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Interpretative Guidelines

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

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Introduction

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

The Commission committed itself to providing these guidelines before the 2012 Paralympic Games in its Report to the European Parliament and the Council on the functioning and effects of Regulation (EC) N° 1107/2006[2]. The Commission services have consulted NEBs and interested parties at European level twice, first in writing in December 2011 and January 2012, and later in the context of the Air Passenger Rights Consultative Group which met in Brussels on 16 February 2012.

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

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

Guiding principles

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

[1] OJ L 204, 26.7.2006, p. 1–9
[2] COM(2011)166 of 11 April 2011

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

Article 2(a) – Definitions

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

The definition of a disabled person or a person with reduced mobility is set out in Article 2(a)[3] of the Regulation. As outlined in the Regulation's introductory recitals, the intention of the legislators was to allow any passenger whose mobility is reduced access to air transport on an equal basis to other passengers[4]. When mobility is reduced by physical disability, such disability can be either of a permanent or temporary nature. Practical considerations should be taken into account in meeting the requirements of this obligation as well as the safety needs of all passengers.

Each request for assistance should be evaluated on its respective merits to ensure that such assistance is proportionate to the reduction in mobility, but there is an expectation that assistance will be provided without undue restriction. In this context, it is worth stressing that some passengers may only need assistance at the airport[5] and not on-board the aircraft.

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

(a) Age

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

[3] Unless otherwise mentioned, any reference in these guidelines to a provision has to be understood as a reference to the corresponding provision of Regulation (EC) N° 1107/2006.
[4] See in particular Recitals (1), (2) and (4) of the Regulation
[5] The size of the airport or its specific features might also be relevant.

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

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

(b) Unaccompanied Minors

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

(c) Obesity

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

(d) Pregnancy

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

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

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

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

Article 4 - Derogations, special conditions and information

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

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

(a) Cabin crew

The primary responsibility of cabin crew[6] is the safety of **all** passengers on-board an aircraft. Any action which could compromise the performance of their duties or their medical fitness (including health & safety considerations) could impact on the safety of all passengers on-board. Cabin crew ensure the respect of safety legislation on-board and organise safety assistance in case of emergency situations and during day-to-day operations, including providing safety information to disabled persons and persons with reduced mobility in accessible formats, in accordance with Annex II to the Regulation and the procedures specified by the operator.

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

(b) Medical assistance

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

(c) Toilets

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

(d) Information on limitations to travel and safety rules

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

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

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

medical or mobility equipment, or items classified as "dangerous goods"[7], such as batteries or oxygen?

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

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

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

(a) Information

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

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

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

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

In common with all passengers, disabled persons and persons with reduced mobility have the option of seeking advice or request assistance in how to file a complaint from the European Consumer Centres Network (ECC-Net)[8]. The European Consumer Centres work closely with the NEBs regarding complaints handling.

Air carriers are obliged to inform disabled persons and persons with reduced mobility as soon as possible (preferably at the stage of booking)[9] if they will not be able to provide carriage to allow them to make alternative arrangements. This is an essential element of the transport contract for these passengers in order to achieve the aim of the Regulation. In this context, whenever possible, modern (on-line) communication and notification tools should be used which should take into consideration the needs of the the passenger concerned.

Air carriers, their agents and tour operators should develop websites allowing access to consumers with disabilities on an equal basis to all passengers, rather than developing parallel websites for these consumers. The design of such websites should always take into consideration existing international guidelines and EU standards in order to meet the needs of passengers with impairments such as blindness or low vision, deafness or hearing loss, learning disabilities, cognitive limitations, restricted movement, photosensitivity or any combinations of these.

NEBs should monitor the accessibility of their national air carriers' websites and their methods of pre-notification in line with Article 14(1), and should regularly report any major difficulties and examples of best practice to the NEB network and the European Commission.

(b) Medical Oxygen

As medical oxygen is among the types of medical equipment specifically mentioned in Annex II to the Regulation, disabled persons may carry oxygen within the cabin free of charge, subject to the equipment meeting any dangerous goods requirements (which are based on ICAO rules) and to advance notice to the carrier. Air carriers may choose to provide oxygen directly to the passenger. However, there is no obligation on air carriers to do so. Where oxygen is provided directly, the air carrier may charge for its provision. Where charges are imposed for the provision of medical oxygen, carriers may wish to consider offering it at a discounted rate. Carriers have to publish the cost of this service as part of the rules and restrictions applicable. Air carriers can require advance notice of the need for oxygen when a disabled person wishes to use the air carrier's own supply throughout a flight.

There is currently no European certification of oxygen for air transport which would ease the identification process. Taking into account the international framework, the Commission services with the help of the national competent authorities will encourage the adoption of common identification standards by EASA and ICAO.

[8] Including complaints under Regulation (EC) 261/2004 on air passenger rights in case of cancellation or denied boarding

[9] See the word "immediately" in Article 4(4)

Q5 Accompanying persons

(a) On what basis may an air carrier require disabled persons and persons with reduced mobility to be accompanied?

Article 3 of the Regulation states that air carriers cannot refuse reservations or boarding of passengers on the basis of their reduced mobility. The general principle of non-discrimination prevents carriers from imposing special conditions for disabled persons and persons with reduced mobility to travel.

Article 4(2) provides for some exceptions to that general principle. Thus an air carrier may require disabled persons and persons with reduced mobility to be accompanied by another person who is capable of providing the assistance they need, in order to meet applicable safety requirements. However, such a condition can only be founded in safety requirements established by international, EU or national law or established by the authority that issued the carrier's air operator certificate[10].

The circumstances in which this condition, or indeed any other restriction on the carriage of disabled persons and persons with reduced mobility or their mobility equipment, may be imposed by an air carrier must be made publicly available e.g. in their rules on the carriage of disabled persons and persons with reduced mobility, which can be part of their Terms & Conditions.

An air carrier may require disabled persons and persons with reduced mobility to be accompanied only if they are not self-reliant. Where air carriers require a disabled person or person with reduced mobility to be accompanied they need to give detailed reasons in accordance with Article 4(4)[11].

In order to help carriers to determine whether disabled persons and persons with reduced mobility cannot travel unaccompanied, they may ask them questions related to the criteria laid down in applicable safety rules.

Given that Article 4(1)(a) makes reference to a broad range of rules (including national law and safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned), where air carriers require a passenger to be accompanied they should provide a clear, precise explanation with reference to the relevant legislation.

(b) Is the seat for an accompanying person expected to be offered for free?

As mentioned above, the general rule is that disabled persons and persons with reduced mobility can travel alone as any other passenger. The Regulation allows air carriers to require disabled persons and persons with reduced mobility to be accompanied for safety reasons only (see Article 4(2)). The Regulation does not address the question of whether the seat for an accompanying person should be

[10] E.g. http://www.ukaccs.info/accesstoairtravelfordisabled.pdf , Para 3.14

[11] See Q4 (a) second subparagraph.

offered for free. Where the air carrier requires disabled persons and persons with reduced mobility to be accompanied, the Commission services recommend that the seat be offered for free or at a significantly discounted rate. It is also worth mentioning the good practice of certain airlines which, depending on circumstances, will ask another passenger on a flight to take the role of an accompanying person.

Disabled persons and persons with reduced mobility should be given full information on an air carrier's safety requirements and the cost of additional seating if an air carrier seeks to invoke its rights under Article 4(2).

(c) Is there any requirement for an accompanying person to be given a seat next to the disabled persons and persons with reduced mobility?

Annex II to the Regulation, states that air carriers shall make all reasonable efforts to seat the accompanying person next to the disabled persons and persons with reduced mobility. This means that airlines should always endeavour to place an accompanying person next to the disabled persons and persons with reduced mobility, notably when the passenger has pre-notified, and even if other passengers have to be moved, but taking due account of the financial consequences for any passenger who is being asked to move.

Article 6 – Transmission of information

Q6: Is there a need for a harmonised minimum set and level of information required by an air carrier/airport on receiving notification of a request in order to better provide assistance or justify the refusal of booking/carriage?

Given the international nature of air travel, it is considered that the industry itself is best placed to determine what information is required and how this information should be collected and transmitted, albeit with the guidance and assistance of the NEBs and – if necessary - other safety related national authorities.

Under Article 6 of the Regulation air carriers, their agents and tour operators are obliged to facilitate receipt of notifications of a request for assistance at all their points of sale. To improve the service provided to disabled persons and persons with reduced mobility, air carrier may request additional information. Such information might include:

- The nature and description of the assistance needs (notably regarding accompanying persons, luggage and indication of points from and until where assistance is required),
- Description of any mobility equipment (quantity, model, dimension, weight, type of battery, instruction manual),
- Description of any medical equipment,

- Autonomy of the passenger in using this equipment during the flight,
- Recognised assistance dog (see also question 8).

However, any subsequent refusal of reservation/embarkation must still be based on the size of the aircraft and/or applicable safety requirements. Furthermore, where air carriers seek to collect additional information and an insufficient level - or none - is provided, this cannot in itself justify a refusal to accept a reservation or to embark the passenger. Finally it must be emphasised that in accordance with Article 7(3), all reasonable efforts have to be made to provide assistance to disabled persons and persons with reduced mobility who have not pre-notified.

Articles 7(1) – 7(3) - Pre-notification – 'Reasonable efforts' clause

Q7: Which actions are required from assistance providers where disabled persons and persons with reduced mobility do not notify their specific needs prior to travel?

Pre-notification in accordance with Article 6 of the Regulation is an essential element of the process to facilitate the efficient use of resources and to ensure that appropriate assistance is provided to the disabled persons and persons with reduced mobility. It should fully respect EU data protection legislation as outlined by Recital 12.

Article 7(1) establishes an obligation for the airport management body to provide assistance in a way "that the person is able to take the flight" for pre-notified passengers against a softer obligation in Article 7 (3) of only "reasonable efforts" to provide the same assistance for those that have not pre-notified. Article 7 thus empowers the airport management body to modulate the provision of assistance giving preference to those disabled persons and persons with reduced mobility that have pre-notified over those that have not.

Assistance service providers can therefore give priority to pre-notified disabled persons and persons with reduced mobility when providing assistance, insofar as they ensure that a non-discriminatory approach is taken and all reasonable efforts are made to assist those disabled persons and persons with reduced mobility who have not pre-notified their needs.

The Regulation requires assistance providers to take a proactive role in seeking to meet any request for assistance from disabled persons and persons with reduced mobility.

Air carriers, their agents and tour operators shall put in place all the necessary means to facilitate pre-notification, particularly, but not only, where disabled persons and persons with reduced mobility book and purchase directly through websites (online). At the time of booking, passengers shall be clearly informed of

the means available to pre-notify the carrier of their assistance needs. Evidence of their pre-notification requests shall be included in their reservation. Pre-notification is always free of charge, regardless of the place where the booking or the pre-notification is made. Furthermore, a facility (e.g. phone process) should be in place to allow disabled persons and persons with reduced mobility to provide more details on their mobility equipment as well as to enable passengers who were not disabled or reduced in their mobility at the time of booking, but who subsequently became disabled or reduced in their mobility to notify their requirements. Any fee imposed for pre-notification is contrary to Article 10. As outlined above, NEBs have to monitor how carriers, their agents and tour operators on their territory facilitate pre-notification. NEBs should share with the Commission and the NEB network any detected shortcomings, improvement, best practices and, potentially, sanctions.

Where a disabled person or a person with reduced mobility is required to change to the flight of a different carrier, e.g. because of a cancellation[12] or if the initial aircraft is replaced by another, inaccessible, aircraft, the first carrier should endeavour to support the second carrier in providing the pre-notification assistance requested to ensure a smooth travel experience.

All parties agree that a higher rate of pre-notification will improve application of the Regulation in general. The Regulation asks for pre-notification in case of transport of electric wheelchairs where possible (see Annex II). Air carriers, their agents, and tour operators should seek to encourage disabled persons and persons with reduced mobility to also pre-notify in the following cases:

- Transport of medical oxygen,
- Where access to a respirator or ventilator is required,
- Carriage of disabled persons and persons with reduced mobility who make a booking and travel as a group,
- Where an on-board wheel-chair is required, given that this equipment is not explicitly required by the Regulation (note that this does not mean that an on-board wheelchair will be provided if there is not one available on-board an aircraft).

Article 7(2) – Guide and Assistance dogs

Q8: What are air carriers' and airport management bodies' obligations regarding the transport of assistance dogs?

[12] Where a flight is cancelled, or delayed disabled persons and persons with reduced mobility might also have rights and entitlements under Regulation (EC) N° 261/2004. In particular Articles 8, 9 and 11.

"Recognised assistance dogs" shall be accommodated on-board at no additional cost for disabled persons and persons with reduced mobility (Article 10) and in the cabin (Annex II) subject to pre-notification to the carrier, its agent or tour operator as soon as possible prior to travel. In accordance with Article 7(2) the carriage by air of guide and assistance dogs is subject to any applicable European or national legislation on the carriage of animals – for example in relation to safety requirements regarding restraint in the cabin.

Regulation (EC) 998/2003[13] of the European Parliament and of the Council of 26 May 2003 on animal health requirements is applicable to the non-commercial movement of pet animals. It applies to the movement of those animals accompanying their owners and sets out specific criteria for their cross-border carriage.

Under that Regulation (also known as "the Pet Passport Regulation") an animal must comply with certain requirements before it can travel cross-border, in particular with regard to the required identification systems ("passport") and proof of vaccination. Industry, NEBs and relevant stakeholders, notably associations of disabled persons and persons with reduced mobility, should play an active role in raising assistance dog owners' awareness of these requirements and provide information on the criteria under EU and national legislation to be met before guide and assistance dogs can be carried across borders.

The obligation of air carriers and airports to allow the transport of recognised guide and assistance dogs is not in contradiction with Regulation 998/2003 in so far as the dogs meet the requirements of that Regulation.

Article 7(7) - Appropriate assistance

Q9: What is meant by assistance which is "appropriate to the particular needs of the individual passenger"?

The provision of appropriate assistance to disabled persons and persons with reduced mobility both on-board and at the airport should be assessed on a case-by-case basis, with similar consideration being given to the assessment of any medical or mobility equipment, or assistive devices such passengers may require subject to appropriate safety and/or security restrictions. Pre-notification is key to ensuring that adequate assistance is provided in each case.

Illness

A passenger, who is taken ill in flight, does not, in principle, fall within the provisions of the Regulation. Cabin crew must, however, care for the safety of that passenger, as they do for all passengers on-board an aircraft.

[13] OJ L 146, 13.6.2003, p. 1.

Q10: Should airports be expected to provide a variety of different types of wheelchairs?

In obtaining mobility equipment such as wheelchairs airport managing bodies and their agents should take into consideration the varying needs that different disabled persons and persons with reduced mobility may have and the number of passengers who may require such assistance.

It is accepted that the size of the airport may have an impact on the availability of different types of wheelchairs[14]. Although choice may be more restricted at small, regional airports there is an expectation that larger airports will have a wider variety of wheelchairs to meet the needs of such passengers. NEBs should encourage their national airports to provide information in accessible formats[15] about the equipment available.

It is considered best practice for airport managing bodies to allow disabled persons and persons with reduced mobility, as far as possible and as long as this does not constitute a derogation to the security regulations in place, to use their own mobility equipment until the boarding of the aircraft, especially in those cases where the types of wheelchairs available at the airport are not suitable for the specific disability of the passenger concerned. Similarly and where practicable taking into account safety related handling procedures, disabled persons and persons with reduced mobility should receive their own mobility equipment when disembarking and not be obliged to retrieve it at the baggage hall.

Service providers are recommended to follow the "Guidelines on ground handling for persons with reduced mobility" contained in Document 30 of the European Civil Aviation Conference (ECAC)[16], notably Annex 5 D. That Annex sets out the standards of service that airports should provide for departing and arriving disabled persons and persons with reduced mobility with and without the required notice.

Q11: Does providing assistance to disabled persons and persons with reduced mobility include the transportation of their baggage from the baggage hall to a designated point?

Yes. The term "appropriate assistance" within Article 7(7) of the Regulation means that the service provider needs to adapt the assistance to the individual requirements of disabled persons and persons with reduced mobility. Such assistance should be

[14] See the words "as far as possible" in Article 7(7)

[15] Accessible formats means that information should be provided using text, audio, video (equipped with subtitles and/or sign language interpretation) and/or electronic means so as to be accessible to all. Accessible formats include, but are not limited to, large print, Braille version, easy-to-read version, audio format such as tapes or CDs, video format like DVDs, and electronic format.

[16] https://www.ecac-ceac.org/index.php/publications_events_news/ecac_documents/ecac_docs

proportionate whilst allowing disabled persons and persons with reduced mobility to move at the airport to take their flight.

On this basis, assistance providers are allowed to adapt the level of their service to each situation following a case by case analysis.

Recital 5 states that assistance must be provided at departure and at arrival. Amongst the items listed in Annex I to the Regulation as being under the responsibility of the airport management body is the assistance required to enable disabled persons and persons with reduced mobility to "proceed from the aircraft to the baggage hall and retrieve baggage" and to "proceed from the baggage hall to a designated point". The latter provision should be read in such a way as to include the transport of baggage together with the transport of the disabled persons and persons with reduced mobility from the baggage hall to a designated point.

In seeking to apply the principle of non-discrimination enshrined in the Regulation the discrimination of other passengers must be avoided. This means that weight limits for normal, checked-in luggage do also apply for disabled persons and persons with reduced mobility, i.e. they might have to pay a fee for overweight luggage if it is not medical equipment or the two pieces of mobility equipment required for the journey under Annex II to the Regulation.

Weight limitations do not apply to the transport of medical and mobility equipment or assistive devices (whilst respecting the limitation of two pieces of mobility equipment per disabled persons or person with reduced mobility and any applicable restrictions related to the transport of dangerous goods or size and certification of the aircraft). Disabled persons and persons with reduced mobility may require assistance with carrying their luggage, including overweight luggage for which they have paid a fee, particularly at connecting points, including inter-modal connecting points in the airport area.

Article 8(4) – Calculation of the specific airport charge

Q12: Cost of assistance at airports and how is the specific airport charge to be calculated?

Article 8(1) of the Regulation requires the services outlined in Annex 1 to be provided to disabled persons and persons with reduced mobility without additional charge. Article 8(3) allows an airport managing body to recover the cost of providing assistance on a non-discriminatory basis by means of a charge levied across all airport users.

This specific charge shall follow the definition given in article 8(4) of the Regulation and has to be reasonable, cost-related and transparent and established by the managing body of the airport in cooperation with airports users.

A true process of consultation led by the managing authority of the airport has to take place with the airports users along with a real exchange of views concerning the elements of calculation of the charge.

However, the Regulation states that at the end of the consultation process the airport managing body is the competent authority that may finally decide upon and apply the policy and the level of the charge. The Regulation does not allow airports users as defined by the Regulation to take the decision on the level of the charge and impose this on airport managing bodies.

In calculating the cost of the charge the Regulation allows for the inclusion of the cost of equity capital[17] as an element of the cost calculation. Separate accounts must be maintained in respect of those activities relating to the provision of assistance to disabled persons and persons with reduced mobility. An audited annual overview of the income generated from the specific charge and those expenses incurred in the provision of assistance shall be made available to the NEB and the airport users.

Appointed NEBs under Article 14.2 are responsible for the monitoring and enforcement of the satisfactory implementation of Article 8 of the Regulation.

Q13: Can mobility infrastructure (like elevators and buses adapted for disabled persons and persons with reduced mobility that can be used by both, disabled persons and persons with reduced mobility and other passengers) be partially financed through the "specific charge" (Article 8)?

Yes. However, the aim of the "specific charge" is to finance assistance to disabled persons and persons with reduced mobility. Therefore, it may only be used in exceptional cases for mobility infrastructure that can be used by both, disabled passengers and passengers with reduced mobility, and other passengers. Article 8(5) of the Regulation requires airports to separate accounts of activities relating to assistance to disabled persons and persons with reduced mobility from its other activities.

With regard to the financing of mobility infrastructure, such as buses or elevators, which are not only used by disabled persons and persons with reduced mobility, but which can also be used by other passengers, the following two examples clarify the issue:

- When infrastructure is retrofitted in order to make it accessible also to disabled persons and persons with reduced mobility (i.e. the installation of an elevator adapted to the needs of these passengers), the cost of the retrofit

[17] Cost of equity is to be understood as the expected distribution of profit of an undertaking to its investors (e.g. shareholders). It is the rate of return the airport theoretically pays to its equity investors to obtain equity capital (net assets) from them.

(or extra cost dedicated to the needs of disabled persons and persons with reduced mobility) can be covered by the "specific charge" if needed.

- When infrastructure is put in place because of the needs of disabled persons and persons with reduced mobility but can also be used by other passengers (installation of an elevator where only escalators existed for instance), only a part of it, proportionate to the use by disabled persons and persons with reduced mobility compared to the total use[18], can be financed by the "specific charge". Usual accounting principles will apply in this respect.

Article 9 – Quality standards for assistance

Q14: Does Regulation (EC) N° 1107/2006 place an implicit obligation on airports to comply with the airport quality standards?

Yes. Article 9 of the Regulation requires airports with more than 150.000 commercial passenger movements per year to adopt and publish quality standards on the assistance they provide. Article 14(1) read in conjunction with Article 9(1) requires NEBs to monitor compliance of the assistance provided by airport managing bodies with their quality standards.

Article 11 – Training

Q15: Which standards for training are to be applied to provide comparable levels in all MS and for which type of staff?

Training is an important element in ensuring the appropriate application of and compliance with requirements of the Regulation. Article 11 specifies that all airline and airport personnel having contact with the public, including any subcontractors working on their behalf, must receive an appropriate level of training. The Commission also draws attention to Recital (10) of the Regulation, which refers to DOC 30 Part 1 (5) of ECAC, in particular to Annex 5 G[19].

There are three levels for training obligations:

a) Staff (including sub-contractors) working on behalf of airport managing bodies, air carriers or ground-handling service providers providing direct assistance to disabled persons and persons with reduced mobility shall have a specific and effective knowledge of how to meet the needs of these passengers (Article 11(a)).

[18] The Commission notes that in the ACI final report on the Evaluation of Regulation 1107/2006 of June 2010 the total number of disabled persons and persons with reduced mobility corresponded to 0,7 % on average

[19] https://www.ecac-ceac.org/index.php/publications_events_news/ecac_documents/ecac_docs

b) Staff working on behalf of airport managing bodies, air carriers or ground-handling service providers with direct contact with the travelling public in general shall receive equality and disability awareness training about disabled persons and persons with reduced mobility. Here, the training obligation is less strong but it applies to a larger group of employees (Article 11(b)).

c) The last obligation put in place is in principle very wide: all new employees of airlines, ground-handling service providers and airports managing bodies (even if not working in direct contact with the travelling public) shall attend disability related training (Article 11(c)). The principle of proportionality does apply to the level and intensity of training of this last category of staff.

Ground handling staff should also receive appropriate training on the handling of mobility equipment.

Security staff should receive appropriate training to ensure that the dignity of disabled persons and persons with reduced mobility is preserved during checks.

The exchange of best practices between NEBs is desirable in providing appropriate training to those personnel having direct contact with passengers in order to make them aware of disability issues and the non-discrimination principle and to ensure a better knowledge of how to meet the needs of disabled persons and persons with reduced mobility.

Article 14(1) - Competence of the national enforcement bodies (NEBs)

Q16: How should the cooperation between NEB's function in particular with regard to the transmission of cases to the competent NEB?

The Commission services are of the opinion that an "incident based" approach to the competence of NEBs along the lines of the NEB-NEB agreement under Regulation (EC) N° 261/2004, which proved to be effective, should be adopted as follows:

- For complaints linked to the **assistance required to be provided by an airport management body**, the competent NEB should be the one in the Member State where this airport is situated.
- For complaints linked to the **assistance to be provided by an air carrier**:
    - if the place of departure is situated in a Member State, the competent NEB should be the one in that Member State;
    - if the place of departure is situated outside the Member States, and the flight is operated by an EU licensed carrier, the competent NEB should be the one in the first Member State of arrival;

- In addition to the above, and in consideration of the principle of territoriality, when an incident occurs during a flight, the NEB from the Member State which issued the air carrier's operating licence may be asked to provide assistance in solving the case;

- In order to ensure an effective application of the Regulation, NEBs need to cooperate and mutually assist each other so that the competent NEB in charge of investigating a complaint about a specific carrier, can obtain the necessary information to handle the complaint taking into account EU and national legislation on data protection;

- Again, in order to ensure an effective application of the Regulation, the NEB of the country that has granted the EU air carrier's operating licence needs to monitor its commercial practices, its "manuals of procedure" and the tools and procedures the carrier has put in place to ensure full compliance with the Regulation. NEBs that have detected misapplication of the Regulation on their territory linked to these general practices, tools and procedures of the carrier need to draw the attention of the NEB of the country of the licence so that, where possible, NEBs can coordinate actions to cease abusive practices

- This approach is in line with Article 14(1) which states that the body(ies) in charge of enforcement in a Member State is responsible for flights departing from or arriving at airports situated in the territory of this Member State. It should be mentioned that the NEB in charge of enforcement might be different from the NEB which receives the complaint. In accordance with Article 15(2), disabled persons and persons with reduced mobility can send complaints to the NEB in charge of enforcement or to any other NEB[20] and that according to Article 15(3) the NEB which receives the complaint has the duty to send it to the NEB in charge of the enforcement.

Annex I – Assistance by airports - ground handling of mobility equipment

Q17: How to read the legal liability of the airport under Regulation (EC) N° 1107/2006 in case of loss of or damage to mobility equipment, taking into account that the ground-handling of mobility equipment is effectively carried out by the air carrier's/ground-handler's own staff?

(a) Liability

Article 12 of the Regulation permits the owner of the mobility equipment to seek compensation in case of a loss or damage during handling at the airport or during transport on board an aircraft.

[20] See also in this context Recital 17.

Annex I to the Regulation states that airports are responsible for the ground handling of mobility equipment. However, Annex I does not change the legal liability in relation to the handling of such equipment. Air carriers and their agents remain liable in case of damage to mobility equipment in accordance with International, EU and national law. The provisions of the Montreal Convention[21] would normally apply. Nothing within the Regulation prevents air carriers or their agents from seeking to recover the cost of any compensation paid where the cause of any damage to mobility equipment is a result of the actions of the airport managing body or any other third party.

(b) Responsibility for the management of mobility equipment

The services of the Commission consider that the Regulation does not change the current distribution of tasks between airlines and airport, but does provide airport managing bodies with specific overview powers in relation to the ground-handling of mobility equipment. Airports have an obligation to ensure that this service is correctly managed and should be active in its organisation and supervision. Airports should develop an action plan for this process, which should include quality standards agreed by airlines and handlers, and a mechanism to allow performance to be monitored.

The appropriate management and carriage of mobility equipment is a collaborative process between airports and air carriers. However, the final safety decision on whether such equipment can be carried is a matter for the air carrier. Where carriage is refused an air carrier should record details as to the reason for that refusal. A detailed written and accessible explanation should be provided to disabled persons and persons with reduced mobility on request. This information should be kept for an adequate period of time to allow for any resulting legal or alternative dispute resolution processes to be completed (in line with the limits set out in Article 35 of the Montreal Convention).

Q18: How can the consideration of health and safety of airport and airline employees (or the employees of bodies contracted by them) be reconciled with the fact that assistance into and out of aircraft seats are usually completed manually?

Consideration of health and safety of airport and airline employees should be first addressed through the appropriate training of the personnel in direct contact with passengers (see Q15 on training). Most Member States have national rules governing employers' responsibilities vis-à-vis the protection of health and safety of their employees. Consequently, the assistance provided by airports and air carrier employees should incorporate, where possible, the use of mechanical aids, such as ground wheelchairs, boarding wheelchairs, on-board wheelchairs and ramps or lifts. Also in this respect, the Commission services are encouraging cooperation between air carriers as regards the potential collective use of on-board wheelchairs.

[21] Montreal Convention 1999.provides a common liability regime in relation to all carriage (including domestic services within the European Union) by means of European Regulation 2027/97.

Should there be health or safety problems faced by employees as a consequence of compliance with Regulation (EC) N° 1107/2006, and in order to promote the development of best practices in this area, airport management bodies and air carriers could be encouraged by NEBs to report on the actual extent of the problems faced by the personnel when assisting disabled persons and persons with reduced mobility, and their link with regulatory health and safety requirements (see also Q3 on assistance on-board).

Annex II – Assistance by Air Carriers

Q19: How can mobility equipment be defined?

There is no clear definition of "mobility equipment" in Regulation (EC) N° 1107/2006. However, it can be defined as any equipment the purpose of which is to provide mobility to disabled persons and persons with reduced mobility or assist them in their mobility. In order to provide the assistance required, service providers should request from these passengers in advance all the necessary information related to the transport of their mobility equipment.

Q20: Is Annex II to Regulation (EC) N° 1107/2006 to be interpreted in a way that the right to take mobility equipment is not limited to those items needed during the journey but also extended to those needed at the destination?

As Annex II to the Regulation does not provide a clear definition of "mobility equipment" it is not possible to limit these to the ones needed only during the journey. Furthermore, the wording of Annex II “transport” and the inclusion in the items to be carried of electric wheelchairs, which cannot be used during the journey, can be understood to extend the right to items needed at destination, taking into account that the Regulation limits the number of items to be carried for free to two.

(a) Sports Equipment

The Regulation allows disabled passengers the transport of two items of mobility equipment without any additional charge. Therefore, if the disabled passenger wishes to transport a piece of mobility equipment which can also be used for sport purposes alone or in addition to one item of "day-to-day" mobility equipment, this has to be transported for free. Rules for the transport of sport equipment which is not mobility equipment also apply to disabled persons.

Q21: Seating arrangements for disabled persons and persons with reduced mobility and "reasonable efforts concept".

a) What does the concept of "reasonable efforts" encompass?

Annex II to the Regulation imposes on air carriers a requirement to make all reasonable efforts to accommodate the needs of disabled persons and persons with reduced mobility when allocating seats. This requirement is applicable from the time of the booking until the passenger is in his/her seat. The allocation of seats for all passengers is however subject to appropriate safety requirements. For example, based on those requirements disabled persons and persons with reduced mobility shall not occupy seats where their presence could impede the crew in their duties, obstruct access to emergency equipment or hinder the emergency evacuation of the aeroplane.

In case of persons with plastered or immobilised legs, carriers should make reasonable efforts to provide bulkhead seats or other seats providing greater legroom.

b) Should the air carrier upgrade or offer additional seats <u>for free</u> to disabled persons and persons with reduced mobility that need more than one seat?

Since the Regulation is silent on this subject, air carriers have varying policies in this regard. Some may decide to upgrade disabled persons and persons with reduced mobility, whilst others may choose to transport accompanying persons (as per Article 4(2)) free of charge. Carriers are not required to take either measure under the Regulation. However, air carrier policies regarding the allocation of seating for disabled persons and persons with reduced mobility should be transparent (e.g. indicating whether seats are attributed on a "first come first served" basis). Where restrictions on seating for disabled persons and persons with reduced mobility are applied, these should be made publicly available in accordance with Article 4(3), e.g. on the carrier's website. (See also Q5 on seats for accompanying persons.)

Q22: Does the requirement to provide assistance to move to toilet facilities mean that all aircraft must carry on-board wheelchairs?

Under Annex II to the Regulation cabin crew are required to provide appropriate assistance to disabled persons and persons with reduced mobility in moving from their seat to toilet facilities if required. Any particular procedures implemented for the assistance of disabled persons and persons with reduced mobility should neither compromise the performance or the health and safety of cabin crew in undertaking their duties (see Q3 on assistance on-board).

On-board wheelchairs should be used for this purpose where available. By comparison, this is already an obligation under US law for all planes of more than 60 seats. A disabled person or a person with reduced mobility should not be denied boarding just because they cannot be assisted in moving to the toilet facilities due to the unavailability of an on-board wheelchair. Where possible, disabled persons and

persons with reduced mobility should be informed in advance that an on-board wheelchair is not available in order to allow them to make an informed decision as to whether to travel under those conditions or not. The impossibility for a disabled person or person with reduced mobility to use the toilet facilities is not necessarily linked to safety and might therefore not be a valid reason to refuse transportation, especially during short haul flights (see also Q5a).

In accordance with Recital (11) of the Regulation air carriers should, where possible, take into consideration the needs of disabled persons and persons with reduced mobility when deciding on the design of new and newly refurbished aircraft. This may include the provision of a suitable on-board wheelchair and the design of accessible toilet facilities.