help passengers to make the necessary arrangements and, if needed, to obtain information about alternative connections.
- (13) Inconvenience experienced by passengers due to the cancellation or long delay of their journey should be reduced. To this end, passengers should be adequately looked after and should be able to cancel their journey and have their tickets reimbursed or to obtain re-routing under satisfactory conditions. Adequate accommodation for passengers may not necessarily consist of hotel rooms but also of any other suitable accommodation that is available, depending in particular on the circumstances relating to each specific situation, the passengers' vehicles and the characteristics of the ship. In this respect and in duly justified cases of extraordinary and urgent circumstances, carriers should be able to take full advantage of the available relevant facilities, in cooperation with civil authorities.

⁽¹⁾ OJ L 389, 30.12.2006, p. 1.

⁽²⁾ OJ L 163, 25.6.2009, p. 1.

- (14) Carriers should provide for the payment of compensation for passengers in the event of the cancellation or delay of a passenger service based on a percentage of the ticket price, except when the cancellation or delay occurs due to weather conditions endangering the safe operation of the ship or to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (15) Carriers should, in accordance with generally accepted principles, bear the burden of proving that the cancellation or delay was caused by such weather conditions or extraordinary circumstances.
- (16) Weather conditions endangering the safe operation of the ship should include, but not be limited to, strong winds, heavy seas, strong currents, difficult ice conditions and extremely high or low water levels, hurricanes, tornados and floods.
- (17) Extraordinary circumstances should include, but not be limited to, natural disasters such as fires and earthquakes, terrorist attacks, wars and military or civil armed conflicts, uprisings, military or illegal confiscations, labour conflicts, landing any sick, injured or dead person, search and rescue operations at sea or on inland waterways, measures necessary to protect the environment, decisions taken by traffic management bodies or port authorities, or decisions by the competent authorities with regard to public order and safety as well as to cover urgent transport needs.
- (18) With the involvement of stakeholders, professional associations and associations of customers, passengers, disabled persons and persons with reduced mobility, carriers should cooperate in order to adopt arrangements at national or European level for improving care and assistance offered to passengers whenever their travel is interrupted, notably in the event of long delays or cancellation of travel. National enforcement bodies should be informed of those arrangements.
- (19) The Court of Justice of the European Union has already ruled that problems leading to cancellations or delays can be covered by the concept of extraordinary circumstances only to the extent that they stem from events which are not inherent in the normal exercise of the activity of the carrier concerned and are beyond its actual control. It should be noted that weather conditions endangering the safe operation of the ship are indeed beyond the actual control of the carrier.
- (20) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the passenger service or the cruise.
- (21) Passengers should be fully informed of their rights under this Regulation in formats which are accessible to everybody, so that they can effectively exercise those rights. Rights of passengers should include the receipt of information regarding the passenger service or cruise before and during the journey. All essential information provided to passengers should also be provided in formats accessible to disabled persons and persons with reduced mobility, with such accessible formats allowing passengers to access the same information using, for example, text, Braille, audio, video and/or electronic formats.
- (22) Passengers should be able to exercise their rights by means of appropriate and accessible complaint procedures implemented by carriers and terminal operators within their respective areas of competence or, as the case may be, by the submission of complaints to the body or bodies designated to that end by the Member State concerned. Carriers and terminal operators should respond to complaints by passengers within a set period of time, bearing in mind that the non-reaction to a complaint could be held against them.
- (23) Taking into account the procedures established by a Member State for the submission of complaints, a complaint concerning assistance in a port or on board a ship should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the port of embarkation is situated and, for passenger services from a third country, where the port of disembarkation is situated.
- (24) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (25) The body or bodies designated for the enforcement of this Regulation should be independent of commercial interests. Each Member State should appoint at least one body which, when applicable, should have the power and capability to investigate individual complaints and

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

to facilitate dispute settlement. Passengers should be entitled to receive a substantiated reply from the designated body, within a reasonable period of time. Given the importance of reliable statistics for the enforcement of this Regulation, in particular to ensure coherent application throughout the Union, the reports prepared by those bodies should if possible include statistics on complaints and their outcome.

- (26) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (27) Since the objectives of this Regulation, namely to ensure a high level of protection of and assistance to passengers throughout the Member States and to ensure that economic agents operate under harmonised conditions in the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (28) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ⁽¹⁾. That Regulation should therefore be amended accordingly.
- (29) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ should be strictly respected and enforced in order to guarantee respect for the privacy of natural and legal persons, and to ensure that the information and reports requested serve solely to fulfil the obligations laid down in this Regulation and are not used to the detriment of such persons.
- (30) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union,

HAVE ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 364, 9.12.2004, p. 1.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules for sea and inland waterway transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) non-discrimination and assistance for disabled persons and persons with reduced mobility;
- (c) the rights of passengers in cases of cancellation or delay;
- (d) minimum information to be provided to passengers;
- (e) the handling of complaints;
- (f) general rules on enforcement.

Article 2

Scope

1. This Regulation shall apply in respect of passengers travelling:

- (a) on passenger services where the port of embarkation is situated in the territory of a Member State;
- (b) on passenger services where the port of embarkation is situated outside the territory of a Member State and the port of disembarkation is situated in the territory of a Member State, provided that the service is operated by a Union carrier as defined in Article 3(e);
- (c) on a cruise where the port of embarkation is situated in the territory of a Member State. However, Articles 16(2), 18, 19 and 20(1) and (4) shall not apply to those passengers.

2. This Regulation shall not apply in respect of passengers travelling:

- (a) on ships certified to carry up to 12 passengers;
- (b) on ships which have a crew responsible for the operation of the ship composed of not more than three persons or where the distance of the overall passenger service is less than 500 metres, one way;
- (c) on excursion and sightseeing tours other than cruises; or

(d) on ships not propelled by mechanical means as well as original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials, certified to carry up to 36 passengers.

3. Member States may, for a period of 2 years from 18 December 2012, exempt from the application of this Regulation seagoing ships of less than 300 gross tons operated in domestic transport, provided that the rights of passengers under this Regulation are adequately ensured under national law.

4. Member States may exempt from the application of this Regulation passenger services covered by public service obligations, public service contracts or integrated services provided that the rights of passengers under this Regulation are comparably guaranteed under national law.

5. Without prejudice to Directive 2006/87/EC and to Directive 2009/45/EC, nothing in this Regulation shall be understood as constituting technical requirements imposing obligations on carriers, terminal operators or other entities to modify or replace ships, infrastructure, ports or port terminals.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the service made available to all passengers;

(b) 'territory of a Member State' means a territory to which the Treaty on the Functioning of the European Union applies as referred to in Article 355 thereof, under the conditions set out therein;

(c) 'access conditions' means relevant standards, guidelines and information on the accessibility of port terminals and ships including their facilities for disabled persons or persons with reduced mobility;

(d) 'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public;

(e) 'Union carrier' means a carrier established within the territory of a Member State or offering transport by passenger services operated to or from the territory of a Member State;

(f) 'passenger service' means a commercial passenger transport service by sea or inland waterways operated according to a published timetable;

(g) 'integrated services' means interconnected transport services within a determined geographical area with a single information service, ticketing scheme and timetable;

(h) 'performing carrier' means a person, other than the carrier, who actually performs the carriage wholly or partially;

(i) 'inland waterway' means a natural or artificial navigable inland body of water, or system of interconnected bodies of water, used for transport, such as lakes, rivers or canals or any combination of these;

(j) 'port' means a place or a geographical area made up of such improvement works and facilities as to permit the reception of ships from which passengers regularly embark or disembark;

(k) 'port terminal' means a terminal, staffed by a carrier or a terminal operator, in a port with facilities, such as check-in, ticket counters or lounges, and staff for the embarkation or disembarkation of passengers travelling on passenger services or on a cruise;

(l) 'ship' means a vessel used for navigation at sea or on inland waterways;

(m) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more passenger services or cruises;

(n) 'ticket' means a valid document or other evidence of a transport contract;

(o) 'ticket vendor' means any retailer concluding transport contracts on behalf of a carrier;

(p) 'travel agent' means any retailer acting on behalf of a passenger or a tour operator for the conclusion of transport contracts;

(q) 'tour operator' means an organiser or retailer, other than a carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;

(r) 'reservation' means a booking of a specific departure of a passenger service or a cruise;

- (s) 'terminal operator' means a private or public body in the territory of a Member State responsible for the administration and management of a port terminal;
- (t) 'cruise' means a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board;
- (u) 'shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

Article 4

Tickets and non-discriminatory contract conditions

1. Carriers shall issue a ticket to the passenger, unless under national law other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers or ticket vendors shall be offered to the general public without any direct or indirect discrimination based on the nationality of the final customer or on the place of establishment of carriers or ticket vendors within the Union.

Article 5

Other performing parties

1. Where the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal operator who has entrusted such obligations shall nevertheless be liable for the acts and omissions of that performing party, acting within that party's scope of employment.
2. In addition to paragraph 1, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal operator shall be subject to the provisions of this Regulation, including provisions on liabilities and defences, with regard to the obligation entrusted.

Article 6

Exclusion of waiver

Rights and obligations pursuant to this Regulation shall not be waived or limited, in particular by a derogation or restrictive clause in the transport contract.

CHAPTER II

RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY

Article 7

Right to transport

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation, to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility as such.
2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost under the same conditions that apply to all other passengers.

Article 8

Exceptions and special conditions

1. By way of derogation from Article 7(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a disabled person or person with reduced mobility:
 - (a) in order to meet applicable safety requirements established by international, Union or national law or in order to meet safety requirements established by the competent authorities;
 - (b) where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner.
2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier.

3. Where a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements referred to in Article 11(2), is nonetheless denied embarkation on the basis of this Regulation, that person, and any accompanying person referred to in paragraph 4 of this Article, shall be offered the choice between the right to reimbursement and re-routing as provided for in Annex I. The right to the option of a return journey or re-routing shall be conditional upon all safety requirements being met.

4. Where strictly necessary and under the same conditions set out in paragraph 1, carriers, travel agents and tour operators may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility. As regards passenger services, such an accompanying person shall be carried free of charge.

5. When carriers, travel agents and tour operators have recourse to paragraphs 1 or 4, they shall immediately inform the disabled person or person with reduced mobility of the specific reasons therefor. On request, those reasons shall be notified to the disabled person or person with reduced mobility in writing, no later than five working days after the request. In the event of refusal according to paragraph 1(a), reference shall be made to the applicable safety requirements.

Article 9

Accessibility and information

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal operators shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility and accompanying persons. The access conditions shall upon request be communicated to national enforcement bodies.

2. The access conditions provided for in paragraph 1 shall be made publicly available by carriers and terminal operators physically or on the Internet, in accessible formats on request, and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

3. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

4. Carriers, travel agents and tour operators shall ensure that all relevant information, including online reservation and information, concerning the conditions of carriage, journey information and access conditions is available in appropriate and accessible formats for disabled persons and persons with reduced mobility. Persons needing assistance shall receive confirmation of such assistance by any means available, including electronic means or Short Message Service (SMS).

Article 10

Right to assistance in ports and on board ships

Subject to the access conditions provided for in Article 9(1), carriers and terminal operators shall, within their respective areas of competence, provide assistance free of charge to disabled persons

and persons with reduced mobility, as specified in Annexes II and III, in ports, including embarkation and disembarkation, and on board ships. The assistance shall, if possible, be adapted to the individual needs of the disabled person or person with reduced mobility.

Article 11

Conditions under which assistance is provided

1. Carriers and terminal operators shall, within their respective areas of competence, provide assistance to disabled persons and persons with reduced mobility as set out in Article 10 provided that:

- (a) the carrier or the terminal operator is notified, by any means available, including electronic means or SMS, of the person's need for such assistance at the latest 48 hours before the assistance is needed, unless a shorter period is agreed between the passenger and the carrier or terminal operator; and
- (b) the disabled person or person with reduced mobility presents himself at the port or at the designated point as referred to in Article 12(3):
 - (i) at a time stipulated in writing by the carrier which shall not be more than 60 minutes before the published embarkation time; or
 - (ii) if no embarkation time is stipulated, no later than 60 minutes before the published departure time, unless a shorter period is agreed between the passenger and the carrier or terminal operator.

2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, at the time of reservation or advance purchase of the ticket, of their specific needs with regard to accommodation, seating or services required or their need to bring medical equipment, provided the need is known at that time.

3. A notification made in accordance with paragraphs 1(a) and 2 may always be submitted to the travel agent or the tour operator from which the ticket was purchased. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided. The passenger shall receive a confirmation stating that the assistance needs have been notified as required in accordance with paragraphs 1(a) and 2.

4. Where no notification is made in accordance with paragraphs 1(a) and 2, carriers and terminal operators shall nonetheless make all reasonable efforts to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to embark, disembark and travel on the ship.

5. Where a disabled person or person with reduced mobility is accompanied by a recognised assistance dog, that dog shall be accommodated together with that person, provided that the carrier, travel agent or tour operator is notified in accordance with applicable national rules on the carriage of recognised assistance dogs on board passenger ships, where such rules exist.

Article 12

Reception of notifications and designation of meeting points

1. Carriers, terminal operators, travel agents and tour operators shall take all measures necessary for the request for notifications, and for the reception of notifications made in accordance with Article 11(1)(a) and 11(2). That obligation shall apply at all their points of sale, including sale by telephone and over the Internet.

2. If travel agents or tour operators receive the notification referred to in paragraph 1 they shall, within their normal office hours, transfer the information to the carrier or terminal operator without delay.

3. Carriers and terminal operators shall designate a point inside or outside port terminals at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. That point shall be clearly signposted and shall offer basic information about the port terminal and assistance provided, in accessible formats.

Article 13

Quality standards for assistance

1. Terminal operators and carriers operating port terminals or passenger services with a total of more than 100 000 commercial passenger movements during the previous calendar year shall, within their respective areas of competence, set quality standards for the assistance specified in Annexes II and III and shall, where appropriate through their organisations, determine resource requirements for meeting those standards, in cooperation with organisations representative of disabled persons or persons with reduced mobility.

2. In setting quality standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the IMO's Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

3. The quality standards provided for in paragraph 1 shall be made publicly available by terminal operators and carriers physically or on the Internet in accessible formats and in the same languages as those in which information is generally made available to all passengers.

Article 14

Training and instructions

Without prejudice to the International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers and to the regulations adopted under the Revised Convention for Rhine Navigation and the Convention regarding the Regime of Navigation on the Danube, carriers and, where appropriate, terminal operators shall establish disability-related training procedures, including instructions, and ensure that:

- (a) their personnel, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in Annex IV, Parts A and B;
- (b) their personnel who are otherwise responsible for the reservation and selling of tickets or embarkation and disembarkation, including those employed by any other performing party, are trained or instructed as described in Annex IV, Part A; and
- (c) the categories of personnel referred to in points (a) and (b) maintain their competences, for example through instructions or refresher training courses when appropriate.

Article 15

Compensation in respect of mobility equipment or other specific equipment

1. Carriers and terminal operators shall be liable for loss suffered as a result of the loss of or damage to mobility equipment or other specific equipment, used by a disabled person or person with reduced mobility, if the incident which caused the loss was due to the fault or neglect of the carrier or the terminal operator. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

2. The compensation referred to in paragraph 1 shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

3. Paragraphs 1 and 2 shall not apply if Article 4 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents ⁽¹⁾ applies.

4. Moreover, every effort shall be undertaken to rapidly provide temporary replacement equipment which is a suitable alternative.

⁽¹⁾ OJ L 131, 28.5.2009, p. 24.

CHAPTER III

OBLIGATIONS OF CARRIERS AND TERMINAL OPERATORS IN THE EVENT OF INTERRUPTED TRAVEL*Article 16***Information in the event of cancelled or delayed departures**

1. In the case of a cancellation or a delay in departure of a passenger service or a cruise, passengers departing from port terminals or, if possible, passengers departing from ports shall be informed by the carrier or, where appropriate, by the terminal operator, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled time of departure, and of the estimated departure time and estimated arrival time as soon as that information is available.

2. If passengers miss a connecting transport service due to a cancellation or delay, the carrier and, where appropriate, the terminal operator shall make reasonable efforts to inform the passengers concerned of alternative connections.

3. The carrier or, where appropriate, the terminal operator, shall ensure that disabled persons or persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

*Article 17***Assistance in the event of cancelled or delayed departures**

1. Where a carrier reasonably expects the departure of a passenger service or a cruise to be cancelled or delayed for more than 90 minutes beyond its scheduled time of departure, passengers departing from port terminals shall be offered free of charge snacks, meals or refreshments in reasonable relation to the waiting time, provided they are available or can reasonably be supplied.

2. In the case of a cancellation or a delay in departure where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary, where and when physically possible, the carrier shall offer passengers departing from port terminals, free of charge, adequate accommodation on board, or ashore, and transport to and from the port terminal and place of accommodation in addition to the snacks, meals or refreshments provided for in paragraph 1. For each passenger, the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights.

3. In applying paragraphs 1 and 2, the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

*Article 18***Re-routing and reimbursement in the event of cancelled or delayed departures**

1. Where a carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between:

- (a) re-routing to the final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost;
- (b) reimbursement of the ticket price and, where relevant, a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.

2. Where a passenger service is cancelled or delayed in departure from a port for more than 90 minutes, passengers shall have the right to such re-routing or reimbursement of the ticket price from the carrier.

3. The payment of the reimbursement provided for in paragraphs 1(b) and 2 shall be made within 7 days, in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made where the journey no longer serves any purpose in relation to the passenger's original travel plan. Where the passenger agrees, the full reimbursement may also be paid in the form of vouchers and/or other services in an amount equivalent to the price for which the ticket was purchased, provided that the conditions are flexible, particularly regarding the period of validity and the destination.

*Article 19***Compensation of the ticket price in the event of delay in arrival**

1. Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract. The minimum level of compensation shall be 25 % of the ticket price for a delay of at least:

- (a) 1 hour in the case of a scheduled journey of up to 4 hours;
- (b) 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;
- (c) 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or
- (d) 6 hours in the case of a scheduled journey of more than 24 hours.

If the delay exceeds double the time set out in points (a) to (d), the compensation shall be 50 % of the ticket price.

2. Passengers who hold a travel pass or a season ticket and who encounter recurrent delays in arrival during its period of validity may request adequate compensation in accordance with the carrier's compensation arrangements. These arrangements shall state the criteria for determining delay in arrival and for calculation of compensation.

3. Compensation shall be calculated in relation to the price which the passenger actually paid for the delayed passenger service.

4. Where the transport is for a return journey, compensation for delay in arrival on either the outward or the return leg shall be calculated in relation to half of the price paid for the transport by that passenger service.

5. The compensation shall be paid within 1 month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services, provided that the conditions are flexible, particularly regarding the period of validity and the destination. The compensation shall be paid in money at the request of the passenger.

6. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Carriers may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 6.

Article 20

Exemptions

1. Articles 17, 18 and 19 shall not apply to passengers with open tickets as long as the time of departure is not specified, except for passengers holding a travel pass or a season ticket.

2. Articles 17 and 19 shall not apply if the passenger is informed of the cancellation or delay before the purchase of the ticket or if the cancellation or delay is caused by the fault of the passenger.

3. Article 17(2) shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship.

4. Article 19 shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken.

Article 21

Further claims

Nothing in this Regulation shall preclude passengers from seeking damages in accordance with national law in respect of loss resulting from cancellation or delay of transport services before national courts, including under Directive 90/314/EEC.

CHAPTER IV

GENERAL RULES ON INFORMATION AND COMPLAINTS

Article 22

Right to travel information

Carriers and terminal operators shall, within their respective areas of competence, provide passengers with adequate information throughout their travel in formats which are accessible to everybody and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

Article 23

Information on passenger rights

1. Carriers, terminal operators and, when applicable, port authorities, shall, within their respective areas of competence, ensure that information on the rights of passengers under this Regulation is publicly available on board ships, in ports, if possible, and in port terminals. The information shall be provided as far as possible in accessible formats and in the same languages as those in which information is generally made available to all passengers. When that information is provided particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

2. In order to comply with the information requirement referred to in paragraph 1, carriers, terminal operators and, when applicable, port authorities, may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

3. Carriers, terminal operators and, when applicable, port authorities shall inform passengers in an appropriate manner on board ships, in ports, if possible, and in port terminals, of the contact details of the enforcement body designated by the Member State concerned pursuant to Article 25(1).

*Article 24***Complaints**

1. Carriers and terminal operators shall set up or have in place an accessible complaint-handling mechanism for rights and obligations covered by this Regulation.

2. Where a passenger covered by this Regulation wants to make a complaint to the carrier or terminal operator, he shall submit it within 2 months from the date on which the service was performed or when a service should have been performed. Within 1 month of receiving the complaint, the carrier or terminal operator shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint.

CHAPTER V

ENFORCEMENT AND NATIONAL ENFORCEMENT BODIES*Article 25***National enforcement bodies**

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards passenger services and cruises from ports situated on its territory and passenger services from a third country to such ports. Each body shall take the measures necessary to ensure compliance with this Regulation.

Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of commercial interests.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint, in accordance with national law, to the competent body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation. The competent body shall provide passengers with a substantiated reply to their complaint within a reasonable period of time.

A Member State may decide:

(a) that the passenger as a first step shall submit the complaint covered by this Regulation to the carrier or terminal operator; and/or

(b) that the national enforcement body or any other competent body designated by the Member State shall act as an appeal body for complaints not resolved under Article 24.

4. Member States that have chosen to exempt certain services pursuant to Article 2(4) shall ensure that a comparable mechanism of enforcement of passenger rights is in place.

*Article 26***Report on enforcement**

By 1 June 2015 and every 2 years thereafter, the enforcement bodies designated pursuant to Article 25 shall publish a report on their activity in the previous two calendar years, containing in particular a description of actions taken in order to implement the provisions of this Regulation, details of sanctions applied and statistics on complaints and sanctions applied.

*Article 27***Cooperation between enforcement bodies**

National enforcement bodies referred to in Article 25(1) shall exchange information on their work and decision-making principles and practice to the extent necessary for the coherent application of this Regulation. The Commission shall support them in that task.

*Article 28***Penalties**

The Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 18 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER VI

FINAL PROVISIONS*Article 29***Report**

The Commission shall report to the European Parliament and to the Council by 19 December 2015 on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

*Article 30***Amendment to Regulation (EC) No 2006/2004**

In the Annex to Regulation (EC) No 2006/2004 the following point shall be added:

- '18. Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway (*).

(*) OJ L 334, 17.12.2010, p. 1.'

*Article 31***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 18 December 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 24 November 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

ANNEX I

RIGHT TO REIMBURSEMENT OR RE-ROUTING FOR DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY AS REFERRED TO IN ARTICLE 8

1. Where reference is made to this Annex, disabled persons and persons with reduced mobility shall be offered the choice between:
 - (a) — reimbursement within 7 days, paid in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan, plus, where relevant,
 - a return service to the first point of departure, at the earliest opportunity; or
 - (b) re-routing to the final destination as set out in the transport contract, at no additional cost and under comparable conditions, at the earliest opportunity; or
 - (c) re-routing to the final destination as set out in the transport contract, under comparable conditions, at a later date at the passenger's convenience, subject to availability of tickets.
2. Paragraph 1(a) shall also apply to passengers whose journeys form part of a package, except for the right to reimbursement where such a right arises under Directive 90/314/EEC.
3. When, in the case where a town, city or region is served by several ports, a carrier offers a passenger a journey to an alternative port to that for which the reservation was made, the carrier shall bear the cost of transferring the passenger from that alternative port either to that for which the reservation was made, or to another nearby destination agreed with the passenger.

ANNEX II

ASSISTANCE IN PORTS, INCLUDING EMBARKATION AND DISEMBARKATION, AS REFERRED TO IN ARTICLES 10 AND 13

1. Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:
 - communicate their arrival at a port terminal or, if possible, a port and their request for assistance,
 - move from an entry point to the check-in counter, if any, or to the ship,
 - check in and register baggage, if necessary,
 - proceed from the check-in counter, if any, to the ship, through emigration and security points,
 - embark the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
 - proceed from the ship door to their seats/area,
 - store and retrieve baggage on the ship,
 - proceed from their seats to the ship door,
 - disembark from the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
 - retrieve baggage, if necessary, and proceed through immigration and customs points,
 - proceed from the baggage hall or the disembarkation point to a designated point of exit,
 - if required, make their way to the toilet facilities (if any).
2. Where a disabled person or person with reduced mobility is assisted by an accompanying person, that person must, if requested, be allowed to provide the necessary assistance in the port and with embarking and disembarking.
3. Handling of all necessary mobility equipment, including equipment such as electric wheelchairs.
4. Temporary replacement of damaged or lost mobility equipment with equipment which is a suitable alternative.
5. Ground handling of recognised assistance dogs, when relevant.
6. Communication in accessible formats of information needed to embark and disembark.

ANNEX III

ASSISTANCE ON BOARD SHIPS AS REFERRED TO IN ARTICLES 10 AND 13

1. Carriage of recognised assistance dogs on board the ship, subject to national regulations.
 2. Carriage of medical equipment and of the mobility equipment necessary for the disabled person or person with reduced mobility, including electric wheelchairs.
 3. Communication of essential information concerning a route in accessible formats.
 4. Making all reasonable efforts to arrange seating to meet the needs of disabled persons or persons with reduced mobility on request and subject to safety requirements and availability.
 5. If required, assistance in moving to toilet facilities (if any).
 6. Where a disabled person or person with reduced mobility is assisted by an accompanying person, the carrier shall make all reasonable efforts to give such person a seat or a cabin next to the disabled person or person with reduced mobility.
-

ANNEX IV

DISABILITY-RELATED TRAINING, INCLUDING INSTRUCTIONS, AS REFERRED TO IN ARTICLE 14

A. Disability-awareness training, including instructions

Disability-awareness training, including instructions, includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation or communication may be reduced,
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers,
- recognised assistance dogs, including the role and the needs of an assistance dog,
- dealing with unexpected occurrences,
- interpersonal skills and methods of communication with people with hearing impairments, visual impairments or speech impairments and people with a learning disability,
- general awareness of IMO guidelines relating to the Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

B. Disability-assistance training, including instructions

Disability-assistance training, including instructions, includes:

- how to help wheelchair users make transfers into and out of a wheelchair,
 - skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs,
 - techniques for escorting passengers with visual impairments and for the handling and carriage of recognised assistance dogs,
 - an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to carefully handle such equipment,
 - the use of boarding and deboarding assistance equipment used and knowledge of the appropriate boarding and deboarding assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility,
 - understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled persons and persons with reduced mobility to experience feelings of vulnerability during travel because of their dependence on the assistance provided,
 - a knowledge of first aid.
-

REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2007
on rail passengers' rights and obligations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 ⁽³⁾,

Whereas:

- (1) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (2) The Commission's communication 'Consumer Policy Strategy 2002-2006' ⁽⁴⁾ sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.
- (4) Users' rights to rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings and ticket vendors should provide this information in advance and as soon as possible.
- (5) More detailed requirements regarding the provision of travel information will be set out in the technical specifications for interoperability (TSIs) referred to in Directive

2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽⁵⁾.

- (6) Strengthening of the rights of rail passengers should build on the existing system of international law on this subject contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too.
- (7) Railway undertakings should cooperate to facilitate the transfer of rail passengers from one operator to another by the provision of through tickets, whenever possible.
- (8) The provision of information and tickets for rail passengers should be facilitated by the adaptation of computerised systems to a common specification.
- (9) The further implementation of travel information and reservation systems should be executed in accordance with the TSIs.
- (10) Rail passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for rail travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and to non-discrimination. *Inter alia*, special attention should be given to the provision of information to disabled persons and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Disabled persons and persons with reduced mobility should be enabled to buy tickets on board a train without extra charges.

⁽¹⁾ OJ C 221, 8.9.2005, p. 8.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 490), Council Common Position of 24 July 2006 (OJ C 289 E, 28.11.2006, p. 1), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

⁽⁴⁾ OJ C 137, 8.6.2002, p. 2.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).

- (11) Railway undertakings and station managers should take into account the needs of disabled persons and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility, so as to ensure that, in accordance with Community public procurement rules, all buildings and rolling stock are made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work.
- (12) Railway undertakings should be obliged to be insured, or to make equivalent arrangements, for their liability to rail passengers in the event of accident. The minimum amount of insurance for railway undertakings should be the subject of future review.
- (13) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (14) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.
- (15) Where a Member State grants railway undertakings an exemption from the provisions of this Regulation, it should encourage railway undertakings, in consultation with organisations representing passengers, to put in place arrangements for compensation and assistance in the event of major disruption to a rail passenger service.
- (16) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (17) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (18) Rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time.
- (19) Railway undertakings should define, manage and monitor service quality standards for rail passenger services.
- (20) The contents of this Regulation should be reviewed in respect of the adjustment of financial amounts for inflation and in respect of information and service quality requirements in the light of market developments as well as in the light of the effects on service quality of this Regulation.
- (21) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.
- (22) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (23) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (24) It is an aim of this Regulation to improve rail passenger services within the Community. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Community.
- (25) Railway undertakings in some Member States may experience difficulty in applying the entirety of the provisions of this Regulation on its entry into force. Therefore, Member States should be able to grant temporary exemptions from the application of the provisions of this Regulation to long-distance domestic rail passenger services. The temporary exemption should, however, not apply to the provisions of this Regulation that grant disabled persons or persons with reduced mobility access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (26) Urban, suburban and regional rail passenger services are different in character from long-distance services. Therefore, with the exception of certain provisions which should apply to all rail passenger services throughout the Community, Member States should be able to grant exemptions from the application of the provisions of this Regulation to urban, suburban and regional rail passenger services.
- (27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (28) In particular, the Commission should be empowered to adopt implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules as regards the following:

- (a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport,
- (b) the liability of railway undertakings and their insurance obligations for passengers and their luggage,
- (c) the obligations of railway undertakings to passengers in cases of delay,
- (d) the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail,
- (e) the definition and monitoring of service quality standards, the management of risks to the personal security of passengers and the handling of complaints, and
- (f) general rules on enforcement.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 2

Scope

1. This Regulation shall apply to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽²⁾.

2. This Regulation does not apply to railway undertakings and transport services which are not licensed under Directive 95/18/EC.

3. On the entry into force of this Regulation, Articles 9, 11, 12, 19, 20(1) and 26 shall apply to all rail passenger services throughout the Community.

4. With the exception of the provisions set out in paragraph 3, a Member State may, on a transparent and non-discriminatory basis, grant an exemption for a period no longer than five years, which may be renewed twice for a maximum period of five years on each occasion, from the application of the provisions of this Regulation to domestic rail passenger services.

5. With the exception of the provisions set out in paragraph 3 of this Article, a Member State may exempt from the application of the provisions of this Regulation urban, suburban and regional rail passenger services. In order to distinguish between urban, suburban and regional rail passenger services, Member States shall apply the definitions contained in Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽³⁾. In applying these definitions, Member States shall take into account the following criteria: distance, frequency of services, number of scheduled stops, rolling stock employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, train codes and timetables.

6. For a maximum period of five years, a Member State may, on a transparent and non-discriminatory basis, grant an exemption, which may be renewed, from the application of the provisions of this Regulation to particular services or journeys because a significant part of the rail passenger service, including at least one scheduled station stop, is operated outside the Community.

7. Member States shall inform the Commission of exemptions granted pursuant to paragraphs 4, 5 and 6. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. No later than 3 December 2014, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4, 5 and 6.

⁽²⁾ OJ L 143, 27.6.1995, p. 70. Directive as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

⁽³⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'railway undertaking' means a railway undertaking as defined in Article 2 of Directive 2001/14/EC ⁽¹⁾, and any other public or private undertaking the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;
2. 'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;
3. 'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to whom the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail;
4. 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
5. 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager;
6. 'tour operator' means an organiser or retailer, other than a railway undertaking, within the meaning of Article 2, points (2) and (3) of Directive 90/314/EEC ⁽²⁾;
7. 'ticket vendor' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
8. 'transport contract' means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;
9. 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
10. 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings;
11. 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State;
12. 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival;
13. 'travel pass' or 'season ticket' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;
14. 'Computerised Information and Reservation System for Rail Transport (CIRSRT)' means a computerised system containing information about rail services offered by railway undertakings; the information stored in the CIRSRT on passenger services shall include information on:
 - (a) schedules and timetables of passenger services;
 - (b) availability of seats on passenger services;
 - (c) fares and special conditions;
 - (d) accessibility of trains for disabled persons and persons with reduced mobility;
 - (e) facilities through which reservations may be made or tickets or through tickets may be issued to the extent that some or all of these facilities are made available to users;
15. 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;
16. 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
17. 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

⁽¹⁾ Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 75, 15.3.2001, p. 29). Directive as last amended by Directive 2004/49/EC.

⁽²⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

CHAPTER II

TRANSPORT CONTRACT, INFORMATION AND TICKETS*Article 4***Transport contract**

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

*Article 5***Bicycles**

Railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits.

*Article 6***Exclusion of waiver and stipulation of limits**

1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.
2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.

*Article 7***Obligation to provide information concerning discontinuation of services**

Railway undertakings or, where appropriate, competent authorities responsible for a public service railway contract shall make public by appropriate means, and before their implementation, decisions to discontinue services.

*Article 8***Travel information**

1. Without prejudice to Article 10, railway undertakings and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the journeys for which a transport contract is offered by the railway undertaking concerned. Ticket vendors offering transport contracts on their own account, and tour operators, shall provide this information where available.
2. Railway undertakings shall provide the passenger during the journey with at least the information set out in Annex II, Part II.

3. The information referred to in paragraphs 1 and 2 shall be provided in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment.

*Article 9***Availability of tickets, through tickets and reservations**

1. Railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations.
2. Without prejudice to paragraph 4, railway undertakings shall distribute tickets to passengers via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) telephone, the Internet or any other widely available information technology;
 - (c) on board trains.
3. Without prejudice to paragraphs 4 and 5, railway undertakings shall distribute tickets for services provided under public service contracts via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) on board trains.
4. Railway undertakings shall offer the possibility to obtain tickets for the respective service on board the train, unless this is limited or denied on grounds relating to security or antifraud policy or compulsory train reservation or reasonable commercial grounds.
5. Where there is no ticket office or selling machine in the station of departure, passengers shall be informed at the station:
 - (a) of the possibility of purchasing tickets via telephone or the Internet or on board the train, and of the procedure for such purchase;
 - (b) of the nearest railway station or place at which ticket offices and/or selling machines are available.

*Article 10***Travel information and reservation systems**

1. In order to provide the information and to issue tickets referred to in this Regulation, railway undertakings and ticket vendors shall make use of CIRSRT, to be established by the procedures referred to in this Article.

2. The technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC shall be applied for the purposes of this Regulation.

3. The Commission shall, on a proposal to be submitted by the European Railway Agency (ERA), adopt the TSI of telematics applications for passengers by 3 December 2010. The TSI shall make possible the provision of the information, set out in Annex II, and the issuing of tickets as governed by this Regulation.

4. Railway undertakings shall adapt their CIRSRT according to the requirements set out in the TSI in accordance with a deployment plan set out in that TSI.

5. Subject to the provisions of Directive 95/46/EC, no railway undertaking or ticket vendor shall disclose personal information on individual bookings to other railway undertakings and/or ticket vendors.

CHAPTER III

LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE

Article 11

Liability for passengers and luggage

Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

Article 12

Insurance

1. The obligation set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring a railway undertaking to be adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation.

2. The Commission shall submit to the European Parliament and the Council a report on the setting of a minimum amount of insurance for railway undertakings by 3 December 2010. If appropriate, that report shall be accompanied by suitable proposals or recommendations on this matter.

Article 13

Advance payments

1. If a passenger is killed or injured, the railway undertaking as referred to in Article 26(5) of Annex I shall without delay, and in any event not later than fifteen days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

Article 14

Contestation of liability

Even if the railway undertaking contests its responsibility for physical injury to a passenger whom it conveys, it shall make every reasonable effort to assist a passenger claiming compensation for damage from third parties.

CHAPTER IV

DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

Article 15

Liability for delays, missed connections and cancellations

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

Article 16

Reimbursement and re-routing

Where it is reasonably to be expected that the delay in the arrival at the final destination under the transport contract will be more than 60 minutes, the passenger shall immediately have the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity. The payment of the reimbursement shall be made under the same conditions as the payment for compensation referred to in Article 17; or
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.

*Article 17***Compensation of the ticket price**

1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and destination stated on the ticket for which the ticket has not been reimbursed in accordance with Article 16. The minimum compensations for delays shall be as follows:

- (a) 25 % of the ticket price for a delay of 60 to 119 minutes,
- (b) 50 % of the ticket price for a delay of 120 minutes or more.

Passengers who hold a travel pass or season ticket and who encounter recurrent delays or cancellations during its period of validity may request adequate compensation in accordance with the railway undertaking's compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation.

Compensation for delay shall be calculated in relation to the price which the passenger actually paid for the delayed service.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the Treaty establishing the European Community is applied.

2. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.

*Article 18***Assistance**

1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

- (a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

4. Railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled, as the case might be.

5. In applying paragraphs 1, 2 and 3, the operating railway undertaking shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

CHAPTER V

DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY*Article 19***Right to transport**

1. Railway undertakings and station managers shall, with the active involvement of representative organisations of disabled persons and persons with reduced mobility, establish, or shall have in place, non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost. A railway undertaking, ticket vendor or tour operator may not refuse to accept a reservation from, or issue a ticket to, a disabled person or a person with reduced mobility, or require that such person be accompanied by another person, unless this is strictly necessary in order to comply with the access rules referred to in paragraph 1.

Article 20

Information to disabled persons and persons with reduced mobility

1. Upon request, a railway undertaking, a ticket vendor or a tour operator shall provide disabled persons and persons with reduced mobility with information on the accessibility of rail services and on the access conditions of rolling stock in accordance with the access rules referred to in Article 19(1) and shall inform disabled persons and persons with reduced mobility about facilities on board.

2. When a railway undertaking, ticket vendor and/or tour operator exercises the derogation provided for in Article 19(2), it shall upon request inform in writing the disabled person or person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to make the reservation or to issue the ticket or the imposition of the condition of being accompanied.

Article 21

Accessibility

1. Railway undertakings and station managers shall, through compliance with the TSI for persons with reduced mobility, ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility.

2. In the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers shall make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.

Article 22

Assistance at railway stations

1. On departure from, transit through or arrival at, a staffed railway station of a disabled person or a person with reduced mobility, the station manager shall provide assistance free of charge in such a way that that person is able to board the departing service, or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules referred to in Article 19(1).

2. Member States may provide for a derogation from paragraph 1 in the case of persons travelling on services which are the subject of a public service contract awarded in conformity with Community law, on condition that the competent authority has put in place alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services.

3. In unstaffed stations, railway undertakings and station managers shall ensure that easily accessible information is displayed in accordance with the access rules referred to in Article 19(1) regarding the nearest staffed stations and directly available assistance for disabled persons and persons with reduced mobility.

Article 23

Assistance on board

Without prejudice to the access rules as referred to in Article 19(1), railway undertakings shall provide disabled persons and persons with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train.

For the purposes of this Article, assistance on board shall consist of all reasonable efforts to offer assistance to a disabled person or a person with reduced mobility in order to allow that person to have access to the same services in the train as other passengers, should the extent of the person's disability or reduced mobility not allow him or her to have access to those services independently and in safety.

Article 24

Conditions on which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility in line with Articles 22 and 23 in accordance with the following points:

- (a) assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;
- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the disabled person or person with reduced mobility may travel;

- (d) without prejudice to the powers of other entities regarding areas located outside the railway station premises, the station manager or any other authorised person shall designate points, within and outside the railway station, at which disabled persons and persons with reduced mobility can announce their arrival at the railway station and, if need be, request assistance;
- (e) assistance shall be provided on condition that the disabled person or person with reduced mobility present him or herself at the designated point at a time stipulated by the railway undertaking or station manager providing such assistance. Any time stipulated shall not be more than 60 minutes before the published departure time or the time at which all passengers are asked to check in. If no time is stipulated by which the disabled person or person with reduced mobility is required to present him or herself, the person shall present him or herself at the designated point at least 30 minutes before the published departure time or the time at which all passengers are asked to check in.

Article 25

Compensation in respect of mobility equipment or other specific equipment

If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility, no financial limit shall be applicable.

CHAPTER VI

SECURITY, COMPLAINTS AND QUALITY OF SERVICE

Article 26

Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security.

Article 27

Complaints

1. Railway undertakings shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The railway undertaking shall make its contact details and working language(s) widely known to passengers.

2. Passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

3. The railway undertaking shall publish in the annual report referred to in Article 28 the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken.

Article 28

Service quality standards

1. Railway undertakings shall define service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex III.

2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. Railway undertakings shall each year publish a report on their service quality performance together with their annual report. The reports on service quality performance shall be published on the Internet website of the railway undertakings. In addition, these reports shall be made available on the Internet website of the ERA.

CHAPTER VII

INFORMATION AND ENFORCEMENT

Article 29

Information to passengers about their rights

1. When selling tickets for journeys by rail, railway undertakings, station managers and tour operators shall inform passengers of their rights and obligations under this Regulation. In order to comply with this information requirement, railway undertakings, station managers and tour operators may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the European Union institutions and made available to them.

2. Railway undertakings and station managers shall inform passengers in an appropriate manner, at the station and on the train, of the contact details of the body or bodies designated by Member States pursuant to Article 30.

Article 30

Enforcement

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

Article 31

Cooperation between enforcement bodies

Enforcement bodies as referred to in Article 30 shall exchange information on their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

CHAPTER VIII

FINAL PROVISIONS

Article 32

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 3 June 2010 and shall notify it without delay of any subsequent amendment affecting them.

Article 33

Annexes

Measures designed to amend non-essential elements of this Regulation by adapting the Annexes thereto, except Annex I, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

Article 34

Amending provisions

1. Measures designed to amend non-essential elements of this Regulation by supplementing it and necessary for the implementation of Articles 2, 10 and 12 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

2. Measures designed to amend non-essential elements of this Regulation by adjusting the financial amounts referred to therein, other than in Annex I, in light of inflation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

Article 35

Committee procedure

1. The Commission shall be assisted by the Committee instituted by Article 11a of Directive 91/440/EEC.

2. Where reference is made to this paragraph, Articles 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 36

Report

The Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation by 3 December 2012, and in particular on the service quality standards.

The report shall be based on information to be provided pursuant to this Regulation and to Article 10b of Directive 91/440/EEC. The report shall be accompanied where necessary by appropriate proposals.

Article 37

Entry into force

This Regulation shall enter into force 24 months after the date of its publication in the *Official Journal of the European Union*.

For the Council
The President
M. LOBO ANTUNES

ANNEX I

Extract from Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV)*Appendix A*

to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention Concerning International Carriage by Rail of 3 June 1999

TITLE II

CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE*Article 6***Contract of carriage**

1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

*Article 7***Ticket**

1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
2. The following, at least, must be entered on the ticket:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.
4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

*Article 8***Payment and refund of the carriage charge**

1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

*Article 9***Right to be carried. Exclusion from carriage**

1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.

2. The General Conditions of Carriage may provide that passengers who:

- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers,
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

*Article 10***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities.

*Article 11***Cancellation and late running of trains. Missed connections**

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

TITLE III

CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES

Chapter I

Common provisions*Article 12***Acceptable articles and animals**

1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.

2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.

4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

*Article 13***Examination**

1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.
2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

*Article 14***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

Chapter II

Hand luggage and animals*Article 15***Supervision**

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

Chapter III

Registered luggage*Article 16***Consignment of registered luggage**

1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

*Article 17***Luggage registration voucher**

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
2. The following, at least, must be entered on the luggage registration voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;

- (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

Article 18

Registration and carriage

1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.
2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.
3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

Article 19

Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

Article 20

Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

Article 21

Right to dispose of registered luggage

1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.
2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

Article 22

Delivery

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:
- (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) live animals have been handed over to third parties.

3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.
4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.
5. Luggage shall be delivered at the place of destination for which it has been registered.
6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.
7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.
8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

Chapter IV

Vehicles

Article 23

Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

Article 24

Carriage voucher

1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
3. The following, at least, must be entered on the carriage voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

Article 25

Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

TITLE IV

LIABILITY OF THE CARRIER

Chapter I

Liability in case of death of, or personal injury to, passengers*Article 26***Basis of liability**

1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
2. The carrier shall be relieved of this liability
 - (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
 - (b) to the extent that the accident is due to the fault of the passenger;
 - (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.
4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.
5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

*Article 27***Damages in case of death**

1. In case of death of the passenger the damages shall comprise:
 - (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
 - (b) if death does not occur at once, the damages provided for in Article 28.
2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

*Article 28***Damages in case of personal injury**

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

*Article 29***Compensation for other bodily harm**

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

*Article 30***Form and amount of damages in case of death and personal injury**

1. The damages under Article 27(2) and Article 28(b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).

2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

*Article 31***Other modes of transport**

1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.

2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.

3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

Chapter II

Liability in case of failure to keep to the timetable*Article 32***Liability in case of cancellation, late running of trains or missed connections**

1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

Chapter III

Liability in respect of hand luggage, animals, registered luggage and vehicles

SECTION 1

Hand luggage and animals

Article 33

Liability

1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply *mutatis mutandis*.

2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

Article 34

Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

Article 35

Exclusion of liability

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

SECTION 2

Registered luggage

Article 36

Basis of liability

1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.

2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) the absence or inadequacy of packing;
- (b) the special nature of the luggage;
- (c) the consignment as luggage of articles not acceptable for carriage.

Article 37

Burden of proof

1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.

2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

Article 38

Successive carriers

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

Article 39

Substitute carrier

1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.

2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.

3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.

5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.

6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

Article 40

Presumption of loss

1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within 14 days after a request for delivery has been made in accordance with Article 22(3).

2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.

3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43.

4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

*Article 41***Compensation for loss**

1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
 - (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
 - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

*Article 42***Compensation for damage**

1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
2. The compensation shall not exceed:
 - (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
 - (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

*Article 43***Compensation for delay in delivery**

1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:
 - (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
 - (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.

The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.
3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

SECTION 3

Vehicles

Article 44

Compensation for delay

1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

Article 45

Compensation for loss

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

Article 46

Liability in respect of other articles

1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

Article 47

Applicable law

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

Chapter IV

Common provisions

Article 48

Loss of right to invoke the limits of liability

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 49

Conversion and interest

1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.

2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

Article 50

Liability in case of nuclear incidents

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

Article 51

Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

Article 52

Other actions

1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

TITLE V

LIABILITY OF THE PASSENGER

Article 53

Special principles of liability

The passenger shall be liable to the carrier for any loss or damage:

- (a) resulting from failure to fulfil his obligations pursuant to
 1. Articles 10, 14 and 20,
 2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage, or
 3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), or
- (b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

TITLE VI

ASSERTION OF RIGHTS

Article 54

Ascertainment of partial loss or damage

1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
2. A copy of the report must be supplied free of charge to the person entitled.
3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

Article 55

Claims

1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

Article 56

Carriers against whom an action may be brought

1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.
3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

*Article 58***Extinction of right of action in case of death or personal injury**

1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within 12 months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
2. Nevertheless, the right of action shall not be extinguished if
 - (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
 - (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
 - (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
 - (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

*Article 59***Extinction of right of action arising from carriage of luggage**

1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
2. Nevertheless, the right of action shall not be extinguished:
 - (a) in case of partial loss or damage, if
 1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled,
 2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
 - (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he
 1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage, and
 2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
 - (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
 - (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

*Article 60***Limitation of actions**

1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:
 - (a) in the case of a passenger, three years from the day after the accident;
 - (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

3. The period of limitation provided for in paragraph 2 shall run for actions:

- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. [...]

5. [...]

6. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

TITLE VII

RELATIONS BETWEEN CARRIERS

Article 61

Apportionment of the carriage charge

1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.
2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

Article 62

Right of recourse

1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:
 - (a) the carrier who has caused the loss or damage shall be solely liable for it;
 - (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
 - (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

Article 63

Procedure for recourse

1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.
3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

Article 64

Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 61 and 62.

ANNEX II

**MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS
AND/OR BY TICKET VENDORS****Part I: Pre-journey information**

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for the lowest fares

Accessibility, access conditions and availability on board of facilities for disabled persons and persons with reduced mobility

Accessibility and access conditions for bicycles

Availability of seats in smoking and non-smoking, first and second class as well as couchettes and sleeping carriages

Any activities likely to disrupt or delay services

Availability of on-board services

Procedures for reclaiming lost luggage

Procedures for the submission of complaints.

Part II: Information during the journey

On-board services

Next station

Delays

Main connecting services

Security and safety issues.

*ANNEX III***MINIMUM SERVICE QUALITY STANDARDS**

Information and tickets

Punctuality of services, and general principles to cope with disruptions to services

Cancellations of services

Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with service quality standards

Assistance provided to disabled persons and persons with reduced mobility.

I

(Acts whose publication is obligatory)

REGULATION (EC) No 1107/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 July 2006
concerning the rights of disabled persons and persons with reduced mobility when travelling by air
 (Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The single market for air services should benefit citizens in general. Consequently, 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. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. This applies to air travel as to other areas of life.
- (2) Disabled persons and persons with reduced mobility should therefore be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on the grounds of safety and prescribed by law. Before accepting reservations from disabled persons or persons with reduced mobility, air carriers, their agents and tour operators should make all reasonable efforts to verify whether there is a reason which is justified on the grounds of safety and which would prevent such persons being accommodated on the flights concerned.

- (3) This Regulation should not affect other rights of passengers established by Community legislation and notably Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽³⁾ and Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights ⁽⁴⁾. Where the same event would give rise to the same right of reimbursement or rebooking under either of those legislative acts as well as under this Regulation, the person so entitled should be allowed to exercise that right once only, at his or her discretion.

- (4) In order to give disabled persons and persons with reduced mobility opportunities for air travel comparable to those of other citizens, assistance to meet their particular needs should be provided at the airport as well as on board aircraft, by employing the necessary staff and equipment. In the interests of social inclusion, the persons concerned should receive this assistance without additional charge.

- (5) Assistance given at airports situated in the territory of a Member State to which the Treaty applies should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at an airport to an aircraft and from the aircraft to a designated point of departure from the airport, including embarking and disembarking. These points should be designated at least at the main entrances to terminal buildings, in areas with check-in counters, in train, light rail, metro and bus stations, at taxi ranks and other drop-off points, and in airport car parks. The assistance should be organised so as to avoid interruption and delay, while ensuring high and equivalent standards throughout the Community and making best use of resources, whatever airport or air carrier is involved.

⁽¹⁾ OJ C 24, 31.1.2006, p. 12.

⁽²⁾ Opinion of the European Parliament of 15 December 2005 (not yet published in the Official Journal), and Council Decision of 9 June 2006.

⁽³⁾ OJ L 158, 23.6.1990, p. 59.

⁽⁴⁾ OJ L 46, 17.2.2004, p. 1.

- (6) To achieve these aims, ensuring high quality assistance at airports should be the responsibility of a central body. As managing bodies of airports play a central role in providing services throughout their airports, they should be given this overall responsibility.
- (7) Managing bodies of airports may provide the assistance to disabled persons and persons with reduced mobility themselves. Alternatively, in view of the positive role played in the past by certain operators and air carriers, managing bodies may contract with third parties for the supply of this assistance, without prejudice to the application of relevant rules of Community law, including those on public procurement.
- (8) Assistance should be financed in such a way as to spread the burden equitably among all passengers using an airport and to avoid disincentives to the carriage of disabled persons and persons with reduced mobility. A charge levied on each air carrier using an airport, proportionate to the number of passengers it carries to or from the airport, appears to be the most effective way of funding.
- (9) With a view to ensuring, in particular, that the charges levied on an air carrier are commensurate with the assistance provided to disabled persons and persons with reduced mobility, and that these charges do not serve to finance activities of the managing body other than those relating to the provision of such assistance, the charges should be adopted and applied in full transparency. Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ⁽¹⁾ and in particular the provisions on separation of accounts, should therefore apply where this does not conflict with this Regulation.
- (10) In organising the provision of assistance to disabled persons and persons with reduced mobility, and the training of their personnel, airports and air carriers should have regard to document 30 of the European Civil Aviation Conference (ECAC), Part I, Section 5 and its associated annexes, in particular the Code of Good Conduct in Ground Handling for Persons with Reduced Mobility as set out in Annex J thereto at the time of adoption of this Regulation.
- (11) In deciding on the design of new airports and terminals, and as part of major refurbishments, managing bodies of airports should, where possible, take into account the needs of disabled persons and persons with reduced mobility. Similarly, air carriers should, where possible, take such needs into account when deciding on the design of new and newly refurbished aircraft.
- (12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ should be strictly enforced in order to guarantee respect for the privacy of disabled persons and persons with reduced mobility, and ensure that the information requested serves merely to fulfil the assistance obligations laid down in this Regulation and is not used against passengers seeking the service in question.
- (13) All essential information provided to air passengers should be provided in alternative formats accessible to disabled persons and persons with reduced mobility, and should be in at least the same languages as the information made available to other passengers.
- (14) Where wheelchairs or other mobility equipment or assistive devices are lost or damaged during handling at the airport or during transport on board aircraft, the passenger to whom the equipment belongs should be compensated, in accordance with rules of international, Community and national law.
- (15) Member States should supervise and ensure compliance with this Regulation and designate an appropriate body to carry out enforcement tasks. This supervision does not affect the rights of disabled persons and persons with reduced mobility to seek legal redress from courts under national law.
- (16) It is important that a disabled person or person with reduced mobility who considers that this Regulation has been infringed be able to bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, he or she should be free to make a complaint to the body or bodies designated to that end by the relevant Member State.
- (17) Complaints concerning assistance given at an airport should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State where the airport is situated. Complaints concerning assistance given by an air carrier should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State which has issued the operating licence to the air carrier.

⁽¹⁾ OJ L 272, 25.10.1996, p. 36. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

- (18) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. The penalties, which could include ordering the payment of compensation to the person concerned, should be effective, proportionate and dissuasive.
- (19) Since the objectives of this Regulation, namely to ensure high and equivalent levels of protection and assistance throughout the Member States and to ensure that economic agents operate under harmonised conditions in a single market, cannot sufficiently be achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (20) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (21) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

1. This Regulation establishes rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air, both to protect them against discrimination and to ensure that they receive assistance.
2. The provisions of this Regulation shall apply to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services on departure from, on transit through, or on arrival at an airport, when the airport is situated in the territory of a Member State to which the Treaty applies.
3. Articles 3, 4 and 10 shall also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the operating carrier is a Community air carrier.
4. This Regulation shall not affect the rights of passengers established by Directive 90/314/EEC and under Regulation (EC) No 261/2004.

5. In so far as the provisions of this Regulation conflict with those of Directive 96/67/EC, this Regulation shall prevail.

6. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

7. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on 2 December 1987 enter into operation. The Governments of Spain and of the United Kingdom shall inform the Council of the date of entry into operation.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and the adaptation to his or her particular needs of the service made available to all passengers;
- (b) 'air carrier' means an air transport undertaking with a valid operating licence;
- (c) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (d) 'Community air carrier' means an air 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 of air carriers⁽¹⁾;
- (e) 'tour operator' means, with the exception of an air carrier, an organiser or retailer within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (f) 'managing body of the airport' or 'managing body' means a body which notably has as its objective under national legislation the administration and management of airport infrastructures, and the coordination and control of the activities of the various operators present in an airport or airport system;

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

- (g) 'airport user' means any natural or legal person responsible for the carriage of passengers by air from or to the airport in question;
- (h) 'Airport Users Committee' means a committee of representatives of airport users or organisations representing them;
- (i) 'reservation' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (j) 'airport' means any area of land specially adapted for the landing, taking-off and manoeuvres of aircraft, including ancillary installations which these operations may involve for the requirements of aircraft traffic and services including installations needed to assist commercial air services;
- (k) 'airport car park' means a car park, within the airport boundaries or under the direct control of the managing body of an airport, which directly serves the passengers using that airport;
- (l) 'commercial passenger air service' means a passenger air transport service operated by an air carrier through a scheduled or non-scheduled flight offered to the general public for valuable consideration, whether on its own or as part of a package.

Article 3

Prevention of refusal of carriage

An air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility:

- (a) to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;
- (b) to embark a disabled person or a person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation.

Article 4

Derogations, special conditions and information

1. Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:

- (a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned;

- (b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met.

2. Under the same conditions referred to in paragraph 1, first subparagraph, point (a), an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person.

3. An air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft. A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours which it organises, sells or offers for sale.

4. When an air carrier or its agent or a tour operator exercises a derogation under paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons therefor. On request, an air carrier, its agent or a tour operator shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.

Article 5

Designation of points of arrival and departure

1. In cooperation with airport users, through the Airport Users Committee where one exists, and relevant organisations representing disabled persons and persons with reduced mobility, the managing body of an airport shall, taking account of local conditions, designate points of arrival and departure within the airport boundary or at a point under the direct control of the managing body, both inside and outside terminal

buildings, at which disabled persons or persons with reduced mobility can, with ease, announce their arrival at the airport and request assistance.

2. The points of arrival and departure referred to in paragraph 1, shall be clearly signed and shall offer basic information about the airport, in accessible formats.

Article 6

Transmission of information

1. Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all their points of sale in the territory of the Member States to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility.

2. When an air carrier or its agent or a tour operator receives a notification of the need for assistance at least 48 hours before the published departure time for the flight, it shall transmit the information concerned at least 36 hours before the published departure time for the flight:

- (a) to the managing bodies of the airports of departure, arrival and transit, and
- (b) to the operating air carrier, if a reservation was not made with that carrier, unless the identity of the operating air carrier is not known at the time of notification, in which case the information shall be transmitted as soon as practicable.

3. In all cases other than those mentioned in paragraph 2, the air carrier or its agent or tour operator shall transmit the information as soon as possible.

4. As soon as possible after the departure of the flight, an operating air carrier shall inform the managing body of the airport of destination, if situated in the territory of a Member State to which the Treaty applies, of the number of disabled persons and persons with reduced mobility on that flight requiring assistance specified in Annex I and of the nature of that assistance.

Article 7

Right to assistance at airports

1. When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation, provided that the notification of the person's particular needs for

such assistance has been made to the air carrier or its agent or the tour operator concerned at least 48 hours before the published time of departure of the flight. This notification shall also cover a return flight, if the outward flight and the return flight have been contracted with the same air carrier.

2. Where use of a recognised assistance dog is required, this shall be accommodated provided that notification of the same is made to the air carrier or its agent or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.

3. If no notification is made in accordance with paragraph 1, the managing body shall make all reasonable efforts to provide the assistance specified in Annex I in such a way that the person concerned is able to take the flight for which he or she holds a reservation.

4. The provisions of paragraph 1 shall apply on condition that:

- (a) the person presents himself or herself for check-in:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than one hour before the published departure time, or
- (b) the person arrives at a point within the airport boundary designated in accordance with Article 5:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than two hours before the published departure time.

5. When a disabled person or person with reduced mobility transits through an airport to which this Regulation applies, or is transferred by an air carrier or a tour operator from the flight for which he or she holds a reservation to another flight, the managing body shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation.

6. On the arrival by air of a disabled person or person with reduced mobility at an airport to which this Regulation applies, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to reach his or her point of departure from the airport as referred to in Article 5.

7. The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

*Article 8***Responsibility for assistance at airports**

1. The managing body of an airport shall be responsible for ensuring the provision of the assistance specified in Annex I without additional charge to disabled persons and persons with reduced mobility.

2. The managing body may provide such assistance itself. Alternatively, in keeping with its responsibility, and subject always to compliance with the quality standards referred to in Article 9(1), the managing body may contract with one or more other parties for the supply of the assistance. In cooperation with airport users, through the Airport Users Committee where one exists, the managing body may enter into such a contract or contracts on its own initiative or on request, including from an air carrier, and taking into account the existing services at the airport concerned. In the event that it refuses such a request, the managing body shall provide written justification.

3. The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance.

4. This specific charge shall be reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users, through the Airport Users Committee where one exists or any other appropriate entity. It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

5. The managing body of an airport shall separate the accounts of its activities relating to the assistance provided to disabled persons and persons with reduced mobility from the accounts of its other activities, in accordance with current commercial practice.

6. The managing body of an airport shall make available to airport users, through the Airport Users Committee where one exists or any other appropriate entity, as well as to the enforcement body or bodies referred to in Article 14, an audited annual overview of charges received and expenses made in respect of the assistance provided to disabled persons and persons with reduced mobility.

*Article 9***Quality standards for assistance**

1. With the exception of airports whose annual traffic is less than 150 000 commercial passenger movements, the managing body shall set quality standards for the assistance specified in Annex I and determine resource requirements for meeting them, in cooperation with airport users, through the Airport Users Committee where one exists, and organisations representing disabled passengers and passengers with reduced mobility.

2. In the setting of such standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility.

3. The managing body of an airport shall publish its quality standards.

4. An air carrier and the managing body of an airport may agree that, for the passengers whom that air carrier transports to and from the airport, the managing body shall provide assistance of a higher standard than the standards referred to in paragraph 1 or provide services additional to those specified in Annex I.

5. For the purpose of funding either of these, the managing body may levy a charge on the air carrier additional to that referred to in Article 8(3), which shall be transparent, cost-related and established after consultation of the air carrier concerned.

*Article 10***Assistance by air carriers**

An air carrier shall provide the assistance specified in Annex II without additional charge to a disabled person or person with reduced mobility departing from, arriving at or transiting through an airport to which this Regulation applies provided that the person in question fulfils the conditions set out in Article 7(1), (2) and (4).

*Article 11***Training**

Air carriers and airport managing bodies shall:

- (a) ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
- (b) provide disability-equality and disability-awareness training to all their personnel working at the airport who deal directly with the travelling public;
- (c) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

*Article 12***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.

Article 13

Exclusion of waiver

Obligations towards disabled persons and persons with reduced mobility pursuant to this Regulation shall not be limited or waived.

Article 14

Enforcement body and its tasks

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated in its territory. Where appropriate, this body or bodies shall take the measures necessary to ensure that the rights of disabled persons and persons with reduced mobility are respected, including compliance with the quality standards referred to in Article 9(1). The Member States shall inform the Commission of the body or bodies designated.

2. Member States shall, where appropriate, provide that the enforcement body or bodies designated under paragraph 1 shall also ensure the satisfactory implementation of Article 8, including as regards the provisions on charges with a view to avoiding unfair competition. They may also designate a specific body to that effect.

Article 15

Complaint procedure

1. A disabled person or person with reduced mobility who considers that this Regulation has been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be.

2. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, complaints may be made to any body or bodies designated under Article 14(1), or to any

other competent body designated by a Member State, about an alleged infringement of this Regulation.

3. A body in one Member State which receives a complaint concerning a matter that comes under the responsibility of a designated body of another Member State shall forward the complaint to the body of that other Member State.

4. The Member States shall take measures to inform disabled persons and persons with reduced mobility of their rights under this Regulation and of the possibility of complaint to this designated body or bodies.

Article 16

Penalties

The Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendment affecting them.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2010 at the latest on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or revising it.

Article 18

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 26 July 2008, except Articles 3 and 4, which shall apply with effect from 26 July 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 5 July 2006.

For the European Parliament
The President
 J. BORRELL FONTELLES

The President
For the Council
 P. LEHTOMÄKI

ANNEX I

Assistance under the responsibility of the managing bodies of airports

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings mentioned in Article 5,
- move from a designated point to the check-in counter,
- check-in and register baggage,
- proceed from the check-in counter to the aircraft, with completion of emigration, customs and security procedures,
- board the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft door to their seats,
- store and retrieve baggage on the aircraft,
- proceed from their seats to the aircraft door,
- disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft to the baggage hall and retrieve baggage, with completion of immigration and customs procedures,
- proceed from the baggage hall to a designated point,
- reach connecting flights when in transit, with assistance on the air and land sides and within and between terminals as needed,
- move to the toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if requested, be allowed to provide the necessary assistance in the airport and with embarking and disembarking.

Ground handling of all necessary mobility equipment, including equipment such as electric wheelchairs subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.

Temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis.

Ground handling of recognised assistance dogs, when relevant.

Communication of information needed to take flights in accessible formats.

ANNEX II

Assistance by air carriers

Carriage of recognised assistance dogs in the cabin, subject to national regulations.

In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods).

Communication of essential information concerning a flight in accessible formats.

The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.

Assistance in moving to toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.8.2008
COM(2008) 510 final

COMMUNICATION FROM THE COMMISSION

Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.

Text with EEA-relevance

COMMUNICATION FROM THE COMMISSION

Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.

Text with EEA-relevance

1. BACKGROUND

On 5 July 2006, the Council and the European Parliament adopted the Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air¹ (hereinafter referred to as "the Regulation"). The overall objective of the Regulation is to ensure that disabled passengers and persons with reduced mobility (hereinafter referred to as PRM) are not discriminated against when travelling by air. On 30 November 2005, in the course of the political negotiation process on the Commission proposal, and in relation to the future Article 12 concerning 'Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices', the Commission presented a statement for the minutes², in which the Commission committed to launch a study and to report on it, regarding the possibility of enhancing the 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.

The Commission published a contract notice³ for a "*Study on the compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility*" (hereinafter referred to as "the Study"), which is available on the Commission website. The purpose of this Communication is to report on the outcome of the study and the possibility to enhance existing rights.

2. THE SCOPE OF THE PROBLEM.

"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 dignity⁴."

A significant proportion of the current EU population has mobility problems which include needing a wheelchair other mobility equipment or assistive devices (hereinafter referred to as "mobility equipment"). The proportion of PRM within the population is likely to increase as the EU population ages.

The Commission does not wish to reproduce in this Communication the data already provided in the study, which should be read as a complement to this Communication. Nevertheless, on

¹ OJ L 204/1 of 26.07.2006

² Council working document n° 15206/05 (COD 2005/007).

³ Contract notice 2006/S 111-118193 of 14.06.2006

⁴ From a PRM association's answer to the consultants.

the basis of those data, the Commission notes that there are clear indications that passengers with reduced mobility who require mobility equipment, are travelling by air less than the general population. It is quite likely that fear of loss, damage or destruction of their mobility equipment is a contributory factor in deterring them from travelling and, therefore, preventing their integration in society. This fear is based on several objective reasons:

- (1) 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 properly resolved.
- (2) PRM face risks to their health and safety if their mobility equipment is lost, damaged or destroyed, as replacements are not always provided and, even when provided, replacements are not always suitable for the person's needs.
- (3) The time taken by airlines or airports to resolve practical problems presented by the damage or loss of mobility equipment is inappropriate given the urgency of the need.
- (4) The existing procedures and the average training level of the staff of most airlines and airports regarding how to act when confronted with a loss or damage of mobility equipment are deficient.
- (5) The financial implications of the loss, damage or destruction of mobility equipment present an additional risk for PRM when travelling by air in comparison with other passengers.
- (6) The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier, and for airports

3. OUTCOME OF THE STUDY: THE CHALLENGES

The actual number of accidents per year and per company involving incidents with mobility equipment is very low. The total number of relevant complaints is somewhere in the range between 600 and 1000 cases per year, compared to 706 million air passengers carried per year in the European Union⁵. That means a ratio between less than one and one and a half complaints as a maximum in a million of passengers.

The study analyses both the experience in the USA and the situation in Europe. The two analysis provide a reasonable basis for believing that this estimate is close to the actual number. The study has also concluded that there are a number of outstanding issues regarding both the quantitative aspects and the qualitative aspects of the problem worth to be highlighted:

3.1. Quantitative objective: to reduce the number of incidents

The number of events of destroyed, damages or lost mobility equipment of PRM is linked to the correct handling and stowage of mobility equipment onboard aircraft and storage at airports is a fundamental part of the conditions of transport of PRM in order to meet their needs, and a skill for which staff must be properly trained. The objective should remain to allow the PRM to use her/his personal device as long as possible. Ideally, the mobility

⁵ 705.8 million air passengers carried in the EU in 2005.

equipment should be handed over by the PRM and back to him at the door of the aircraft in all those cases where the PRM cannot use their own mobility equipment onboard. Other procedures may be set up when required for safety, security or practical reasons.

The attachment to the 2001 Airline Passenger Service Commitment⁶, signed by the majority of European national carriers (hereinafter referred to as the Airline Commitment) states that signatory airlines must take all reasonable steps to avoid loss or damage to mobility equipment or other disability assistive devices; they will develop their own individual service plans incorporating the Airline Commitment; They will establish staff training programmes and introduce changes to their computer systems to implement the Airline Commitment; and that *"PRM must be enabled to remain independent to the greatest possible extent"*.

The Airport Voluntary Commitment on Air Passenger Service (hereinafter referred to as "the Airport Commitment"), developed by European airports under the auspices of Airports Council International Europe⁷ states that *"Staff will be given appropriate training in understanding and meeting the needs of PRMs"*. The aim for the signatories was to develop their own individual service plans on the basis of the Commitment and to incorporate the appropriate provisions of the European Civil Aviation Conference (ECAC) Document 30 (Section 5)⁸, and the International Civil Aviation Organisation⁹ (ICAO Annex 9).

Point 5.2.3.2 of ECAC document 30¹⁰ states that *"Member States should promote the distribution of a booklet to airline and airport operator personnel on procedures and facilities to be provided to assist PRM, which would contain all the necessary information concerning the conditions of transport of such persons and the assistance to be provided to them, as well as the steps to be taken by them. They should ensure that airlines include in their manuals all procedures concerning PRM"*. Point 5.5 of the same document says *"Member States should ensure the provision at airports of a ground handling service for PRMs comprising: staff trained and qualified to meet their needs (...) the appropriate equipment to assist them."*

However, those voluntary agreements are not always properly honoured. Firstly, few companies and airports in the EU have actually developed their own plans or customer policies to implement those voluntary agreements. Secondly, those that have done so have adopted such different plans or policies that they result in widely differing levels of protection for PRM. Thirdly, those plans and customer policies are not always published, which makes it very difficult for PRM to know what to expect in advance.

In the context of the Airport Commitment, the majority of airports spontaneously provide assistance to passengers with reduced mobility. However, the procedures whereby the PRM is allowed to get to the door of the aircraft in their own wheelchair, or receive their own wheelchair on arrival, vary from airport to airport

⁶ The Airline Passenger Service Commitment: see article 8 and attachment

⁷ ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service and its Special Protocol to Meet the Needs of People with Reduced Mobility.

⁸ ECAC Policy Statement in the Field of Civil Aviation Facilitation (ECAC.CEAC DOC No. 30 (PART I) 10th Edition/December 2006

⁹ Standards and Recommended Practices of the International Civil Aviation Organization (Annex 9 of the Chicago Convention).

¹⁰ See footnote 8.

3.2. Qualitative objective: to minimise the consequences of an incident.

3.2.1. The current lack of a common procedure leading to immediate solutions on the spot.

The extent of damage sustained to mobility equipment can have serious implications not just because of its cost. The issue is also about both the time during which the PRM will be unable to use their equipment, and the long period until compensation is finally paid to them. The difficulties of establishing where to send 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.

There are currently no international, Community or national legislation on offering immediate assistance to PRM whose mobility equipment has been lost, damaged or destroyed, or on how this immediate assistance should be provided, or what are the essential aspects of such assistance.

The Airline Commitment, does not give details of how related claims for compensation are to be dealt with or what action should be taken on the spot when a wheelchair or other mobility equipment is damaged or lost.

The majority of airports do not have a policy regarding claims for damaged or destroyed wheelchairs or mobility equipment. The provision of compensation and the procedures by which airports provide a replacement vary from airport to airport despite the existence of the Airport Commitment¹¹. This may result in gaps and inconsistencies regarding replacement and compensation for PRM whose equipment was destroyed or damaged during the time when the airport is in charge. This certainly results in uncertainty and confusion for PRM, who never know how to act or to whom they should turn in the event of an accident involving their mobility equipment.

3.2.2. The difference between the nature and the limits of the liability of airlines and the liability of airports.

Traditionally there has been a difference between the nature and the limits of the liability of the airlines and the airports. This difference may cause confusion among stakeholders.

3.2.2.1. Transport of equipment on board an aircraft (airline liability)

Currently, assistance to PRM is provided by air carriers in the framework of the ground-handling. Air carriers can provide the assistance either directly, through a third company or through the airport when it acts as a service provider for the air carrier. Airline liability is currently limited by a miscellany of international conventions¹², Community Regulations

¹¹ See footnote 6.

¹² Those conventions are: 1 -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). 2 -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). 3 -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).

implementing those international conventions within the EU¹³, and legal or administrative procedures that other countries impose on EU companies that wish to enter their national markets. Companies may waive their limited liability and agree to compensate the full value of the lost mobility equipment or of its repair.

All these legal texts operate according to the same mechanism: presumption of liability of the carrier in case of checked baggage¹⁴. This means that the victim will not have to prove that the carrier was at fault in order for the carrier's liability to be incurred. The only thing the PRM needs to prove is the fact that the damage or loss occurred while 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 prior to being actually handed over to the carrier (at the gate or at the door of the aircraft), the liability of the carrier should only be triggered at the moment the equipment is physically handed over to the carrier (be it at the boarding gate or at the door of the aircraft).

3.2.2.2. Handling of the equipment at an airport (airport liability).

Airports have assumed the responsibility for providing assistance to PRM since the Regulation fully came into effect on 26 July 2008. Airport liability is, in principle, not limited¹⁵ and it is established according to national liability/tort law. This fact that the applicable legal framework is different as between airports and airlines results in two big differences in the nature of their respective liability: First of all, as a rule, airport liability is based on a proven fault by the airport managing body. Secondly, whereas airport liability is not limited, airline liability definitely is. This means that, in the case of airports, the PRM will have to prove the fault of the wrongdoer before a court if the airport does not accept the claim (not so if the air carrier is responsible), but can recover the full damages (not so if the air carrier is liable, since its liability is normally limited).

3.2.3. *Compensation: amount and procedure.*

For a long time, PRM organisations have been pressing for unlimited liability in cases of incidents regarding mobility equipment both during handling at an airport or during transfer on-board aircraft. This approach is driven by the high cost of modern mobility equipment¹⁶ and the relatively low limit of current liability for baggage under international conventions, and in particular the Montreal Convention¹⁷, which indeed suggest that the amount of compensation under international conventions may not be adequate in all cases.

¹³ Regulation (EC) N° 889/2002 of the European Parliament and of the Council of 13 May 2002 (JO L 140/02 of 30.05.2002, amending Council Regulation (EC) N° 2027/97 on air carrier liability in the event of accidents.

¹⁴ See Article 1.10 of the REGULATION (EC) N° 889/2002.

¹⁵ Airport liability is not dealt with by any international convention or Community .

¹⁶ for example, electric wheelchairs can cost up to €10000

¹⁷ Up to 1000 SDRs (approximate amount in euros based on the SDR value on 10/03/2008 according to the IMF SDR valuation: €1060).

Most air carriers provide compensation in line with the Montreal Convention. Damages to the mobility equipment above 1000 SDR are at the passenger's own risk, 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 requires¹⁸. Special insurance for PRM mobility equipment is proposed by only a minority of companies and for a marginal number of airports. The majority of air carriers and of airports do not offer special insurance coverage for damaged or destroyed wheelchairs or mobility equipment.

According to the study, only a minority of EU companies allow PRM to declare that their mobility equipment has a higher value and that this can then be claimed accordingly. Among those companies, some limit the excess value declaration to a given amount above the level of compensation set by international and EU rules, but below the actual cost of the mobility equipment. Several carriers pointed out that declaring a special value involves “a supplement [that] has to be paid by the passenger”.

All stakeholders agree that the cost of providing for the needs of PRM must not be passed directly to PRM. However, only a few have drawn the logical conclusion and compensate the full cost of the damage or loss of the mobility equipment. The Regulation consolidates the principle that assistance shall be provided without additional charge to PRMs¹⁹, but its scope does not include the specific amount of compensation, which is left to be dealt with under the “rules of international, Community and national law²⁰”.

It is worth noticing that for railway transport, Community legislation imposes on railway companies the obligation of full compensation, if the railway undertaking is liable for the total or partial loss or damage of the mobility equipment²¹.

3.2.4. *The inclusion or exclusion of mobility equipment in the definition of "baggage".*

The point of view of PRM organisations and the majority of the Civil Aviation Authorities responding to the survey linked to the study is that mobility equipment should not be regarded as baggage. The purpose of this exclusion is that mobility equipment should not be subject to the airline limited liability rules laid down by the international conventions. As a consequence, airlines and airports should compensate the full cost of the lost mobility equipment or the price of repairing it.

The US Air Carrier Access Act (ACAA) does not give a definition of mobility equipment and does not expressly exclude it from the definition of baggage; however, it does impose full, objective liability without financial limits in the event of an accident involving mobility equipment on all carriers wishing to cover domestic routes in the United States²². The U.S. Department of Transportation intends to amend soon its regulation implementing the US Air Carrier Access Act to make foreign air carriers operating to and from the United States

¹⁸ in line with what it is stipulated by article 22.2 of the Montreal Convention and article 1.5 of Regulation 889/2002.

¹⁹ See Article 8 of Regulation n° 1107/2006.

²⁰ See article 12 of Regulation n° 1107/2006.

²¹ REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on rail passengers' rights and obligations, JO 315/14 of 31.12.2007, article 25.

²² The Air Carrier Access Act (ACAA) prohibits discrimination in air travel against individuals with disabilities. The U.S. Department of Transportation issued a regulation (14 CFR Part 382) implementing the ACAA which explicitly refers to the treatment of mobility aids and devices.

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.

The current Canadian legislation in place concerning PRMs is *Part VII of the Air transport Regulations: Terms and Conditions of Carriage Regulations*²³. The Canadian Transportation Agency seems to define mobility aids as priority checked items of a personal nature, even though the mobility equipment is not excluded from the baggage definition strictu sensu. By doing so the Canadian Transportation Agency does not allow companies working on their territory to apply the limited liability provisions in respect of destroyed, damaged or lost baggage in international conventions to mobility equipment. There is an understanding that to land in Canada, the carrier must respect the Canadian regulations. This understanding seems not to have been challenged by any foreign carrier.

4. AN ANSWER TO THE CHALLENGES: REGULATION N° 1107/2006.

4.1. Quantitative objective: to reduce the number of accidents.

As has been demonstrated in point 3.1 of this Communication, 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 being provided in all airports or by all airlines, indicate that improvements could easily be made. Regulation 1107/2006 has tackled this shortcoming in the current state of affairs by establishing legal obligations concerning both the necessary procedures and the necessary training for the staff to ensure adequate assistance to PRM²⁴.

Such legal obligations include, inter alia, the handling of mobility equipment at the airport or its transportation on board aircraft. Therefore, the quality and the adequacy of the assistance provided by airlines and air carriers should improve significantly. Specific procedures on check-in and training for staff in the handling of mobility equipment will raise awareness among employers and employees alike and help to reduce even further the number and the gravity of accidents, as well as the personal and economic costs.

4.2. Qualitative objective: to minimise the consequences of an incident.

Point 3.2.1 of this Communication highlights the shortcomings of the current lack of a common procedure which would provide immediate solutions on the spot, in the case of damaged or lost mobility equipment. Regulation 1107/2006 partly covers that legal vacuum. First of all, Annex I of Regulation 1107/2006 specifically includes in the definition of airport assistance the *"temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like for like basis"*²⁵. Secondly, Article 9 establishes a legal obligation for airports to set up *"quality standards for the assistance specified in Annex I and determine resource requirements for meeting them"*.

²³ The Terms and Conditions of Carriage Regulations issued under the authority of the Canada Transportation Act. Part V of the Act deals with the transportation of persons with disabilities. Section 155 of this Part V explains the provisions for a damaged or lost aid.

²⁴ See articles 9 and 11 of the Regulation

²⁵ See Annex I to Regulation n° 1107/2006.

As regards the difference between the nature and the limits of the liability of airlines and airports mentioned in point 3.2.2 of this Communication, article 12 of Regulation 1107/2006 establishes the obligation of compensation *"in accordance with rules of international, Community and national law"*.

The Commission will closely monitor how airports and airlines implement this responsibility in the new context laid down by the Regulation, in order to assess in the future whether the inclusion of a more precise definition of the airport's liability, along the lines of what it is laid down for air carriers in Regulation 889/2002, would be advisable.

With regard to the amount of compensation and the relevant procedure, dealt with in point 3.2.3 of this Communication, the number of incidents regarding mobility equipment is already small and the new protection offered by Regulation 1107/2006 should help to further reduce the number of incidents and their consequences. It therefore seems clear that, if the current rules applying to compensation were to be changed, any economic consequences which those accidents could involve for companies or airports would not have a major economic impact on carriers or airports.

Finally, point 3.2.4 of this Communication deals with the issue of whether mobility equipment should be deemed included in the notion of "baggage". This question is relevant because it is linked to the amount of the compensation, since the limits on liability imposed by international conventions only apply to baggage. Some of the Community's biggest air transport partners have already developed detailed administrative procedures regarding the rights of PRM on this issue. Broadly speaking, those administrative procedures impose objective liability and full compensation on air carriers and sometimes on airports. European air carriers covering transoceanic routes to Canada or domestic flights in the US or Canada do already comply with those rules outside the Community's borders. Some companies have already waived their limited liability through their own customer policy or their internal quality standards.

As these examples show, different options can be envisaged when dealing with the amount of the compensation paid in case of destroyed, damaged or lost mobility equipment in order to approximate it to the real value of such equipment. That goal can be achieved by seeking to interpret or define the notion of baggage so as to exclude mobility equipment, while still ensuring legal coverage of such equipment under the applicable international conventions, or alternatively by removing or reviewing the limits on financial compensation under those international conventions. Finally, airlines and airports might voluntarily waive their current limited liability regarding mobility equipment.

The Commission considers that it is worth addressing this issue at ICAO level with the aim of abolishing or reviewing any financial limit on lost, damaged or destroyed mobility equipment, laid down in the Montreal Convention. The Commission recognises the difficulties linked to re-negotiating an international Convention. However, the fact that some ICAO members have decided to unilaterally amend their rules and impose full compensation for their domestic routes regarding the mobility equipment indicates that such an EU initiative may receive political support.

In the mid-term, the Commission considers that the full application of Regulation 1107/2006 will improve both the monitoring and the enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost mobility equipment, as well as the kind of assistance to be provided on the spot when an incident occurs. Before deciding

whether to put forward a legislative proposal on these issues, the Commission considers it prudent to allow Regulation 1107/2006 to become applicable, before assessing its impact on the likely decreasing of incidents. Whilst taking into account current practices in other countries and having regard to Community legislation governing railway transport, the Commission in the short term encourages airlines to voluntarily waive their limited liability.

5. CONCLUSIONS

- (1) The Commission reminds airports and airlines of their obligation to put in place the quality standards and the necessary training and procedures regarding the handling of mobility equipment and the rights of PRM passengers in the case of an accident related to their mobility equipment, following in particular ECAC document n° 30 and its relevant annexes.
- (2) As regards the amount of compensation and in order to bring it closer to the actual value of the equipment, the Commission will propose to the Council that, with the cooperation of the Member States, the Community launch an initiative within ICAO with the aim of clarifying or defining the term 'baggage' so as to exclude mobility equipment or, alternatively, of abolishing or reviewing any liability limits on lost, damaged or destroyed mobility equipment, in the framework of the Montreal Convention.
- (3) The Commission encourages airlines in the UE to voluntarily waive their current liability limits in order to bring the amount of compensation closer to the actual value of the mobility equipment.
- (4) The Commission will monitor in 2008-2009 the compliance of Member States, air carriers and airports with Community law, including Regulation 1107/2006.
- (5) The Commission encourages the stakeholders to carry out a better and more systematic collection of data concerning claims related to mobility equipment.
- (6) The Commission will include in the Report foreseen in Article 17 of Regulation 1107/2006 a chapter on the rights of PRM whose mobility equipment has been lost, damaged or destroyed. The Commission will then assess the actual developments following the entry into force of Regulation 1107/2006 and the progress of the initiative within ICAO mentioned in point (2) of these conclusions. If the assessment shows that necessary improvement has not been achieved, the Commissions will put forward an appropriate legislative proposal to enhance the existing rights under Community 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, including the revision of the current threshold for compensation and the need to better define airport liability.

**EVALUATION OF REGULATION
1107/2006**

Final report

Main report and Appendices A-B

June 2010

Prepared for:

European Commission
Directorate-General Energy and Transport
DM28 5/70
Brussels
Belgium

Prepared by:

Steer Davies Gleave
28-32 Upper Ground
London
SE1 9PD

+44 (0)20 7910 5000
www.steerdaviesgleave.com

Contents	Page
EXECUTIVE SUMMARY	1
Background	1
Factual conclusions	1
Recommendations	4
1. INTRODUCTION	8
Background	8
The need for this study	8
This report	8
Structure of this document	9
2. RESEARCH METHODOLOGY	10
Introduction	10
Overview of our approach	10
Selection of case study States	11
Stakeholder selection and inputs	12
Desk research	19
3. APPLICATION OF THE REGULATION BY AIRPORTS	21
Introduction	21
Requirements of the Regulation	21
Categories of PRM defined by carriers and airports	22
Services actually provided by airports	23
Policies on service provision	25
Statistical evidence for carriage of PRMs	27
Organisation of service delivery	31
Airport charges	33
Quality standards	38
Complaints to airports	47
Training	48
Stakeholder views on effectiveness of implementation	49
Conclusions	53
4. APPLICATION OF THE REGULATION BY AIRLINES	55
Introduction	55
Requirements of the Regulation for air carriers	55
Published safety rules	56

Carrier requirements on carriage of PRMs	61
Services provided to PRMs	70
Pre-notification of requirements	74
Complaints to airlines	79
Cost of complying with the Regulation	79
Training	80
Stakeholder views on effectiveness of implementation by airlines	81
Stakeholder views on effectiveness of pre-notification systems	84
Conclusions	85
5. ENFORCEMENT AND COMPLAINT HANDLING BY NEBS	87
Introduction	87
Requirements of the Regulation relating to States and NEBs	87
Overview of the NEBs	88
Legal basis for complaint handling and enforcement	91
Statistics for complaint handling and enforcement	95
The complaint handling and enforcement process	97
Monitoring undertaken by NEBs	106
Other activities undertaken by NEBs	110
Stakeholders views on complaint handling and enforcement	112
Conclusions	113
6. STAKEHOLDER VIEWS ON POLICY ISSUES	116
Introduction	116
Whether changes should be made to the Regulation	116
The content and drafting of the Regulation	117
Conclusions	121
7. FACTUAL CONCLUSIONS	122
Introduction	122
Implementation of the Regulation by airports	122
Implementation of the Regulation by air carriers	124
Enforcement and complaint handling by NEBs	125
Other issues that have arisen with the Regulation	127
Conclusions	127
8. RECOMMENDATIONS	128
Overview	128

Measures to improve the operation of the Regulation	128
Recommendations for changes to the Regulation	133

FIGURES

Figure 3.1	Frequency of PRMs requesting assistance at Airports (2009)	27
Figure 3.2	Frequency of PRMs over the year (2009)	28
Figure 3.3	Rate of PRMs observed at Brussels Zaventum airport	29
Figure 3.4	Variation in types of PRMs assisted (2009)	30
Figure 3.5	Airport Charges per departing passenger (€ at current exchange rates)	35
Figure 3.6	Airport Charges per departing passenger, 2009 (€ at 2008 EU-27 PPP)	36
Figure 3.7	Airport costs per PRM assisted, 2009 (€ at 2008 EU-27 PPP)	37
Figure 3.8	Proportion of Airports Publishing Quality Standards	39
Figure 3.9	Rate of complaints received by airports, 2009	48
Figure 3.10	Views of stakeholders on airport effectiveness	50
Figure 4.1	Conditions on Carriage of PRMs	64
Figure 4.2	Pre-notification rates by airport	78
Figure 4.3	Stakeholder views: airlines	81
Figure 4.4	Stakeholder views: pre-notification	84
Figure 5.1	Views of stakeholders on NEB effectiveness	112

TABLES

Table 2.1	Stakeholder Interviews: Case Study NEBs
Table 2.2	Stakeholder Interviews: Non-case study NEBs
Table 2.3	Airline Selection Criteria
Table 2.4	Stakeholder Interviews: Airlines
Table 2.5	Stakeholder Interviews: Airline Associations

Table 2.6	Airport Selection Criteria
Table 2.7	PRM and Passenger Organisations by Case Study State
Table 2.8	Stakeholder Interviews: Other Organisations
Table 3.1	Airport service provided to non-pre-notified PRMs
Table 3.2	Methods of procuring PRM services at airports
Table 3.3	Scope of quality standards: departing passengers
Table 3.4	Scope of quality standards: arriving passengers
Table 3.5	Airport actions to monitor quality standards
Table 3.6	NEB actions to monitor quality standards
Table 4.1	Information available on carrier websites
Table 4.2	Conditions of Carriage of PRMs
Table 4.3	Airline PRM Limits
Table 4.4	Options to Notify Carriers of Requirements
Table 5.1	Enforcement bodies
Table 5.2	States where NEBs are different under Regulations 1107/2006 and 261/2004
Table 5.3	Relevant national legislation
Table 5.4	Maximum fines
Table 5.5	Complaints received
Table 5.6	Languages in which complaints are handled
Table 5.7	Time taken to resolve complaints
Table 5.8	Responses issued to passengers
Table 5.9	Policy on imposition of sanctions
Table 5.10	Issues with application of sanctions to carriers not based in the State
Table 5.11	NEB actions to monitor airport quality of service (excluding indirect monitoring)
Table 5.12	NEB actions to monitor airline quality of service and policy

Table 5.13 NEB actions to monitor airport charges (excluding indirect monitoring)

Table 5.14 NEB interaction with other organisations

Table 5.15 NEB activity to promote awareness of the Regulation

APPENDICES

A AIR CARRIERS POLICIES ON CARRIAGE OF PRMS

B SERVICES PROVIDED BY AIR CARRIERS

C CASE STUDIES (Provided as separate document)

EXECUTIVE SUMMARY

Background

1. Regulation 1107/2006, which took full effect in July 2008, introduced new protections for people with reduced mobility when travelling by air. Key provisions included:
 - The right, subject to certain derogations, not to be refused embarkation or reservation.
 - The right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight.
 - Responsibility for provision of assistance to PRMs at airports is placed with the airport management company; previously, these services were usually contracted by airlines.
 - The costs of providing assistance at airports can be recovered from airlines through transparent and cost-reflective charges levied for all passengers.
2. The Regulation also required Member States to introduce sanctions into national law for non-compliance with the Regulation, and create National Enforcement Bodies (NEBs) responsible for enforcement of the Regulation. The Regulation applies to all flights from and within the European Union (EU), as well as to flights to the EU operated by EU-registered carriers.
3. The Regulation requires the Commission to report to the Council and the Parliament on its operation and results, and if appropriate to bring forward new legislative proposals. In order to inform this report, the Commission has asked Steer Davies Gleave to undertake an independent review of the Regulation.

Factual conclusions

4. Our review has gathered evidence on the implementation of the Regulation through in-depth discussions and consultation with stakeholders, supplemented by desk research. Stakeholders included airports, airlines, NEBs and PRM organisations. The evidence gathered shows that most of the airports and airlines examined for the study have implemented the requirements of the Regulation. However, there is significant variation in the quality of service provided by airports, and in the policies of airlines on carriage of PRMs. We also identified relatively little activity by NEBs to monitor the Regulation's implementation, or to promote awareness of the rights it grants.
5. Conclusions regarding each of the groups of stakeholders are set out below.

Airlines

6. The key issue we identified in the study is the lack of consistency in policies on carriage, and the significant variation between carriers. For example, Ryanair permits a maximum of 4 PRMs who require assistance on any flight, and Brussels Airlines permits at most 2 on most aircraft; in contrast, British Airways does not impose any restrictions. There is similar variation in policies on whether PRMs have to be accompanied. Approval of policies is the responsibility of national safety regulators, however typically airlines propose policies which are then approved with little or no challenge by the licensing authority (often the same organisation as the NEB).

Although the rationale for these restrictions is safety, there is limited evidence to justify them. Limitations on carriage of PRMs are specifically prohibited by the equivalent US regulation on carriage of PRMs¹.

7. All airlines in the study sample had published some information on carriage of PRMs, however 13 of the 21 did not publish on their websites all of the restrictions on carriage of PRMs that they imposed. Most stated in their Conditions of Carriage that PRMs would not be refused, but this was usually conditional on pre-notification; this may be an infringement of the Regulation.
8. The Regulation encourages PRMs to pre-notify their requirements for assistance to airlines, which are then required to pass on this information to the relevant airports. In theory this should both ensure that PRMs promptly receive the services they need, and allow airports to minimise resourcing costs through efficient rostering. However, our research found that levels of pre-notification too low to allow this: at 11 of 16 airports for which we were provided with information, pre-notification rates were lower than 60%.
9. PRM representative organisations informed us that loss or damage to mobility equipment could still be a significant issue. The Regulation requires airports to handle mobility equipment but does not introduce any new provisions which reduce the risk of loss or damage, or increase the amount of compensation payable, which is restricted by the limits defined in the Montreal Convention.

Airports

10. All airports in the study sample had implemented the Regulation, although we were informed that the Regulation had not been implemented at all at regional airports in Greece. Most had subcontracted the service through a competitive tender; several informed us that they were considering or were in the process of retendering the service, generally because service quality in the initial period had not been sufficient.
11. The frequency with which the PRM services are used varies considerably between airports: among the airports for which we have been able to obtain data use of services varies by a factor of 15, although in most cases between 0.2% and 0.7% of passengers requested assistance.
12. Most airports in the case study States had published quality standards, typically following the format of the minimum recommended standards in ECAC Document 30. Most undertook some form of internal monitoring of performance, however few used external checks of service such as ‘mystery shoppers’. Most stakeholders informed us that airports were providing an adequate level of service quality.
13. Variability in airport service quality (including safety) was reported by PRM organisations and some airlines, but this is subjective and hard to quantify. Airports reported variation in equipment and facilities provided, and we observed significant

¹ US Department of Transport 14 CFR part 382.

variation in the level of training given to personnel providing services to PRMs. In the sample examined, training varied between 3 and 14 days, ostensibly to provide the same services.

14. Charges levied by airports varied considerably (between €0.16 and €0.90 per departing passenger), and we were unable to identify any apparent link to frequency of service use, price differentials between States or service quality. Airports in Spain and mainland Portugal levied uniform charges across all airports managed by the national airport company; this may be an infringement of the Regulation. Many airlines believed consultation by airports regarding charges was poor; Cyprus, Spain and Portugal were identified as particular issues.

NEBs

15. All States except Slovenia have designated NEBs; in most cases the NEB is the CAA, and is the same organisation as the NEB for Regulation 261/2004. All States except Poland and Sweden have introduced penalties into national law for infringements of the Regulation, although several have not introduced sanctions for all possible infringements. The maximum sanction which can be imposed varies significantly, and in some States may not be at a high enough level to be dissuasive; for example, in Estonia, Lithuania and Romania the maximum sanction is lower than €1,000.
16. Most States have received very few complaints to date; in total 1,110 received to date, compared to a total of 3.2m passengers assisted in 2009 across 21 case study airports. 80% of all complaints regarding infringements of the Regulation had been submitted to the UK NEBs; this may be the result of national law in the UK which permits financial compensation to be claimed under the Regulation. No sanctions have yet been imposed, although the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In a number of States we identified significant practical difficulties in imposing and collecting sanctions, typically in relation to imposing fines on carriers registered in other States. These issues are in most cases equivalent to those that apply in relation to Regulation 261/2004².
17. Although most case study NEBs had taken some action to monitor the services provided under the Regulation beyond the monitoring of complaints (14 out of 16 had undertaken at least one inspection of airports), in most cases this was limited. Most inspections focussed on checks of systems and procedures, and did not assess the experience of passengers using the services. Monitoring of PRM charges was also poor: NEBs in 9 of the 16 States had undertaken no direct monitoring of airport charges.
18. Few NEBs had made significant efforts to promote awareness of the Regulation by passengers, as required by the Regulation; only two informed us of national public awareness campaigns they had undertaken. This lack of promotion undermines the claims of some NEBs that reviewing complaints is sufficient to monitor the

² See Evaluation of Regulation 261/2004, February 2010:
http://ec.europa.eu/transport/passengers/studies/doc/2010_02_evaluation_of_regulation_2612004.pdf.

implementation of the Regulation. Awareness of the NEBs' performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

Other issues

19. A particular issue raised by stakeholders was the conflict between the Regulation and the equivalent US legislation (14 CFR Part 382), which applies to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. The most significant conflict is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. The US legislation also prohibits airlines from imposing numerical limits on PRMs, and from requiring pre-notification from PRMs. This has caused issues for carriers who are required to comply with pieces of legislation that conflict, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.
20. A number of other issues regarding specific Articles are discussed in the section below on recommended changes to the Regulation.

Recommendations

21. We have made a number of recommendations, addressing:
 - improvements to the implementation of the Regulation which would not require any legislative changes; and
 - further recommendations which could only be implemented through amendment to the text of the Regulation.

Measures to improve the operation of the Regulation

22. Several airlines argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide this more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and our most important recommendation is therefore that allocation of responsibility for PRM services to airports should not be amended.
23. Many of the concerns raised regarding airports relate to inconsistency of application of the Regulation. To address this, we suggest that the Commission should:
 - improve provision of information regarding accessibility of airports, through a centralised website listing factors such as maximum likely walking distance within an airport, means used for access to aircraft, and any facilities available for PRMs;
 - develop and share best practice on contracting of PRM service providers, both to improve the content and structure of the contracts used and therefore reduce

-
- the likelihood of unnecessary retendering, and to recommend methods of cooperation; and
- develop and share best practice advice on training of staff providing PRM services, so that a more consistent standard of service is provided.
24. Similarly, many of the concerns raised regarding airlines also relate to inconsistency of application of the Regulation, in particular to inconsistent policies on carriage of PRMs. We therefore suggest that the Commission should:
- work with EASA to determine safe policies on carriage of PRMs, in particular to address the wide and unjustifiable variation in airline policies on carriage of PRMs (in particular on numerical limits and circumstances under which PRMs are required to be accompanied); and
 - ensure that the airlines we have identified as not publishing clear policies on carriage of PRMs do so, through actions by the relevant NEBs (which could also review airlines outside the study sample for the same reason).
25. Given the current low rates of rates pre-notification, we suggest that the Commission monitor this issue, through encouraging NEBs to collect rates of pre-notification. In future, the Commission should assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.
26. An additional problem reported with pre-notification is where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification.
27. The greatest problem identified by the study regarding NEBs was the lack of proactive measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. We suggest that the Commission should encourage all Member States to:
- designate NEBs and introduce penalties for all infringements of the Regulation;
 - take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB, for example through national promotional campaigns; and
 - pro-actively monitor the application of the Regulation (rather than relying on complaints), for example through increased interaction with PRM organisations, and through direct monitoring of quality of service provided.
28. We also recommend that the Commission should, in consultation with stakeholders, develop a detailed good practice guide regarding implementation of the Regulation. This could include sections regarding recommendations on safety limits, the format and content of policies on carriage, and consultation. It could also specify recommended minimum quality standards covering qualitative aspects of the services provided. Publishing voluntary policies such as these would allow potential future amendments to the Regulation to be tested in practice before adoption.
-

Changes to the Regulation

29. There are some areas where improvements can only be effected through changes to the text of the Regulation. These include minor amendments which we recommend should be implemented as soon as possible, and more significant amendments to be considered in the longer term.
30. The minor amendments we would suggest are:
- Extend Article 11 to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment.
 - Amend Article 8 to make specific PRM charges obligatory for airports wishing to recover costs from users, and therefore ensure costs are transparent, reasonable and cost-related.
 - Amend Article 8 to make clear that that PRM charges are airport-specific and cannot be set at a network level.
 - Amend Article 14 to require that NEBs must be independent of any bodies responsible for providing services under the Regulation (at present this is not the case in Greece).
 - Amend Article 14 to clarify that NEBs are responsible for flights departing from (rather than both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within the State's territory but departing from a third country.
 - Amend Recital 17 to be consistent with Article 14, so that both state that complaints regarding the Regulation should be addressed to the NEB of the State where the flight departed, rather than of the State which issued the operating license to the carrier.
31. These changes would improve the functioning of the Regulation in its current form, without making significant changes to its overall approach.
32. A key issue with the Regulation is its lack of detail when compared to equivalent legislation (in particular, the equivalent US regulations on carriage of PRMs); in our view, as a result of this, it leaves too much scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency, and that PRMs' rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. Some key areas in which we suggest that changes could be made are as follows:
- Specify the circumstances under which carriage of PRMs may be restricted (including any numerical limits) or where PRMs may be required to be accompanied³.
 - Clarify the definitions of 'PRM', 'mobility equipment' and 'cooperation'.

³ This could be implemented either through amendment to this Regulation or through amendment to Commission Regulation (EC) 859/2008

- Clarify whether airlines may levy additional charges for supply of medical oxygen and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers).
 - Extend the Regulation to include a provision requiring airports to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport.
33. It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.
34. We also suggest that the Commission and the Member States should work with other contracting States to amend the Montreal Convention so as to exclude mobility equipment from the definition of baggage. This would address the problem faced by users of technologically advanced wheelchairs, the values of which often substantially exceed the maximum compensation allowable under the Montreal Convention (1,131 SDRs, or €1,370). Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not, and even in the case that an airline voluntarily waives the limit the PRM is in a position of uncertainty.

1. INTRODUCTION

Background

- 1.1 Approximately 10% of the EU population has some type of disability⁴. Equal access to air transport services is necessary to enable full and equal participation in modern society. In order to ensure equal treatment as far as possible, Regulation 1107/2006 introduced new protections for people with reduced mobility when travelling by air, including the right, subject to certain derogations, not to be refused embarkation or reservation, and the right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight. Before the introduction of the Regulation, there had been some well-publicised examples of carriers charging passengers for the provision of assistance that was essential in order to travel⁵.
- 1.2 The Regulation creates obligations towards disabled persons and persons of reduced mobility (PRMs) for air carriers and their agents, tour operators, airport management companies, and Member States:
- Airlines are prohibited from refusing carriage (except where necessary to comply with safety regulations or where it is physically impossible) and have to provide certain types of assistance on board the aircraft.
 - Airlines, their agents and tour operators have to ensure that they can accept notification of the need for assistance at all points of sale, and transmit this information to the airport and the operating air carrier.
 - Airport management companies have to provide assistance at the airport, and develop and publish quality standards for this assistance. The costs of providing this assistance can be recovered through transparent and cost-reflective charges levied for all passengers.
 - Member States are required to introduce sanctions into national law for non-compliance with the Regulation, create bodies responsible for enforcement of the Regulation, and promote awareness of the rights created by the Regulation and how to complain about infringements.

The need for this study

- 1.3 Article 17 of the Regulation requires the Commission, by 2010, to report to the Parliament and the Council on the operation and results of the Regulation. In order to inform this report, the Commission requires an independent evaluation of the operation of the Regulation.

This report

- 1.4 This report is the Final Report for the study. It sets out the work undertaken over the five month duration of the study, and draws conclusions on the current functioning of the Regulation. The recommendations set out in this report were discussed at the final

⁴ ECAC document 30, section 5, annex N

⁵ For example, on January 2004 a UK court ruled that Ryanair had acted unlawfully by charging a passenger Bob Ross £18 in each direction for wheelchair hire at London Stansted airport

meeting with the Commission.

Structure of this document

- 1.5 The rest of this report is structured as follows:
- Section 2 summarises the methodology used for this study;
 - Section 3 sets out how the Regulation is being applied by airports;
 - Section 4 sets out how the Regulation is being applied by airlines;
 - Section 5 describes enforcement and complaint handling by NEBs;
 - Section 6 summarises stakeholder views on other policy issues relating to the Regulation;
 - Section 7 summarises the factual conclusions; and
 - Section 8 summarises the recommendations.
- 1.6 Further detailed information on the policies of airlines regarding carriage of PRMs is provided in Appendices A and B.
- 1.7 Case studies have been undertaken of complaint handling and enforcement in 16 Member States. These are provided in Appendix C, which, due to its size, is provided as a separate document.

2. RESEARCH METHODOLOGY

Introduction

2.1 This section provides a summary of the research methodology used. It describes:

- the overall approach used;
- the selection of case studies;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the study, and how they have provided inputs.

Overview of our approach

2.2 The Commission requested us to collect evidence to address a number of questions, most of which can be categorised as either relating to:

- enforcement and complaint handling undertaken by National Enforcement Bodies (NEBs); and
- application of the Regulation by air carriers, their agents, tour operators and airports.

2.3 In order to address these questions, we developed a research methodology divided into two parts:

- case study research; and
- cross-EU interviews and analysis.

2.4 The rationale for this division is that enforcement and complaint procedures are specific to Member States and are therefore best evaluated through a case study approach. It was agreed to undertake case studies of complaint handling and enforcement in 16 Member States as part of this study. The case studies also describe state-specific aspects of airline and airport implementation of the Regulation.

2.5 Key airlines cover the whole of the EU rather than restricting operations primarily to one State (for example, the Irish-registered carrier Ryanair operates domestic flights in the UK, France, Spain and Italy). In addition, the issues faced by airports in implementing the Regulation are, in most cases, not State-specific. Questions relating to the application of the Regulation by airlines and airports have therefore been addressed through a cross-EU approach. Information from both elements of the research has been used for the conclusions, and will be used in the development of recommendations.

2.6 Both the case study and the cross-EU research use a mixture of stakeholder interviews and desk research. The desk research has been useful to supplement the information provided by stakeholders, particularly regarding the charges levied by airports for services to PRMs.

Selection of case study States

2.7 The 16 case study states were selected in agreement with the Commission, with reference to the following criteria:

- The Member States with the largest aviation markets (measured by passenger numbers these are UK, Spain, Germany, Italy, France, Greece, Netherlands and Ireland);
- At least some of the Member States that, at the time the study commenced, had not introduced sanctions into national law;
- Member States in which the structure of the NEB is unusual (for example, in the UK, the Equality and Human Rights Commission is responsible for complaint handling);
- Member States in which airlines are based with which we identified significant issues of non-compliance with Regulation 1107/2006 in our 2008 review of Conditions of Carriage (carriers with some particularly non-compliant terms were based in Denmark and Italy); and
- States covering a wide geographical scope and variation in sizes.

2.8 The case study states are:

- Belgium;
- Denmark;
- France;
- Germany;
- Greece;
- Hungary;
- Ireland;
- Italy;
- Latvia;
- Netherlands;
- Poland;
- Portugal;
- Romania;
- Spain;
- Sweden; and
- United Kingdom.

2.9 In order to present a thorough analysis of the operation of the Regulation across the EU we conducted a more limited programme of data collection and stakeholder interviews in the remaining 11 Member States.

Stakeholder selection and inputs

2.10 The stakeholders important for the study were:

- NEBs;
- Airlines;
- Airport managing bodies; and
- Organisations representing disabled people, and people with reduced mobility (PRM organisations).

2.11 In addition to these, we spoke to cross-EU bodies which represented these organisations at a European level.

National Enforcement Bodies

2.12 We interviewed (face-to-face or by telephone) the NEB(s) notified to the Commission in every case study State, and obtained written responses from the NEBs of all other States.

2.13 We obtained the following information from each NEB:

- The legal basis for complaint handling and enforcement in the Member State;
- The degree of compliance by airlines;
- The degree of compliance by airports;
- Statistics on the number of complaints and the process for handling them;
- Issues relating to enforcement; and
- Any other issues.

2.14 Non-case study states were provided with a shorter question list which, while addressing the areas listed above, does so at a less detailed level.

2.15 Engagement of the NEBs was obtained through a combination of written responses, meetings and telephone interviews, depending on whether the State concerned is one of the 16 case study states. The approach adopted for case study NEB is listed in Table 2.1, together with the final status of contact as we drafted this Report.

TABLE 2.1 STAKEHOLDER INTERVIEWS: CASE STUDY NEBS

Member State	Organisation	Form of input
Belgium	SPF Mobilité et Transport	Written response and face-to-face interview
Denmark	CAA-Denmark (Støtens Luftfartsvesen)	Face-to-face interview
France	DGAC Sous-direction du tourisme	Face-to-face interview
Germany	Luftfahrt-Bundesamt (LBA) BM für Verkehr, Bau und Stadtentw	Face-to-face interview
Greece	CAA, Air Transport Economics Section CAA, Airports Division	Written response and telephone interview

Member State	Organisation	Form of input
Hungary	Nemzeti Közlekedési Hatóság (Directorate for Aviation) Egyenlő Bánásmód Hatóság (Equal Treatment Authority)	Face-to-face interview
Ireland	Commission for Aviation Regulation	Face-to-face interview
Italy	ENAC - Direzione Centrale Operazioni	Face-to-face interview
Latvia	Civil Aviation Agency	Written response and telephone interview
Netherlands	Inspectie Verkeer en Waterstaat	Written response and face-to-face interview
Poland	Civil Aviation Office	Face-to-face interview
Portugal	Instituto Nacional de Aviação Civil	Face-to-face interview
Romania	Autoritatea Nationala Pentru Persoanele cu Handicap Romanian Civil Aeronautical Authority	Face-to-face interview
Spain	Servicio de inspección y relaciones con usuarios	Written response and face-to-face interview
Sweden	Swedish Civil Aviation Authority	Written response and telephone interview
United Kingdom	Equality and Human Rights Commission (England) Civil Aviation Authority	Face-to-face interview

2.16 We obtained responses from all NEBs in the non-case study States, as shown in Table 2.2. We requested written responses from all non-case study NEBs and these were followed up with telephone interviews where necessary for clarification.

TABLE 2.2 STAKEHOLDER INTERVIEWS: NON-CASE STUDY NEBS

Member State	Organisation
Austria	Civil Aviation Authority
Bulgaria	Civil Aviation Administration Ministry of Transport, Information Technologies and Communications
Cyprus	Department of Civil Aviation
Czech Republic	Civil Aviation Authority
Estonia	Consumer Protection Body
Finland	Civil Aviation Authority
Lithuania	Civil Aviation Administration
Luxembourg	Direction de l'Aviation Civile
Malta	Department of Civil Aviation
Slovakia	Slovak Trade Inspection Ministry of Transport, Posts and Telecommunications, Directorate General of Civil Aviation and Water Transport, Air Transport Department
Slovenia	Ministry of Transport, Directorate of Civil Aviation

Airlines

2.17 20 airlines have been selected to include a sample with variation across several criteria. These are:

- One key airline with major operations in each case study State;
- At a minimum to include the top 10 European airlines measured in terms of passenger numbers;
- Also to include a mix of different airline types (legacy, low cost and charter), States of registration, and sizes; and
- At least 2 non-EU airlines.

2.18 The airlines selected, and their relevance to each of the criteria, is shown in Table 2.3. We were originally planning to consider Air France-KLM as one airline, but various differences (for example, in its Conditions of Carriage) have meant that it is more logical to consider it as two airlines, meaning there are 11 airlines under the ‘Top 10 passenger numbers’ criterion. We have consequently excluded the 11th (Austrian) from the interview sample, although the airline still forms part of the desk research.

TABLE 2.3 AIRLINE SELECTION CRITERIA

Airline	Case study State coverage		Airline type				Top 10 passenger numbers
	Selected for case study state coverage	Case study states	Non-EU	Legacy	Low cost	Charter	
Aegean Airlines	✓	Greece			✓		
Air Berlin					✓		✓
Air France	✓	France / Netherlands		✓			✓
AirBaltic	✓	Latvia			✓		
Alitalia	✓	Italy		✓			✓
British Airways	✓	UK		✓			✓
Brussels Airlines	✓	Belgium		✓			
Delta			✓	✓			
EasyJet					✓		✓
Emirates			✓	✓			
Iberia	✓	Spain		✓			✓
KLM	✓	Netherlands		✓			✓
Lufthansa	✓	Germany		✓			✓
Ryanair	✓	Ireland			✓		✓
SAS	✓	Denmark / Sweden		✓			✓
TAP Portugal	✓	Portugal		✓			
TAROM	✓	Romania		✓			
Thomas Cook						✓	
TUI (Thomsonfly)						✓	

Wizzair	✓	Hungary / Poland	✓
---------	---	------------------	---

2.19 We approached all 21 case study airlines requesting either a face-to-face or telephone interview. The methods they chose to respond are shown in Table 2.4 below.

TABLE 2.4 STAKEHOLDER INTERVIEWS: AIRLINES

Airline	Form of input
Aegean Airlines	Written response and telephone interview
Air Berlin	Input through IACA only
Air France	Telephone interview
AirBaltic	Did not respond
Alitalia	Written response
British Airways	Declined to participate
Brussels Airlines	Did not respond
Delta	Written response
easyJet	Face-to-face interview
Emirates	Did not respond
Iberia	Telephone interview
KLM	Face-to-face interview
Lufthansa	Declined to participate
Ryanair	Face-to-face interview
SAS	Written response
TAP Portugal	Face-to-face interview
TAROM	Face-to-face interview
Thomas Cook	Face-to-face interview
TUI (Thomsonfly)	Input through IACA only
Wizzair	Did not respond

2.20 We also consulted the five main associations representing airlines operating airlines within the EU, listed in Table 2.5 below.

TABLE 2.5 STAKEHOLDER INTERVIEWS: AIRLINE ASSOCIATIONS

Organisation	Full Name	Type of airline represented	Form of input
IATA	International Air Transport Association	Legacy	Written response and telephone interview
ELFAA	European Low Fares Airline Association	European low cost	Face-to-face interview
AEA	Association of European Airlines	European legacy	Face-to-face interview
ERA	European Regions Airlines Association	European regional	Face-to-face interview
IACA	International Air Carrier Association	Leisure / charter	Face-to-face interview

Airports

2.21 The 21 case study airports were selected according to the following criteria:

- All of the top 10 European airports in terms of passenger numbers;
- The main airport in each of the 16 case study Member States; and
- A sample of smaller airports.

2.22 The airports selected under each criterion, and the methods they chose to respond, are shown in Table 2.6. Note that three of the top 10 airports were excluded from the case study consultation as they were operated by the same organisations as others in the top 10. These comprise Paris Orly, London Gatwick, Zaragoza and Barcelona airports which, at the time the study was planned, were managed by the same companies as Paris CDG, Heathrow and Madrid Barajas respectively⁶. These airports do still form part of the desk research, however.

TABLE 2.6 AIRPORT SELECTION CRITERIA

Airport	State	Main airport in case study State	Top 10 passenger numbers	Smaller airport	Form of input
Amsterdam	Netherlands	✓	✓		Face-to-face interview
Athens	Greece	✓			Written response and telephone interview
Bologna	Italy			✓	Face-to-face interview
Brussels	Belgium	✓			Face-to-face interview
Bucharest Otopeni	Romania	✓			Face-to-face interview
Budapest	Hungary	✓			Face-to-face interview
Brussels Charleroi	Belgium			✓	Face-to-face interview
Copenhagen	Denmark	✓			Written response and telephone interview
Dublin	Ireland	✓			Face-to-face interview
Frankfurt Main	Germany	✓	✓		Face-to-face interview
Lisbon	Portugal	✓			Face-to-face interview
London Heathrow	United Kingdom	✓	✓		Face-to-face interview
London Luton	United Kingdom			✓	Face-to-face interview
Madrid Barajas	Spain	✓	✓		Face-to-face interview*
Munich	Germany		✓		Not able to obtain a response
Paris Charles De Gaulle	France	✓	✓		Face-to-face interview
Riga	Latvia	✓			Written response and telephone interview
Roma Fiumicino	Italy	✓	✓		Written response and telephone interview

⁶ Gatwick ceased to be managed by BAA, the operator of Heathrow, on 2 December 2009

Stockholm	Sweden	✓		Written response and telephone interview
Warsaw	Poland	✓		Face-to-face interview
Zaragoza	Spain		✓	Face-to-face interview*

* Interview with AENA covered all State airports in Spain

Selection of PRM organisations and other passenger groups

2.23 In each case study State we selected a PRM organisation representing all disabilities and impairments at a national level. We initially approached the national council organisations that are members of the European Disability Forum (EDF); however in a small number of cases we were unable to obtain a response from this organisation and had to contact an alternative organisation in their place. The table also includes four cross-EU PRM organisations.

TABLE 2.7 PRM AND PASSENGER ORGANISATIONS BY CASE STUDY STATE

State	Organisation	Form of input
Belgium	Belgium Disability Forum	Telephone interview
Denmark	Danske Handicaporganisationer (DH; Disabled Peoples Organisations Denmark)	Face-to-face interview
France	Conseil Français des personnes Handicapées pour les questions Européennes (CFHE ; French Council of Disabled People for European Affairs)	Telephone interview
Germany	Deutscher Behinderten Rat (DBR; German Disability Council)	Unable to obtain a response
Greece	National Confederation of Disabled People (ESAEA)	Written response and telephone interview
Hungary	National Council of Federations of People with Disabilities (FESZT)	Written response and telephone interview
Ireland	People with Disabilities in Ireland (PWDI)	Face-to-face interview
Italy	Forum Italiano sulla Disabilità (FID; Italian Disability Forum)	Face-to-face interview
Latvia	Latvian Umbrella Body for Disability Organisations (SUSTENTO)	Written response and telephone interview
Netherlands	CG-Raad*	Face-to-face interview
Poland	Polskie Forum Osob Niepełnosprawnych (PFON; Polish Disability Forum)	Face-to-face interview
Portugal	Confederação Nacional dos Organismos de Deficientes (CNOD; National Confederation of Organisations of Disabled People)	Unable to obtain a response
Romania	National Disability Council (CNDR)	Face-to-face interview
Spain	Fundación ONCE*, on request of Comité Español de Representantes de Personas con Discapacidad (CERMI)	Face-to-face interview
Sweden	Swedish Disability Federation (HSO)	Written response and telephone interview
United Kingdom	UK Coalition for Disability Rights in Europe (UKCDRE)	Telephone interview

EU	European Disability Forum	Face-to-face interview
EU	European Blind Union	Face-to-face interview
EU	European Union of the Deaf	Written response and telephone interview
EU	Inclusion Europe	Declined to respond

* Not a national council organisation member of EDF

Selection of other organisations

2.24 In addition to the stakeholders listed above, we contacted a number of cross-EU organisations. These comprised:

- **Passenger organisations:** the European Passenger Federation;
- **Travel agent associations:** ECTAA;
- **Airport association:** ACI Europe; and
- **Advisory bodies:** EASA, ECAC.

2.25 At the level of Member States, there were stakeholders which did not correspond to the categories described so far, but which we believed would provide useful information. These organisations were as follows:

- **Wings on Wheels (UK):** This organisation provides package holidays tailored to the needs of disabled people.
- **Thomas Cook, TUI:** Elements of the Regulation apply to travel agents as well as to airlines.
- **Air Transport Users Council (UK):** Prior to the introduction of the Regulation, this organisation had handled complaints from disabled passengers regarding travel by air, and as a result continued to receive some complaints after the Regulation came into force. In addition, the AUC is the only government-funded body in the EU specifically to represent the interests of air passengers

2.26 The form of input adopted by each stakeholder is shown in Table 2.8.

TABLE 2.8 STAKEHOLDER INTERVIEWS: OTHER ORGANISATIONS

State	Association name	Form of input
EU	ECTAA	Written response
EU	EPF	Did not respond
EU	ACI Europe	Face-to-face interview
EU	EASA	Written information provided
EU	ECAC	Face-to-face interview
United Kingdom	Wings on Wheels	Unable to obtain a response
Germany	Thomas Cook	Face-to-face interview
United Kingdom	TUI	Through IACA only
United Kingdom	Air Transport Users Council	Face-to-face interview

Desk research

- 2.27 The main objectives of the desk research were:
- To evaluate the extent to which air carriers demonstrate compliance with the Regulation through published information, such as Conditions of Carriage and policies on carriage of PRMs; and
 - The extent to which airports have complied with the requirement to develop and publish PRM quality standards, as specified in Article 9 of the Regulation, and the content of these standards.
- 2.28 Conclusions emerging from the desk research were supplemented by the information collected through stakeholder interviews.

Airlines

- 2.29 The research methodology employed for this part of the study was based on a review of the websites of the 21 case study airlines listed above. Although the focus was on the English language version of the websites, versions in other languages were checked to check whether additional information was provided.
- 2.30 Three key sources of information were surveyed from each website:
- Conditions of Carriage, with particular regard to the conditions set out for the carriage of PRMs;
 - Other policies on the carriage of PRMs: a more detailed search across the airline's website for any policies and relevant information on PRM travel; and
 - Options to notify carriers of assistance requirements.

Airports

- 2.31 Again, the research conducted for this part of the study was internet-based. The websites of each of the case study airports was surveyed against the following criteria:
- whether the airport publishes quality standards;
 - how easy these are to find;
 - the content of the standards; and
 - whether the airport publishes details of its performance against the standards.

Review of relevant legislation and other documentation

- 2.32 We also reviewed airline and airport policies with reference to other applicable legislation and guidance. The only other EU-wide legislation which relates to the carriage of PRMs by air is EU-OPS 1 (Commission Regulation 859/2008). In addition, many EU carriers which operate flights to the US are also covered by the corresponding US regulation (14 CFR Part 382, Nondiscrimination on the Basis of Disability in Air Travel); this is significantly different from Regulation 1107/2006 and this has an impact on the operating procedures of some carriers.

2.33 Other current guidance includes:

- ECAC Document 30;
- JAR-OPS 1 Section 1;
- JAA Temporary Guidance Leaflet (TGL) No. 44; and
- UK Department for Transport (DfT), *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*.

3. APPLICATION OF THE REGULATION BY AIRPORTS

Introduction

- 3.1 One of the most fundamental changes introduced by the Regulation was the change in responsibility for provision of assistance to PRMs: where previously these services were provided by airlines, the Regulation requires airports to provide them, and permits them to pass on the associated costs to users, provided this is done in a fair and transparent manner. The Regulation also requires airports handling over 150,000 passenger movements per year to develop and publish quality standards for assistance. The detailed requirements are set out in the following section.
- 3.2 In order to assess how airports are implementing these requirements, we met or sought responses from a sample of airports selected under the criteria set out above (see 2.21). The information gathered was supplemented by tours of the services provided at certain airports, by interviews with other stakeholders who gave their views on service provision, and by desk research. The desk research included analysis of the charges and quality standards set out by the airports in the sample.

Requirements of the Regulation

- 3.3 As noted above, the Regulation places responsibility for provision of assistance with the airport, whereas previously assistance had been provided by ground handling companies on the basis of contracts with individual airlines. The Regulation requires each airport to provide a uniform service quality for all airlines that it handles (except where an airline requests a higher level of service). The key requirements for the PRM assistance service are summarised below:
- **Designated points:** Airports are required to designate points inside and outside the terminal building at which PRMs can announce their arrival at the airport and request assistance. These must be developed in cooperation with airport users and relevant PRM organisations, must be clearly signed and must offer basic information about the airport in accessible formats.
 - **Assistance:** Airports must provide assistance to PRMs so that they are able to take the flight for which they hold a reservation, providing that they have pre-notified their requirements and arrive with sufficient time before the departure of their flight. If they have not pre-notified, the airport must make all reasonable efforts to enable them to take their flight. For PRMs on arriving flights, the airport must provide assistance to enable them to leave the airport or reach a connecting flight. The assistance provided should be appropriate to the individual passenger. An airport may contract for these services to be provided by another company, in compliance with quality standards (discussed below).
 - **Charges:** An airport cannot charge a PRM for this service, but may levy a specific charge on airport users for it. The charge must be reasonable, cost-related and transparent, and the accounts for these services must be separated from its other accounts. The charge must be shared between airport users in proportion to the total number of passengers carried to and from the airport by each. If an airport wishes to contract for services or levy a charge, both must be done in cooperation with airport users through the Airport Users Committee (AUC).

- **Quality standards:** Airports with over 150,000 annual passenger movements must set and publish quality standards for these services, and decide resource requirements to meet them, in cooperation with airport users and PRM organisations. The standards must take account of relevant policies and codes, such as the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility (ECAC Document 30). An airline can agree with an airport to receive a higher standard of service, for an additional charge.
- **Training:** All employees (including those employed by sub-contractors) providing direct assistance to PRMs should be trained in how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability-related training.

Categories of PRM defined by carriers and airports

3.4 The Regulation covers passengers with a wide range of impairments for which the needs for assistance are different. Although each individual is different, airlines and airports find it helpful to apply some categorisation when referring to the needs of different passengers. The most commonly used categorisation is the list of Special Service Request (SSR) codes defined by IATA. These categories are:

- **WCHR:** Wheelchair (R for Ramp). Passengers who are able to ascend and descend steps and move about inside the aircraft cabin, but who require a wheelchair or other assistance for longer distances (e.g. between the terminal and the aircraft).
- **WCHS:** Wheelchair (S for Steps): Passengers who cannot ascend or descend steps, but can move about inside the aircraft cabin. They require a wheelchair for the distances to and from aircraft and must be assisted up and down any steps.
- **WCHP:** Wheelchair (P for Paraplegic). Passengers with a disability of the lower limbs who have sufficient personal autonomy to take care of themselves, but who require assistance to embark and disembark and can move about inside the aircraft cabin only with the assistance of an onboard wheelchair.⁷
- **WCHC:** Wheelchair (C for Cabin Seat). Passengers who are completely immobile, and who can move about only with the assistance of a wheelchair or other means, and require this assistance at all points from arrival at the airport to seating (which may be fitted to their specific needs) on board the aircraft, and the reverse process on arrival.
- **BLND:** Blind or visually impaired passengers.
- **DEAF:** Deaf or hearing impaired passengers, and passengers who are deaf without speech.
- **BLND/DEAF:** Passengers who are both visually and hearing impaired, and who can only move about with the assistance of an accompanying person.
- **DPNA:** Disabled passengers with intellectual or developmental disabilities who need assistance.
- **MEDA:** Passengers whose mobility is impaired due to illness or other clinical reasons, and who are authorised to travel by medical authorities.

⁷ This code is not widely used or universally recognised at present

- **STCR:** Passengers who can only be transported on a stretcher.
 - **MAAS:** Meet and Assist. All other passengers requiring special assistance.
- 3.5 Some airlines use different categorisations. For example, Ryanair uses a more detailed classification system with 16 categories that also identify, for example, whether the passenger is travelling with their own wheelchair.
- 3.6 In addition to the codes above which describe the needs of the passenger, when referring to wheelchair users airlines may also add a description of the type of wheelchair which will be carried. The codes used are WCMP for manual power, WCBD for dry cell battery and WCBW for wet cell battery. These codes are useful for planning the type of assistance which will be necessary to transport them, for example if they require preparation or disassembly.

Services actually provided by airports

- 3.7 All of the case study airports had implemented the Regulation, and were providing the required services in some form. We were given tours of the services provided at several of the airports we visited. From these, and descriptions of services given in interviews, we have drawn together a description of a typical process by which the services required by the Regulation are provided.

Departures

<i>Pre-notification</i>	Almost all airports and airlines have contracted SITA (a company providing aviation information technology) to provide a telex or email service for the purpose of passing notification of the needs of PRMs (see 4.64). For each series of flights for a given aircraft, any assistance required is communicated via a telex which includes a four letter code describing the category of disability of each PRM on each flight (see 3.4). This message is known as the passenger assistance list (PAL); if requirements change prior to the flight this is updated by a change assistance list, or CAL. Where a request for assistance is made by a PRM at least 48 hours before the published departure time for the flight, the airline is obliged to transmit this information to the relevant airports at least 36 hours before the published departure time.
<i>Recording of notification</i>	This information arrives at a telex server in the dispatch office of the airport PRM service provider. The telex describes: the time of the flight, the flight number, the names of passengers on board requiring assistance, and the category of disability of these passengers. The information from this telex is used to update the service provider's task management system, either via an automatic link, or via manual input. The task management system can be purposely developed task management software, or in some airports a piece of paper containing notes on expected assistance. Information regarding requests for assistance may also arrive via email. Airlines and airports may use email for several reasons: some airlines (such as non-EU charter carriers) may not have a SITA terminal; larger groups (such as operators of cruises) may send an off-line message in addition to PAL/CAL messages.
<i>PRM arrives and is assigned an assistant</i>	Each new request for assistance creates a new task; if a passenger arrives without notification, the task is created on their arrival. The task management software lists PRMs requiring assistance as tasks, and sets out expected arrival times and real-time information about their flights. When the passenger announces their arrival (either via a designated point or a check-in desk), the type of assistance they require is confirmed, and the task is assigned to one or more available assistants. At some airports, assistants carry personal digital assistants (PDAs) which record progress on a particular task; if this is the case, information regarding the passenger to be met will be forwarded to the PDA of the selected assistant. At other airports (for example in Spain) the management of tasks is a manual process. More than one assistant may be assigned if the passenger requires more involved assistance, such as carrying into their seat or is in a stretcher.

<p><i>PRM is met and needs are confirmed</i></p>	<p>The assistant meets the passenger at the point at which they announced their presence; when they meet the PRM, they update the dispatch office with their action. This update may be via PDA linking through to the software in the dispatch office, or via calling in. Assistants should be trained in how to approach passengers with different requirements. If the PRM has difficulty with long distances, the airport may use electric carts, or may push the passenger in a wheelchair provided by the airport. The electric carts may be capable of carrying a passenger in an airport wheelchair. The extent of the use of electric carts may be dependent on airport design.</p> <p>PRMs who are blind or visually impaired may require someone whose arm they can hold to guide them through the airport. A PRM with an intellectual disability may require information about the airport to be presented to them in a simplified manner, or may require check-in and other procedures to be conducted in a particular manner. The assistant will help PRMs with a reasonable amount of baggage, but only as much as any other passenger would take.</p>
<p><i>PRM is assisted through check-in and security</i></p>	<p>The passenger is taken through check-in and security. At check-in, there may be lowered desks for passengers in wheelchairs. At security, there may be a track where the security staff are trained in searching PRMs, including searching wheelchairs, and a screen to provide privacy for the search. Usually it is not possible for wheelchairs to be taken through metal detector arches, and therefore wheelchair users are searched manually. The security track is not typically exclusively for PRMs, but they may receive priority. There may be a dedicated PRM lounge; if there is time before their flight leaves, they will have the option of resting there or if there is time they may wish to use the facilities in the departure lounge until called for their flight. Some airports are willing to take PRMs to these facilities (such as restaurants and shops), while others require PRMs to remain in the waiting area allocated. Where the airport is willing to provide this, the assistant arranges a time at which to collect the passenger. Some airports allow PRMs to use the business lounge regardless of class of travel.</p>
<p><i>PRM is assisted through customs and to gate</i></p>	<p>Once the flight is ready for boarding, the assistant takes the passenger to the gate. Different methods of assisting a PRM into the aircraft will be used depending on the passenger's needs and on the manner in which the aircraft is embarked (e.g. via airbridge or from the apron). Some PRMs will be able to use either stairs or an airbridge and will not require specific assistance at this point.</p>
<p><i>PRM is assisted on board aircraft with airbridge</i></p>	<p>Where passengers board via an airbridge, category WCHC and WCHS PRMs are transferred to the onboard wheelchair at the door of the aircraft. If they have remained in their own chair up to this point, their wheelchair is transferred to the hold; otherwise the airport's wheelchair is returned with the assistant. The onboard wheelchair is narrower to allow it to pass down the aisle, and has straps to hold the passenger safely in the chair. Other categories of PRM board the aircraft on foot, without particular assistance. Depending on the policy of the carrier concerned, PRMs may have to board either first or last.</p>
<p><i>PRM is assisted on board aircraft without airbridge</i></p>	<p>Where passengers board via steps, category WCHC and WCHS PRMs are transferred to the onboard wheelchair on the apron before entering the aircraft. They are then lifted up to the aircraft either by an Ambulift⁸, by a motorised stair-climbing chair or at some airports by manual lifting. Other categories of PRM board the aircraft on foot, and may require assistance to ascend the stairs. If the aircraft is boarded away from the terminal building and passengers are brought to the aircraft by bus, a dedicated PRM vehicle may be used to bring the PRM to the aircraft.</p>
<p><i>PRM is assisted to seat on board aircraft</i></p>	<p>On board, the assistant provides the assistance necessary for the passenger to get to their seat. This may include lifting the passenger from the on-board wheelchair into the seat and if, as required by certain carriers, the PRM has to be seated in a window seat, transferring across other seats. The assistant may also help the passenger with storing any baggage in the overhead lockers. Once the passenger is installed in their seat, the airport ceases to have responsibility for providing assistance, and it transfers to the airline.</p>

⁸ An Ambulift is a vehicle with a hydraulic platform which can be raised to the level of the flight deck to allow wheelchairs to be pushed on board.

Arrivals

<i>Notification arrives</i>	In addition to arriving via PAL or CAL, notification for arriving passengers may arrive by passenger service message (PSM). This is a list of passengers on board the aircraft requiring particular treatment on arrival, dispatched when an aircraft departs. The message states the points of embarkation and disembarkation, the flight number and date, and lists the names of the passengers requiring particular assistance with a description of the assistance. In addition to PRMs, the PSM lists children travelling alone (unaccompanied minors, or UMs), deportees and returned inadmissible passengers. In some circumstances, no PAL or CAL is received for arriving passengers, and the only notification is via PSM; this reduces the period of notification from 36 hours to the duration of the flight. In some cases no notification is received at all.
<i>PRM is met and assisted to disembark</i>	The information from the PSM is input into the task management system in the same manner as the PAL or CAL. When a flight lands, available assistants are assigned to each of the PRMs on board the flight, and dispatched to meet them at the gate. On landing, if a PRM requires assistance to disembark they will typically disembark once all other passengers have disembarked. The PRM is met at the door of the aircraft or within the aircraft by their assigned assistant. Depending on the code included in the PSM the assistant may have equipment such as wheelchairs, or may be accompanied by another member of staff. If the passenger has their own wheelchair, this is removed from the hold, and the passenger may then be assisted to transfer from the aircraft wheelchair into their own. At some airports the passenger's wheelchair is not returned to them until baggage reclaim, for security reasons.
<i>PRM is assisted from aircraft to point of arrival</i>	The passenger is then assisted through passport control (where there may be a dedicated PRM-accessible track) to the baggage hall, where they are assisted to retrieve their bags. They are then assisted through customs, and the assistant accompanies them as far as is required, up to the designated point of arrival outside the terminal. If it is situated close to the arrival point, they may also assist the PRM to their car if requested.

Connections

<i>Connecting flights</i>	Where a PRM requires assistance to make a connecting flight, the assistance offered varies depending on the length of time between arrival and departure. If there is limited time, assistance is offered as described above to disembark, transfer, and embark the passenger onto their next flight. If there is a significant wait between arrival and departure, the passenger may be taken to a PRM lounge or waiting area, until their departing flight is ready for boarding.
---------------------------	---

Policies on service provision

Provision for non pre-notified passengers

- 3.8 The Regulation sets out the assistance which must be provided to PRMs where they have notified the air carrier or tour operator at least 48 hours before the published time of departure of their flight. It also requires that where no such notification is made, the airport should make all reasonable efforts to provide this assistance.
- 3.9 Of the airports we contacted, most stated that there was little or no difference in the service received by passengers who had not pre-notified, and differences in service quality only occurred when the services were busy. Even in the cases where a choice did have to be made between assisting a pre-notified and non-pre-notified passenger, some airports informed us that they would make decisions on the basis of ensuring all passengers could make their flights, rather than on the basis of notification. Some airports informed us that the level of notification was so low that it was not useful to make any distinction on this basis. Only a small minority of the case study airports stated that a slower service was provided to passengers who did not pre-notify (Table 3.1 below).

TABLE 3.1 AIRPORT SERVICE PROVIDED TO NON-PRE-NOTIFIED PRMS

Airport	Service provided to non-pre-notified PRMs
Amsterdam Schiphol	Equivalent service, priority based on ensuring passengers can make their flights
Athens	Slower service than pre-notified for departures, equal service for arrivals
Bologna	Equivalent service is provided
Brussels	Equivalent service as pre-notified, lower priority when busy
Bucharest Otopeni	Equivalent service is provided (some equipment may not be available)
Budapest	Equivalent service is provided (possible delay of a few minutes)
Brussels Charleroi	Equivalent service, priority based on ensuring passengers can make their flights
Copenhagen	Equivalent service as pre-notified, lower priority when busy
Dublin	Slower service
Frankfurt Main	Equivalent service as pre-notified, lower priority when busy
Lisbon	Standards not defined
London Heathrow	N/A
London Luton	Equivalent service is provided
Madrid Barajas	Equivalent service is provided (possible delay on arrival)
Munich	Equivalent service as pre-notified, lower priority when busy
Paris Charles De Gaulle	Equivalent service as pre-notified, lower priority when busy
Riga	Equivalent service is provided
Roma Fiumicino	Slower service
Stockholm	Slower service
Warsaw	Equivalent service as pre-notified, lower priority when busy
Zaragoza	Equivalent service is provided (possible delay on arrival)

3.10 Airports' estimates of the impact of pre-notification rates on staffing and equipment levels varied considerably. Several airports informed us that while an increase in the rate of pre-notification would improve the quality of the service provided, they would not expect it to significantly affect the number of staff they employed. In contrast, Aéroports de Paris believed that improving rates of pre-notification could allow them to reduce the costs of PRM service provision by 30%-40%. In January 2010, London Heathrow introduced a banded charge which varies the amount paid depending on the level of pre-notification of the airline (see 3.34).

Restrictions on service

3.11 Unlike for airlines, the Regulation does not explicitly state any grounds for airports to restrict the services provided. However, there may be national laws which have bearing on the functions which airport staff are permitted to undertake; for example, we were informed that in Denmark national laws on health and safety did not permit people of above a certain weight limit to be carried up stairs and into an aircraft.

Other issues noted

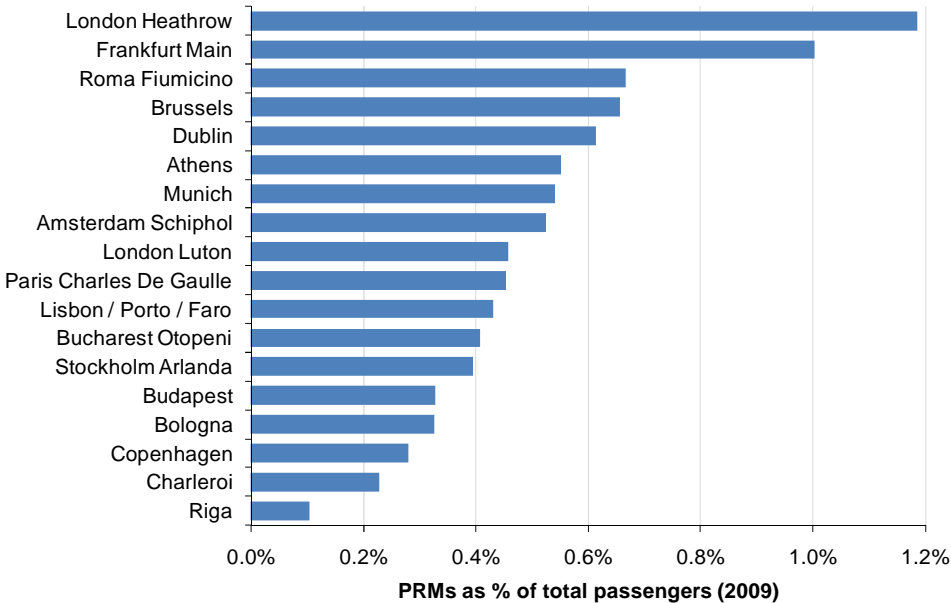
- 3.12 All of the case study airports provide the services required under the Regulation. The manner and quality of provision varies among the sample, and there have been a number of incidents of significant service failure, but we identified no fundamental problems with service provision at major airports. However, we were informed that the Regulation had not been implemented at Greek airports other than Athens: at these airports, services are provided to PRMs, but the change of responsibility from airline to airport has not yet been effected; provision of and payment for services is agreed between airlines and ground handling companies, as it was prior to the introduction of the Regulation.
- 3.13 The views of stakeholders on the provision of services are discussed at the end of this chapter (see 3.76).

Statistical evidence for carriage of PRMs

The proportion of passengers requiring assistance

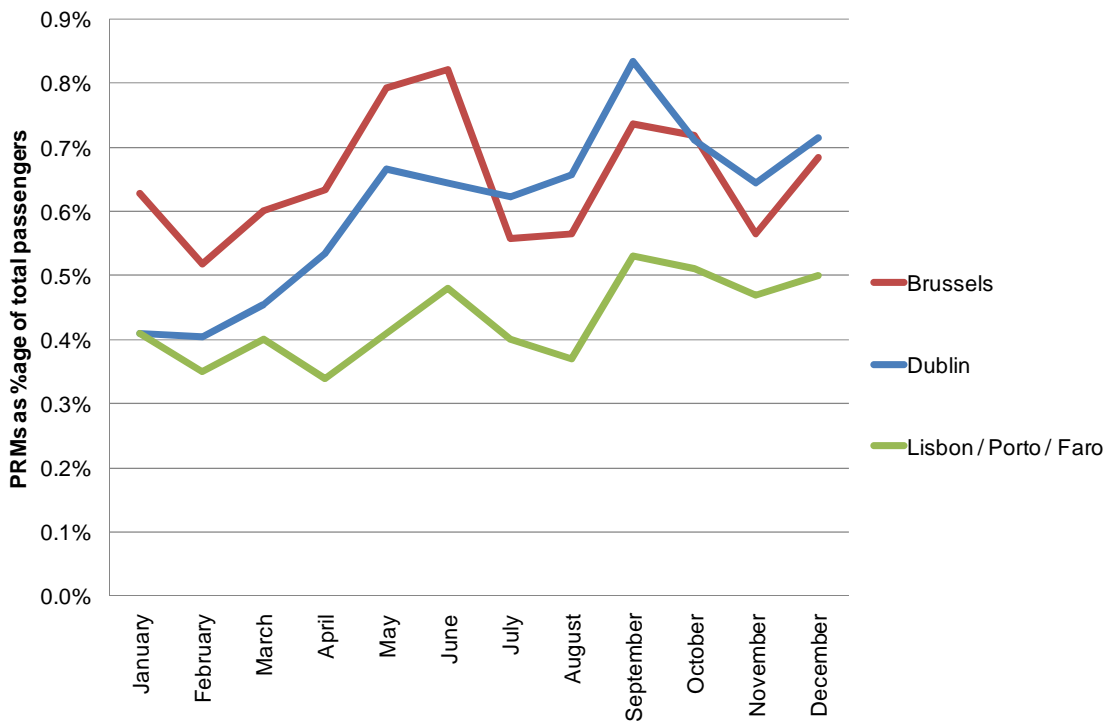
- 3.14 The frequency with which PRM assistance services are used varies considerably between airports. Figure 3.1 shows the rate of use at the airports in our sample for which we were provided with data. At London Heathrow 1.2% of passengers are PRMs requiring assistance, while at Riga only 0.1% of passengers require assistance. However, for most airports in the sample, the proportion requiring assistance is between 0.2% and 0.7%. ACI informed us that the higher rates at some airports were the result of the demographics of the passengers flying to these destinations.

FIGURE 3.1 FREQUENCY OF PRMS REQUESTING ASSISTANCE AT AIRPORTS (2009)



- 3.15 Some other airports have higher proportions of PRMs requiring assistance, resulting from the demographic profile of passengers using the airports. These include holiday destinations popular with elderly people, such as Alicante, Malaga and Tenerife Sur; and pilgrimage destinations such as Lourdes.
- 3.16 Based on the information we have received from airports, the profile of PRM travel differs markedly from that of other passengers (see Figure 3.2). Most data indicates that the number of PRMs travelling tends to be lower in relative terms, and at some airports also in absolute terms, during July and August when total air travel is at a peak. At some airports, there appears to be a peak in December and January, however this is not consistent across all the airports for which we have data. Airports informed us that provision of services between April and September can be particularly affected by passengers travelling to cruise ships: these often carry high numbers of PRMs, and since a cruise ship usually disembarks passengers at the same time as it embarks the next load, there is a twofold increase in the number of PRMs travelling through the airport. The winter peak in PRMs is partly due to high rates of injury amongst passengers returning from winter sports holidays.

FIGURE 3.2 FREQUENCY OF PRMS OVER THE YEAR (2009)

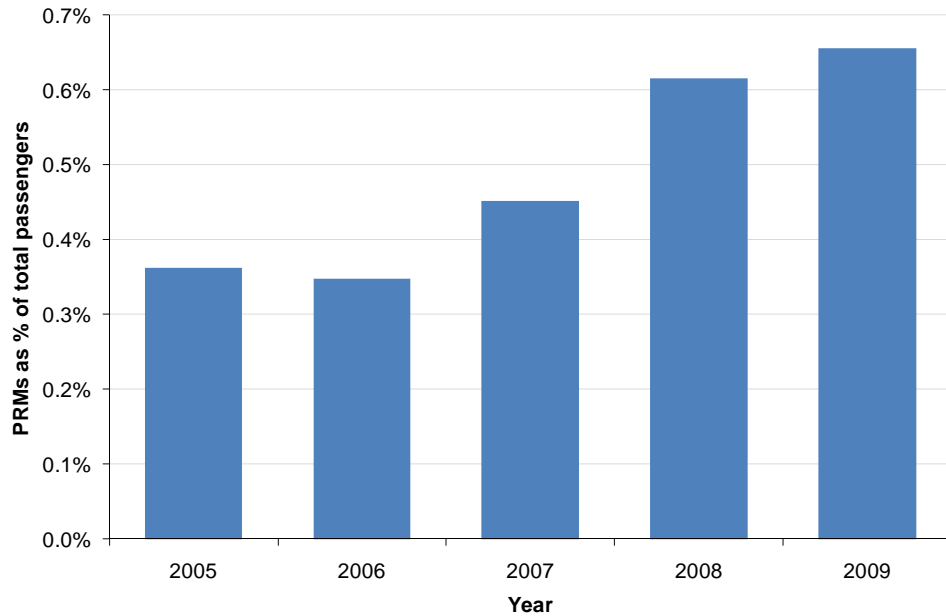


Trend in PRM travel

- 3.17 Several airports and airlines informed us that the number of PRMs requiring assistance has increased significantly since the introduction of the Regulation. It is difficult to verify this, as airports generally did not provide PRM services before July 2008, and therefore did not have a time series of data available. However, Brussels Zaventum airport introduced a PRM service similar to that required by the Regulation earlier, and as a result was able to provide figures for PRM's travelling between 2005 and 2010. This shows an increasing trend (Figure 3.3): the proportion of passengers

requiring assistance appears stable at approximately 0.35% over 2005 and 2006, and then climbs to 0.66% in 2009. It believed that this was a result of significant abuse of the services.

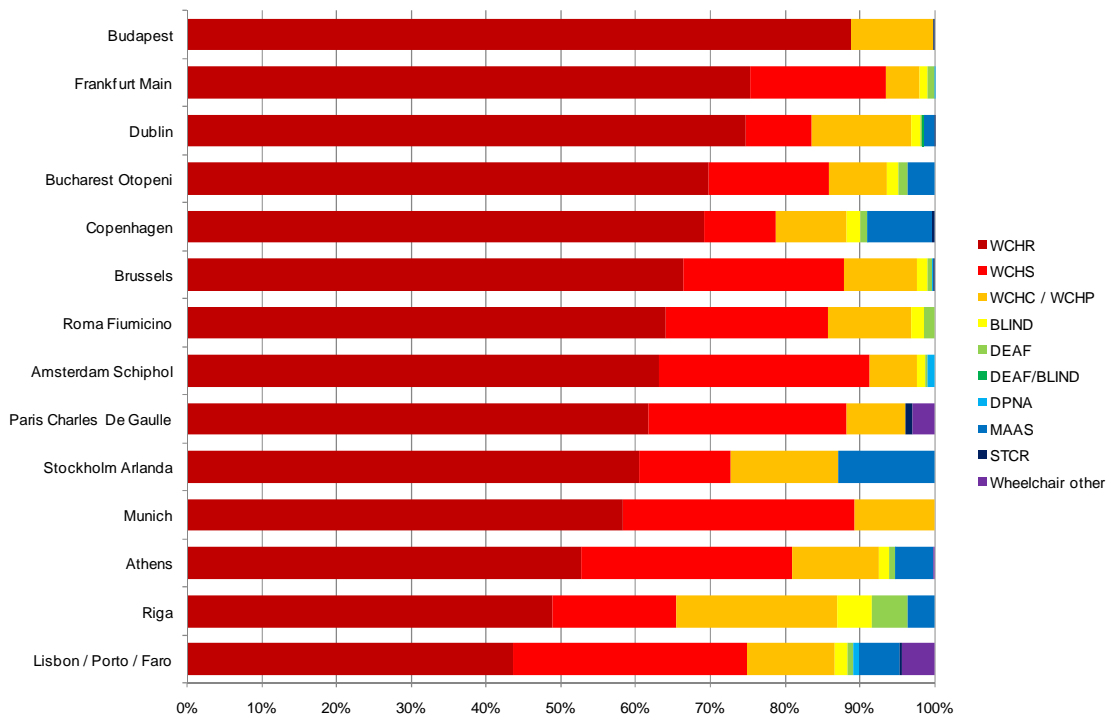
FIGURE 3.3 RATE OF PRMS OBSERVED AT BRUSSELS ZAVENTUM AIRPORT



Types of assistance provided

- 3.18 Assistance is often divided by airports into WCHC/WCHS (see 3.4), which requires significant time and resources, and others. We requested data on the types of passengers assisted from each of the case study airports and a summary of the data is shown in Figure 3.4. At all airports which provided data, the most frequent category of assistance was WCHR, although the proportion ranged from 44% to 89% (median 64%). The category “Wheelchair other” comprises wheelchair codes which do not fit into the other wheelchair categories: WCMP, manually powered wheelchair; WCBBD, dry cell operated wheelchair; and WCBW, wet cell operated wheelchair. We have excluded the codes for medical cases and unaccompanied minors (MEDA and UM respectively) from this analysis, as they are not within the scope of the Regulation.

FIGURE 3.4 VARIATION IN TYPES OF PRMS ASSISTED (2009)



Abuse of services

3.19 Many airports – particularly larger and busier airports – reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. A typical observation was of a passenger who was assisted in a wheelchair from a designated point of arrival through security and customs, and who then walked to the gate unassisted. Several types of passenger who might be motivated to do this were suggested:

- Passengers who feel confused by a large and complex airport, and do not feel that they would be able to navigate it successfully;
- Passengers who do not speak the language used for the airport signs and announcements;
- Passengers who have no mobility impairment which prevented them from walking long distances within the airport, but who did not wish to; and
- Passengers (particularly those who arrive at the airport with limited time before the departure of their flight) who wish to avoid lengthy queues at immigration, customs and security.

3.20 In addition, some airports reported cases where airlines had requested PRM assistance for passengers such as unaccompanied minors, passengers with excessive cabin baggage, and VIPs. These passengers might previously have been classified ‘meet and assist’ (MAAS) and any assistance required would have been paid for by the airline.

- 3.21 By its nature, it is hard to establish the true level of this abuse. PRM organisations noted that a passenger's disability may not always be visible. They also noted the perceived stigma attached to travelling in a wheelchair, and believed that many passengers would prefer to avoid this in preference to receiving the services offered under the Regulation.
- 3.22 The level of abuse reported varied between airports. Copenhagen Airport reported a rate of approximately one passenger per day whom they suspected was not entitled to services under the Regulation, while Brussels reported 20-30 passengers per day. Brussels Airport perceived abuse as a bigger problem than other airports within the sample.
- 3.23 However, Charleroi Airport informed us that abuse of services had decreased since the introduction of the Regulation, as a result of changes made to procedures. The two changes it identified as having had an impact were:
- requiring passengers who had not pre-notified requirements for assistance to wait; and
 - boarding passengers requiring assistance after, rather than before, other passengers, and hence users of the PRM service no longer get first choice of seats on low cost carriers that do not allocate seats in advance.
- 3.24 These changes had the effect of reducing the number passengers without mobility needs who wished to use the services to avoid queues, and to obtain first choice of seating. However, these policies create some disadvantages for passengers who are entitled to the services.

Organisation of service delivery

- 3.25 Airport managing bodies may provide the services required under the Regulation themselves, or may contract with other parties to provide the assistance. Any arrangements for assistance to be provided through other parties must be compliant with published quality standards, and must be determined with the cooperation of airport users.

Overview

- 3.26 15 of the sample of 21 airports provided PRM services through a subcontractor (Table 3.2 below) and, of these, 12 were procured through open tenders. The advantage of procuring this service through an open tender include:
- a specialised provider might more easily be able to provide services of the cost or quality required;
 - providing services through subcontractors facilitates the separation of costs of PRM services in an airport's accounts; and
 - open tenders allow the airport to demonstrate that the costs are reasonable, as required by the Regulation.
- 3.27 Some of the largest airports split the tendering of provision into more than one contract, usually through grouping terminals together on a geographical basis.

- 3.28 In contrast, some of the airports provide the services required under the Regulation through specially trained airport staff. This may be through the creation of new department with this remit, or through extending the remit of a pre-existing department (for example the firefighting department). Airports may also subcontract some services (such as assisting passengers from the gate to the aircraft) to ground handling staff whilst providing other elements of the service themselves.
- 3.29 We also identified variation in the type of organisation providing services, where this was sub-contracted:
- **Subsidiary company of airport:** This approach is very similar to providing the services in-house, although an advantage is that it is easier for the airport to separate the accounts relating to the provision of PRM services.
 - **Ground handling companies:** Airports may be able to realise economies of scope through provision of PRM services by ground handling companies.
 - **Specialist PRM contractor:** Among the airports examined for this study, the most frequent type of organisation providing PRM services was a company that specialised in this kind of assistance service. Some such companies provided PRM services only, while a number provide it as part of a range of services. These other services might include cleaning services, facilities management, emergency assistance, and ambulance services.

TABLE 3.2 METHODS OF PROCURING PRM SERVICES AT AIRPORTS

Airport	Approach to procurement	Type of organisation providing PRM services
Amsterdam Schiphol	Open tender	Specialist PRM contractor
Athens	Open tender	3 ground handling companies
Bologna	In-house / non-competitive tender	Airport staff, 2 ground handling companies
Brussels	Open tender	Specialist PRM contractor
Bucharest Otopeni	In-house	Airport staff
Budapest	Open tender	Ground handling company
Brussels Charleroi	In-house	Airport staff
Copenhagen	Open tender	Specialist PRM contractor
Dublin	Open tender	Specialist PRM contractor
Frankfurt Main	Non-competitive tender	Subsidiary of airport
Lisbon	In-house	Airport staff, subcontracted ground handling staff
London Heathrow	Open tender	2 specialist PRM contractors
London Luton	Open tender	Specialist PRM contractor
Madrid Barajas	Open tender	Information not provided at interview
Munich	Open tender	Specialist PRM contractor
Paris Charles De Gaulle	Open tender	2 specialist PRM contractors
Riga	In-house	Airport staff
Roma Fiumicino	Non-competitive tender	Subsidiary of airport

Stockholm Arlanda	In-house	Airport staff
Warsaw	Non-competitive tender	Ground handling company
Zaragoza	Open tender	Information not provided at interview

3.30 Although the PRM service had only been provided by airports for around 18 months at the time of our research, we were informed by a number of airports that they were considering or were in the process of retendering the service. The primary reason given for retendering was that service quality had not been sufficiently high, although some airports cited a higher than expected increase in use of services after the introduction of the Regulation.

3.31 The Regulation also allows⁹ for airlines to request a higher level of service than those set out in the quality standards for the airport, and to levy a supplementary charge for this service. However, none of the sample airports or airlines were requesting or providing such a service.

Consultation

3.32 The Regulation requires contracts for the supply of services under the Regulation to be entered into in cooperation with airport users and with organisations representing PRMs. Cooperation with airport users is usually through the airport users committee (AUC). Although this is intended to improve consultation, airlines informed us that in some circumstances it did not do so, citing examples where:

- the proceedings of the AUC were conducted only in the native language of the airport;
- only ground handlers were represented on the committee; and
- one stakeholder has a voting majority on the committee, allowing it to disregard the views of other carriers.

3.33 We were also informed of circumstances where the consultation provided by airports was extensive. London Luton retendered for PRM services in March 2010, and involved airport users (airlines and ground handling companies) at all stages of the tendering process, including the development of the specification, and the evaluation and scoring of bids.

Airport charges

3.34 The Regulation permits airports to fund the provision of assistance through a specific charge on airport users. This charge must be reasonable, cost-related, transparent and established in co-operation with airport users. It must be shared among airport users in proportion to the total number of passengers that each carries to and from the airport (this is typically calculated on the basis of departing passengers). The accounts of the airport relating to provision of PRM services must be separate from its accounts relating to other services, and it must make available to airport users and NEBs an audited annual overview of charges received and costs incurred relating to the provision.

⁹ Articles 9 (4) and (5).

3.35 The majority of the case study airports recover costs for PRM assistance through a PRM charge levied on all departing passengers which is specific to the airport and set to fully recover the costs of the PRM service. However, we identified the following key variations in this approach:

- **Uniform charge:** The PRM charges in Spain and Portugal are uniform across the airports operated by AENA and ANA respectively. This approach appears to infringe the Regulation, which requires a specific charge “established by the managing body of the airport”, although there is some uncertainty about this due to differences between the English and Spanish language versions of the Regulation. Both AENA and ANA believed that, since the service was provided across a network of airports, it was appropriate that there should be a uniform network charge.
- **Economic regulation:** Many airports are subject to economic regulation of the charges they may levy on airlines. At most of the airports in our sample, the PRM charge is excluded from the regulated price cap, but at Dublin and Brussels Zaventem the PRM charge is included within this. As a result, their flexibility to amend charges (for example to reflect a higher than expected use of PRM services) is constrained: for example, they may require regulatory approval for any changes, or have the level of any increases limited by a charging cap. Charges may also be fixed over the course of a given regulatory period.
- **Pre-existing provision:** Stockholm Arlanda and all other State-owned airports in Sweden provided some elements of the services required under the Regulation prior to its introduction. In Sweden, charges for services for WCHC and WCHS passengers were introduced in 2001 at a rate of 1 SEK (€0.10¹⁰) per departing passenger; charges have not yet been increased since the Regulation came into force to reflect the wider range of passengers requiring assistance, but we were informed that this is likely to happen in the next year.
- **Non-implementation of the Regulation:** With the exception of Athens, none of the airports in Greece provide assistance for PRMs. Assistance is provided by ground handling companies, and charges are negotiated directly between airlines and ground handling companies, and consequently not made public.

3.36 We were informed by ACI that the proportion of airports which identify this fee separately was 52% across the airports it surveyed, as opposed to 48% which include it in the passenger fee.

3.37 The types of costs which may be recovered using the PRM charge are:

- **Direct assistance costs:** The direct costs of the day-to-day running of the service.
- **Other incidental operating costs:** These may include maintenance, purchase of operating materials, other services, etc.
- **Capital expenditure:** Expenditure to invest in facilities required to provide services, such as mobility equipment and the fitting out of a dispatch office.
- **Administrative expenses:** These may include time spent by airport personnel in running the contract, and project costs such as airport management time in developing the tender.

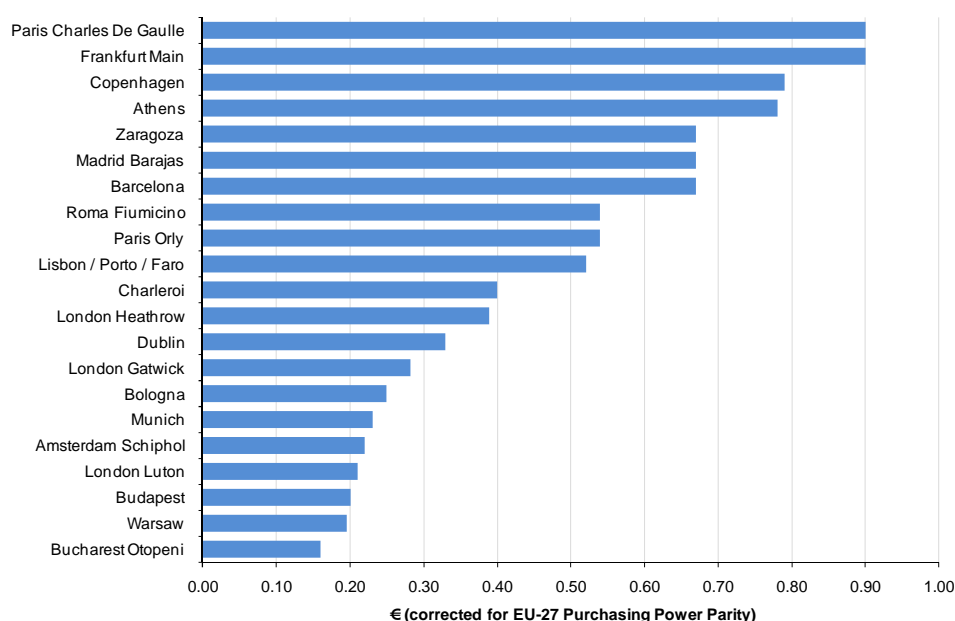
¹⁰ Calculated on the basis of €1 = 9.7 SEK.

- **Other airport fees:** The PRM contractor may have to, for example, rent space from the airport and to pay a fee for doing so. This would also be recovered through the PRM charge.

Level of charges

3.38 Figure 3.5 shows the charges at the case study airports in euros, converted using current (January 2010) exchange rates where required. There is significant variation in the level of the PRM charge between airports, from a minimum of €0.16 in Bucharest to €0.90 at Frankfurt Main and Paris CDG.

**FIGURE 3.5 AIRPORT CHARGES PER DEPARTING PASSENGER
(€ AT CURRENT EXCHANGE RATES)**



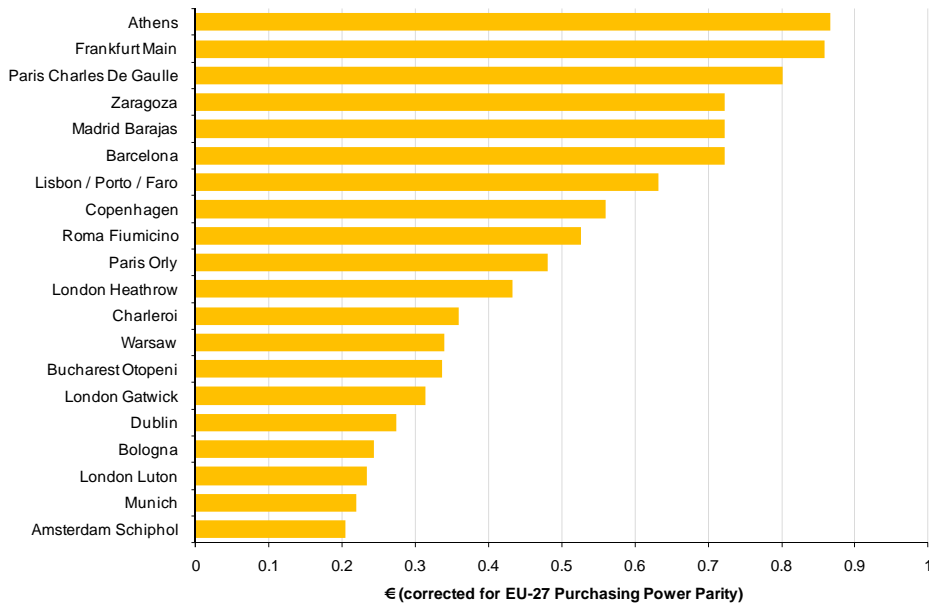
3.39 The variation in charges between airports may result from several factors, including:

- staff cost variation;
- quality standards in place;
- the frequency with which the PRM services are used;
- the proportion of connecting flights; and
- the design of the terminal or airport.

3.40 We discuss each of these possible reasons for variation in turn.

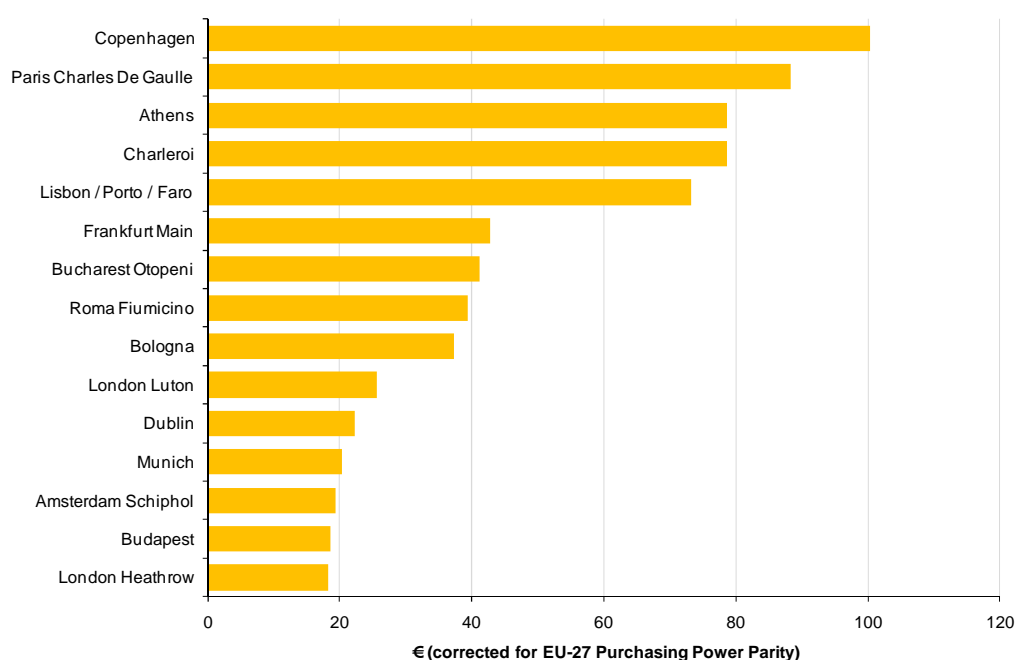
3.41 **Purchasing power parities (PPPs)** can be used to compensate for differences in price levels between States. Figure 3.6 uses Eurostat PPPs for 2008 to convert PRM charges in national currency to euros at average price levels for the EU-27. The harmonisation only very slightly reduces the variation in the charges (measured in terms of standard deviation).

**FIGURE 3.6 AIRPORT CHARGES PER DEPARTING PASSENGER, 2009
(€ AT 2008 EU-27 PPP)**



- 3.42 Although it was not possible to find published data showing the actual **level of service** offered to PRMs at any of the case study airports, the level of service set out in the PRM quality standards might help explain the variation in charges. To test this, we have calculated a weighted average PRM wait time and compared this with the PRM charge at each airport. This analysis suggests little or no correlation: for example, although the London airports state the highest service standards in terms of waiting times, the charges levied are lower than those at many other airports. Similarly, low charges at Bucharest are not reflected in longer proposed waiting times for PRMs requesting assistance.
- 3.43 It might also be expected that airports with **higher proportions of PRMs** would have higher charges. To examine this we calculated a proxy for the cost of assisting each PRM, for the airports for which we had data. This was obtained by dividing the PRM charge by the proportion of PRMs at each airport, to obtain the revenue gained by the airport for each PRM assisted.
- 3.44 It should be noted that there are some limitations to this analysis. It calculates revenue per PRM, and for this to be a valid proxy for costs, it must be assumed that charges are accurately cost-reflective, which is not the case in some airports: in Spain and Portugal the charge is uniform across all mainland State-owned airports, and does not therefore reflect local variation in costs; at State-owned airports in Sweden, the charge reflects only the costs of providing services for WCHC and WCHS passengers. For the costs to be cost-reflective it is also necessary that the frequency of use of the service is as forecast when the charges were calculated.
- 3.45 Figure 3.7 shows the results of the analysis. There is still significant variation between airports; the maximum cost per PRM assisted (€100 at Copenhagen, PPP adjusted) is 5 times the minimum cost (€18 at Bucharest, PPP adjusted). This shows that the variation in the number of PRMs does not fully explain the variation in the charge.

**FIGURE 3.7 AIRPORT COSTS PER PRM ASSISTED, 2009
(€ AT 2008 EU-27 PPP)**



- 3.46 The level of variation also does not appear to be accounted for by the **size of the airport**: the charge at London Heathrow is relatively low, while Paris CDG is relatively high.
- 3.47 Several airports cited **high proportions of connecting passengers** as a factor which increased costs. However, we do not believe that high proportions of connecting passengers would increase the costs of provision: transfer passengers are counted as two passengers in airport statistics and any PRM charge is levied twice, so if the service is less than twice the cost of that for an arriving or departing passenger, such passengers would in fact result in a cost saving relative to other PRMs. This view is supported by the data, where the charge at London Heathrow is relatively low.
- 3.48 **Terminal design** may impact on the amount of time required to provide assistance, or the efficiency with which it can be provided. For example, Amsterdam Schiphol airport, which has one integrated terminal building and the concourse is generally at the same level, can make extensive use of electric carts to transport multiple passengers together; this is not practical at airports such as CDG.

Changes to charges in 2010

- 3.49 The charges and costs in this section are based on those current in 2009, as this is the only complete year for which data was available. Where updated charges have been published for 2010¹¹, we have compared these with those for 2009. Most airports had not made any changes, but Munich and Rome Fiumicino increased charges by 48% and 28% respectively.

¹¹ IATA Airport, ATC and Fuel Charges Monitor, February revision, published March 2010.

3.50 London Heathrow changed the structure of its PRM charges in 2010. Whereas previously it levied a charge of £0.35 (€0.38) per passenger for all airlines, from 1 January 2010 the charges vary depending on the level of pre-notification. Airlines which pre-notify 85% or more of PRMs are charged £0.42 (€0.46) per departing passenger, while those which pre-notify 45% or less of their passengers are charged £0.83 (€0.91).

Consultation

3.51 Airports are required to determine charges in cooperation with users through airport user committees. The Regulation does not define cooperation further, however, and as a result the form this consultation has taken varies considerably. London Luton informed us that their tender process involved airlines, ground handlers and PRM organisations at all points of the tender process, from developing the specification to evaluating the bids and awarding the contract. In contrast, several airlines informed us that the consultation in Portugal and Spain was limited to the publication of a letter stating the amount the charge per person. We were also informed that consultations on PRM charges were often included in wider general charge negotiations.

3.52 A number of issues were raised regarding this cooperation.

- We were informed by several airports that certain carriers have contested the procedural steps taken by airport managing bodies to establish the charge. This has in at least one case been supported by an NEB taking a strict interpretation of the meaning of ‘in cooperation with airport users’, as requiring agreement between the airport and the airline both on the tender and the level of the charge. This has led to delays, particularly due to challenges by low-cost airlines, including requests to see cost information, which the airports regarded as unnecessary, after the tender processes were completed.
- Some airlines have blocked the process of approving charges by refusing to participate in the consultation.
- Some airports believed that direct involvement of users in the tender process can be problematic: without signing personal non-disclosure agreements, it may not be possible to share the commercially sensitive information included in tenders; there may also be conflicts of interests between some of the handlers and the tendering parties. However, the example of London Luton discussed above demonstrates that these barriers are not impossible to overcome.

Quality standards

Standards published

3.53 The Regulation requires all airports serving over 150,000 passenger movements per year to set and publish quality standards. Figure 3.8 indicates the proportions of airports publishing quality standards. The following airports had not yet done so:

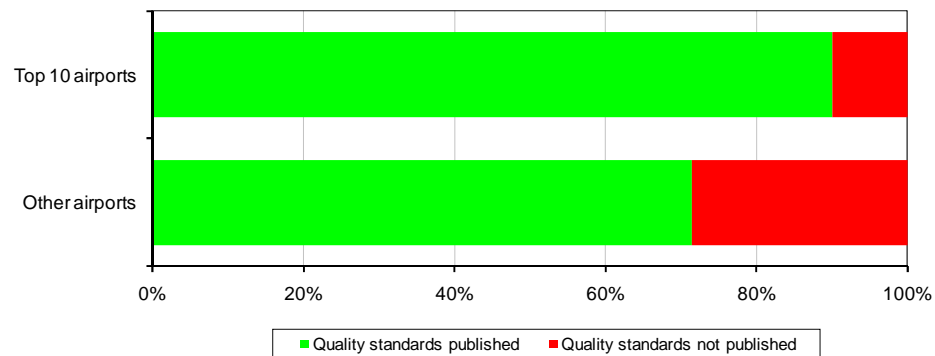
- Amsterdam Schiphol: quality standards are in the process of being re-developed with airlines, and have not been published yet;
- Bologna: standards not yet published;
- Budapest: standards published to airlines and handling companies by letter; and
- Stockholm Arlanda: standards published to airlines but not yet published on its

website; it informed us that the standards would be published soon.

3.54 Three of these airports provided the quality standards to us at interview, but Amsterdam Schiphol and Bologna did not provide any details of their quality standards.

3.55 We found that the largest ten European airports in terms of passenger numbers were more likely to publish quality standards than those outside the top 10.

FIGURE 3.8 PROPORTION OF AIRPORTS PUBLISHING QUALITY STANDARDS



Ease of finding quality standards

3.56 The ease with which the quality standards could be located on airport websites varied considerably. For the airports which published quality standards, some of the main issues encountered were:

- Having to click through an excessive number of links before finding the standards, e.g. the website of Charleroi Airport requires the user to click on five links before the standards can be viewed;
- Locating the standards on the site of the management company rather than within the section or website dedicated to the airport – this was the case for the Spanish airports for which the information is on the main AENA website;
- Using terminology which may not be obvious, avoiding the actual term ‘quality standards’, e.g. BAA use the term ‘Service Level Agreement’; and
- Restrictions on language – Bucharest Otopeni, Brussels Charleroi and the Paris airports only publish quality standards on the local language versions of their websites.

Standards for waiting time

3.57 The standards defined by the case study airports are shown in Table 3.3 and Table 3.4 below. At all of the case study airports for which we were able to obtain standards, these are defined in terms of the percentage of PRMs who should wait for up to a given number of minutes. For example, at Barcelona, 80% of departing passengers who have pre-notified requirements for assistance should wait for 10 minutes or less from the point at which notice is given that they have arrived at the airport. This

approach is consistent with the example standards in Annex 5-C of ECAC Document 30¹², and eight of the airports in the sample (including Copenhagen, Munich and the AENA Spanish airports) follow these exactly.

- 3.58 There are however variations in both how the standards are structured and the level of the standards. Paris Charles de Gaulle is unusual in that, with the exception of the top 99% bracket, an additional ten minutes is added to the wait time for departing passengers located ‘further away’. The published standards do not define how far away this is. Aéroports de Paris also define an additional category, of pre-notification of between 8 and 36 hours, for whom the standards are part-way between those applying to PRMs for which notification was received 36 hours or more before travel (‘pre-booked’), and those for which notification was received less than 8 hours beforehand (‘non-pre booked’). This is not shown in the table as it is not comparable with the standards offered by the other airports.
- 3.59 There are also some differences in how the wait time for arriving passengers is measured. At most airports, it is measured from when the aircraft reaches the parking position, but there are the following exceptions:
- From descent of last passenger: Rome Fiumicino;
 - From boarding bridge lock: Brussels; and
 - Not defined: Athens, Budapest, Lisbon, Stockholm Arlanda.
- 3.60 The standards proposed for pre-booked departing passengers are generally consistent, at least in terms of the waiting times which percentages are applied to: 10, 20 and 30 minutes are the most commonly used intervals, at 80%, 90% and 100% respectively. For non pre-booked passengers 80%, 90% and 100% apply to 25, 35 and 45 minutes. Better standards are offered by the UK and French airports that we reviewed. This is also reflected in the standards for arriving passengers, with the London and Paris airports targeting zero waiting time for 90-100% of passengers. There is also a clear pattern for arriving passengers, with 80% of pre-notified PRMs waiting no more than 5 minutes, 90% no more than 10 and 100% no more than 20 minutes. Standards are not as high as this for non pre-booked passengers, however.
- 3.61 Several airports informed us that the standards suggested by ECAC Document 30 for arriving passengers were not short enough to meet airline requirements on turnaround times: if the airports adhered only to these standards, there would be significant operational issues. Some of these airports published standards in line with Document 30, but stated that they actually provided services in much shorter times.

¹² ECAC Policy Statement in the field of Civil Aviation Facilitation, 11th Edition/December 2009.

Other elements of published quality standards

- 3.62 Some airports define additional standards other than the waiting time targets, generally reflective of the assistance set out in Annex 1 of the Regulation. For example, Charleroi provides detailed information regarding the level of assistance which will be provided for PRMs, for example support for embarking and disembarking the aircraft, or for dealing with customs formalities. Brussels Airport also defines how many assistants will accompany a PRM, depending on their type of disability.
- 3.63 Some airports also include more general, qualitative targets, less directly related to the assistance offered to an individual PRM. For example, Luton Airport's published standards include responding to 'disabled customer enquiries to offer guidance and advice', and auditing to ensure compliance with all disability legislation. Athens Airport also provides extensive details of the measures it has taken to accommodate PRMs, including disabled-access internet points and a special walkway for partially sighted PRMs.

TABLE 3.3 SCOPE OF QUALITY STANDARDS: DEPARTING PASSENGERS

	Pre-booked / airport informed % of PRMs who should wait no longer than (minutes)										Non-pre-booked / airport not informed % of PRMs who should wait no longer than (minutes)									
	5	10	15	20	25	30	35	40	45	60	5	10	15	20	25	30	35	40	45	60
Athens		80%		90%	100%								80%		90%	100%				
Barcelona		80%		90%	100%									80%		90%	100%			
Brussels		80%		90%	100%									80%		90%	100%			
Bucharest Otopeni		80%		90%	100%									80%		90%	100%			
Budapest		100%										100%								
Charleroi		80%		90%	100%									80%		90%	100%			
Copenhagen		80%		90%	100%									80%		90%	100%			
Dublin		80%		90%	100%									80%		90%	100%			
Frankfurt Main		80%		90%	100%									80%		90%	100%			
Lisbon		80%		90%	100%									80%		90%	100%			
London Gatwick	80%	90%	100%									80%	90%	100%						
London Heathrow	80%	90%	100%									80%	90%	100%						
London Luton		90%	95%	100%									90%	95%	100%					
Madrid Barajas		80%		90%	100%									80%		90%	100%			
Munich		80%		90%	100%									80%		90%	100%			
Paris CDG		90%		99%										80%		90%	99%			
Paris Orly		90%		99%				100%				40%		80%		90%	100%			
Riga		80%		90%	100%									80%		90%	100%			
Roma Fiumicino		80%												80%		100%				
Stockholm Arlanda		80%		90%	100%									80%		90%	100%			
Warsaw		100%												100%						
Zaragoza		80%		90%	100%									80%		90%	100%			

TABLE 3.4 SCOPE OF QUALITY STANDARDS: ARRIVING PASSENGERS

	Pre-booked / airport informed % of PRMs who should wait no longer than (minutes)										Non-pre-booked / airport not informed % of PRMs who should wait no longer than (minutes)									
	0	5	10	15	20	25	30	35	40	45	0	5	10	15	20	25	30	35	40	45
Athens		80%	90%	100%	100%								80%		90%		100%			
Barcelona		80%	90%	100%	100%								80%		80%		90%			100%
Brussels		80%	90%	100%	100%								80%		90%		100%			
Bucharest Otopeni		80%	90%	100%	100%								80%		90%		100%			100%
Budapest		100%																		
Charleroi		80%	90%	100%	100%								80%		80%		90%			100%
Copenhagen		80%	90%	100%	100%								80%		80%		90%			100%
Dublin		80%	90%	100%	100%								80%		90%		100%			
Frankfurt Main			80%		100%															
Lisbon		80%	90%	100%	100%															
London Gatwick	100%																			
London Heathrow	100%																			
London Luton	99%	100%											90%	100%						
Madrid Barajas		80%	90%	100%	100%								80%		80%		90%			100%
Munich		80%	90%	100%	100%										80%		90%			100%
Paris CDG	90%		90%	99%											80%		90%			100%
Paris Orly	90%		90%												80%		90%			100%
Riga		80%	90%	100%	100%										80%		90%			100%
Roma Fiumicino					90%	100%														
Stockholm Arlanda		80%	90%	100%	100%										80%		90%			100%
Warsaw	100%														100%					
Zaragoza		80%	90%	100%	100%										80%		90%			100%

Monitoring

3.64 While the Regulation requires larger airports to develop and publish quality standards, it does not require them publish whether they are actually met, and none of the case study airports do so. Nonetheless most airports do undertake some form of monitoring and several provided us with performance statistics. There were a number of approaches to monitoring:

- **Time spent waiting to receive assistance:** This is the most common measure used by airports, as set out above. These times are often measured by time stamps inputted into the personal digital assistants (PDAs) or equivalent devices carried by staff providing assistance to PRMs (discussed earlier). The data recorded can often give wider outputs than solely the time taken to receive assistance, such as time from gate to boarding, or time waiting once disembarked from an aircraft. This approach should give accurate information on the time spent waiting by passengers, but does not address other aspects of quality of service.
- **Spot checks:** Many airports reported that the PRM service manager will undertake frequent unannounced tours of the services and infrastructure provided within the airport. They may check, for example, that the designated points of arrival and departure are functioning correctly. This approach is useful to identify wide-ranging problems but may not be sufficiently systematic to identify all problems.
- **Surveys:** A number of airports reported using surveys to obtain feedback from passengers. Typically, a postcard with survey questions to be completed was given to PRMs at some point during their use of the airport's services, which could be submitted at information desks or at various comment boxes placed throughout the airport. These covered questions on the services received, and in some cases assessed the passenger's knowledge of the Regulation. A potential problem with this approach is the lack of accessibility for all passengers.
- **Mystery shoppers:** 'Mystery shoppers' are people (typically PRMs) paid to anonymously receive the service provided by the airport and afterwards give detailed reports or feedback about their experiences. This approach gives a thorough appraisal of the service provided at a particular time.

3.65 Table 3.5 sets out the actions airports have taken to monitor their quality standards. Most airports do not include any external auditing in their monitoring processes; Athens, Bucharest Otopeni, Luton, Madrid Barajas, Zaragoza include some external checks.

TABLE 3.5 AIRPORT ACTIONS TO MONITOR QUALITY STANDARDS

Airport	Measures monitored
Amsterdam Schiphol	Manual checks of numbers of PRMs and service quality
Athens	Audits, including 'mystery PRM' audit; PRM surveys
Bologna	PRM survey; time taken for assistance
Brussels	Time taken for assistance (in real time); passenger complaints
Bucharest Otopeni	Passenger surveys; complaints; external audits by NEB, PRM organisations, Commission, and airlines
Budapest	Monthly reports of time taken for assistance and passenger complaints; daily contact with service provider; 'walk-throughs' of service provided; airline audits

Brussels Charleroi	Passenger complaints received
Copenhagen	Time taken for assistance (in real time)
Dublin	Weekly audits of time taken; annual training audit
Frankfurt Main	Monthly reports of time taken for assistance
Lisbon	Time taken for assistance
London Heathrow	Time taken for assistance; missed flights; flight delays; internal audits; regular meetings with service providers; complaints from passengers and airlines; some of these measures monitored through a 'dashboard'; monthly 'scorecard' review
London Luton	Passenger feedback forms; 'walk-throughs' of service provided; internal and external audit teams of provider; airline and PRM organisation audits
Madrid Barajas	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms
Munich	Monthly reports of time taken for assistance; spot checks; quality service manager as 'mystery shopper'; yearly passenger survey
Paris Charles De Gaulle	Flight delays for which PRM services are responsible; passenger complaints
Riga	Questionnaires to airlines, passengers and others; daily service monitoring by duty managers; internal audits
Rome Fiumicino	Time taken for assistance (in real time); other unspecified monitoring
Stockholm Arlanda	Time taken for assistance; passenger complaints; AOC meetings
Warsaw	Infrequent spot checks of time taken
Zaragoza	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms

3.66 In addition, we found that most NEBs had not undertaken any direct, systematic monitoring of whether airports were meeting quality standards. Table 3.6 sets out the actions NEBs have taken to monitor airport quality standards.

TABLE 3.6 NEB ACTIONS TO MONITOR QUALITY STANDARDS

Member State	Monitoring
Belgium	Inspections of infrastructure and procedures
Denmark	No monitoring, biannual meetings
France	No monitoring
Germany	No monitoring
Greece	Inspections of infrastructure and procedures at Athens, not of regional airports
Hungary	Inspections of infrastructure and procedures, questionnaire on training
Ireland	No monitoring
Italy	Inspections of quality standards including infrastructure, procedures, information, training
Latvia	Inspection of infrastructure, procedures, waiting times, documentation
Netherlands	Inspection of infrastructure and procedures
Poland	No monitoring
Portugal	No monitoring

Member State	Monitoring
Romania	Request annual reports
Spain	Checks of staff training and procedures
Sweden	No monitoring
United Kingdom	Inspections of infrastructure and procedures, attend monthly PRM groups at major airports, less frequently at smaller airports

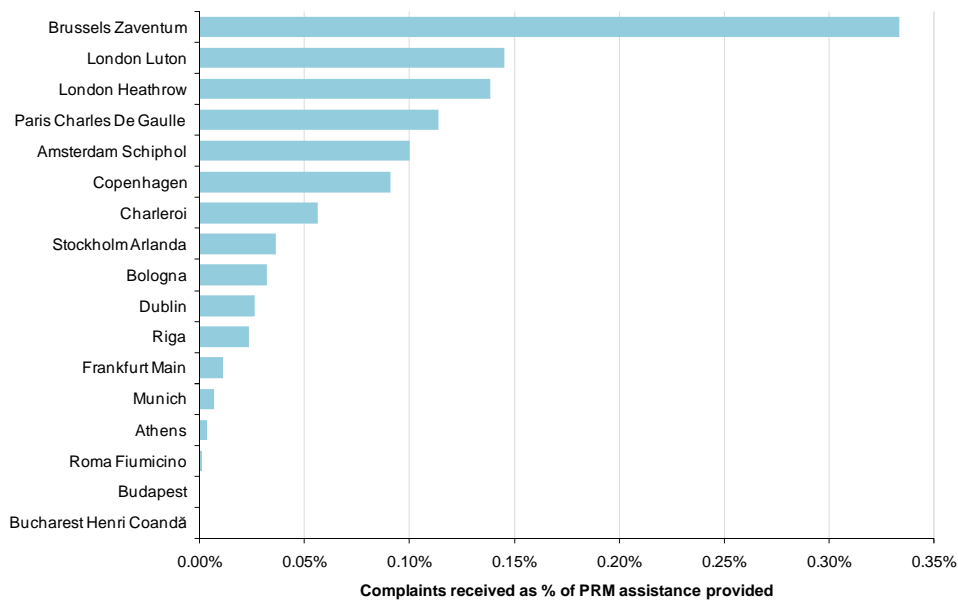
Complaints to airports

Airport processes for handling complaints

- 3.67 Most case study airports accepted complaints relating to PRM services in the same way as other complaints. Often airports will accept complaints via email, via information desks at the airport, or via forms which can be filled in and deposited in comment boxes located at various points within the terminals.
- 3.68 Typically, complaints are registered in a database which is reviewed by a member of staff on the service quality team. The staff member allocated to the complaint reviews documents relating to the service referred to in the complaint, and talks to the member of staff who provided the service (this member of staff may be employed by either the airport or a contractor). After investigating the complaint, the staff member writes a report including the findings and any response which is sent to the passenger. The service quality manager may review monthly reports on complaints, which will include complaints regarding the PRM service.
- 3.69 The level of detail to which the complaint handling process is specified varies depending on the volume of complaints received: an airport which handles many complaints may follow clearly defined procedures for handling complaints, while an airport which receives only few complaints may address them on a more ad hoc basis.

Number of complaints received

- 3.70 For each airport in the case study sample we requested the number of complaints received relating to provision of services to PRMs. We compared the data received with the assistance provided to give a rate of complaints, shown in Figure 3.9. This shows a high level of variation in the number of complaints received. Most of the larger airports have a similar rate of complaints. The highest rate of complaints is at Brussels Zaventem (0.33%, over double the next highest).

FIGURE 3.9 RATE OF COMPLAINTS RECEIVED BY AIRPORTS, 2009

3.71 Some airports note that they have received no complaints regarding the Regulation since its introduction, while during the same period they have received several thousand complaints regarding aspects of their service not covered by the Regulation. This is evidence that their system for receiving complaints is functioning well, but it is not necessarily evidence that there are no problems regarding the implementation of the Regulation. We were informed by several PRM organisations that a mobility-impaired passenger who receives poor service may be reluctant to complain, as they may wish to forget the incident, and since these passengers may face many obstacles during a journey, they may take the view that reporting the more frequent minor incidents is not worthwhile. In addition, the lack of compensation in most Member States means there is little direct incentive to complain.

Training

3.72 The Regulation requires that airports provide training relating to PRMs for their personnel:

- All personnel who provide direct assistance to PRMs, including those employed by subcontractors, must have knowledge of how to meet the needs of various different types of PRMs.
- All airport personnel who have direct contact with the travelling public must have disability-equality and disability-awareness training.
- All new employees must attend disability-related training and personnel must have appropriate refresher training.

3.73 We requested information on the training provided at each of the airports in the sample for the study. As many considered this material confidential, we were not able to obtain many copies of training documents. From the information we have received, the content of the three types of training may typically include the following:

- **Staff assisting PRMs directly:** Most courses described included: theoretical training on rights and obligations under the Regulation, training in awareness of disabilities, and physical training in lifting and other handling of PRMs. Some elements of training may be given to all staff; these could include Ambulift licenses and sign language. It may also include training not directly related to PRMs, such as training in first aid. Not all of the training courses we were given information for included provision for ‘soft’ elements of interacting with PRMs, such as ensuring that the person providing assistance is at the same height as a wheelchair user when talking to them, or being aware of the type of circumstances which could cause a person with autism to become distressed.
- **Passenger-facing staff:** This training is typically the disability-equality and disability-awareness sections of the training for staff providing direct assistance to PRMs. Several airports ensured that this training was undertaken by all staff working in the airport (including external staff) by making this training a requirement for obtaining the security clearance pass needed to work in the airport. It may include specific training for security staff who perform searches on PRMs, relating for example to how to search a passenger in their own wheelchair, and awareness of the importance to blind passengers of having belongs replaced in exactly the same place within their baggage.
- **Other employees:** The form of this training was often a short video on disability awareness. Some airports did not provide this training, or did not make it compulsory, which appears to be an infringement of the Regulation.

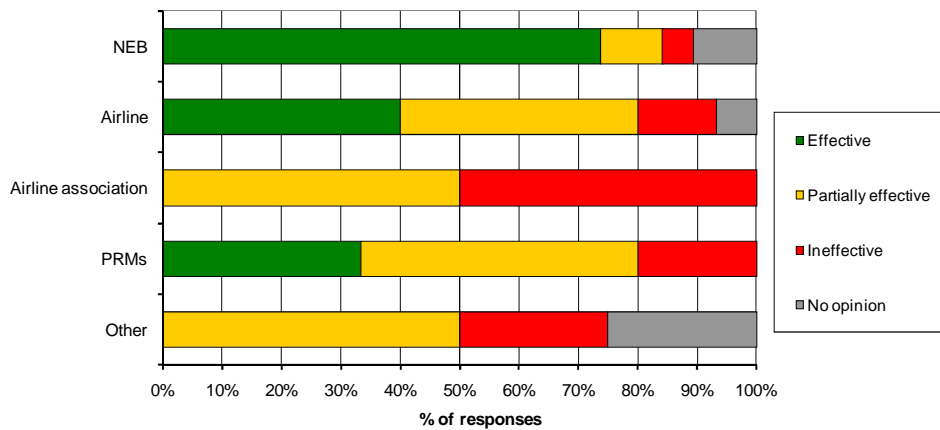
3.74 Training was delivered either internally, by external contractors specialising in training, or by PRM organisations. Several airports informed us that they used a “train the trainer” approach, where employees who have received the training then go on to train other employees. Several airports informed us that their training programmes were compliant with the guidance given in Annex 5-G of ECAC Document 30. A number of airports had involved PRM organisations in their training in some way, including in the development of the training, in its delivery, or through audit and approval. Several airports informed us that they had sought assistance from local PRM organisations but had found this problematic.

3.75 The lengths of the training programmes about which we were given information varied widely. We were given information relating to 6 training programmes for those providing direct assistance to PRMs: of these, 4 lasted 3-6 days, while two lasted 12 days or more. The length of training for passenger-facing staff also varied, with some airports requiring a full day of training whilst others only required the staff member to watch a 20 minute video. Refresher courses also varied considerably in length (between 1 and 4.5 days) and frequency: one airport informed us that it had monthly refresher training, while another required refresher training every 2 years.

Stakeholder views on effectiveness of implementation

3.76 We asked each of the stakeholders we contacted about how effectively they believed airports had implemented the Regulation; views vary considerably between different groups of stakeholders (Figure 3.10 below). Airlines and PRM organisations both believe that there are significant improvements to be made, but over 70% of NEBs believe that the actions of airports are largely sufficient. The rest of this section summarises the views expressed by stakeholders.

FIGURE 3.10 VIEWS OF STAKEHOLDERS ON AIRPORT EFFECTIVENESS



Airports

3.77 Most airports viewed their own actions as effective implementations of the Regulation. The most common problem reported by airports was misuse of the PRM service, however the level of impact of this reported misuse varied considerably between airports. The following other issues were identified by airports:

- Connecting flights: Minimum connection times, while sufficient for other passengers, can be insufficient for a PRM.
- Initial implementation of the Regulation: Several airports informed us that they had had problems with subcontracted service providers; a number had since retendered the service because of unsatisfactory service quality.
- Several airports informed us that they had had difficulty obtaining the cooperation of PRM organisations when developing quality standards.

Airlines and airline associations

3.78 Many airlines reported that quality of service and level of charges varied considerably between airports. This did not necessarily relate to size of airport: some airlines informed us that larger airports tended to provide better assistance, while other airlines informed us that their provision tended to be worse. Few airlines reported significant delays due to PRM services.

3.79 The most common problems with airport implementation of the Regulation reported by airlines related to airport charges. These issues were raised, in particular, by low cost and charter carriers:

- many airlines believed that the method of determining charges was not transparent and that the charges determined by airports were not reasonable or cost reflective;
- many airlines reported that the costs of the PRM service had increased (in some cases significantly) since the introduction of the Regulation, relative to the previous situation when the PRM service was contracted directly by the carrier, generally from its ground handler;

- this increase was believed by several airlines to be a result of overstaffing, or by some as a result of the inclusion of a margin, which they believed to be a contravention of the Regulation;
- at the same time as this perceived increase in cost, many airlines believed the quality of service had decreased, or at best not improved, since the introduction of the Regulation, and that the charges therefore represented poor value for money; and
- some States (in particular Spain and Portugal) have introduced uniform charges for services at State-operated airports, which airlines do not believe are cost-reflective or give value for money.

3.80 Some airlines informed us that they had serious concerns regarding the safety of uses of the PRM assistance services provided by airports, and noted that the airlines have no right to audit or directly influence the service provider.

3.81 Airline associations raised many of the same issues. ELFAA had particularly negative views regarding the assistance provided by airports: it believed that assistance was provided by unskilled staff and that the quality had decreased as a result, and that the cost of provision had tripled at some airports. It also believed that services were poorly synchronised with airline schedules. All of the airline associations from whom we obtained a response raised at least some concerns on all points regarding charges, including whether the costs were reasonable, cost-related and transparent, and whether the cooperation with airlines was sufficient.

NEBs

3.82 Most NEBs believed that airports had implemented the Regulation effectively. Several informed us that they believed there had initially been problems with implementation, but that these were now resolved. Those that believed there were areas which should be improved identified problems with designated points, infrastructure, delays on arrival and provision of information. It is not clear whether the level of supervision by most NEBs would be sufficient to allow an in-depth analysis of airport effectiveness (see 5.42).

PRM organisations

3.83 Most organisations representing disabled people believed there were some issues with the implementation of the Regulation by airports, and identified issues at all points of the process. Most organisations also noted that there was wide variation in the quality of service provided at different airports; several believed that this was a result of variation in the training given. Frequently identified problems included:

- **Mobility equipment is frequently damaged:** Many PRM organisations informed us that understanding of mobility equipment was poor and that training regarding it was insufficient. They believed that this poor understanding amongst airport and ground handling staff contributed to frequent damage. There was an expectation amongst most of the PRMs using wheelchairs that we spoke to that, if they travel by air, there is a high likelihood their chair will be damaged. For disabled people with extremely limited mobility who rely heavily on their wheelchair and may have adaptations particular to their needs, damage to their chair can be extremely distressing.

- **Lengthy waits for disembarkation:** Although the initial disembarking from the plane may be completed within the time set out in the quality standards, the passenger may then have to wait a long period of time in a holding area before the rest of the arrivals procedure is finished.
- **Information provision is poor:** This includes information on the layout of the airport, accessible real-time information on flights, and information on the rights of PRMs.
- **Websites are inaccessible:** We were informed by many organisations that airport websites are frequently inaccessible to visually impaired people.
- **Poor training of staff:** Several organisations reported that the interaction of airport assistance staff with PRMs could be poor. Examples of this included the assumption that all PRMs require a wheelchair, and where the assistance staff talk to a companion of a PRM rather than directly to the PRM.
- **Inability to use own wheelchair:** As discussed above, some wheelchair users with particularly limited mobility may wish to use their own wheelchair for as long as possible. We were informed that many airports do not permit the use of a passenger's own chair up to the gate, and that some have a policy of transferring the passenger to an airport chair at check-in.
- **Inadequate provision where connection times are long:** Where there is a wait of several hours between the arrival of one flight and the scheduled departure of the connecting flight, at some airports this may result in a PRM being left unattended for a long period in an area without facilities or assistance.
- **Insufficient time allowed for connections:** The minimum connection time given by airports may not be sufficient to unload, transfer and board a PRM. This is a particular problem at larger, more complex airports with multiple terminals.
- **Parking provision:** A number of issues were raised with the parking spaces made available to PRMs. These included comments on inconvenient location, insufficient capacity, or inappropriate requirements for payment.
- **“Holding areas”:** Some airports do not enable PRMs to access departure lounge facilities such as shops or restaurants, and require them to remain in a “holding area” for PRMs. Although such access to facilities is not required by the Regulation, it can significantly improve the experience of air travel of PRMs, and is provided by many airports.
- **Communication of arrival:** Communication of arrival at the airport can be difficult, for example through poor signage for points of communication, or points of communication failing to respond to calls for assistance.
- **Poor provision for the visually impaired:** Many airports do not provide adaptations to allow visually impaired passengers to access the airport independently. These can include tactile surfaces or Braille maps. We were also informed that training on how security staff should search the bags of these passengers was often lacking; it is important that all items are returned to their original location, as otherwise the passenger may have difficulty finding them.

Other organisations

3.84 The other organisations we interviewed raised issues which have been raised by the stakeholder groups already discussed. These included:

- “Teething problems” when the Regulation was first introduced;
- Poor provision of information;

- Variability of training; and
- Falling service levels, in particular falling standards of safety.

Conclusions

- 3.85 All airports in the sample for this study had implemented the provisions of the Regulation. We were informed that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports, but we were not told of any other airports at which the Regulation has not been implemented. Most of the sample airports had contracted the provision of PRM assistance services to an external company, and several had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that initial procurement and specification had not met actual needs.
- 3.86 The service provided at the sample airports varies in terms of a number of factors including the resources available to provide the services; the level of training of the assistance staff; the type of equipment used to provide services; the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, there is resulting variability in service quality, although this is difficult to quantify.
- 3.87 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data. The type of PRM service requested also varies considerably between airports. Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports.
- 3.88 The Regulation requires airports to publish quality standards. Most sample airports had done so, although some had published them only to airlines and other service users. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.
- 3.89 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably. We analysed this charge to examine whether variation could be explained by higher frequency of use of the service, differences in price levels between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport may be a further factor influencing the cost of service provision and hence the level of charges.
- 3.90 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a

number of barriers to effective consultation, including linguistic restrictions and airport user committees which failed to include all interested stakeholders. Consultation with airlines was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.

- 3.91 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

4. APPLICATION OF THE REGULATION BY AIRLINES

Introduction

4.1 Regulation 1107/2006 also sets out requirements for air carriers relating to their treatment of passengers with reduced mobility (PRMs). This section assesses how airlines are implementing these requirements. Information is drawn from two key sources:

- a detailed review of information published by the case study airline on their websites, against a range of criteria; and
- interviews with representatives of the carriers and other stakeholders.

4.2 This section begins by outlining the obligations imposed on airlines by the Regulation, and evaluates how airlines are implementing these requirements.

Requirements of the Regulation for air carriers

4.3 The Regulation imposes a range of requirements on airlines, which can be summarised as follows:

- **Prevention of refusal of carriage:** The Regulation prohibits airlines from refusing carriage or accepting reservations from PRMs, unless this is necessary to comply with safety requirements, or necessitated by the physical constraints of the aircraft. Where boarding is refused, the provisions of Regulation 261/2004 should apply with regard to refunds or rerouting. Airlines are permitted to require that a PRM be accompanied by a person who is able to provide any assistance that is required (again subject to this being necessary to meet safety requirements), and are required to publish any safety rules which they attach to the carriage of PRMs.
- **Transmission of information:** Airlines are required to take all necessary measures to enable the receipt of PRM assistance requests at all points of sale. Where such requests are received up to 48 hours prior to departure, the airline should transmit the information to the relevant airport(s) at least 36 hours before departure, or as soon as possible if notification is received from the passenger less than 48 hours before departure. Following departure of a flight the airline is also required to provide the destination airport with details of the PRMs requiring assistance on the arriving flight.
- **Assistance:** Annex II specifies the level of assistance which air carriers should provide to PRMs. This comprises carriage of assistance dogs, transport of up to two items of mobility equipment, communication of flight information in accessible formats, making efforts to accommodate seating requests (and seating accompanying persons next to the PRM where possible) and assistance in moving to toilet facilities.
- **Training:** All employees (including those employed by sub-contractors) handling PRMs should have knowledge of how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability-related training.

- **Compensation for lost or damaged mobility equipment:** Airlines are required to compensate passengers for lost or damaged mobility equipment or assistive devices, in accordance with national and international law.

Published safety rules

- 4.4 Article 4(3) requires airlines to publish the safety rules relating to carriage of PRMs. The Regulation does not state in any more detail what these safety rules should cover, but we would expect from the context that this is intended to mean rules relating to where carriers would exercise a derogation under Article 4(1) to allow refusal or limitation of carriage, or for where passengers would have to be accompanied. This would include any rules necessitating limitations on the number of PRMs which can be carried, restrictions on the types of PRM posing specific safety risks, or limitations on their carriage or on that of mobility equipment due to the size of aircraft.
- 4.5 In some cases the information published by airlines is in the form of a document defined as ‘safety rules’ or ‘information pursuant to Regulation 1107/2006’, but more commonly information is provided on a web page (or pages) without these descriptions. The limited use of the ‘safety rules’ term by airlines may indicate that carriers do not understand what is meant by the term, or that the requirement is open to interpretation. It is also possible that airlines do not have specific PRM safety rules – both KLM and SAS informed us that the same safety rules apply to PRMs as to all other passengers.
- 4.6 The airlines’ Conditions of Carriage may also provide a useful source of information on policy on the carriage of PRMs, and in some cases may provide more detail than dedicated PRM web pages.
- 4.7 Seven carriers’ Conditions of Carriage also refer to other requirements (often described as ‘Our regulations’ or ‘Other regulations’) which apply to carriage of PRMs. In the sample we have reviewed, the reference to such regulations does not always specify exactly what the scope of these is or where they are to be found. This may infringe the requirement in Article 4(3) to publish any safety rules affecting PRMs, and may also raise issues of consistency with the Unfair Contract Terms Directive, as the conditions on which bookings are made should be transparent at the time. Whilst some airlines’ Conditions state that these regulations are published on their websites, the following case study carriers’ Conditions include such references without saying where the information can be found:
- Air Baltic;
 - Emirates;
 - SAS; and
 - TAP Portugal.
- 4.8 The carriers which provided the most detailed information set out the information listed below, and we would therefore expect a comprehensive PRM web page to provide at least some information on these topics:
- Any limitations on the carriage of PRMs, for example a limit on the number that can be conveyed on a given flight;

- Advance booking requirements for any PRM requiring assistance;
- Conditions under which an accompanying passenger will be required;
- Guidance on the carriage of assistance animals;
- Policies on the carriage of equipment, e.g. wheelchairs, stretchers and oxygen; and
- Any assistance which will be offered on board.

Information actually published by carriers

- 4.9 Three of the sample airlines (Air Berlin, easyJet and Ryanair) provide either ‘safety rules’, or a notice specifically stated to be pursuant to Regulation 1107/2006. In a further six cases Regulation 1107/2006 is mentioned in a first sentence of the web page / PRM document, or elsewhere in the text.
- 4.10 We found that eight of the sample airlines include on their website all the information likely to be required. This was normally in the form of a web page, sometimes with sub-sections, however AirBaltic and KLM provide downloadable documents containing all PRM guidance. Delta also provides a PRM brochure, but this does not contain all the information provided on the PRM web page. In the remainder of cases airlines provide fairly comprehensive web pages, but omit certain items which may appear on other sections of the website (for example in the Conditions of Carriage).
- 4.11 In some cases we found inconsistencies between the PRM web page and that the information provided in the Conditions of Carriage. For example, Delta’s Conditions of Carriage state that 48 hours’ advance notice is required for any PRMs who wish to receive special assistance, but the PRM information section states that 48 hours’ advance notice is only required if the passenger needs to use oxygen during the flight, requires the packaging of a wheelchair battery for shipment as checked luggage, or is travelling with a group of 10 or more people with disabilities. Austrian Airlines’ PRM information emphasises the importance of booking in advance, but does not reflect the stronger wording in the Conditions of Carriage, which state that carriage of PRMs ‘is subject to express prior arrangement’. Similarly, the Conditions of Carriage of Alitalia, Brussels Airlines, Delta, Ryanair and Wizzair state that carriage may be refused to PRMs if not arranged in advance; however although the PRM webpage states that assistance should be requested at the time of booking, it is not indicated that failure to do this may result in denial of boarding.
- 4.12 Some of the rules set out in airlines’ Conditions of Carriage do not appear in the PRM information section of the website. For example, Thomsonfly imposes a limit on the number of PRMs or wheelchairs which will be accepted per flight in their Conditions of Carriage, which does not appear on the airline’s PRM web page.

Table 4.1 outlines the coverage of the PRM web pages against the criteria set out in paragraph 4.9 above.

TABLE 4.1 INFORMATION AVAILABLE ON CARRIER WEBSITES

Airline	Information provided	Key issues and omissions
Aegean Airlines	'Travel Guide' section of website provides some information on carriage of assistance animals, wheelchairs and oxygen.	No information on advance booking, accompanying passengers or animals Information on wheelchairs is incomplete – conditions of carriage state that spillable batteries cannot be carried. No information on stretchers.
Air Berlin	Information is provided within a section entitled 'Flying barrier-free', and in a safety rules section entitled 'airberlin's safety regulations for the carriage of passengers with restricted mobility (PRMs) in accordance with EC regulation no. 1107/2206' downloadable from the same page. The safety rules discuss the following: <ul style="list-style-type: none"> • PRM limit • Accompanying persons • Seat allocation • Guide dogs • Information in the event of refusal of carriage 	The safety rules do not include advance booking or policies on carriage of equipment. However, with the exception of stretchers this information is provided on the PRM webpage which contains the safety rules.
Air France	Information is provided within a section entitled 'Passengers with reduced mobility'	None
AirBaltic	Detailed information is provided within a document entitled 'Air travel for physically challenged passengers'	None
Alitalia	Limited information across all categories is provided in a section entitled 'No barriers travelling'.	More detailed information on some topics can be accessed only by searching the site for specific terms, e.g. 'stretcher'.
Austrian	Information on most categories is provided in a section entitled 'Barrier-free travel'.	No reference is made to the carriage of stretchers.
British Airways	Information on all categories is provided within a section entitled 'Disability assistance'	None
Brussels Airlines	Reasonably detailed information across all categories is provided in a section entitled 'Special Assistance'.	Information on accompanying passengers, wheelchairs and stretchers is incomplete.
Delta	Detailed information on all categories is provided within a section entitled 'Services for Travelers with Disabilities'. A brochure providing a summary of this information can also be downloaded from the site.	None
easyJet	Detailed information on almost all categories is provided within a notice entitled 'For passengers who are disabled or have reduced mobility (PRM) due to a physical, cognitive (learning) disability or any physical impairment, as defined by current European law, Regulation EC1107/2006 Article 2(a).' In addition detailed information is provided in the 'Carrier's Regulations'.	The information notice on the website is detailed and generally appears complete. There is no reference to provision of oxygen or carriage of stretchers although both are addressed in the Carrier's Regulations.
Emirates	Some information across all categories is provided within the sections 'Health & Travel', 'Special Needs' and 'FAQs'.	The information provided appears to be complete but it is fragmented between these

Airline	Information provided	Key issues and omissions
		three sections, which could be confusing.
Iberia	The website has a general information section entitled 'Passengers with reduced mobility or special needs'. This provides a link to a more detailed information leaflet, downloadable by clicking on a 'No barriers to travel' icon.	The location of the information leaflet is not obvious as it is not listed under 'Information of interest'. Information in the leaflet on accompanying passengers and carriage of mobility equipment appears to be incomplete. There is a document entitled 'Attending to the needs of people with reduced mobility' but this appears to be a general summary of ECAC/ICAO guidance and it is not clear what applies to Iberia.
KLM	Information is provided within a section entitled 'Physically challenged passengers' and in a 'Carefree travel' brochure.	None
Lufthansa	Information on most categories is provided in a section entitled 'Travellers with special needs'.	No information on accompanying passengers or stretchers, although some info is provided in a section on flights to and from the USA.
Ryanair	Detailed information on almost all categories is provided within a notice entitled 'NOTICE PURSUANT TO EC REGULATION 1107/2006 CARRIAGE OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY'.	None
SAS	Information on almost all categories is provided within a section entitled 'Special needs'.	No information on accompanying passengers or stretchers
TAP Portugal	Detailed information on all categories is provided within a section entitled 'Special Assistance'.	None
TAROM	Limited information across all categories is provided in a section entitled 'Persons with disabilities'.	Because the information is not detailed it is not clear whether it is complete, e.g. whether all circumstances where passengers need to be accompanied are listed.
Thomas Cook	Information on all categories is provided within a section entitled 'Medical - passengers with Reduced Mobility'.	None
TUI (Thomsonfly)	Some information on most categories is provided within a section entitled 'Passengers with special needs'.	No information on stretchers or oxygen
Wizzair	Limited information is provided within a section entitled 'Passengers with Special Needs'.	No information on assistance animals or stretchers, although both are referred to in the Conditions of Carriage.

Carrier requirements on carriage of PRMs

Safety requirements defined in law or by licensing authorities

- 4.13 Article 4(1) allows derogations from Article 3 in order to meet safety requirements defined by national or international law, or to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned. The only EU-wide legislation which applies is EU-OPS1 (Commission Regulation 859/2008), which is aligned with JAR-OPS 1 Section 1 guidance previously produced by the Joint Aviation Authorities.
- 4.14 National health and safety legislation may also provide safety-related grounds for imposing restrictions on the carriage of PRMs – for example cabin crew may not be permitted to lift passengers between their seat and an on-board wheelchair, which would then necessitate an accompanying passenger if it is expected that they will need to leave their seat at any point during the flight.
- 4.15 All other restrictions are governed by safety requirements established by licensing authorities, which are often (although not always) the same organisation that has been designated as the NEB for the Regulation. The main guidance material relating to carriage of PRMs that licensing authorities should take into account is that originally defined in Section 2 of JAR-OPS 1. Section 2 was not included in EU-OPS1, but ECAC Document 30 states that, pending the adoption of implementing rules related to operations based on the EASA Regulation (216/2008), Member States are allowed to use the Section 2 guidance material, provided that there is not conflict with EU-OPS. To accompany EU-OPS 1, the JAA published an updated version of Section 2 in the form of Temporary Guidance Leaflet (TGL) 44. The section relating to the carriage of PRMs, ACJ OPS 1.260, remains unchanged from the original JAR-OPS 1 Section 2. It states that:

- 1 *A person with reduced mobility (PRM) is understood to mean a person whose mobility is reduced due to physical incapacity (sensory or locomotory), an intellectual deficiency, age, illness or any other cause of disability when using transport and when the situation needs special attention and the adaptation to a person's need of the service made available to all passengers.*
- 2 *In normal circumstances PRMs should not be seated adjacent to an emergency exit.*
- 3 *In circumstances in which the number of PRMs forms a significant proportion of the total number of passengers carried on board:*
 - a. *The number of PRMs should not exceed the number of able-bodied persons capable of assisting with an emergency evacuation; and*
 - b. *The guidance given in paragraph 2 above should be followed to the maximum extent possible.*

- 4.16 Licensing authorities may require their carriers to impose more stringent restrictions on carriage of PRMs than the 50% limit defined by TGL 44. However, this is rare: the only example identified amongst the case study States is the Belgian Civil Aviation Authority (BCAA), which has set restrictions on the numbers of certain types of PRM, and minimum numbers of accompanying passengers. The numerical limits, which are outlined in more detail in the case study for Belgium in appendix C, are reflected in the conditions imposed by Brussels Airlines. In contrast, some licensing authorities

(for example the UK CAA) have stated that they will not generally approve limits on carriage of PRMs below the 50% defined in TGL 44.

- 4.17 In the remainder of cases, licensing authorities do not have any defined policy and will consider any restrictions on carriage of PRMs on a case by case basis. Therefore, more stringent restrictions on carriage of PRMs may be proposed by the airlines themselves, included in their Operations Manuals and submitted for approval by the licensing authority. As a result, there are significant variations between airlines, even where operational models and types of aircraft are similar. For example, whilst Wizzair, easyJet and Ryanair have similar operational models and aircraft types, Ryanair has a limit of 4 PRMs who require assistance per aircraft whilst Wizzair has a limit of 28 PRMs and easyJet 50%. Although the limits imposed by the three airlines are all based on safety, it is difficult to imagine that all three could be ‘safe’ limits. There does not seem to be an evidence base for these limits and a stakeholder suggested to us that, in the event of an emergency, it is impossible to predict whether even ‘able bodied’ passengers will be in a physical or psychological state consistent with evacuating the aircraft in the expected time; therefore, it was discriminatory to have a PRM limit.
- 4.18 The policy adopted by many of the legacy carriers is influenced by the United States Department of Transport Regulation, 14 CFR Part 382 (hereafter described as rule 382). The United States Air Carrier Access Act of 1999 made rule 382 apply to non-US carriers on flights to/from the US, and to all flights which are codeshares with US carriers (even flights not to/from the US), except where there is a specific conflict with non-US law. Despite sharing the same aspiration of ensuring equal access to air travel for all, there are significant differences between the US and EU regulations. Rule 382 specifically prohibits airlines from imposing numerical limits on PRMs, on the basis that this practice is discriminatory. Lufthansa and TAP Portugal are the only case study airlines operating to and from the US to publish PRM limits.
- 4.19 PRM limits have also been challenged on the basis of national law. In 2009, the Madrid Provincial Court ruled that Iberia must change its Flight Operation Manual because it was indirectly discriminatory against disabled people. The case was brought by three deaf people who were refused boarding because they were unaccompanied.
- 4.20 The Regulation allows airlines to **request that a passenger be accompanied**, but only on the basis of safety. Three carriers cited the UK Department for Transport’s *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice* as the basis for the criteria they use to determine whether a PRM should be accompanied. The document also supports the Regulation in providing guidance to airlines and airports on best practice approaches to the handling and transit of PRMs. The guidance states that an accompanying passenger should only be required “when it is evident that the person is not self-reliant and this could pose a risk to safety”. The document defines this as being as passenger who cannot:
- Unfasten their seat belt;
 - Leave their seat and reach an emergency exit unaided;
 - Retrieve and fit a lifejacket;
 - Don an oxygen mask without assistance; or
 - Is unable to understand the safety briefing and any advice and instructions given

by the crew in an emergency situation (including information communicated in accessible formats).

- 4.21 The document also states that passengers who require a level of personal care which cabin crew cannot provide should be told that they should be accompanied. This includes assistance with the following:
- Breathing (reliance on supplementary oxygen);
 - Feeding;
 - Toileting; and
 - Medicating.
- 4.22 The guidance implies that a passenger should only be required to be accompanied if they are likely to require such assistance during the course of the flight. This is consistent with rule 382, which states that "concern that a passenger with a disability may need personal care services...is not a basis for requiring the passenger to travel with a safety assistant".
- 4.23 The most significant difference between US and EU law relates to the **48 hour advance notification** requirement in the Regulation for passengers requiring assistance. Rule 382 states that requiring pre-notification from PRMs is discriminatory, given that the same requirement is not imposed on other passengers. It does however allow airlines to require 48 hours pre-notification in circumstances where a passenger:
- Requires oxygen on a domestic flight (72 hours notice can be requested on international flights);
 - Is travelling in an incubator;
 - Requires a respirator or oxygen concentrator to be connected to the aircraft power supply;
 - Is travelling in a stretcher;
 - Is travelling in an electric wheelchair on an aircraft with 60 seats or less;
 - Requires hazardous material packaging, e.g. for an electric wheelchair;
 - Is travelling in a group of 10 or more PRMs;
 - Requires an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible toilet;
 - Intends to travel in the cabin with an emotional support animal;
 - Intends to travel in the cabin with a service animal on a flight of 8 hours or more; or
 - Has both severe vision and hearing impairments.
- 4.24 The Regulation does not define the circumstances under which **medical clearance** can be reflected from a passenger, but rule 382 prohibits airlines from requesting medical certification unless the passenger's condition poses a 'direct threat', which 'means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services'.

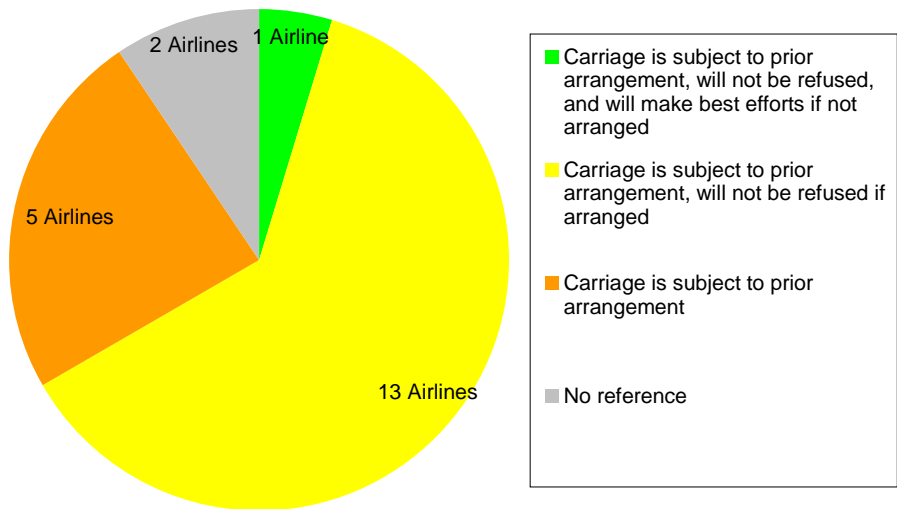
Policy on carriage of PRMs defined in Conditions of Carriage

4.25 The element of carriers’ Conditions of Carriage relating to PRMs can be classified into the following six categories:

- **Will not refuse carriage on disability grounds** – all PRMs carried without restriction or requirement for pre-booking;
- **Carriage subject to prior arrangement, but will not be refused if not arranged** – the airline would prefer that advance arrangements are made, but PRMs may nevertheless be carried without this;
- **Carriage subject to prior arrangement and will not be refused if arranged** – PRMs are required to make advance arrangements, and will not be refused carriage on the basis of their disability if advance arrangements have been made;
- **Carriage is subject to prior arrangement** – as above, but without the additional clause on non-refusal of carriage to PRMs who have made arrangements;
- **Non-compliant term** – e.g. airline refuses to carry certain PRMs;
- **No reference** – PRMs not discussed in Conditions of Carriage.

4.26 Figure 4.1 shows the general approach adopted in the Conditions of Carriage of the case study airlines. None of the case study Conditions of Carriage were at the extreme ends of the scale, i.e. explicitly non-compliant terms or carriage of all PRMs without any restriction.

FIGURE 4.1 CONDITIONS ON CARRIAGE OF PRMS



4.27 Most (13) of the Conditions of Carriage of the sample airlines surveyed state a policy of not refusing carriage to PRMs on the grounds of their special requirements subject to arrangements being made in advance, although boarding may still be denied for other reasons. Alitalia adds an additional disclaimer, which states that the PRMs who have made advance arrangements will be carried, unless this is “...impossible due to objective causes of force majeure”.

- 4.28 The advance booking requirement does not necessarily apply to all PRMs. Air Berlin states that the carriage of medical devices and mobility aids can only be guaranteed with up to 48 hours' notice, and visually impaired passengers with guide dogs are also required to make advance arrangements. No reference is made to PRMs not falling within these categories, however.
- 4.29 Table 4.2 shows the approaches adopted by each of the case study airlines in their Conditions of Carriage. Air Berlin is unusual in that the advance booking requirement appears only to apply to PRMs reliant on mobility aids, medical devices or assistance animals, and it appears that no such requirement exists for other PRMs.

TABLE 4.2 CONDITIONS OF CARRIAGE OF PRMS

Airline	State	General approach
Aegean Airlines	Greece	No reference
Air Berlin	Germany	Carriage of mobility aids, medical devices and assistance animals is subject to prior arrangement
Air France	France	Carriage is subject to prior arrangement, will not be refused if arranged
AirBaltic	Latvia	Carriage is subject to prior arrangement, will not be refused if arranged
Alitalia	Italy	Carriage is subject to prior arrangement, will not be refused if arranged
Austrian	Austria	Carriage is subject to prior arrangement
British Airways	UK	Carriage is subject to prior arrangement, will not be refused, and will make best efforts if not arranged
Brussels Airlines	Belgium	Carriage is subject to prior arrangement, will not be refused if arranged Also state that they will make reasonable efforts even if not arranged.
Delta	Non-EU	Carriage is subject to prior arrangement
EasyJet	UK	Carriage is subject to prior arrangement
Emirates	Non-EU	Carriage is subject to prior arrangement
Iberia	Spain	No reference
KLM	Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Lufthansa	Germany	Carriage is subject to prior arrangement, will not be refused if arranged
Ryanair	Ireland	Carriage is subject to prior arrangement, will not be refused if arranged
SAS	Sweden	Carriage is subject to prior arrangement, will not be refused if arranged
TAP Portugal	Portugal	Carriage is subject to prior arrangement, will not be refused if arranged
TAROM	Romania	Carriage is subject to prior arrangement, will not be refused if arranged
Thomas Cook	Germany / UK	Carriage is subject to prior arrangement, will not be

Airline	State	General approach
		refused if arranged
TUI (Thomsonfly)	Germany / UK / Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Wizzair	Hungary	Carriage is subject to prior arrangement

Circumstances under which carriage may be refused

4.30 Although all of the case study airlines impose a range of conditions on PRM bookings, only a proportion state explicitly that carriage may be refused if certain conditions are not met. In some cases, an individual PRM travelling cannot control whether the conditions are met, but some conditions can be satisfied if the PRM follows a defined course of action:

- Conditions which individual PRMs cannot control whether they meet include limits on the number of PRMs which can be carried on a given flight, and restrictions posed by the physical size and configuration of specific aircraft
- Conditions which PRMs can take actions to comply with include advance booking (discussed in the preceding section), travelling with an accompanying passenger or obtaining medical clearance.

4.31 The remaining categories are discussed in turn below.

4.32 Under Article 4 of the Regulation carriage can only be refused on safety grounds, or if boarding is physically impossible due to space constraints, a requirement with which most of the case study airlines are compliant. The only condition we have identified which is potentially non-compliant is the requirement for advance booking cited by Alitalia, Brussels Airlines, Delta, Ryanair and Wizz Air.

PRM limits and physical constraints

4.33 Ryanair is the only case study airline to set out numerical limits on carriage of PRMs in its Conditions of Carriage. In addition, Delta's Conditions of Carriage include the vague statement that carriage may be refused to any PRM on the basis of safety.

4.34 Airline PRM web pages provide more information on PRM limits, with several airlines setting out limits:

- Air Berlin;
- AirBaltic;
- Brussels Airlines;
- Lufthansa;
- TAROM (only for PRMs in wheelchairs); and
- Wizz Air.

4.35 Aegean Airlines and TAP Portugal also informed us that they have PRM limits in place, although these are not published. Full details of the PRM limits adopted by each airline are given in Table 4.3. Several of the other case study airlines informed us that they are required to adhere to the limit set out in TGL 44 that the number of PRMs

should not exceed the number of able bodied passengers; this restriction is not included in the table below, although it is possible that some of the unspecified restrictions actually relate to this. Note that other carriers may have unpublished limits which we have not been informed about.

TABLE 4.3 AIRLINE PRM LIMITS

Airline	Published limits	Unpublished limits	Applies to
Aegean Airlines	-	Unspecified restriction	All unaccompanied PRMs
AirBaltic	If number of PRMs exceeds number of cabin crew per flight (typically 3-4 on short haul aircraft)	-	All PRMs, only where PRMs form a large proportion of passengers on flight
Air Berlin	Unspecified limit for safety reasons	-	All PRMs
Brussels Airlines	2 when travelling individually, except on A330-300, where limit of 4. When travelling in group limit ranges from 9 (on BAe 146) to 27 (on A330-300), including escorts.	-	WCHS + WCHC + STCR + BLND + DEAF/BLND, in any combination
Lufthansa	Limit on unaccompanied passengers in wheelchairs: 3 on regional flights (>70 seats); 5 on other flights Limit on no. of wheelchairs per flight: 3 on most intercontinental flights, 2 on continental flights and 1 on regional flights. Also unspecified general limit on limited mobility passengers for care and safety reasons.	-	All unaccompanied PRMs
Ryanair	Limit of 4 per aircraft for safety reasons	-	Passengers with reduced mobility, blind/visually impaired or requiring special assistance.
TAP Portugal	-	Stretcher: 2, except Fokker 100 and Embraer 145; WCHC: 4-10 depending on aircraft; WCHS, blind and deaf: 9, except Fokker 100 and Embraer 145; Incubator: 1, except Fokker 100 and Embraer 145.	See left
TAROM	Limit on passengers requiring wheelchair in		

	cabin: 0 on AT42, 2 on B737 and 6 on A318. No limits on other PRMs	
Wizz Air	Limit of 28 disabled or incapacitated or passengers with reduced mobility, including a maximum of 10 who require a wheelchair from check-in to the cabin seat	See left

4.36 Fewer airlines refer to other physical constraints in their Conditions of Carriage, with only AirBaltic and Brussels Airlines indicating that carriage may be refused if the PRM is unable to physically board via the aircraft’s doors.

Accompanying passengers

4.37 Article 4(2) of the Regulation allows airlines to require PRMs to be accompanied in order to meet the applicable safety requirements referred to in Article 4(1). As with any numerical PRM limits, requirements for PRMs to be accompanied should be set out in the carriers’ Operations Manuals, which again would require the approval of the licensing authority in the relevant Member State.

4.38 Most airlines publish criteria under which a PRM would have to be accompanied. These are again generally safety related, or relate to the level of assistance cabin crew are able to give. Three common themes emerge:

- The PRM has certain specified conditions, e.g. difficulty walking;
- The PRM requires care which the cabin crew are unable to provide (typically this means that the passenger is not self-reliant); or
- The PRM is unable to evacuate the aircraft without assistance.

4.39 Although many airlines make reference to self-reliance criteria there is a difference between those requiring **all** passengers who are not self-reliant to be accompanied; and those which state that passengers who, for example, require help with eating, should be accompanied. In the latter case a passenger could argue that they will not be eating on the flight, and that this criterion is therefore irrelevant. Six of the sample airlines state that all passengers who are not self-reliant must be accompanied, and this is not limited to cases where there is a safety implication. In our view, these airlines may be infringing the Regulation as well as (if they fly to the US) rule 382.

Medical clearance

4.40 The majority of the case study airlines required medical clearance for certain types of PRM, either confirming fitness to travel, or stating a need to carry medical equipment such as syringes or oxygen, although again it is generally not explicitly stated that boarding will be refused if clearance is not obtained. In most cases, the PRM is required to ask their doctor to fill in a medical clearance form, which is then forwarded to the airline’s medical department for approval.

4.41 Given the importance of not confusing disability with illness, it might be expected that

the proportion of passengers required to seek clearance before travelling would be minimised. This is the case for most of the case study airlines. Although the types of PRM required to obtain clearance varies, this normally includes those requiring oxygen or stretchers and is not overly restrictive. However, six airlines adopt slightly different policies:

- Lufthansa states that ‘In the case of a physical or psychological limitation, you must obtain an assessment of your fitness for air travel from a Lufthansa doctor in advance’, although it is stated elsewhere that this does not apply to blind people. Nevertheless, this requirement could potentially encompass many types of PRM, and the requirement to see a Lufthansa doctor is likely to be particularly onerous.
- The policy adopted by Wizz Air, although vague, also has the potential to be quite onerous. The airline reserves the right to require medical clearance in all cases, and will refuse the reservation if this is not obtained.
- Austrian, Iberia (both on the PRM web pages) and Wizzair (in the airline’s Conditions of Carriage) all state explicitly that boarding may be refused to passengers on medical grounds if clearance has not been arranged in advance.
- Thomas Cook takes an unusually vague approach in stating that ‘Some medical conditions require a fitness to fly certificate’. Passengers who consider themselves to have a condition that will require the authorisation of their doctor are advised to obtain their approval before flying. A telephone number is however provided, where presumably clarification of the conditions requiring medical authorisation can be obtained.

4.42 Policies on denial of boarding, accompanying passengers and medical clearance are summarised in Appendix A. This information is mostly derived from the PRM web pages provided by the airlines, unless explicit reference is made to the conditions of carriage. Any unpublished information provided to us directly by the airline is shown in italics.

Actions to be taken when carriage refused

4.43 Article 4(1) requires that, where a PRM is refused boarding, the airline is required to offer reimbursement or rerouting in line with Regulation 261/2004. Although none of the case study airlines make any references to this in either their PRM web pages or Conditions of Carriage, almost all of the airlines we interviewed confirmed that passengers who have been refused boarding would be offered a refund, rerouting or cost-free cancellation, depending on the circumstances. However, some carriers indicated that this situation would be rare, as refusal would most commonly occur at the booking stage.

4.44 Where boarding is refused, airlines are required under Article 4(4) of the Regulation to immediately inform the PRM of the reasons for the refusal and, on request, should communicate the reasons to the PRM in writing within five working days. Alitalia and Ryanair are the only airlines to refer to this in their Conditions or policies, Alitalia stating in its Conditions of Carriage that in the event of refusal of carriage the passenger may request additional information, and Ryanair stating on its PRM webpage that ‘If we are unable to carry a disabled/reduced mobility passenger, we will inform the person concerned of the reasons for refusal of carriage’.

4.45 However, although only two of the case study airlines provide details of the actions

they will take when carriage is refused, again most indicated in their interviews with us that they will provide either written or verbal explanations to passengers who have been refused boarding.

Services provided to PRMs

Requirements defined in law or other guidance

4.46 Annex II of the Regulation requires that airlines provide the following assistance to pre-notified PRMs without additional charge:

- Carriage of recognised assistance dogs in the cabin, subject to national regulations.
- In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.
- Communication of essential information concerning a flight in accessible formats.
- The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.
- Assistance in moving to toilet facilities if required.
- Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

4.47 This guidance is reflected in ECAC Document 30 and the UK DfT Code of Practice. The Code of Practice also suggests the following:

- Cabin crew should provide reasonable assistance with the stowage and retrieval of any hand baggage and/or mobility aid whilst in flight.
- Cabin crew should familiarise disabled passengers with any facilities on board designed particularly for disabled passengers. In the case of visually impaired people they should additionally offer more general familiarisation information and such other explanations as may be requested, such as about on-board shopping.
- Other printed material, such as dinner menus, should, where reasonably practicable, be accessible to blind and partially sighted people. Alternatively, cabin crew should explain the material.
- Where video, or similar systems, are used to communicate safety or emergency information, sub-titles should be included to supplement any audio commentary.
- Where possible, films and other programmes should be subtitled for deaf and hard of hearing passengers.
- In selecting catering supplies, air carriers should consider how “user-friendly” the packaging is for disabled people.
- Cabin crew should describe the food, including its location on the tray, to blind and partially sighted passengers.
- During the flight, cabin crew should check periodically to see if PRMs need any

assistance. In the case of those requiring the use of the on-board wheelchair (where one is installed), the staff must be trained in how to assist the passenger to and from the toilet by pushing the on-board wheelchair.

- Passengers' own portable oxygen concentrators should normally be allowed if battery powered, though air carriers will need to check the type of device to ensure it does not pose any technical problems.

4.48 The assistance provided by the case study airlines generally reflects this guidance, although not all provide comprehensive information on the service they provide to PRMs, particularly in terms of general assistance on-board the aircraft.

4.49 Again, there are some conflicts between Regulation 1107/2006 and the US guidance defined in rule 382, which would apply to some flights operated by EU carriers including all flights to/from the US. In particular, the US regulations do not define an upper limit on the number of items of mobility equipment that should be carried. Some additional requirements established by rule 382 include:

- Assistance in moving to and from seats;
- Assistance in preparation for eating;
- All new videos, DVDs, and other audiovisual displays played on aircraft for safety purposes should be high-contrast captioned;
- Passengers should be able to use moveable armrests seats where their condition requires it;
- Seats with additional legroom should be provided for passengers with fused or immobilised legs;
- PRMs should be permitted to use ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) of a kind equivalent to an FAA-approved POC on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats, unless the equipment does not meet safety requirements or cannot be used or stowed safely in the cabin.

Assistance animals

4.50 Of all the case study airlines which refer to guide dogs, almost all accept them in the cabin free of charge, as required by Annex II of the Regulation, although carriage is also limited by national regulations regarding the transport of animals. However, we identified the following issues with the carriers' published policies:

- Alitalia – assistance dogs are only allowed in the cabin if space is available;
- Emirates – assistance animals can only be carried in the hold;
- TAP Portugal / Thomas Cook / Wizz Air – insufficient information regarding charging and carriage in cabin;
- TUI – assistance dogs carried for a nominal charge. It is not stated whether animals can be carried in the cabin; and
- Air France / EasyJet – not stated whether carriage is free of charge.

4.51 There is some variation in terms of the conditions applied to the carriage of guide dogs; some airlines require a carrying case, muzzle or harness, for example; Austrian,

EasyJet and TAP Portugal require certification of service animal status; and carriage in exit rows is often prohibited. Several airlines state limits on the number of guide dogs that can be carried on a given flight – AirBaltic, British Airways and Ryanair. Other airlines may enforce similar unpublished limits. Full details of airline policies are provided in Appendix B.

- 4.52 In most cases, the information provided by carriers on which routes service dogs can be carried on is quite vague. Two exceptions are British Airways and Iberia, which include detailed information and links to external websites; in the case of British Airways this is the UK DEFRA (Department for Environment, Food and Rural Affairs) guidance on the Pet Travel Scheme which governs the carriage of assistance animals on flights within and to/from the UK. This includes detailed guidance on travel preparation and a full list of approved routes. The guidance provided by Brussels Airlines is also reasonably detailed, and both Austrian and Thomas Cook provide links to EU and UK regulations respectively, but without detailed supporting explanations.

Mobility equipment

- 4.53 All the airlines reviewed accept wheelchairs, and in most cases airlines state that there is no charge for this. Three airlines allow at least certain types of personal wheelchair in the cabin, with carriage restricted to the hold or not stated in the remainder of cases. Spillable wet-cell batteries are not accepted by some airlines and where they are accepted this is usually subject to preparation. Where specified, most airlines policies on the carriage of wheelchairs are consistent with the upper limit of two items of mobility equipment per passenger specified in Annex II of the Regulation. Air Berlin is the only one of the case study airlines to define a limit below this.
- 4.54 Dangerous goods legislation is cited by many airlines as posing a limitation on the range of battery operated wheelchairs which may be carried. However, few airlines provide specific details of the laws and regulations which apply. Austrian does provide references to both Regulation (EC) No 820/2008 and the IATA Dangerous Goods Regulations, the latter accessible via an external link; and Delta provides a link to the US Department of Transportation's Safe Travel information, which provides information to passengers on the carriage of batteries. The Thomas Cook and TUI websites include a reference to the IATA Dangerous Goods Regulations, but without external links. It is worth noting that, although only a fraction of the case study airlines provide this level of detail on their PRM web pages, many may provide such information in their luggage regulations or elsewhere in the Conditions of Carriage.
- 4.55 Under Article 12 airlines are required to compensate for losses or damage to mobility equipment, up to the limits specified by national and international law, which effectively means the limits defined in the Montreal Convention. This limits any compensation to 1131 SDR (approximately €1260), which would be inadequate for technologically advanced wheelchairs which can cost up to €20,000. However, several airlines have indicated that these limits would be waived in practice, partly to avoid bad publicity associated with provision of insufficient compensation, and also because it is generally agreed that such events are rare. Air France, Iberia, KLM, TAROM, Thomas Cook and TUI informed us that they compensate passengers for the full value of the equipment; with TUI also indicating that all UK airlines have agreed to waive

the Montreal limits. In contrast, one PRM organisation informed us that it was aware of cases where airlines had not waived the limits.

- 4.56 Almost all stakeholders stated that the Regulation had made no impact on loss or damage to mobility equipment, both in terms of the number of incidents and levels of compensation for loss or damage; although some felt that the training requirements imposed by the Regulation has resulted in improved handling procedures.

Medical equipment

- 4.57 Oxygen is available on most of the case study airlines, and can either be provided by the airline or the passenger. Where stated, charges range from €100 (Ryanair / Thomas Cook) to €335 (SAS intercontinental flights). Wizzair is the only exception: the airline accepts passengers who need oxygen with medical certification, but does not provide additional oxygen or allow passengers to bring their own onboard. Such restrictions appear to equate to a complete ban on PRMs requiring oxygen.
- 4.58 Policies on the carriage of stretchers (where stated) tend to be based on aeroplane size, with several operators not accepting stretchers on the smaller planes in their fleet. Most low cost carriers including easyJet, Ryanair, Thomas Cook and Wizzair prohibit carriage of stretchers entirely.

Accessible information

- 4.59 Only 6 airlines specify the types of accessible information provided for PRMs. This tends to be safety-related, although may also include Braille seat numbers and verbally describing food-related information.

Seating

- 4.60 Austrian, British Airways, Delta and KLM are the only case study airlines to state on their web pages that PRMs can be allocated any seat most appropriate to their needs, subject to safety regulations restricting access to exit row seats. Where most other airlines discuss their PRM seating policy this is usually in terms of restrictions, again the most frequent being not allowing PRMs to be seated in exit rows. Many airlines provide seats with retractable armrests, although normally only a proportion of the seats on an aircraft are provided with this feature (KLM is the only airline to state that all seats have moveable armrests). British Airways state that passengers will be allocated a bulkhead seat when requested, provided that this is not already allocated to another PRM. Similarly, Delta and Lufthansa also state that customers with service animals (or immobilised legs in the case of Delta) are entitled to bulkhead seats. Again, only a proportion of the airlines (14 out of 21) provide any of this kind of information, so it is unclear what the other case study airlines offer. The results of our analysis are shown in Appendix Table A.2.
- 4.61 Ryanair requires PRMs to sit in window seats, so that they do not impede the evacuation of other passengers, although this could result in a difficult or uncomfortable transfer to and from the seat for some passengers. Other airlines may adopt similar policies which we were not informed about. Iberia informed us that, although they recommend that PRMs are accommodated in window seats, through

their online booking systems PRMs are able to choose any seat, with the exception of emergency exit rows.

- 4.62 Several airlines prohibit PRMs from being seated in exit rows ‘for safety reasons’, but generally do not make a specific reference to the legal basis for this, which in most cases would be EU-OPS1. Air Berlin, Delta and Ryanair are the only airlines to provide details of the regulations on which this prohibition is based – in the case of Delta this is the Exit Seat Regulation, 14 CFR 121.585; and for Air Berlin and Ryanair EU/JAR-OPS 1.260. Thomas Cook and TUI make more vague references to UK CAA regulations as a justification for their seating restrictions.

Restrictions on service

- 4.63 12 of the case study airlines provide an indication of the level of assistance in-flight provided to PRMs, although mostly in terms of the assistance staff are unable to provide. This generally includes feeding, lifting passengers, administering medication and assisting in personal hygiene or toilet functions. The level of assistance which is provided is generally limited to preparation for eating, assistance in moving around the aircraft and stowing and retrieving luggage.

Pre-notification of requirements

Requirements defined in law or other guidance

- 4.64 Article 6(1) of the Regulation requires that airlines take all measures necessary to ensure that they are able to receive PRM assistance requests via all normal points of sale. Articles 6(2) and 6(3) state that, where this information is received more than 48 hours before departure it should be transmitted to the relevant airports no later than 36 hours before the flight departs. Requests received after 48 hours should be communicated at the earliest opportunity. Article 6(4) requires that, after departure of a flight, airlines inform the destination airport (if within the EU) of the number of disabled persons and persons with reduced mobility on that flight requiring assistance, and the nature of the assistance required.

Methods by which passengers can pre-notify

- 4.65 In addition to the requirements of Article 6(1), the Recitals of the Regulation state that all essential information provided to air passengers should be provided “in at least the same languages as the information made available to other passengers”. Several airlines do not meet this standard, although the Recitals are in themselves not binding.
- 4.66 Many of the major airlines provide offices and contact telephone numbers in a number of countries where the official language may not be one of the languages in which the airline website is offered. In most cases it is not possible to assess the languages offered by staff in these offices, and if the website is not offered in this language passengers may in any case have difficulty finding the contact for their country. For these reasons the language category is based on the website languages offered rather than the geographical spread of airline offices.
- 4.67 Some NEBs highlighted the use of premium rate special assistance telephone numbers as being an issue. Our research indicates that many carriers use phone numbers that do

charge, although rates are usually moderate, with the following exceptions:

- Some carriers, for example AirBaltic, provide international numbers only.
- Ryanair provides national phone numbers in most Member States but the rates in some States are high – for example, €0.50 per minute in Belgium
- Brussels Airlines provides (for calls from the UK) either a Belgian telephone number, or the UK reservations centre which charges £0.40 (€0.44) per minute, although this number centre deals with all reservations, and not just PRM assistance requests.
- SAS provides (for calls from the UK) a UK reservations number, which charges £0.25 (€0.28) per minute, although again this is not PRM-specific.

4.68 Each of these airlines accept notifications online, so passengers could theoretically avoid payment of these charges. However, we are not able to comment on the accessibility of these systems or whether they enable collection of all of the information that would be required in each case – some passengers may still need to use the telephone numbers for these reasons.

4.69 The notification options available to PRMs for the 21 case study airlines are shown in Table 4.4. It should be noted that options presented during the booking process could only be examined up to the point of payment for tickets. Some airlines may provide a notification option after payment has been made, which we would not have identified.

TABLE 4.4 OPTIONS TO NOTIFY CARRIERS OF REQUIREMENTS

Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
Aegean Airlines	Telephone	None	Not stated
Air Berlin	Telephone	None	Not stated
Air France	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 10 languages	Not stated
AirBaltic	Telephone	None	Not stated
Alitalia	Telephone	Main site in 8 languages PRM info in 6 languages	Not stated
Austrian	Email / website Fax	Main site in 22 languages PRM info in 2 languages	Not applicable
British Airways	During online booking process Email / website Telephone	None	Not stated
Brussels Airlines	Email / website Telephone	None	Not stated
Delta	Telephone	None	Not stated
EasyJet	During online booking process Email / website Telephone	None	Telephone numbers only accessible after logging into personal account
Emirates	Email / website Telephone	None	Not stated
Iberia	During online booking process	None	Not applicable
KLM	Email / website Telephone	Main site in 15 languages PRM info in 9 languages	Not stated
Lufthansa	Email / website Telephone	None	Not stated
Ryanair	During online booking process Telephone	None	English French Italian Spanish
SAS	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 12 languages	Not stated
TAP Portugal	Telephone	Main site in 9 languages PRM info in 7 languages	Not stated

Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
TAROM	During online booking process	None	Not applicable
Thomas Cook	During online booking process Telephone	None	Not stated
TUI (Thomsonfly)	Telephone	None	Not stated
Wizzair	During online booking process Telephone	None	Bulgarian Czech English French German Hungarian Italian Polish Romanian Ukrainian

Process for collection and transmission of requests

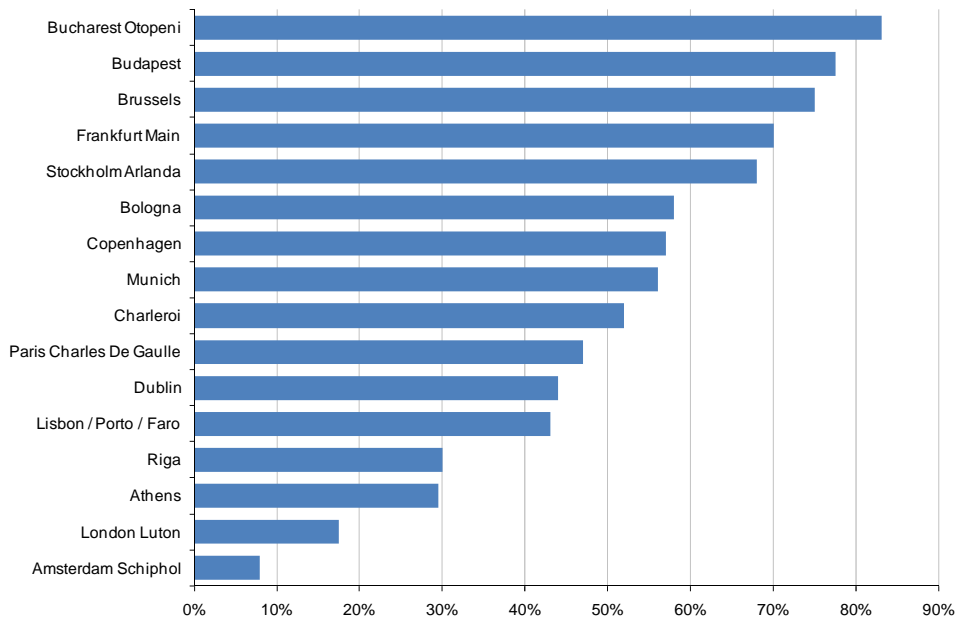
- 4.70 Although many case study airlines enable PRMs to make special assistance requests online, this often has to be supplemented by a telephone call to the airline to establish the PRM's exact requirements. Air France informed us that, when notifying online, a 'pop up' window will appear which informs the passenger that they will be contacted by the airline to clarify the assistance required. Similarly, KLM stated that, although they do provide an online notification option, the passenger would still need to call the airline to establish their exact requirements.
- 4.71 The standard procedure for transmitting assistance requests to the relevant airports is the PAL (Passenger Assistance List), which under Article 6(2) should be sent 36 hours before departure. Additional requests received after this time can be included in the CAL (Change Assistance List) in line with the requirements of Article 6(3). Most requests are transmitted using the standard special assistance codes IATA codes, although some airlines their own codes.
- 4.72 This information is supported by Passenger Service Messages (PSM) which are automatically generated by all special assistance requests recorded on the Passenger Name List of a given flight (thus complying with Article 6(4) of the Regulation). PSM messages are generated automatically on departure from the origin airport, so can be particularly useful for airports in relation to long haul flights, where there is sufficient time to mobilise staff and equipment before the aircraft arrives. Conversely, PRM messages are of less use in relation to short haul flights, as staffing arrangements cannot be so easily amended at short notice.

Effectiveness of process

4.73 All of the case study airlines interviewed use the standard PAL / CAL / PSM system, although Ryanair informed us that they also have their own system of codes and notifications (discussed in section 3 above).

4.74 Rates of pre-notification vary substantially, as shown in Figure 4.2. It should be noted that the definition of pre-booked assistance may vary between airports – for example Brussels Charleroi airport informed us that its figures for pre-notification includes notification by PSM message, which would not be received prior to the 36 hours specified by the Regulation. A number of other airports did not clarify their definition of pre-notification, including Bucharest and Budapest, which may explain why the percentages here are particularly high.

FIGURE 4.2 PRE-NOTIFICATION RATES BY AIRPORT



4.75 There a number of possible explanations for both the wide divergence of pre-notification rates, and the particularly low values observed at some airports. These include:

- **Passenger factors**, e.g. not being aware of the pre-notification requirement, abuse of the system or not realising that they would need assistance until arriving at the airport;
- **Airline factors**, e.g. not providing sufficient or appropriate means for passengers to pre-notify of their requirements, or failing to transmit assistance requests to airports within the time limits specified in the Regulation;
- **Other factors** – primarily communication and other technological failures.

4.76 Stakeholder views on the possible explanations for pre-notification issues are explored in the relevant section below.

Complaints to airlines

Airline processes for handling complaints

- 4.77 Most of the case study airlines have dedicated complaint forms and departments for the handling of complaints. Complaints regarding the Regulation do not necessarily require specialised procedures – both easyJet and Ryanair stated that their process for handling complaints was the same as for Regulation 261/2004, and KLM reported that PRM complaints were handled in the same way as all others. The only differences cited by the airlines were that, in the case of easyJet, complaints regarding refusal of boarding were escalated to head office; and KLM informed us that the airline’s medical department may need to be involved in more complex cases. Ryanair also informed us that they will amend standard procedures for receipt of complaints where required, for example if a customer needs to complain by phone rather than in writing. KLM stated that to date they have only received complaints by phone, email or letter; and none in Braille / audio tape or other accessible formats.
- 4.78 Delta reported a more complex procedure, shaped primarily by the requirements of rule 382. The airline is required to designate Complaints Resolution Officials, responsible for providing a ‘dispositive response’ to customer complaints of an alleged violation, summarising the facts and explaining the airline’s determination of the issue. If the complaint relates to the airline’s policy and not a specific infringement the airline is still responsible for providing a full and final response and the reasons for its determination.
- 4.79 The stated time taken by airlines to respond to complaints is variable, and is not related to the airline type or business model.
- 4.80 Air France, SAS, TAP Portugal reported that they would (at least in theory) be able to accept complaints in any of the languages of the countries which they serve and/or have offices. Aegean Airlines, Ryanair and TAROM reported a more restricted range – despite its destinations including Albania, Egypt, Israel, Serbia, Spain and Turkey, Aegean Airlines stated that it can only accept complaints in Greek, English, German, French and Italian. Likewise, despite both Ryanair and TAROM operating services to 25 countries, the range of languages in which they will accept complaints is limited. Ryanair is only able to accept complaints in English, German, French, Spanish and Italian; and TAROM will only process complaints in Romanian, English, French, German, Spanish and Italian. Thomas Cook stated that, to date, they have only received complaints in English, although they do have a retainer with a language translation service which can be used if required.

Number of complaints received

- 4.81 Only TAROM and Thomas Cook were able to provide us with PRM complaint statistics. TAROM reported so far receiving no complaints from PRMs; Thomas Cook received 51 complaints in each of 2008 and 2009.

Cost of complying with the Regulation

- 4.82 The main compliance cost identified by airlines was the airport PRM charge. As discussed in section 3 above, several airlines (mostly low cost and charter carriers)

expressed dissatisfaction with the level of these charges; in contrast, Air France stated that it did not consider the PRM charge to be a real cost, as it was passed directly to passengers. Another legacy carrier stated that the Regulation did not generate any additional costs for it, as it was already compliant with the (generally more onerous) requirements of rule 382.

- 4.83 An issue raised by Air Berlin and TUI related to the additional costs likely to be associated with providing a cost-neutral special assistance telephone number. The German NEB considers that the special assistance helpline should be free, and the UK DfT Code of Practice also suggests that cost-neutral telephone numbers should be provided for PRMs, which TUI accommodates by requesting that the special assistance helpline calls the passenger back. However, the costs associated with telephone assistance calls are likely to be relatively small, particularly in relation to the staffing costs associated with providing a call centre.
- 4.84 TUI also highlighted the initial training costs incurred by the Regulation, which have now diminished as the focus shifts to more limited refresher training where required.

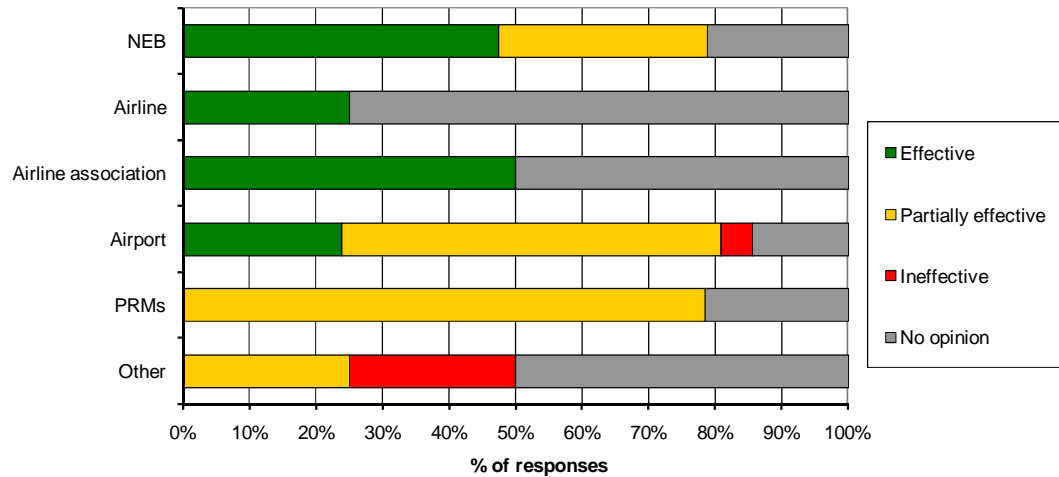
Training

- 4.85 Under Article 11 airlines are required to:
- Ensure that all staff (including those employed by sub-contractors) providing direct assistance to PRMs, have knowledge of how to meet the needs of these persons;
 - Provide disability-equality and disability-awareness training to all staff working at airports dealing directly with the travelling public;
 - Ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.
- 4.86 Most of the case study airlines were able to demonstrate compliance with the training criteria set out in Article 11, although the carriers informed us that training was restricted to passenger-facing staff only. Some examples of the training provided to airline staff are given below.
- Major European network carrier: 2.5 hours theory (e.g. responsibilities under the Regulation, how to approach PRMs) and practical (e.g. guiding blind PRMs, lifting to and from wheelchairs) training for crew; 1.5 hours theory for all other passenger-facing personnel.
 - US network carrier: annual recurrent training is provided to all Complaint Resolution Officers (CROs); required under 14 CFR Part 382 to ensure effective implementation and to resolve passengers' problems as quickly as possible).
 - European low cost carrier: initial and refresher cabin crew training includes PRM training, and the airline has requested that this training should be a requirement in contracts with ground handling staff.
 - European low cost carrier: basic training in sign language is included.
- 4.87 Airlines operating to the US and therefore already compliant with rule 382 stated that few if any changes to their existing training programmes were required to comply with the Regulation.

Stakeholder views on effectiveness of implementation by airlines

4.88 Figure 4.3 summarises stakeholder views on the effectiveness of the implementation of the Regulation by airlines. Although many stakeholders did not express an opinion on this, relatively few stakeholders were dissatisfied. A summary of views of each stakeholder group is given below.

FIGURE 4.3 STAKEHOLDER VIEWS: AIRLINES



Airlines and airline associations

4.89 Unsurprisingly, the majority of airlines did not express an opinion on their own effectiveness in implementing the Regulation, and none felt that implementation was ineffective. Similarly, airline associations either expressed no opinion, or stated that implementation by their members was effective. ELFAA felt that all its members were complying and not refusing carriage. AEA was also generally satisfied that its members were not discriminating against PRMs in any way, but did suggest that there may be issues around the interpretation of the safety rules governing embarkation by PRMs, leading to inconsistencies between its members.

Airports

4.90 Pre-notification was the most frequently cited issue raised by the airports, an issue discussed separately below. The second most common theme emerging across several airports was the alleged non-payment of PRM charges by airlines.

4.91 Alongside the non-payment issue ACI highlighted several other issues relating to agreement of the PRM charges at airports. These included trying to avoid or reduce the charge, for example by requiring excessive levels of detail on the costs of PRM assistance at airports after the tender process had been completed, and refusing to cooperate with consultation meetings. Two airports with high proportions of low cost carrier traffic informed us that some carriers sought to specify the lowest possible levels of service in order to minimise PRM charges.

NEBs

4.92 The majority of NEBs informed us that compliance by airlines was satisfactory.

Although some issues were raised no common themes emerged, suggesting that any issues may be somewhat isolated. The NEBs which stated that implementation by airlines was partially effective were:

- France (DGAC): lack of information, and limited consistency in policies between airlines.
- Germany (BMBVS): use of premium rate telephone numbers by airlines.
- Portugal (INAC): some issues with the explanations provided for refusal of carriage.
- Spain (AESA): notification can incur additional costs for the passenger, airline safety rules are sometimes insufficient, and some airlines claim that passengers with mobility equipment are taking two seats, and charge for this.
- Sweden (CAA): issues around pre-notification (see section below).
- UK (CAA / EHRC / CCNI): lack of consistency in criteria for refusal of carriage. Some airlines charge for reserving specific seats.

PRM organisations

- 4.93 Satisfaction with implementation by airlines was generally lower among the PRM organisations, although none of the stakeholders informed us that airlines were significantly non-compliant with the Regulation. Inconsistencies in airline policies, accessibility of websites and the level of information provided by airlines emerged as the most frequently cited issues – *Danske Handicaporganisationer* (DH) suggested that less than 5% of airlines’ websites were accessible. Two organisations also indicated that they had not seen any PRM safety rules published online.
- 4.94 Two organisations highlighted issues with medical clearance – this was felt to be requested too frequently, and that an unnecessary level of information was being requested by some airlines. Other issues raised included insufficient training, issues with handling of mobility equipment, seating, and inaccessibility of airport check-in systems. Guide Dogs reported instances where flight crew had not reported allergies which then prevented a passengers with guide dogs from flying, or had not checked that the dog was secure prior to take-off or landing. It was felt that policies of refusing boarding to unaccompanied blind passengers on the basis that they could not evacuate was misguided, given that they were accustomed to not being able to see and could therefore cope more easily in smoky conditions.

- 4.95 These views were echoed by the European Blind Union (EBU) and the European Disability Forum (EDF). In addition, EBU emphasised continuing difference in the handling of PRM travel between carriers, and felt that booking processes were discriminatory against those without access to a computer (we were informed that requesting assistance by phone can take several hours). The UK PRM organisation informed us that only 30% of the disabled population are online, which would increase this discrimination. EDF also noted that some airlines still only paid up to the Montreal Convention limits in cases of damage or loss of mobility equipment; that insurance for mobility equipment was extremely difficult to obtain; and that establishing liability for damage can be very complex. EDF also believe that the enforcement of numerical limits on PRMs is inappropriate and discriminatory, and that it is unacceptable for carriers to require passengers to be accompanied on self-reliance criteria.
- 4.96 EDF provided us with some examples of discrimination which had been reported to them. Some examples relating to treatment on-board the aircraft include:
- A blind passenger was not given any safety information in an accessible way, and the cabin crew were unaware of how to assist the passenger when serving a meal, or to communicate with the passenger more generally.
 - A passenger was not allowed to check-in online, due to him using a wheelchair. Once on the aircraft he was forced to sit in a window seat at the back of the plane, which he found both discriminatory and difficult, as being tetraplegic meant that it was not easy to access the seat, or to receive assistance in an emergency.
 - A passenger was informed that he had to pay extra to bring his prosthetic legs when going on holiday.
 - A wheelchair user tried to book a ticket with an airline but noticed on their website that it was clearly indicated that they do not accept passengers using wheelchairs.
 - A blind couple travelling with their baby were told that in order to be allowed to travel, they needed to bring an accompanying person, as it was not considered safe that the couple were responsible for their baby on board.
 - A blind passenger was asked by a member of cabin crew in a rude manner whether she really was entirely blind.

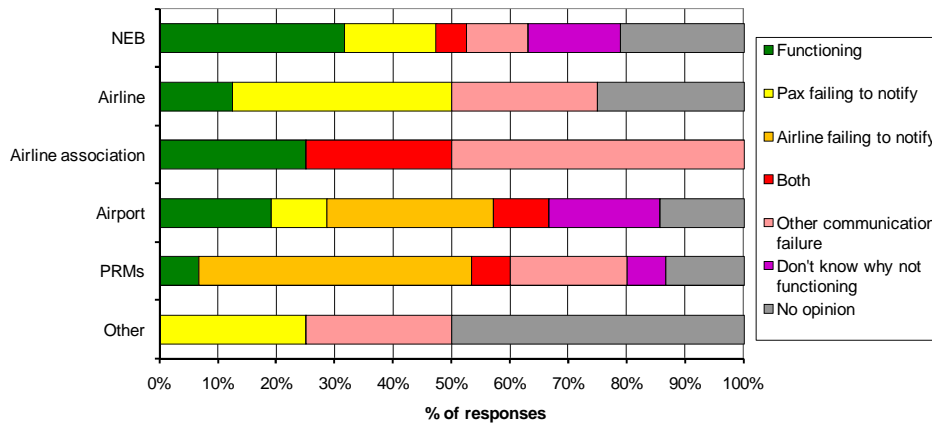
Other organisations

- 4.97 Key issues raised by other organisations were the application by some carriers of limits on the numbers of PRMs that could be carried, and that these limits could be further reduced based solely on arbitrary decisions by pilots. In addition, ECAC felt that information should be simplified for passengers with learning disabilities. However, ECTAA highlighted the improvements which airlines, tour operators and travel agents had made to their websites and booking procedures to enhance PRM travel.

Stakeholder views on effectiveness of pre-notification systems

4.98 Figure 4.4 shows stakeholder views on the effectiveness of the pre-notification system and reasons cited for low rates of notification. Most stakeholders believed that this system was not functioning well, although the explanations cited by each stakeholder group vary.

FIGURE 4.4 STAKEHOLDER VIEWS: PRE-NOTIFICATION



4.99 The NEBs were generally the most optimistic about how the pre-notification system was working, with fewer than half identifying problems. Where they did express a view on the cause of pre-notification issues it was most commonly that the passenger was the cause. The Irish NEB suggested that awareness of the Regulation and the need to pre-notify to receive assistance was low amongst PRMs who were not members of representative groups. Most of the PRM groups felt that the airlines were the primary cause of problems with the pre-notification system, for a variety of reasons:

- Poor design and accessibility of airline websites makes it difficult for passengers to pre-notify;
- Airlines have been unwilling to make the significant investments required to ensure an effective system; and
- Airlines have been ineffective at transmitting special requests (e.g. dietary needs) between staff and departments.

4.100 The majority of airlines believed that the main issue in terms of pre-notification was that passengers were themselves failing to notify of their assistance needs. Several airlines and airports suggested a possible explanation as being that, although they may not normally consider themselves as being in need of special assistance, some travellers (especially infrequent flyers and the elderly) may find they need this once in the airport and having to walk long distances to reach their flight. Low rates of pre-notification were also attributed partly to abuse of the system, as it was believed that ‘genuine’ PRMs would usually pre-notify.

4.101 However, the majority of airports stated that the most significant problem was failure by airlines to pass on notifications, or erroneous notifications. Several highlighted the large differences in pre-notification rates between airlines: some airlines are able to achieve high rates of pre-notification (60-80%) whereas others have very low rates

(10% or less). Non-EU airlines were often stated to be worse, with flights from North Africa and India often cited as being particularly problematic, both in terms of the low levels of pre-notification and the high numbers of PRMs on these flights. Aéroports de Paris stated that passengers travelling from some north African airports would be charged for assistance if pre-notifying, even though the European airport provided assistance free of charge. US flights also pose difficulties for airports as US carriers are generally not allowed, under rule 382, to request details of assistance requirements in advance; however, the relative length of these flights means that PSM messages are usually received 7-10 hours in advance of arrival.

- 4.102 Several airports also indicated that charter carriers had particularly low rates of pre-notification. This was attributed by some carriers to low rates of notification by travel agents – in many cases agents may have an incomplete knowledge of the full range of wheelchair codes, often simply observing that the passenger is using a wheelchair and then allocating the WCHR special assistance code.
- 4.103 Communication failures were also cited by a number of stakeholders, sometimes a result of the confusion generated by the IATA special assistance codes themselves, particularly unnecessary requests for wheelchairs. Although technological failures may have been a problem when the Regulation was first implemented, these did not emerge as a significant current issue.

Conclusions

- 4.104 The main obligation that the Regulation places on carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that most carriers comply with this, although some make carriage of PRMs conditional on advance notification, which does not appear to be consistent with the Regulation. In addition, a small number of carriers impose requirements for medical clearance which appear to be excessively onerous.
- 4.105 There are significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. In most cases, these requirements are defined in carriers' Flight Operations Manuals, which have to be approved by the relevant licensing authority; often, although not always, this is the same organisation that has been designated as the NEB. In some cases the PRM limits are required by the licensing authority, but in most cases, they are proposed by the carrier and approved by the authority. Whilst the rationale for these limits is safety, there does not seem to be an evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).

- 4.106 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not ‘self-reliant’, which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. Other carriers require PRMs to be accompanied where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency); this is consistent with the Regulation.
- 4.107 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information but in some cases there appeared to be significant omissions from this information.
- 4.108 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study airlines are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

5. ENFORCEMENT AND COMPLAINT HANDLING BY NEBS

Introduction

5.1 This section summarises the complaint handling and enforcement process undertaken by National Enforcement Bodies (NEBs). We set out the following information:

- an overview of the NEBs, describing the types of organisations they are and the resources they have available;
- the legal basis for complaint handling and enforcement in each State;
- statistics for the number of complaints received, the nature of the complaints, and the outcomes, and for sanctions that have been issued;
- the typical process for complaint handling and enforcement in each State, and outline a number of common issues and difficulties;
- a summary of the activities of NEBs to monitor the implementation of the Regulation; and
- an overview of other activities undertaken by NEBs in relation to the Regulation, such as interactions with other stakeholders and promotional activity.

5.2 Most of the information within this section is provided for the NEBs in all Member States. The detailed information relating to the complaint handling and enforcement process, and to monitoring and other activities undertaken by the NEB, has been collected for the case study States only. Further detail on complaint handling and enforcement in the 16 case study States is provided in the case studies, in Appendix C.

Requirements of the Regulation relating to States and NEBs

5.3 The Regulation requires each Member State to designate a National Enforcement Body (NEB) responsible for the enforcement of the Regulation regarding flights departing from or arriving at airports within its territory, and to inform the Commission of this designation. This body is required to ensure that the rights of PRMs are respected, and in particular that the quality standards defined by Article 9(1) (see 3.53) are respected. It must also ensure that the provisions of Article 8 are respected. More than one body may be designated. To allow NEBs to enforce the Regulation, Member States must set out penalties for infringements of the Regulation, which must be effective, proportionate and dissuasive.

5.4 These bodies must also accept complaints from PRMs where they are dissatisfied with the service they have received under the Regulation and have been unable to obtain satisfaction by complaining directly to the service provider. If a body receives a complaint for which a body in another State is competent, it must forward the complaint to the other NEB. Other bodies may be designated specifically for the purpose of receiving complaints.

5.5 Member States should also inform PRMs about their rights under the Regulation, and the possibility of complaint to the bodies above.

Overview of the NEBs

5.6 Most of the NEBs (68%) are Civil Aviation Authorities. The other NEBs are government departments, independent statutory bodies or consumer protection authorities. Some Member States have designated more than one NEB. In these States, the responsibilities of the NEBs are divided in two ways:

- according to which type of organisation the enforcement relates to: in France, there are separate bodies for complaints handling and enforcement relating to airlines and airports, and to tour operators; and
- according to task: in the UK, there are separate NEBs for complaints handling and for enforcement.

5.7 In Belgium, there are three NEBs and an additional body responsible for handling complaints; the case of Belgium is unique, as the Flemish- and French-speaking regions are administered separately. For some of the States, there is a body which acts as the NEB but which has not yet been explicitly designated (see 5.13).

5.8 No States have designated a separate body for the enforcement of Article 8.

5.9 Table 5.1 lists the NEBs, the nature of the organisation, and where there is more than one NEB in a State, the role of each organisation. The table is divided into case study and non-case study States.

TABLE 5.1 ENFORCEMENT BODIES

State	Enforcement Body	Nature of organisation	Role
Belgium	Belgian CAA	CAA	Enforcement and sanctions
	Departement Mobiliteit en Openbare Werken	Regional government department	Enforcement and sanctions
	Service public de Wallonie, direction générale opérationnelle de la mobilité et des voies hydrauliques	Regional government department	Enforcement and sanctions
	Passenger Rights Department of Federal Public Service of Mobility and Transport	Federal government department	Complaints handling
Denmark	Statens Luffartsvæsen (SLV)	CAA	-
France	Direction Générale de l'Aviation Civile (DGAC)	CAA	Airlines and airports
	Ministry of Economy, Industry and Labour, Division on Competition, Industry and Services	Government department	Tour operators
Germany	Luffahrts-Bundesamt (LBA)	CAA	-
Greece	Hellenic Civil Aviation Authority (HCAA): Airports Division	CAA	Airports
	Hellenic Civil Aviation Authority (HCAA): Air Transport Economics	CAA	Airlines and tour operators

Hungary	Equal Treatment Authority (ETA)	Independent statutory body	Complaint handling, enforcement relating to PRM complaints
	National Transport Authority Directorate for Aviation (NTA)	CAA	Other enforcement
Ireland	Commission for Aviation Regulation	Independent economic regulator	-
Italy	Ente Nazionale Aviazione Civile (ENAC)	CAA	-
Latvia	CAA, Aircraft Operations Division	CAA	-
Netherlands	Transport and Water Management Inspectorate (IVW)	CAA	-
Poland	Civil Aviation Office (CAO) Commission on Passengers' Rights	CAA	-
Portugal	National Institute for Civil Aviation (INAC)	CAA	-
Romania	Autoritatea Națională pentru Persoanele cu Handicap (ANPH)	Independent statutory body	All Articles except 8
	Autoritatea Aeronautică Civilă Română (AACR)	CAA	Article 8
Spain	Agencia Estatal de Seguridad Aérea (AESA)	CAA	-
Sweden	Swedish Transport Agency, Civil Aviation Department	CAA	-
UK	CAA	CAA	Enforcement
	EHRC	Independent statutory body	Complaints handling in UK except Northern Ireland
	CCNI	Consumer protection authority	Complaints handling in Northern Ireland
Austria	Federal Ministry of Transport, Innovation and Technology	CAA	-
Bulgaria	CAA	CAA	-
Cyprus	Department of Civil Aviation	CAA	-
Czech Republic	Civil Aviation Authority	CAA	-
Estonia	Consumer Protection Board	Consumer protection authority	-
Finland	Finnish Transport Safety Agency	CAA	-
Lithuania	Civil Aviation Administration	CAA	-
Luxembourg	Direction de l'Aviation Civile	CAA	-
Malta	Civil Aviation Directorate	CAA	-
Slovak Republic	Slovak Trade Inspectorate	Consumer protection authority	Consumer protection
	Civil Aviation Authority	CAA	Safety aspects
	Ministry of Transport, Post and	Government	Implementation, including airline

	Telecommunications	department	conditions of carriage and aspects of airport operations
Slovenia	Civil Aviation Directorate	CAA	-

5.10 Most of the bodies designated as NEBs under Regulation 1107/2006 are also designated as NEBs under Regulation 261/2004. The States which have different NEBs are shown in Table 5.2.

TABLE 5.2 STATES WHERE NEBS ARE DIFFERENT UNDER REGULATIONS 1107/2006 AND 261/2004

State	NEB(s) under Regulation 1107/2006	NEB(s) under Regulation 261/2004
Finland	Finnish Transport Safety Agency	Consumer Ombudsman & Agency
		Consumer Disputes Board
		Finnish Civil Aviation Authority
Hungary	Equal Treatment Authority (ETA)	Hungarian Authority for Consumer Protection
	National Transport Authority Directorate for Aviation (NTA)	National Transport Authority Directorate for Aviation
Latvia	CAA, Aircraft Operations Division	Consumer Rights Protection Centre
Romania	Autoritatea Națională pentru Persoanele cu Handicap (ANPH)	National Authority for Consumer Protection
	Autoritatea Aeronautică Civilă Română (AACR)	
Slovak Republic	Slovak Trade Inspectorate	Slovak Trade Inspectorate
	Civil Aviation Authority	
	Ministry of Transport, Post and Telecommunications	
Sweden	Swedish Transport Agency, Civil Aviation Department	Konsumentverket
		Allmänna reklamationsnämndens
UK	CAA	CAA
	EHRC	Air Transport Users Council
	CCNI	

5.11 Only BCAA is shown as a notified NEB for Belgium in the list published by the Commission. As a result, we were not made aware of the existence of the other Belgian NEBs until our interview with BCAA, and therefore did not seek responses from them; in addition, at the time of our research for this project, BCAA had not held meetings with the other regional departments. For these reasons, we therefore have only limited information on their operations, and the data relating to Belgian NEBs in this report refers only to BCAA.

Separation of regulation from service provision

5.12 There is no requirement in the Regulation that the NEB be independent from service providers. However, in our view, it is inappropriate for the NEB also to be a service provider, as it would be difficult for it to act independently in undertaking

enforcement in relation to an infringement that it was itself committing. The only case we have identified where an NEB is also a service provider is the Greek NEB, HCAA, which is also the operator of the regional airports in Greece. This is a significant issue because, as identified in section 4 above, the most significant failure to implement the Regulation that we have identified is that it has not been implemented at the HCAA airports.

Legal basis for complaint handling and enforcement

5.13 Most Member States have complied with the obligations set out in Articles 14 and 16 to designate an NEB and introduce sanctions into national law, with the exception of:

- **Poland:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Polish parliament, but has not yet been passed.
- **Slovenia:** As yet no body has been designated, and no sanctions have been introduced.
- **Spain:** Enforcement relies on a law which predates the Regulation and hence does not refer explicitly to it. As a result, sanctions for infringements of Regulation 261/2004 (which have an equivalent legal basis) have been challenged by airlines. In most cases, the courts have upheld the right of the NEB to impose sanctions, but cases have not as yet reached the Supreme Court, and in one case a court has ruled that the NEB was not competent to impose sanctions. This is discussed in detail in the case study for Spain (appendix C).
- **Sweden:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Swedish parliament, but has not yet been passed. The proposed amendment does not define the levels of fines.

5.14 There are a number of States where sanctions have not been introduced for all potential infringements of the Regulation:

- Bulgaria, which does not define penalties for Article 8;
- Estonia, where sanctions have only been introduced for carriers;
- Luxembourg, which only defines explicit fines for Article 4; and
- Romania, where the law defining responsibilities makes the CAA responsible for enforcing compliance with Article 8, but does not endow it with the powers to do so.

5.15 In several Member States, enforcement is dependent on more than one law; for example, the law defining how the NEB must operate and the procedure for imposing sanctions may differ from the law introducing sanctions. There may also be other laws – typically defining rights to equal treatment – which may apply at the same time as the Regulation. Table 5.3 below summarises the relevant legislation in the case study States. More detailed information is provided in the case studies in Appendix C.

TABLE 5.3 RELEVANT NATIONAL LEGISLATION

State	Summary of relevant legislation
Belgium	• Articles 32 and 45-52 of Law of 27 June 1937
Denmark	• Air Navigation Act, Articles 149(11) and 149a define sanctions

France	<ul style="list-style-type: none"> Article 330-20 of the Civil Aviation Code, as amended by Decree 2008-1445 of 22 December 2008: gives the Minister of Civil Aviation the power to impose sanctions
Germany	<ul style="list-style-type: none"> Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung): defines LBA as the NEB and that breaches of the Regulation are considered an offence. Air Traffic Law (Luftverkehrsgesetz): defines that breach of EU Regulations relating to air traffic is an offence, and defines the fines applying. Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten): defines the administrative process that must be followed in order to impose sanctions.
Greece	<ul style="list-style-type: none"> Letter of 1 December 2006 (reference 6310/A/10909) from Permanent Representation of Greece to Commission designates NEB; National Aviation Law 1815/1988 sets out fines Act CXXV of 2003 defines role and sanctions of ETA Act CXXX of 2003, and Article 4 (2) of Government Decree No 362/2004 define complaints handling procedure
Hungary	<ul style="list-style-type: none"> Act XCVII of 1995 on Air Traffic, implemented by Government Decree No. 141/1995 defines role and sanctions of NTA Ministerial Order 97/2005 makes NTA responsible for approving airport charges Act CXL of 2004 defines procedure for imposing fines and sets out administrative penalties
Ireland	<ul style="list-style-type: none"> Section 45(a) of the Aviation Regulation Act 2001 as inserted by the Aviation Act 2006: defines basis for enforcement and sanctions Statutory Instrument SI 299/2008: transposes the Regulation into law
Italy	<ul style="list-style-type: none"> Legislative Decree 24/2009 of 24 February 2009: defines process to be followed by ENAC and fines that can be imposed
Latvia	<ul style="list-style-type: none"> Air Navigation Order (2007): designates NEB Administrative Violations Code: defines fines
Netherlands	<ul style="list-style-type: none"> Resolution to set up the Transport and Water Management Inspectorate (Instellingsbesluit Inspectie Verkeer en Waterstaat), Article 2, paragraph 1, item d: sets up the NEB Civil Aviation Act (Wet luchtvaart), revised December 2009, Article 11.15, section b, item 1 and Article 11.16, paragraph 1.e.3: defines circumstance under which sanctions may be imposed General Administrative Law Act (Algemene wet bestuursrecht), chapter 4 (process to impose sanctions) and chapter 5 (level of fines).
Poland	<ul style="list-style-type: none"> Aviation Act (Article 21.2(3)): designates NEB Administrative Procedure Code: defines procedures to be followed No sanctions yet defined - draft amendment to Aviation Act (Articles 205a, 205b, 209a, 209b) will set out fines
Portugal	<ul style="list-style-type: none"> Decree Law 241/2008: designates NEB and defines level of fines which can be imposed for each infringement Decree Law 10/2004: defines standard scale of fines
Romania	<ul style="list-style-type: none"> Decree 27/2002: requires all government bodies to be able to receive complaints Decision 787/2007: defines penalties (except for Article 8) Decree 2/2001 (approved and modified by Law 180/2002): defines framework for imposing penalties
Spain	<ul style="list-style-type: none"> Royal Decree 184/2008: designates NEB Aviation Security Law (Law 21/2003): basis for enforcement and sanctions Royal Decree 28/2009: defines inspection regime Law on Public Administrations and Administrative Procedures (Law 30/1992): defines operational procedures for the NEB

	<ul style="list-style-type: none"> • Regulation on Procedures for the Imposition of Sanctions (Royal Decree 1398/1993): defines process for imposing sanctions
Sweden	<ul style="list-style-type: none"> • Förordning (1994:1808) om behöriga myndigheter på den civila luftfartens område (ordinance on competent authorities in civil aviation): designates the NEB • No sanctions yet defined, but some are set out in a proposed amendment Regeringens proposition 2009/10:95- Luftfartens lagar • Prohibition of Discrimination Act may also apply in some circumstances (e.g. infringements of Articles 3 and 4)
UK	<ul style="list-style-type: none"> • Statutory Instrument 2007/1895: designates NEBs, defines penalties and introduces a right to compensation for injury to feelings resulting from an infringement • Enterprise Act 2002: defines civil powers for NEB, including power to apply for an injunction ('stop now order') and power to seek binding undertakings
Austria	<ul style="list-style-type: none"> • Austrian Civil Aviation Law
Bulgaria	<ul style="list-style-type: none"> • Civil Aviation Act, Art. 81a
Cyprus	<ul style="list-style-type: none"> • Civil Aviation Act N 213(I)/2002
Czech Republic	<ul style="list-style-type: none"> • Civil Aviation Act (No 49/1997), § 93 Articles 7 (a) - (l) and 8 • Administrative Code (No 500/2004)
Estonia	<ul style="list-style-type: none"> • Consumer Protection Act • Aviation Act §58 and §60
Finland	<ul style="list-style-type: none"> • Finnish Aviation Act (1194/2009) - Section 157 (Conditional fines and conditional orders of execution) • Conditional Fine Act (1113/1990)
Lithuania	<ul style="list-style-type: none"> • Paragraph 2 of Article 70 of the Act of Aviation No. VIII-2066 (O.J. 2000, No. 94-2918; 2007, No. 59-2279): designates CAA as NEB • Code of Administrative Violations, Article 115: defines penalties
Luxembourg	<ul style="list-style-type: none"> • Law of 31st January 1948, art 43, modified by the law of June 5, 2009, Article 1 (19)
Malta	<ul style="list-style-type: none"> • Civil Aviation (rights of Disabled Persons and Persons with Reduced Mobility) Regulations (LN234/07) as amended by (LN 411/07)
Slovak Republic	<ul style="list-style-type: none"> • Act No 128/2002 (State Inspections Act): defines powers of NEB to conduct inspections, impose preventative measures, and impose sanctions • Act No 250/2007 on Consumer Protection: provides legal framework for NEB's consumer protection activities
Slovenia	<ul style="list-style-type: none"> • Not yet implemented

Sanctions allowed in national law

- 5.16 There are significant differences between the States in the maximum sanctions for infringements of the Regulation that can be imposed under national law (Table 5.4). The highest defined maximum sanctions are in Spain (€4.5 million) but in Denmark, Finland, Netherlands and the UK unlimited fines can be imposed, and in Cyprus the maximum fine is 10% of the turnover of the carrier. In Austria, Belgium and Denmark sanctions may also include a prison sentence.
- 5.17 However, in many States, sanctions are low, and in some States maximum sanctions are close to or below the costs that a service provider may in some circumstances avoid through non-compliance with the Regulation. In these States, it is possible that the sanctions regime may not comply with the requirement in Article 16 for dissuasive

sanctions to be introduced by Member States; however, without data on the costs of compliance we are unable to assess this. Maximum sanctions are particularly low (less than €1,000) in Estonia, Lithuania and Romania.

5.18 In most States, fines are determined by the NEB, taking into account various factors relating to the case, including the circumstances and conditions of the case, any reasons given for non-compliance, its impact on the passenger and the size of the company. In some States, fines may be imposed which relate directly to the financial impact of the alleged infringement:

- in Germany, additional fines may be imposed to recover any financial gains to the service provider which resulted from its non-compliance; and
- in the Netherlands, reparatory fines can be imposed, which require the service provider to make good any financial loss incurred by the passenger.

TABLE 5.4 MAXIMUM FINES

State	Maximum sanction (€)	Explanation/notes
Belgium	€4,000,000 (criminal and administrative)	In addition up to 1 year's imprisonment if a criminal prosecution
Denmark	Unlimited fine	In addition up to 4 months' imprisonment
France	€7,500	Maximum sanction 'per failing', which is not defined. Can be imposed on a per-passenger basis to give a higher total sanction. Can be doubled if repeated within a year.
Germany	€25,000	Additional fines can be imposed to recover the economic advantage that the carrier has obtained from infringement
Greece	€250,000	Minimum sanction is €500. Fines are generic, and do not refer specifically to the Regulation
Hungary	€22,600 (ETA) €11,300 (NTA)	Minimum sanction €189 for ETA. In addition penalty of up to €3,774 for failure to cooperate with an investigation.
Ireland	€150,000	Maximum €5,000 if the case is heard in a District Court. Fines only applicable on failure to comply with a Direction.
Italy	€120,000	Maximum depends on Article infringed and reduced by two thirds if paid within 60 days. Minimum fines of €2,500-€30,000.
Latvia	€2,800	Fine can be applied per passenger that complains. Law makes no direct reference to the Regulation, and it is possible that penalties could be open to legal challenge.
Netherlands	Reparatory fines: unlimited Punitive fines: €74,000	Reparatory fines should be in proportion to the amount of loss and to the severity of the violation. Punitive fines are per infringement and are not multiplied by number of passengers affected. IVW are conducting a study which will define policy on punitive fines.
Poland	Not yet defined, but proposed to be €1,875	Fines vary depending on Article infringed. Fines are variable for infringements of some Articles, but otherwise are fixed. Fines are cumulative per Article and per passenger that complains, so maximum could be a multiple of this. Minimum fines €47-€1,875.
Portugal	€250,000	The maximum and minimum fines depend on the infringement ('light', 'serious' or 'very serious'), the size of the

		company, and whether the infringement was intentional or negligent. Minimum fine €350-4,500.
Romania	€608	Maximum depends on Article infringed. Per Article breached and per passenger. No penalties available for Article 8. Minimum fines €195-€243.
Spain	€4,500,000	For most infringements maximum would be €4,500
Sweden	Not yet defined	Proposed amendment does not define levels of fines
UK	Unlimited fine	Maximum fines depend on Article breached; for many Articles the maximum fine is €5,600. Unlimited fines must be imposed by Crown Court, for serious cases.
Austria	€22,000	In addition up to 6 weeks' imprisonment
Bulgaria	€5,100	No penalties available for Article 8. Minimum fines €1,020.
Cyprus	€8,000 or 10% of operators turnover	-
Czech Republic	€192,000	-
Estonia	€640	Only applies to carriers
Finland	Unlimited fine	Fines are conditional on the period of time during which a condition is unfulfilled, and should be in proportion to company's size, amongst other factors
Lithuania	€870	Minimum sanction €290. Per case, not per passenger.
Luxembourg	€10,000	Fine of €10,000 for violation of Article 4, of €5,000 for failure to provide information, but no other sanctions given.
Malta	€2,300	Criminal procedure
Slovak Republic	€66,000	Depending on number of passengers affected and whether it is repeated
Slovenia	Not yet defined	-

Statistics for complaint handling and enforcement

- 5.19 Most NEBs had received very few complaints in relation to the Regulation. Of the 27 NEBs, 8 had received no complaints, and 26 had received less than 50. 80% of all complaints to NEBs had been received by the UK NEBs. Although, the UK has the largest aviation market in Europe, and therefore would be expected to receive a higher number of complaints, in 2009 it received over ten times as many complaints as Germany or Spain, the next largest markets. This may be a result of the right in the UK to claim compensation for infringements of the Regulation, discussed below.

5.20 Of those NEBs that had received complaints, most were not able to give a breakdown. Table 5.5 therefore gives a brief description of the types of complaints received.

TABLE 5.5 COMPLAINTS RECEIVED

State	2009	Total	Description/notes
Belgium	1	1	Poor quality of assistance
Denmark	0	0	-
France	5	24	Transport of insulin and other liquids; denied boarding and requirements to be accompanied; damage to mobility equipment
Germany	22	34	Assistance by the carrier (55%), at the airport (18%), refusal of reservation (14%), denial of boarding (14%)
Greece	3	4	Denial of boarding; carriage of oxygen; handling of passengers
Hungary	0	1	Denial of boarding
Ireland	14	18	Conditions imposed on travel e.g. seating or carriage of oxygen.
Italy	36	40	48% refusal to embark PRMs; most of remainder lack of assistance at airports
Latvia	0	0	-
Netherlands	5	6	IVW was only competent for 1 complaint
Poland	2	2	Both related to airports outside Poland
Portugal	16	34	Not provided
Romania	0	0	-
Spain	35	46	Not provided
Sweden	3	5	Denied boarding, assistance dog policy
UK	356	883	Allocation of appropriate seating; timely provision of assistance on landing; and communicating requests for assistance on arrival at the airport.
Austria	1	2	Treatment of injured passengers
Bulgaria	0	0	Denied boarding
Cyprus	1	3	Not provided
Czech Republic	0	0	-
Estonia	0	0	-
Finland	3	4	Seating, oxygen, movement within cabin
Lithuania	0	0	-
Luxembourg	0	1	Boarding denied to deaf passengers
Malta	1	1	Carriage of guide dogs
Slovak Republic	0	0	-
Slovenia	0	1	Denied boarding
Total	499	1110	

- 5.21 In addition, NEBs in several States had received questions which were not complaints, regarding, for example, airline seating policy.

Sanctions applied

- 5.22 At the time the interviews for this study were conducted, no sanctions had yet been applied for infringements of the Regulation. At the time of drafting this report, three States were in the process of applying sanctions:

- France had opened proceedings to impose fines in one case;
- Portugal had opened proceedings to impose fines in two cases; and
- Spain had opened proceedings to impose fines in five cases.

- 5.23 Two other States had taken other actions to encourage compliance:

- Hungary wrote to an airline requiring it to correct its policy, and published this letter; and
- the UK has threatened several organisations with sanctions, and has taken other actions to encourage compliance, including writing to airlines, and setting out its requirements for compliance.

The complaint handling and enforcement process

Overview of the process

- 5.24 The complaint handling process is broadly similar in each NEB, however, since most NEBs receive very few complaints, the process for handling them is often not defined in detail. A typical process is as follows:

- complaints are recorded (since the number of complaints is frequently very low, this may be in a spreadsheet or a filing system rather than in a database);
- most undertake an initial filter of the complaints, to remove those that are not related to the Regulation, where the passenger has not first sought redress from the service provider, or where there is no *prima facie* case of an infringement;
- complaints relating to flights departing from other States are forwarded to the NEB of the State which is competent to handle the complaint;
- the complaint is investigated through contacting service providers to request information and/or justification for their actions; and
- a decision is made on the complaint.

- 5.25 The complaint handling process is different for complaints submitted to one of the UK NEBs (see box below). Otherwise, the main differences between the processes in different Member States are in the following areas, which are discussed in more detail below:

- the nature of the ruling or decision issued to the passenger, in particular whether the ruling is binding;
- under what circumstances the investigation of the complaint may lead to sanctions; and
- the process by which sanctions may be imposed and collected.

Complaint handling in the UK (excluding Northern Ireland) by EHRC

The legislation implementing penalties for infringements of the Regulation in the UK also grants a right to compensation for injury to feelings resulting from an infringement. This is in line with UK disability rights legislation in other sectors. As a result of this, the process for complaint handling is structured around conciliation, with a possible civil claim for compensation if conciliation fails. In other States there is no right to compensation and therefore no reason to offer conciliation proceedings.

The EHRC handles complaints relating to incidents which occurred in the UK excluding Northern Ireland. When a complaint is submitted to the EHRC and an initial evaluation shows it to be potentially valid, a letter is sent to the service provider which summarises the complaint and requests comments. This letter also explains the conciliation process, and asks if the service provider would be willing to participate. The responses are evaluated to see whether they appear to justify the actions of the service provider, but there is no technical or operational investigation, for example, to establish whether any claims made by a service provider are true.

If the complaint remains unresolved, the EHRC will consider referring the case for conciliation. If both parties agree, conciliation is provided independently, and may result in a voluntarily binding agreement on both parties. This agreement may include financial compensation, or may include non-financial reparations such as an apology.

If a service provider does not wish to participate in conciliation, the EHRC may suggest to the passenger that they initiate legal proceedings, which may result in payment of compensation. The EHRC may also consider offering litigation support for cases where it believes that the outcome could help clarify the application of the Regulation.

Complaints related to incidents occurring in Northern Ireland are handled by CCNI. This follows a procedure similar to most other NEBs, including an investigation of the facts of the case, but if this procedure fails to resolve the complaint to the passenger's satisfaction, the passenger can seek financial compensation under UK national law.

Languages in which complaints can be handled

5.26 Most NEBs are able to handle and reply to complaints written in the national language and English, but in many cases NEBs were not able to handle complaints in other Community languages. The languages in which NEBs can receive complaints, and respond to passengers, are shown below.

TABLE 5.6 LANGUAGES IN WHICH COMPLAINTS ARE HANDLED

State	Languages in which complaints may be written	Languages in which the NEB will reply to the passenger
Belgium	Flemish, French, English	Flemish, French, English
Denmark	Danish, English, German	Danish, English
France	French, English, Spanish	French only
Germany	German, English	German, English
Greece	Greek, English, French, German, Spanish, Italian	Greek, English
Hungary	Hungarian, English, German, Italian, other languages where possible	Hungarian, English, German, Italian
Ireland	English, French, German, Spanish, Italian	English, Spanish
Italy	Italian, English, French, Spanish, German	Italian, English, French, Spanish

Latvia	Information not provided at interview	Information not provided at interview
Netherlands	Dutch, English; sometimes also French and German	Dutch, English; sometimes also French and German
Poland	Polish, English, German, French	Polish, informal translation to English provided
Portugal	Portuguese, Spanish, English and French	Portuguese, Spanish, English and French
Romania	Romanian, English	Romanian, English
Spain	Spanish, English	Spanish, English
Sweden	Swedish, English	Swedish, English
UK	English, but would make arrangements to handle any other languages	English, but would make arrangements to handle any other languages

Time taken

5.27 Many NEBs informed us that they had received too few complaints to be able to draw conclusions on the average time taken to handle them (see Table 5.7 below). Several other States had received very few complaints, but had a legal limit on time to respond set by national law. Of those that were able to estimate the actual time taken to resolve complaints, most reported wide variation: for example, Italy reported variation between 1 and 6 months. The longest time taken to resolve complaints was reported in the UK, where complaints may take up to 6 months, and there are instances where complaints have taken longer than this to resolve; as a result the passenger has no longer been able to claim for compensation under UK national law (see 5.25).

TABLE 5.7 TIME TAKEN TO RESOLVE COMPLAINTS

State	Average time taken	Explanation/Notes
Belgium	Too few complaints to estimate time	
Denmark	Too few complaints to estimate time	No complaints yet received, but in principle 2-3 months
France	Varies significantly	If the case goes to CAAC, it will take longer. Overall, durations are similar to under Regulation 261/2004
Germany	Too few complaints to estimate time	Complaints are handled faster than for Regulation 261/2004, which take 3-4 months
Greece	30 days	Response time is set by law and is generic across all complaints to HCAA
Hungary	75 days	Response time is set by law and is generic across all complaints to ETA
Ireland	3-4 months	Awaiting responses (from service providers or Commission) lengthens the average time taken, so many cases handled quicker than this
Italy	30 days to 6 months	Depends on investigation required and response of service provider
Latvia	Too few complaints to estimate time	
Netherlands	Too few complaints to estimate time	Same procedure as for Regulation 261/2004: in principle 3-6 months
Poland	Too few complaints to estimate time	Likely to be quicker than for Regulation 261/2004
Portugal	Too few complaints to estimate time	May be faster than for Regulation 261/2004

Romania	30 days	Time limit set by law
Spain	Too few complaints to estimate time	Always less than six months, and delay is due to service providers. Shorter than equivalent complaints under Regulation 261/2004.
Sweden	At most 6 weeks	This is a non-binding target for the CAA; little information at present on how well this has been met.
UK	EHRC: Up to 6 months, can take longer CCNI: Up to 6 weeks	EHRC: Wide variation in time taken. Process is driven by 6 month time limit for court cases for compensation under SI. CCNI: Wide variation in time taken.

Responses issued to passengers

- 5.28 All of the NEBs in the case study States provide PRMs who complain with an individual response. As there is no right to compensation, the extent to which an NEB can offer assistance to obtain redress is limited; most responses state a decision on whether the NEB considers the Regulation to have been infringed, but do not state whether any payment should be made to the PRM, for example for loss due to denied boarding. The UK is an exception, for the reasons given in above. Most responses from NEBs do not have specific legal status, however in Hungary the response is legally binding, and in the Netherlands non-compliance with a decision may lead to a fine.
- 5.29 Almost all States would undertake some form of investigation of a complaint. The exception to this is the UK (excluding Northern Ireland), where the body responsible for handling complaints does not take an investigative role, although the CAA does investigate the facts of a proportion of cases. As discussed above, the UK process is structured around claims for compensation and the NEB sees its role as to facilitate conciliation, where the service provider is incentivised to voluntarily provide some form of compensation, or risk having a court award compensation against it.
- 5.30 Table 5.8 summarises the responses issued to the passenger.

TABLE 5.8 RESPONSES ISSUED TO PASSENGERS

State	Nature of response issued
Belgium	Individual non-binding evaluation sent to both service provider and passenger
Denmark	Non-binding individual evaluation provided to PRM and service provider
France	Individual response provided by DGAC summarising the conclusions of the investigation and its opinion on the case
Germany	Individual response giving the result of the investigation and their conclusions
Greece	Individual response giving the result of the investigation and their conclusions
Hungary	ETA issues legally binding decision to both passenger and service provider
Ireland	CAR writes to each passenger to summarise conclusions and whether incident was an infringement of the Regulation
Italy	ENAC writes to each complainant to inform them of its conclusions
Latvia	No specific procedures established, but passengers would be issued with an official letter communicating the final decision

Netherlands	Formal decision issued to both passenger and carrier. Not legally binding, but non-compliance may lead to a fine.
Poland	Formal decision issued to both passenger and carrier
Portugal	Individual response summarising correspondence with service provider and reasons for decision.
Romania	Individual response is sent to the passenger, setting out any infringements of the Regulation and any corrective measures taken by ANPH
Spain	Individual response, including response from carrier and AESA's view on it, and information on how passenger can obtain redress
Sweden	Individual non-binding response summarising correspondence with service provider and reasons for decision.
UK	EHRC: Does not investigate complaints, and therefore does not have standard format for output. Conciliation process may result in form agreeing actions to be taken. CCNI: Individual opinion letter sent to passengers.

Circumstances in which sanctions may be imposed

- 5.31 There are also significant differences between the States as to whether and when sanctions are imposed.
- 5.32 Some NEBs, including one of the Hungarian NEBs, Italy, Portugal, and Romania, always impose sanctions in the case that an infringement is found, even if it is a minor or technical infringement which does not significantly inconvenience passengers. If the amendments to the Aviation Act are passed in their current form, the Polish NEB will in future apply fines for every infringement. The German NEB must also take some action whenever an infringement is identified, although it has discretion to choose between a warning letter and a fine. If it chooses a fine, this has to be proven to the same standard of evidence required for criminal cases, and the NEB is therefore unlikely to impose sanctions if the infringement is 'not significant'.
- 5.33 In other States, the policy is to impose sanctions far less frequently:
- In two States (Belgium and Greece), a sanction would only be imposed where a service provider fails to take corrective action when required to do so by the NEB. In Ireland, this is the case for infringements of some Articles. In Spain, this is the general policy of the NEB but it could in theory impose sanctions without first warning the service provider.
 - Several States have a policy of imposing sanctions where there is evidence of serious or systematic infringements, including Denmark, and the Netherlands.
 - The UK will consider prosecution of a service provider where it fails to comply with CAA requests for corrective action, or for wilful non-compliance. Any case to be taken to prosecution must be proven to a criminal standard of evidence, despite the due diligence defence available in UK law. The UK NEB believed that this would be less difficult than under Regulation 261/2004, as Regulation 1107/2006 is more prescriptive.
- 5.34 The policies of the case study States on imposition of sanctions are shown in Table 5.9 below.

TABLE 5.9 POLICY ON IMPOSITION OF SANCTIONS

State	Policy on imposition of sanctions	Explanation/Notes
Belgium	Applied for serious or systematic violations (allows opportunity for corrective action first). Public prosecutor decides whether to bring criminal case; if not, BCAA may then decide whether to impose administrative sanctions.	If prosecutor brings criminal case, BCAA may not impose administrative sanctions
Denmark	Applied for serious or systematic offenses; minor offences would receive a caution, which would not be made public	
France	In consultation with CAAC. Ultimate decision made by the Minister responsible for Civil Aviation on the advice of CAAC.	Cases would only be considered by CAAC if referred by DGAC
Germany	If a complaint is upheld, imposes warning letter or sanction; LBA has flexibility to decide which	Procedure is a mix between administrative and criminal procedures: level of proof required is equivalent to a criminal case but case is decided by LBA
Greece	First send a letter of caution; if service provider infringes again, then impose penalty.	
Hungary	Choice of actions (including fines and non-pecuniary measures) which may be applied by ETA, depending on nature of case. NTA has same choice of actions but must take some form of action. Fines also imposed for non-cooperation with cases.	Fines for non co-operation can be imposed even where there was no infringement found
Ireland	CAR would consider prosecuting if a service provider did not comply with a Direction, or if it identified a breach of Articles 3 or 6 (2)	CAR can consider issuing a Direction if issue identified during an inspection, or if a service provider does not rectify a case when required to do so
Italy	Applied in every case of an infringement, identified either by investigation of complaint or inspection	Amount of fine considers facts of the case. Appeals and collection process can be lengthy, up to 7 years
Latvia	At discretion of NEB	More specific policies to be developed when Administrative Violations Code amended.
Netherlands	In principle sanctions could be applied for every violation, but IVW policy is to apply them only for severe or repeated infringements	Appeals process includes several stages, and may take in principle up to 2 years
Poland	When in force, will be applied in every case of an infringement	No sanctions yet in place
Portugal	Applied for every confirmed infringement, identified either through complaint or inspection	
Romania	Applied for every confirmed infringement	Amount of fine considers facts of the case. Any sanctions must be imposed through the Social Inspectorate; specific methodology is in development. AACR cannot impose fines for violations of Article 8.
Spain	Whenever an infringement is identified, the service provider receives warning, with a period in which to rectify the issue; if it fails to	

do so, AESA can impose a sanction.		
Sweden	Sanctions not yet defined	
UK	Applied when service provider fails to comply with CAA requests for corrective action, or for wilful non-compliance	In addition, standard of evidence required for criminal prosecution, and 'due diligence defence' means that it must be proved that senior management of carrier had intended not to comply

Process to impose sanctions

5.35 In most Member States, the process to impose sanctions is an administrative procedure undertaken by the NEB, and the decision to impose sanctions is made by the NEB alone. Service providers, and in some cases also passengers, can appeal to the courts.

5.36 The exceptions to this are the following States:

- In Germany, the procedure is similar to the administrative procedures applying in other States, but the standard of evidence required is equivalent to that in criminal cases.
- In Slovakia, the procedure is also similar to the administrative procedures in other States, but with the key difference that (as for Regulation 261/2004) an on-site inspection is required before a sanction can be issued. A consequence of this is that sanctions cannot be imposed on carriers that are not based in Slovakia.
- In Denmark, Ireland, Malta and the UK¹³, sanctions are imposed under criminal law and therefore a criminal prosecution is required.
- In France, cases are referred by the NEB (DGAC) to an administrative commission (the CAAC) that meets twice per year. This makes a recommendation to the Minister of Civil Aviation, who takes the ultimate decision about whether a sanction should be imposed, and the level of any sanction.
- In Belgium, sanctions can be imposed under criminal law but administrative fines to an equivalent level are also available.
- In Austria, administrative fines can be imposed, but in aggravated cases a prison sentence of up to 6 weeks may also be imposed, under criminal law.

5.37 Some States have administrative fines to encourage compliance, which can be applied when a service provider fails to respond within a certain time; these include Hungary and Latvia.

Application of sanctions to carriers based in other Member States

5.38 A number of NEBs face difficulties in applying sanctions to carriers that are not based in their State. This arises because national law either:

- does not permit application of sanctions to carriers not based in the State; or
- requires administrative steps to be taken in order to impose a sanction, which are

¹³ Issues regarding the imposition and collection of fines in the UK are discussed in further detail in the Evaluation of Regulation 261/2004, SDG for European Commission, February 2010.

either difficult or impossible to take if the carrier is not based in, or does not have an office in, the State concerned.

5.39 The problem is particularly significant in relation to carriers based in other EU Member States, as opposed to non-EU carriers. In many Member States where sanctions are imposed through an administrative process, national law requires a notification of a sanction, or the process to start imposition of a sanction, to be served at a registered office of the carrier, or on a specific office-holder within the carrier. Non-EU (long haul) carriers will usually have an office in the each of the States to which they operate, and this can be a condition of the bilateral Air Services Agreements which permit their operation; however there are no such requirements on EU carriers, which are free to operate any services within the Union.

5.40 We discussed this issue in detail in our recent report on Regulation 261/2004, and in most cases the issues are equivalent, because the process to impose the sanction is the same. However, since the research for that report was conducted, there have been changes affecting the imposition of fines on non-national carriers in two States:

- **Greece:** Until 2008, the legal process for serving a fine required that a writ was accepted by a representative in Greece of the company being fined. As a result, HCAA faced difficulties in imposing fines on non-national carriers that had not established an office in Greece. To resolve this problem, in May 2008 HCAA adopted a regulation on airline representation, requiring all non-national airlines to have representation agreements with their local representatives. This was withdrawn shortly after it came into force, as the restrictions it imposed violated Regulation 1008/2008 on common rules for the operation of air services in the Community. The difficulties in imposing sanctions on non-national carriers therefore remain.
- **Germany:** German national law requires LBA to prove that the notification of any sanction had been issued to a named person within the carrier; as these carriers often do not have offices or legal representation in Germany, at the time of the research for the study on Regulation 261/2004 it was often not possible to meet this requirement. LBA now believes that this problem has been resolved and expects to test this application within six months.

5.41 The problems with application of sanctions to carriers not based in the Member State are summarised in Table 5.10. Since no fines have yet been imposed for infringements of the Regulation, many of the procedures and issues described below have not been tested in practice. However, often the procedures for imposing fines are equivalent to those for Regulation 261/2004 and therefore where possible we have drawn conclusions on this basis.

TABLE 5.10 ISSUES WITH APPLICATION OF SANCTIONS TO CARRIERS NOT BASED IN THE STATE

State	Whether it is possible to impose sanctions	Explanation/Notes
Belgium	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. BCAA believed the best approach would be through cooperation with other NEBs, but the scope of the Regulation could limit this.
Denmark	Yes, although only if the incident occurred on Danish territory	No sanctions have been imposed and therefore this has not been tested. Restriction to Danish territory means that a small proportion of incidents would not be covered, i.e. incidents occurring mid-flight on board a non-Danish carrier which had departed from or was landing at a Danish airport.
France	Yes	Sanctions have been imposed on foreign carriers without any difficulties for other Regulations, so in principle should not be a problem. Notification can be sent by registered mail, and by fax if it is not possible to obtain a receipt from the registered mail.
Germany	Yes in principle	Sanctions must be served on a named person within the airline, which caused problems when issuing fines for Regulation 261/2004. LBA believe this is now resolved, and that it should be sufficient to obtain a signed receipt either by registered mail or by a courier, or issue the sanction through the German embassy in the State concerned
Greece	Uncertain	In summer 2009 national legislation came into force on airline representation, requiring a representation agreement for all non-national airlines. This allowed HCAA to impose financial penalties on all carriers but has now been repealed. The same difficulties in imposing fines on non-national carriers are now present: the legal process of serving a fine requires that a representative of the airline in Greece accept the writ, and there are therefore difficulties in imposing fines on non-national carriers that have not established an office in Greece.
Hungary	No	ETA is only able to handle discrimination cases regarding companies based in the territory of the Republic of Hungary.
Ireland	Yes in principle	Notification of a Direction can be served at the carrier's registered office, which does not have to be within the State. Any proceedings would require proof of incorporation of an airline which could be accepted by the Irish courts.
Italy	Yes but slower / more complex	ENAC would use the process set out in Regulation 1393/2007 to serve notifications on carriers which do not have offices in Italy, but this is likely to be slow/complex. For fines imposed under Regulation 261/2004, this has been short-cut in some cases by the Italian embassy/consulate in the State serving the notification directly.
Latvia	No	The Latvian Administrative Violations Code only allows for sanctions to be imposed on 'legal persons'. This is defined as including foreign individuals but not foreign companies.
Netherlands	Yes	IVW must prove that the company being fined has been notified, for example by proving receipt of the letter setting out the fine. The law states that if IVW can prove it has sent the fine, it is up to the other party to prove it has not received it.
Poland	Yes	Notifications are sent by registered mail or courier to the head office of the carrier – there is no limitation provided a receipt is obtained. A receipt from a courier company is considered sufficient.

Portugal	Yes	No specific constraints on imposing sanctions. Procedure equivalent to that for national carriers.
Romania	No	Notification of any penalty must be made by mail with a receipt, or by physically presenting it in the presence of a witness. If an airline does not have a legal representation in Romania, this cannot be done.
Spain	Yes	Notifications are sent by registered mail – there is no limitation provided a receipt is obtained. In theory collection of sanctions is problematic if carrier does not have an office in Spain, but this has not yet proved a problem.
Sweden	Sanctions not yet defined	Proposed amendment to Civil Aviation Act is unlikely to allow this, as no other Swedish legislation does so.
UK	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. As sanctions could only be imposed through a criminal process, this would be undertaken by the criminal courts system not the NEB.

Monitoring undertaken by NEBs

- 5.42 While the Regulation does not explicitly require NEBs to undertake monitoring of compliance with the Regulation, it does require them to take measures to ensure that the rights of PRMs are respected, including compliance with the quality standards required by Article 9 (1).

Monitoring of airport quality of service

- 5.43 Two NEBs, Denmark and Germany, had undertaken no actions to directly monitor airport service quality. Denmark holds biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines, but does not undertake any first-hand monitoring of service quality at airports.
- 5.44 NEBs in all but two of the case study States had undertaken some inspections of airports. Many undertook yearly inspections of the major airports, although some inspected airports more frequently: the Hungarian NEB inspects Budapest airport three times per year, and Spain had conducted 152 inspections since the introduction of the Regulation. Some had only undertaken one inspection, when the Regulation came into force; these included France, the Netherlands, Romania and Sweden.
- 5.45 Most inspections focus on checks of the systems and procedures in place to provide service. These checks included confirming the signage and functioning of the designated points of arrival, training records, and the written procedures followed by staff providing the service. Most did not assess the passenger experience; those that did were Latvia, Sweden and the UK. These checks included site visits accompanied by representatives of PRM organisations to check actual waiting times and infrastructure such as designated points.
- 5.46 In addition to inspections, there were a number of other approaches to monitoring quality of service, including:
- attending the PRM steering committees of larger airports on a monthly basis (UK);
 - holding biannual meetings with stakeholders including PRM organisations (Denmark); and

- sending annual surveys on implementation of the Regulation to airports (Romania).

5.47 Table 5.11 summarises the actions NEBs have taken to monitor airport service quality.

TABLE 5.11 NEB ACTIONS TO MONITOR AIRPORT QUALITY OF SERVICE (EXCLUDING INDIRECT MONITORING)

State	Direct monitoring of airport quality of service
Belgium	Inspection and audit of subcontractors at Brussels Airport, covering part of Regulation
Denmark	Biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines
France	One inspection of Paris Charles De Gaulle
Germany	None
Greece	Inspections of all airports (including 3 at Athens) for compliance with quality standards (although no quality standards set at any airport other than Athens)
Hungary	Regular inspections (Budapest 3 per year, smaller airports once) covering systems and equipment; questionnaire requesting number of complaints received and training given; approves safety license of PRM service provider, including check of quality standards
Ireland	2 inspections at each airport under jurisdiction
Italy	Regular inspections by staff based at airports, reviewing equipment and procedures, application of quality standards, and provision of training
Latvia	Inspections for compliance with quality standards: checking 'time stamps', site visits to measure actual waiting times. Meetings two times a year to discuss standards.
Netherlands	Audit of systems at major Dutch airports in 2007/2008. Further investigations will be driven by complaints.
Poland	Surveys of all airports, covering: quality standards, training records and programmes, documentation of cooperation with PRM organisations and airport users. Documentation checked by inspections.
Portugal	Yearly inspections of major Portuguese airports, covering designated points and information, but excluding staff training and assistance provided.
Romania	Inspection of Bucharest Otopeni, in cooperation with Social Inspectorate. Annual surveys of airports on several topics, including training, accessible information and procurement.
Spain	152 inspections relating to the Regulation
Sweden	Inspection of Stockholm Arlanda with PRM organisation, including checks of designated points and signage. No such checks of smaller airports.
UK	CCNI: Annual PRM site visits at airports; quarterly meetings with airports. CAA: Physical inspections of airports combined with discussions with service providers. Attends airport-PRM consultative committees monthly for London Heathrow, Gatwick, Luton and Stansted, and for Manchester less frequently.

5.48 For most of the NEBs we spoke to, resource constraints were not an issue: most NEBs received few complaints, and did not undertake significant additional activity which would require additional resources. Where inspections of airports for compliance with the Regulation were undertaken, they were frequently combined with other inspections and did not therefore require significant additional resourcing. The case study States which informed us that they would undertake more inspections if they

had more resources were France and Ireland.

Monitoring of airline quality of service and policy regarding carriage of PRMs

5.49 Most NEBs did not inform us of any monitoring of airline service quality they had undertaken, and stated that they had not investigated or challenged any airline policies on carriage of PRMs.

5.50 The most pro-active approach to airline service quality was that of the Spanish NEB, which in 2009 undertook 409 inspections on passenger rights. The other NEBs which informed us of reviews of airline quality of service took a number of approaches:

- approval of ground handler training (Greece);
- reviewing operating manuals (Latvia, Poland);
- reviewing websites for accessibility (Latvia, Netherlands); and
- annual surveys on airline implementation of the Regulation (Romania).

5.51 Table 5.11 summarises the actions NEBs have taken to monitor airline service quality and policies on carriage of PRMs.

TABLE 5.12 NEB ACTIONS TO MONITOR AIRLINE QUALITY OF SERVICE AND POLICY

State	Monitoring of airline quality of service and policy on carriage of PRMs
Belgium	Developed advisory document which sets limits on PRM carriage by Belgian carriers
Denmark	No review of service quality. Discussion of hypothetical reasons for refusal of embarkation discussed at stakeholder meetings
France	None
Germany	No review of service quality.
Greece	Training of ground handlers is approved by HCAA
Hungary	Reviews requirements and Conditions of Carriage for compliance with Regulation
Ireland	Reviewed airline policies on carriage of PRMs
Italy	None
Latvia	Inspections of both main Latvian airlines: reviewed operating manuals, websites and records. Would use unannounced inspections if infringements identified.
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	NEB reviewed airline's operating manual as a result of one case
Portugal	None
Romania	Annual surveys of airlines on several topics, including refusal of carriage, training and accessible information
Spain	409 inspections in 2009 on passenger rights, including checks on information provided to passengers and compliance with conditions of carriage
Sweden	Reviewed policies on carriage in cooperation with Swedish Work Environment Authority; awaiting EASA report before defining policy on PRM limits
UK	Requested and reviewed information from airlines on the rationales for their policies

- 5.52 In addition, many NEBs are also the licensing authority for carriers registered in the State, and therefore have to approve carriers Operating Manuals. Where this is the case, these NEBs have to approve, and therefore could determine, carriers' policies on carriage of PRMs and requirements to be accompanied.
- 5.53 We have identified that in some cases the licensing authority does have specific policies on carriage of PRMs which must be reflected in carriers Operating Manuals. The stated rationale for these policies is safety, but these policies vary significantly between States, and have not been demonstrated to be evidence-based. In most cases, the licensing authorities do not have specific policies and will approve those proposed by the carriers, subject to these being reasonably based on safety. Most NEBs and licensing authorities have not done anything to challenge policies on carriage of PRMs proposed by carriers, and this has resulted in significant differences in policies between carriers. This issue is discussed in more detail in section 4 above.

Monitoring of airport charges

- 5.54 As noted previously (see 5.6), no Member State has designated a separate body for enforcement of Article 8 of the Regulation, and several have not yet passed legislation to allow penalties to be imposed for infringements of this Article.
- 5.55 7 out of 16 case study NEBs had undertaken no direct monitoring of the charges levied by airports for providing services under the Regulation, or of the consultation which airports are also obliged to undertake when setting such charges.
- 5.56 The NEBs for Hungary and Italy had undertaken audits of the charges levied, while a number of NEBs had undertaken high level reviews of expenses and charges (including Greece, Latvia, Poland and Romania). The Netherlands and Portugal had undertaken benchmarking exercises against other airports.
- 5.57 Table 5.11 summarises the actions NEBs have taken to monitor airport charges under the Regulation.

TABLE 5.13 NEB ACTIONS TO MONITOR AIRPORT CHARGES (EXCLUDING INDIRECT MONITORING)

State	Direct monitoring of airport service charges
Belgium	None
Denmark	None
France	None
Germany	None
Greece	Annual review of expenses and charges
Hungary	Approves airport charges; in-depth audit of costs and charge for Budapest
Ireland	Charges included within regulated price cap. CAR has investigated level of consultation on charges.
Italy	Charges set by ENAC in cooperation with airports and airlines
Latvia	High-level check of charge
Netherlands	Reviews against other airports with advice of Netherlands Competition Authority.

Poland	Review of charges (by other CAO department)
Portugal	Benchmarking exercise across European countries, but no auditing or analysis of whether charges are cost-reflective
Romania	Checks for: existence of charges; separation of accounts; annual report on expenses and revenues. No checks on whether reasonable or cost-reflective (but in the process of recruiting staff with economic skills).
Spain	None
Sweden	None, but review is planned.
UK	None

Other activities undertaken by NEBs

Interaction between NEBs and with other organisations

5.58 Given the low number of complaints received by NEBs, interaction with other stakeholders is important to maintain an awareness of any issues arising. Table 5.14 summarises the interactions between NEBs and other organisations.

TABLE 5.14 NEB INTERACTION WITH OTHER ORGANISATIONS

State	Form of any interaction between NEB and other organisations
Belgium	None
Denmark	Biannual meetings with stakeholders, including airports, airlines and PRM organisations
France	No information provided at interview
Germany	No information provided at interview
Greece	Meetings with PRM organisations to help define quality standards, joint accessibility reviews of regional airports
Hungary	Biannual meetings with PRM organisations
Ireland	No information provided at interview
Italy	Round table discussions to develop advisory guidance, good relationship with PRM organisation
Latvia	CAA attends quarterly PRM steering committee at Riga Airport with PRM organisations
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	Worked with PRM organisation to improve CAO understanding of problems faced by PRMs
Portugal	One day seminar for aviation industry stakeholders on Regulations 261/2004 and 1107/2006. Did not include representatives of PRM organisations.
Romania	NEB and PRM organisation cooperated with Bucharest Otopeni to develop quality standards
Spain	No information provided at interview
Sweden	Approximately monthly contact with PRM organisations, including biannual aviation focus group
UK	CCNI: Worked with Equality Commission of Northern Ireland to support introduction. CAA: Attends monthly PRM steering committees at major UK airports with PRM organisations, receives guidance from government advisory committee on disabled travel.

Promotional activity undertaken by NEBs

- 5.59 The Regulation requires Member States to inform PRMs of their rights and the possibility of complaints to NEBs. Relatively few NEBs have made significant efforts towards this: of the case study NEBs, only Romania and UK had undertaken nationwide campaigns to promote awareness of passengers' rights under the Regulation, and even in the UK, the PRM organisation we spoke to was not aware of the campaign the UK NEB had conducted.
- 5.60 Other NEBs had undertaken less direct promotional activity, including the following:
- publishing of leaflets to be distributed at airports (Belgium, Germany);
 - holding a conference (Germany); and
 - actions to promote awareness of the Regulation to PRM organisations and other stakeholders, but which did not directly inform passengers (Denmark, Italy, Netherlands, Poland).
- 5.61 A number of NEBs had published information on their websites. While such information can be useful, if a passenger is unaware that they have rights, or is aware they have rights but unaware of the role the NEB plays in enforcing them, they are unlikely to find and read NEB websites. Table 5.15 lists the activities undertaken by NEBs.

TABLE 5.15 NEB ACTIVITY TO PROMOTE AWARENESS OF THE REGULATION

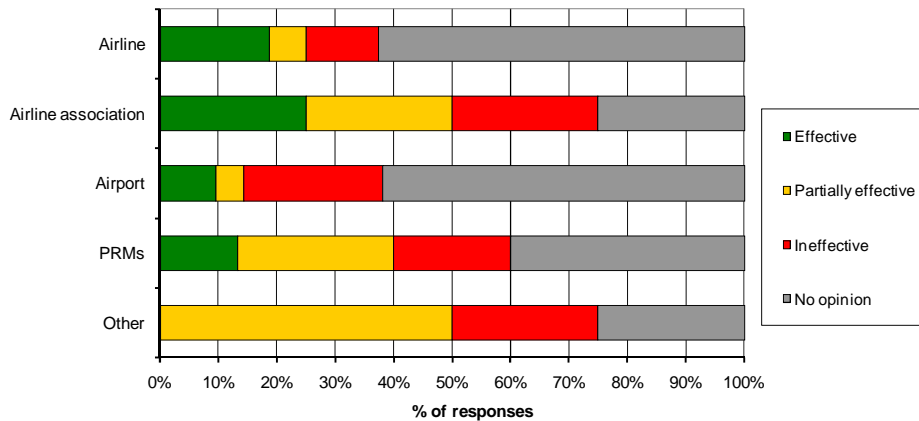
State	Actions taken by NEBs to promote awareness of the Regulation
Belgium	Leaflets sent to Brussels Airport; also available on the BCAA website.
Denmark	Letters to stakeholders on obligations under Regulation sent out when it was passed.
France	No information provided at interview. Section on website with information on Regulation.
Germany	BMBVS published a leaflet on Regulation in 2008 and held a conference with PRM organisations and the association of German air carriers; published information on website.
Greece	Information on the Regulation (including videos) placed on website.
Hungary	Information on the Regulation (including videos) placed on website.
Ireland	No information provided at interview. Section on website with in-depth information on Regulation.
Italy	Guidance on implementing the Regulation developed with and circulated to airports, airlines and PRM organisations. No direct promotional activity to passengers.
Latvia	Published PRM complaint form on website.
Netherlands	Contact with Dutch Association of Travel Agents to improve awareness and ensure correct allocation of IATA codes.
Poland	Provided information regarding the Regulation to PRM organisations.
Portugal	No information provided at interview. Section on website with information on Regulation.
Romania	Public awareness campaign with main PRM organisations, including dedicated website, posters and leaflets distributed throughout the country, through airports, carriers, travel agents and municipal bodies.
Spain	No information provided at interview. Section on website with information on Regulation.

Sweden	No information provided at interview. Section on website with information on Regulation. PRRM org states well-publicised initially but not since.
UK	EHRC: distribution of guides on rights under Regulation; advertised in national media CCNI: distribution of guides on rights under Regulation, covered in regional media; advertorial piece in newspapers; exhibitions at relevant events.

Stakeholders views on complaint handling and enforcement

5.62 We asked each of the stakeholders we contacted about how effectively they believed NEBs had enforced the Regulation; there is some variation between different groups of stakeholders (Figure 3.10 below). A high proportion of stakeholders (over 60% of airports and airlines) have no opinion on how well NEBs have been enforcing the Regulation; often, the reason given for this response was that the stakeholder had had no interaction with the NEB in question. The proportion which believes that NEBs have not been enforcing the Regulation effectively is broadly consistent across stakeholder groups, at 20%-25%.

FIGURE 5.1 VIEWS OF STAKEHOLDERS ON NEB EFFECTIVENESS



5.63 In this section, we discuss the particular issues raised by each group of stakeholders.

Airlines and airline associations

5.64 Most airlines did not express strong views on whether NEBs had enforced the Regulation effectively, and did not give specific examples of areas where NEBs were performing well or poorly. One airline expressed frustration with the lack of action taken against airports, in particular relating to excessive charges and to lack of focus on safety.

5.65 Of the airline associations we spoke to, AEA believed that effectiveness of enforcement varied by State. IACA believed that in general NEBs were unfairly targeting airlines and not airports. Regarding specific NEBs, it believed that the UK complaint-handling NEB was bringing cases which were factually inaccurate, and that there was insufficient distinction between NEBs and service providers in Spain and Portugal.

Airports

- 5.66 A higher proportion of airports than airlines believed that NEBs were ineffective. Two airports believed actions needed to be taken by NEBs to raise the proportion of pre-notifications for assistance. One airport believed that the NEB should take more action to inform passengers of their rights and obligations. Three airports informed us that they had had no interaction with their NEBs, and two stated that their interactions with NEBs had been unsatisfactory: one informed us that the NEB was slow and unresponsive, and the other stated that it was not clear which organisation was their NEB. Only one airport informed us that it had good and close cooperation with its NEB.

NEBs

- 5.67 As there have been very few complaints received under the Regulation, there have also been very few complaints which have required forwarding to other NEBs. Therefore, the NEBs have no information on the effectiveness of other NEBs via their responses to forwarded complaints.

PRM organisations

- 5.68 13% of PRM organisations believed that NEBs were enforcing the Regulation effectively. Those that believed that NEBs were functioning ineffectively or only partially effectively believed that too little action was being taken, either through active monitoring of the services provided or through taking actions to remedy poor service. Four of the PRM organisations we spoke to had had little or no interaction with their NEB.

Other organisations

- 5.69 The other organisations we spoke to noted the following issues with regard to enforcement:
- lack of consistency of approach between NEBs, particularly in terms of whether they believe it is their role to handle complaints;
 - unwieldy complaints systems; and
 - unreasonable requests made by NEBs.
- 5.70 One organisation also believed that some NEBs were taking a sensible line between the demands of PRMs and of service providers.

Conclusions

- 5.71 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB, which in most cases is the Civil Aviation Authority and is the same organisation that is responsible for enforcement of Regulation 261/2004. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.

- 5.72 There is no requirement in the Regulation that the NEB be independent from service providers and we have identified one case where it is not: the Greek NEB, HCAA, is also the operator of the airports other than Athens.
- 5.73 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. In the UK, national law grants rights additional to those given in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the service provider.
- 5.74 There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.
- 5.75 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received under the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passenger assisted in 2009 across a sample of 21 EU airports. 80% of all complaints were received by the UK NEBs; none of the NEBs in the other 26 Member States has received more than 50 complaints.
- 5.76 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but France, Portugal and Spain have opened proceedings to impose fines. However, in a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different States.
- 5.77 Many NEBs had taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States had undertaken at least one inspection of airports for compliance with the Regulation, however most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 16 States had undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.
- 5.78 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken.

- 5.79 Awareness of the NEBs performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

6. STAKEHOLDER VIEWS ON POLICY ISSUES

Introduction

6.1 This section summarises views expressed by stakeholders in the course of our consultation exercise on key policy issues, including whether any changes should be made to the scope or content of the Regulation, and what any changes should be.

6.2 Stakeholders also expressed views on the application of the Regulation by airports, carriers, and the complaint handling and enforcement process; these views are summarised in the relevant chapters above.

Whether changes should be made to the Regulation

6.3 We asked all of the stakeholders that we interviewed whether they considered that any changes should be made to the Regulation.

6.4 Half of the airports we interviewed believed that the Regulation should be changed. Several suggested that the definition of PRM was too broad, and that this was contributing to abuse of services. It was also suggested that the Regulation be amended to require proof of disability, and that the Regulation should also be amended to improve the functioning of pre-notification (for example by making it mandatory). ACI supported these positions. The airports which did not believe the Regulation should be amended, or had a neutral opinion, thought that any lack of clarity in the Regulation could be addressed through information from the Commission.

6.5 In addition, around half of the airlines we interviewed also believed that the Regulation should be changed, however this was for different reasons to those given by airports. A number of airlines believed that it should be possible for them to choose to provide the service themselves or that responsibility should lie with airlines, arguing that as customer-focussed organisations they are better able to do this. Of the airline associations, only ELFAA argued for this amendment. One airport strongly agreed with this position, however most believed that the allocation of responsibility should not be revised, as if airlines were to provide their own service, the incentive to reduce costs would result in unacceptable reductions in service quality. Airlines also supported amendments to clarify the definitions of PRM and mobility equipment, and to improve pre-notification.

6.6 Most of the NEBs we interviewed did not have a clear opinion on whether the Regulation should be amended. Seven NEBs believed that the definitions of terms such as PRM and mobility equipment should be clarified, and two of the NEBs in the case study sample supported changes which would allow airlines to opt out of the Regulation and provide the services themselves.

6.7 Slightly over half of the PRM representative organisations we interviewed believed that the Regulation should be amended. Amendments were suggested to address the following issues:

- limits on number of PRMs which can safely be carried;

- allocation of seating;
- requirements on compensation payable for damaged mobility equipment, and improvements to its handling; and
- provision of information.

6.8 EDF suggested that compensation should be introduced, as this would incentivise more complaints and therefore improve service. Those that did not believe the Regulation should be amended either believed that the Regulation had not been in force for long enough to assess its efficacy, or that poor implementation was the cause of any problems identified.

The content and drafting of the Regulation

6.9 We outline below some of the main detailed issues that have been raised by stakeholders. Few stakeholders believed that there were significant issues with the drafting of the Regulation that made it difficult to implement, however many stakeholders outlined issues relating to insufficient definition.

Definition of terms

6.10 The issue most commonly raised, particularly by airports and NEBs, is the definition of PRM set down in the Regulation. Many stakeholders believe this is too broad and opens the service to abuse, both by passengers and by airlines. A number of airports believed that airlines were using the wide definition to allow them to avoid costs: passengers who were previously classified as MAAS (including unaccompanied minors, VIPs and passengers with language issues), and therefore paid for by the airline, are now classified as WCHR and the cost is borne by all airlines. Some airports believed this could be resolved by setting out a clear definition of MAAS.

6.11 The definition in the Regulation could include a wide range of passengers who some stakeholders do not believe were the intended beneficiaries of the Regulation, including:

- obese passengers;
- stretchers;
- medical cases; and
- passengers who had sustained injuries (whose travel is often paid for by their travel insurance).

6.12 Some stakeholders believed that the definition of PRM was so broad that it could be considered to include passengers which the Regulation was clearly not intended to cover, such as passengers whose intellectual and sensory capacities were temporarily impaired by excessive consumption of alcohol.

6.13 Several stakeholders believed this issue could be resolved by requiring some proof of need for assistance in order to receive assistance, for example in the form of a disability ID card. This was opposed by some PRM organisations.

6.14 Stakeholders also considered that a number of other terms were not sufficiently defined. These included:

- **Mobility equipment:** The reference in Annex II to mobility equipment states that it should include electric wheelchairs but does not define the term any further. Stakeholders had differing views on what should be included in this: several airlines believe that it should refer only to equipment that is required to make it possible to travel by air, but a number of PRM organisations believed it should include items which make the *purpose* of the trip possible. This could include, for example, joists for lifting passengers in and out of seats.
- **Medical equipment:** Several stakeholders believed there was insufficient clarity on which items were classified as medical equipment and which as mobility equipment. It was also uncertain whether airlines could any limits (for example on weight) on its carriage.
- **Accessible formats:** It was reported that the requirement for designated points of arrival and departure to offer basic information about the airport in accessible formats did not define what was required, for example, whether all such points should include a map in Braille of the airport.
- **Safety rules:** Article 4(3) requires airlines to make publicly available the safety rules that it applies to the carriage of PRMs, and any restrictions on the carriage of PRMs or mobility equipment. Several stakeholders informed us that such documents were not defined, and it was not clear what this term referred to.

Lack of clarity in the Regulation

- 6.15 In one case, the requirements of the Regulation appear contradictory. Several NEBs noted that the responsibility for enforcement defined in Article 14 contradicts that specified in Recital 17. Article 14 states that NEBs are responsible for enforcement regarding flights departing from or arriving at airports within their State, while Recital 17 places responsibility on the NEB of the State which issued the carrier's operating license.
- 6.16 Stakeholders identified a number of other provisions where they considered the description of obligations was insufficiently clear, including:
- **Article 7:** Under this Article, airports are required to provide assistance to PRMs holding reservations so that they able to take their flight, however, it does not define what an airport is required to provide to a PRM who does not hold a valid reservation. In addition, it does not define the airport's liability when a PRM misses their flight, in particular where the passenger has not pre-notified their requirement for assistance.
 - **Article 11:** One airport had been the subject of a legal challenge by an airline regarding the inclusion within its PRM service charge of the costs of providing training under Article 11(b) to subcontractors at the airport. The airline contended that since the paragraph did not refer to subcontractors (unlike Article 11(a)) the airport was not obliged to provide such training. Several airports believed that the requirement under this Article to provide disability-related training to all new staff (not just those whose role required them to interact with PRMs) was unnecessary. In contrast, some PRM organisations believed that training should be explicitly extended to Commanders of aircraft, to enable them to make better-informed decisions on whether to embark PRMs. PRM organisations also noted

that it was not clear whether airports were required to provide training on specific procedures for handling mobility equipment; as damage to mobility equipment is perceived to be a significant issue, they believed this requirement should be explicitly included.

- **Article 12:** Several PRM stakeholders raised concerns that the compensation referred to in this Article would be consistent with the Montreal Convention, and that the limits under the Convention were insufficient for some mobility equipment, such as technologically advanced wheelchairs (see 4.55). Although this had not been an issue to date – in almost all cases that we were informed of, airlines waived the limits – it creates uncertainty for wheelchair users travelling by air. This is heightened by the reported difficulties in obtaining insurance for such equipment.
- **Annex I:** A number of airlines raised concerns regarding the allocation of liability when boarding a passenger. For example, they did not believe that liability was clear in the case that an accident occurs on board an aircraft when airport staff are present. Some airports raised concerns regarding liability for damage to wheelchairs while in their care. In addition, the services which should be provided to transfer passengers and the measures which should be taken to accommodate assistance dogs are not defined.

- 6.17 Regarding training, some stakeholders raised the issue of the legal weight of ECAC Document 30, particularly Annex 5-G which sets out recommended guidance for training regarding PRM services. While this is referred to in the Regulation as a policy which should be considered when developing quality standards, the same reference is not made in Article 11 where training requirements are defined.

Conflicts with 14 CFR Part 382

- 6.18 As discussed in section 4 above, the US regulations on carriage of PRMs (14 CFR Part 382) apply to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. There are a number of differences between these rules and the Regulation, the most significant of which is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. This has caused difficulties for carriers who are required to comply with legislation that conflicts, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.

Pre-notification

- 6.19 The requirement to pre-notify requests for assistance and problems in doing so were raised by many stakeholders (see 4.98). Stakeholders held differing views on how this should be improved. Several airlines (in particular those with operations to the US, where requiring pre-notification is usually prohibited) believed that the requirement to pre-notify should be removed; they believed that the resulting increases in costs of provision would be marginal, as most resourcing requirements could be planned on the basis of observed variation in demand (over the course of a year, a week or a day as appropriate). This approach was supported by some PRM organisations. In contrast, a number of airports believed that pre-notification should be made compulsory, and

this proposal was opposed by some PRM organisations.

Level of detail

- 6.20 Almost all stakeholders informed us that there was significant variation in the services provided under the Regulation. This is partly a result of the approach taken by the Regulation, which does not seek to define in detail the services to be provided. In contrast, the equivalent US rules set out in detail all aspects of the services to be provided, in effect setting out procedures to be followed by all service providers.
- 6.21 Several stakeholders have raised the lack of detail in the Regulation as an issue, and believe that a more prescriptive approach would lead to greater harmonisation of the services provided. In particular, they believed that the services set out in Annexes I and II and the training required under Article 11 should be defined with greater precision.

Conclusions

- 6.22 We asked each stakeholder we contacted for the study whether they believed that changes should be made to the Regulation. Slightly more thought that there should be changes than did not, but there was not a clear majority in favour of changes. The reasons given for making changes and what those changes should be varied depending on the stakeholder.
- 6.23 No significant problems were identified with the drafting of the Regulation, although there is a conflict between Recital 17 and Article 14. In general, stakeholders had not found it difficult to follow the provisions of the Regulation. The most common issue raised with regard to the text of the Regulation is that the definitions used are not sufficiently precise; in particular, the definition of PRM is believed by airports and some airlines to be too broad, and this is believed to make it difficult for them to take action to counter abuse. The Regulation is much less precise about the policies and procedures that have to be followed, particularly by air carriers, than the equivalent US regulation on carriage of PRMs, 14 CFR Part 382.
- 6.24 In addition, many stakeholders pointed out the significant differences between the Regulation and 14 CFR Part 382, which applies to European carriers on flights to/from the US and other flights operated as codeshares with US carriers. One of the most significant is the requirement to pre-notify requirements for assistance was raised as an issue, particularly by airlines operating to the US, and by airports where the rates of pre-notification were low. Two different approaches were proposed to address the perceived problem. Some airlines (primarily those flying to US) proposed removing the requirement to pre-notify, which would resolve the conflict with US legislation; this was opposed by airports on the grounds that it would reduce service quality and increase cost. Some airports proposed making pre-notification compulsory; this was opposed by some PRM organisations on the grounds that it would reduce the freedom of PRMs to travel.

7. FACTUAL CONCLUSIONS

Introduction

- 7.1 This section summarises our conclusions in relation to how effectively airports and airlines are providing the assistance required by the Regulation, and how effectively Member States and National Enforcement Bodies (NEBs) are undertaking their roles specified in the Regulation.

Implementation of the Regulation by airports

- 7.2 We selected a sample of 21 airports for detailed analysis for the study, and reviewed how they had implemented the Regulation, through desk research and through interviews with representatives of airport management and other stakeholders.
- 7.3 Prior to the introduction of the Regulation, assistance at airports was provided by airlines and usually contracted from ground handlers. The Regulation places responsibility for provision of this assistance with the airport management company. We found that all airports in the sample for this study had implemented the provisions of the Regulation, although we were informed by airlines and other stakeholders that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports. We were not informed by stakeholders of any other EU airports at which the Regulation has not been implemented.
- 7.4 Most of the sample airports had contracted the provision of PRM assistance services to an external company, generally selected through a competitive tender process. However, several airports had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that the service initially specified and procured had been inadequate. One major hub airport acknowledged that it had had significant problems with a PRM service provider.
- 7.5 The service provided at the sample airports varies in terms of: the resources available to provide the services; the level of training of the staff providing assistance; the type of equipment used to provide services; and the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, this results in variability in service quality. PRM representative organisations, airlines and some airports cited a number of examples of poor quality or even unsafe provision of services at airports, although it is not possible to infer how regular these occurrences are. Overall, most stakeholders believed that the Regulation had been implemented effectively by airports.
- 7.6 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data, although in most cases between 0.2% and 0.7% of passengers requested assistance. The type of PRM service requested also varies considerably between airports although in all cases the largest category is WCHR (passengers who cannot walk long distances but can board the aircraft, including using stairs, unaided). Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports; PRMs account for the highest proportions of

passengers at holiday airports, such as Alicante, and airports serving pilgrimage destinations, such as Lourdes.

- 7.7 The Regulation requires airports to publish quality standards. Most of the sample airports had done so, although some had published them only to airlines. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.
- 7.8 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably: the highest charges of the sample airports were at Paris CDG and Frankfurt. We analysed the charges to examine whether variation could be explained by higher frequency of use of the service, differences in levels of wages and other costs between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport is a further factor influencing the cost of service provision and hence the level of charges: the assistance service can be provided at lower cost at an airport such as Amsterdam Schiphol, which is on a single level and has one integrated terminal building, than at an airport with a more complex configuration such as Paris CDG.
- 7.9 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a number of barriers to effective consultation, including linguistic restrictions and airport user committees which did not adequately represent all air carriers. Consultation with air carriers was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.
- 7.10 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

Implementation of the Regulation by air carriers

- 7.11 We selected a sample of 20 air carriers for the study. We reviewed how they had implemented the Regulation, both through review of their published policies, procedures and Conditions of Carriage, and through interviews with the carriers themselves and with other stakeholders.
- 7.12 The main obligation that the Regulation places on air carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that air carriers largely comply with this, although some state in their Conditions of Carriage that carriage of PRMs is conditional on advance notification. In our view, this is not consistent with the Regulation, which does not allow for a derogation on the prohibition of refusal of carriage on the basis that the passenger has not provided advance notification. In addition, we found that a small number of carriers impose requirements for medical clearance which appear to be excessively onerous and to be worded to include PRMs as well as passengers with medical conditions.
- 7.13 We found significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. These limits are not required by any international or European safety rules, although in some cases they are required by the licensing authority for the carrier concerned; often, although not always, this is the same organisation that has been designated as the NEB. However, in most cases, these requirements are defined by carriers in their Flight Operations Manuals; although the licensing authority has to approve this, it appears that in most States, little has been done to challenge the limits proposed by carriers. Whilst the stated rationale for these limits is safety, there does not seem to be a clear evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).
- 7.14 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not 'self-reliant', which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. This type of condition is also, in our view, unreasonable for short haul flights for which passengers could decide to (for example) not eat or drink during the flight. Other carriers require PRMs to be accompanied only where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency or put on an oxygen mask without assistance); this is consistent with the Regulation.
- 7.15 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information, but few published a notice specifically described as being the safety rules related to carriage of

PRMs. In some cases there appeared to be significant omissions from the information published by carriers: for example, some of the carriers which imposed a numerical limit on the number of PRMs which could be carried did not publish this.

- 7.16 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study air carriers are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

Enforcement and complaint handling by NEBs

- 7.17 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB. In the majority of States, the NEB for this Regulation is the same organisation as the NEB for Regulation 261/2004, in most cases the Civil Aviation Authority. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.
- 7.18 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.
- 7.19 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received relating to the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passengers assisted in 2009 across the case study sample of 21 EU airports. There is also a significant disparity in which States had received complaints: 80% of all complaints about infringements of the Regulation were received by the UK NEBs; none of the NEBs in the other 26 Member States had received more than 50 complaints.
- 7.20 In the UK, national law grants rights additional to those in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the air carrier or airport concerned. This is in line with

disability rights legislation applying to other sectors in the UK. A consequence of this is that the process for handling complaints is significantly different in the UK from other Member States, because passengers may have a right to claim compensation from the carrier or airport concerned. At least in part, this also explains the significantly higher number of complaints in the UK compared to the other Member States.

- 7.21 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In most States, the process to impose sanctions is equivalent to that for Regulation 261/2004. In a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different Member States. This is due to the same reasons identified in our recent study for the Commission of Regulation 261/2004¹⁴: either specific limitations in national law on imposition of sanctions on foreign companies, or administrative requirements which cannot be met if the carrier is based outside the State. This means that, in these States, the system of sanctions cannot be considered to be dissuasive as required by the Regulation.
- 7.22 There is no requirement in the Regulation that the NEB must be separate from the service providers that it has to regulate. The only case we have identified where the NEB is also a service provider is Greece, where HCAA is the operator of the airports other than Athens, as well as the NEB. Although not an infringement of the Regulation, this is a breach of the principle of separation of regulation and service provision. As noted above, the most significant failure to implement the Regulation that we have identified is at the HCAA airports, and HCAA has not imposed a sanction on itself for this failure to implement the Regulation.
- 7.23 Many NEBs have taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States have undertaken at least one inspection of airports for compliance with the Regulation. However, most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 14 States have undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.
- 7.24 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken, and even in one of these States, a key national PRM organisation was not aware that the public campaign had taken place. Awareness of the NEBs performance appeared in general to be poor: most

¹⁴ Evaluation of Regulation 261/2004; Steer Davies Gleave on behalf of European Commission, February 2010

stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

Other issues that have arisen with the Regulation

7.25 Stakeholders also pointed out a number of other issues with the Regulation. Whilst few significant problems have been identified with the drafting of the Regulation, the following issues were identified:

- there is a conflict between Recital 17 and Article 14, regarding which NEB is responsible for enforcing the Regulation in relation to air carriers;
- the definition of PRM used in the Regulation is very broad, and could be interpreted to include some categories of passenger who it might not have been intended to cover (such as obese passengers, or even passengers temporarily incapacitated due to excess alcohol consumption); and
- the Regulation does not specify in detail the policies or procedures that have to be followed by air carriers, particularly if compared to the equivalent US regulations, and this has resulted in significant differences in policies between carriers.

7.26 In addition, stakeholders emphasised the significant differences between the Regulation and the equivalent US regulations on carriage of PRMs (14 CFR part 382). These can cause difficulties for air carriers, as part 382 applies to non-US carriers on flights to/from the US and all other flights that are operated as codeshares with US carriers (even if not to/from the US). The most significant differences are:

- in most circumstances, part 382 does not permit carriers to request pre-notification;
- part 382 does not allow limits on the number of PRMs on an aircraft and limits the circumstances in which an accompanying passenger may be required; and
- part 382 places the responsibility for provision of PRM assistance services on the air carrier, whereas the Regulation places this responsibility on the airport.

Conclusions

7.27 Overall, despite difficulties with service provision at some airports, the services required by the Regulation have been implemented at most European airports and compliance with the Regulation appears to be relatively good. Most stakeholders considered that the quality of service provision had improved since the introduction of the Regulation, although some airlines strongly disagreed with this.

7.28 The key issue we have identified with the implementation of the Regulation is that there are significant differences between carriers in their policies on carriage of PRMs. This arises in part from the fact that the Regulation does not specify in detail the services to be provided and the procedures to be followed, in particular if compared to the equivalent US regulations on carriage of PRMs. The Regulation allows carriers to refuse carriage or require a passenger to be accompanied on the basis of safety requirements, but these requirements are not specified in law, and therefore there are significant differences in interpretation of these requirements.

8. RECOMMENDATIONS

Overview

- 8.1 This section sets out our recommendations relating to how to improve the operation and enforcement of the Regulation. We present first a number of recommendations which would improve the operation of the Regulation without requiring any changes to be made to the text. However, we believe some changes are necessary which could only be implemented through amendments to the Regulation.

Measures to improve the operation of the Regulation

- 8.2 This section sets out measures to improve the operation of the Regulation. It covers the following:
- improvement in the operation of PRM services at airports;
 - issues relating to the carriage of PRMs by airlines;
 - actions to be taken by or in relation to NEBs; and
 - guidance on PRM services and carriage which should be produced by the Commission, in consultation with other parties.

Airports

- 8.3 All airports in the sample for the study had implemented the provisions of the Regulation in some form, although as the Regulation does not precisely specify the quality of service to be provided, PRM organisations have reported this as being variable. We do not recommend any significant changes, and recommend a number of measures which will help airports to move towards consistency of service.

Maintain allocation of responsibility

- 8.4 Several airlines (primarily those operating low-cost business models) argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide it more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and therefore we recommend that allocation of responsibility for PRM services to airports should **not** be amended.

Monitor misuse of services

- 8.5 A number of airports (in particular larger and busier airports) reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. There was no consensus amongst airports about how significant this issue was. This variation in perception of the problem, combined with the nature of the problem itself, makes it difficult to accurately assess its extent. We recommend that the Commission monitor reports of misuse of services, so that it is alerted if the problem becomes more consistently serious.

Improve provision of information

8.6 Several PRM organisations informed us that provision of information on accessibility by airports could be improved. In particular, we were informed that many PRMs would find it helpful to have access to information, in a consistent format, regarding the accessibility of airports to which they were travelling. This could be provided through a webpage on an airport's website included, for example:

- the maximum likely walking distance within the airport;
- locations of any flights of stairs;
- the means used for access to aircraft (airbridge or stairs);
- any facilities available for PRMs;
- appropriate contact details for PRM services both for airlines and the airport¹⁵.

8.7 Whilst some of this information is often available on airport websites, it can be difficult to find and is not always complete. To address this, we suggest that ACI could develop a single website which would either include all of this information or alternatively provide links to the specific pages on airport websites which include this information.

Share best practice on contracting of PRM service providers

8.8 We identified two issues with the process for selection of PRM service providers:

- several airports which had subcontracted PRM services had re-tendered within 18 months of the Regulation entering into force, as there were significant issues with the operation of the service; and
- many airlines informed us that they did not believe the extent of consultation from airports was sufficient.

8.9 To address these issues, we recommend that the Commission, in co-operation with ACI, develop and distribute best practice advice on contracting for services, including:

- **Content and structure of the contract:** This could include the level of detail at which contract terms relating to services should be specified, and any penalties for failure to meet required standards. It could be provided in the form of a sample contract. This would help to reduce the likelihood of issues with the contract leading to retendering.
- **Recommended methods of cooperation:** This could give details of the level and manner of consultation an airport should undertake. It could detail how to involve airport users in consultation at all points of a tendering process, including from drafting of invitation to tender documents, to evaluating and scoring bids, and might include input on the eventual decision. It could also include how to involve PRM organisations in this process. Where implemented, this would improve the perception by airport users and other parties of airport consultation.

¹⁵ London Luton airport provides a good example of this; see <http://www.london-luton.co.uk/en/content/3/1427/how-to-book-special-asistance.html>.

Share best practice on training

- 8.10 Our research found that approaches to training of staff to provide PRM services varied significantly. In particular, there was significant variation in length of training (between 3 and 14 days) and method of delivery (videos, classroom-based or practical), to provide what should in principle be the same services. In addition, some airports reported that they had sought assistance on developing training from local PRM organisations, but the PRM organisations were too resource-constrained to be able to provide the required assistance. We therefore recommend that the Commission work with ACI and EDF to develop and distribute best practice advice on training, which would include recommended minimum levels.

Airlines

- 8.11 A key problem identified in our research is the lack of consistency between airline policies on the carriage of PRMs. These policies are subject to approval by the carriers' licensing authorities (which are often the same organisation as the NEB), but in many cases they approve policies with little or no challenge.

Work with EASA to determine safe policies on carriage of PRMs

- 8.12 Article 4 of the Regulation permits air carriers to refuse to accept reservations from a PRM, or to require that a PRM be accompanied, in order to meet safety requirements set out in international, Community or national law, or established by the authority that issued the carrier's operating certificate. However, other than minimal requirements in EU-OPS, Community law does not impose specific requirements regarding the safe carriage of PRMs. There is little published research into safety issues regarding carriage of PRMs, so even where licensing authorities do seek to challenge proposed airline policies or impose their own, there is a limited evidence base on which to do this. This results in wide and unjustifiable variation in airline policies.

- 8.13 Therefore, we recommend that the Commission work with EASA to determine policies on carriage of PRMs which are consistent with safe operation. Such policies should include any limits on the number of PRMs permitted on board an aircraft, where PRMs may be seated, and whether and under what circumstances PRMs must be accompanied. The policies should take into account the type of aircraft and the different safety implications of carriage of different types of PRMs.

Airlines to publish clear policies on carriage of PRMs

- 8.14 We have identified a number of airlines which are failing to publish clear policies on carriage of PRMs. We recommend that the Commission encourage the relevant NEBs to ensure that the airlines identified in Table 4.1 as not publishing sufficient information do so. The Commission could also encourage NEBs to review the policies of airlines outside the study sample to ensure that these provide sufficient information.

Monitor pre-notification

- 8.15 Pre-notification of requirements for assistance should have two benefits:

- it should ensure that PRMs are able, on arrival at an airport, to promptly receive the assistance they require to take their chosen flight; and
- it should allow airports to plan their staffing requirements efficiently, minimising the cost of service provision .

8.16 However, at present, as discussed in section 4.74 above, pre-notification is not functioning well. Of the 16 airports which provided us with information on levels of pre-notification, 11 have rates of pre-notification under 60%. The result of this is that at most airports, the rate of pre-notification is too low for the airport to gain efficiency benefits, and the incentive for PRMs to pre-notify is reduced (since at many airports a similar quality of service is provided regardless of pre-notification). Therefore the system as it presently operates requires airlines and airports to incur the costs of enabling pre-notification, but not to realise the benefits of reduced costs or smoother provision of services. We recommend that the Commission monitor the operation of pre-notification (for example by encouraging NEBs to collect appropriate data), and in future assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.

Encourage airlines to provide receipts for pre-notification

8.17 Several PRM organisations reported problems where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification. Once this voluntary scheme has been in place for an appropriate length of time, the Commission could consider amending the Regulation to make it compulsory.

Monitor implementation of ECAC Document 30 recommendations on carriage

8.18 Section 5 of ECAC Document 30 contains a number of recommendations regarding on-board provisions for PRMs which it recommends airlines commission in new or significantly refurbished aircraft. These include (depending on the type of aircraft) the provision of on-board wheelchairs, provision of at least one toilet catering for the special needs of PRMs, and ensuring that at least 50% of all aisle seats should have moveable armrests¹⁶. We recommend that the Commission monitor uptake of these recommendations.

NEBs

8.19 The greatest problem identified by the study regarding NEBs was the lack of proactive measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. In most States few complaints had been received by the NEB, and as a result

¹⁶ See ECAC/CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Section 5.10.5.

the handling of complaints has not been raised as a significant issue.

Encourage all States to implement the Regulation

- 8.20 We identified in section 5.13 above that some States have not as yet either introduced penalties into national law for all infringements of the Regulation, or designated an NEB. We recommend that the Commission encourage all States to comply with their obligations under the Regulation.

Encourage better promotion of rights under Regulation

- 8.21 Article 15(4) of the Regulation requires Member States to take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB. Of the NEBs which provided information on this point, few had taken direct actions to promote the Regulation. Many had published sections with information on their websites, but unless PRMs are made aware that this website exists and is relevant to them, we do not believe that this is sufficient. Only two case study NEBs informed us that they had commissioned national promotional campaigns relating to the Regulation. We recommend that the Commission takes actions to encourage NEBs to inform PRMs of their rights under the Regulation.

Encourage NEBs to pro-actively monitor application of Regulation

- 8.22 Article 14 of the Regulation requires Member States to take the measures necessary to ensure that the rights of PRMs are respected. Our research found that most NEBs were taking only limited actions to monitor the application of the Regulation (see 5.42), and few NEBs were directly monitoring whether airports were meeting published quality standards. Many NEBs rely on complaints as a method of monitoring, but without promotion of awareness of rights and of the NEB as the body able to receive complaints (see above), a low number of complaints cannot be interpreted as evidence that there are no issues with the application of the Regulation.

- 8.23 We therefore recommend that the Commission encourage NEBs to pro-actively monitor the application of the Regulation. This could take a number of forms:

- increased interaction with PRM organisations;
- direct monitoring of quality of service provided, for example through ‘mystery shopping’ and other types of inspections of airports (which could be conducted in cooperation with PRM organisations);
- collection of airline pre-notification data; and
- reviews of airline websites for accessibility.

Guidance to be produced

- 8.24 We recommend that the Commission should, in collaboration with airlines, airports, PRM representatives and NEBs, develop a detailed good practice guide regarding implementation of the Regulation. This could take the code of practice issued by the

UK Department for Transport¹⁷ as a model, and could form the basis for later detailed revisions of the Regulation. Publishing voluntary policies would allow potential future amendments to the Regulation to be tested in practice before adoption.

- 8.25 The good practice guide could address the following areas (some of which are discussed in previous sections on recommendations regarding airports and airlines):
- recommendations on safety limits;
 - the format and content of policies on carriage (including safety rules);
 - detailed training modules implementing the recommendations in Annex 5G of ECAC Document 30, in addition to recommended minimum duration;
 - consultation; and
 - airport accessibility information.
- 8.26 A key issue to be addressed in this guidance would be the quality standards to be published by airports. At present, most airports follow the format of the minimum standards recommended in ECAC Document 30¹⁸ (see 3.57). However, these standards are a limited measure of the quality of service received by PRMs. We recommend that the Commission work with ECAC to develop recommended minimum standards which are wider in scope, and cover qualitative aspects of the service received. Airports such as London Luton, which publishes a wide range of quality standards which address all aspects of the service, could provide a model for this approach.
- 8.27 The guidance should also specify the information which should be included in carriers' published policies on carriage of PRMs, which should cover at least the areas identified in 4.8.

Recommendations for changes to the Regulation

- 8.28 The measures described above could significantly improve the operation of the Regulation. However, we believe that some issues could only be addressed through amendments to the text, and therefore we also set out:
- Recommendations for some minor amendments to address issues with the text (such as areas where the Regulation is unclear) which we believe should be implemented as soon as possible.
 - Suggestions for more significant revisions to be considered in the longer term. These would require consultation with stakeholders and an impact assessment to be undertaken.

Changes to be implemented as soon as possible

Training

¹⁷ *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*, UK Department for Transport, July 2008.

¹⁸ See ECAC/CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Annex 5C section 1.6.

- 8.29 We recommend that Article 11 be extended to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment. Several PRM organisations informed us that damage to mobility equipment was one of the most serious problems for PRMs travelling by air, and that such damage could cause considerable distress to PRMs.
- 8.30 We recommend that Article 11 be amended to include the provisions in Recital 10, namely to specify that the provisions regarding training in ECAC Document 30 be taken into account when commissioning and developing training. This could be phrased in the manner of Article 9(2) on quality standards.
- 8.31 We recommend that Article 11b be amended to clarify that disability-equality and – awareness training is required for passenger-facing subcontractors as well as personnel directly employed by an airport. This would be consistent with Article 11a regarding personnel providing direct assistance. We were informed by one airport that an airline had disputed the level of PRM charges on the basis that the charges recovered the costs of training subcontractors, which the airline believed was not required by the Regulation.
- 8.32 We recommend that the Commission consider removing the requirement in Article 11c for disability-awareness training for non-passenger facing personnel, as it is not clear why this should be any more necessary in this sector than in others.

Obligatory charges where costs recovered

- 8.33 Article 8 permits airports to levy specific charges on airport users to fund the assistance provided under the Regulation, which must be reasonable, cost-related, transparent and established in cooperation with airport users. However, it does not *require* airports to levy such charges; several of the airports we researched for the study recovered costs through their general passenger charges, and did not identify the PRM component separately. Where specific charges are not applied, airports are not required to follow the requirements on reasonability, cost-relatedness, transparency and cooperation. We therefore recommend that, for airports above a minimum size, Article 8 be amended to make specific charges obligatory if costs are to be recovered from users.

Airport charges

- 8.34 We recommend that Article 8 be amended where necessary to make clear that PRM charges are airport-specific and cannot be set at a network level. At present, the translation into some languages (for example Spanish) could be interpreted to permit network charges, which we believe is contrary to the intention of the Regulation.

Independence of NEBs

- 8.35 We recommend that Article 14 be amended to require that NEBs must be independent of any bodies responsible for providing services under the Regulation.

Scope of Regulation

- 8.36 We recommend that Article 14 be amended to clarify that NEBs are responsible for

flights departing from (rather than, as is currently stated, both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within State's territory but departing from a third country.

- 8.37 We also recommend that Recital 17 (which states that complaints regarding assistance given by an airline should be addressed to the NEB of the State which issued the operating license to the carrier) be amended to be consistent with Article 14.

PRMs without a reservation

- 8.38 Article 7 requires airports to provide assistance to PRMs arriving at an airport so that they are able to take the flight for which they hold a reservation. However, there may be rare occasions where a PRM (like any other passenger) arrives at an airport *without* a reservation, expecting to purchase a ticket at the airport. We therefore recommend that Article 7 be amended to set out the airport's responsibilities to such PRMs.

Longer term changes to the Regulation

- 8.39 The key issue that we have identified with the Regulation is that the text is much less detailed or specific than other comparable legislation (in particular, the equivalent US regulations on carriage of PRMs) and therefore leaves much more scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency and that PRMs rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. The rest of this section describes key areas in which we suggest that changes could be made.
- 8.40 It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.

Provisions on safe carriage PRMs

- 8.41 Once the Commission has established with EASA policies on the safe carriage of PRMs, particularly regarding any permissible limits on carriage and requirements for passengers to be accompanied (see 8.13), we recommend that either the Regulation or EU-OPS be extended to include these policies.

Definitions

- 8.42 We recommend that the following definitions should be clarified:
- **PRM:** The definition of PRM used in the Regulation is very broad and this has led to disputes as to whether obese passengers or those impacted by temporary injuries (e.g. winter sports) are included; and even that those temporarily incapacitated e.g. due to alcohol consumption might be included. We suggest that, at a minimum, the definition should be amended to clarify this, and ideally (but subject to consultation) a much more precise definition of passengers entitled to assistance should be used, along the lines of that used in the equivalent US Regulations (see below).
 - **Mobility equipment:** The Regulation should make clear whether this includes

equipment required by PRMs for the trip but not required for them to be able to take the flight (e.g. joists for assisted lifting of PRMs).

- **Cooperation:** The Regulation should to specify what measures airports must take when required by the Regulation to set out policies and charges in cooperation with airport users and PRM organisations - in particular in Article 8(4).

Definition of disability used in US CFR part 14 rule 382

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) Has a record of such impairment means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Supplementary charges

- 8.43 Although we have not been made aware of any incidences of airlines or airports charging for assistance provided under the Regulation, several airlines charge for the supply of medical oxygen, and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers). Several PRM organisations informed us that they believed these charges were unjust. We recommend that in any amendment of the Regulation it should be clarified whether airlines may levy such additional charges.

Information on rights of PRMs

- 8.44 Regulation 261/2004 requires airlines to display at check-in a notice informing passengers that they may request information on their rights under the Regulation. To assist the promotion of awareness of rights under Regulation 1107/2006, we recommend that the Regulation be extended to include a provision requiring airports

to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport, for example at check-in desks and help points.

Liability for mobility equipment

- 8.45 The Montreal Convention allows for compensation for damage to baggage up to 1,131 SDRs (€1,370), however this is insufficient for many technologically advanced electric wheelchairs, which can cost several thousand euros. Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not. Even in the case that an airline voluntarily waives the limit, the PRM is in a position of uncertainty. This is exacerbated by the difficulty of obtaining insurance for such wheelchairs; the high cost combined with the high probability of damage means that the PRM organisations we spoke to had been unable to find any insurers willing to provide coverage.
- 8.46 We therefore recommend that the Commission work with non-EU States to amend the Montreal Convention to exclude mobility equipment from the definition of baggage.

APPENDIX A
AIR CARRIERS POLICIES ON CARRIAGE OF PRMS

APPENDIX TABLE A.1 POLICY ON DENIAL OF BOARDING, ACCOMPANYING PASSENGERS AND MEDICAL CLEARANCE

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
<p>Aegean Airlines</p> <p>Not stated</p> <p><i>Unpublished limit on unaccompanied PRMs</i></p>	Not stated	Not stated	<ul style="list-style-type: none"> PRM requires oxygen
Air Berlin	May limit number of PRMs on each flight for safety reasons	<p>'Advised' if the following apply (although the use of 'must' in terms of the criteria for the companion suggest that this may not be optional):</p> <ul style="list-style-type: none"> PRM has severe walking disability PRM has severe visual impairment <p>Also required if:</p> <ul style="list-style-type: none"> PRM is on stretcher PRM is mentally ill / blind / deaf if unable to follow crew instructions ID states that continuous accompaniment required 	<ul style="list-style-type: none"> PRM has infectious disease PRM is on stretcher PRM requires oxygen
Air France	Not stated	<ul style="list-style-type: none"> PRM cannot safely exit aircraft alone PRM cannot follow safety instructions PRM has visual or hearing impairment 	<ul style="list-style-type: none"> PRM is on stretcher or in incubator PRM will need extraordinary medical equipment during flight PRM requires oxygen
AirBaltic	<p>To meet safety requirements</p> <p>If aircraft doors make boarding physically impossible</p> <p>If number of PRMs exceeds number of cabin crew per flight, where PRMs form a large proportion of passengers on flight</p>	<p>PRM requires assistance beyond that provided by cabin crew. Cabin crew will provide additional information to PRMs, but will not:</p> <ul style="list-style-type: none"> Assist with eating or personal hygiene; Administer medication; or Lift or carry passengers. <p>Also required if unable to follow safety instructions, e.g. if in stretcher, incubator, or if both blind and deaf</p>	<ul style="list-style-type: none"> PRM has infectious disease PRM has 'unusual condition' which could affect welfare of crew or other passengers, or could be considered a potential hazard to flight or its punctuality PRM will require medical attention or special equipment during flight PRM has medical condition which may worsen during, or because of, flight PRM cannot use normal seat in upright position

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
Alitalia	Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	<ul style="list-style-type: none"> PRM uses wheelchair PRM is blind or deaf PRM is on stretcher PRM is not self sufficient 	<ul style="list-style-type: none"> Pregnant passengers, except when uncomplicated and with more than 4 weeks until due date. PRM will require medical assistance on board
Austrian	Not stated	<ul style="list-style-type: none"> PRM cannot evacuate aircraft alone PRM cannot follow safety instructions PRM needs assistance in feeding or using toilet PRM is deaf and blind PRM requires assistance beyond that provided by cabin crew 	<ul style="list-style-type: none"> PRM has chronic illness or disability
British Airways	Not stated	<ul style="list-style-type: none"> PRM cannot lift themselves PRM cannot evacuate aircraft alone PRM cannot communicate with crew on safety matters PRM cannot unfasten seat belt PRM cannot retrieve and fit life jacket PRM cannot fit oxygen mask. 	<ul style="list-style-type: none"> Not stated
Brussels Airlines	To meet safety requirements If size of doors makes boarding or alighting physically impossible Limit of PRMs of up to 31 per flight depending on aeroplane type Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	<ul style="list-style-type: none"> PRM is mentally disabled and does not have prior medical clearance of airline 	<ul style="list-style-type: none"> PRM is on stretcher or bed PRM requires oxygen PRM is under care of a doctor PRM has unstable medical condition PRM suffers from illness PRM has recently been to hospital, or has operation

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
Delta	On basis of safety, or if in violation of Federal Aviation Regulations If advance arrangements have not been made (this requirement is more stringent in the Conditions of Carriage)	<ul style="list-style-type: none"> PRM requires constant monitoring at departure gate PRM requires assistance beyond that provided by cabin crew 	<ul style="list-style-type: none"> PRM has medical disability and cannot be accompanied PRM is more than 34 weeks pregnant PRM has infectious disease PRM requires oxygen PRM will require extraordinary medical assistance during flight
EasyJet	If the safety and welfare of the PRM or other passengers may be compromised <i>In only extreme circumstances, e.g. where special seats or torso restraints are required, or if a passenger's condition makes them potentially violent or disruptive.</i>	<ul style="list-style-type: none"> PRM cannot evacuate aircraft alone PRM cannot communicate with staff PRM cannot unfasten seat belt PRM cannot retrieve and fit life jacket PRM cannot fit oxygen mask PRM cannot take care of own personal needs and welfare 	<ul style="list-style-type: none"> PRM has infectious or chronic illness PRM has broken limb in plaster PRM is 28-35 weeks pregnant PRM is a child with a chronic lung disease PRM has severe asthma or has recently been prescribed oral steroids.
Emirates	Not stated	<ul style="list-style-type: none"> PRM needs to travel in stretcher or incubator PRM requires medical attention during flight PRM cannot follow safety instructions PRM cannot evacuate aircraft alone PRM has severe hearing and visual impairments and cannot communicate with staff 	<ul style="list-style-type: none"> PRM is on stretcher PRM requires oxygen PRM requires medical escort or in-flight treatment PRM is carrying medical equipment or instruments PRM is 29 or more weeks pregnant
Iberia	If PRM poses a risk to themselves and other passengers for medical reasons Limit on number of PRMs per flight <i>May also refuse carriage for security reasons, e.g. aggression.</i>	<ul style="list-style-type: none"> In order to meet safety requirements <i>PRM is considered as a 'medical case'</i> 	Not stated
KLM	Not stated	<ul style="list-style-type: none"> PRM requires assistance beyond that provided by 	<ul style="list-style-type: none"> PRM has infectious disease

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
	<p>Passenger cannot sit up straight</p> <p>Wheelchair will not fit through aircraft door.</p>	<p>cabin crew</p> <ul style="list-style-type: none"> PRM cannot move unassisted between wheelchair and seat / toilet PRM not compliant with normal safety rules 	<ul style="list-style-type: none"> PRM requires medical care or specific equipment in-flight PRM has medical condition that could result in a life-threatening situation or could require the provision of exceptional medical care for their safety during the flight. PRM requires in-flight personal care PRM cannot use normal seat in upright position PRMs up to 36 weeks pregnant who are expecting complications
Lufthansa	Limit on number of unaccompanied limited mobility PRMs per flight	<ul style="list-style-type: none"> Not stated for non-US flights 	Stringent medical clearance requirements – see text
Ryanair	Limit on number of disabled or sensory or mobility impaired PRMs per flight. Conditions of Carriage state that failure to advise on special needs will result in denial of boarding. <i>PRM limit can be overridden at the discretion of the crew on a case-by-case basis</i>	<ul style="list-style-type: none"> PRM cannot use toilet unaided PRM cannot feed themselves unaided PRM cannot administer own medication. 	<ul style="list-style-type: none"> PRM requires oxygen, portable dialysis machine or continuous portable airway pressure machine
SAS	Not stated <i>When PRMs cannot be safely carried or physically accommodated</i>	<ul style="list-style-type: none"> Not stated PRM is blind, deaf, or both PRM is Disabled Passenger with Intellectual or Developmental Disability Needing Assistance PRM is on stretcher 	<ul style="list-style-type: none"> PRM requires stretcher or other flat transportation
TAP Portugal	Not stated <i>Unpublished limit on unaccompanied PRMs</i>	<ul style="list-style-type: none"> PRM is in an incubator PRM is on trolley / stretcher PRM requires oxygen PRM uses wheelchair or has 'great difficulty in mobility' 	<ul style="list-style-type: none"> PRM uses emotional support dog PRM is more than 36 weeks pregnant

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
TAROM	Not stated	<ul style="list-style-type: none"> PRM is reliant on others PRM suffers from a disease <i>PRM cannot self-evacuate</i> 	<ul style="list-style-type: none"> PRM has disease PRM requires stretcher PRM requires oxygen
Thomas Cook	Not stated	<ul style="list-style-type: none"> PRM cannot lift themselves PRM cannot use toilet unaided PRM cannot feed themselves unaided PRM cannot administer own medication PRM cannot communicate or follow instructions PRM reliant on oxygen. 	Unspecified – see text
TUI (Thomsonfly)	Not stated	<ul style="list-style-type: none"> PRM cannot lift themselves PRM cannot use toilet unaided PRM cannot feed themselves unaided PRM cannot administer own medication PRM cannot communicate or follow instructions PRM reliant on oxygen 	<ul style="list-style-type: none"> <i>PRM is unaccompanied and does not meet self-sufficiency requirements</i> <i>PRM has declared medical condition</i> <i>PRM has requested a service for which there is a risk of abuse, e.g. extra legroom seats would normally be chargeable.</i>
Wizzair	<p>If medical certification is not provided on request</p> <p>If airline is unable to provide for specific medical requirements</p> <p>Limit of 28 PRMs per flight</p> <p>Conditions of Carriage state that boarding may be denied if advance arrangements have not been made</p>	<ul style="list-style-type: none"> PRM unable to care for themselves PRM cannot use toilet unaided. 	Unspecified, but could be required in all cases – see text.

APPENDIX B
SERVICES PROVIDED BY AIR CARRIERS

APPENDIX TABLE A.2 SERVICE AND RESTRICTIONS

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
Aegean Airlines	Prenotification required Carried free in cabin Case / carrier required Subject to weight restriction Not carried on UK flights	Wheelchairs carried free Not subject to baggage allowance Passenger's oxygen allowed with medical certification Conditions of Carriage state that wet cell batteries are not allowed in cabin	Not stated	Not stated	Not stated
Air Berlin	Carried free in cabin Case / carrier not required Harness required	Wheelchairs carried in hold only Wet cell batteries subject to safety regulations Other medical aids carried free with medical certificate Limit of one wheelchair per passenger defined in Conditions of Carriage	Not stated	Not stated	Free seat reservation for passengers with severe disability pass (or equivalent) for 50% disability or more, and for companion PRMs cannot reserve XL / extra large seats (i.e. in exit rows) Conditions of carriage state that seating may be restricted for safety reasons
Air France	Carried free in cabin Leash required, attached to seat in front Muzzle not required	Up to two wheelchairs carried free of charge Onboard wheelchairs on most flights Stretchers accepted with medical clearance Oxygen allowed on board on payment of fee	Cannot lift passengers Cannot administer medication	Braille seat numbers in new aircraft Safety briefing in French or English Braille Some crew members able to communicate in French sign language	Additional seat may be reserved at discounted rate if needed Seats with retractable armrests Easy access toilets
AirBaltic	Carried free in cabin Excluded from weight	Carried free of charge Only collapsible wheelchairs	Will provide extra information Cannot assist with eating or	Not stated	Depending on aircraft, provide movable aisle armrest seats

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	restrictions Prohibited from exit rows	allowed in cabin Spillable batteries accepted if removed and packed and labelled Stretchers not carried Oxygen provided free with prenotification, doctor's verification and accompanying passenger	personal hygiene Cannot lift or carry passengers Cannot administer medication		PRMs cannot obstruct crew or emergency exits Companion must travel in seat next to PRM
Alitalia	Carried free in hold, or in cabin if space available Leash required Muzzle required	Wheelchairs carried free Stretcher service offered for a fee and with authorisation and accompanying passenger, only one per aircraft. Oxygen must be booked in advance, and not available on all flights	Not stated	Not stated	Not stated
Austrian	Carried free in cabin Leash required Subject to size and weight restriction Proof of status required	Up to two wheelchairs carried free, subject to space and prenotification for electric wheelchairs Onboard wheelchairs available	Preparation for eating Use of on-board wheelchair Accessing lavatory Stowing / retrieving carry-on items	Will communicate effectively as required.	Choice of seat may be limited Some seats with moveable armrests Accessible lavatories on long haul flights
British Airways	Prenotification required Limit on no. of guide dogs per flight Carried free in cabin Carried on all UK and certain international routes	Up to two wheelchairs carried free Preparation required for certain types of electric wheelchair Onboard wheelchairs on some flights Portable Oxygen Concentrators accepted with medical clearance, included in cabin	Cannot assist with breathing apparatus Cannot assist with eating Cannot administer medication Cannot assist with going to toilet Can assist in access to and from toilet when on-board wheelchair is available	Individual safety briefings and subtitles on English safety video Braille cards on some flights	Lifting armrests on some seats Cannot be seated on emergency exit aisle due to safety regulations. Will be allocated bulkhead seat when requested, unless already allocated to PRM. Adapted toilets on 747-operated flights

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
Brussels Airlines	<p>Prenotification required</p> <p>Carried free in cabin</p> <p>Leash required</p> <p>Muzzle required</p> <p>Subject to national regulations</p>	<p>baggage allowance</p> <p>Conditions of carriage state that the airline reserves the right to refuse stretchers on any flight</p> <p>Electric wheelchairs carried in hold</p> <p>Spillable batteries accepted under certain conditions</p> <p>In-flight wheelchair on some flights</p> <p>Up to two stretchers on certain planes</p> <p>Can supply oxygen with prenotification and payment of fee in advance</p>	<p>Moving to toilet facilities</p> <p>Cannot lift passengers</p> <p>Cannot assist during visit to lavatory</p>	<p>Not stated</p>	<p>Not stated</p>
Delta	<p>Carried free in cabin</p> <p>Prohibited from exit rows</p> <p>Must occupy space where passenger sits</p> <p>No documentation required</p> <p>Subject to national entry requirements</p>	<p>One wheelchair can be carried in cabin per flight</p> <p>Wet cell batteries accepted with preparation</p> <p>One onboard wheelchair per flight</p> <p>Personal oxygen tanks can be transported but not used in flight</p> <p>Can provide oxygen on many flights, subject to medical certification</p> <p>Conditions of Carriage state that carriage of passengers requiring stretcher kit may be refused</p>	<p>Cannot assist with feeding or personal hygiene and lavatory functions.</p> <p>Cannot lift or carry passengers</p> <p>Cannot provide medical services such as giving injections.</p>	<p>Pre-booked passengers with hearing disabilities can be accompanied by agents who will provide updates on flight information</p>	<p>FAA regulations limit exit seats to certain customers</p> <p>Customers with service animals or immobilised leg are entitled to bulkhead seats</p> <p>On board aircraft with 100 seats or more, Delta provides a stowage location specifically for the first collapsible wheelchair</p>

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
EasyJet	Carried free in cabin if space available Must occupy space where passenger sits Harness required Proof of training and status required Only allowed on routes within UK or mainland Europe	Up to two portable mobility items carried free, subject to weight restriction Wet cell batteries not accepted No onboard wheelchairs Allow up to two oxygen cylinders per passenger, with medical certification Conditions of Carriage state that stretchers are not carried	Stowing and retrieving of hand baggage Opening food packages and describing the contents Cannot lift passengers Cannot provide personal care Cannot administer medication Cannot assist with feeding or children	Can provide a verbal explanation of the safety card information and location of emergency exits	Body supports required for passengers who cannot sit upright
Emirates	All animals carried in hold, subject to IATA Live Animals and national regulations	Wheelchairs carried free of charge Do not count towards baggage allowance Battery-powered wheelchairs subject to safeguards Stretcher kit provided Oxygen provided Portable Oxygen Concentrators allowed	Cannot assist with transfer Cannot assist with feeding Cannot assist with toilet functions	Not stated	Not stated
Iberia	Carried free in cabin Must not use seat Muzzle required Does not count towards luggage allowance Deaf passengers will require medical certificate	All wheelchairs carried free in hold Wet cell batteries accepted with preparation Carriage of stretchers may be restricted on smaller aircraft Oxygen allowed in cabin subject to certain conditions	Cannot provide sanitary, hygienic or safety onboard assistance.	Not stated	'The entire fleet has been adapted to carry Passengers with Reduced Mobility, despite the space limitations that air transport normally poses.'
KLM	Carried free in cabin Must be with PRM, but not using seat or blocking aisle of	Up to two pieces of mobility equipment carried free Collapsible wheelchairs allowed	Transporting passengers using on-board wheelchair	Braille safety cards Toilets with Braille attendant call	Seats with moveable armrests Leg rests available

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
Lufthansa	<p>exit</p> <p>Leash required</p> <p>Subject to national regulations</p>	<p>in cabin, electric wheelchairs carried in hold</p> <p>Wet cell batteries accepted with preparation</p> <p>Onboard wheelchairs on all flights</p> <p>Stretcher service offered, subject to medically trained companion</p> <p>Oxygen allowed on board on payment of fee</p> <p>Own oxygen not allowed</p> <p>Approved Portable Oxygen Concentrators allowed</p>	<p>Cannot assist with eating</p> <p>Cannot lift or carry passengers</p> <p>Cannot administer medication</p> <p>Cannot assist with personal hygiene</p>	<p>buttons</p>	
Lufthansa	<p>Carried free in cabin</p> <p>Limited number allowed per flight</p> <p>Subject to national regulations</p>	<p>Wheelchairs carried free in hold (small collapsible devices allowed in cabin to/from US)</p> <p>Non leak-proof wet cell batteries not accepted except to/from US</p> <p>Limit on number of wheelchairs per flight</p> <p>Limited oxygen available with advance payment of an unspecified fee</p>	<p>Assistance in boarding / disembarking</p> <p>Stowing hand luggage</p> <p>Opening of food items</p> <p>Getting to / from toilet</p> <p>Cannot provide assistance in toilet</p> <p>Cannot lift or carry passengers</p> <p>Cannot feed passengers</p> <p>Cannot administer medication</p>	<p>Will explain arrangement of meal tray to partially sighted</p> <p>Flights to/from US section of website also includes:</p> <p>Separate safety briefings</p> <p>Separate briefings about delays and other issues</p> <p>Captioning of in-flight video in English and German</p>	<p>Disabled toilets in long-haul aircraft</p> <p>Flights to/from US section of website also includes:</p> <p>Bulkhead seats provided if travelling with service animal</p> <p>Some seats with lifting armrests</p> <p>May not be able to sit near exit</p>
Ryanair	<p>Carried free in cabin</p> <p>Must travel on floor at passenger's feet</p> <p>Max of 4 per flight</p> <p>Not carried on some international routes</p>	<p>Wheelchairs carried free of charge in hold</p> <p>Not subject to weight limit</p> <p>Wet cell batteries not accepted</p> <p>One oxygen request per flight allowed at cost of £100.</p>	<p>Will provide water for taking medication</p> <p>Cannot administer medication</p> <p>Cannot lift passengers</p> <p>Cannot assist with personal hygiene</p>	<p>Not stated</p>	<p>Passengers with reduced mobility, or whose physical size prevents them from moving quickly cannot be seated near exit.</p> <p>Passengers with pre-booked special assistance will be</p>

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
SAS	<p>Carried free in cabin</p> <p>Case / carrier not required</p> <p>Excluded from weight restriction</p>	<p>Personal oxygen not allowed on board</p> <p>Conditions of carriage state that stretchers are not carried</p> <p>One collapsible and one power-driven wheelchair carried free of charge</p> <p>Wet cell batteries accepted as cargo</p> <p>In-flight wheelchair on some flights</p> <p>Personal oxygen allowed if required for transport to/from aircraft</p> <p>Will provide oxygen with payment of fee</p>	<p>Cannot lift passengers</p> <p>Cannot assist during visit to lavatory</p>	<p>Not stated</p>	<p>boarded after general boarding is completed as seats will be held on board.</p> <p>Conditions of carriage state that seating may be restricted for safety reasons</p> <p>Not stated</p>
TAP Portugal	<p>Dogs and cats allowed in cabin</p> <p>Leash required</p> <p>Must not occupy a seat</p> <p>Must comply with sanitary regulations</p> <p>Proof of status required</p>	<p>Prenotification of type of wheelchair battery required</p> <p>On-board wheelchair on larger planes</p> <p>Stretchers accepted in economy class subject to medically trained companion</p> <p>Oxygen provided with medical certification</p> <p>Personal oxygen not allowed</p>	<p>Not obliged to provide any on-board assistance contradicting passenger statement of self-reliance, e.g. assistance in toilet, lifting, carrying or feeding.</p>	<p>Not stated</p>	<p>May request an additional seat for greater comfort in coach class only. This seat must be requested when booking and is charged as an occupied place</p>
TAROM	<p>Prenotification required</p> <p>Carried free in cabin</p> <p>Case / carrier not required</p>	<p>Wheelchairs carried free and allowed in cabin on some planes</p> <p>Preparation of some electric</p>	<p>Not stated</p>	<p>Not stated</p>	<p>Not stated</p>

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	Muzzle required	wheelchairs may be required Stretchers not allowed on certain planes. PRM using a stretcher is considered as 'medical case' and is consequently required to obtain a medical certificate, and to be accompanied by a medical professional. Oxygen provided free, subject to limits on no of passengers per flight Personal oxygen not allowed	Can assist in opening food containers	Will describe catering arrangements to blind people In-flight safety video includes subtitles Also offer separate briefing about safety procedures for passengers with hearing impairments	PRMs cannot be seated near exits
Thomas Cook	Carried on many routes	Wheelchairs carried free in hold Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Limit on no of wheelchairs Stretchers not carried One oxygen request per flight allowed at cost of £100. Personal oxygen not allowed on board			
TUI (Thomsonfly)	Carried on many routes Conditions of Carriage state that this will incur 'a nominal charge'	Wheelchairs carried free in addition to normal baggage allowance Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Passengers may bring their own oxygen supply onboard if authorised to do so by Special	Not stated	Not stated	Not stated

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
Wizzair	Not stated	<p>Assistance Team.</p> <p>Wheelchairs carried subject to weight limit</p> <p>Spillable batteries not accepted</p> <p>Do not provide additional oxygen, and passengers cannot carry their own supply</p> <p>Conditions of carriage state that stretchers are not carried</p>	Free 'Meet and Assistance Service' provided to deaf and blind passengers on request	Not stated	PRMs cannot be seated on exit rows

CONTROL SHEET

Project/Proposal Name: EVALUATION OF REGULATION 1107/2006

Document Title: Final report

Client Contract/Project Number: TREN/A3/143-2007/SI2.545092

SDG Project/Proposal Number: 22179801

ISSUE HISTORY

Issue No.	Date	Details
1	1 February 2010	Interim report issued
2	23 April 2010	Draft final report issued
3	18 June 2010	Final report
4	20 July 2010	Version for publication

REVIEW

Originators: Will Macnair, Mark Havenhand, Simon Smith

Review By: Print: Simon Smith

Sign: Reviewed electronically

DISTRIBUTION

Clients: European Commission

Steer Davies Gleave: Project team





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.12.2008
COM(2008) 804 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

"Towards an accessible information society"

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

"Towards an accessible information society"

[SEC(2008) 2915]

[SEC(2008) 2916]

1. EXECUTIVE SUMMARY

As our society is evolving to an 'information society', we are becoming intrinsically more dependent on technology-based products and services in our daily lives. Yet poor e-accessibility means many Europeans with a disability are still unable to access the benefits of the information society.

This issue of e-accessibility has received high policy visibility and attention in recent years. In 2006, European Ministers agreed targets in their 'Riga Declaration' to deliver significant progress by 2010. In 2007, benchmarking showed that the pace of progress was still insufficient and that further efforts were needed in order to achieve the Riga targets. Web accessibility, especially the accessibility of public administration websites, has emerged as a high priority due to the growing importance of the Internet in everyday life.

The Commission considers it is now urgent to achieve a more **coherent, common and effective approach to e-accessibility, in particular web accessibility**, to hasten the advent of an accessible information society, as announced in the Renewed Social Agenda¹. Through this Communication, the Commission describes the current state of play, establishes the rationale for European action and sets out key steps to be taken.

To achieve a common and coherent **e-accessibility approach**:

- European Standardisation Organisations (ESOs) should **pursue wider e-accessibility standardisation** activities to reduce market fragmentation and facilitate increased adoption of ICT-enabled goods and services.
- Member States, stakeholders and the Commission should **stimulate greater levels of innovation and deployment** in e-accessibility, in particular through the use of the EU research and innovation programmes and the Structural Funds.
- All stakeholders should **make full use of** the opportunities to address e-accessibility within **existing EU legislation**. The Commission will include appropriate e-accessibility requirements in revisions or new legislative developments.
- The Commission will **boost stakeholder cooperation activities** to enhance the coherence, coordination and impact of the actions. In particular, a new high-level ad hoc group will be mandated to provide guidance on the overall coherent approach to e-accessibility (including web accessibility) and propose priority actions to overcome e-accessibility barriers.

¹ COM(2008)412.

To speed up progress in the special case of **web accessibility**:

- ESOs should **rapidly adopt European standards** for web accessibility, following the establishment of updated web guidelines (WCAG 2.0) by the World Wide Web Consortium.
- Member States should **step up work** on making public web sites **accessible** and **jointly prepare for swift adoption** of European web accessibility standards.
- The Commission will **monitor and publish progress** and may follow up at a later stage with legislative action.

2. E-ACCESSIBILITY

E-accessibility means overcoming the technical barriers and difficulties that people with disabilities, including many elderly people, experience when trying to participate on equal terms in the information society.

If everyone is to have equal opportunities for participation in today's society, the full range of ICT goods, products and services need to be accessible. This includes computers, telephones, TVs, online government, online shopping, call centres, self-service terminals such as automatic teller machines (ATMs) and ticket machines.

2.1. State of play

The scale of the accessibility challenge is huge and growing: around 15% of Europe's population has a disability and up to one in five working-age Europeans have impairments requiring accessible solutions. Overall, three out of every five people stand to benefit from e-accessibility, as it improves general usability².

E-accessibility has socio-economic implications for both individuals and Europe as a whole. For example, accessible ICT-enabled solutions can help older workers to stay in employment and enhance the take-up of online public services such as e-Government and e-Health. Lack of e-accessibility excludes significant sectors of the population and prevents them from fully carrying out their professional, education, leisure, democratic participation and social activities. Strengthening e-accessibility will contribute to both economic and social inclusion goals.

Many countries have adopted at least some legislative or support measures to promote e-accessibility and parts of the ICT industry are making significant efforts to improve the accessibility of their products and services³.

E-accessibility is also a key element in the European e-Inclusion policy⁴. In a broader context, ICT falls within the scope of the proposed Directive on equal treatment that refers to access to and supply of goods and services available to the public⁵. The European Community and the

² The Demographic Change — Impacts of New Technologies and Information Society.

³ See details in accompanying Staff Working Paper.

⁴ i2010 Communication COM(2005) 229, Communication on e-accessibility COM(2005) 425, and Communication on e-Inclusion COM(2007) 694.

⁵ COM(2008) 426.

Member States also have to fulfil obligations under the United Nations Convention on the Rights of Persons with Disabilities in relation to accessibility of ICT goods and services. Some pieces of EU legislation already directly or indirectly address e-accessibility issues.

2.2. Rationale for further action

Despite the benefits and political attention, progress in e-accessibility is still unsatisfactory. There are many striking examples of accessibility deficits. E.g. text relay services, essential for deaf and speech-impaired people, are only available in half of the Member States; emergency services are directly accessible by text telephone in only seven Member States; broadcasting with audio description, subtitled TV programming and TV sign-language programming remains very poor; only 8% of ATMs installed by the two main European retail banks provide 'talking' output⁶.

The existing EU *acquis* relating to e-accessibility is limited. At Member State level, there is considerable fragmentation in the treatment of e-accessibility, both in the issues addressed (usually fixed telephony services, TV broadcast services and public website accessibility) and the completeness of policy instruments used. Faced with divergent requirements and uncertainties, the ICT industry suffers from this market fragmentation, making it difficult to achieve the economies of scale necessary to sustain widespread innovation and market growth. Parts of the industry are actively engaged and cooperating with users (e.g. on accessible digital television) but too many are watching from the sidelines.

The key issue in e-accessibility is that current efforts have insufficient impact due to a lack of coherence, unclear priority setting, and poor legislative and financial support.

A common and coherent European approach to e-accessibility is therefore key to achieving significant improvements.

2.3. Proposed actions

(1) Delivering the change — strengthening policy priorities, coordination and stakeholder cooperation

At European level several activities have been put in place in recent years. Now is the time to increase synergies between these and reinforce individual areas of action for greater and more consistent impact.

Member States, users and industry need to step up their efforts and seek more impact through greater cooperation at European level and better exploitation of existing EU policy instruments. To support and strengthen coherence and effectiveness of a common approach and to help define priorities, the Commission will establish an **ad hoc high-level group on e-accessibility**, reporting to the i2010 high level group, involving consumer organisations and representatives of disabled and elderly users, ICT and assistive technology and service industries, academia and relevant authorities.

Early in 2009, the Commission will establish an **ad hoc high-level group** to provide guidance on priorities and a more coherent approach to e-accessibility. Stakeholders are called upon to commit to this cooperation.

⁶ For details, see the MeAC study (Measuring progress of e-accessibility in Europe).

The Commission will **boost its existing support for cooperation** with and between stakeholders. In particular the groups following the implementation of i2010, standardisation matters, telecommunication issues and the disability action plan should use the guidance of the high-level group to inform their priorities. It is also important that users, relevant authorities, and industry reinforce their commitment and cooperation on e-accessibility matters.

Priorities for e-accessibility need to be selected. The first is web accessibility, where the proposed coherent and common approach can be applied. Next are the accessibility of digital television and electronic communications, including accessibility of the single European emergency number. For these, cooperation of users and industry should be increased and, with the help of the high-level group, better linked to the EU-level legislative and innovation support.

Self-service terminals and electronic banking is another high priority⁷. The closer cooperation of stakeholders will help to obtain guidance on further priorities and define a common programme of future work.

The Commission has already addressed e-accessibility in its proposal for a new version of the e-government European Interoperability Framework⁸, and will do so in its follow-up to the i2010 initiative and the disability action plan.

The Commission will ensure e-accessibility remains a **policy priority** in the follow-up to i2010 and disability action plan.

This closer coordination and cooperation will be further strengthened through enhanced exploitation of the activities mentioned below.

(2) Monitoring progress and reinforcing good practice

The Commission will launch a study in 2009 to continue monitoring general e-accessibility and web accessibility progress and implementation, following up two studies conducted in 2006-2008⁹.

Under the 2009 Competitiveness and Innovation Programme (CIP), the Commission will propose a new thematic network on e-accessibility and web accessibility to further enhance stakeholder cooperation and the building up of experience and collection of good practices. It will also seek to reinforce the *ePractice* good practice exchange network on e-government, e-health and e-Inclusion, which has already amassed a vast amount of expertise on e-accessibility.

The Commission will monitor web-accessibility and e-accessibility progress and implementation, support cooperation and exchange of good practices via **studies** and a **CIP thematic network**, to be launched in 2009.

(3) Supporting innovation and deployment

⁷ See report on the public consultation.

⁸ <http://ec.europa.eu/idabc/en/document/7728>

⁹ MeAC and study on accessibility of ICT products and services for disabled and elderly people.

There is already extensive support for e-accessibility research and innovation. In 2008, 13 new projects were funded with some €43m from the EU research programme. The Commission will continue to actively support e-accessibility and ICT for independent living of elderly people through the EU research programmes with a further call for proposals in 2009.

The Commission will **ensure e-accessibility is a strong research and innovation priority** in 2009 and beyond.

Member States and the Commission will use the Ambient Assisted Living joint research programme, launched in 2008, to stimulate innovative ICT-based solutions for independent living and the prevention and management of chronic conditions of elderly people.

Under the 2008 CIP, the Commission funded a pilot project on accessible TV and pilots on ICT for elderly people to accelerate technology deployment. In 2009, the Commission will fund a pilot on 'total conversation' (the combination of audio, text and video communications to support people with disabilities), which will help hearing- and speech-impaired persons to access the European '112' emergency number.

Member States and stakeholders are urged to **stimulate e-accessibility innovation and deployment** via the Structural Funds, FP7, the AAL programme and national programmes.

The Structural Funds Regulation¹⁰ requires that the Member States consider accessibility for disabled persons as one of the criteria to receive funding. In this context, the Commission will provide a 'disability toolkit' in 2009, applicable to ICTs, and encourage Member States and Regions to ensure that ICT accessibility is incorporated in their procurement and funding criteria.

The Commission will provide a **disability toolkit** applicable to ICTs in 2009 for use in Structural Funds and other programmes.

(4) **Facilitating standardisation activities**

The Commission continues its strong support for e-accessibility in its standardisation work programme. In particular, Mandate 376 issued to the European Standardisation Organisations is an important standardisation activity to foster e-accessibility.¹¹ The Commission will promote the use of the results from this standardisation work and will seek a rapid continuation of Mandate 376 to deliver the actual standards and related conformity assessment schemes. This process will be complemented and supported by stakeholders' dialogue, exchange of good practices and deployment pilots, as referred to in the proposed actions of this Communication.

Under Mandate 376, ESOs should **rapidly develop EU standards** for e-accessibility, in cooperation with relevant stakeholders during 2009 and beyond.

¹⁰ Council Regulation (EC) 1083/2006

¹¹ The aim of Mandate 376 is to enable the use of public procurement and practice for ICT's to remove barriers to participation in the Information Society by disabled and older people. The Mandate was given by the European Commission to the ESOs to come up with a solution for common requirements (for example for text sizes, screen contrast, keypad sizes etc) and conformance assessment.

(5) Exploiting current and considering new legislation

There is a clear correlation at national level between the existence of legislation and the actual level of progress on e-accessibility¹². Research points to the risks of legal fragmentation in the EU due to divergent legislative measures. Based on this, and building on the 2005 and 2007 Communications, the Commission has started exploring a more general legislative approach to e-accessibility.

However, given the vast, complex and evolving nature of the e-accessibility field, there is not yet a clear consensus on possible EU legislation dedicated to e-accessibility¹³, e.g. on elements such as scope, standards, compliance mechanisms and links to existing legislation. Furthermore, although there is a clear consensus on the need to act jointly to improve e-accessibility, there are different views on the next priorities to address. The Commission has therefore concluded that the time is not yet right for a specific e-accessibility legislative proposal, but will continue to assess its feasibility and relevance, taking into account actual progress in the field.

Nevertheless, there are provisions under current EU legislation that remain under-exploited, in particular for radio telecommunications equipment, electronic communications, public procurement, copyright in the information society, equality in employment, value added tax and state aid exemptions¹⁴. Making full use of these provisions would already significantly improve e-accessibility in Member States. The Commission therefore encourages Member States to make the most of these before new legislation is considered.

Several of the above pieces of EU legislation are under review or will be reviewed soon¹⁵. The Commission will work to ensure that, where appropriate, e-accessibility requirements are considered and reinforced in these revisions. Moreover, legislative proposals for electronic communications significantly strengthen provisions on disabled users under the current framework. The Commission will also carefully monitor the transposition and implementation of the audiovisual media services Directive¹⁶ in particular its Article 3c that provides that Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

The Commission will ensure that appropriate e-accessibility provisions are integrated in revisions of EU legislation. Member States, stakeholders and the Commission should make full use of opportunities in current legislation to strengthen e-accessibility.

¹² See MeAC and study on accessibility of ICT products and services for disabled and elderly people.

¹³ In the public consultation 90% of user organisations considered binding legislation a high priority, versus 33% of industry and public authorities.

¹⁴ Directives 2000/78/EC, 2002/21/EC, 1999/5/EC, 2004/18/EC, 2001/29/CE, 2007/65/EC.

¹⁵ For example, Directive 1999/5/EC on terminal equipment is under review: in this context, the Commission will make sure to maintain the possibility to activate the relevant Article 3(3)(f).

¹⁶ Directive 2007/65/EC.

3. WEB ACCESSIBILITY

Web accessibility is an important aspect of e-accessibility which offers disabled people the possibility to perceive, understand, navigate, interact with and contribute to the Web. It also benefits other people confronted with visual, dexterity or cognitive limitations, such as elderly people. Web accessibility has become particularly important because of the explosive growth in online information and interactive services: online banking, shopping, government and public services, and communicating with distant relatives or friends.

3.1. State of play

Despite its importance, the overall level of web accessibility remains poor across the EU. Several national and European surveys conducted over the last few years have found that the majority of websites, public and private, do not comply even with the most basic internationally accepted guidelines for accessibility. A recent survey found that only 5.3% of government websites and hardly any of the commercial websites surveyed were fully compliant with the basic accessibility guidelines¹⁷. This confirms why many people find important websites difficult to use and are therefore at risk of being partially or totally excluded from the information society.

The accessibility of public websites has received increasing policy attention in recent years in Member States¹⁸. At European level, a 2001 Communication on web accessibility encouraged Member States to endorse the Web Content Accessibility Guidelines (WCAG)¹⁹. In two Resolutions²⁰, the Council stressed the need to speed up accessibility to the web and its content. The European Parliament suggested in 2002 that all public websites be fully accessible to disabled persons by 2003²¹. In 2006, the Riga Ministerial Declaration on an inclusive Information Society included a commitment that 100% of public websites be accessible by 2010.

Internationally, WCAG version 1 was adopted in 1999 by the World Wide Web Consortium (W3C). However, ambiguities led to fragmented implementations by Member States, and in view of new internet developments, WCAG 1.0 is becoming outdated. W3C has been working on a new version of the specifications (WCAG 2.0) for several years; these are now in the final stages of adoption. The challenge this time is to avoid a fragmented implementation.

3.2. Rationale for further action

Making websites more accessible may be challenging in some cases, involving certain costs and expertise. However, there is increasing evidence and documented examples that making a website accessible delivers real benefits not only for disabled users, but also for website owners and users in general. Services are easier to use, simpler to maintain and accessed by more users²². As a result, improving website accessibility improves the situation for people

¹⁷ MeAC study.

¹⁸ See related Staff Working Paper.

¹⁹ COM(2001) 529.

²⁰ 2002/C 86/02 and 2003/C 39/03.

²¹ C5-0074/2002-2002/2032(COS).

²² Staff Working Paper.

with disabilities and also for others and can thus strengthen the competitiveness of European companies.

Case study: benefits of an accessible website

After making their website accessible, a financial services business in the UK identified as benefits:

- Customers found information more quickly and stayed on the site longer.
- New customers used the service, increasing online sales.
- Website maintenance was simpler, quicker and cheaper.
- The website achieved significantly higher search engine rankings.
- Compatibility problems were eliminated and mobile device access improved.
- 100% return on investment in less than 12 months.

Even so, persistent legislative fragmentation across Member States combined with the lack of clear legislative action at European level continues to hamper the internal market, constitutes barriers to consumers and citizens in this cross-border environment, and hinders industry development. The United Nations Convention on the Rights of Persons With Disabilities foresees obligations related to the internet which State Parties have to comply with. Further action at European level is therefore appropriate.

3.3. Proposed actions

The primary responsibility for improving web accessibility rests with Member States and individual service providers. Nevertheless, there are actions that the Commission can undertake or facilitate that will help accelerate the improvement in web accessibility in Europe, even without specific EU legislative provisions on web accessibility. Overall success will be achieved through a common and consistent approach. The key action areas are:

(1) Facilitate the rapid adoption and implementation of international guidelines in Europe

There is broad consensus that WCAG 2.0 guidelines are the technical specifications to be closely adhered to for web accessibility. Once W3C reaches agreement on the guidelines, expected in the near future, Mandate 376 will be able to complete its harmonisation work at European level. In the meantime, Member States should undertake actions to ensure the Riga target for accessible public websites is achieved and prepare for the rapid incorporation of new web-accessibility specifications into national rules in a common and coherent way by:

- Publishing during 2009-2010 updated technical guidance and, where appropriate, translating relevant W3C specifications;
- Identifying during 2009 the public websites and intranets²³ concerned and achieving their accessibility by 2010.

²³ In accordance with the Employment Equality Directive 2000/78/EC.

The Commission will continue its work to improve the accessibility of its own websites, updating its internal guidance to reflect the new specifications.

Non-public service providers, in particular owners of websites providing services of general interest²⁴, and providers of commercial websites that are essential for participation in the economy and society are also encouraged to improve web accessibility (2008 onwards).

Member States should **achieve 100%** accessibility of public websites by 2010 and prepare for rapid transition to updated web accessibility specifications **in a common and coherent way**.

Websites owners providing services of general interest and other relevant website owners should improve the accessibility of their websites.

The European Standardisation Organisations, in cooperation with stakeholders, should rapidly develop **EU standards for web accessibility** building on WCAG 2.0.

The Commission is improving the accessibility of Commission websites, updating internal guidance to reflect the new specifications.

The Commission will monitor and support these developments, encouraging Member States to take rapid action on the key aspects of implementation and facilitating the collection and exchange of practical experience, primarily through the ePractice platform²⁵. Depending on progress and when the standards are in place, the Commission will consider the need for common EU guidance, including legislative action²⁶.

The Commission will monitor and publish progress and consider the need for common EU guidance, including legislative action (2009 onwards).

(2) **Improve the understanding of and promote web accessibility**

There is a strong need for increased visibility, understanding and awareness of the needs and solutions for web accessibility. Member States should take a leading role in achieving this by:

- Widely promoting accessibility of websites by providing clear information and guidance on website accessibility, including assistive technologies²⁷, and encouraging the use of accessibility statements²⁸;
- Supporting training schemes, knowledge sharing and good practice exchange;
- Purchasing accessible tools and websites in their public procurement;
- Assigning a national contact point for web accessibility, e.g. via a website, in 2009;

²⁴ As referred to in COM(2007) 725.

²⁵ www.epractice.eu.

²⁶ See Impact Assessment of COM 2007 (694)

²⁷ Pieces of ICT equipment that support functional capabilities of people with disabilities.

²⁸ Providing supporting information such as accessibility policy of the website, compliance with relevant specifications, support for persons with disabilities, complaint mechanisms.

- monitoring and reporting progress on compliance, user satisfaction and implementation costs for web accessibility on both public and other websites to the proposed high-level group and general public.

Member States should **lead in improving the awareness and understanding** of web accessibility in a coherent, efficient and effective manner and **report progress** to the high-level group.

4. CONCLUSION

Common and coherent action is required on many fronts to achieve e-accessibility. In particular, immediate and rapid progress on web accessibility is essential. All stakeholders have decisive roles to play to achieve the common goal of a truly inclusive information society.

The Commission invites the Council, the European Parliament, the Committee of the Regions, and the Economic and Social Committee to express their views on the actions to be taken to make the information society accessible to all.

Annex – Summary of actions

E-accessibility

<i>Actions</i>	<i>Date</i>	<i>Responsible</i>
Establish an ad hoc high-level group to provide guidance on priorities and a more coherent approach to e-accessibility. Stakeholders are called upon to commit to this cooperation.	Early 2009	EC, stakeholders
Ensure e-accessibility remains a policy priority in the follow-up to i2010 and disability action plan.	2009-	EC
Monitor web-accessibility and e-accessibility progress and implementation , support cooperation and exchange of good practices via studies and a CIP thematic network .	2009-	EC, industry and stakeholders
Ensure e-accessibility is a strong research and innovation priority .	2009 -	EC
Stimulate e-accessibility innovation and deployment via the Structural Funds, FP7, the AAL programme and national programmes.	2009 -	MS, other stakeholders
Provide a disability toolkit applicable to ICTs for use in Structural Funds and other programmes.	2009	EC
Under Mandate 376, rapidly develop EU standards for e-accessibility, in cooperation with relevant stakeholders.	2009-	ESOs
Ensure appropriate e-accessibility provisions are integrated in revisions of EU legislation.	2008-	EC
Make full use of opportunities in current legislation to strengthen e-accessibility.	2008-	MS, EC industry and stakeholders

Web-accessibility

Achieve 100% accessibility of public websites and prepare for rapid transition to updated web accessibility specifications in a common and coherent way .	2009-2010	MS
Rapidly develop EU standards for web accessibility building on WCAG 2.0.	2009-	ESOs (and stakeholders)
Improve the accessibility of Commission websites , updating internal guidance to reflect the new specifications.	2009-	EC
Websites owners providing services of general interest and other relevant website owners to improve the accessibility of their websites.	2009-	Other stakeholders
Monitor and publish progress and consider the need for common EU guidance, including legislative action.	2009-	EC
Lead in improving the awareness and understanding of web accessibility in a coherent, efficient and effective manner and report progress to the high-level group.	2008-	MS



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.9.2005
COM(2005)425 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

eAccessibility

[SEC(2005)1095]

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

eAccessibility

Accessible Information and Communication Technologies (ICT) will improve the quality of life of people with disabilities significantly. At the same time, the lack of equal opportunities to access ICT can lead to exclusion. In this Communication, the Commission proposes a set of policy actions that foster eAccessibility. It calls on Member States and stakeholders to support voluntary positive actions to make accessible ICT products and services far more widely available in Europe.

This Communication on eAccessibility contributes to the implementation of the recently launched “**i2010 – A European Information Society for growth and employment**”¹ initiative, that presents a new strategic framework and broad policy orientations to promote an open and competitive digital economy, emphasising ICT as a driver of inclusion and quality of life. The Commission has the ambitious objective of achieving an “Information Society for All”, promoting an inclusive digital society that provides opportunities for all and minimises the risk of exclusion.

1. INTRODUCTION

People with disabilities constitute about 15% of the European population and many of them encounter barriers when using ICT products and services. In certain cases, older people can be faced with similar problems. Accessible ICT products and services have now become a priority in Europe, due to the demographic shift: 18% of the European population was aged over 60 in 1990, while this is expected to rise to 30% by 2030.²

A recent study in the USA³ found that 60% of working-age adults can benefit from the use of accessible technologies because they experience mild impairments or difficulties when using current technologies.

A 2002⁴ study found that over 48% of 50 years+ persons in Europe considered that they are not being adequately addressed by manufacturers in the design of their products. Between 10 and 12 million were nevertheless potential customers of new mobile phones, computer and internet services.

The implications are clear: **making the benefits of ICT available to the widest possible number of people is a social, ethical and political imperative.** Furthermore, this creates markets of increasing economic significance.

¹ COM(2005) 229 final of 1 June 2005.

² UN World Population Prospects (2002 Revision) and Eurostat Demographic projections

³ The Wide Range of Abilities and Its Impact on Computer Technology – Forrester Research Inc., 2003.

⁴ Seniorwatch IST-1999-29086 www.seniorwatch.de

Overcoming the technical barriers and difficulties that people with disabilities and others experience when trying to participate on equal terms in the Information Society (IS) is known as “*eAccessibility*”. This is part of the broader eInclusion concept, which also addresses other types of barriers, such as financial, geographical or educational.

This Communication builds on previous work on eAccessibility under the two eEurope Action Plans and on the conclusions and results of RTD projects. It also integrates the main findings of an **online consultation**⁵ that was held early 2005, which showed a very strong support (over 88% of responses) for the European Institutions to take initiatives to address a situation that is perceived by a significant majority (over 74%) as a lack of coherence among accessible ICT products and services in Europe. A wider availability of accessible products and services is also felt to be needed (84% of respondents).

The main objective of this Communication is to promote a consistent approach to eAccessibility initiatives in the Member States on a voluntary basis, as well as to foster industry self-regulation.

2. THE PRACTICAL CHALLENGES

New technologies have already provided clear support to persons with disabilities and have enabled the realisation of functions in an independent manner that was only possible before with human assistance. However, despite efforts by industry, persons with disabilities still report a large number of problems when trying to use information technology products and services for example:

- lack of harmonised solutions, e.g. lack of access to the 112 emergency number from text phones in many Member States;
- lack of interoperable solutions for accessible ICT ;
- software not compatible with assistive devices, screen readers for blind users are often impossible to use after releases of new operating systems;
- interference between mainstream products and assistive devices, e.g. GSM telephones and hearing aids;
- lack of European-wide standards, e.g. the seven different, incompatible text phone systems for deaf and hard-of-hearing persons;
- lack of adequate services, e.g. many websites too complicated for cognitively impaired or inexperienced users or impossible to read and navigate through for visually impaired persons;
- lack of products and services for certain groups, e.g. telephone communication for sign language users;
- physical design difficult to use, e.g. keypads and displays on many devices;
- lack of accessible content;
- restricted choice of electronic communication services, quality and price.

⁵ Results available at:
http://europa.eu.int/information_society/policy/accessibility/com_ea_2005/a_documents/com_consult_res.html#_Toc97028181

Most of these problems could, conceptually, be easily solved from a technical point of view, but require cooperation, coordination and determination at European level as market forces alone seem not to have been sufficient to date.

In the near future, examples of new technologies where accessibility aspects must be considered early include:

- digital television, e.g. regarding standards and compatibility as well as design of services and hardware;
- third generation mobile telephones, e.g. regarding design of hardware and software as well as services;
- broadband communication, e.g. using the possibilities of multimodal presentations in a way that enhances accessibility rather than the opposite.

Addressing these issues, previously thought to be of interest to a specific target segment of the population, will actually have positive consequences for the majority of technology users.

3. MARKET AND ECONOMY ISSUES

ICT research and the market have come up with innovative solutions for some of these challenges. The main obstacles to their widespread availability are:

- until now they have been targeting a small market (seen essentially as people with disabilities and in some cases older people), mostly through SMEs at a national or regional level;
- the scarcity of applicable technical standards and technical specifications;
- relevant European legislation only recently explicitly contemplated the possibility of using accessibility requirements in the technical specifications in public procurement procedures;
- there are significant differences in the way some Member States have developed their own solutions.

As a consequence, the accessible ICT products and services market in Europe is still in an initial development phase, largely fragmented at national borders and lacking harmonised legislation and applicable technical standards. This does not facilitate the functioning of a single market and poses an increased burden on industry to comply with differing requirements in different Member States.

Increasingly, the target consumers are not seen anymore as only persons with disabilities and in some cases, older people, but as the whole population. This realization entails a market change we are just beginning to witness, as the bigger European industrial players are now turning their attention to this market sector, although they are still some time away before putting their full weight behind it.

This is also the case of the Telecommunications area – the pervasiveness of telecommunications products and services is now such that even this (relatively small for now) market niche is significant as a differentiator and growth generator, attracting interest from the bigger market players.

In conclusion, eAccessibility and related assistive technology products and services are now on the “midterm radar” of even the bigger mainstream technology providers, not only from Europe but also from other regions of the world.

4. LEGAL AND POLICY ISSUES

On several occasions, Council has encouraged action at EU level for instance when it called on Member States and invited the Commission to “*Tap the Information Society’s potential for people with disabilities and, in particular, tackle the removal of technical and other barriers to their effective participation in the Knowledge Based Economy and Society*”⁶. The European Parliament has also supported this perspective⁷.

In particular, European policies and legislation have recognised employment and occupation as key elements in guaranteeing equal opportunities for all, contributing strongly to the full participation of citizens in economic, cultural and social life and to realising their potential. The potential impact on this from a wider availability of quality accessible ICT products and services is clear. It will foster greater employability, better social inclusion and give people the ability to live independently for longer.

The need to include all Europeans in the Information Society has been expressed by the European Institutions in many contexts. The Commission has taken initiatives in the two eEurope Action Plans to build a more accessible IS. The 2002 Action Plan included a separate action line addressing these issues. It recommended the adoption of the Web Accessibility Initiative (WAI)⁸ guidelines, the development of a European Design for All (DFA) curriculum and strengthening assistive technology and DFA standardisation. In the eEurope 2005 Action Plan, the aim was to mainstream eInclusion in all action lines. It also proposed the introduction of accessibility requirements for ICT in public procurement.

Supporting this work, the Telecommunications Council has expressed the need to improve eAccessibility in Europe⁹. Furthermore the Ministerial Declaration¹⁰ on eInclusion proposes taking all necessary actions towards an open, inclusive knowledge-based society accessible to all citizens.

Furthermore, in its 2003 Resolution on eAccessibility¹¹, the Social Affairs Council called on Member States to tackle the removal of technical, legal and other barriers to the effective participation of people with disabilities in the knowledge-based economy and society.

In line with this, the European Parliament, in its 2002 Resolution on web accessibility¹², “*reiterates the need to avoid any form of exclusion from the IS, and calls for the integration of*

⁶ Council Resolution on “eAccessibility for People with Disabilities”, 2-3 December 2002, http://www.socialdialogue.net/docs/cha_key/consilium_2002_14892en2.pdf

⁷ EP Resolution on eEurope 2002: Accessibility of Public Web Sites and their Content (2002 (0325))

⁸ «eEurope 2002 : Accessibility of public websites and their content», COM(2001) 529 final, http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0529en01.pdf

⁹ Council Resolution on the eEurope Action Plan 2002 : Accessibility of public websites and their content, OJ C 86, 10.4.2002.

¹⁰ Ministerial Declaration on eInclusion, 11 April 2003 <http://www.eu2003.gr/en/articles/2003/4/11/2502/>

¹¹ Council resolution 14892/02.

¹² EP Resolution on eEurope 2002: Accessibility of Public Web Sites and their Content (2002 (0325))

disabled and elderly people in particular”. Furthermore in another Resolution, the use of sign language in Telecommunications in Europe¹³ is mentioned.

In a general sense, Article 13 of the Treaty establishing the EC provides for action to combat discrimination, *inter alia* because of disability.

Based on this article, Council Directive 2000/78/EC of 27 November 2000¹⁴, has the explicit purpose (Article 1) “...to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation”. In particular the Directive states that “Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises **and equipment**...”

Furthermore, a number of European Directives related to the Information Society have clauses referring to the inclusion of persons with disabilities and older people. These include the Electronic Communications Directives, in particular the Framework¹⁵ and the Universal Service Directives¹⁶, the Directive on Radio and Telecommunication Terminals (RTTE)¹⁷ the Public Procurement Directive¹⁸ and the Employment Equality Directive¹⁹.

The Commission Action Plan²⁰ published in December 2003 on the follow-up of the European Year of People with Disabilities included as one of its four areas the access to, and use of, new technologies and describes actions undertaken to improved accessibility to the information society using instrument available at EU level.

Activities at EU level have an added value as several Member States are developing legislation, regulations, standards or guidelines to tackle these issues at national level. These actions are leading to similar but yet different eAccessibility requirements for products and services, thus creating a high risk for the European industry, i.e. being forced to operate in a fragmented market with the consequent loss of competitiveness and effectiveness.

The risk for consumers is even greater, particularly for people with disabilities and older persons: a fragmented market means costlier, more unfamiliar and incompatible products, more difficulty in accessing/moving information across borders, etc.

EU actions also take into account international experiences, like those in the USA and Canada, with which a dialogue has been initiated by the European Commission, particularly regarding the use of legislative provisions in the context of public procurement as a powerful leverage factor.

Consequently, basic conditions are set for initiatives to be taken at EU level – this was the view expressed by an overwhelming majority of the stakeholders during the public consultation process (84%).

¹³ EP Resolution on Sign Language - Resolution B4/ 0985/98.

¹⁴ Available at

http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf

¹⁵ Directive 2002/21/EC.

¹⁶ Directive 2002/22/EC.

¹⁷ Directive 1999/5/EC.

¹⁸ Directives 2004/17/EC and 2004/18/EC.

¹⁹ Directive 2000/78/EC.

²⁰ Equal opportunities for people with disabilities; A European Action Plan, COM(2003) 650 final.

5. ONGOING ACTIVITIES AT EU LEVEL

Several measures are already under way at EU level and will be strengthened and continued.

Accessibility requirements and standards

Standards are a strategic tool for industry and for the public sector as well as a key enabler for new market opportunities. Although the production and implementation of standards are voluntary, they are an important tool to support the implementation of policy actions. European Standards on eAccessibility would contribute to the proper functioning of the single European market and consequently promote the development of new markets, competitiveness and employment. Thus, the Commission will continue to provide financial support to specific activities proposed by the European Standardisation Organisations (ESO) in the framework of the European Standardisation Action Plan or issuing mandates to the ESO²¹.

Accessibility requirements specified by standards must meet the needs of industry, designers and providers of products and services to avoid the hampering of creativity or innovation. At the same time they must meet user needs, and the involvement of users in the development of standards is therefore essential: a balance should be found between industrial and public interest. Standards should allow easy enforcement and reference in legislation, regulation and other instruments that promote accessibility. Free availability of standards or availability at a reduced cost would make their uptake easier, especially by SMEs with limited resources to purchase them and for users to access them.

Whilst promoting interoperability, care should be taken that patented technologies without reasonable and non-discriminatory (RAND) licensing are not promoted as standard solutions.

Design for All (DFA)

The DFA methodology denotes the design of products and services to be accessible to as broad a range of users as possible²². DFA is now well established, although not yet widely practiced. It is therefore essential to continue raising awareness and promotion of DFA in Europe. To this end, the Commission has set up a network of centres of excellence known as EDEAN²³, which has over one hundred members.

DFA not only allows a **more thorough consideration of accessibility requirements when designing a product or service**, but also fosters important **economies by avoiding costly redesign or technical fixes** after their deployment.

The basic structure for a European DFA curriculum for engineers and designers has been developed and several pilot courses have been provided in Member States. Strengthening its use in post secondary and professional education is a way of ensuring a future accessible IS.²⁴

²¹ This process is governed by Directive 98/34:

http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/l_204/l_20419980721en00370048.pdf

²² There are three main strategies for DFA: 1) design for most users without modifications, 2) design for easy adaptation to different users (e.g. using adjustable interfaces), 3) design with a view to connect seamlessly to assistive devices.

²³ Website EDEAN (European Design for All e-Accessibility Network), <http://www.e-accessibility.org/>

²⁴ DFA curriculum report of IDCnet project.

The presence of an accessibility officer competent in DFA in relevant organisations, could be a way to professionalize eAccessibility.

Web accessibility

A 2001 Commission Communication²⁵ on accessibility to public websites was followed by Council and Parliament resolutions in 2002. As a result, Member States have committed themselves to make their public websites accessible according to international guidelines²⁶.

Through the eAccessibility Expert Group, the Commission with the Member States is monitoring developments, including new evaluation methods²⁷ and procedures, benchmarking, data collection and identification of best practices. **Web accessibility is an enabler** of accessible online services of public interest. To facilitate this process, it is important to encourage the development of authoring tools that encompass accessibility²⁸.

A need for certification schemes of accessibility has arisen from the fact that several Member States have binding legislation that mandates accessibility and the need to assess compliance. A European Committee for Normalization (CEN) Workshop²⁹ is currently exploring adequate solutions.

Benchmarking and monitoring

Several Member States are introducing benchmarking for accessibility and monitoring in their national legislation. At EU level, monitoring of web accessibility has been requested by Council and the European Parliament. The Parliament also requested monitoring subtitles and audio description for Digital TV.

To be able to further develop adequate European eAccessibility policies **it is essential to have European data comparable across Member States**. The Commission will build upon the ongoing European monitoring activities, taking account of the revised Lisbon approach.

The Commission maintains a dialogue with statistical bodies in order to develop and improve relevant indicators, in particular to mainstream accessibility questions in existing indicators.

Research

Research and technological development (RTD) is a fundamental element in the push towards an accessible IS. Almost 200 European RTD projects since 1991, representing approximately € 200 Million in EC co-financing³⁰ have already contributed to improving accessibility with increased knowledge of accessibility problems and required solutions.

Specific results demonstrated possible solutions such as accessible remote home services for older people (including alarms and emergency services). Solutions have been developed to

²⁵ COM(2001) 529 final.

²⁶ W3C/WAI/WCAG1.0 Web Content Accessibility Guidelines 1.0. Version 2 is under preparation and will address the evolution that has taken place in web technologies and facilitate testing compliance.

²⁷ Web Accessibility Benchmarking (WAB) cluster.

²⁸ W3C/WAI/ATAG Authorising Tools Accessibility Guidelines (ATAG).

²⁹ <http://www.cenorm.be/cenorm/businessdomains/businessdomains/iss/activity/ws-wac.asp>

³⁰ For examples of projects, see <http://www.cordis.lu/ist/so/einclusion/home.html> and http://www.cordis.lu/ist/directorate_f/einclusion/previous-research.htm

improve access to digital information by blind and partially sighted persons (text, graphics, 3D images, coded music, television programmes). Systems for motor impaired persons to facilitate mobility, manipulation and control have been demonstrated, as have services to improve communication possibilities of hearing impaired persons including sign language and lip movement generation. Other examples included computer environments to facilitate the integrated education of children with disabilities or employment of adults with disabilities and contributions to policy-making (eEurope i.e. Web Accessibility, Design for all).

Many of the results of Community projects have been further successfully elaborated in products in the market, or the knowledge developed has contributed to the improvement of the accessibility of ICT products and services.

As technologies continue to rapidly evolve, offering new technical solutions, it is essential to invest in research to reap the significant potential that they have for people with disabilities and older persons. The current proposal for the 7th Framework Programme integrates the **need to continue and, indeed, to expand RTD in eAccessibility** so as to further develop European assistive technology industry³¹ and to make accessibility an everyday issue for mainstream industry.

6. INCREASING THE E-ACCESSIBILITY OF ICT PRODUCTS AND SERVICES IN EUROPE – THREE NEW APPROACHES

In addition to promoting the ongoing measures just listed, the Commission will foster the use of three approaches not yet widely used in Europe: (i) accessibility requirements in public procurement, (ii) accessibility certification, and (iii) better use of existing legislation.

Two years after the publication of this Communication, the Commission will evaluate the outcome of these actions. Following the principle of Better Regulation³² the Commission will hold an exchange of views with the Member States and, subject to full impact assessment, may consider the possibility of taking additional measures, including legislation if deemed necessary.

1. Public procurement

The total public procurement in Europe is about 16% of the gross domestic product. Public authorities at all levels can require accessibility features in the goods and services they purchase. In fact, the European Public Procurement Directives specifically mention the possibility to include DFA and accessibility requirements in conditions for tender (technical specifications).

This implies a clear commitment to **an inclusion policy that makes the products and services available to more users, citizens and employees**. It encourages industrial companies to include accessibility as a built-in feature of their products and creates a larger market for accessible ICT. Such effects have been seen in the USA³³ where legislation mandates accessibility requirements to be included in federal procurement.

³¹ Access to Assistive Technology in the EU, a DG EMPL report, CE-V/5-03-003-EN-C

³² European Commission 'White Paper on Governance' COM(2001) 428 final.

³³ Section 508 of the Rehabilitation Act as amended by the Workforce Investment Act of 1998.

In the online consultation over 90% of respondents favoured the principle of public agencies requiring all ICT products and services they buy to be accessible. Some Member States already include accessibility requirements in their public procurement. Shared accessibility requirements at EU level have the potential to reduce market fragmentation and to foster interoperability.

There is a strong need for consistency of accessibility requirements in public procurement in Europe. To this effect, the Commission is preparing a mandate to the European standardisation organisations to develop European accessibility requirements for public procurement of products and services in the ICT domain. The mandate is currently submitted to the Member States for consultation. It is foreseen to be issued to the European standardisation organisations by the end of 2005.

The Commission will encourage the debate on this subject with the Member States in the framework of the eAccessibility Expert Group³⁴. It will continue to collect experiences from Europe and to encourage an international dialogue in particular with the US through the Transatlantic Economic Partnership (TEP) on harmonisation of eAccessibility requirements for public procurement.

2. *Certification*

It is not always obvious when buying ICT products what requirements they fulfil. This is particularly important when buying accessible ICT. Some standards exist or are under development defining how products and services can be made accessible. However, at present there is no reliable means to assess the conformity of products with those accessibility standards. Adequate certification schemes for accessibility of products, organisational processes and professionals (based on the European Key Mark³⁵ and on European standards) would provide guidance to customers and clients who want accessible products and services and might give manufacturers and service providers due recognition for their efforts. They would also facilitate the monitoring of compliance with regulations demanding accessibility.

In its January 2003 Resolution on eAccessibility, the Council called for an “eAccessibility mark” for goods and services. The 2002 Ministerial Declaration on eInclusion reflected that “*a European web accessibility label that certifies compliance with W3C WAI³⁶ guidelines could be considered in order to avoid market fragmentation*”.

The Commission will study together with the key stakeholders **possibilities for the development, introduction and implementation of certification schemes for accessible products and services**, including the definition of criteria testing, and evaluation methods. The possibility of self-declaration or third-party certification will also be investigated and the different options will be compared for their effectiveness³⁷. The Commission will launch a study on this matter in the last quarter of 2005.³⁸

³⁴ The eAccessibility Experts Group coordinates experts from the Member States who support the implementation of the eEurope Action Plan.

³⁵ http://www.cenorm.be/conf_assess/keymark/keymarktext.htm

³⁶ World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI).

³⁷ The online consultation showed a strong support (over 72%) for the certification and labelling of eAccessible ICT products and services, with significant differences among target groups only 61.4% agreement among *Manufacturers, providers or sellers of eAccessibility products & services*). Additionally, among those supporting product certification and labelling, the groups “*Private*

3. *Better use of existing Legislation*

Several Directives have provisions that can be used to enforce eAccessibility (such as the Equal Treatment in Employment Directive³⁹, the Directive on Radio and Telecommunication Terminals and the Public Procurement Directives). It is important to cooperate with the Member States, to develop a practical way of using these Directives to address eAccessibility.

In particular, implementing the Inclusive Communications Group (INCOM)⁴⁰ suggestions would resolve some existing European challenges, e.g. to ensure access by users with disabilities to emergency services using the single European number 112, to have harmonised frequencies in Europe for assistive wireless solutions, to ensure real time text and sign communication across Member States, and to facilitate the purchasing of accessible goods by public authorities. Possible difficulties in putting existing legislation into practice should be addressed.

The Commission, in its audiovisual policy dialogue, will encourage common or interoperable solutions in the field, for example, of improved access to digital TV programmes. Such common solutions will allow the exploitation of economies of scale.

The “eAccessibility potential” of existing European legislation needs to be fully exploited. The Commission will launch a study⁴¹ in 2005 to identify best practices and establish a dialogue with Member States and key stakeholders through the relevant groups in charge of the implementation of the Directives.

7. CONCLUSIONS AND FOLLOW-UP

This Communication and the results of the online consultation process show and endorse the European Commission’s determination to address eAccessibility issues and find solutions that (i) convey to Member States the urgent need to work together towards a consistent approach to e-accessibility; (ii) encourage industry to develop accessible solutions for ICT products and services; (iii) demonstrate to users with disabilities the active commitment to improve accessibility in the Information Society.

During the next two years (2005-2007), the Commission will continue to raise awareness, promote the use of the proposed instruments, gather evidence and continue stakeholder consultation in order to take informed decisions in the eAccessibility domain.

To this effect, the Commission plans a study to begin in the last quarter of 2005 on “*Measuring progress of eAccessibility in Europe*” in order to identify and evaluate policy options aiming at improving eAccessibility in Europe. The initial results of the study will be available in early 2007.

individuals with a disability” and “*Public Agencies*” clearly favouring mandatory schemes, while “*Manufacturers, providers or sellers of eAccessibility products & services*” favour voluntary procedures, with the remaining groups standing somewhere in between.

³⁸ See chapter Follow-up and conclusions.

³⁹ Council Directive 2000/78/EC of 27 November 2000 prohibits discrimination of persons with disabilities *inter alia* at work and encompasses reasonable accommodation including ICT.

⁴⁰ Formed in 2003 and made up of representatives of Member States, Telecoms operators, user organisations and standardisation bodies.

⁴¹ See Follow-up and conclusions.

A follow-up that focuses on the eAccessibility situation will be made two years after the publication of this Communication. It will include an evaluation of the outcome of the approaches proposed here, following the principle of Better Regulation⁴² and, subject to full impact assessment, the Commission may consider additional measures, including new legislation if deemed necessary. This eAccessibility work will in turn contribute to the already announced 2008 European Initiative on eInclusion⁴³.

⁴² European Commission 'White Paper on Governance' COM(2001) 428 final.

⁴³ COM(2005) 229 "i2010 – A European Information Society for growth and employment".

In this list, the items in blue are still proposals, the ones marked with a "+" are instruments implementing the main legislation.

Dans cette liste, les entrées en bleu sont encore à l'état de proposition, celles marquées avec un "+" sont des instruments qui mettent en œuvre la législation principale.

Bei den blau markierten Einträgen dieser Liste handelt es sich noch um Vorschläge. Die Instrumente zur Politikumsetzung sind mit einem "+" gekennzeichnet.

List of secondary legislation relevant to "disability"

- 1) **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**
- 2) **Directive 2001/85/EC (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat)**
- 3) **Directive 1999/5/EC (on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity)**
- 4) **Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data**
- 5) **Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 312, 7.9.1995, p.1)**
- 6) **Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment**
- 7) **Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air Text with EEA relevance. OJ L 204, 26.7.2006 p.1-9**
- 8) **Regulation of the European Parliament and of the Council on rail passengers' rights and obligations**
- 9) **Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)**
- 10) **Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC)**

+ Commission Regulation (EC) N° 1981/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

+ Commission Regulation (EC) N° 1982/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the sampling and tracing rules.

+ Commission Regulation (EC) N° 1983/2003 of 7 November 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target primary variables.

+ Commission regulation (EC) N° 28/2004 of 5 January 2004 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the detailed content of intermediate and final quality reports.

+ Regulation (EC) N° 1553/2005 of the EP and Council of 7 September 2005 amending Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC).

+ Commission Regulation (EC) N° 698/2006 of 5 May 2006 amending Commission Regulation (EC) N° 1981/2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

11) Council Regulation (EC) 577/98 of 9 March on the organisation of the Labour Force Sample Survey in the Community (LFS):

+ Commission Regulation (EC) N° 1571/98 of 20 July 1998 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community (OJ L 205, 22.7.98, p.40)

+ Commission Regulation (EC) N° 1924/1999 of 8 September 1999 implementing Council Regulation (EC) 577/98 as regards the 2000 to 2002 programme of ad hoc modules to the LFS

+ Commission Regulation (EC) N° 1566/2001 of 12 July 2001 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2002 ad hoc module on employment of disabled people *

+ Commission Regulation (EC) N° 1575/2000 of 19 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2001 onwards (OJ L 181, 20.7.2000, p.16)

+ Commission Regulation (EC) N° 1626/2000 of 24 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community as regards the 2001 to 2004 program of ad hoc modules to the labour force survey.

+ Regulation (EC) N° 1991/2002 of the EP and of the Council of 8 October 2002 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community.

+ Regulation (EC) N° 2257/2003 of the EP and of the Council of 25 November 2003 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community to adapt the list of survey characteristics.

+ **Commission Regulation (EC) N° 430/2005 of 15 March 2005 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2006 onwards and the use of a sub-sample for collection of data on structural variables (OJ L 71, 17.3.2006, p.36).**

12) Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS)

13) Proposal for a Regulation of the European Parliament and of the Council on Community statistics on public health and health and safety at work – COM(2007) 46 final

14) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

15) Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty

16) Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes" (as amended by "Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes")

17) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

18) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

19) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

20) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ L 136, 30.4.2004, p.34)

21) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22)

- 22) Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships - OJ L 123, 17.5.2003, p. 18-21)
- 23) Directive 96/48/EC on the interoperability of the trans-European high-speed rail system (O J L 235, 17.09.1996, p. 6-24) as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163)
- 24) Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans European conventional rail system (O J L 110, 20.04.2001, p. 1-27) -as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163)
- 25) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (Text with EEA relevance)(O J L 263, 9.10.2007, p 1)
- 26) Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance) (OJ L 332, 18.12.2007, p. 27)
- 27) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999
- 28) Decision 1720/2006/EC of the European Parliament and of the Council of 15 November 2007 establishing an action programme in the field of lifelong learning
- 29) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)
- 30) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive").
- 31) Council Decision 2005/600/EC of 12 July 2006 on guidelines for the employment policies of the Member States
- + Council Decision 2006/544/EC of 18 July 2006 on guidelines for the employment policies of the Member States
- 32) Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide
- 33) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

- 34) **Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use**
- 35) **Proposal for a Regulation of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning – COM(2005)625 final.**
- 36) **Directive 97/67/EC of the European Parliament and of the Council of 15 December on common rules for the development of the internal market of Community postal services and the improvement of quality of services(OJ L15 of 21.01.1998), page 14) as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ, L176 of 05.07.2002, page 21).**
- 37) **Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 -2013)**
- 38) **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**
- 39) **Decision 2119/98 of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community**
- 40) **Directive 2004/23/EC of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissue and cells**
- 41) **Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood components and amending Directive 2001/83/EC**

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

The following replaces the information note published in OJ 2009 C 297, p. 1, as a consequence of the addition of a new paragraph 25 and the amendment of paragraph 40.

INFORMATION NOTE**on references from national courts for a preliminary ruling**

(2011/C 160/01)

I – General

1. The preliminary ruling system is a fundamental mechanism of European Union law aimed at enabling national courts to ensure uniform interpretation and application of that law in all the Member States.
2. The Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of European Union law and on the validity of acts of the institutions, bodies, offices or agencies of the Union. That general jurisdiction is conferred on it by Article 19(3)(b) of the Treaty on European Union (OJEU 2008 C 115, p. 13) ('the TEU') and Article 267 of the Treaty on the Functioning of the European Union (OJEU 2008 C 115, p. 47) ('the TFEU').
3. Article 256(3) TFEU provides that the General Court is to have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute. Since no provisions have been introduced into the Statute in that regard, the Court of Justice alone has jurisdiction to give preliminary rulings.
4. While Article 267 TFEU confers on the Court of Justice a general jurisdiction, a number of provisions exist which lay down exceptions to or restrictions on that jurisdiction. This is true in particular of Articles 275 and 276 TFEU and Article 10 of Protocol (No 36) on Transitional Provisions of the Treaty of Lisbon (OJEU 2008 C 115, p. 322).
5. The preliminary ruling procedure being based on cooperation between the Court of Justice and national courts, it may be helpful, in order to ensure that that cooperation is effective, to provide the national courts with the following information.
6. This practical information, which is in no way binding, is intended to provide guidance to national courts as to whether it is appropriate to make a reference for a preliminary ruling and, should they proceed, to help them formulate and submit questions to the Court.

The role of the Court of Justice in the preliminary ruling procedure

7. Under the preliminary ruling procedure, the Court's role is to give an interpretation of European Union law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings, which is the task of the national court. It is not for the Court either to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law.

8. In ruling on the interpretation or validity of European Union law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute, but it is for the referring court to draw the appropriate conclusions from that reply, if necessary by disapplying the rule of national law in question.

The decision to submit a question to the Court

The originator of the question

9. Under Article 267 TFEU, any court or tribunal of a Member State, in so far as it is called upon to give a ruling in proceedings intended to arrive at a decision of a judicial nature, may as a rule refer a question to the Court of Justice for a preliminary ruling.⁽¹⁾ Status as a court or tribunal is interpreted by the Court of Justice as a self-standing concept of European Union law.

10. It is for the national court alone to decide whether to refer a question to the Court of Justice for a preliminary ruling, whether or not the parties to the main proceedings have requested it to do so.

References on interpretation

11. Any court or tribunal **may** refer a question to the Court of Justice on the interpretation of a rule of European Union law if it considers it necessary to do so in order to resolve a dispute brought before it.

12. However, courts or tribunals against whose decisions there is no judicial remedy under national law **must, as a rule**, refer such a question to the Court, unless the Court has already ruled on the point (and there is no new context that raises any serious doubt as to whether that case-law may be applied), or unless the correct interpretation of the rule of law in question is obvious.

13. Thus, a court or tribunal against whose decisions there is a judicial remedy may, in particular when it considers that sufficient guidance is given by the case-law of the Court of Justice, itself decide on the correct interpretation of European Union law and its application to the factual situation before it. However, a reference for a preliminary ruling may prove particularly useful, at an appropriate stage of the proceedings, when there is a new question of interpretation of general interest for the uniform application of European Union law in all the Member States, or where the existing case-law does not appear to be applicable to a new set of facts.

14. It is for the national court to explain why the interpretation sought is necessary to enable it to give judgment.

References on determination of validity

15. Although national courts may reject pleas raised before them challenging the validity of acts of an institution, body, office or agency of the Union, the Court of Justice has exclusive jurisdiction to declare such an act invalid.

16. All national courts **must** therefore refer a question to the Court when they have doubts about the validity of such an act, stating the reasons for which they consider that that act may be invalid.

⁽¹⁾ Article 10(1) to (3) of Protocol No 36 provides that the powers of the Court of Justice in relation to acts adopted before the entry into force of the Treaty of Lisbon (OJ 2007 C 306, p. 1) under Title VI of the TEU, in the field of police cooperation and judicial cooperation in criminal matters, and which have not since been amended, are, however, to remain the same for a maximum period of five years from the date of entry into force of the Treaty of Lisbon (1 December 2009). During that period, such acts may, therefore, form the subject-matter of a reference for a preliminary ruling only where the order for reference is made by a court of a Member State which has accepted the jurisdiction of the Court of Justice, it being a matter for each State to determine whether the right to refer a question to the Court is to be available to all of its national courts or is to be reserved to the courts of last instance.

17. However, if a national court has serious doubts about the validity of an act of an institution, body, office or agency of the Union on which a national measure is based, it may exceptionally suspend application of that measure temporarily or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers the act to be invalid.

The stage at which to submit a question for a preliminary ruling

18. A national court or tribunal may refer a question to the Court for a preliminary ruling as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment; it is the national court which is in the best position to decide at what stage of the proceedings such a question should be referred.

19. It is, however, desirable that a decision to seek a preliminary ruling should be taken when the national proceedings have reached a stage at which the national court is able to define the factual and legal context of the question, so that the Court of Justice has available to it all the information necessary to check, where appropriate, that European Union law applies to the main proceedings. It may also be in the interests of justice to refer a question for a preliminary ruling only after both sides have been heard.

The form of the reference for a preliminary ruling

20. The decision by which a national court or tribunal refers a question to the Court of Justice for a preliminary ruling may be in any form allowed by national law as regards procedural steps. It must however be borne in mind that it is that document which serves as the basis of the proceedings before the Court and that it must therefore contain such information as will enable the latter to give a reply which is of assistance to the national court. Moreover, it is only the actual reference for a preliminary ruling which is notified to the interested persons entitled to submit observations to the Court, in particular the Member States and the institutions, and which is translated.

21. Owing to the need to translate the reference, it should be drafted simply, clearly and precisely, avoiding superfluous detail.

22. A maximum of about 10 pages is often sufficient to set out in a proper manner the context of a reference for a preliminary ruling. The order for reference must be succinct but sufficiently complete and must contain all the relevant information to give the Court and the interested persons entitled to submit observations a clear understanding of the factual and legal context of the main proceedings. In particular, the order for reference must:

- include a brief account of the subject-matter of the dispute and the relevant findings of fact, or, at least, set out the factual situation on which the question referred is based;
- set out the tenor of any applicable national provisions and identify, where necessary, the relevant national case-law, giving in each case precise references (for example, a page of an official journal or specific law report, with any internet reference);
- identify the European Union law provisions relevant to the case as accurately as possible;
- explain the reasons which prompted the national court to raise the question of the interpretation or validity of the European Union law provisions, and the relationship between those provisions and the national provisions applicable to the main proceedings;
- include, if need be, a summary of the main relevant arguments of the parties to the main proceedings.

In order to make it easier to read and refer to the document, it is helpful if the different points or paragraphs of the order for reference are numbered.

23. Finally, the referring court may, if it considers itself able, briefly state its view on the answer to be given to the questions referred for a preliminary ruling.

24. The question or questions themselves should appear in a separate and clearly identified section of the order for reference, generally at the beginning or the end. It must be possible to understand them without referring to the statement of the grounds for the reference, which will however provide the necessary background for a proper assessment.

25. Under the preliminary ruling procedure, the Court will, as a rule, use the information contained in the order for reference, including nominative or personal data. It is therefore for the referring court itself, if it considers it necessary, to render anonymous, in the order for reference, one or more persons concerned by the dispute in the main proceedings.

The effects of the reference for a preliminary ruling on the national proceedings

26. A reference for a preliminary ruling calls for the national proceedings to be stayed until the Court of Justice has given its ruling.

27. However, the national court may still order protective measures, particularly in connection with a reference on determination of validity (see point 17 above).

Costs and legal aid

28. Preliminary ruling proceedings before the Court of Justice are free of charge and the Court does not rule on the costs of the parties to the main proceedings; it is for the national court to rule on those costs.

29. If a party has insufficient means and where it is possible under national rules, the national court may grant that party legal aid to cover the costs, including those of lawyers' fees, which it incurs before the Court. The Court itself may also grant legal aid where the party in question is not already in receipt of legal aid under national rules or to the extent to which that aid does not cover, or covers only partly, costs incurred before the Court.

Communication between the national court and the Court of Justice

30. The order for reference and the relevant documents (including, where applicable, the case file or a copy of the case file) are to be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice, L-2925 Luxembourg, telephone + 352-4303-1).

31. The Court Registry will stay in contact with the national court until a ruling is given, and will send it copies of the procedural documents.

32. The Court of Justice will send its ruling to the national court. It would welcome information from the national court on the action taken upon its ruling in the national proceedings and, where appropriate, a copy of the national court's final decision.

II – The Urgent preliminary ruling procedure (PPU)

33. This part of the note provides practical information on the urgent preliminary ruling procedure applicable to references relating to the area of freedom, security and justice. The procedure is governed by Article 23a of Protocol (No 3) on the Statute of the Court of Justice of the European Union (OJEU 2008 C 115, p. 210) and Article 104b of the Rules of Procedure of the Court of Justice. National courts may request that this procedure be applied or request the application of the accelerated procedure under the conditions laid down in Article 23a of the Protocol and Article 104a of the Rules of Procedure.

Conditions for the application of the urgent preliminary ruling procedure

34. The urgent preliminary ruling procedure is applicable only in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice.

35. The Court of Justice decides whether this procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

36. The urgent preliminary ruling procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

37. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of the rules of European Union law governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the following situations: in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under European Union law depends on the answer to the question referred for a preliminary ruling.

The request for application of the urgent preliminary ruling procedure

38. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

39. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

40. The request for the urgent preliminary ruling procedure must be submitted in an unambiguous form that enables the Court Registry to establish immediately that the file must be dealt with in a particular way. Accordingly, the referring court is asked to couple its request with a mention of Article 104b of the Rules of Procedure and to include that mention in a clearly identifiable place in its reference (for example at the head of the page or in a separate judicial document). Where appropriate, a covering letter from the referring court can usefully refer to that request.

41. As regards the order for reference itself, it is particularly important that it should be succinct where the matter is urgent, as this will help to ensure the rapidity of the procedure.

Communication between the Court of Justice, the national court and the parties

42. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court of Justice, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

43. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Court Registry as soon as possible.

Notes

