



Legal committee– Topic 2

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¹ This paper reflects the author’s personal views and cannot be considered as the views of ICAO.

THE QUESTION OF SOCIAL SUSTAINABILITY

Factors limiting the effectiveness of regulations concerning the rights of passengers with impaired mobility when travelling by air. The need for a single legal instrument.

1. Social responsibility

For years, access to air transportation for persons with reduced mobility was an area of substantial dissatisfaction. The World Health Organization (WHO) has estimated that more than one billion people live with some form of disability. This constitutes approximately 15% of the world's population. As the population ages, the proportion of passengers with reduced mobility (PRMs) will only grow. Annex 9 to the Chicago Convention defines a passenger with a disability to travel as “any person whose mobility is reduced due to physical incapacity, an intellectual deficiency, age, illness or any other cause of disability when using transport and whose situation needs special attention and the adaptation to the person’s needs of these services that are made available to passengers.”

The profile of PRMs and their level of confidence has changed over the years. PRMs are becoming more confident as they have more experience with novel technologies that improve their quality of life. They are asking for a more personally adapted service and request more autonomy. In addition, whereas in the past the assistance was focused on physical disability, which represents only a part of reduced mobility, nowadays hidden disabilities are also getting more attention. Travelling is especially difficult for people with so-called invisible disorders, such as deafness or autism. The very fact that these symptoms are invisible can lead to misunderstandings, false perceptions and unfair judgments.

The main reasons for PRMs to complain in relation to travel by air are, by order of importance: “Lack of or low-quality assistance by the airline or the airport” (20%), “loss of or damage to the mobility equipment” (17%), “denied boarding of the mobility equipment by the airline” (12%), “slow or delayed assistance by the airport” (10%) and “denial to transport assistance dogs” (10%)².

Existing regulations are not always suitable to tackle the changing profile of the PRM. Moreover, the regulations that are in force are fragmented and not always consistent with each other. They are mainly

² SWD (2021) 417.

geared towards eliminating complaints in national jurisdictions, rather than laying the necessary foundations to achieve accessible and universal air transport in a global and coordinated manner.

As the profile of the PRM is changing, several factors currently limit the effectiveness of the existing regulations as compared to when it was inception. The reasons are that some factors were not taken into consideration when the regulations were drafted, and others had yet to occur.

2. Towards more effective regulations

LACK OF CLEAR DEFINITIONS

The foremost legal shortcoming is constituted by the lack of certain well-described definitions which leaves carriers without guidance. This gives room for different interpretations.

Please check if your State has a clear definitions of PRM. Does it include, for example, obese or pregnant passengers, parents travelling with young children...

The lack of well described definitions can also have an impact on what is considered mobility equipment and what is to be treated as medical equipment. The distinction can be important as under most jurisdictions, airlines must carry medical equipment free of charge whilst the passenger will have to pay for the transport of mobility equipment.

Did your State establish parameters for the acceptance and use of assistance dogs or comfort animal.

Should ICAO issue "ICAO" definitions on this matter? How would they need to be worded?

PRIVACY PROTECTION

If airports and airlines are to give assistance to PRMs, they need to be notified. In a lot of countries PRMs cannot be obliged to provide details of the assistance they will need, hence the service cannot always be tailored to their needs. The reason for the request for assistance should not be important, but in order to assist the PRM one needs to know the disability. *Can ICAO help here to resolve this dilemma?*

DENIED BOARDING

It is noted that incidents of denied boarding continue to occur. *For which reasons does your State allow airlines to refuse to transport PRMs?*

Should ICAO promulgate a standard? What would it be?

COMPENSATION FOR DAMAGED OR LOST MOBILITY EQUIPMENT

When damage or loss events occur to the PRM's assisting device, it can be devastating to the PRMs as these devices are extensions of their body and crucial to the PRM's independence.

What is the nature of the liability of the airport in your State?

According to the Montreal Convention, compensation for lost or damaged baggage, which also includes mobility equipment, is subject to limitations and often does not cover the true costs of the replacement or repair of a mobility equipment which is, most often, tailor-made. When the PRM brings the equipment on board the aircraft, technically speaking the equipment will be treated as hand luggage. The difference between checked-in luggage and hand-luggage is, however, important since under the Montreal Convention, concerning hand luggage, there is no presumption of fault on behalf of the carrier. Unlike with checked-in luggage, the PRM will have to prove the fault of the carrier or his agent. Once the liability of the air carrier is triggered, the carrier can invoke a limited liability for the loss or damage to the equipment. Currently this limitation is set at 1288 SDR.

Is your State taking action to mitigate this limited liability for loss or damage of assisting devices? Should ICAO issue a guidance note of this and how would this look like or should ICAO move in the direction of changing the Montreal Convention?

TIME TO CHECK IN

The size and complexity of airports and the operational procedures of the aviation industry make it more difficult for passengers to actually reach their flights. New large airports have been built and existing ones have been enlarged, resulting in the fact that the distance to walk between the entrance of the terminal and the departure gate, has significantly increased. In many airports, passengers having difficulties to walk longer distances are not allowed to check-in with sufficient time before their flights. To entice passengers to spend their time shopping at the airport, the departure gate is only announced a short time before departure. This makes it virtually impossible for many passengers to reach their departure gate on time and forces them to request PRM assistance.

How to overcome this challenge and should ICAO issue proper guidance? What would this look like?

PATCHWORK OF LEGISLATION

Significant differences also exist between different regulations which results in overlapping legislation. This means that several flights are covered by different legislations which causes difficulties for air carriers and confusion for passengers. Air carriers have a compelling need to know which rules apply to their operations and concern has been voiced with respect to overlapping regulatory requirements. In a business with generally thin profit margins, the cost of complying with multiple or inconsistent consumer protection rules can be detrimental to air carriers

ICAO is deploying accessibility priorities. The 2022 ICAO General Assembly adopted a resolution on accessibility for passengers with disabilities and tasked the Council to develop a work program to reach for a disability-inclusive air transport system.

Should the above mentioned subjects be resolved by ICAO and should ICAO try to develop guidance material, a “global code of conduct”, or issue standards and recommended practices with a view to harmonizing the States’ PRMs regimes?

3. Papers to read are amongst others

EU-COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of Regulation (EC) No 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 SWD (2021) 418.

UK-Visit the website of the UK Civil aviation Authority on reduced mobility.

USA-https://www.transportation.gov/sites/dot.gov/files/2022-07/508_Airline_Passengers_with_Disabilities_Bill_of_Rights_07132022_ADA.pdf

Canada-<https://www.canada.ca/en/employment-social-development/programs/accessible-canada-regulations-guidance/consultation/section1.html>