

ERA RESPONSE TO EC COMMUNICATION 2011/166 ON THE FUNCTIONING AND EFFECTS OF REGULATION 1107/2006 CONCERNING THE RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY WHEN TRAVELLING BY AIR

ERA and its member airlines support the rights of passengers with reduced mobility. However, the rights of PRMs (as is the case with all passengers) must at all times not impose on the safety of the aircraft and its operation.

ERA has considered the European Commission's communication on the application of Regulation 1107/2006 and has the following comments on the actions proposed by the Commission in its four axes:

- **First axis: Uniform interpretation of the Regulation**

ERA supports the Commission's proposed action to seek uniform interpretation of the regulation and in particular the establishment of the NEB network, a group of experts from the national enforcement bodies. ERA feels that in order to obtain the maximum benefit for passengers that all stakeholders should be party to this group similar to the APR Consultative Group that the Commission plans to establish for air passenger rights. The issues to be discussed by this group and the Commission i.e. guidelines for interpreting the regulation should not be discussed in isolation without the participation and input from air carriers and other stakeholders of the industry the regulation regulates.

ERA does not support the adoption of "*a common interpretation of safety requirements that can be used to justify denial of reservation or boarding*" as this is not necessarily in the interests of all passengers and crew members. Decisions with respect to safety on board aircraft must always be left to the discretion and judgement of the aircraft commander. ERA agrees that EASA should be consulted on all safety implications, including certification requirements for the emergency evacuation of all passengers and crew, in addition to aircraft operators. ERA is gravely concerned that the Commission "*will see to it that a consolidated list common to all Member States of the reasons that can serve as a basis for refusing to transport PRMs or for requiring the presence of an accompanying person is drawn up and made public.*" Although a list may be of some benefit as guidance to passengers, for information purposes any list developed will not be exhaustive and the final decision as to whether to transport a PRM should always be at the discretion of the commander of the aircraft.

- **Second axis: Improving how the regulatory instruments work in practice**

ERA supports working with the Commission to ensure that better information is provided to the public for the rights of passengers with reduced mobility. Passenger awareness is key to ensuring that passengers know what to expect when travelling. ERA supports the establishment of training programmes to improve the service provided to PRMs and to ensure that the rules are applied efficiently, but training must be both proportionate and realistic. However it must be for all actors in the chain not just for airlines to receive training on their obligations imposed by the regulation.

In respect of pre-notification rules for PRMs ERA supports making pre-notification more effective however ERA believes that PRMs should not be discriminated against by making mandatory pre-notification a regulatory requirement. However, it must be accepted that failure to pre-notify, or to not make fully clear the extent of disabilities in pre-notification, means that the operator cannot guarantee to carry the passenger. Pre-notification ensures that an airline is able make the necessary provisions to carry a PRM therefore individual airlines should be able to set their own pre-notification rules. This requirement is no different from a passenger being required to "pre-notify" by checking in so that the airline can ensure that, for example, suitable catering is loaded. ERA believes that regulatory



requirements should make it clear that an airline cannot be obliged to carry a PRM unless it has received a pre-notification of the PRM's requirement and is able to confirm its ability to accept the PRM.

In general ERA is concerned with the increasing numbers of "self-declaring" PRMs who do not pre-notify and request assistance either on arrival at the airport of departure or at the point of arrival at the destination airport. In many cases late declarations are made by genuine PRMs, but in some cases they are made by people who, whilst able to make their own arrangements, simply choose not to. Late declarations significantly limit the ability of airlines and airports to handle genuine PRMs efficiently and effectively.

In order to ensure the efficient handling of PRMs, ERA would support the development of a set of guidelines for passengers to use to determine whether they fall into a generally accepted definition of a PRM.

- **Third axis: Strengthening the efficacy of the penalties and their supervision by national authorities**

ERA supports the establishment of a common database to follow up the handling of complaints concerning the implementation of the regulation provided that a real benefit can be shown to the passenger. ERA has concerns over airlines being required to appoint a person to be in charge of any dispute resolution on the spot as it is not always the airline that is responsible or cause of the complaint. There are other actors in the chain of the provision of PRM assistance. ERA disagrees that publishing a list of operators that have fallen foul of the regulation will provide additional benefit to passengers and increase compliance.

- **Fourth axis: Handling the issue of medical oxygen**

ERA does not support standardised rules for the carriage of on-board oxygen for personal use. Airlines should be able to set their own rules and conditions associated with the carriage of oxygen including portable oxygen generators on both safety grounds and in the interest of passengers' health (for example ensuring adequate battery life for portable oxygen generators). There are numerous safety reasons why standardised rules should not be implemented:

- not all aircraft are able to provide for the carriage of medical oxygen
- not all types of medical oxygen equipment can be carried
- Remote stations are not all equipped to handle medical oxygen
- The one size fits all application of any rules would not work for smaller regional aircraft

ERA therefore does not support the Commission's proposal for either a voluntary commitment or the creation of binding rules on the carriage of oxygen. An airline should always retain the right to refuse to transport passengers who may be a risk to themselves, other passengers and the safety of a flight.

The Commission's statement that "*passengers who have a vital need for oxygen are either denied access to air transport or left in a situation of uncertainty concerning the conditions and costs of their transport*" is wholly unjustified in that an air carrier should have the right to refuse travel on grounds of safety.

Additional comments

- **Restrictions on accepting reservations from or embarking PRMs on the grounds of safety**



ERA disagrees entirely with the Commissions statement that *“the need to be able to follow safety in the event of depressurisation, turbulence, sudden manoeuvres or an accident might in some cases justify refusing to embark a PRM or limiting the number of PRMs on board or requiring that they be accompanied by another person.”* The use of the word “might” is inappropriate and misleading. It is for the commander of the aircraft to determine if a passenger should be carried. If he or she feels that the passenger is unable to follow safety instructions or could bear a risk to other passengers and crew in the event of unusual, safety related, circumstances then he or she reserves the ultimate right to refuse travel.

ERA agrees that if boarding is denied for safety reasons, this must be done solely for flight safety reasons and that detailed reasons for this should be notified to the passenger. Refusal to carry must not be due to the commercial policy of the airline concerned. ERA believes that if national authorities are required to *“define in detail and publish... safety requirements that can serve as a basis for denying transport ...”* in order to harmonise practices that this should only act as a basis for refusing to carry a passenger and would not be exhaustive

- **Reasons for refusals**

ERA supports that *“any reasons used to justify refusal of transport should be strictly and directly related to flight safety.”* However it has grave concerns over the Commissions statement that refusal of travel should be based on the principle that *“the maximum number of PRMs allowed on a flight depends on the characteristics of the aircraft and should not exceed the number of able-bodied passengers capable of assisting the PRMs in an emergency evacuation. On the basis of this, some authorities estimate that this maximum number corresponds to half of the able-bodied passengers present on the flight.”* On what basis has the Commission chosen to make this statement? The safe evacuation of all passengers is dependent on the number of emergency exits and access to those exits. This is a matter for EASA and aircraft operators not the Commission which does not have the safety competence in this area.

- **Issues related to in-flight assistance**

The Commission states that there are difficulties in implementing the Regulation also as regards in-flight assistance, in particular assistance in moving to toilet facilities, which is the air carrier's responsibility. This is an obligation imposed by the regulation however ERA is not aware of any issues identified by its members in respect of this difficulty. Subject to safety standards ERA members are compliant with this obligation.

- **Problems related to mobility equipment and liability for lost and damaged PRM mobility equipment**

The Commission has stated that there are concerns over the handling of mobility equipment which is fragile, expensive and vitally important to the passenger. ERA accepts that airlines should be responsible for the costs associated with the loss or damage to mobility equipment consistent with an airline's obligations under the Montreal Convention. This liability should not be extended to damage where it is caused by incorrect packaging of the mobility equipment by the passenger. Airlines should have a clear legal right to reclaim the cost of any financial liability payments for the loss or damage to mobility equipment claimed against them by passengers for lost or delayed PRM equipment for events beyond their control from third parties. Airlines should also have the right to refuse to transport mobility equipment on grounds of safety. ERA is not aware of any circumstances in which the right to carry certain equipment free of charge was refused for the reason that this equipment was not necessary for the trip for which assistance was requested.

- **Charges imposed on airlines by airports for PRM assistance**



ERA has concerns over the imposition of the amount charged by airports and the methods imposed and used to calculate these charges. Moreover, the system is open to abuse in that some airports set the charge far higher than others, with no justification presented and no open accounting of how the money is used. ERA feels that the calculation and implementation of charges should be equitable for the service provided and harmonised across the EU.

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