

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning the rights of persons with reduced mobility when travelling by air

(text with EEA relevance)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. The single market for air transport has brought Europeans important benefits, including a wider choice of destinations and carriers and lower fares. It has helped open air transport to the majority of citizens, for whom now it is often indispensable for active participation in economic and social life. For example air travel is often indispensable for work, for visiting family and friends and for enjoying leisure and tourism; and poor access to it can severely impede the integration of many citizens, to the detriment of society as a whole. Consequently, comparable opportunities for air travel should be open to people suffering the disadvantage of reduced mobility, whether caused by disability, age or some other factor. Passengers with reduced mobility should be confident that their needs will be met throughout the European Community, whatever airline or airport they plan to use.

2. The Commission has therefore given high priority to guaranteeing the rights of persons with reduced mobility. Already in 2000 it raised the general issue in a communication on the protection of air passengers[1], in 2001 announced its intention to act on users' rights in its white paper on transport policy for 2010[2], and in 2002 published a consultation paper on airlines' contracts with passengers; in which operational questions were discussed[3]. This paper identified a number of possible improvements to passengers' rights and invited stakeholders to comment on which issues required action by the European Union. After a thorough analysis of the many responses and a hearing of stakeholders, the Commission has reached the view that the protection of people with reduced mobility is the first priority.

3. The Commission, however, does not believe that policy in favour of person with reduced mobility should be limited to air transport. It has supported research programmes on the adaptation of different means of transport to their needs, covering low floor buses and the accessibility of coaches and long - distance buses and of rail, which have led or will lead to legislative initiatives[4]. In the case of rail, more actions have been launched. First, on the basis of the directive on the interoperability of the conventional rail system[5], technical specifications for interoperability covering accessibility for persons with reduced mobility are being developed, with the aim of enabling the Commission to adopt a decision in 2005.

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1 Protection of air passengers in the European Union - COM(2000) 365, 21.6.2000.

2 European transport policy for 2010: time to decide - COM(2001) 370, 12.9.2001.

3 Airlines' contracts with passengers. Consultation paper of Directorate-general for Energy and Transport, 21.6.2002. The consultation paper, responses and detailed summary on reactions is available on Internet: http://europa.eu.int/comm/transport/air/rights/consult_contract_en.htm.

4 Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provision for vehicles used for the carriage of passengers comprising more than eight seats - OJ L 42, 13.2.2002; Commission Decision 2002/735/EC, Technical Specifications for Interoperability (TSI) relating to the rolling stock subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Directive 96/48/EC - OJ L 275, 11.10.2002; Commission Decision 2002/732/EC of 30 May 2002 concerning the technical specification for interoperability of the infrastructure subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Directive 96/48/EC - OJ L 245, 12.9.2002.

5 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.

Second, as announced in its communication on an integrated railway area[6], in March 2004 the Commission adopted a proposal for a regulation on the rights of passengers using international services, including people with reduced mobility[7]. As for maritime transport, the amended directive on safety rules and standards for passenger ships introduced requirements concerning the safety of persons with reduced mobility[8].

4. These initiatives should be seen in the context of the Community's policy on non-discrimination. Article 21 of the Charter of Fundamental Rights lays down a general principle that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic feature, language, religion, or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. In addition, Article 13 of the EC Treaty enables the Community to combat discrimination, be it on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, in the areas of Community competence. The Council adopted on 27 November 2000 Directive 2000/78/EC[9] "establishing a general framework for equal treatment in employment and occupation". The Directive prohibits any discrimination, be it direct or indirect, on the grounds of religion or belief, disability, age or sexual orientation[10]. With regard to disability, this Directive recognises that the failure to provide a reasonable accommodation in the workplace can constitute discrimination. In practical terms such obligation requires from employers to take positive steps to ensure that people with disabilities are fairly treated. The Commission took the initiative to make 2003 the European Year of People with Disabilities which the Council subsequently followed. In order to produce results beyond 2003 and to achieve a sustainable and operational approach to disability issues, the Commission adopted in October 2003 a Communication [COM(2003) 650] on "Equal opportunities for people with disabilities: a European Action Plan". In addition it considers it necessary to challenge negative attitudes, raise awareness, promote exchanges of experience and reinforce co-operation between all parties concerned.

2. RESULTS OF CONSULTATION

5. There was a strong response to the Commission's consultation paper on airlines' contracts. It received no less than forty seven contributions from different stake-holders, notably airlines and their associations, consumer organisations, ministries and government agencies. From the consultation process emerged a wide consensus that Community law should protect the rights of persons with reduced mobility. There was general agreement that unjustified refusal of carriage on the grounds of reduced mobility must be prohibited, in order to prevent unfair treatment. On the other hand, it was generally admitted that carriers should be allowed to refuse transport for safety reasons, if well justified and required by law so as to prevent abuse. There was also a consensus that passengers with reduced mobility should not be charged for the assistance needed to use air transport, but that the costs should be spread over passengers in general.

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6 Communication from the Commission to the Council and the European Parliament - Towards an integrated European railway area - COM(2002) 18, 23.1.2002.

7 Proposal for a regulation of the European Parliament and of the Council on international rail passengers' rights and obligations - COM(2004) 143, 3.3.2004.

8 Directive 2003/24/EC of the European Parliament and of the Council amending Directive 98/18/EC on safety rules and standards for passenger ships - OJ L 123, 17.5.2003.

9 OJ L 303, 2.12.2000, p. 16.

10 Discrimination on the grounds of sex and ethnic or racial origin is dealt with under other directives.

6. With so much agreement, the stumbling block was fierce disagreement over whether airports or airlines should be responsible for the assistance at airports. Airlines tended to believe that airports should provide assistance before and after the flight, as this was their competence. This assistance should be organised centrally at each airport and funded through a charge on each airline proportional to the number of passengers it carries to and from that airport. Airports argued that carriers should take responsibility, since it was they that had contacts with passengers and possessed information about passengers with reduced mobility and their needs.

7. The debate has been going on for some time, but the issue has not been resolved. Although the airlines' and airports' voluntary commitments[11] cover the treatment of people with reduced mobility, they do not answer the question of who should be responsible for providing assistance at airports. Given the importance of mobility for social integration, the issue must not be left open and can only be resolved through legislation, so the Commission has decided to present this proposal for a regulation. It will achieve two essential goals: first, preventing unfair treatment, that is refusal of carriage on the basis of reduced mobility and, second, guaranteeing the provision, free of charge, of the assistance that passengers with reduced mobility need to have effective opportunities for air travel.

8. The Commission recognises the serious efforts that most airlines and airports make to accommodate the needs of people with reduced mobility. Indeed air transport is in advance of most other sectors in this respect. It also recognises the valuable work done by the European Civil Aviation Conference over the years in facilitating the transport of persons with reduced mobility[12]. It is concerned, however, to ensure that best practice is followed at all Community airports and on all flights departing from them, and that this continues despite the increase in passengers with reduced mobility caused by the ageing of the population and the unrelenting pressure on airlines to reduce costs in order to compete.

3. ELEMENTS OF REGULATION

Fair treatment clause

9. Unless it charged passengers with reduced mobility for the full cost of assistance, which would be quite unacceptable, an airline might be tempted to refuse them carriage in order to save cost. It might also be concerned about potential safety risks or the unjustified reaction of other passengers. Without suggesting that such practices are widespread, the Commission believes that passengers must be guaranteed that they will not be refused carriage on the grounds of reduced mobility. An airline or tour operator might refuse either to accept reservations from people with reduced mobility or to embark them once at the airport. The Commission therefore proposes that, in the case of flights departing from airports situated in the territory of a Member State to which the Treaty applies, they should be forbidden to refuse either acceptance of reservations or embarkation of passengers, on the grounds of reduced mobility. The prohibition to refuse reservation or embarkation shall also exist in the case of passengers departing from an airport located in a third country to an airport situated in the

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[11] Airline Passenger Service Commitment and Airport Voluntary Commitment on Passenger Service, presented European Civil Aviation Conference/European Union dialogue, Lisbon, 10th May 2001.

[12] European Civil Aviation Conference: Document 30, Part 1 Facilitation, with annexed Code of good conduct in ground-handling for persons with reduced mobility.

territory of a Member State to which the Treaty applies, if the flight is part of a journey, which started in the Community and if the operating carrier is a Community carrier.

10. Nevertheless, this guarantee cannot be absolute. The transport of people with very severely limited mobility or of numerous passengers with reduced mobility on the same flight might conflict with duly established safety requirements. For instance, it could make evacuation of a plane in an emergency unacceptably slow and difficult. Consequently, the proposed regulation should allow airlines and air carriers to refuse carriage in order to comply with prescribed safety rules. To deter abuse, however, they should be obliged both to inform in writing passengers refused carriage of the reasons for that refusal and to make publicly available the safety rules that they apply to the transport of people with reduced mobility.

Assistance at airports: some distinctions

11. In order to take flights, people with reduced mobility may need assistance to meet their particular needs. For example, they may require help to move from their point of arrival at an airport to their plane and, on arrival, from the plane to their point of departure from the airport. Such assistance is sometimes seen as the provision of a wheelchair with an attendant at the check-in counter, but this view is a simplification that ignores the diversity of needs.

12. First, it equates someone of reduced mobility with a disabled person unable to walk and so requiring a wheelchair. While this is true of some people, others have disabilities that do not affect their ability to walk, like blindness or deafness. Their need may rather be for guidance, so that they can find their way, or for the communication of essential information in an accessible form, concerning for example the check-in counter, the departure gate and the boarding time. On the other hand, passengers who need help in moving around an airport do not necessarily have a disability. For example many old people do not need assistance in daily life, but are not capable of walking long distances around airports. The growing size and complexity of modern airports cause otherwise self-reliant people to request assistance. The European Civil Aviation conference has developed a definition that expresses this diversity for its work on facilitation, which the Commission is following in this proposal.

13. Second, assistance does not necessarily begin at the check-in counter on departure, or end at the baggage hall on arrival. Some passengers with reduced mobility may arrive at car parks or bus or train stations and then need help to reach the check-in counter. Similarly, they may require further help in going from the baggage hall, where they are often left unattended, to their point of departure from the airport. Passengers transferring from one flight to another may need assistance in moving from one departure gate to another and possibly from one terminal to another. Moreover, people with reduced mobility may require further help on the way, for instance in completing procedures for check-in, security clearance, passport control, baggage retrieval and customs clearance. This does not mean that all passengers with reduced mobility would want such extended services, rather that they should be available when needed. Nor does it necessarily imply that assistance must be provided throughout the whole area of an airport, rather to and from points at which passengers with reduced mobility can easily request it

14. To give people with reduced mobility real opportunities for air travel, assistance must be interpreted widely. To ensure that the full range is always available, the proposed regulation should lay down a standard list of services to be provided at airports in the Community. In the interests of equity and social inclusion, people with reduced mobility should not be charged for this assistance; rather the cost should be borne by air passengers in general. As explained,

the consultation showed that stakeholders support this principle, but airlines and airports disagree on responsibility for organising and funding this assistance. This can only be settled by Community legislation.

Assistance at airports: the options

15. Which option would most benefit passengers with reduced mobility departing from or arriving at airports situated in Member States: making airports responsible for assistance or giving this task to airlines? To enjoy full opportunities for air transport, people with reduced mobility must be confident that they will receive the assistance they need, whatever the airport or whatever the airline they use. Such confidence can only be created by guarantees that they will be given, free of charge, assistance of high quality at all airports located in Member States. Passengers with reduced mobility also need to be assured that, whatever airline they choose, they will receive the same help and high standard of treatment.

16. One concrete aim should be to ensure that assistance is given in an extended and seamless form at all airports. This implies that interruptions in service and transfers from one supplier to another should be avoided as far as possible, as they often cause delays and force passengers to await new attendants. Provision of a seamless service at reasonable cost would be greatly facilitated if only one body was responsible at each airport. This would also help the exploitation of economies of scale, for instance in the provision and operation of vehicles and of lifting equipment.

17. The managing body has wide responsibilities throughout the airport and so would be well placed to provide a comprehensive and seamless service. The Commission therefore proposes that this body should be made responsible for organising and financing the assistance that people with reduced mobility need to use air transport. It could then supply the assistance itself or place contracts with suppliers. As for the other option, it would be unreasonable to expect one airline to provide assistance throughout an airport, for its own passengers and for those transferred between carriers, in the terminals that it uses and in others.

18. A second objective should be to avoid giving airlines incentives to reduce the number of persons with reduced mobility that they carry. If an airline were responsible for assistance at each airport served and so were to incur costs roughly proportional to the number of passengers with reduced mobility transported, some might be tempted to carry as few as possible. While they could not directly refuse carriage without violating the fair treatment clause, they might deter people with reduced mobility by providing a poor service or abusing safety rules. If they gained a reputation for doing so, people with reduced mobility would soon start to avoid them. Most carriers would strongly resist such practices but, if a few were to adopt them and make serious cost savings, the others would come under strong pressure to follow. As a result, effective opportunities for air travel would diminish.

19. This could be avoided if airlines were to pay charges proportional to the number of passengers that it carried to or from the airport, so that they were independent of the number of people with reduced mobility transported. Such an approach would greatly reduce the incentives for airlines to minimise the number carried (it would not eliminate them entirely as airlines would have to provide some assistance on-board the aircraft). It could be realised by establishing a centralised system at each airport and then allowing its organiser to levy a charge on all airlines using the airport in proportion to the number of passengers that it transported to and from it. Again the managing body of an airport is well placed to levy such a charge, which should be cost related, transparent and established after consultation with air

carriers. All airlines using an airport would have to pay it, whether a Community or a third country carrier.

20. The regulation would then oblige airport managing bodies to provide specified services for passengers with reduced mobility (see Annex I of proposal), in order to achieve certain social objectives. This does not mean that it would impose one model for all circumstances; indeed it would rather allow much flexibility. First, quality standards would not be centrally imposed but each managing body would itself define them and the associated resource requirements, after consulting the air carriers using the airport and organisations representing passengers with reduced mobility. This would allow standards and specifications to fit the size and form of different airports and the types of aircraft used.

21. Second, the proposed regulation would leave each managing body free to choose whether to provide assistance itself or to procure services from suppliers including airlines, so long as they respected the terms of Community legislation on public procurement[13]. If it procured assistance from outside, the managing body would be free to choose between letting one contract and splitting its purchase between several suppliers by terminal, airline or however seemed best. It should be noted that services supplied to the managing bodies of airports do not fall under the ground-handling directive[14]. This covers services provided by suppliers to airport users (essentially air carriers), with the purpose of creating free access to this market within certain limits. The two laws, then, would not overlap nor raise issues of consistency.

Assistance on-board aircraft

22. Some services to passengers with reduced mobility are given on-board an aircraft and so are naturally the responsibility of air carriers. Examples are the transport of wheelchairs and other mobility equipment and the carriage of guide dogs for the blind, which most airlines accept in the cabin (see Annex II of proposed regulation). In the case of flights departing from an airport situated in a Member State, the Commission proposes that airlines be required to provide these services free of charge.

Notification of need for assistance

23. Knowing the particular needs of passengers with reduced mobility in advance of travel would help airports and airlines to organise assistance, provide prompt service and make best use of their resources. At present they frequently do not receive prior notice and have to organise themselves as best they can. It would be going too far to make advance warning a condition of assistance, as many airports and airlines now provide a satisfactory service without it. Rather, Community legislation should encourage passengers to give advance notice, without creating what would be in effect an obligation to do so. The Commission proposes a mechanism that strikes a balance. If passengers with reduced mobility gave prior notice of their needs, airports would be obliged to assist them in such a way that they caught their flights. In the absence of prior notification, they would only have to make best efforts to ensure that they caught their flights. This would encourage notification, without creating an obligation that would be considered a step backward from present practice.

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[13] Council directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors - OJ L 199, 9.8.1993.

[14] Council Directive 96/67/EC of 15 October 1996 on access to the ground-handling market at Community airports - OJ L 272, 25.10.1996.

Enforcement

24. Passengers with reduced mobility are in a weak position if airlines or airports fail to meet their obligations, so strict enforcement of the proposed regulation will be necessary. The Commission's proposal therefore includes an article requiring Member States to lay down sanctions for non-compliance and to designate bodies responsible for enforcing the regulation and for handling complaints from passengers. By the way, these provisions are very close to those in the Regulation of the European Parliament and the Council on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.[15]

4. SUBSIDIARITY AND PROPORTIONALITY

25. The Community has created an internal market in air transport in which carriers operate under uniform rules. These do not only govern access to the market but also the protection of passengers. Like other air passengers, many people with reduced mobility travel between Member States and so would greatly benefit from protection that is harmonised at a high level. Without harmonisation, they would at best enjoy different rights and at worst no legal protection at all. Moreover, they would find it difficult to know their rights wherever they travelled in Europe and so to insist on their respect. As for airlines, without harmonisation they would have to work under a variety of different rules, and so face higher raise costs and cumbersome procedures. So national rules, even assuming that they all afforded a high level of protection, would not achieve essential Community objectives and could even frustrate their attainment.

26. The Community has long recognised the need for harmonised rules on the protection of air passengers. It has adopted legislation on compensation for denied boarding[16], on the liability of air carriers[17] and most recently on compensation and assistance in the event of denied boarding and of cancellation or long delay of flights[18]. Moreover, the Community has adopted legislation on package travel, which frequently includes transport by air[19]. The proposed regulation would therefore be the latest in a series. The Community has no other means than legislation to create rights for air passengers.

27. Passengers, airports and airlines would all benefit from precise and complete rules. Air transport is a highly internationalised industry, so that differences between national rules can cause serious difficulties. Moreover decisions involving passengers' rights have often to be taken quickly on the spot, adding to the value of exact rules at Community level.

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15 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.

16 Council Regulation (EEC) No. 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport - OJ L 36, 8.2.1991.

17 Regulation (EC) No. 889/2002 of the European Parliament and the of the Council of 13 May 2002 amending Council Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents - OJ L 140, 30.5.2002.

18 Regulation (EC) No 261/2004.

19 Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours - OJ L 158, 23.6.1990.

Consequently, a regulation is a better tool than a directive, as has been found with other measures to protect the rights of air passengers.

28. The Commission has limited its proposal to areas where precise Community rules are necessary, and indeed desired by stakeholders. The regulation would list assistance to be given at airports and on-board aircraft, but would not define it in detail nor specify how it should be provided; nor would it cover other topics like facilities on-board the aircraft. While accepting that more detailed harmonisation would benefit both passengers with reduced mobility and air carriers, the Commission considers that doing this through internationally recognised recommendations would preserve flexibility and allow adaptation to specific circumstances.

29. The Commission has therefore supported the work of the European Civil Aviation Conference on the facilitation of the transport of persons with reduced mobility. Its recommendations provide a comprehensive guide to the assistance of people with reduced mobility, covering information for them and for airline and airport staff, communication facilities, training of personnel, accessibility of airports, arrangements for embarking and disembarking, assistance on board, equipment in the aircraft and group travel. Its recently adopted code of good conduct in ground handling for persons with reduced mobility lays down further principles and standards.

30. The Commission's proposal avoids such subjects, which are better left to recommendations, and is limited to areas where the need for Community action is clear and widely accepted. It is therefore proportional to the objective sought and appropriate to the circumstances in which it is pursued.

5. ASSESSMENT OF SOCIAL AND ECONOMIC IMPACT

Social impact

31. People with reduced mobility include not only disabled people, estimated at around 45 million people in the Community or 10% of the population, but also others unable to use air transport without assistance. These are often elderly people who cannot walk long distances around large, modern airports, although mobile for the purposes of daily life. It is estimated that, of passengers embarking or disembarking at airports in Member States, around 1% of those on scheduled flights[20] and 1.6% of those on leisure services are assisted[21], around seven million cases of assistance each year. In the long run, the aging of the population will increase the numbers of both disabled people – the prevalence of disability is several times higher among elderly citizens than among the population at large – and of persons not sufficiently mobile to use air travel unassisted.

32. The proposal should greatly advance achievement of an important social objective, that people with reduced mobility enjoy comparable opportunities for air transport, despite the rise in their numbers and the competitive pressures on airlines. Without such opportunities, they would not only lose the direct benefits of air travel but also the indirect one of fuller inclusion in the economic and social life of the community. For example they would be unable to travel

[20] Source: Association of European Airlines representing operators of scheduled services, other than regional airlines.

[21] Source: International air carrier association representing operators of leisure services.

for work, visit family and friends and go on holiday like other citizens. They should therefore receive, free of charge, assistance in airports and on-board aircraft to meet their particular needs.

33. The regulation would guarantee assistance not only in moving from the check-in counter to the aircraft and from the aircraft to the baggage hall, usually the practice at present, but also from a designated point of arrival at the airport to the aircraft and from the aircraft to a designated point of departure from the airport. Giving responsibility to one body at each airport would create the conditions for seamless service, without interruptions and delays, even when a passenger changes carriers and is transferred between terminals.

34. The managing body has wide responsibilities for services throughout the airport and so is better placed to perform this role than individual airlines, hence the Commission's proposal. Despite long discussions, airlines and airports have been unable to agree who should be responsible and are most unlikely to do so in future. Consequently if the status quo continued, passengers with reduced mobility would receive a service that was neither complete nor seamless.

Economic impact

35. Passengers with reduced mobility should be guaranteed at all airports assistance to a high standard, free of charge. They should also be assured that this will continue in future despite the growing expense and the pressure on airlines to reduce costs in order to remain competitive. The cost of assistance at an airport for wheelchair passengers has been estimated at 24 €[22] or 30 €[23], on departure and the same on arrival which represents a modest cost should the overall cost for persons of reduced mobility be shared amongst all passengers in Europe (around 590 million passengers in 2003). At present, airlines usually provide this free, so that the regulation would not impose a whole new set of costs on the sector. It should be noted that, on the one hand, that not all passengers with reduced mobility need all this assistance and, on the other, the regulation would require the extension of the range of services made available.

36. At present, assisting people with reduced mobility affects airlines' profits, particularly when they travel on less expensive tickets. With competitive pressure to reduce costs and, in the long run, the increase in numbers of passengers with reduced mobility caused by the aging of the population, it is doubtful that airlines can continue present levels of assistance at airports. The crucial question, then, is how to allocate the costs among the different actors, so as to minimise the economic incentive to minimise the number of people with reduced mobility transported.

37. Maintaining the status quo would not work. Under it, each airline would provide limited assistance to its own passengers, usually free of charge. An airline would have an economic incentive to minimise the number of passengers with reduced mobility carried and could often do so without violating the prohibition to refuse carriage. At present almost all carriers accept responsibility for transporting and assisting people with reduced mobility, and go to considerable expense to do so. However, if one were to change policy, competitive pressure

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22 Source: International Air Carrier Association.

23 Source : Association of European Airlines.

would oblige others either to follow suit or to charge for assistance. Both would be unacceptable.

38. The solution proposed would avoid these problems as the charge levied on each airline would be proportional to the total quantity of passengers that it embarked and disembarked at an airport. The charge would be independent of the number of passengers with reduced mobility carried, so that the airline would little economic incentive to reduce their numbers. The proposal would impose one additional cost on the sector, that of extended assistance when people required it. Its main economic effect would be to change the way assistance at airports was organised and financed. Responsibility would be transferred from air carriers to the managing bodies of airports. However, the managing bodies would not bear the cost themselves but rather charge it to the airlines using their airports. Airlines would pass the charge on to their passengers as a whole, so that it would be shared among a large number of citizens. And a person with reduced mobility would not be seen as an extra cost but welcomed as a passenger, at all stages from booking a ticket to arrival at destination.

6. COMMENTS ARTICLE BY ARTICLE

Article 1 states the basic purpose and scope of the regulation.

Article 2 defines terms used in the regulation.

Article 3 prohibits air carriers or tour operators from refusing persons with reduced mobility carriage on the grounds of reduced mobility. This is without prejudice to certain exceptions and derogations notably for justified safety reasons established by law, as foreseen in Article 4.

Article 5 gives persons with reduced mobility the right to a package of assistance at airports specified in Annex I, on departure, on arrival and in transit; it also contains provisions on prior notification of the need for this assistance.

Article 6 makes the managing bodies of airports responsible for providing the assistance mentioned in Article 5 free of charge to persons with reduced mobility, and allows them to levy charges on air carriers to fund it.

Article 7 requires, after proper consultation, the managing body of an airport to lay down quality standards for the assistance.

Article 8 requires air carriers to provide assistance on-board aircraft specified in Annex II, free of charge to persons with reduced mobility.

Article 9 requires air carriers and tour operators to make certain arrangements concerning prior notification of the need for assistance.

Article 10 forbids the limitation or waiver of obligations created by the regulation.

Article 11 requires Member States to designate bodies responsible for enforcement of the regulation and for dealing with complaints.

Article 12 requires Member States to lay down sanctions for infringements.

Article 13 requires the Commission to report on the operation and results of the regulation.

Article 14 sets the date for entry into force of the regulation.

07/2005 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning the rights of 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[24],

Having regard to the opinion of the European Economic and Social Committee[25],

Having regard to the opinion of the Committee of the Regions[26],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[27],

Whereas:

(1) The single market for air services should benefit citizens in general. Consequently persons suffering the disadvantage of reduced mobility, whether caused by disability, age or another factor, should have opportunities for air travel comparable to those of other citizens.

(2) Persons with reduced mobility should therefore be accepted for carriage and not refused transport on the grounds of their lack of mobility, except for justified safety reasons prescribed by law.

(3) This Regulation should not affect other rights of passengers established by Community legislation and notably by Council Directive (EC) 90/314/EEC on package travel, package holidays and package tours[28] and Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights[29].

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24 OJ C XX, XX, p. XX.
25 OJ C XX, XX, p. XX.
26 OJ C XX, XX, p. XX.
27 OJ C XX, XX, p. XX.
28 OJ L 158, 23.6.1990, p.59.
29 OJ L 46, 17.2.2004, p.1.

(4) In order to give persons with reduced mobility opportunities for air travel comparable to those of other citizens, assistance to meet their particular needs at airports and on-board aircraft should be provided and, in the interests of social inclusion, the persons concerned should receive this assistance free of charge.

(5) Assistance given at airports situated in the territory of a Member State to which the Treaty applies should, among other things, enable 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. It 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.

(6) To achieve these aims, assistance at airports should be provided by a central body. As managing bodies of airports play a central role in providing services throughout their airports, they should be given this responsibility.

(7) Assistance should be financed in such a way as to spread the burden equitably over all passengers using an airport and to avoid disincentives to the carriage of passengers with reduced mobility. A charge levied on each airline 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.

(8) To give persons with reduced mobility effective opportunities for air travel, air carriers should be required to provide certain forms of assistance on board aircraft.

(9) Since the objectives of the action to be taken, 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 the 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.

(10) Member States should lay down sanctions applicable to infringements of this regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.

(11) Member States should supervise and ensure compliance with this regulation and designate an appropriate body to carry out enforcement tasks. This supervision should not affect the rights of persons with reduced mobility to seek legal redress from courts under the national law.

(12) This regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union —

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

1. This Regulation establishes rules for the protection of and assistance to persons with reduced mobility travelling by air.

2. The provisions of this Regulation shall apply to persons with reduced mobility travelling by air and departing from, arriving at or transiting through an airport located in the territory of a Member State to which the Treaty applies.

3. Notwithstanding paragraph 2, Article 3, 4 and 8 shall also apply to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the flight is part of a journey, which started in the Community and if the operating carrier is a Community carrier.

4. This Regulation shall not affect the rights of passengers established by Council Directive 90/314/EEC on package travel, package holidays and package tours and under Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) "person with reduced mobility" means any person whose mobility is reduced due to physical incapacity (sensory or locomotors), intellectual impairment, age, illness, or any other cause of disability when using transport and whose situation needs special attention and the adaptation to a person's 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 of licensing of air carriers[30];

[30] OJ L 240, 24.8.1992.

(e) "tour operator" means, with the exception of an air carrier, an organiser or retailer within the meaning of Article 2, points 2 and 3, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

(f) "managing body of the airport" means a body which notably has as its objective under national legislation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

(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 of tour operator.

Article 3

Prevention of refusal of carriage

1. An air carrier or its agent or a tour operator shall not refuse, on the grounds of reduced mobility, to accept a reservation for a flight departing from an airport to which this regulation applies.

2. An air carrier or its agent or a tour operator shall not refuse to embark a person with reduced mobility departing from an airport to which this regulation applies:

   a) when this person has a reservation on the flight concerned and presents him or her self for check-in:

   at the time stipulated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or

   if no time is stipulated, not later than sixty minutes before the published departure time or

   b) when the person is transferred, irrespective of the reason, by an air carrier or tour operator from the flight for which he or she holds a reservation to another flight.

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 to accept a reservation from or to embark a person with reduced mobility or request that a person with reduced mobility who travels must be accompanied by another person in order to meet applicable safety requirements duly established by law or if the size of the aircraft or the justified absence of cabin crew

prevents the carriage of persons with reduced mobility, including their embarking and disembarking.

2. When an air carrier, or its agent or a tour operator exercises the derogations under paragraph 1, it shall inform in writing the person with reduced mobility concerned of its reasons for doing so, within five working days from the reservation or embarking being refused or the condition of accompaniment imposed.

3. An air carrier or its agent shall immediately make available, on request, the safety rules that it applies to the carriage of persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft or the absence of cabin crew. A tour operator shall immediately make such safety rules and restrictions available on request for flights included in package travel, package holidays and package tours, which it organises, sells or offers for sale.

Article 5

Right to assistance at airports

1. On departure of a person with reduced mobility from an airport to which this Regulation applies, the managing body of the airport shall provide the assistance specified in Annex I, in such a way that the person is able to take the flight on which he or she holds a reservation, provided the notification of the person's particular needs for such assistance is made to the air carrier or tour operator concerned at least twenty-four hours before the published time of departure of the flight.

2. If no notification was 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 on which he or she holds a reservation.

3. The provisions of paragraphs 1 and 2 shall apply on condition that:

a) the person presents him or her self for check-in:

- at the time stipulated in advance and in writing (including by electronic means) by the air carrier or the tour operator, or

- if no time is stipulated, not later than one hour before the published departure time, or

b) the person arrives at a point in an airport designated in accordance with Article 6 paragraph 4:

- at the time stipulated in advance and in writing (including by electronic means) by the air carrier or the tour operator, or

- if no time is stipulated, not later than two hours before the published departure time.

4. When a person with reduced mobility transits through an airport, 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 make all reasonable efforts to provide assistance specified in Annex I, in such a way that the person is able to take the flight on which he or she holds a reservation.

5. On arrival by air of a person with reduced mobility at an airport to which this Regulation applies, the managing body of the airport shall provide 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 6, paragraph 4.

Article 6

Responsibility for assistance at airports

1. The managing body of an airport shall provide the assistance specified in Annex I free of charge to persons with reduced mobility. The managing body may provide assistance itself or contract with other parties for its supply.

2. The managing body of an airport providing assistance in accordance with paragraph 1 may levy a charge on the air carriers using the airport for the purpose of funding this assistance.

3. The charge mentioned in paragraph 2 shall be cost related, transparent and established after consultation of the Airport Users Committee of the airport, where one exists. It shall be shared among the air carriers using an airport in proportion to the number of passengers that each carries to and from that airport.

4. After consulting airport users, through the Airport Users Committee where one exists, and organisations representing passengers with reduced mobility, the managing body of an airport shall designate points of arrival and departure within and outside terminal buildings, at which persons with reduced mobility can, with facility, announce their arrival at the airport and request assistance. It shall designate such points at least at the entries to terminal buildings, at check-in counters, in train, metro and bus stations, at taxi ranks and in the car parks closest to terminal buildings.

Article 7

Quality standards for assistance

1. With the exception of airports whose annual traffic is less than two million passenger movements, the managing body shall set quality standards for the assistance specified in Annex I and determine resource requirements for meeting them, after consulting airport users, through the Airport Users Committee where one exists, and organisations representing passengers with reduced mobility. In the setting of such standards, full account shall be taken of internationally recognised policies and codes of conduct concerning the facilitation of the transport of persons with reduced mobility. The managing body of an airport shall publish its quality standards.

2. An air carrier and the managing body of an airport may agree that, for the passengers that the air carrier transports to and from the airport, the managing body shall provide assistance of a higher standard than those set in the standards mentioned in paragraph 1 or provide services additional to those specified in Annex I. For the purpose of funding either of these, the managing body may levy a charge on the air carrier additional to that mentioned in Article 6, paragraph 2, which shall be transparent, cost related and established after consultation of the air carrier concerned.

Article 8

Assistance by air carriers

An air carrier shall provide the assistance specified in Annex II free of charge to a person with reduced mobility departing from or in transit through an airport to which this Regulation applies provided the person fulfils the conditions set out in Article 5, paragraph 3.

Article 9

Notification of need for assistance

1. An air carrier or a tour operator shall take all measures necessary for the reception, at all its points of sale on the territory of a Member State to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance by persons with reduced mobility.

2. When an air carrier or a tour operator receives a notification of the need for assistance, it shall immediately communicate the notification:

   - to the managing bodies of the airports of departure, of arrival and of transit, and

   - to the operating carrier of a flight, if a reservation was not made with that carrier.

3. Immediately after the departure of a flight, an operating air carrier shall inform the managing body of the airport of destination, if situated on the territory of a Member State to which the Treaty applies, of the number of persons with reduced mobility requiring assistance specified in Annex 1 and of the nature of that assistance.

Article 10

Exclusion of waiver

Obligations towards persons with reduced mobility pursuant to this regulation shall not be limited or waived.

Article 11

Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated on its territory. Where appropriate, this body shall take the measures necessary to ensure that the rights of persons with reduced mobility are respected, including compliance with the quality standards mentioned in Article 7, paragraph 1. The Member States shall inform the Commission of the body that has been designated.

2. Complaints may be made to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation. The Member States shall take measures to inform people with reduced mobility of their rights under this regulation and of the possibility of complaint to this designated body.

Article 12

Penalties

1. The Member State shall lay 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 must be effective, proportionate and dissuasive. The Member states shall notify those provisions to the Commission by the date of entry into force at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 13

Report

The Commission shall report to the European Parliament and the Council by 1 January 2010 at the latest on the operation and the results 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 14

Entry into force

This regulation shall enter into force on --[31].

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

[31] One year after date of publication in the Official Journal.

ANNEX I

Assistance by managing bodies of airports

Assistance and arrangements necessary to enable 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, paragraph 6;

– 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;

– 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;

– 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.

Ground handling of mobility equipment, including electric wheelchairs (subject to advance warning of twenty-four hours and to possible limitations of space on board the aircraft).

Temporary replacement of damaged or lost mobility equipment.

Ground handling of certified service dogs, when relevant.

Communication of information needed to take flights in accessible formats.

ANNEX II

Assistance by air carriers

Carriage of certified service dogs in the cabin, subject to national regulations and for flights whose scheduled duration is less than five hours.

Transport of one piece of mobility equipment per passenger with reduced mobility, including electric wheelchairs (subject to advance warning of twenty-four hours and to possible limitations of space on board an aircraft).

Communication of information concerning a flight in accessible formats.

Arranging of seating to meet the needs of individual people with reduced mobility on request and subject to safety requirements.