

## Special EU regulation on disability matters in the field of transport and obligations for individuals

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### Context

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The ability to travel is fundamental to enabling disabled people to live independent lives and to have access to employment, health care, education and leisure activities.

For many years public transport was inaccessible to the majority of people with mobility difficulties or with sensory or cognitive impairments. Steps and stairs, gaps between vehicles and platforms, poor information and signage all contributed to the problems. For the majority of disabled people private cars or specialist door to door services, where they existed, were the only options for mobility.

Over the past twenty five or so years, however, many countries in Europe have introduced measures to tackle these barriers to mobility. In many cases the first steps were to develop design solutions such as low floor buses which not only opened up the option of bus travel for the first time to disabled people but also made it easier for everyone to get on and off.

The next step in many countries was the introduction of legislation either based on a civil rights approach to accessibility or on technical regulation setting design requirements for buses, trains etc or a combination of both.

A 2008 Report, part of EU funded project EuroAccess<sup>1</sup>, noted that most countries have general regulatory texts on accessibility. Most also had planning and building acts that incorporate the needs of disabled people to access buildings. This is important in the context of terminals, bus stops and railway stations, for example. About half the countries also had a transport or a public transport Act that recognised accessibility for disabled people. Half of them also had regulations on accessibility of buses and coaches based on EU directive 2001/85/EC (which sets technical standards for bus and coach design to meet accessibility needs). Many countries also indicated at that time that they were developing non-statutory guidelines or standards for transport accessibility.

At European level, we now also have a technical specification on “interoperability relating to ‘persons with reduced mobility’ in the trans-European conventional and high-speed rail system”<sup>2</sup>. This means that we are now beginning to see consistent and compatible access standards between the railway systems of different countries so that a wheelchair user, for example, can travel across Europe by train without worrying that the aisle or doorway width of the second train they have to take will be too narrow to accommodate the wheelchair.

## Rights legislation

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For the reasons described above, technical standards based on a sound understanding of disabled people’s needs are essential, particularly in delivering compatible access standards across national boundaries. However, unless we also have requirements that deal with rights, obligations and quality standards, many disabled people will find that they are still not able to travel with confidence that their needs will be met and that they will be treated with dignity.

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<sup>1</sup> [http://www.euro-access.org/deliverables/EuroAccess\\_D1\\_v2.pdf](http://www.euro-access.org/deliverables/EuroAccess_D1_v2.pdf)

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:064:0072:0207:EN:PDF>

The recognition at European level that the rights of disabled people were as important as the design and operation of vehicles and systems came first from experience in air travel. The case of a person needing wheelchair assistance at an airport being charged by the airline for providing that assistance triggered the first of the EU Regulations on passenger rights.

## Air Passenger Rights

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Regulation (EU) 1107/2006 "Concerning the rights of disabled persons and persons with reduced mobility (PRMs) when travelling by air<sup>3</sup>" came into effect fully in July 2008.

### Scope

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Regulation 1107/2006 deals with "the rights of disabled persons and persons with reduced mobility when travelling by air." The Regulation applies to disabled people travelling by commercial air passenger services departing from, arriving at or in transit through an airport situated in the territory of any of the 27 countries which are members of the EU. Provisions dealing with refusal of carriage and assistance by airlines also apply to passengers travelling from a third country to a Member State. Some other countries in Europe which are not members of the European Union or EFTA are also following the requirements of the Regulation on a voluntary basis.

### Definition

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"Disabled person" or "person with reduced mobility" is defined as anyone whose mobility when using transport is reduced due to:

- Any physical disability (sensory or locomotor, permanent or temporary);
- Intellectual disability or impairment;

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<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:003:en:PDF>

- 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”.

## Denied Boarding

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The first part of the Regulation, which came into force in July 2007, makes it illegal for airlines to discriminate against disabled passengers by refusing to carry them. The only exceptions are for very small aircraft in which it is physically impossible to provide for the needs of a disabled person (for example because the door is too narrow for a wheelchair or to lift a passenger on board) or on the basis of legally binding safety requirements.

There is also a requirement, subject to advance notice, to accept on board a “recognised” assistance dog. Interestingly the Regulation does not define what is meant by “recognised” but a definition has been drawn up by the European Civil Aviation Conference (ECAC) and is published in their good practice guidance<sup>4</sup>.

Airlines can require that a disabled passenger is accompanied by someone capable of providing assistance to them. Airlines are encouraged – but not required – to offer a discounted fare to the accompanying person.

## Responsibility of airports

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The second part of the Regulation places responsibility on the airport managing body to provide services and facilities to meet the needs of disabled passengers from the point of arrival at the airport to their seat on the aircraft (and from their seat on arrival to their point of departure from the airport. Assistance must also be provided for disabled

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<sup>4</sup> ECAC policy statement in the field of Civil Aviation Facilitation (ECAC.CEAC DOC No. 30 (PART I) 11th Edition/December 2009)

passengers in transit through an airport between flights. The Regulation sets down minimum requirements for assistance.

The managing body of any airport handling more than 150,000 commercial passenger movements a year must set quality standards for the service, in co-operation with airlines and bodies representing disabled people. Airports may provide the services themselves, or contract out to another body, including an airline, to provide them but the responsibility for delivery rests with the Airport Managing Body.

The Regulation does not set quality standards but does make specific reference to the guidance drawn up by the European Civil Aviation Conference (ECAC) which sets set out detailed information on best practice in areas including ground handling of disabled passengers and staff training in disability awareness and other key areas<sup>5</sup>.

Disabled passengers cannot be charged for the assistance they need to get through the airport and on board the plane. The Airport Managing Body recovers the costs of the service through a charge on airlines proportionate to the total number of passengers they carry to and from the airport.

The kinds of assistance that must be provided to disabled passengers are set out in the Regulation. They include facilities to enable the disabled passenger to communicate their arrival at the airport and ask for assistance from designated points outside and inside the terminal building (for example a call button).

Designated points of arrival will vary according to the size and layout of individual airports but should include car parks serving the airport as well as taxi ranks and train and bus terminals. Most importantly, the selection of appropriate designated points should be made in consultation with disabled people who use that airport.

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<sup>5</sup> <http://www.ecac-ceac.org/index.php?content=docstype&idtype=38>.

The airport is required to provide assistance to enable a disabled passenger to move through all stages of the airport procedures including check-in, security checks, lost and found and access to duty free and restaurant outlets. Enabling the disabled passenger to use toilet facilities is also, of course, an important requirement. Passenger information must be in accessible formats.

#### Responsibility of air carriers

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The airlines have obligations too. They are required to seat a disabled passenger where they are most comfortable on board, subject to safety requirements which apply, for example to the exit row of seats. They are also required to provide help to a disabled passenger moving to and from the on board toilet (though not in the toilet) and they must carry up to two pieces of essential mobility equipment (such as a wheelchair) free of charge provided that there is space on board.

#### Responsibility of passengers

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Passengers also have obligations as well as rights and it is important that they are aware of what they need to do before they fly to make sure that they get the assistance they need.

Anyone who needs assistance must tell the airline or travel agent with whom they have booked what their requirements are at least 48 hours ahead of the scheduled departure of the flight. If they don't, the airports and airlines are each still required to do their best. However, to be sure of getting the support that is needed, advance notice is essential.

## Training

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Like all laws, it will only work if everyone understands what needs to be done and is committed to doing it well. For this reason both airlines and airports are required to provide disability awareness training to their staff as well as more specialised training for those working directly with disabled passengers and handling mobility equipment.

## Enforcement

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In every country, a National Enforcement Body (or Bodies) has been appointed to monitor quality standards and to deal with complaints about non-compliance. There are also penalties for non-compliance which are set at national level. Most countries have appointed their civil aviation authorities to this role.

## Other Passenger Rights Regulations

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Since the introduction of Regulation 1107/2006 on air travel, the concept of passenger rights have also been introduced for other modes of transport.

Three further Regulations have now been adopted dealing with travel by rail, by bus and coach and by sea and inland waterway. All three of these Regulations cover the rights and obligations of all passengers. However, each also has specific articles and annexes on the rights and obligations of disabled passengers and passengers with reduced mobility which are closely modelled on the provisions of Regulation 1107/2006.

Regulation (EC) 1371/2007 on Rail Passengers' Rights and Obligations<sup>6</sup> came into effect in December 2009.

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<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:EN:PDF>

Two further sets of Regulations also using the same model have been adopted but have not yet come into effect. Regulation (EU) 1177/2010 deals with the rights of passengers when travelling by sea and inland waterway<sup>7</sup> and will come into effect on 18<sup>th</sup> December 2012.

Regulation (EU) 181/2011 on the rights of passengers in bus and coach transport<sup>8</sup> will come into effect on 1<sup>st</sup> March 2013.

## Implementation and Experience of Regulation 1107/2006

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The only experience to date of how these rights and obligations work in practice comes from air travel. Although the Rail Regulation is also in force it is too early to have any definitive feedback.

For Regulation 1107/2006 we do, however, have a wealth of information and experience both from the airports and airlines and from disabled people and PRMs which can provide useful insights into the practical application of rights legislation more generally.

### Awareness

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Although the Regulation has been in force in 2008, there are still many disabled people unaware of its existence or of the rights that it gives them. A recent survey of disabled air travellers in one country has revealed, for example, that 70% of respondents did not know about its existence. This means that people are less able to challenge poor service and that the overall picture of the level of problems may be significantly distorted.

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<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0001:0016:EN:PDF>

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0001:0012:EN:PDF>



## At the airport

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To date there is little evidence of major improvements in the travel experiences of disabled people and, in some cases, perversely; levels of service seem actually to have deteriorated.

The root of the problem often lies in the way that services to provide assistance at the airport for disabled people are being secured and operated.

## Assistance providers

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Many of the major airports in Europe issued tenders for assistance providers in compliance with the requirements of Regulation 1107/2006. The majority of contracts were awarded to major companies which provide a range of airport services, including, for example, cleaning. These companies had no particular experience or expertise in the highly specialist area of assisting passengers with a disability.

Although training is required under the Regulation, the standard and depth of the training varies widely with some specialist workers receiving no more information than a 15 minute video! As a result, many complaints have been made about inappropriate handling both of people and of their mobility equipment. A number of major airports now seem to have realised the problem and have re-tendered services with a much more stringent training requirement included.

## Pre-notification of need for assistance

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The issue of pre-notifying a need for assistance is another problem area. Regulation 1107/2006 makes a clear link between the obligation of the airport managing body to ensure that a PRM passenger is able to take their flight and the responsibility of the passenger to have identified their need for assistance at least 48 hours in advance of the flight departure.

There are complaints from passengers at European airports who have booked assistance that has not been provided and also complaints from airports that passengers who have booked assistance are not showing up. The solution to the first of these problems must rest with better training and tighter procedures as well as being absolutely clear about the point at which the passenger wishes to have the assistance provided. It is no use saying, as one major European airport does, that assistance can only be provided after check in!

The second issue about the waste of time and resource because the pre-booked passenger doesn't show up is, in many cases, down to a lack of information about the size and nature of individual airports. For the majority of passengers who are not frequent flyers, information is not readily available for example, about the maximum distance that they may have to walk or wheel between check in and the departure gate. They may therefore book assistance when they don't need it at a small airport. This is particularly true of flights between major airports where distances are great and small regional airports which are on a much more manageable scale.

As a result, numbers of pre-booked passengers are falling at many airports leading to greater strain on airport assistance providers and greater risk of passenger failing to make flights or connections.

On board

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In Europe and many other parts of the world, there are still frequent problems with passengers with a disability being refused by the captain or treated inappropriately (for example two blind people who travel together on a regular basis being prevented from sitting together on a recent flight). This is often the result of a simple lack of understanding about the very different nature of different types of impairment.

This is a very grey area legally. The Regulation states that a disabled person can be denied boarding *"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."*

There is no common or absolute legal requirement but the current guidance that prevails in Europe (OPS1 IEM 260) states that:

*"The number of PRMs on board should not exceed the number of able bodied passengers capable of assisting in case of emergency."*

However, this makes no distinction between a passenger who may have a slight hearing loss and one who is unable to move without assistance. Clearly the issues – if any – about safety and evacuation are very different but this lack of clarity severely undermines the confidence with which disabled people can fly.

One recent case involved a wheelchair user who travelled alone on one sector of a journey. When she came to make the return journey (same route, same aircraft, and same air carrier) she was denied boarding by the captain because she did not have an accompanying person with her.

The European Air Safety Agency (EASA) is looking at these issues but it is likely to be a number of years at best before this issue is resolved. In the meantime there are frequent reports of problems like that described above which negate the benefits that the Regulation was intended to bring.

#### Lost or damaged mobility equipment

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One of the most common problems that occurs is the loss or damage of essential mobility equipment such as wheelchairs. Although the Regulation is clear that passengers have a right to compensation in this instance, the much more serious and immediate problem is how the person concerned can

continue their journey. The Regulation does require the Airport Managing Body to offer temporary replacement but not necessarily on a like for like basis.

An added complication is that many disabled people are unclear about who is responsible. Generally speaking under the terms of the Regulation, the airport is held responsible and the Commission advise that they should be the first body against whom the passenger makes a claim. The airport can, if necessary counter claim against the airline if it is proved to have been their responsibility.

### Complaints handling

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Because each Member State is separately responsible for monitoring and enforcement, the process is complex and often confusing. As a result, problems are currently significantly under reported.

The level of resources available to the National Enforcement Body in each Member State also varies widely. Some have the resources to undertake regular monitoring at airports and to follow closely the level of complaints coming through to airlines and airports. Others have no dedicated resources and are unable even to provide figures on levels of complaints within their country.

Ironically, those countries which have put the greatest level of resource into making sure that people are aware of their rights and that the Regulation is properly implemented and enforced are those who show the highest level of complaints!

### US Requirements

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The position is significantly complicated by the presence of US Regulation (US ACAA Regulation (14 CFR Part 382) )<sup>9</sup> which came into effect shortly after Regulation 1107/2006 (May 2009) and which applies to non-U.S. airlines on flights to and from the

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<sup>9</sup> <http://airconsumer.dot.gov/rules/382short.pdf>

U.S. and on code share flights with US carriers anywhere in the world. While many of the requirements are similar, the primary focus of the US law is to place responsibility on the airline while the European Regulation places most responsibility on the airport.

## Conclusions

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The introduction of Regulation at European level setting out rights and responsibilities of disabled travellers has been widely welcomed by the disability community and generally accepted by operators and service providers – albeit after much negotiation during the legislative process.

However, based on the experience from Regulation 1107/2006, there is a need for careful reflection on how to ensure that such Regulations actually deliver the benefits that the legislators and policy makers intended.

Experience shows us that in some cases the law needs to be clearer and more precise. In others there is a greater need for authoritative (“statutory”) guidance on how to comply.

In all cases there is a need for consistent and high quality training of all those responsible for implementation at every level and for effective monitoring and enforcement so that standards are progressively driven up and people with disabilities are able to travel with greater confidence that their needs will be met as a matter of routine rather than of chance.

