



30.7.2014

NOTICE TO MEMBERS

Subject: Petition 1274/2013 by Luis Cayo Perez Bueno (Spanish), on behalf of the CERMI committee, on discrimination against disabled passengers by airlines, and Regulation No 1107/2006 (EC)

1. Summary of petition

The petition has been submitted by the Spanish association CERMI (*Comité español de representantes de personas con discapacidad*).

This association condemns the discrimination that takes place against passengers with disabilities, by airlines that often do not allow such passengers to board their flights. It is therefore calling for the revision of Regulation No 1107/2006 (EC).

According to CERMI, this regulation contains some discriminatory points, in particular where it allows airlines to: deny boarding to people with disabilities for security reasons; call for people with disabilities to be accompanied; set a time frame for the request for assistance at the airport. CERMI argues that the revision of Regulation No 1107/2006 should be based on the legislation of the United States, which allegedly protects the rights of people with disabilities effectively.

2. Admissibility

Declared admissible on 3 April 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 July 2014

The precise purpose and objective of Regulation (EC) 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, is to protect these passengers from discrimination and to allow them to travel by air on an equal footing with other passengers. Following a commitment made by the Commission in its report on the application of Regulation (EC) 1107/2006 of April 2011 (COM(2011)166) and in order to further improve the application of the Regulation, the Commission has published, in June 2012, interpretative guidelines to facilitate the application for air transport providers and passengers with disabilities¹. These guidelines were drafted in cooperation with stakeholders and notably with representatives of disabled persons (European Disability Forum) who fully endorsed them. According to statistical data provided to the Commission by national authorities in charge of the enforcement of Regulation (EC) 1107/2006 (NEBs), the number of complaints about problems with the application of the Regulation is overall very low.

Under Article 3 of the Regulation, passengers should not be refused reservation or boarding on grounds of disability or reduced mobility. Article 4 of the Regulation provides for derogations under certain circumstances from the right to transport, notably "*in order to meet applicable safety requirements established by international, community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned*". It follows, that safety requirements are defined by external authorities (and not by air carriers) and are aimed at ensuring the safety of all passengers and staff on board aircraft. The primacy of safety should also be in the interest of disabled passengers and the persons travelling with them.

US air carriers are equally subject to safety legislation (see US Department of Transportation, 14 CFR Part 382, Nondiscrimination on the Basis of Disability in Air Travel, § 382.3 on Applicability, point (d): "*Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation*" and § 382.31 Refusal of transportation, point (d): "*Carrier personnel [...] may refuse to provide transportation to any passenger on the basis of safety ...*").

As regards the issue of accompanying persons, Regulation (EC) 1107/2006 specifies under Article 4 (2), that these are only required to comply with applicable safety requirements. The above mentioned interpretative guidelines provide further explanation on this issue under Q5, insisting on the need for attendants only to meet applicable safety requirements. Furthermore, the Commission, in these guidelines, recommends that if air carriers require disabled persons to travel accompanied, these attendants should be offered to travel for free or at a reduced rate.

Similar requirements exist under the above mentioned US legislation, § 382.35 on Attendants, point (b), which sets out that carriers may require that a disabled person travel with an attendant if this is necessary for safety reasons.

Pre-notification of assistance needs according to Regulation (EC) 1107/2006, Article 7(1) is an essential element in the service chain to allow air transport providers to prepare

¹ SWD (2012) 171 final http://ec.europa.eu/transport/themes/passengers/air/doc/prm/2012-06-11-swd-2012-171_en.pdf

appropriately and to provide the required assistance under the best possible circumstances, which is in the interest of the passenger needing assistance when travelling. The Regulation, however, also provides for adequate assistance in cases where no pre-notification was made under Article 7 (3) specifying that where no notification was made "*the [airport] managing body shall make all reasonable efforts to provide [...] assistance*" in order to allow the passenger to fly. This concept of "reasonable efforts" is further spelt out in Q7 of the interpretative guidelines, notably as regards the accessibility of the means to pre-notify during the booking process (website, telephone) as well as the fact that pre-notification should always be possible without additional charges.

US legislation under §382.33 also specifies the requirement for advance notice in a number of situations, notably when an electric wheelchair or other dangerous goods (e.g. batteries, oxygen, etc.) have to be carried, where an on-board wheelchair is needed or where groups of disabled passengers are travelling together.

Conclusion

The Commission does not, currently, see the necessity to revise Regulation (EC) 1107/2006 in the short or medium term for the following reasons:

- According to available data, NEBs receive only very few complaints about malfunctioning of Regulation (EC) 1107/2006.
- Instead of being considered discriminatory, the Regulation as well as the interpretative guidelines of 2012 were welcomed - notably by European representatives of disability organisations - as a step forward to improve the travelling experience for disabled persons and to allow them to use air transport on an equal footing with other passengers.
- US legislation, to which the petitioner refers as a best practice example, specifies similar requirements as the EU legislation currently in place.