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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.8.2008
COM(2008) 510 final

COMMUNICATION FROM THE COMMISSION

Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.

Text with EEA-relevance

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1. BACKGROUND

On 5 July 2006, the Council and the European Parliament adopted the Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air¹ (hereinafter referred to as "the Regulation"). The overall objective of the Regulation is to ensure that disabled passengers and persons with reduced mobility (hereinafter referred to as PRM) are not discriminated against when travelling by air. On 30 November 2005, in the course of the political negotiation process on the Commission proposal, and in relation to the future Article 12 concerning 'Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices', the Commission presented a statement for the minutes², in which the Commission committed to launch a study and to report on it, regarding the possibility of enhancing the existing rights under Community, national or international law of air passengers whose wheelchairs or other mobility equipment are destroyed, damaged or lost during handling at an airport or during transport on-board aircraft.

The Commission published a contract notice³ for a "*Study on the compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility*" (hereinafter referred to as "the Study"), which is available on the Commission website. The purpose of this Communication is to report on the outcome of the study and the possibility to enhance existing rights.

2. THE SCOPE OF THE PROBLEM.

"Damaged or lost luggage is annoying. Damaged or lost mobility equipment can destroy the whole journey and complicate life considerably for a long time. It is a loss of independence and dignity⁴."

A significant proportion of the current EU population has mobility problems which include needing a wheelchair other mobility equipment or assistive devices (hereinafter referred to as "mobility equipment"). The proportion of PRM within the population is likely to increase as the EU population ages.

The Commission does not wish to reproduce in this Communication the data already provided in the study, which should be read as a complement to this Communication. Nevertheless, on

¹ OJ L 204/1 of 26.07.2006

² Council working document n° 15206/05 (COD 2005/007).

³ Contract notice 2006/S 111-118193 of 14.06.2006

⁴ From a PRM association's answer to the consultants.

the basis of those data, the Commission notes that there are clear indications that passengers with reduced mobility who require mobility equipment, are travelling by air less than the general population. It is quite likely that fear of loss, damage or destruction of their mobility equipment is a contributory factor in deterring them from travelling and, therefore, preventing their integration in society. This fear is based on several objective reasons:

- (1) The loss or damage of wheelchairs or other mobility equipment takes away the independence of the PRM and affects every aspect of their daily lives until the matter is properly resolved.
- (2) PRM face risks to their health and safety if their mobility equipment is lost, damaged or destroyed, as replacements are not always provided and, even when provided, replacements are not always suitable for the person's needs.
- (3) The time taken by airlines or airports to resolve practical problems presented by the damage or loss of mobility equipment is inappropriate given the urgency of the need.
- (4) The existing procedures and the average training level of the staff of most airlines and airports regarding how to act when confronted with a loss or damage of mobility equipment are deficient.
- (5) The financial implications of the loss, damage or destruction of mobility equipment present an additional risk for PRM when travelling by air in comparison with other passengers.
- (6) The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier, and for airports

3. OUTCOME OF THE STUDY: THE CHALLENGES

The actual number of accidents per year and per company involving incidents with mobility equipment is very low. The total number of relevant complaints is somewhere in the range between 600 and 1000 cases per year, compared to 706 million air passengers carried per year in the European Union⁵. That means a ratio between less than one and one and a half complaints as a maximum in a million of passengers.

The study analyses both the experience in the USA and the situation in Europe. The two analysis provide a reasonable basis for believing that this estimate is close to the actual number. The study has also concluded that there are a number of outstanding issues regarding both the quantitative aspects and the qualitative aspects of the problem worth to be highlighted:

3.1. Quantitative objective: to reduce the number of incidents

The number of events of destroyed, damages or lost mobility equipment of PRM is linked to the correct handling and stowage of mobility equipment onboard aircraft and storage at airports is a fundamental part of the conditions of transport of PRM in order to meet their needs, and a skill for which staff must be properly trained. The objective should remain to allow the PRM to use her/his personal device as long as possible. Ideally, the mobility

⁵ 705.8 million air passengers carried in the EU in 2005.

equipment should be handed over by the PRM and back to him at the door of the aircraft in all those cases where the PRM cannot use their own mobility equipment onboard. Other procedures may be set up when required for safety, security or practical reasons.

The attachment to the 2001 Airline Passenger Service Commitment⁶, signed by the majority of European national carriers (hereinafter referred as to the Airline Commitment) states that signatory airlines must take all reasonable steps to avoid loss or damage to mobility equipment or other disability assistive devices; they will develop their own individual service plans incorporating the Airline Commitment; They will establish staff training programmes and introduce changes to their computer systems to implement the Airline Commitment; and that *"PRM must be enabled to remain independent to the greatest possible extent"*.

The Airport Voluntary Commitment on Air Passenger Service (hereinafter referred to as "the Airport Commitment"), developed by European airports under the auspices of Airports Council International Europe⁷ states that *"Staff will be given appropriate training in understanding and meeting the needs of PRMs"*. The aim for the signatories was to develop their own individual service plans on the basis of the Commitment and to incorporate the appropriate provisions of the European Civil Aviation Conference (ECAC) Document 30 (Section 5)⁸, and the International Civil Aviation Organisation⁹ (ICAO Annex 9).

Point 5.2.3.2 of ECAC document 30¹⁰ states that *"Member States should promote the distribution of a booklet to airline and airport operator personnel on procedures and facilities to be provided to assist PRM, which would contain all the necessary information concerning the conditions of transport of such persons and the assistance to be provided to them, as well as the steps to be taken by them. They should ensure that airlines include in their manuals all procedures concerning PRM"*. Point 5.5 of the same document says *"Member States should ensure the provision at airports of a ground handling service for PRMs comprising: staff trained and qualified to meet their needs (...) the appropriate equipment to assist them."*

However, those voluntary agreements are not always properly honoured. Firstly, few companies and airports in the EU have actually developed their own plans or customer policies to implement those voluntary agreements. Secondly, those that have done so have adopted such different plans or policies that they result in widely differing levels of protection for PRM. Thirdly, those plans and customer policies are not always published, which makes it very difficult for PRM to know what to expect in advance.

In the context of the Airport Commitment, the majority of airports spontaneously provide assistance to passengers with reduced mobility. However, the procedures whereby the PRM is allowed to get to the door of the aircraft in their own wheelchair, or receive their own wheelchair on arrival, vary from airport to airport

⁶ The Airline Passenger Service Commitment: see article 8 and attachment

⁷ ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service and its Special Protocol to Meet the Needs of People with Reduced Mobility.

⁸ ECAC Policy Statement in the Field of Civil Aviation Facilitation (ECAC.CEAC DOC No. 30 (PART I) 10th Edition/December 2006

⁹ Standards and Recommended Practices of the International Civil Aviation Organization (Annex 9 of the Chicago Convention).

¹⁰ See footnote 8.

3.2. Qualitative objective: to minimise the consequences of an incident.

3.2.1. The current lack of a common procedure leading to immediate solutions on the spot.

The extent of damage sustained to mobility equipment can have serious implications not just because of its cost. The issue is also about both the time during which the PRM will be unable to use their equipment, and the long period until compensation is finally paid to them. The difficulties of establishing where to send complaints about damage and appeals for assistance on arrival, in what is often an unfamiliar airport, adds to the time and stress involved in finding even a temporary solution to the practical problems of everyday life when without mobility equipment.

There are currently no international, Community or national legislation on offering immediate assistance to PRM whose mobility equipment has been lost, damaged or destroyed, or on how this immediate assistance should be provided, or what are the essential aspects of such assistance.

The Airline Commitment, does not give details of how related claims for compensation are to be dealt with or what action should be taken on the spot when a wheelchair or other mobility equipment is damaged or lost.

The majority of airports do not have a policy regarding claims for damaged or destroyed wheelchairs or mobility equipment. The provision of compensation and the procedures by which airports provide a replacement vary from airport to airport despite the existence of the Airport Commitment¹¹. This may result in gaps and inconsistencies regarding replacement and compensation for PRM whose equipment was destroyed or damaged during the time when the airport is in charge. This certainly results in uncertainty and confusion for PRM, who never know how to act or to whom they should turn in the event of an accident involving their mobility equipment.

3.2.2. The difference between the nature and the limits of the liability of airlines and the liability of airports.

Traditionally there has been a difference between the nature and the limits of the liability of the airlines and the airports. This difference may cause confusion among stakeholders.

3.2.2.1. Transport of equipment on board an aircraft (airline liability)

Currently, assistance to PRM is provided by air carriers in the framework of the ground-handling. Air carriers can provide the assistance either directly, through a third company or through the airport when it acts as a service provider for the air carrier. Airline liability is currently limited by a miscellany of international conventions¹², Community Regulations

¹¹ See footnote 6.

¹² Those conventions are: 1 -The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 10/1929, abbreviated: the Warsaw Convention (1929). 2 -The Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929; signed in the Hague on 28/09/1955, abbreviated: The Hague Protocol (1955). 3 -The Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28/05/1999, abbreviated: the Montreal Convention (1999).

implementing those international conventions within the EU¹³, and legal or administrative procedures that other countries impose on EU companies that wish to enter their national markets. Companies may waive their limited liability and agree to compensate the full value of the lost mobility equipment or of its repair.

All these legal texts operate according to the same mechanism: presumption of liability of the carrier in case of checked baggage¹⁴. This means that the victim will not have to prove that the carrier was at fault in order for the carrier's liability to be incurred. The only thing the PRM needs to prove is the fact that the damage or loss occurred while the equipment was in the care of the carrier (also commonly referred to as the "period of transportation").

With regard to equipment that was checked in at the check-in counter (always by or on behalf of the carrier) and consequently labelled as luggage, it is quite clear that the period of transportation starts at the moment the check-in procedure starts. The same holds true for luggage that is "a delivery at cabin". Although the equipment can be labelled prior to being actually handed over to the carrier (at the gate or at the door of the aircraft), the liability of the carrier should only be triggered at the moment the equipment is physically handed over to the carrier (be it at the boarding gate or at the door of the aircraft).

3.2.2.2. Handling of the equipment at an airport (airport liability).

Airports have assumed the responsibility for providing assistance to PRM since the Regulation fully came into effect on 26 July 2008. Airport liability is, in principle, not limited¹⁵ and it is established according to national liability/tort law. This fact that the applicable legal framework is different as between airports and airlines results in two big differences in the nature of their respective liability: First of all, as a rule, airport liability is based on a proven fault by the airport managing body. Secondly, whereas airport liability is not limited, airline liability definitely is. This means that, in the case of airports, the PRM will have to prove the fault of the wrongdoer before a court if the airport does not accept the claim (not so if the air carrier is responsible), but can recover the full damages (not so if the air carrier is liable, since its liability is normally limited).

3.2.3. *Compensation: amount and procedure.*

For a long time, PRM organisations have been pressing for unlimited liability in cases of incidents regarding mobility equipment both during handling at an airport or during transfer on-board aircraft. This approach is driven by the high cost of modern mobility equipment¹⁶ and the relatively low limit of current liability for baggage under international conventions, and in particular the Montreal Convention¹⁷, which indeed suggest that the amount of compensation under international conventions may not be adequate in all cases.

¹³ Regulation (EC) N° 889/2002 of the European Parliament and of the Council of 13 May 2002 (JO L 140/02 of 30.05.2002, amending Council Regulation (EC) N° 2027/97 on air carrier liability in the event of accidents.

¹⁴ See Article 1.10 of the REGULATION (EC) N° 889/2002.

¹⁵ Airport liability is not dealt with by any international convention or Community .

¹⁶ for example, electric wheelchairs can cost up to €10000

¹⁷ Up to 1000 SDRs (approximate amount in euros based on the SDR value on 10/03/2008 according to the IMF SDR valuation: €1060).

Most air carriers provide compensation in line with the Montreal Convention. Damages to the mobility equipment above 1000 SDR are at the passenger's own risk, unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires¹⁸. Special insurance for PRM mobility equipment is proposed by only a minority of companies and for a marginal number of airports. The majority of air carriers and of airports do not offer special insurance coverage for damaged or destroyed wheelchairs or mobility equipment.

According to the study, only a minority of EU companies allow PRM to declare that their mobility equipment has a higher value and that this can then be claimed accordingly. Among those companies, some limit the excess value declaration to a given amount above the level of compensation set by international and EU rules, but below the actual cost of the mobility equipment. Several carriers pointed out that declaring a special value involves “a supplement [that] has to be paid by the passenger”.

All stakeholders agree that the cost of providing for the needs of PRM must not be passed directly to PRM. However, only a few have drawn the logical conclusion and compensate the full cost of the damage or loss of the mobility equipment. The Regulation consolidates the principle that assistance shall be provided without additional charge to PRMs¹⁹, but its scope does not include the specific amount of compensation, which is left to be dealt with under the “rules of international, Community and national law²⁰”.

It is worth noticing that for railway transport, Community legislation imposes on railway companies the obligation of full compensation, if the railway undertaking is liable for the total or partial loss or damage of the mobility equipment²¹.

3.2.4. *The inclusion or exclusion of mobility equipment in the definition of "baggage".*

The point of view of PRM organisations and the majority of the Civil Aviation Authorities responding to the survey linked to the study is that mobility equipment should not be regarded as baggage. The purpose of this exclusion is that mobility equipment should not be subject to the airline limited liability rules laid down by the international conventions. As a consequence, airlines and airports should compensate the full cost of the lost mobility equipment or the price of repairing it.

The US Air Carrier Access Act (ACAA) does not give a definition of mobility equipment and does not expressly exclude it from the definition of baggage; however, it does impose full, objective liability without financial limits in the event of an accident involving mobility equipment on all carriers wishing to cover domestic routes in the United States²². The U.S. Department of Transportation intends to amend soon its regulation implementing the US Air Carrier Access Act to make foreign air carriers operating to and from the United States

¹⁸ in line with what it is stipulated by article 22.2 of the Montreal Convention and article 1.5 of Regulation 889/2002.

¹⁹ See Article 8 of Regulation n° 1107/2006.

²⁰ See article 12 of Regulation n° 1107/2006.

²¹ REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on rail passengers' rights and obligations, JO 315/14 of 31.12.2007, article 25.

²² The Air Carrier Access Act (ACAA) prohibits discrimination in air travel against individuals with disabilities. The U.S. Department of Transportation issued a regulation (14 CFR Part 382) implementing the ACAA which explicitly refers to the treatment of mobility aids and devices.

subject to most of the disability-related requirements currently available to U.S. carriers under Part 382, including treatment of mobility aids and assistive devices.

The current Canadian legislation in place concerning PRMs is *Part VII of the Air transport Regulations: Terms and Conditions of Carriage Regulations*²³. The Canadian Transportation Agency seems to define mobility aids as priority checked items of a personal nature, even though the mobility equipment is not excluded from the baggage definition strictu sensu. By doing so the Canadian Transportation Agency does not allow companies working on their territory to apply the limited liability provisions in respect of destroyed, damaged or lost baggage in international conventions to mobility equipment. There is an understanding that to land in Canada, the carrier must respect the Canadian regulations. This understanding seems not to have been challenged by any foreign carrier.

4. AN ANSWER TO THE CHALLENGES: REGULATION N° 1107/2006.

4.1. Quantitative objective: to reduce the number of accidents.

As has been demonstrated in point 3.1 of this Communication, the absence of specific procedures for handling wheelchairs or other mobility equipment and the fact that, training on handling wheelchairs and other mobility equipment is not being provided in all airports or by all airlines, indicate that improvements could easily be made. Regulation 1107/2006 has tackled this shortcoming in the current state of affairs by establishing legal obligations concerning both the necessary procedures and the necessary training for the staff to ensure adequate assistance to PRM²⁴.

Such legal obligations include, inter alia, the handling of mobility equipment at the airport or its transportation on board aircraft. Therefore, the quality and the adequacy of the assistance provided by airlines and air carriers should improve significantly. Specific procedures on check-in and training for staff in the handling of mobility equipment will raise awareness among employers and employees alike and help to reduce even further the number and the gravity of accidents, as well as the personal and economic costs.

4.2. Qualitative objective: to minimise the consequences of an incident.

Point 3.2.1 of this Communication highlights the shortcomings of the current lack of a common procedure which would provide immediate solutions on the spot, in the case of damaged or lost mobility equipment. Regulation 1107/2006 partly covers that legal vacuum. First of all, Annex I of Regulation 1107/2006 specifically includes in the definition of airport assistance the *"temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like for like basis"*²⁵. Secondly, Article 9 establishes a legal obligation for airports to set up *"quality standards for the assistance specified in Annex I and determine resource requirements for meeting them"*.

²³ The Terms and Conditions of Carriage Regulations issued under the authority of the Canada Transportation Act. Part V of the Act deals with the transportation of persons with disabilities. Section 155 of this Part V explains the provisions for a damaged or lost aid.

²⁴ See articles 9 and 11 of the Regulation

²⁵ See Annex I to Regulation n° 1107/2006.

As regards the difference between the nature and the limits of the liability of airlines and airports mentioned in point 3.2.2 of this Communication, article 12 of Regulation 1107/2006 establishes the obligation of compensation *"in accordance with rules of international, Community and national law"*.

The Commission will closely monitor how airports and airlines implement this responsibility in the new context laid down by the Regulation, in order to assess in the future whether the inclusion of a more precise definition of the airport's liability, along the lines of what it is laid down for air carriers in Regulation 889/2002, would be advisable.

With regard to the amount of compensation and the relevant procedure, dealt with in point 3.2.3 of this Communication, the number of incidents regarding mobility equipment is already small and the new protection offered by Regulation 1107/2006 should help to further reduce the number of incidents and their consequences. It therefore seems clear that, if the current rules applying to compensation were to be changed, any economic consequences which those accidents could involve for companies or airports would not have a major economic impact on carriers or airports.

Finally, point 3.2.4 of this Communication deals with the issue of whether mobility equipment should be deemed included in the notion of "baggage". This question is relevant because it is linked to the amount of the compensation, since the limits on liability imposed by international conventions only apply to baggage. Some of the Community's biggest air transport partners have already developed detailed administrative procedures regarding the rights of PRM on this issue. Broadly speaking, those administrative procedures impose objective liability and full compensation on air carriers and sometimes on airports. European air carriers covering transoceanic routes to Canada or domestic flights in the US or Canada do already comply with those rules outside the Community's borders. Some companies have already waived their limited liability through their own customer policy or their internal quality standards.

As these examples show, different options can be envisaged when dealing with the amount of the compensation paid in case of destroyed, damaged or lost mobility equipment in order to approximate it to the real value of such equipment. That goal can be achieved by seeking to interpret or define the notion of baggage so as to exclude mobility equipment, while still ensuring legal coverage of such equipment under the applicable international conventions, or alternatively by removing or reviewing the limits on financial compensation under those international conventions. Finally, airlines and airports might voluntarily waive their current limited liability regarding mobility equipment.

The Commission considers that it is worth addressing this issue at ICAO level with the aim of abolishing or reviewing any financial limit on lost, damaged or destroyed mobility equipment, laid down in the Montreal Convention. The Commission recognises the difficulties linked to re-negotiating an international Convention. However, the fact that some ICAO members have decided to unilaterally amend their rules and impose full compensation for their domestic routes regarding the mobility equipment indicates that such an EU initiative may receive political support.

In the mid-term, the Commission considers that the full application of Regulation 1107/2006 will improve both the monitoring and the enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost mobility equipment, as well as the kind of assistance to be provided on the spot when an incident occurs. Before deciding

whether to put forward a legislative proposal on these issues, the Commission considers it prudent to allow Regulation 1107/2006 to become applicable, before assessing its impact on the likely decreasing of incidents. Whilst taking into account current practices in other countries and having regard to Community legislation governing railway transport, the Commission in the short term encourages airlines to voluntarily waive their limited liability.

5. CONCLUSIONS

- (1) The Commission reminds airports and airlines of their obligation to put in place the quality standards and the necessary training and procedures regarding the handling of mobility equipment and the rights of PRM passengers in the case of an accident related to their mobility equipment, following in particular ECAC document n° 30 and its relevant annexes.
- (2) As regards the amount of compensation and in order to bring it closer to the actual value of the equipment, the Commission will propose to the Council that, with the cooperation of the Member States, the Community launch an initiative within ICAO with the aim of clarifying or defining the term 'baggage' so as to exclude mobility equipment or, alternatively, of abolishing or reviewing any liability limits on lost, damaged or destroyed mobility equipment, in the framework of the Montreal Convention.
- (3) The Commission encourages airlines in the UE to voluntarily waive their current liability limits in order to bring the amount of compensation closer to the actual value of the mobility equipment.
- (4) The Commission will monitor in 2008-2009 the compliance of Member States, air carriers and airports with Community law, including Regulation 1107/2006.
- (5) The Commission encourages the stakeholders to carry out a better and more systematic collection of data concerning claims related to mobility equipment.
- (6) The Commission will include in the Report foreseen in Article 17 of Regulation 1107/2006 a chapter on the rights of PRM whose mobility equipment has been lost, damaged or destroyed. The Commission will then assess the actual developments following the entry into force of Regulation 1107/2006 and the progress of the initiative within ICAO mentioned in point (2) of these conclusions. If the assessment shows that necessary improvement has not been achieved, the Commissions will put forward an appropriate legislative proposal to enhance the existing rights under Community law of air passengers whose wheelchairs or other mobility equipment are destroyed, damaged or lost during handling at an airport or during transport on-board aircraft, including the revision of the current threshold for compensation and the need to better define airport liability.