

FINAL REPORT

In the framework of the EC TENDER TREN/A3/448-2009 on the *“Assessment on rules on penalties applicable to Regulation infringements 1107/2006, concerning the rights of disabled persons and persons with reduced mobility when travelling by air”*

Prepared by the law firm PHILIPPE & PARTNERS

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EXECUTIVE SUMMARY OF THE FINDINGS OF PHILIPPE & PARTNERS REGARDING THE PENALTIES SCHEMES UNDER ARTICLE 16 OF REGULATION 1107/2006 CONCERNING THE RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY WHEN TRAVELLING BY AIR.

Brussels, 17 August 2010

1. Obligations under the Regulation

The Regulation imposes some obligations for air carriers, managing bodies of the airports and/or tour operators.

a) Prevention of refusal of carriage (Article 3 and 4.1)

An air carrier or a tour operator shall not refuse, on grounds of disability or of reduced mobility:

- To accept a reservation for a flight departing from or arriving at an EU airport ;
- To embark a disabled person or a person with reduced mobility (hereafter “**DP&PRM**”) at such an airport, provided that the person concerned has a valid ticket and reservation.

However, they may refuse to accept a reservation from or to embark a DP&PRM:

- 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;
- If the size of the aircraft or its doors makes the embarkation or carriage of that DP&PRM physically impossible.

b) Requirement that a DP&PRM be accompanied by another person (Article 4.2)

An air carrier or a tour operator may require that a DP&PRM be accompanied by another person who is capable of providing the assistance required by that person only in order to meet applicable safety requirements.

c) Information (Article 4.3)

An air carrier or a tour operator shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers,

the safety rules that it applies to the carriage of DP&PRM, as well as any restrictions on their carriage or on that of mobility equipment due to the size of the aircraft.

d) Information about the exercise of a derogation from Article 4 (Article 4.4)

When an air carrier or a tour operator exercises a derogation to the obligations to accept a reservation and/or the embarkation of a DP&PRM or on the requirement to be accompanied by another person, it shall immediately inform the DP&PRM of the reasons of it.

e) Designation of points of arrival and departure (Article 5)

The managing body of an airport shall, taking account of local conditions, designate¹ points of arrival and departure within the airport boundary both inside and outside terminal buildings, at which DP&PRM can, with ease, announce their arrival at the airport and request assistance.

These points of arrival and departure shall be clearly signed and shall offer basic information about the airport, in accessible formats.

f) Notification of the need for assistance (Article 6)

Air carriers and tour operators have to take all measures necessary for the receipt notifications of the need for assistance made by DP&PRM.

g) Transmission of information (Article 6)

When an air carrier or a tour operator receives a notification of the need for assistance at least 48 hours before the published departure time for the flight, it shall transmit the information concerned at least 36 hours before the published departure time for the flight:

- To the managing bodies of the airports of departure, arrival and transit; and
- To the operating air carrier, if a reservation was not made with that carrier.

h) Right to assistance at airports (Article 7)

- *In case of notification*

¹ The designation of points of arrival and departure should be done in cooperation with airport users, through the Airport Users Committee where one exists and relevant organisations representing DP&PRM.

When the DP&PRM arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I of Regulation in such a way that the person is able to take the flight for which he or she holds a reservation.

The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

Moreover, where use of a recognised assistance dog is required, this shall be accommodated provided that notification is made to the air carrier or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.

- *Without notification*

If no notification is made at least 48 hours before the published time of departure of the flight, the managing body shall make all reasonable efforts to provide the assistance specified in Annex I of Regulation in such a way that the person concerned is able to take the flight for which he or she holds a reservation.

The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

i) Right to assistance in the case of transit (Article 7.5)

When a DP&PRM transits through an airport to which the Regulation applies, or is transferred by an air carrier or a tour operator, the managing body shall be responsible for ensuring the provision of the assistance specified in Annex I of Regulation in such a way that the person is able to take the flight for which he or she holds a reservation.

j) Responsibility for assistance at airports (Article 8)

The managing body of an airport shall be responsible for ensuring the provision of the assistance specified in Annex I of the Regulation without additional charge to DP&PRM.

The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance. It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

k) Quality standards for assistance (Article 9)

With the exception of airports whose annual traffic is less than 150.000 commercial passenger movements, the managing body shall set quality standards for the assistance specified in Annex I of the Regulation.

The managing body of an airport shall publish its quality standards.

l) Assistance by the carriers (Article 10)

An air carrier shall provide the assistance specified in Annex II of the Regulation without additional charge to a DP&PRM departing from, arriving at or transiting through an airport to which the Regulation applies provided that the person in question fulfils the conditions set out in Article 7.1, 7.2 and 7.4 (notification at least 48 hours before the published time for departure and the person presents himself or herself for check- on time or the person arrives at a point within the airport boundary designated on time).

m) Training (Article 11)

Air carriers and airport managing bodies shall:

- Ensure that all their personnel providing direct assistance to DP&PRM have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
- Provide disability-equality and disability-awareness training to all their personnel working at the airport who deal directly with the travelling public.

n) Compensation for lost or damaged wheelchairs, other mobility equipment (Article 12)

Where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or transported on board aircraft, the passenger to whom the equipment belongs shall be compensated, in accordance with rules of international, Community and national law.

o) Exclusion of waiver (Article 13)

Obligations towards DP&PRM pursuant to this Regulation shall not be limited or waived.

Article 16 of the Regulation foresees that MS shall lay down rules on penalties applicable to any infringements of Regulation 1107/2006 and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for must be effective, proportionate and dissuasive.

* * *

2. Scope of study

On 24 December 2009 the European Commission (the “**Commission**”) selected the law firm Philippe & Partners for performing a study on “*Assessment on rules on penalties applicable to Regulation infringements 1107/2006, concerning the rights of disabled persons and persons with reduced mobility when travelling by air*” in Europe.

Hereunder, you will find a summary of the results of that study to assess the rules on penalties applicable to Regulation implementation (EC) 1107/2006 concerning the rights of DP&PRM when travelling by air (hereafter referred to as the “**Regulation**”) in each Member State (hereafter referred to as “**MS**”) of the European Union.

* * *

3. Implementation of Article 16 of the Regulation (penalties scheme)

Not all MS have implemented so far the of the Regulation penalties scheme:

- Estonia, Slovenia and Sweden have not yet provided penalties for Regulation infringement ;
- In Slovakia, a penalty could be imposed on the basis of the Consumer Protection Act (which refers to the Regulation as footnotes);
- The penalties scheme will be soon adopted by the Parliament in Poland but has not been yet at the time of submitting the present report.

Moreover, some MS did not fully implement the Regulation penalties scheme.

Three different approaches have been chosen by MS to implement the Regulation:

- MS established a general provision concerning all community rules (generally, in connection with air transport);
- MS established a general provision especially adopted for Regulation infringements; and

- MS established specific (detailed) provisions, providing penalties for different kinds of infringements. Within these MS, some MS provide various penalties in function of different kind of infringements detailed by the national law.

The drawback of the last approach (specific/ detailed provisions) is that not all types of infringements are pursued. For example:

- Bulgarian legislation concerns only the air carriers and the managing body but no penalty is provided in case of infringement by a tour operator;
- Luxembourg established penalties only for some infringements:
 - To any air carrier or tour operator refusing to accept a reservation or to embark DPs or PRMs, subject to the exceptions provided for in Article 4 of the Regulation;
 - To any air carrier not respecting the obligation of information under the Regulation;
 - To any tour operator not providing the safety rules and restrictions available for flights included in package holidays and package tours it organises, sells or offers for sale;
- Romania does not provide any penalty in case of infringement of Article 6 (transmission of information). Article 8 (responsibility for assistance at airports) and Article 11 (training);
- Spain does not provide penalties for each Regulation infringement but only for some of them, namely in case of:
 - Depriving the persons concerned of their legal right to due information on the air transport services offered by the airlines in the computerised reservation systems;
 - Blatantly impolite treatment by the personnel of the company providing the air transport services for passengers;
 - Failure to fulfil the obligation to establish rules for passenger boarding, or in case of failure to respect, without justification, their rights and interests in the event of boarding being refused;
 - Unjustified refusal of free access by the public to the air transport services.

Four years after its entry into force, the Regulation is not yet fully implemented in the whole European Union.

Four MS have not adopted (or have not enforced yet) penalties rules in case of Regulation infringement and some MS imposed penalties only in cases of specific/some infringements (not for all infringements under the Regulation).

4. Diverging penalties amounts – proportionality and dissuasiveness aspects of the penalties schemes

The MS implemented diverging penalties amounts. In order to compare these penalties, it is necessary not to compare the amounts (change in Euro for the MS which are not in the Euro Area) but to compare the amount taking into account the relative economic value of them (in function of the GDP per habitant in the concerned MS).

You will find below a list of the penalties amounts expressed in Euro and expressed in Purchasing Power Standards (“PPS”²) taking into account the GDP per inhabitant³.

Member State	In Euro	In PPS
Austria	up to 22.000 €	up to 17.742 PPS
Belgium	ranging from 200 € to 4.000.000 €	ranging from 174 PPS to 3.478.261 PPS
Bulgaria	ranging from 100 € to 5.000 €	ranging from 244 PPS to 12.195 PPS
Cyprus	up to 8.000 € or 10 % of the annual turnover	up to 8.163 PPS or 10 % of the annual turnover
Czech Republic	ranging from 12.000 € to 200.000 €	ranging from 15.000 PPS to 250.000 PPS
Denmark	amount determined by Courts	amount determined by Courts
Estonia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Finland	amount determined on a case-by-case basis	amount determined on a case-by-case basis
France	up to 7.500 € (15.000 € in case of recidivism)	up to 7.009 PPS (14.018 PPS - recidivism)
Germany	up to 25.000 €	up to 21.552 PPS
Greece	from 500 € to 250.000€	From 490 PPS to 237.500 PPS
Hungary	up to 11.500 €	up to 18.254 PPS
Ireland	up to 5.000 € (or 150.000 € in case of conviction on indictment)	up to 3.817 PPS (114.504 PPS in case of conviction on indictment)
Italy	ranging from 2.500 € to 120.000 € ⁴	ranging from 2.450 PPS to 117.647 PPS ⁵
Latvia	ranging from 71 € to 1.000 €	ranging from 149 PPS to 2.041 PPS
Lithuania	ranging from 300 € to 900 €	ranging from 566 PPS to 1.698 PPS
Luxembourg	ranging from 1.250 € to 10.000 €	ranging from 466 PPS to 3.731 PPS
Malta	ranging from 465 € to 2.350 €	ranging from 596 PPS to 3.013 PPS
Poland	ranging from 50 € to 2.000 € (to be adopted)	from 82 PPS to 3.279 PPS (to be adopted)

² PPS is an artificial reference currency unit that eliminates price level differences between countries. One PPS buys the same volume of goods and services in all countries. This unit allows meaningful volume comparisons of economic indicators across countries.

³ The amounts expressed in PPS are based on the “GPD per inhabitant for 2009” published by Eurostat (21.06.2010).

⁴ The amount will be updated as of 1st January 2011

⁵ The amount will be updated as of 1st January 2011

Portugal	ranging from 150 € to 250.000 €	ranging from 192 PPS to 320.513 PPS
Romania	ranging from 330 € to 332.000 €	ranging from 733 PPS to 737.778 PPS
Slovakia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Slovenia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Spain	ranging from 4.500 € to 4.500.000 €	ranging from 4.369 PPS to 4.368.932 PPS
Sweden	NO RULES ADOPTED YET	NO RULES ADOPTED YET
The Netherlands	up to 74.000 €	up to 56.923 PPS
The United Kingdom	up to 6.024 €	up to 5.149 PPS

Expressed in relative economic value, it appears that the amount of the penalty varies from 82 PPS to 4.368.932 PPS (or, expressed in Euro, from 50 € to 4.500.000 €).

Penalty amounts greatly vary from one MS to the other. Therefore, the penalty is greatly diverges depending on where the offense is committed.

In the MS imposing low penalties (especially in Lithuania, Latvia, Malta, Poland, Luxembourg, Ireland, the United kingdom, France and Cyprus), the implemented regime is not dissuasive.

However, all MS choose to provide a large scale of penalties allowing to impose a proportional penalty depending on the circumstances.

5. Common approaches and divergences

5.1. Common approaches

Penalties schemes of MS are based on a fine regime. However, some MS provide for other types of sanction:

- Austria, Belgium and Denmark provide that an imprisonment could be sentenced (especially in case of aggravating circumstances) additionally or in the place of the penalty. However, because the imprisonment of a legal person is impossible, it seems that the fine is almost always the only penalty possible;
- The Netherlands provide for the periodic publication of a list of companies which were given an administrative fine.

* * *

Generally speaking, the provisions of law determine the amount of penalty with a maximum (and often a minimum) threshold.

The two MS that did not determine any amount are Denmark and Finland. In Denmark, the determination of the penalty is an exclusive competence of the Criminal Courts and in Finland (which provides a general provision concerning infringement to any duty [i.e. not only in connection with air travel]), penalty amount is determined on a case-by-case basis.

5.2. Diverging approaches

The amount of the penalties established by national law greatly varies from 82 PPS and 4.368.932 PPS:

- The MS imposing the lowest penalty is Lithuania (ranging from 566 PPS to 1.698 PPS);
- The MS imposing the highest penalty is Spain (ranging from 4.369 PPS to 4.368.932 PPS).

Nine MS impose low penalties (maximum amount under 10.000 PPS): Lithuania, Latvia, Malta, Poland, Luxembourg, Ireland, the United Kingdom, France and Cyprus.

Five MS impose penalties whose maximum amount ranges from 10.000 PPS to 60.000 PPS: Austria, Bulgaria, Germany, Hungary and the Netherlands.

Four MS impose penalty with a maximum amount higher than 100.000 PPS: Italy, Czech Republic, Portugal and Romania.

Two MS impose high penalty (maximum amount over 3.000.000 PPS): Belgium and Spain.

* * *

Three different approaches were chosen by MS:

- Seven MS established a general provision concerning all Community rules (generally, in connection with air transport);
- Six MS established a general provision especially adopted for Regulation infringements; and
- Nine MS established specific (detailed) provisions providing penalties for different kinds of infringements. Within these nine MS, seven MS provide

various penalties in function of different kinds of the Regulation infringements detailed by national law.

The first two approaches (setting up a general provision for all rules in connection with air transport or for all Regulation rules) allow the full Regulation implementation.

The last approach (setting up specific/detailed provisions) allows specifying the obligations under the Regulation in national law. However, this approach has the drawback of entailing the risk that not all types of infringements are pursued.

* * *

6. Analysis of procedural rules on penalties

Different approaches were chosen by MS concerning the procedural rules on penalties:

- The authority that imposes the penalty varies from MS to MS:
 - The National Enforcement Bodies (“NEB”) as in Czech Republic, Germany, Italy, Lithuania and Poland; or
 - The competent Minister as in Cyprus, France and Luxembourg; or
 - A Court as in Denmark and Malta; or
 - Another authority as in Romania where the identification of Regulation contravention and the application of the penalties are the competence of the National Authority for Disabled Persons.
- The hearing of the offender’s explanations (or objections) is especially provided by numerous national laws as in Bulgaria, Cyprus, France, Germany, Hungary, Ireland, Luxembourg, Poland and the Netherlands;

However, the hearing of the offender should exist, in principle, in all MS, even where the penalty is not a criminal fine (the criminal penalties shall comply with the rights of the defendant as provided by the European Convention of the Human Rights but not administrative ones). Unfortunately, the NEBs did not communicate to us further information to take relevant conclusions concerning the hearing of the offender;

- A possibility to appeal against the penalties decision is especially provided by some MS as Bulgaria, Czech Republic, Italy, Lithuania, Luxembourg, Malta and Poland;

It seems that the possibility of an appeal against the penalties decision exists in all MS but all the NEBs did not confirm this point;

- Three MS chose to impose a deadline to pursue an infringement:
 - In Bulgaria, the administrative penalty shall be drawn up within three months following the detection of the offender, or following the elapse of two years since the infringement;
 - In Lithuania, the protocol of administrative violation shall be composed no later than six months after the infringement took place;
 - In the Netherlands, the administrative decision to impose a penalty shall be made within the time limit prescribed within a reasonable period of time.
- Two MS chose to impose a penalty only after a first order to comply with the Regulation and only in case the Operator does not comply with that order, as in Finland and Ireland.

7. Effectiveness of the penalties – practical approach

The majority of MS adopted national legislation in order to implement the penalties schemes according to Article 16 of the Regulation. However, the most important finding of the study is that these penalties are not applicable by MS in case of the Regulation infringement.

The NEBs mentioned various cases of complaints related to the refusal of identification of passengers as DPs and PRMs, lack or inappropriate assistance to the DPs and PRMs, absence of assistance at the airport, Operators refusing carriage of materials, wheelchairs, provide assistance within the airplane, etc.

Even though NEBs admit that there were clear cases of Regulation infringement, they did not take any further steps in order to apply penalties. The main reason invoked by the different NEBs in order to justify the absence of penalties is that satisfaction was given to the victim.

The conclusion of our study on this point is that many MS implemented the penalty schemes but these schemes are not uniform to all MS. Firstly, the Regulation provisions vary substantially from Ms to MS. Furthermore, some penalties are (theoretically) very severe, implying huge amounts of penalties, other are lower. The nature of penalties is also different and it consequently implies a different application by the judges. It is much more difficult to bring criminal charges against an Operator than civil and/or administrative charges, which could be more easily applicable by the judges.

Furthermore, the study reveals that the penalty scheme is actually not applicable by the MS. The NEBs seem aiming at finding an acceptable solution between the parties and do not intend to take further steps in order to apply the penalty scheme. Specific and clear guidelines shall be addressed on this point.

Therefore, the penalties scheme adopted by the MS is not effective. The study reflects that the NEBs do not have an appropriate interpretation of Article 16 of the Regulation. The penalties provided by MS shall be applicable in case of Regulation infringement independently of the fact that DP&PRM undergo damages or obtain indemnification.

1. INTRODUCTION

1.1. SCOPE OF SCRUTINY

1. On 24 December 2009 the European Commission (the “**Commission**”) selected the law firm Philippe & Partners for performing a study on *“Assessment on rules on penalties applicable to Regulation infringements 1107/2006, concerning the rights of disabled persons and persons with reduced mobility when travelling by air”* in Europe.

The purpose of the study is to assess the rules on penalties applicable to the Regulation implementation (EC) 1107/2006 concerning the rights of disabled persons (“**DPs**”) and persons with reduced mobility (“**PRMs**”) when travelling by air (hereafter referred to as the “**Regulation**”) in each Member State (“**MS**”).

It consists also in the analysis of the role of body or bodies responsible for Regulation enforcement (“**NEBs**”) and of other bodies involved in the assistance of DPs and PRMs, such as tour operators, air carriers, assistance services and managing bodies (hereafter referred as “**the Operators**”), the rules regarding liabilities, penalties and the procedures under each jurisdiction.

Namely, the study aims at:

- Analysing all penalties schemes;
- Highlighting common approaches and divergences in the scrutinised MS;
- Determining to what extent such differences or practices affect or reinforce the Regulation implementation;
- Describing the different types of penalties, their strictness and their utility;
- Concluding whether penalties undertaken by all MS are compliant with Article 16 of the Regulation and therefore if they are effective, proportionate and dissuasive;
- Describing the practical approach of the implementation of such penalties (how often they are applied, which are the amounts, for which kind of infringement, etc);
- Describing and analysing the procedural rules adopted by MS in order to implement the penalties schemes including the type of jurisdiction, the rapidity of the decisions, the possibility of appeal;
- Identifying the NEBs responsible for the enforcement of the Regulation, their role as well as their experience in implementing the Regulation;
- Analysing the way each obligation contained in the Regulation is fulfilled and how the NEBs handle the implementation of such obligation in practice;
- Seeking how DPs and PRMs are indemnified in case of damages (including analysing the law and the procedure applicable in such case); and
- Assessing whether a further European approach is recommendable.

1.2. METHODOLOGY

2. The first step is the Regulation analysis with the purpose to identify all the obligations which shall be sanctioned by each MS. The purpose is to determine if one or several types of penalties are applicable to all infringements uniformly or if the type of the penalties varies in function of each infringement in practice. The first step also aims to determine what obligations under the Regulation the Operators do not respect. This process is important: if the content of the obligations is not clear or subject to discussion, it will be *a fortiori* more problematic to impose penalties.

3. The second step is the analysis of penalty schemes notified by each MS as well as the legislation adopted or to be adopted. This step includes translation of different notified texts and the researches of all relevant legislation mentioned in these notifications.

4. Annex 1 of this report contains the text of the legal basis for each rule (both substantial and procedural) on penalties⁶.

5. For the purpose of performing the study, we addressed a detailed legal questionnaire to the NEBs for each country. In a nutshell, the legal questionnaire contained detailed open question on elements allowing the understanding of:

- How different obligations under the Regulation are fulfilled in practice and whether they are sanctions applicable by MS in case of non fulfilment;
- How the NEBs supervise the respect of such obligations in practice and how the NEBs consider their role;
- What are the experience/difficulties faced by the NEBs and how, to their knowledge, cases of infringement were solved in practice (procedure, penalties, etc);
- How the DPs and PRMs can be indemnified in case of damage/Regulation infringement; and
- The liability of NEBs, tour operators, air carriers, assistance services and managing bodies in all possible aspects (legal basis for liability, content/elements of liability, questions on proceedings, etc.).

The questionnaire contains three parts.

The first part, “*Part A The implementation of the obligations issued from the Regulation*” concerns specific questions designed to understand the way each obligation under the Regulation is implemented and supervised by the NEBs and which penalty corresponds

⁶ The only MS for which we do not have any information concerning the legal basis is the Greece.

to infringement of such obligation as well as the practical experience of NEBs in violation of these obligations.

The second part, *“Part B General questions related to liability and procedure”* was addressed with the aim to have a good understanding of the way DPs and PRMs can obtain compensation under each jurisdiction. The purpose was to distinguish the two different issues: the penalties, applicable in case of Regulation infringement, paid to the Administration and the indemnities paid directly to the DPs and PRMs in case of damage. To this end, the questionnaire aims to understand and compare in each MS the legal basis for liability, content/elements of liability, questions on proceedings, etc.

The third part, *“Part C General questions related to penalties”*, aims to understand and compare in each MS, the legal basis for penalties in case of Regulation infringement content, type of penalties, conditions under which such penalties are applicable, questions on proceedings and the practical experience of the NEBs related to the penalties infringements.

Finally, the questionnaire contains a part on *“Additional Comments”*, which is an optional question with the purpose to give the opportunity to different NEBs to formulate their eventual remarks on achievements, difficulties and suggestions in implementing the rules under the Regulation, as well as giving their general view on the condition of DPs and PRMs. This question aims to analyse the situation beyond the limits of the Regulation, to have the personal view of NEBs and to determine whether a further European approach is recommendable (assessing the weaknesses of the current systems in each MS, points to be improved, etc.).

You will find the detailed legal questionnaire and the processed answers in Annex 2 and Annex 3 of this report.

6. Following the reception of the answers to the legal questionnaire, the second step was a preliminary analysis of aggregated answers. The purpose was to address to our correspondents some clarifications and/or additional questions related to their answers.

7. As mentioned above, a comparative analysis of aggregated responses is integrated in Annex 2 of this report. We tried, at the same time and when possible, to provide the same level of information, per MS, for each piece of information. As each NEB had sometimes its own understanding of how to respond to the questions, it was not always possible to align the level of all answers. This explains why, for example, in some MS, some information is provided, whereas it is not the case in others. In the table of annexes, we identify the latter cases by mentioning “not specified” or “not applicable”.

8. The study is also completed by researches and personal contacts.⁷ The relevant conclusions concerning the application of the Regulation (practical approach) and the functioning of the different NEBs constitute the sections 2 and 3 of this report.

9. In parallel to the answers of the questionnaire, we analysed the notifications received by the Commission in order to compare them with the answers of the NEBs. Furthermore, we performed researches on all relevant legislations mentioned in these notifications and on some answers to the legal questionnaire.

10. Finally, in order to compare the different penalties adopted (or to be adopted) by MS and to determine whether they are persuasive and proportionate it is important to take into account the economic differences between MS. Consequently, before making a comparative analysis, we adjusted the amounts in function of the economic level of each MS.⁸

1.3. STRUCTURE OF THE REPORT

11. This study contains two parts: a report and a summary of the penalties schemes.

The first part of the study contains a report composed of three chapters:

- Understanding of the application of the Regulation;
- Understanding of the functioning of the different NEBs; and
- Understanding of the different implemented penalty regimes.

The first part of the report analysis the way the different obligations under the Regulation are respected by the MS. The second part aims to understand the organisation and the functioning of the different NEBs. The analysis of each obligation under the Regulation and the role of the NEBs is of an utmost importance as it will allow to:

- Identify whether the obligations arising from the Regulation are respected in the MS;
- Identify the complaints and the cases which are addressed in relation to each obligation under the Regulation;
- Identify the role of the NEBs in the complaint process; and finally

⁷ For example, we will refer to some developments in *the Consultation on the enforcement of Regulation (EC) No. 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air* (a draft Statutory Instrument) prepared by the Britain Department for Transport; the text of Shawcross & Beaumont published in the famous book *Air Law* (Butterworths, issue 123, VII-702) and the article “Persons with Disabilities and Their Right to Fly” written by Norberto E. Luongo from the Mc Gill Institute of Air and Space Law (published in the revue *Air and Space Law* in 2009 (pp. 149-175).

⁸ For example, 100 € do not have the same value in Romania as in UK.

- Understand how penalties are applied in these cases and determine if the penalties are proportional, effective and dissuasive.

The third and last part of this report is the analysis of the different implemented penalty regimes. This part is divided into five chapters:

- Firstly, it contains a general scope of the different implemented regimes. Within this chapter we detailed the MS which implemented the Regulation and the way they implement it;
- Secondly, it contains a technical part setting out the legal basis (both substantial and procedural) on the penalties rules;
- Thirdly, the analytical part on substantial penalties rules contains a section concerning the amount of the penalties (which are compared in function of the gross domestic product “GDP” per inhabitant in MS) and a determination of the common approaches and the divergences among the various regimes;
- Fourthly, the analytical part on procedural penalties rules is an understanding of the common approaches and the divergences between the various regimes; and
- Finally, this report contains the relevant conclusions on the compliance, effectiveness, proportionality and dissuasiveness of the implemented penalty regimes.

The report contains three annexes:

- Annex 1 - Texts of the penalty rules: a document which contains all legal basis of the penalties rules in English language and for most MS in the original languages;
- Annex 2 - Application of the Regulation by the Members States: a document which contains a comparative scrutiny of aggregated responses;
- Annex 3 - Legal questionnaire to the NEBs.

1.4. PROBLEMS ENCOUNTERED AND SOLUTIONS FOUND OR SUBMITTED FOR DISCUSSION WITH THE COMMISSION

12. The difficulty encountered for the performance of this study was the delayed reception of answers and the lack of exhaustive answers from NEBs. Only some NEBs answered within the deadline initially proposed. We granted several times additional deadlines to the majority of NEBs. The NEB of Luxembourg was not able to complete the entire questionnaire due to lack of time. We performed the study on the penalties concerning Luxembourg through our personal researches.

2. UNDERSTANDING OF THE APPLICATION OF THE REGULATION

2.1. ACCESS TO TRAVELLING BY AIR OF DPS AND PRMS

2.1.1. Identification of DP's and PRMs

2.1.1.1. Categories of DP's and PRMs

13. The first issue of the study is to assess how in practice DP's and PRMs are identified with regards to the Article 2(a) of the Regulation.

Generally speaking, according to the NEBs, the following categories of passengers are considered as DP's and PRMs:

- Persons with physical disability (sensory or locomotors, permanent or temporary);
- Persons with intellectual disability or impairment;
- Persons with reduced mobility due to age reasons;
- Persons with reduced mobility due to weight reasons; and
- Persons with particular situation requiring assistance.

14. The definition of each category varies in each MS: some countries have an extensive approach, other a restrictive approach of identification of DP's and PRMs.

Hence, in Greece, France, Sweden and the United Kingdom persons who have a reduced mobility due to weight reasons are not considered as PRMs and therefore cannot benefit from the assistance exempted of charges. The Swedish and British NEBs stress that *a priori*, obese people are identified as PRMs only if the obesity has as effect to reduce their mobility. Obese passengers without any other reason of reduced mobility are therefore excluded. In Italy, the NEB has generally a wide interpretation under the following reserves: passengers due to age reasons and weight reasons are examined on a case-by-case basis.

Other countries have a very wide view on identification of passengers as DP's and PRMs. Therefore, the Finish Safety Transport Agency stresses that all persons who need assistance to move are generally considered as PRMs. The French NEB considers that the Regulation remains very general with regards to the age reasons and that therefore it might be applicable not only to old persons but also to unaccompanied children ("**UM**"). Airlines companies in France took measures concerning the transportation of young children travelling alone. In Hungary are accepted and considered as PRMs passengers with any cause of disability. In Sweden, the assistance is provided to any person with an individual reason which is also taken into consideration (i.e. seating near to the toilet facilities).

According to the Belgian NEB, the identification of DPs and PRMs is an important issue as, according to them, the definition of DP and PRM in the Regulation is too vague. It considers that with the current definition there is a high risk of abuse from passengers willing to benefit from this assistance based on a simple declaration. The NEB considers that the definition shall be harmonised at the UE level in all MS.

The British NEB stressed that in the United Kingdom, Operators are not obliged to identify DPs and PRMs, which opens the door to a large category of passengers.

In Luxembourg, there is no general rule concerning the identification of the passengers as DPs and PRMs. This question depends on the internal regulation of the airline.

15. Our study reveals one issue in Slovakia. The questionnaire was filled by different managing authorities of the airports of Slovakia where the NEBs have no supervision with regards to the application of the Regulation and were not able to answer the questionnaire. Therefore, according to the Operational Manager of the Airport of Bratislava⁹ persons with any cause of disability and impairment do not benefit at Bratislava Airport from the assistance imposed by the Regulation. However, according to answers provided by the deputy CEO of the airport, all categories benefit from such assistance.

16. Another question examined is whether separate criteria are used in order to identify PRMs. This category is probably the most difficult to define and these passengers can be exposed to refusals. At this stage, the airlines, tour operators and service providers have a huge power and responsibility on informing passengers about their rights under the Regulation. The PRMs are very vulnerable as not all people with reduced mobility might be informed that as DPs, they also have the right to benefit from a special assistance. The study reveals that, in principle, there are no separate criteria used in order to accept passengers with reduced mobility to benefit from the rights under the Regulation. However, the cases of complaints analysed further in the report show that this is not the case and that PRMs are in a much more vulnerable position.

2.1.1.2. Formalities required for identification

17. Another issue examined with regards to Articles 1 and 2 of the Regulation is the criteria used by the different MS in order to identify DPs and PRMs. Notably, the study aims at identifying whether Operators require formalities in order to identify a passenger as a DP or as a PRM. Heavy procedures and formalities might have as consequence to exclude a certain number of passengers from benefiting from the Regulation.

⁹ Letisko M.R. Stefabika-Airport Bratislava, a.s. (BTS), 82311 Bratislava 216. For further information, please refer to the following web site: <http://www.airportbratislava.sk/index.aspx?lang=1033>.

According to the different NEBs, the passengers are identified by the Operators as DPs and PRMs under a simple declaration. In some specific cases, Operators require other formalities. In Czech Republic and in France formalities are required only in case of complaints and administrative penalties. It is an *a posteriori* formality in order to confirm real passenger's situation.

In Austria, issues a specific certificate Frequent Medical Travelling ("**FREMEC**") for the DPs and PRMs travelling frequently.

There is no general system of identification in Malta. The DPs and PRMs can, in principle, be accepted for reservation and/or embarkation if they declare themselves as such. However, the DPs passengers might be required to fill in a request form and to be exposed to a physical observation. For some reasons which were unrevealed, airlines may request passengers considering themselves as DPs and PRMs to submit a medical information form. It appears that in Malta there is no uniform and objective principle in order to identify the passengers as DPs and PRMs.

In Romania, according to the NEB, DPs and PRMs are identified under simple declaration. They shall present a certificate of disability only in case these passengers require extra-services (those which are not obligatory under the Regulation). However, one case of complaint analysed at the point 2.1.2.3 reveals that, in practice, this is not respected by the Operators.

In Luxembourg this question is settled by the policy of each airline. Some airlines ask formalities, such as medical certificate.

Finally, in Slovakia medical documents are required in order to confirm the permanent disability.

18. The requirement of certificates on permanent disability is irrelevant, as it does not have any particular importance for the Operators in order to comply with the obligations issued from the Regulation.

The study reveals that even though according to the majority of the NEBs, the definition of the DPs and PRMs has rather a wide application, in practice, some MS require formalities that are not appropriate and settled on a objective basis. Furthermore, the NEBs shall avoid situations where airlines are setting their own internal rules about the identification, criteria and formality required to DPs and PRMs.

It appears that there is no general and uniform understanding and therefore application of the Regulation by the MS as regards the identification of DPs and PRMs.

There is a clear need of a guideline (as detailed as possible) addressed to all MS in order to identify the persons who shall benefit from the Regulation and the criteria used to

this end.

2.1.1.3. Refusal of identification notification

19. According to Article 4.4 of the Regulation: *“When an air carrier or its agent or a tour operator exercises a derogation under paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons therefore. On request, an air carrier, its agent or a tour operator shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.”*

This article does not foresee the situation in which the Operators refuse to identify passengers as DPs and PRMs. Therefore, our study aims at determining from a practical approach, whether the Operators have any obligations to motivate their refusal and if yes to whom. This question is crucial at all stages (from the refusal of identification until the problems encountered during the assistance provided to the DPs and PRMs) as this is one important way through which the NEBs, responsible for the supervision of the Regulation, can be informed about the irregularities, violations and procedures to improve.

20. There are generally two approaches adopted by the Operators:

- In Belgium, Cyprus, Hungary, the Netherlands, Poland and the United Kingdom, Operators do not have any specific obligation of notification in case of refusal of identification as DPs and PRMs;
- In other MS, the Operators have the obligation to notify in writing to the passengers the reasons of refusal. In Spain, the Operators have also the obligation to report the refusal to the NEBs. In Finland, Italy and Malta, the Operators shall report the case of refusal to the NEB only if requested. In Luxembourg airlines might have to provide explanation upon request.

The question whether the Operators refusing assistance on the grounds of refusal identification of passengers as DPs or PRMs have any obligation to report the reasons of such refusal has a high importance in practice. Such reports will actually allow the NEBs and the managing bodies to be informed about any irregularity, to issue appropriate guidelines on a specific point and therefore to better supervise the correct application of the Regulation.

2.1.1.4. Complaints and procedures concerning the identification refusal

21. Several cases of complaints with regards to the identification refusal of passengers as DPs and PRMs have been revealed by the NEBs.¹⁰

In Latvia, an Operator refused to inform the passenger within five working days as of the request. The Latvian NEB had the opportunity to detect the fact that the obligation of notification had to be implemented in the Operator's procedures.

The Danish NEB was also informed about some small cases/misunderstandings. These cases were solved between the parties.

In the United Kingdom some airlines have a policy requesting the PRMs to provide proof of their need for an appropriate seat. Equality and Human Rights Commission ("EHRC"), which is the complaint handling body for the United Kingdom, had to interfere in order to find conciliation between the passengers and airlines.

22. Generally speaking, the study reveals that in the majority of MS there are no special procedures and, namely, a less expensive jurisdiction of proximity offering rapidity in cases of complaints following Regulation infringements. The passengers shall follow the ordinary civil procedure in order to obtain compensation.

However, in some MS, either the NEB, either the EHRC are entitled to interfere and to offer advice and/or conciliation to passengers:

- In Belgium, there is a mediation procedure, where a mediator, independent of both air carriers and the CAA will help the parties to express their points of view and to find a constructive solution to their problem;
- In Malta, in case of a possible of Regulation infringement, the NEB is entitled to investigate the case. If there is sufficient evidence of an infringement, the NEB will transmit all the information to the Prosecutor. In such case, a criminal procedure will be initiated by the Prosecutor before the Courts of Magistrates. There is the possibility of appeal before the Criminal Court of Appeal;
- In the Netherlands, if the complaint is lodged to the NEB, the latter will ask the Operator to give a written explanation for the refusals; and
- In the United Kingdom, passengers may seek the EHRC. According to the British NEB, EHRC handles approximately 4.000 calls per year (including advice demands) with regards to the Regulation. The EHRC does not interfere into the

¹⁰The name of the Operators, the amount of the compensations and even the settlement of some cases were not revealed by the NEBs. For this reason, the cases analyzed in this reports are limited to the information available.

complaint handling process which is always initiated by the passenger. EHRC may offer conciliation in order to resolve a complaint or support an individual's case in Court. According to the NEB, seven cases have been resolved through conciliation.

These cases reflect the fact that in case of any Regulation infringement combined with passengers' satisfaction, there is no further action from the NEBs in order to apply penalties. Furthermore, it appears that the NEBs and EHRCs have a major role to play in the conciliation and the compensation of the DPs and PRMs as in practice, they are the ultimate bodies to which such complaints are made. Considering the long and expensive ordinary procedures available in MS, passengers have the tendency not to pursue further their complaints. Hence, important internal organisation of the NEBs and the measures they will take are decisive for the respect of the Regulation.

2.1.2. The refusal of DPs and PRMs

23. According to Article 4.1a and b of the Regulation: *"Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:*

(a) 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;

(b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible."

The study aims at determining for which reasons, in practice, Operators in different MS can refuse DPs and PRMs.

At this point, a distinction is made between the two situations: the refusal of DPs and PRMs at the moment of reservation and their refusal at the moment of embarkation.

2.1.2.1. The refusal at the reservation

24. Generally speaking, the Operators refuse the DPs and PRMs for a reservation for the following reasons:

- In order to meet applicable safety requirements such as: Injured people; The requirement of Oxygen or wheelchair batteries and other types of equipment

containing parts considered as dangerous goods; EU OPS¹¹ (i.e. seating not allowed at emergency exit, etc); Health and safety rules (i.e. passengers may not be carried in steps or on board very small aircraft types); Manual lifting which is impossible due to health and safety reasons;

- Due to the size of the aircraft or its doors which makes the embarkation physically impossible: i.e. Aircrafts as Fleet CRJ and DH 8-300 which have only 50 seats, ATR 42, Jetstream 32; When the DPs or the PRMs require wheelchairs which make the board impossible because they are heavy for a small aircraft; Special disability requiring large place for the legs; Inexistence of on-board wheelchairs related to the size of the aircraft; Completely immobile passengers moving only with the help of a wheelchair and who require assistance at all times from arrival at the airport to the seating in the aircraft or, if necessary, in a special seat fitted to their specific needs;
- Due to the lack of appropriate personnel: i.e. Personnel available to assist during an emergency evacuation; In case the passenger with a wheelchair might require the assistance of a cabin crew member during all flight;
- Due to the lack of appropriate aircraft equipment: Appropriate equipment missing such as special toilets;
- Due to an increased number of DPs or PRMs on the same flight: If the number of DPs and PRMs exceeds the number of non-DPs and PRMs.

The most common reason of refusal of reservation in all MS is safety requirements and an increased numbers of DPs and PRMs on the same flight.

In Belgium, Hungary, France and Lithuania, DPs and PRMs can also be refused on boarding due to a lack of personnel which is considered as a security reason by these MS. This does not comply with the exception provided at Article 4.1.a of the Regulation but is directly related to the internal organisation of airlines and their needs for productivity.

According to the Polish NEB, the number of DPs and PRMs on board of specific aircrafts may be limited in accordance with operation manuals of the air carriers. However, the number of DPs or PRMs cannot represent a separate and sole reason for refusal. Flight captains are also entitled to exclude some passengers if it appears that the behaviour of such persons can endanger the safety of other passengers. This refers to safety rules applicable to all passengers, including DPs and PRMs.

25. Somme MS elaborated internal rules on the security of DPs and PRMs, namely:

¹¹ All EU Regulations determining minimum safety requirements.

- In Spain, the Operative Circular 04/01 of 22 June 2001 limits the number of DPs and PMRs to the number of available persons able to assist during an emergency evacuation;
- France issued the Instruction of 26 June 2008 concerning the technical regulation and administrative procedures applicable to air commercial transportation in order to help the airlines drafting their exploitation manuals;
- In Belgium, the Circular CIR/OPS-04 of General Direction of the Air Transportation of 12/06¹² was issued with the purpose to determine the modalities of transportation by air of PRMs. The Circular is applicable to the Belgian Operators of commercial air transportation. The Circular operates a classification of PRMs¹³ based mainly on IATA Resolution 700 and recommended Practice 1700 in order to improve services supplied to the their needs. The Circular operates a distinction between PRMs travelling on an individual basis and PRMs travelling as a group in order to limit the number of PRMs on board. In case of PRMs travelling on an individual basis limitations are operated in function of categories:
 - The total number of WCHS, WCHP, WCHC, STCR, BLIND, BLIND/DEAF on board may not be greater than half of the floor level exits available in the passenger cabin;

¹² For further information, please refer to the following website:
www.mobilite.fgov.be/data/aero/OPS04.pdf

¹³ Passenger whose mobility is impaired, due to clinical cases with medical pathology in progress, being authorized to travel by medical authorities. Such passenger usually has social coverage in relation to the illness or accident in question ("**MEDA**");

Passenger who can only be transported on a stretcher. Such passenger may or may not have social protection or specific insurance ("**STCR**");

Passenger who can walk up and down stairs and move about in an aircraft cabin, but who requires a wheelchair or other means for movements between the aircraft and the terminal, in the terminal and between arrival and departure points on the city side of the terminal ("**WCHR**");

Passenger who cannot walk up or down stairs, but who can move about in an aircraft cabin and requires a wheelchair to move between the aircraft and the terminal, in the terminal and between arrival and departure points on the city side of the terminal ("**WCHS**");

Passenger with a disability of the lower limbs who has sufficient personal autonomy to take care of him/herself, but who requires assistance to embark or disembark and who can move about in an aircraft cabin only with the help of an on-board wheelchair ("**WCHP**");

Passenger who is completely immobile, who can move about only with the help of a wheelchair or any other means and who requires assistance at all times from arrival at the airport to seating in the aircraft or, if necessary, in a special seat fitted to his/her specific needs, the process being inverted at arrival ("**WCHC**").

Blind ("**BLIND**");

Passenger who is deaf or a passenger who is deaf without speech ("**DEAF**").

- No limitation on board for WCHF or mentally handicapped. However, one valid passenger must be in charge per 12 WCHR or 12 mentally handicapped; and
- No limitation on board for MEDA, MAAS and DEAF.

In case of PRMs travelling as a group, limitations are operated in function of the following categories:

- The total number of WCHS, WCHP, WCHC, STCR, BLIND, BLIND/DEAF on board their accompanying person(s) may never exceed 10 % of the “maximum approved passenger seating configuration”;
- No limitation on board for WCHF or mentally handicapped. However, one valid passenger must be in charge per 12 WCHR or 12 mentally handicapped; and
- No limitation on board for MEDA, MAAS and DEAF.

Furthermore, according to the Article 3 of the Circular: *“if PRM's travelling on an individual basis and incapacitated/disabled passengers travelling as a group are present on board the same aircraft, the individual cases will not be included in the group calculation”*.

- In the United Kingdom, the Joint Aviation Authorities (“JAA”) guidance material associated with EU-OPS provide for the maximum number of PRMs that may be carried on a flight. The British CAA issued a communication CAA FODCOM 49/2008¹⁴ with the purpose to provide further guidance on the circumstances in which an air carrier may refuse to embark a PRM and notes that it does not expect UK carriers to be more restrictive than EU-OPS. It advises the following: *“Where PRMs form a significant proportion of the total number of passengers carried on board, the number of PRMs should not exceed the number of able-bodied persons (ABPs) capable of assisting with an emergency evacuation (..). An operator must be prepared to carry as many PRMs as permitted by EU-OPS or JAR-OPS 3. It is not open to an operator to set for itself a lower limit. The maximum number of PRMs permitted by EU-OPS or JAR-OPS 3 on any particular flight will depend on a number of variables. These variables include the type and configuration of the aircraft, the extent of the reduced mobility or disability of the PRMs seeking embarkation, and the number of ABPs.*

¹⁴ Safety Regulation Group, flight operations division communication 49/2008 of the Civil Aviation Authority. For further information please refer to the following link: www.caa.co.uk/docs/33/FOD200849.pdf

It is not possible for the CAA to determine what is the maximum number of PRMs that may be carried on any particular flight in respect of every aircraft type and configuration. Therefore, a maximum number determined by the operator does not become a legal justification for refusal to embark a PRM on the grounds that it is contained in a document submitted to the CAA.

Generally, the maximum number of PRMs who may be carried in accordance with EU-OPS or JAR-OPS 3 is likely to be much greater than the number of PRMs typically seeking to be carried on any particular flight. For larger aircraft, it seems unlikely that an operator will be in a position to refuse to carry a PRM because the EU-OPS or JAR-OPS 3 limit has been reached. Smaller aircraft may have a lower limit due to the size of the entrance door, presence of integral steps, and location and size of other emergency exits.

It is the responsibility of an operator to comply both with EU-OPS or JAR-OPS 3 and with Regulation (EC) No. 1107/2006. If operators are considering the refusal of reservation or boarding on the basis of Article 4(1)(a) of the Regulation, they can only do so if they would otherwise exceed the legal maximum established by EU-OPS or JAR-OPS 3 for that flight; it is the operator's responsibility to establish that maximum." Furthermore, the Department for Transport issued Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice which foresees at 3.18¹⁵ that "Air carriers should only require disabled passengers to obtain a medical clearance in cases of a medical condition where it is clear that the passenger's safety or well being, or that of other passengers cannot be reasonably assured. Medical clearance forms should not be required just to prove a need for assistance." In case such medical clearance is not provided, Operators may refuse to accept reservation. In the United Kingdom, Operators may refuse a reservation if the passenger needs to travel with medical or mobility equipment that does not meet the criteria of the air navigation "Dangerous Goods" and the International Civil Aviation Organisation Technical Instructions for the Safe Transport of Dangerous Goods by Air. For example, wheelchairs or other battery-powered mobility devices with spillable batteries will not be accepted for carriage. The weight of an oxygen cylinder must not exceed 5kg when full.

2.1.2.2. Refusal at embarkation

26. According to Article 4.1. of the Regulation, Operators may refuse to embark DPs and PRMs for the same reasons as for the refusal of reservation:

- Security reasons; and
- Size of the aircraft or its door.

¹⁵ For further information, please refer to the following web-site: www.dft.gov.uk

The study reveals that, in principle, the same reasons invoked for refusal of reservation are used by the Operators in case of refusal of embarkation.

The question related to the refusal of embarkation is of an utmost importance. Operators shall use the refusal of embarkation with a great reserve and with diligence. Refusal at the moment of embarkation is likable to create inconveniences and damages which could be avoided if such refusal was notified at the moment of reservation.

According to Article 4.4 of the Regulation, the Operators shall immediately inform the concerned person about the refusal and shall communicate on request the reasons of the refusal in writing within 5 working days.

The study reveals that the refusal interferes at all stages from booking until boarding. In Austria, Bulgaria, Cyprus, Finland, Hungary, Italy, Lithuania, Luxembourg, Romania and Slovakia, the NEBs do not mention any specific deadline.

2.1.2.3. Complaints concerning refusal of reservation and/of embarkation

27. The right of Operators to refuse DPs and PRMs at reservation and embarkation provoked various claims in different MS.

The Danish NEB was informed about some small claims solved between the parties. The French CAA received complaints in great majority concerning the refusal of embarkation in connection to the refusal of accompaniment of another person. At present, the NEB supports a case which is lodged before an Administrative Commission concerning a situation in which an airline had to disembark a DP due to the lack of accompanying person. There is another case in Hungary where the NEB had the possibility to interfere and to condemn the Regulation infringement on this point. The Irish NEB received also a complaint related to a forced disembarkation. The passenger unexpectedly required use of oxygen during his outbound flight and he did not book oxygen for use on his return journey. Due to these reasons, he was asked to disembark the aircraft. The flight captain requires in such case to full the quota of oxygen at the disposal of other passengers. This case highlights the importance of the information provided by the air carriers and the tour operators, especially the publicity available on web sites and at airports.

The Italian NEB had also been informed about some cases. The NEB had direct contact with the Operators in order to analyse the problems and concluded that there was no Regulation infringement.

The Maltese NEB has knowledge of a case where the airline was not able to carry the guide dog on board because the airport at destination did not have the procedures in place.¹⁶

The Polish NEB is aware of one case of refusal of embarkation of a group of DPs at an airport in Poland. The Operator and the DPs reached an amicable agreement without the intervention of the NEB. No penalties were therefore applicable in this case.

The Romanian NEB had to face a case where the DP refused to present the certificate of disability in order to certify that the DP is able to travel alone. In this case the DP was transferred to another flight. This case reveals a contradiction with the information provided by the Romanian NEB concerning the identification of DPs and PRMs. The Romanian NEB stated that the DPs and PRMs are identified in Romania under simple declaration. Medical certificate is required only in case DPs and PRMs require extra-services than those imposed by the Regulation. Furthermore, this case, as other cases analysed in this report, shows that the NEB supervised the fact that satisfaction is given to the passenger, which is very welcomed, but no sanctions are applied (on the basis of course of an appropriate procedure which will eventually determine if the air carrier did or did not infringe the Regulation).

The Swedish NEB received a written complaint concerning a domestic flight between Sundsvall and Gothenburg. The passenger received information the day before departure that the airline¹⁷ was not able to transport passengers with wheelchairs. This was due to the fact that the airline had changed the operating carrier to a carrier with a smaller aircraft type. The operator carrier¹⁸ operates with small aircrafts¹⁹ and the NEB considered in this case that for safety reasons it was not possible to accept the passenger to flight. The NEB was informed by the airline that they changed the operating carrier on all flights to a specific destination with short notice and they missed the fact that some passengers had already confirmed. The airline was advised to pay compensation to the passenger.

This case leads to several conclusions. Firstly, as other cases, penalties are not applicable as long as satisfaction is given to the passenger. It demonstrates also that a single coordination error is likable to cause refusal of embarkation. Therefore, this case emphasizes, as in other MS that there is still a lack of a well coordinated system between all Operators: air carriers, ground handling, air carrier, etc.

In the United Kingdom, passengers have been refused at reservation or embarkation for a various number of reasons:

¹⁶ No information available concerning the airport of destination.

¹⁷ Skyways.

¹⁸ Direktflyg.

¹⁹ Jetstream 32 with 19 seats.

- Operator required 5 days notice;
- Operators considered that a PRM should not travel alone;
- Medical certificate was required at check-in;
- Operators refused to carry mobility equipment;
- etc.

According to the British NEB, these cases may be solved if passengers pursue them, but this is often not the case. Some passengers encounter delays or failure of response from Operators. This deters many from pursuing their complaint. In other cases, the Operator is able to resolve the complaint directly with the PRM, for example, by offering a free flight or shopping vouchers. For these reasons, according to the British NEB these cases were not solved by EHRC's complaint handling process. This reveals a very passive attitude of the EHRC.

The Operators shall deploy their best efforts in order to avoid any refusal of embarkation, which shall remain exceptional. Well-organised Operators, which have an efficient coordination system, shall be able to avoid such refusals. An air carrier shall be able to anticipate the reasons of refusal at the moment of reservation and offer alternatives to the passengers. The managing bodies of airports shall develop with the cooperation of air carriers and other Operators, an efficient coordination system in order to allow a rapid exchange of information. The airlines shall have obligation of best efforts to take decision which would be less damageable for the DPs and PRMs and proportionate between the inconvenience made to these passengers and the utility for the airline and other passengers.

2.1.3. Accessible alternatives

28. According to Article 4 of the Regulation: *"In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.*

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met."

29. The Regulation distinguishes therefore two situations:

- In case of refusal of reservation, Operators have a obligation of best efforts to propose acceptable alternatives;
- In case of refusal of embarkation, the DPs and PRMs shall be offered the right to reimbursement or re-routing (at the condition that safety requirements are met).

30. The study reveals²⁰ that, in practice, the same alternatives are offered in both situations, at reservation and during embarkation and that the Operators:

- Offer the possibility of another flight;
- Reimburse the cost of the ticket;
- Offer re-routing, under comparable transport conditions; and
- Offer the choice between reimbursement of the ticket and re-routing under comparable transport conditions.

In case the refusal is notified at reservation, airlines prefer, in principle, to offer rebooking on a later flight, if it is still useful for the passenger. In case of refusal at embarkation, airlines offer also to the passengers the opportunity to reimburse the ticket.

The study reveals that only the NEBs in Czech Republic, Spain and Poland mentioned an obligation of best efforts on airlines and tour operators or their agents to propose acceptable alternatives solutions to DPs and PRMs.

In some countries, only one or two alternatives are offered to DPs and PRMs. In Slovakia airlines offer only the possibility to reimburse the ticket.

In some MS (Austria, Spain, Finland, France, Italy, Lithuania, Poland and Sweden) in addition to alternatives offered to DPs and PRMs, the airlines shall pay compensation in case the refusal is unjustified and in violation to the Regulation.

The study reveals that alternatives are offered in all MS. This study does not enable, however, to assess beyond the answers provided by NEBs, whether in practice, such alternatives are applicable with rapidity and taking into consideration the needs and the situation of each passenger.

2.2. ASSISTANCE PROVIDED TO THE DPs AND PRMs

2.2.1. Notification

²⁰ Question not available for Luxembourg.

31. In order to receive appropriate assistance, the DPs and PRMs shall notify their need of assistance to the airlines. The study reveals that the deadline for the notification is in principle forty-eight hours before the flight, as indicated at Articles 6.2 and 7 of the Regulation. However, in Estonia and in Lithuania the DPs and PRMs can make their notification 36 hours before the flight. It appears that in Malta and in Hungary, the assistance is provided and available without any specific need of notification.

In other MS the need of notification depends of the internal rules of the Operators. In Cyprus, the questionnaire was answered by the NEB, the Cyprus Airways, Eurocypria (national air carriers) and by the managing body of the Hermes Airports. It appears from the different answers received that the notification shall be made 72 hours,²¹ 24 hours and/or two hours before the flights. In Slovakia there is no general system of notification which might vary from 36 to 48 hours before the flight.

The study also reveals that, even in case the notification has not been made within the required deadline, the Operators have a best efforts obligation to provide the necessary assistance to the DPs and PRMs, in the time limit and with the means at their disposal.

32. Another point examined at paragraph 2.3. is to determine how exactly the DPs and PRMs are informed about their need of notification. Not all passengers are informed about the existence and their right issued from the Regulation. Some categories of PRMs might ignore that facilities and assistance are offered to them without any supplementary costs. This emphasizes the very important role of the tour operators, airlines and their agents to inquire to all passengers whether they need such assistance and to inform them that such assistance is provided free of charge. At present, passengers are often buying tickets online and therefore, the web page of the airlines shall be able to inform adequately the passengers about their rights.

According to the information provided by the different NEBs in each MS, the notification made by the DPs and PRMs covers the departure flight (including flight, transit and arrival) and the return flight (including departure, flight, transit and arrival). In Malta and in Slovakia the notification covers only the assistance provided at departure flights. This point was not specified by the Cyprian, Estonian, French, Hungarian, Irish and Dutch NEBs.

33. In France and Sweden, the managing bodies are complaining about the absence of notification from DPs and PRMs and/or absence with delay. This point is relevant as the failure of appropriate notification might be the result of inappropriate information and publicity offered to the DPs and PRMs.

²¹ According to the answers of CYPRUS AIRWAYS PUBLIC LTD.

The definition and the extension of the meaning of the obligation of best efforts should be common to all MS. The notification is necessary for Operators in order to better organise and provide their services (i.e. foresee the number of wheelchairs available, appropriate personnel, etc.). However, some services do not require or require a little organisation from Operators (i.e. acceptance of dogs, moving to the toilet on board) and therefore, they shall be provided even in case the passenger did not make the notification within the required deadline. Namely, a flight attendant shall not refuse to help a DP on board, just because the person did not make the notification within the deadline and do not figure on the PRM list.²²

2.2.2. Accompaniment of another person

2.2.2.1. The requirement of accompaniment of another person

34. Article 4 of the Regulation foresees that for security reasons: *“an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person.”*

Each MS set up its own criteria and rules on this point. Namely, point 3.14 of the British Code of Practice foresees that: *“Air carriers should only require a personal assistant to accompany a disabled person when it is evident that the person is not self-reliant and this could pose a risk to safety. In practice, this means anyone who is unable to unfasten their seat belt, leave their seat and reach an emergency exit unaided, retrieve and fit a lifejacket, don an oxygen mask without assistance, or is unable to understand the safety briefing and any advice and instructions given by the crew in an emergency situation”.*

35. The study revealed that Operators require the accompaniment in case of special needs (toilet facilities), in case of emergency and mental disability of the passenger.

Namely, the presence of an accompanied person is necessary in order to help evacuating DPs and PRMs in case of emergency. This argument has its reasons and its dangers as well. Such system may be the result of the lack of specific personnel. This will have as effect to exclude numerous cases of passengers with physical disability from the opportunity to travel alone without accompaniment.

Furthermore, according to the NEBs in Austria, Belgium and Sweden, Operators are entitled to require an accompanying person due to the lack of specific personnel. This

²² The list drafted by the Operators containing the names of passengers requiring assistance according to the Regulation.

reason appears to be in contradiction with Article 4 of the Regulation. Lack of specific personnel cannot be assimilated to security reasons.

Mental disability is one reason for which, in Belgium, according to the Circular CIR/OPS-04, Operators might require the accompaniment of another person.

In Denmark and Sweden, this requirement can be imposed for particular reasons in connection with mobility within the plane and lack of properly trained personnel. Notably, some particular reason for which such accompaniment can be required are:

- Long haul flights;
- In case the passengers cannot eat or visit the toilet without help;
- In case the passengers are in a constant need of help for communication, etc.

36. Another point examined in the questionnaire was whether the requirement to be accompanied by another person is applicable until the embarkation gate, until the aircraft seat, during the flight or at all stages of the travel (from check-in until arrival at the destination airport).

Several approaches are adopted by the Operators:

- In some MS such as in: Bulgaria, Cyprus, Germany, Denmark, Finland, France, Ireland, the Netherlands, Sweden and the United Kingdom, the accompaniment of another person is required only during flights. This implies that assistance within the airports shall be provided by the managing bodies according to the Regulation;
- Other MS as Austria, Czech Republic, Spain, Hungary, Italy, Latvia, Malta, Poland and Slovenia require from DPs and PRMs to be accompanied during all travel: within the airplane and the airport;
- In Romania the accompaniment is required from the arrival at the airport until the embarkation gate and /or the aircraft seat;
- No information is available on this point from the NEBs of Estonia, Greece, Lithuania, Luxembourg and Slovakia.

2.2.2.2. Cases of complaints related to the accompaniment requirement

37. A few cases related to requirement of accompaniment have been mentioned by the NEBs.

In Finland one case was reported where a passenger asked whether an Operator was acting according to Regulation, when it stated that the person totally incapable of moving would need to be accompanied on intercontinental flights. The passenger

addressed the inquiry via email to the Finnish Transport Safety Agency. The case concerned a flight from Bangkok to Helsinki. The NEB interrogated the air carrier about their procedures on this matter. According to the air carrier, they assist passengers with reduced mobility in moving to the toilet facilities. However, in case it involves actual lifting, the cabin crew are not able to provide such assistance, since they do not have the appropriate training and their own work safety would thus be endangered. According to the Finish NEB, the cabin crew can also provide help by supporting the passenger to get up, but the passenger must be able to move from the seat to the wheelchair. The cabin crew can also support the passenger when they are walking to the toilet. If the passenger needs help in the toilet facilities, they shall have an accompanying person.

The French NEB mentioned a case where a British airline refused a DP which was already within the airplane due to the fact that he was unaccompanied. This case is currently under examination by the authorities.

Furthermore, a recent case published in the press²³ reveals a refusal of embarkation of a DP by the flight captain of the airline EasyJet. This was due to the fact that this person was paraplegic and unaccompanied. The DP had notified her handicap at the moment of the reservation of the ticket. According to a statement from the marketing manager of EasyJet, this decision was taken on the grounds that in case of emergency procedures, the airplane must be evacuated within 90 seconds. The DP made a complaint before the French Authority for fight against the discriminations and equality treatment (Halde).

The British NEB mentioned that a complaint with regards to this issue led to an offer of a free flight and an assurance that an appropriate policy would be applied in the future.²⁴

The Luxembourgish NEB had been familiarised with one complaint regarding a group of passengers to whom the airline refused the embarkation on the grounds that they were unaccompanied. In the meantime, the company has changed its procedures on this point. No penalties were applicable.

The Operators are entitled, for security reasons, to require from DPs and PRMs to be accompanied by another person. However, this right shall be exercised with diligence as this right shall not have as effect to exclude the DPs who cannot receive accompaniment from the benefit of the Regulation.

It appears that the approaches adopted by some MS as regards the moment at which the accompaniment is required do not correspond to the reasons for which such requirements are demanded. All reasons are directly related to the situation of the DPs and PRMs during the flight (security in case of evacuation, access to the toilet and need

²³ La Libre Belgique of 12/08/2010 "EasyJet refuse un vol à une handicapée".

²⁴ No further information available on this point.

of appropriate assistance in very difficult cases of disability). However, the requirement of accompaniment in some MS is applicable during the mobility within the airports. The danger of such approach is that the managing bodies would have the tendency to replace their obligation to provide services in the airports with the requirement of accompaniment of another person.

General guidelines shall be recommended on this point. Notably, there is a need of clarification on how to conciliate other security rules with the Regulation, such as the deadline for evacuating the airplane in case of emergency. Airlines shall have clear and obligatory rules on this point.

2.2.3. Type of services provided

38. The study aims at determining, how in practice, the Operators provide the services under the Regulation, and namely:

- What services are provided by the managing bodies;
- Which services are provided by the air carriers;
- Which entity provide these services (ground handlers, specific bodies under contract with managing bodies or others);
- Who is in charge of the coordination of these services; and
- Whether points of arrival and departure are designated in all airports.

2.2.3.1. Services provided by the managing bodies

39. Article 8 of the Regulation provides that: *“the managing body shall be responsible for ensuring the assistance specified in Annex I without additional charge.”*

The study reveals that in all MS with a few exceptions analysed hereafter, the managing bodies provide the assistance mentioned at Annex 1 and namely:

- Help to communicate their arrival at an airport and their request for the assistance at the designated points of arrival and departure (i.e. in Austria the designated points are equipped with phone for requesting assistance. It has been specified by the Austrian NEB that it takes only a few minutes after the phone call to meet a staff provider);
- Furnish wheelchairs or other assistance needed (i.e. in Austria, wheelchairs are provided by the airports or the Red Cross; In Belgium wheelchairs are dispatched

by Axxiom Airport Caddy²⁵ which has also a website offering information about passengers who can benefit from their assistance and the type of assistance provided²⁶; Luxair is the handling agent which is working for Lux-Airport in charge with all requests. All necessary mobility equipment such as wheelchairs are provided. Manual wheelchairs are also available at the underground parking desk and also to the Lux-Airport Information desk in the departure hall);

- Move from a designated point to the check-in counter (i.e. in Belgium passengers report to Axxiom Airport Caddy their need via phones at various locations);
- 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, as appropriate;
- Proceed from the aircraft door to their seats;
- Store and retrieve baggage on the aircraft;
- Proceed from their seats to the aircraft door;
- 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 (i.e. in Belgium, Axxicom Airport Caddy assistant reports to the gate agent or airline representative that they shall meet the registered DP or PRM. The passenger will then be transported to the departing gate by wheelchair or caddy service; In Luxembourg this task is also performed under the responsibility of the ground handling agent);
- Move to the toilet (in the airport) if required;
- Allow an accompanying person of DPs and PRMs to provide assistance in the airport and with embarking and disembarking. (i.e. in Greece, Luxembourg and Finland, in case an accompanying person is allowed to provide assistance, the airport service is provided only under request);
- Handle all necessary mobility equipment (including electric wheelchair);

²⁵ For further information, please refer to the following link:
<http://www.facilicom.com/be/axxicom%20airport%20caddy/fr-BE/Pages/CulturedentreprisedAxxicomAirportCaddy.aspx>

²⁶ For further information, please refer to the following link:
<http://www.facilicom.com/be/axxicom%20airport%20caddy/fr-BE/Pages/ServicesAAC.aspx>

- Replace temporary of damaged or lost mobility equipment;
- Handle of recognised assistance dogs. Except in Greece and Slovakia, recognised assistance dogs are allowed to follow the DPs and the PRMs from the check-in to the gate. They are also allowed to the board of the aircraft. In Luxembourg airlines might ask the owner to provide proof that their dog is properly trained.
- Communication of information needed by DPs and PRMs to take flights in accessible format.

The study reveals that in Slovakia, the managing body does not provide all services mentioned above. Namely, at the Stefanik Airport there is no assistance on helping reaching connection flight and helping over to toilets; replace temporary of damaged or lost mobility equipment; handle of recognised assistance dogs; communication of information needed by DPs and PRMs to take flights.

The services are provided in principle by specific bodies under contract of supply with the managing bodies of the airports. It concerns generally specialised companies and ground handlers of airports. The Red Cross together with a service operator are in charge of providing assistance in Austria.

40. Furthermore, according to the information provided by the NEBs,²⁷ in principle, except in Luxembourg, DPs and PRMs are compensated when wheelchairs or other mobility equipment or assistance devices are lost or damaged while being handled at the airport or transported on board aircraft. In Austria, the equipment is repaired or replaced. The Spanish, Polish and Hungarian NEBs mentioned that the amounts of compensation are settled according to the Montreal Convention.²⁸

In Sweden, the compensation is made according to the conditions specified in the contract with the air carrier.

2.2.3.2. Complaints related to the assistance provided by the managing bodies

41. Assistance provided by the managing bodies raised many complaints.²⁹

The Greek NEB has been informed about the failure of assistance but it was difficult to collect any information about the case, especially regarding the transmission of

²⁷ Information not available for Lithuania.

²⁸ Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999.

²⁹ The cases analyzed under this Paragraph contain the elements limited to the information provided by the NEBs.

information and the level of service, as the entity in charge with the service³⁰ went to liquidation. This case raises the question regarding the responsibility of the managing body. According to Article 8 of the Regulation, the managing body is the entity responsible for the assistance provided within the airport. In case of any failure of assistance, the responsibility of the managing body shall be engaged independently of the behaviour and situation of its subcontractor. It is in such case to the managing body to return against the assistance provider on a contractual basis.

In the United Kingdom, the NEBs had been aware of the following complaints:

- PRMs being made to use a wheelchair when they do not need it;
- DPs and PRMs complaining that no assistance has been provided until check-in;
- Ambulift not available;
- Insensitivity during security searches;
- Missing flights due to insufficient assistance;
- Refusal of assistance when the DPs and PRMs were not a wheelchair user;
- Refusal of assistance when DPs and PRMs were travelling with someone;
- Refusal and /or no assistance with their language;
- PRM injured while being lifted out of the seat on plane;
- Etc.

For a variety of reasons related to the failure or delays of responses of Operators, it was not possible for the EHRC to solve many of these cases via a complaint handling process. However, conciliation meetings have led to one airport retraining ground handling staff. The communication has been improved between pilots, cabin crew, passengers and assistance providers.

The Spanish NEB was also informed of a complaint related to the failure of assistance provided to the DPs and PRMs. The passengers submitted a complaint to the EHRC which forwarded it to NEB. The airport concerned (Palma de Mallorca) AENA³¹ was contacted by NEB which requested a report about the questions raised by the passengers. The reason of this complaint was that passengers requested the assistance (wheelchair) 48 hours before the published time of departure. Furthermore, at the airport this demand has been expressed several times but no assistance was provided by the entity in charge. The report concluded to Regulation infringement and AENA

³⁰ Old Olympic.

³¹ Aeropuertos Espanoles y Navegacion Aerea ("**AENA**") is a global Operator of airport services and air navigation providing assistance to the DPs and PRMs. For further information, please refer to the following link:
http://www.aena.es/csee/Satellite?Language=EN_GB&SiteName=Aena&c=Page&cid=1043051457943&pagename=subHome

decided to sanction this entity for not complying with the administrative contract they have signed. However, no penalties were applied in accordance with the Regulation.

2.2.3.3. The services provided by the air carriers

42. The study reveals that, in principle, air carriers³² provide the assistance in accordance with Article 10 and Annex II of the Regulation and namely:

- Carriage of recognised assistance dogs in the cabin;
- Transport of up to two pieces of mobility equipment per DP or PRM (including electric chair);
- Communication of the essential information concerning a flight, in accessible format;
- Arrange seating to meet the needs of DPs or PRMs on their request;
- Move to toilet on board if required; and
- Give an accompanying person of a DP and/or PRM a seat next to the DP and/or PRM.

43. The assistance related to the mobility within the aircraft, especially to the toilet facilities raised various comments from the NEBs. In Czech Republic, Sweden and Slovakia such assistance is not provided. The Finish airlines provide this assistance unless a safety regulation and/or the size of the aircraft are preventing to provide such help. The French NEB stressed that the question related to the move to the toilet raised in France several difficulties. Namely, the flight attendants refuse their help stating that they are not in charge or that some passengers are too heavy. There is also a lack of appropriate chairs helping transferring DPs and PRMs within the airplane. In Italy, the assistance to move to the toilet is provided by the cabin crew but some limitations are pointed out which relates to the availability of suitable seats. The Hungarian NEB stressed that the toilets of almost every aircraft operated by the Hungarian air carriers are not accessible with wheelchairs.

44. In Romania the assistance dogs are not allowed in the cabin. In the United Kingdom and Hungary the carriage of recognized assistance dogs on each route must be approved under national regulations and/or by the Operators before the flight.

45. The mobility equipment is also provided under limitations which are generally related to the size of the aircraft. In Italy there are limitations for wheelchair battery feeded and in general for the objects classified as “Dangerous Goods”. Special problems are currently faced with the Personal Oxygen Concentrator classified as Dangerous

³² This question is not available for Luxembourg.

Goods (some types are admitted in the United States for transport in cabin under United States Federal Aviation Administration rules).

According to the NEBs in Spain, Hungary and Latvia the airlines have a best efforts obligation in order to satisfy the DPs and PRMs and to provide them with an adequate assistance. The obligation of best efforts was not specified by other NEBs.

2.2.3.4. Complaints related to the assistance provided by the air carriers

46. Assistance provided by the air carrier also raised complaints in some MS. The German NEB has been informed about some claims which are currently under examination. Other claims have been considered as not founded. The Danish NEB is also aware of some cases, solved between the parties.

The Greek NEB was also informed about a case in which the passenger had a very serious disease and needed medical oxygen. The flight captain refused the DP because he did not provide a medical certificate. The Greek NEB investigated the case requesting records of the training of the personnel and information on the incident. The NEB advised the handler to provide appropriate training to their personnel. No penalties were applicable.

In Finland, there were cases related to seating, need of oxygen, moving to the toilet facilities and seats which are appropriate to the special needs of DPs and PRMs. In these cases a solution has been found between the passenger and the air carrier. No penalties were applicable.

In Portugal, an assistance dog was not accepted to the board by the flight captain because it had no muzzle safety. Alternative solution was offered to the passenger who was able to travel with the next flight.

In the United Kingdom, the NEB is aware of many complaints, in particular:

- Refusal to carry medical or mobility equipment;
- Airlines were charging for carriage;
- PRMs not being allocated appropriate seats;
- Etc.

Conciliation meetings with one air carrier led to:

- Changes of its policy ensuring that at least two bulkhead seats remain unallocated in premium class and two in economy class until two hours before the flight departure time for the use of PRMs or others in need who arrive at check-in without pre-booked seats; and

- Check-in staff and cabin staff received further training on the Regulation in respect of seating needs and assistance to the toilet facilities during the flight.

Correspondence with an Operator led to an agreement to waive the additional charge made for a seat. However, it did not represent a policy which will be applied in the future. In the two cases, the EHRC is currently supporting individuals in taking court proceedings.

2.2.3.5. Points of arrival and departure

47. The study aims also at determining whether specific points of arrival and departure are designated according to Article 5 of the Regulation in order to allow DPs and PRMs to announce their arrival at the airport and to request assistance and to determine whether these points are:

- Located inside and outside terminal buildings;
- Clearly signed in accessible format;
- To deliver basic information about the airport;
- To indicate where appropriate assistance is offered to DPs and PRMs; and
- To offer appropriate assistance to DPs and PRMs, who demand such assistance.

48. According to the NEBs, specific points helping DPs and PRMs to receive appropriate information and assistance are designated in all airports. In Malta, Poland and Romania these points are not likable to offer basic information about the airports. Furthermore, the French and British NEBs mentioned that given the increased number of airports, they are not aware whether these points are located in all airports. In Greece, specific points of arrival and departure (inside and outside terminal buildings) are located only at airports with an annual traffic of 150.000 commercial passenger movements. In Portuguese airports, there are no specific points located outside terminal buildings.

In Swedish airports, these points are represented by a sign with wheelchair symbol offering written information also in Braille and a telephone connected to the assistance desk. Other airports are equipped with a button to press in order to meet the assistance provider.

In Luxembourg, at departure, passengers have to use the call point in order to communicate their arrival at the airport and also their request for assistance. A Lux-Airport agent at the information desk will inform the assistance office. At the arrival, information is transmitted by “Sita” message or by the pilot who gives information when the aircraft is in approach to Luxembourg airport.

2.2.4. The coordination of the assistance provided to DPs and PRMs

49. Another important issue analysed throughout the questionnaire is how the services provided to DPs and PRMs are coordinated in practice with regards to Article 6 of the Regulation.

50. There is no general system of coordination adopted by MS. Each managing body at airports sets up procedures at this end (i.e. in Austria, Operators inform a specific coordinator in charge with assistance of DPs and PRMs such as the Red Cross point; in Ireland, some airports nominated a third party service provider to whom the notification is transmitted by the airlines).

Several Operators interfere in the chain of assistance and they have to notify relevant information to each other. In such system, there is always a higher risk of failure of appropriate transmission of information creating coordination problems. The airlines are responsible to provide assistance during the flight. The managing bodies of airports of arrival and transit are responsible for providing assistance within airports. Therefore, several managing bodies (notably, in case of transits flights) and service providers are responsible for assisting DPs and PRMs. It is sufficient for one Operator involved in the chain of the assistance not to provide and/or to provide the incorrect information, in order to fail the assistance to the DPs and PRMs. This might cause very high damages and dangers for the DPs and PRMs: they might miss connection flight, might find themselves lost, etc.

51. The NEBs are aware of cases involving complaints from the DPs and PRMs related to the lack of coordination of their demand of assistance. Namely, the Danish NEB was informed about some cases on this point, which have been solved between the parties. No penalties were applicable.

According to the Irish NEB a family travelled with a disabled son between two airports in Europe (neither of which were located in Ireland) on an Irish licensed carrier. The father wrote to the Irish NEB complaining about the lack of assistance provided by the air carrier. Upon investigation, it became clear to the NEB that inadequate assistance was provided due to coordination problems. The air carrier demonstrated that it had complied with its obligation to transmit the request for assistance to the relevant airports. Hence, the deficiency in the assistance provided fell to be addressed by the competent authority in the Member State where the airport was located.

The British NEB emphasised that the failure of transmission has been object of many complaints, namely:

- Problems on flights due to the missing record of passengers' demand when they arrive at check-in and/or board the plane;
- Incorrect IATA codes being used, leading to lack of appropriate assistance;

- Absence of assistance at airports, particularly for passengers arriving on return flights;
- DPs and PRMs have been left on the inbound plane, at the gate;
- After leaving the inbound plane, no assistance has been provided at the designated point of the departure;
- Long waits between the stages of the assistance;
- No assistance when retrieving languages;
- Etc.

In some cases airlines offered a free flight as a gesture of apology and an assurance that a new policy would be applied in future. However, in this case, once again, no penalties have been applied. According to the British NEB, the CAA will be working with stakeholders to consider practical ways to improve this issue.

Furthermore, the NEB organised specific meeting in order to change policies. At present, passengers requiring assistance are told not to leave the plane to find assistance in the terminal but shall normally be escorted.

The managing bodies of each airport are responsible for the coordination of assistance of DPs and PRMs. However, two or several managing bodies and air carriers are interfering in the chain of a flight. In case of complaint, it is difficult to identify which body is responsible for their damage. The lack of coordination might create dramatic situations for those passengers (i.e. passengers in an advanced age, etc) who travelling alone can find themselves lost (i.e. in a transit airport because the managing body of the transit airport did not received the adequate information). The failure of the transmission of information might, hence, disturb all assistance which shall be provided under the Regulation. An unified and harmonised system of coordination shall be recommended in all MS.

2.3. Practical information and publicity provided to the DPs and PRMs

52. Article 6.1 of the Regulation foresees that: *“Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all their points of sale in the territory of the Member States to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility.”*

Furthermore, according to Article 4 of the Regulation: *“An air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft.*

A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours which it organises, sells or offers for sale.”

The study aims at identifying whether:

- Operators are obliged to request the need of assistance at the reservation;
- The need of assistance must be demanded when buying the ticket online;
- The need of assistance could be demanded any time by phone or via website;
- Is the publicity provided sufficient in order to provide to the DPs and PRMs the information on the need of notification, the available assistance, the restrictions due to security reasons, the formalities which might be demanded and finally, the gratuity of the assistance. It appears from the study that many cases of complaints have involved situations which shall not occur if proper and full information was provided at the moment of reservation and/or purchase of the ticket;
- What are the formats used by the Operators in order to make the publicity available;
- What is the content of the publicity communicated by the Operators; and
- Whether other means are used to this end.

Information provided to passengers willing to buy the ticket is of an utmost importance in order to allow them to benefit from the assistance provided by the Regulation. Air carriers shall ensure that persons in charge of sales receive clear and appropriate instruction on the information they shall provide.

The most common way DPs and PRMs can notify their need of assistance is to demand assistance by phone or via website when buying the ticket online. The Swedish NEB mentioned at this regard that DPs and PRMs do not have always the possibility to ask the demand via website.

53. The study also reveals that in a majority of MS (except in Bulgaria, Greece, Hungary, Latvia, Malta and in the Netherlands), the Operators are not obliged to inform about the right under the Regulation and to request whether passengers have or not a need of specific assistance. Furthermore, websites are often designed in such a way that the Operators certainly ask the buyers to confirm online whether a need of specific assistance is necessary but the websites do not mention all the services provided by the Operators. The information available on websites can exclude some PRMs from the benefit of the assistance as not properly informed.

Videos and information pamphlets are rarely used. Most of the NEBs accentuated that the information is available on the websites of the airports, air carriers and service

providers. This is certainly due to the fact that, at present, the websites are the most common way passengers buy their tickets. For these reasons, websites shall contain full information on all relevant rights, limitation and requirements in order to make the DPs and PRMs benefit fully from the assistance. The Hungarian NEB detected during an administrative procedure a case where an airline had the wrong translation on its website and admitted that the former information was discriminative.

In Austria and Cyprus call centres and special cases desks are available for the DPs and PRMs. Posters and leaflets at the departure and the arrival areas are the most common publicity provided at airports, namely in Cyprus, Belgium, Czech Republic, Estonia and Romania.

In Cyprus, the Direction of the Civil Aviation issued a handbook concerning air passenger rights under the Regulation. It is available to the public in airports.

54. The United Kingdom developed information which shall serve as a model in other MS. At present, publicity is provided via the *“Your rights to fly”* passenger guide distributed by the EHRC. The guide is available in hard copy, Easy Read, Braille, audio CD, data CD and downloadable PDF versions. This information is also available in some airports. According to the British NEB, approximately 90.000 guides were distributed. A marketing campaign involved advertisements in the most popular weekend papers, as well as information on those papers’ websites, in disability magazines and websites. The NEB stressed that these campaigns had as effect to raise significantly the public awareness. In Northern Ireland, the CCNI produced an information guide *“Access to Air Travel”* which advises passengers of their rights. Approximately 5.000 guides were distributed. A publicity campaign was organised involving articles in the main regional newspapers, as well as through various disability organisations websites and publications.

55. The publicity available in MS is generally provided in writing formats in native and English languages. Braille is available only in some MS: Austria, Denmark, Ireland (only on request), Latvia and Portugal.

56. According to the information provided by the NEBs, the publicity available to the DPs and the PRMs contain the following information:

- The rights of DPs and PRMs under the Regulation;
- Security rules applicable to the DPs and PRMs;
- Safety rules applicable to the DPs and PRMs;
- Restrictions to the carriage of DPs and PRMs;
- Mobility equipment due to the size of aircraft;
- Practical information about the way DPs and PRMs will be assisted from the departure airport until the destination airport (including transit);

- The possibility and the procedure of complaint in case of Regulation infringement.

In Germany, Spain, Hungary, Lithuania, Malta, Portugal and Romania the information do not specify the possibility and the procedure of complaint in case of Regulation infringement. No information is provided concerning the mobility equipment due to the size of aircraft in Spain, Finland, Ireland, Lithuania and Slovakia.

57. As many others NEBs, the Belgian NEB mentioned that the free assistance is provided upon prior notification of 48 hours to all categories mentioned in the questionnaire: disabled persons with physical disability and intellectual disability or impairment persons with reduced mobility due to age reasons, weight reasons, whose situation needs appropriate attention, etc.

The information provided by phone by the Operators at the Brussels airport³³ is that the assistance is provided free of charge only to persons which are in wheelchairs. Old persons, having difficulties of orientation and reading of information and thus not able to arrive at the boarding gate alone, can benefit from the assistance called “*Maintenance assistance*” and the cost of such assistance is around thirty euro (Exact price shall be determined by the airlines).

This case is revelatory of a clear Regulation infringement which was not detected by the Belgian NEB so far.

The information provided to the DPs and PRMs is crucial. Some airlines provide very clear and complex information on their websites³⁴. Other websites do not provide complete information³⁵. The explanations are always drafted in such a way that even when using the term “PRM”, the information might lead to confusion that the assistance is provided only to physically disabled persons and not to those with mental disabilities and with reduced mobility. Furthermore, websites of some air carriers do not specify the deadline of notification³⁶.

³³ Axxicom.

³⁴ For further information please refer to the following web sites:
http://www.austrian.com/Info/FlightPreparation/DisabledAccess.aspx?sc_lang=en&cc=BE;
<http://www.cyprusairports.com.cy/docs/facilities4disableen.pdf>.

³⁵ For further information, please refer to the following web site:
<http://www.brusselsairport.be/fr/airportinfo/special-care/reduced-mobility>.

³⁶ As an example when following the procedure for the ticket reservation on Jetair at http://www.jetair.be/vacances_en_avion, when ticking at the place indicated for the ‘Special requests for the flight’, the passengers receive the following information: “*Passengers who are in a wheelchair or who experience difficulties when walking or climbing steps can request assistance when boarding. This assistance is only available upon prior notification. The absence of a prior notification may lead to improvisation and delays at the moment of embarkation, or even to a refusal to grant the person concerned access to the aeroplane*”.

The information provided to passengers at the moment of buying the ticket is of radical importance. Missing, inadequate or vague information might have as effect to exclude a wide number of passengers to benefit from the assistance imposed by the Regulation. Not all people are aware of their rights and MS shall develop guidelines addressed to air carriers, tour operators and their agents in order to have an appropriate and sustainable information system. The study reveals that the means used by the Operators are not sufficient and are not able to inform correctly the passengers about the services provided and the need of notification within the relevant deadline. This issue shall, in our view, be harmonised at the EU level. The tour operators and the air carriers shall spontaneously ask any passenger about such need, independently of any exterior sign of disability or reduced mobility.

2.4. FINANCIAL ASPECTS OF THE REGULATION IMPLEMENTATION

58. The study determines that, in principle, the DPs and PRMs in all MS do not have to pay any additional charge to their ticket flight in order to benefit from the assistance under the Regulation.

However, the NEBs in Spain and Finland detected infringements concerning the right of DPs and PRMs to benefit free of charge from the assistance. The Spanish NEB requested a report to an airline due to the unfair charge for carrying the mobility equipment. The Spanish NEB requested and obtained the reimbursement of that charge to the passenger. No penalties have been applied.

In Finland a PRM was required to pay an extra leg room seat. The air carrier applied the same policy that had on all passengers. The case was solved between the PRM and the air carrier.

59. Another point concerning the financial aspect of the Regulation implementation is assessing whether the managing bodies levy a specific charge on the airport users for the purpose of funding the DPs and PRMs assistance and how the specific charge is established (i.e. applicable or not to all airport users, cost-related, established in cooperation with another body, etc.).

According to Article 8 of the Regulation: *“The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance.*

This specific charge shall be reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users, through the Airport Users Committee where one exists or any other appropriate entity. It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

The managing body of an airport shall separate the accounts of its activities relating to the assistance provided to disabled persons and persons with reduced mobility from the accounts of its other activities, in accordance with current commercial practice. The managing body of an airport shall make available to airport users, through the Airport Users Committee where one exists or any other appropriate entity, as well as to the enforcement body or bodies referred to in Article 14, an audited annual overview of charges received and expenses made in respect of the assistance provided to disabled persons and persons with reduced mobility.”

60. Generally speaking, the MS adopted two approaches:

- In some MS, the managing bodies do not levy a specific charge on the airport users: Austria, Belgium, Czech Republic, Estonia, Lithuania, Malta, Sweden, Slovenia and Slovakia.
- In Ireland, there are at three state airports and six regional airports. At all state airports (Dublin, Cork and Shannon) and at one regional airport (Knock Ireland West), a specific charge is imposed as follows:
 - Dublin Airport (DUB): 33cents;
 - Cork Airport (ORK): 45cents;
 - Shannon Airport (SNN): 56cents;
 - Knock (Ireland West) Airport (NOC): 25cents.

According to the Irish NEB, the remaining five regional airports have opted not to impose a levy for the provision of this assistance at the moment.

- Other MS³⁷ levy a specific charge on the airport users for funding the DPs and PRMs assistance: Bulgaria, Cyprus, Germany, Denmark, Greece (only Athens international airport), Finland, France, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal and the United Kingdom (in majority of airports). The Bulgarian NEB mentioned that the charge is also established in close cooperation between airlines and airports. In Luxembourg, the managing body fixed the fees for air terminal services and airport fees. Airport fees include passenger service fee which is applicable for commercial flights per passenger at the departure. It is due per passenger and the amount of the PRM fee is 0.50 €. The amount is provided as separate information on the travel ticket. The Operator of the aircraft is responsible for the payment of the passenger service fees.

³⁷ Question not available in Romania.

61. In Italy, Latvia and the Netherlands, the managing bodies levy a specific charge on air carriers³⁸. The NEBs were not able to identify how this specific charge was established.

2.5. QUALITY STANDARDS

62. According to the NEBs, in the majority of the MS the quality standards are implemented throughout publications on the websites. In Cyprus and Malta the quality standards are implemented in contacts with airport services and other contractors. However, in some MS, the managing bodies took further steps in order to implement quality standards, namely:

- In Greece, at all airports with annual traffic above 150.000 passenger movements, the managing body of the airport established quality standards in cooperation with airport users and representatives of the National Confederation of disabled persons;
- In Hungary, the managing body provided a document “service level agreement” specifying quality standards for the assistance for DPs and PRMs;
- Airport Manual Procedures are settled in Romania.

It appears from the questionnaire that Luxembourg did not implement and publish the quality standards.

One point analysed throughout the questionnaire was whether the NEBs considered that the quality standards under their jurisdiction are higher than those provided in the Regulation. Curiously, some NEBs estimated that they implemented higher quality standards, namely:

- According to the Czech NEB, the assistance is far more complex than the one provided by the Regulation;
- In Estonia, ISO standards have been implemented;
- From the practical perspective of the Finish NEB, quality standards are provided to those passengers who did not make any notification;
- In Latvia, quality standards are designed accordingly to ECAC Doc 30³⁹ recommendations where more accurate information is stated;
- In Malta pre-notification is not required;
- According to the British NEB, most airports have standards that match ECAC standards. Some airports which handle no-frills flights with short turnaround

³⁸ This question was not specified in Belgium, Finland, Estonia and Romania.

³⁹ European Civil Aviation Conference Policy Statement in the Field of Civil Aviation Facilitation, doc No. 30 of 11th Edition/December 2009.

times have higher standards with shorter times for DPs and PRMs to be boarded and disembarked from the aircraft.

The study reveals that in principle quality standards are published on websites. The managing bodies shall issue guidelines destined to all Operators with the aim to clearly identify the obligations and the responsibilities of each Operator, especially in the coordination process.

2.6. APPROPRIATE TRAINING

63. The study aims at assessing whether all the Operators personnel, including personnel of their sub-contractor, receive an appropriate training on:

- Disability-equality of DPs and PRMs;
- Disability-awareness of DPs and PRMs;
- Special need of assistance of DPs and PRMs taking into account disabilities and/or mobility impairments; and
- Special procedure of emergency of DPs and PRMs in case of problems during the flight /exit emergency.

64. According to the information available from the NEBs, with a few exceptions, all types of training mentioned above are provided to the personnel. Furthermore, in Cyprus there is a requirement of an additional training: the service provider must be certified in first aid. In Slovakia training are provided to cabin crew only. The British NEB does not supervise the training so could not confirm whether all personnel are trained or not. In Luxembourg, all air hostesses have to be trained. In addition, the personnel have to provide a certificate of “First Aid”.

Belgian, Finish, French and Portuguese NEBs have no information on this point and it might be concluded that this issue is not supervised by their authority.

65. In each MS, the managing bodies established their own rules with regards to the way training is provided under their jurisdiction. In Austria and Poland, the training is provided by organisation representing passengers with disability. In Austria, training guidelines are established and described as awareness training notes. In Cyprus, the airport operator provides disability awareness/equality training to all personnel in charge with the assistance. The training appears to be quite complex and adequate as it involves theoretical and practical trainings on lifting techniques, provided in cooperation with physiotherapists of the paraplegic ward of the Nicosia general hospital. This training is conducted once a year and certificates are issued for participants. Other front line staffs at the airport are required to receive disability equality and awareness training every two years. The airport operator conducted “*train the trainer*” trainings for

all airport entities, whereby trainers representing each entity were selected. The Czech NEB mentioned that the training related to disability is an obligatory part of the training of the flight personnel. In Denmark, training is provided to all new employees. Refresher training is also provided at least once a year for all other personnel.

The question related to the appropriate training raised several complaints. The Greek NEB received a complaint concerning a case where the airline did not provide the appropriate training to its employees in order to accommodate a mute person. This was due to a communication failure between airline staff and the passenger. Furthermore, the Greek NEB was also familiarised with a complaint, which concerned the handling of PRM, by the employees at Zakynthos airport. The complaint was also a training problem.

In Cyprus, the managing body had also to investigate the way the personnel was trained due to a complaint made by a PRM.

In the United Kingdom, the NEB was informed about cases where attitude demonstrated insufficient training and PRM were injured while being lifted out of the seat on plane.

Respecting the right of DPs and PRMs and assuring an appropriate assistance which is adapted to each situation, require an adequate training of the people involved in the assistance process. Assistance shall be provided in a way to be less uncomfortable and embarrassing for those passengers suffering from disabilities.

3. UNDERSTANDING OF THE FUNCTIONING OF THE DIFFERENT NATIONAL ENFORCEMENT BODIES

3.1. TYPE OF NEBs

66. All MS designated body or bodies responsible for the enforcement of the Regulation. The majority of MS designated a single NEB, which is generally the Civil Aviation Authority (“CAA”), in charge of the enforcement of all Regulation aspects. However, some NEBs, have split the responsibilities between two or even three NEBs: the CAA and the consumer protection authorities. Therefore, the CAAs are in charge with technical and safety aspects and with the Regulation enforcement (supervision and coordination of managing bodies, air carriers, airlines, tour operators and airports). The authorities of consumer’s protection are generally in charge of handling the complaints (France, Hungary, Italy and Sweden).

67. Belgium and Slovakia designated three responsible bodies. Belgium, as a federal state, has three NEBs. Therefore, the General Direction of Air Transportation is responsible for the airport in Brussels, the Walloon region is responsible for the enforcement of the Regulation in the airports located in the Walloon region and the Flemish Region is responsible for the enforcement of the Regulation in the airports

located in the Flemish region. Each Belgian NEB is responsible for the enforcement of all aspects of the Regulation in each Region. However, it appears that the General Direction of Air Transportation has the role of coordination and supervision of all obligations under the Regulation. For that reason, the two Belgian regions (Walloon and Flemish) were not able to answer the questionnaire and designated the General Direction competent for providing us with the answers. In Slovakia, the three NEBs have each their specific role: The Slovak Trade Inspectorate is in charge with protection of consumers, the CAA is in charge with safety aspects and The Ministry of Transport, Post and Telecommunications, Directorate General of Civil Aviation is responsible for the enforcement of the Regulation.

68. In the United Kingdom there are several NEBs: the Civil Aviation Authority; Equality and Human Rights Commission helpline - England; Equality and Human Rights Commission helpline - Scotland; Equality and Human Rights Commission helpline-Wales; Consumer Counsel for Northern Ireland. The CAA is in charge of the Regulation enforcement under all technical aspects and the Equality and Human Commissions are in charge of all aspects of consumer protection.

69. The following NEBs were designated in each MS:

- Austria: Federal Minister of Transport, Innovation and Technology;
- Belgium: The General Direction of Air Transportation, competent for the Brussels airport; The Flemish Region (Department of Mobility and Public Works) competent for the airports on the Flemish Region; The Walloon Region competent for the airports of the Walloon Region;
- Bulgaria: The Bulgarian Civil Aviation Administration;
- Cyprus: The Civil Aviation Department of the Ministry of Communications and Works;
- Czech Republic : The Civil Aviation Authority;
- Denmark: The Danish Civil Aviation Administration;
- Estonia: The Consumer Protection Board;
- Finland: The Finish Civil Aviation Authority;
- France: The General Direction of the Civil Aviation ; The General Direction of Competition, Industry and Services (“DGCIS”);
- Germany: The Federal Office of Civil Aviation (Luftfahrtbundesamt);
- Greece: The Department of Civil Aviation, Directorate-General of Air Transport, Directorate of Airports;
- Hungary: The Air Traffic Directorate of the National Transport Authority, responsible for the enforcement of the Regulation and Equal Treatment Authority to handle individual complaints;
- Ireland: The Commission for Aviation Regulation;

- Italy: Italian Civil Aviation Authority (*Ente Nazionale Aviazione civile – Direzione Centrale Regolazione Tecnica*) and *Operazioni Struttura Carta dei Diritti del Passaggero e Qualità dei Servizi*;
- Latvia: The Civil Aviation Agency;
- Lithuania: Civil Aviation Administration;
- Luxembourg: The Direction of the Civil Aviation;
- Malta: The Director of Civil Aviation;
- The Netherlands: The Transport and Water Management Inspectorate (*“Inspectie Verkeers- en Waterstaat, Toezichtseenheid Luchtvaartoperationele Bedrijven”*);
- Poland: The Chairman of the Polish Civil Aviation Office;
- Portugal: The Institut National of Civil Aviation (*“INAC”*);
- Romania: The National Authority for the persons with disability and The Romanian Civil Autonomous Office;
- Slovakia: The Slovak Trade Inspectorate in charge of consumers protection; Civil Aviation Authority in charge of safety aspects; and The Ministry of Transport, Post and Telecommunications, Directorate General of Civil Aviation responsible for the Regulation enforcement;
- Slovenia: The Ministry of Transport;
- Spain: The General Direction of Civil Aviation (*“Direccion General de Aviacion Civil”*);
- Sweden: The Swedish Civil Aviation Authority⁴⁰; The National Board for Consumer; and
- The United Kingdom: The Civil Aviation Authority; The Equality and Human Rights Commission (*“EHRC”*) helpline - England; Equality and Human Rights Commission helpline - Scotland; Equality and Human Rights Commission helpline - Wales; Consumer Counsel for Northern Ireland (*“CCNI”*).

3.2. THE ROLE OF NEBs

70. Under this chapter we will discuss the role of the NEBs in the enforcement of the Regulation in each MS.

71. Before analysing their concrete actions in details concerning each obligation under the Regulation, the first purpose is to seek throughout the questionnaire, how precisely each of the designated NEB sees its role. The purpose is to have a view on how

⁴⁰ A new aviation act shall be adopted which may designate further responsible authorities in respect of certain part of the Regulation.

the NEBs understand their task under the Regulation and what are the main function(s) underlined by each NEB:

- The Austrian NEB has a monitoring role: control of annual review on charges, approval of DPs and PRMs charges and regular meetings with all stakeholders involved to discuss any problem and to check complaints;
- According to the Belgian NEB, their roles consist mainly in the adoption of new policies, adaptation of existing policies, monitoring, surveillance and sanction;
- The Bulgarian NEB estimates that it has the role of coordination among all stakeholders;
- In Cyprus, the NEB has the principal role to supervise the correct enforcement of the Regulation via interventions, guidance, publicity and complaint handling;
- The Czech NEB sees its principal role in supervising the obligations performance;
- The German NEB is responsible for enforcement of the Regulation, monitors the compliance with the Regulation and imposes sanctions for breaches and receives and examine complaints from DPs and PRMs;
- The Danish NEB has a supervising and enforcing role;
- According to the Estonian NEB, its main role consists in surveillance;
- The Finnish NEB considers that it has to supervise in general that the Regulation is correctly implemented, to investigate all the complaints related to the Regulation, inform and advise DPs and PRMs and other interested parties;
- The French NEB has a general competence in the transportation by air;
- According to the Greek NEB, its main role is to supervise all Regulation infringement and to inform other competent NEBs about those complaints which do not fall within the competences of the Greek NEB;
- In Hungary, the accent is put on the distinct functions of the two competent NEBs: the Equal Treatment Authority is competent to deal with passenger complaints and the National Transport Authority – Directorate of Aviation is competent for supervising the airports and the air carriers;
- The Irish NEB has a very formalistic view of its role: it shall act according to the Regulation;
- In Italy, the Airport Office of ENAC sees its role in the larger sense of the term. It is competent to oversee the airport accountable for a violation, to proceed officially or based on a report/complaint to ascertain the violation, to collect information, to perform inspections, to carry out surveys in order to substantiate and record the violation of the passenger's rights as provided in the Regulation. According to the NEB's answer, ENAC is not in charge of dealing directly with complaints when the alleged violation concerns managing bodies or air carriers belonging to another MS. In such case, as also stated by the Greek NEB, ENAC shall forward the complaint to the NEB of that MS;
- According to the Latvian NEB, its main role is to be responsible for the continuous monitoring of airports and air operators;

- In Latvia, the NEB is responsible for the enforcement of the Regulation, the supervision of the respect by the airports and airlines of the requirements, handle complaints and inflict sanctions;
- This information was not provided by Luxembourg;
- The Maltese NEB stresses that it has a role of enforcement of the Regulation and more specifically the power of approval of any decision issued by the managing body;
- The Dutch NEB is empowered to take measures in order to ensure that the rights of the passengers arising from the Regulation are respected;
- The Polish NEB stated that it has at present only a passive role and interferes only under complaints. However, in Poland a new amendment of Aviation Act shall enter into force (the date is not yet known) and it will also issue binding decisions which will state if air carriers/managing bodies/tour operators infringed provisions of the Regulation in relation with specific cases and will impose fines for every infringement found;
- The Portuguese NEB has an enforcement role of the Regulation which is carried out through airports inspections and complaints analysis;
- The Romanian NEB considers that it has a general competence in implementing the Regulation;
- There is no current supervision in Slovakia;
- According to the Slovenian NEB, it has a supervising role;
- The Spanish NEB mentioned that it exercises its role through inspections of the managing body/air carriers. In case it detects infringements, the NEB may initiate a sanction procedure;
- The Swedish NEB is overall responsible for the safety and security rules and the inspections of airports and airlines. It is in charge of complaints handling and general information about the rules to the travelling public. In the initial phase when implementing the Regulation, the Swedish NEB has informed the airlines, the airports and the disability organisations about the rules. One difficulty pointed out by the Swedish NEB, is that it is not always easy to explain to the stakeholders how to implement the rules; and
- In the United Kingdom, the NEBs see their role strictly divided: the CAA is responsible for the enforcement of the Regulation and the EHRC and the CCNI are responsible for carrying out the complaints/inform about their rights/support individuals' court actions/share complaint data with CAA. The British CAA stressed also its role of collaboration and coordination between the NEBs. Therefore, when the EHRC (in charge of complaints from consumers about the service in England, Scotland and Wales) and the CCNI (in charge of complaints in Northern Ireland) identify a trend of non-compliance by an Operator, or evidence of wilful non-compliance, the matter may be referred to the NEB for further action. If it appears to the CAA that an Operator is in contravention of the Regulation and has failed to comply after suitable requests from the CAA to correct its policies, procedures or practices, then the CAA will

consider initiating legal proceedings. The EHRC and CCNI can also ask the CAA to assist with technical safety expertise or if they have any difficulty in engaging with service providers. EHRC's ability to address Regulation breaches depends on individual passengers wishing to pursue a complaint, and bringing the complaint to EHRC's attention. In case it is justified and appropriate EHRC offers a conciliation service. This can facilitate agreement between parties and produce changes of policy from the Operators. If no agreement is reached, the EHRC may support an individual's claim at County Court.

72. The study aims also throughout the questionnaire to analyse, as broad as possible, how the NEBs are supervising the application in their jurisdictions of each of the obligations under the Regulations. Therefore, at the following paragraphs, we try to seek the common and the different approaches adopted by the NEBs, as well as to underline to the best practices. The study also aims to analyse whether actions and solutions found by the NEBs in order to supervise the obligations under the Regulation are practical, appropriate and effective.

According to article 14 of the Regulation, the NEBs shall be *“responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated in its territory. Where appropriate, this body or bodies shall take the measures necessary to ensure that the rights of disabled persons and persons with reduced mobility are respected, including compliance with the quality standards referred to in Article 9(1).”*

The study reveals that the NEBs have different views on the way they shall apply their role under the Regulation.

It appears from the study that the NEBs supervise the Regulation at a double level:

- Making checks, addressing recommendation and generally, supervising the way the different stakeholders are complying with the rules issued from the Regulation; and
- Examining the complaints of DPs and PRMs related to the Regulation violation. On this point, it appears that the main objective of the NEBs is to find an acceptable solution between the airline and the passenger. Even though some cases reveal a flagrant and clear Regulation violation, no further action is taken by the NEBs in order to ensure the application of penalties.

The NEBs shall be clarified on their role in the process of application of penalties.

3.2.1. Identification of DPs and PRMs

73. The first point our questionnaire attempted to clarify is to which persons the Regulation is applicable, which are the criteria used in order to identify DPs and PRMs (under simple declaration or if other formalities are required), if there are separate criteria used in order to identify DPs on one hand and PRMs on another hand, what kind of obligation have the Operators in case of person identification refusal as DP or PRM (motivate in writing, issue a report to the NEB, to other authorities or whether no specific obligation exists). This is an extremely important issue in order seek if some persons are excluded from the benefit of the Regulation protection in an arbitrarily and abusive way. Under this section, we will examine whether the NEBs have a supervision role on the identification and acceptance of persons considering themselves as DPs and PRMs and if yes, how exactly such supervision is performed.

74. Our study reveals that the majority of the NEBs are supervising the correct identification of DPs and PRMs. However, differences exist in the way they handle such supervision. Generally speaking, the NEBs adopted two approaches:

- A passive approach, which implies that they supervise this matter only upon complaints (Belgium, Bulgaria, Czech Republic, Estonia, Finland, The Netherlands, Poland, Portugal, Lithuania and Slovenia). In such a case, the NEBs start broader investigations. Generally, they are contacted by the DPs and PRMs to solve the situation;
- A proactive approach, involving initiatives from the NEBs independently of existence or not of complaints. To this end, in Austria, Germany, Denmark, Malta and Sweden, the NEBs organise meetings with the stakeholders, such as various organisations representing the DPs and PRMs, the airports, the managing bodies, the airlines, the tour operators and the air carriers. The Swedish NEB has a special experience in organising this type of meeting. Even before the existence of the Regulation, over ten years ago, the Swedish NEB started organising meetings with representatives from six to eight disability organisations and the industry (airports and airlines). These meetings were held twice a year at which participated between fifteen and twenty persons. At present, there is another group with representatives from all types of transport and disability organisations where meetings are held twice a year. The members in the two groups form a network. The NEB receives information via this network and also questions from members in disability organisations. This offers to the NEB the advantage of being informed of the difficulties arising in Regulation enforcement directly from the DPs and the PRMs and not only through the managing bodies which might oversee or underestimate all practical problems. The Swedish NEB tries to have a proactive approach of work and solve general problems related to air travel and the Regulation, namely in individual cases when a passenger has problems with a flight reservation. The Danish NEB has also a very good experience in organising meetings with the stakeholders as they are hosted in Denmark since 2002. Other NEBs such as the Italian, Spanish, Latvian, Hungarian ones are organising auditing and inspections at the airports. This implies that the NEB can ask in case of complaint or at its own initiative, information about the

system identification. It is however difficult to seek through this type of supervision the correct identification of DPs and PRMs. Inspections might be very useful for supervising other types of obligations under the Regulation. A particular system of supervision exists in the United Kingdom where the NEB do not organise meetings or spontaneous inspections but recommends the correct identification of DPs and PRMs via the Code of Practice. These are guidelines of best practices, strongly encouraged by the British government. Even though the Code does not have any obligatory effect, the NEBs have a severe attitude on the stakeholders that do not comply with the recommendations under the guideline.

75. There are however NEBs that do not ensure the supervision of the identification of DPs and PRMs: in France, Slovakia, Lithuania, Luxembourg and Ireland. It appears throughout the answers of the Irish NEB that they deduce their role under the Regulation in a very formalistic way. As result, they see their role strictly as is mentioned in the Regulation and do not undertake particular measures to implement practical aspects of problems and the difficulties the DPs and the PRMs are face with. Therefore, according to the Irish NEB, the Regulation does not impose any mechanism to interrogate a disability claim of any form. The authority responsible for the enforcement of the Regulation in Ireland has no knowledge of what consideration was given by the Commission to the consequences for all stakeholders of having in effect a framework that permits very minor or temporary occasions of disability - of any source - to be addressed by service providers (i.e. air carriers and airports).

Other NEBs, such as Cyprus, Greece and Romania did not specify any particular comments regarding this matter, which might lead to the first conclusion that these NEBs have no particular role on this matter⁴¹.

The question related to the criteria used in order to identify the DPs and PRMs is crucial. In addition to the implementation in each MS of all obligations under the Regulation and the establishment of appropriate penalties, a correct identification DPs and PRMs is of utmost importance. The exclusion of some individuals as DPs and PRMs would have as effect to enforce the Regulation partially only. Our study reveals that a great majority of NEBs do not anticipate the supervision of this element and foresee to interfere only under eventual complaints. However, some NEBs took further steps in organising inspections, auditing (written character) and different kinds of meetings. The organisation of meetings with different stakeholders and notably with those representing DPs and PRMs is, in our view, a very appropriate measure allowing the NEBs to be closely familiarised with the practical identification of difficulties faced by the DPs and the PRMs. The issuance of guidelines on how to deal with practical issues of DPs and PRM is also a method which shall be strongly encouraged in other MS.

⁴¹ Further information was not available.

3.2.2. The rights of DPs and PRMs to be accepted for reservation and embarkation

76. Another issue analysed in our study is to understand for which reasons, in practice, the Operators can refuse to accept reservation for DPs and PRMs for a flight and refuse to embark DPs and PRMs that have a valid reservation and/or ticket.

77. At this paragraph, we will examine how the NEBs⁴² supervise the rights of DPs and PRMs to be accepted for reservation and embarkation.

78. Some NEBs that supervise this matter do it upon complaints only (Czech Republic, Germany, Lithuania, France, the Netherlands, Slovakia and the United Kingdom). Other NEBs, such as the Austrian, Belgian, Danish, Finish, Luxembourgish Portuguese and Swedish ones, supervise the acceptance of DPs and PRMs under complaints but also by accomplishing various inspections. These inspections are held on a regular basis and have as purpose to allow NEBs to understanding the way the Regulation is implemented in practice. The Italian NEB made a further step, not only supervising through inspections and meetings but also checking and analysing all contractual rules of the stakeholders and performing severe auditing on activities at airports. The Latvian and Spanish NEBs organise annual inspections and also require periodically from Operators, airports and the airlines to submit information/reports on their received complaints. The Romanian NEB chose to address questionnaires to the relevant bodies in order to assess the compliance with the Regulation. In Luxembourg the NEB organises various meeting with the relevant stakeholders.

79. The Irish NEB declared not supervising this matter. It considers that the complaints role only emerges following a failure by the passenger to conclude the matter satisfactorily directly with the air carrier, airport management body, etc. in the first instance. According to the Irish NEBs, the Regulation does not address nor has it been required for NEBs to engage in any proactive roles.

80. The Belgian NEB stated that no specific supervision has been implemented yet. This shall be implemented in a near future⁴³. However, according to the Belgian NEB, it had adopted a proactive and reactive approach based on complaints regarding embarkation procedures. Audits and inspections are also performed in order to check the compliance with the Regulation.

One purpose of the Regulation is to prevent the abusive refusal of DPs and PRMs for the reservation and/or embarkation. The NEBs shall, in our view, adopt not only a

⁴² No answers were available for Estonia and Greece.

⁴³ Further information was not available on this point.

reactive approach but also a preventive approach. The study reveals at this stage that most of the NEBs took measures in order to be informed about the reservation and embarkation of DPs and PRMs.

3.2.3. Alternative solution offered to DPs and PRMs

81. Another point examined in our study is the question related to the alternatives offered to the DPs and the PRMs in case of refusal of reservation and embarkation.

82. The study aims also at identifying whether there are penalties applicable in case of lack of alternatives or unacceptable alternatives offered to DPs and PRMs and whether the NEBs have knowledge of complaints/cases due to the lack of alternatives or unacceptable alternatives offered to DPs and PRM and how these cases were solved.

83. Generally speaking, we can underline the two different approaches⁴⁴:

- A passive/reactive approach, where NEBs are interfering only in case of complaints (Bulgaria, Czech Republic, Germany, Hungary, the Netherlands, Slovenia, Slovakia and the United Kingdom);
- A proactive approach, implying that NEBs are undertaking actions in order to detect and to prevent any abuse (Austria, Belgium, Cyprus, Denmark, France, Italy, Latvia, Malta, Portugal and Spain). It consists in meetings with the stakeholders (various organisations representing the DPs and PRMs, the airports and air carriers, etc), inspections and audits. The Italian and the Romanian NEBs carry out surveys in order to substantiate and record the violation of passengers rights. Thus, the Romanian NEB sends a questionnaire to the Operators on annual basis. This way of proceeding might be very effective in order to detect how the Operators are able to find alternative solutions in case of refusal of reservation and/or embarkation. The Maltese NEB has a close cooperation with the airports services on this point.

It appears that other NEBs (Ireland and Finland) do not have any particulars supervision as concerns alternative solutions offered to DPs and PRMs. One difficulty pointed out by the Finish NEB, is the fact that this authority does not have enough resources to active monitoring.

The solution offered to DPs and PRMs is another sensitive point of the Regulation which shall be underlined. In fact, it is important to firstly, verify whether the possibility of offering alternative solutions instead of accepting the embarkation of DPs and PRMs is not exercised by the airlines in an abusive way. Secondly, to seek whether the alternatives solutions are not disproportionate. Therefore, the role of NEBs is highly important. As described above, generally, two different approaches are adopted by the

⁴⁴ No information was available on this point from Estonia, Greece and Poland.

NEBs: a passive/reactive approach and a proactive one. Auditing and the use of an questionnaire seem to be the most appropriate ways for the NEBs in order to objectively detect the type, the number and the situations in which alternative solution are offered to DPs and PRMs.

3.2.4. Requirement from DPs and PRMs to be accompanied by a person

84. The questionnaire examined the situation whether Operators in different MS have the right to require from DPs and/or PRMs to be accompanied by another person and, if yes, under which conditions.

85. The majority of NEBs⁴⁵ has a proactive approach concerning the supervision of such requirements throughout the meetings, audits, own initiatives of investigation, reports from the managing bodies and questionnaires. In Poland, the NEB examines and approves operations, annual manuals that establish procedures of carriage of DPs and PRMs. The Swedish NEB supervises this matter by checking the rules when new airlines apply for the operating license.

In Bulgaria, Czech Republic, France, Germany and the United Kingdom, the NEBs are investigating the case only under complaints and no particular supervision exists.

The major difficulty of the French NEB is to supervise the non - French airlines which often refuse to cooperate. Our study reveals that the requirement of Operators of an accompanying person, rose multiples complaints in France. General guidelines on this point shall be issued by the French NEB to all Operators and to the air carriers.

The NEBs in Ireland, Luxembourg and Slovakia do not have any particular supervision relating to alternative solutions offered to DPs and PRMs.

The question of accompaniment by a person, shall in our view, draw a particular supervision by the NEBs. In fact, this requirement shall remain the exception and not the principle. The Operators might, via this requirement, have an abusive position and deprive the DPs and the PRMs from the relevant assistance and therefore violate the Regulation. Our study reveals that this issue is supervised by the majority of NEBs who adopted a proactive and a reactive approach.

⁴⁵ No information was available on this point from Estonia and Greece.

3.2.5. Points of arrival and departure

86. Another relevant obligation under the Regulation is whether specific points of arrival and departure are designated in all airports of MS in order to allow DPs and PRMs to announce their arrival at the airport and to request assistance. At this paragraph, we will examine how the NEBs supervise the existence and the services provided at the points of arrival and departure.

87. Under a few exceptions, all NEBs⁴⁶ supervise the existence of arrival and departure points as well as the services provided to the DPs and PRMs at these points throughout airport inspections, audits and visits. The Finish NEB does not have the resources necessary to carry out the monitoring trips to other airports than that of the Helsinki-Vantaa airport, which is the largest in Finland. However, these kinds of problems were not reported by other NEBs.

The Czech NEB is not in charge of this supervision which is carried out by the Czech government.

The existence of specific points of arrival and departure in order to allow DPs and PRMs to announce their arrival at the airport and to request assistance is supervised proactively by almost all NEBs.

3.2.6. Coordination of the demand of assistance at the transit and arrival airports

88. One very important issue the study tries to determine is how, in practice, the demand of assistance by the DPs and the PRMs is coordinated. Are there some authorities in charge of such coordination, how exactly the Operators of transit and arrival airports provide such assistance and how they are informed. The details of the study are analysed in Section 2.2.4. In this section, we will examine how the NEBs supervise this matter.

89. In principle, the managing body provides a series of assistance to DPs and PRMs in transit through a MS airport. However, the study reveals that this is not the case in all MS:

- According to the Austrian NEB, there is no centralised coordination under the responsibility of a body. There are three ways of coordination:
 - By the air carrier which informs the service provider; or
 - Between the handling agent and local red cross station via email; or

⁴⁶ No information was available on this point from Estonia.

- By the operative manager on duty;
- In Greece, there is a specific procedure: all notifications regarding DPs and PRMs must be sent by the air carriers to the ground handlers within 48 hours with a copy to the managing body;
- At Ireland's three state airports (Dublin, Cork and Shannon) assistance is provided by a third party contractor. In other six regional airports, assistance is provided by the airport management bodies directly;
- In Italy the coordination is ensured by the airport managing body or subcontractor;
- In Lithuania, the coordination function is ensured by the ground handling agent (a separate legal entity from the airport) under the coordination and the liability of the airports;
- In Luxembourg this question is supervised throughout regular meetings;
- In Poland, the airports coordinate the assistance themselves or via subcontractors that provide such assistance on behalf of the airports;
- In Romania, a special service was created especially for providing assistance to the DPs and PRMs;
- According to the Slovakian answers to the questionnaire, this service is not provided. There are no services facilities at the Stefanik Airport;
- In Slovenia, there is no coordination by a single body. Airports must provide assistance until the embarkation point. The Operator provides assistance on the aircraft. Operator must also notify the airport about the DPs and PRMs;
- In Spain, the coordination is ensured by the company supervisor contracted to provide the service of assistance and ultimately by the managing body;
- In Sweden, this task is ensured at large airports, by a special team of staff via separate passenger units and at small airports this service is coordinated by the check-in staff or the duty officers; and
- In the United Kingdom the task of coordination is ensured by each airport (responsible for providing assistance to DPs and PRMs), which coordinates services in conjunctions with airlines, ground handlers and PRM services providers.

90. A passive/reactive approach where NEBs are interfering only in case of complaints is adopted in Bulgaria, Czech Republic, Germany, Hungary, Lithuania, Finland, the Netherlands, and in the United Kingdom.

Other NEBs are organising meetings with the stakeholders, inspections, and are performing questionnaires and monitoring visits.

In Slovakia, the NEBs do not have any particular supervision. In Sweden, the coordination role is handled by the airports that work closely with the airlines.

It appears from the study that the coordination of assistance raised many complaints. The NEBs shall enforce their role of supervision on this matter and issue guidelines addressed to all Operators.

This is an extremely important issue as in case of failure of a well-coordinated system, some DPs, especially those with intellectual disability might be placed in a vulnerable and dangerous position. Therefore, we concluded to a lack of appropriate supervision from those NEBs that supervise this issue only in case of complaints. Generally speaking, for all matters, it is of course suitable that the NEBs adopt a proactive approach. This particular matter requires a proactive and preventive approach from all the NEBs in order to avoid any complaints.

3.2.7. The publicity provided to the DPs and the PRMs

91. Another important obligation under the Regulation is to ensure an appropriate publicity to the DPs and the PRMs in order to inform them about their rights and the opportunities offered to them, etc.

92. The study reveals that the majority of the NEBs have a proactive role in supervising the existence of such publicity: meetings with various stakeholders (organisations representing the DPs and PRMs, the airports and air carriers), updating and checking the websites, visits to the airports.

93. In Germany, the major airports (more than 150,000 passengers), have to demonstrate to the NEB that they defined and published their quality standards. According to the Finish NEB, they do not have the appropriate resources to supervise publicity beyond their own website.

In Slovakia the NEBs do not have any particular supervision.

The publicity provided to the DPs and the PRMs is supervised by the NEBs. Meetings, reports and regular check of the information available on the Operator's websites shall be strongly advised.

3.2.8. The additional and specific charges

94. Generally speaking, the NEBs have adopted a proactive approach in organising meetings, audits and annual reviews. Austrian, Hungarian, Maltese and Portuguese NEBs approve the charges imposed by the Operators and the airports. This seems a bit contradictory with the answers provided by the Austrian NEB stating that there is no

specific charge. This also underlines the fact that the NEBs do not have a particular supervision on this matter.

The British, Czech, Slovenian and Swedish NEBs supervise this issue only in case they receive complaints related to any of these charges. In Belgium this supervision is performed by an independent regulator.

Ireland and Slovakia do not supervise this issue.

Generally, the NEBs supervise the question related to the specific and additional charges. A regular inspection on the web sites of the airlines shall be strongly recommended in order to see how the airlines impose or not additional charges. As regards the question related to the specific charges imposed by the airports, we consider that the approval by the NEBs or at least the notifications by the managing bodies of their charges are the most appropriate ways to supervise this issue.

3.2.9. The personnel training

95. The NEB supervises the way the personnel is trained through meetings with the stakeholders, audits, investigations and examination of complaints. The NEBs also perform surveys of staff training records. The Bulgarian NEB coordinates the training programs. In Cyprus, the NEB informs the managing body of the relevant documents (Code of conduct in Ground Handling for DPs and PRMs)⁴⁷.

The Czech, Slovakian and British NEBs do not handle such supervision⁴⁸.

It appears, in our view that this issue is not always supervised by the NEBs in an appropriate and effective way. Meetings with the stakeholders, audits and investigations do not always allow the identification of problems encountered by the DPs and PRMs due to the lack of personnel training. The emission of specific guidelines by the NEBs on how to improve the personnel training shall be strongly recommended.

⁴⁷ No information is available from the Belgian, Estonian, Finish and Irish NEBs.

⁴⁸ This question was not available for Luxembourg.

4. UNDERSTANDING OF THE DIFFERENT IMPLEMENTED PENALTY REGIMES

4.1. GENERAL SCOPE OF THE DIFFERENT IMPLEMENTED PENALTY REGIMES

96. Four MS have not yet implemented the penalty regime imposed by the Regulation: Estonia⁴⁹, Slovenia and Sweden have not yet adopted the rules on penalties applicable to Regulation the implementation. Slovakia has not yet adopted rules on penalties applicable to the Regulation implementation. However, a penalty could be imposed on the basis of the Slovakian Consumer Protection Act, which refers to the Regulation (but only as footnotes).

At this time, Poland has not yet implemented the penalty regime but the amendment of the Poland Aviation Act is currently waiting for final Parliament's approval. The available information concerning the future penalty regime is mentioned in the technical part setting out the penalties rules but as the rules are not yet adopted by the Parliament, they are not taken into account in the analysis part setting out the penalties rules.

Unfortunately, our national correspondent did not provide us with relevant information concerning the Greek penalty regime (except that the penalty regime is implemented and the scale of the amount of the penalties).

Therefore, the following analysis of the different implemented penalty regimes is not taken into account in six MS: Estonia, Greece, Poland, Slovakia, Slovenia and Sweden. Moreover, we do not have any practical information concerning the Luxembourg penalties regime from the NEB. Therefore, our analysis is only based on information we could find in the Luxembourg legislation.

97. Within the MS that have implemented the penalty regimes (and for which we have relevant information), three different kinds of approaches have been adopted: general provisions concerning all community rules (generally, in connection with air transport), general provisions especially adopted concerning Regulation infringement or specific (detailed) provisions, which provide various penalties in function of different kind of infringements. Namely:

- Seven MS choose to implement penalty regime by a general provision concerning all Community rules (generally, in connection with air transport): Belgium, Denmark, Finland, Hungary, Latvia and Lithuania. However, the Finish general provision concerns all infringement to any duty (not only in connection to air transport); the Latvian general provision is more detailed than others are (and it is now in amendment procedure); and the Lithuanian general provision

⁴⁹ However, an administrative penalty up to 640 € (10.000 kroons) could be imposed in Estonia on the basis of the Consumer Protection Act. That Act applies in the case a person fails to comply with a precept that requires the rights of the consumer to be respected.

concerns especially all provisions concerning help for DPs and PRMs (not only in connection to the air transport);

Therefore, in these MS, all infringements under the Regulation are subject to possible sanctions.

- Six MS choose to implement penalty regime by a general provision especially adopted for the Regulation infringement: Austria, Cyprus, France, Ireland, Malta and the Netherlands;

Therefore, in these MS all infringements under the Regulation are subject to possible sanctions.

- Nine MS (Bulgaria, Czech Republic, Germany, Italy, Luxembourg, Portugal, Romania, Spain and the United Kingdom) choose to implement penalty regime by several provisions concerning specific Regulation infringements obligations. Bulgaria and Germany provide a penalty for infringement under several duties of the Regulation detailed by the national law. The seven others MS provide various penalties in function of different kinds of the Regulation infringements, detailed by the national law.

In these MS, only the infringements detailed in the national laws are subject to possible sanctions (see hereunder).

4.2. TECHNICAL PART SETTING OUT THE PENALTIES RULES

The legal bases (both substantial and procedural) on penalties are as follows:

4.2.1. Austria

98. Austria provides an administrative penalty up to 22.000 € for any infringement under the Regulation.

If there are aggravating circumstances, the sanction may include a period of imprisonment of up to six weeks.

99. The NEB did not provide any information concerning the procedure except that the sanction is imposed by the District Authority.

4.2.2. Belgium

100. Belgium provides an administrative penalty from 200 € to 4.000.000 € and/or imprisonment of 8 days to 1 year for any infringement under the Regulation (as for any infringement the European Regulations concerning Civil Aviation).

101. The NEB did not provide any information concerning the procedure.

4.2.3. Bulgaria

102. Bulgaria provides a penalty ranging from 1.000 € (2.000 BGN) to 5.000 € (10.000 BGN) for infringements under the Regulation detailed by the Bulgarian law:

- For refusal of transportation of DPs or PRMs by an air carrier without justification based on Article 4.1 of the Regulation;
- For infringement to the information obligation referred to in Article 4.3. of the Regulation by an air carrier;
- For infringement to the information obligation in case of refusal referred to in Article 4.4. of the Regulation by an air carrier;
- For infringement to the obligation concerning the departure and arrival point referred to in Article 5 of the Regulation by a managing body;
- For infringement to the obligation to transmit the information concerning the assistance needed to the relevant managing bodies referred to in Article 6 of the Regulation by an air carrier;
- For infringement to the obligation to provide the assistance by a managing body in accordance with Article 7 of the Regulation;
- For any air carrier or managing body who asks for additional remuneration from a DP or a PRM for any provided assistance (Article 8.1);
- For infringement by a managing body of the obligation referred to in Article 9 of the Regulation to establish quality standards for the assistance specified in appendix I of the Regulation;
- For infringement by a managing body or an air carrier to fulfil with the obligation of training referred to in Article 11 of the Regulation.

103. The administrative proceedings shall be instituted by way of drawing up a statement of establishment of the committed administrative violation (unless proceedings have been discontinued by the court or the prosecutors and forwarded to the relevant criminal authority).

It shall be drawn up within three months following the detection of the offender, or following the elapse of two years since the infringement, in the presence of the offender and the witnesses (if they are known) who were present at either the committing or the establishment of such violation.

A statement of establishment of an administrative violation needs to contain: (1) Full name of the official drawing up the statement plus his or her position; (2) Date when the statement was drawn up; (3) Date and place of the commitment of the violation; (4)

Description of the violation and the circumstances under which it was committed; (5) Legal provisions violated; (6) The offender's full name and age, full address and place of work, civil number; (7) Witnesses names and full addresses, civil numbers; (8) The offender's explanations or objections, if any; (9) Names and full addresses of persons who have suffered material damages in consequence of the violation committed, civil numbers; (10) A list of written materials and effects seized, if any, and the person tasked with the safekeeping thereof.

The decision shall be subject to appeal before a regional court.

4.2.4. Cyprus

104. Cyprus provides for a penalty up to 8.000 € (5.000 £) or 10 % of the Operator's annual turnover for any infringement under the Regulation.

The size of the penalty takes into account the seriousness, duration or repetition of the infringement.

105. The penalties are imposed by the Minister of Communications and Works following a recommendation by the NEB.

Before a fine is imposed, the infringing party will be called upon in writing to account for its actions within a reasonable time, according to the circumstances. The party against whom the complaint was made and the passenger shall be notified thereof by a reasoned decision within 60 days after the written complaint was filed.

4.2.5. Czech Republic

106. Czech Republic provides for a penalty ranging from 12.000 € to 200.000 € for infringement under the Regulation detailed by Czech law:

- A penalty of 12.000 € (CZK 300.000) to:

- (1) Any air carrier who fails to establish safety rules for the transport of the DPs and PRMs available to the public in a format and languages accessible to other passengers, including rules on the limitation of transporting these persons or transporting their mobility equipment because of the size of the aircraft;
- (2) Any air carrier, tourist office operator or travel agency operator who fails to make reasonable efforts to recommend acceptable alternative transport for the DPs and PRMs;
- (3) Any air carrier, tourist office operator or travel agency operator who does not give due regard at all sales outlets, including via telephone sales and internet sales to requests for assistance from DPs and PRMs, or by not ensuring that the request has been duly passed in a timely manner;

- A penalty of 20.000 € (CZK 500.000) to:

- (1) Any managing body who does not designate quality norms for assisting the DPs and PRMs, does not define the means necessary for their performance or does not make their quality norms public;
 - (2) Any air carrier or managing body who does not ensure that all employees who directly assist the DPs and the PRMs meet the special needs of these individuals or who does not provide training on equal opportunities for the DPs and PRMs to all airport personnel coming into direct contact with passengers from the general public or who does not ensure that all employees have undergone training on disability issues;
 - (3) Any air carrier, operator of a tourist office or travel agency who does not immediately inform the DPs and PRMs about the fact that their reservations have been refused or who has not been allowed to the board of the aircraft for justified reasons, and/or does not provide information about these reasons in writing within five days from the date requested from the moment a written explanation was made;
- A penalty of 40.000 € (CZK 1.000.000) to:
- (1) Any air carrier who does not provide the DPs and PRMs with an assistance free of charge during the takeoff, landing or transit at the airport in keeping with directly applicable Community legislation;
 - (2) Any managing body who does not designate an arrival and departure area at the airport where the DPs and PRMs may easily make notification of their arrival at the airport or who does not provide basic information in these areas about the airport or who does not clearly designate the area;
- A penalty of 120.000 € (CZK 3.000.000) is applicable to:
- (1) Any managing body who does not ensure that the assistance designated in directly applicable Community legislation has been offered to persons with DPs and PRMs free-of-charge;
 - (2) Any managing bodies who does not provide assistance to the DPs and PRMs, in the relation with directly applicable EC legislation, who came to the airport for the departure in a manner which enables these persons to take part to the flight for which they have reservations;
- A penalty of 200.000 € (CZK 5.000.000) to:
- (1) Any air carrier, operator of tourist offices or travel agency who refuses without grounds to make reservations for the DPs and PRMs on a flight to or from an airport; or who refuses to accept this person on board if the person possesses a valid ticket and reservation;
 - (2) Any air carrier, operator of tourist offices or travel agency who does not offer to the DPs and PRMs who have been refused boarding due to their disability or limited capability for movement and orientation and persons accompanying a reimbursement of expenses or redirection.

107. The penalties are imposed by the Czech NEB and are based (i) on a complaint from a DP or a PRM or (ii) on the own NEB investigation or (iii) on a government control.

However, the NEB did not provide any information concerning the procedure (it seems that there is no specific legal procedure) except that there is a possibility to appeal against the penalties decision to the Ministry of Transport.

4.2.6. Denmark

108. Denmark provides a penalty up to four months of imprisonment or a penalty which the amount is determined by the Court for any infringement under the Regulation (as for any infringement the European Regulations concerning Air Navigation).

109. The NEB did not provide any information concerning the procedure (it seems that there is no specific legal procedure).

4.2.7. Estonia

110. Estonia has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

111. However, an administrative penalty up to 640 € (10.000 kronas) could be imposed on the basis of the Consumer Protection Act in case of a person failing to comply with a precept which requires that rights of the consumer are respected.

In case of infringement of the rights of the consumers, a precept shall be set out and in case of non-compliance with the precept (which could be brought in Court for an appeal against the decision), a penalty should be imposed to an Operator.

4.2.8. Finland

112. Finland did not provide specific penalties. In case of infringement, the Operator receives an order to respect the Regulation (primary obligation). Repeated infringement would be penalised by a penalty.

In order to determine the size of a penalty, the nature and extent of the primary obligation, the financial standing of the obligated party and other aspects influencing the matter shall be taken into account.

113. The decision to impose a primary obligation shall clearly indicate what the Operator has been obligated to do and when, by what date or from what date the primary obligation shall be complied with. When considering the length of the deadline, the nature and extent of the primary obligation, the possibility of the obligated party to

comply with it as well as other aspects influencing the matter shall be taken into account.

A penalty can be imposed only at an Operator that has a legal and actual opportunity to comply with the primary obligation. If a penalty is directed at several Operators, a separate penalty shall be imposed on each of them.

4.2.9. France

114. France provides a penalty up to 7.500 € to any managing body who fails to comply with the Regulation. The maximum amount of the penalty is doubled in the case of any new infringement committed within one year after the previous one.

Moreover, France provides a penalty which the amount is not legally determined to any natural or legal person who infringes the Regulation.

115. In case a sworn officer of the French NEB finds an infringement to the Regulation, he establishes a Direction which is sent to the Operator who may respond within one month.

If the explanation is satisfactory the procedure is stopped. If it is not, the Operator will be summoned before the passengers commission of the Administrative Commission of Civil aviation, who will then advise the Minister on whether to impose an administrative penalty and for which amount. The Minister could follow this advice or not.

4.2.10. Germany

116. Germany provides a fine up to 25.000 € in case of Regulation infringement.

Penalties are imposed to the Operator who:

- Refuses to accept a reservation or refuses to embark a person on board, in contradiction with Article 3;
- Does not offer or offers illegally damages or other similar right to compensation, in contradiction with Article 4.1, paragraph 3;
- Does not give the necessary information, or gives incomplete or illegal information to a DP or a PRM or does not communicate or not legally, in full and in the forms prescribed, the reasons of an exception, in contradiction with Article 4.4;
- Does not or does not correctly designate points of arrival and departure, in contradiction with Article 5.2;
- Does not take the necessary measures to assist DPs and PRMs, in contradiction with Article 6.1;

- Does not transmit the information concerning assistance needing or does not transmit it correctly, completely and in a form consistent with the law, in contradiction with Article 6.2;
- Does not provide for the assistance mentioned in Article 7.1, section 1, subsections 5 and 6;
- Does not ensure that the assistance to DPs and PRMs is provided without additional costs, in contradiction to Article 8, Section 1;
- Does not provide for the assistance listed to DPs and PRMs or does not provide it in the manner prescribed, in contradiction with Article 10;
- Does not ensure that the employees have an appropriate training, in contradiction with Article 11, lit. A.

117. Penalties are imposed by the German NEB (based on the complaint of DPs or PRMs) after having heard the explanations of the Operator.

4.2.11. Greece

118. Our national correspondent did not provide us with the relevant information (except that penalty regime is implemented and the penalties are imposed by a Court). The penalties range from 500 € to 250.000 €.

4.2.12. Hungary

119. Hungary provides a penalty up to 11.500 € in case of infringement of any Community Regulation (namely concerning air traffic, air-transport and related activities).

The authority ignores the imposition of the fine if the activity or the negligence which has led to it does not directly jeopardise life, physical integrity, safety of property, transport safety or the redemption of civil obligations; does not cause injury for a third person; lacks of intended good faith or misdirection of the authority, cannot be observed concerning the activity or the negligence and it is the first time that the activity or the negligence occurs.

120. During the penalties procedure the Operator is asked for explanation about the violation of the Regulation. The legal consequences shall be determined taking into consideration all circumstances of the case, with particular regard to those who have been affected by the violation of law, the consequences of the violation of law, the duration of the situation constituting a violation of law, the repeated demonstration of conduct constituting a violation of law and the financial standing of the person or entity committing such violation.

4.2.13. Ireland

121. Ireland provides a criminal penalty up to 5.000 € for any infringement under the Regulation (or 150.000 € in case of conviction on indictment).

122. Where breaches of the Regulation are identified (either on a NEB initiative or following a complaint), the NEB has the power to issue a “Direction” to the Operator to cease the infringements and to comply with any instructions contained within the Direction.

The recipient may, within 14 days of issue of the Direction make representations to the NEB.

The NEB must then consider any such representation and may reply to the recipient varying, confirming or withdrawing the Direction within two months of receipt of them.

Where the recipient fails to comply with a confirmed Direction an offence is committed and they may be liable even (a) on summary conviction to a fine not exceeding 5.000 € or (b) on conviction of indictment, to a fine not exceeding 150.000 €.

4.2.14. Italy

123. Italy provides a penalty ranging from 2.500 € to 120.000 € in case of infringement under the Regulation detailed in Italian law:

- A fine from 10.000 € to 40.000 € to the air carrier, his agent or tour operator who refuses to accept a reservation of DPs or PRMs for a flight, subject to the exceptions under Article 4 of the Regulation;
- A fine from 30.000 € to 120.000 € to the air carrier, his agent or tour operator who refuses boarding to DPs or PRMs outside of the derogations foreseen in Article 4 of the Regulation;
- A fine from 20.000 € to 80.000 € to the air carrier, his agent or tour operator, after having denied boarding because of a reason for exemption under Article 4, a) and b) of the Regulation, or do not refund tickets or offer an alternative flight attendant also possible, or not respecting the procedures under Article 8 of Regulation No 261/2004;
- A fine from 5.000 € to 20.000 € to the air carrier, his agent or tour operator who does not:
 - a) Make available to the public in accessible formats and at least in the same languages made available to other passengers, the safety rules that apply to the carriage of DPs and PRMs, as well as any restrictions on their

transport or the carriage of mobility equipment due to the size of the aircraft;

b) Inform the DPs or PRMs of the grounds under which he uses the exceptions in Article 4 a) and b) of the Regulation and/or responds in writing within five working days, to a request to that effect;

c) Transmit at least 36 hours before the departure provided the request of assistance which has been notified of at least 48 hours before the service itself, the information founding that notification of assistance to managing body of the airports of departure, arrival and transit as well as the operating flying carrier;

d) Disclose, as soon as possible after the departure of the flight, to the managing body of the airport of destination, if situated in the territory of a MS to which the Treaty applies, the number of disabled people and persons with reduced mobility present on that flight requiring assistance specified in Annex 1 of the decree, determining the nature of assistance required.

- A fine from 5.000 € to 20.000 € to the managing body that fails to take all necessary steps to receive notifications of requests for assistance by disabled persons or reduced mobility at all outlets (sales point) in the territory of the MS to which the Treaty applies, including sale by telephone or the Internet;
- A fine from 5.000 € to 20.000 € to the managing body who does not clearly designate points of arrival and departure for people with disabilities or reduced mobility, both within and outside terminal buildings, making available to them in accessible formats, basic information on the airport;
- A fine from 10.000 € to 40.000 € to the managing body that fails to comply with support obligations set out in Annex 1 of the decree. In case of subcontracting the service, the penalty applies only to the subcontractor;
- a fine from 2.500 € to 10.000 €, to the managing body that does not set and publish quality standards for the assistance specified in Annex 1 of the decree, except for commercial airports with annual traffic of less than 150.000 passengers;
- A fine from 2.500 € to 10.000 €, to the air carrier and managing body that does not:
 - a) Provide staff, including those employed by a subcontractor, fitting the needs of people with disabilities or reduced mobility;
 - b) Ensure that 'all staff working at the airport in direct contact with travellers, has attended training courses aimed at understanding the issues related to disability in order to be able of assisting people with disabilities or reduced mobility;

c) Guarantee that all new employees attend training courses on disability and that all personnel receive continuous training in the field.

- A fine from 10.000 € to 40.000 € to the air carrier that fails to comply with the provisions of Annex 2 of the decree.

Moreover, from 1st January 2011 on, the amounts of the penalties will be updated by applying the increase of the national consumer price for the entire community.

124. The NEB did not provide for any information concerning the procedure except that on the first instance there are administrative penalties imposed by the NEB and on the second instance there are criminal penalties that are applied.

4.2.15. Latvia

125. Latvia provides penalty from 71 € (50 Lats) to 1.000 € (700 Lats) for infringement to the air passenger rights in connection with boarding on an aircraft and cancellation or long delay of the flight.

A penalty from 71 € to 140 € is provided in case of failure to provide information about the passengers' rights, in connection with boarding on an aircraft or of refusal of the flight cancellation or long delay of flight.

A penalty from 140 € to 1.000 € is provided in case of any infringement to the air passenger rights provided in other laws due to the refusal of boarding on an aircraft or a flight cancellation or long delay of the flight.

126. The NEB did not provide any information concerning the procedure.

4.2.16. Lithuania

127. Lithuania provides a penalty from 300 € (1.000 Litas) to 900 € (3.000 Litas) for any infringement to a provision of help for DPs and PRMs (included the Regulation).

128. In case of Regulation infringement, the NEB responsible officer composes a protocol of administrative violation against the head of the Operator.

This protocol, which shall be composed not later than six months after the infringement took place, is a basis to start an administrative procedure against the concerned Operator.

After that, the responsible officer has two weeks to deal with this case and to adopt a resolution.

The resolution can be made in three different ways: to impose penalties on the head of responsible entity at fault; to close the case due to lack of composition of administrative violation; to transfer the case to another responsible authority.

In case of any of these decisions, the head of responsible entity has 20 days to appeal to the Local Administrative Court.

4.2.17. Luxembourg

129. Luxembourg provides a penalty from 1.250 € to 10.000 € in case of Regulation infringement detailed in the Luxembourg law:

- A fine from 2.500 € to 10.000 € to any air carrier or tour operator who refuses to accept a reservation or to embark DPs or PRMs, subject to the exceptions under Article 4 of the Regulation;
- A fine from 1.250 € to 5.000 € to any air carrier who did not make available, in accessible formats and at least in the same languages as the information made available to other passengers, the safety rules applicable to the carriage of DPs and PRMs, as well as any restrictions on their carriage or on that of their mobility equipment due to the size of the aircraft;
- a fine from 1.250 € to 5.000 € to any tour operator that does not provide the safety rules and restrictions available for flights included in package holidays and package tours it organises, sells or offers for sale.

130. The penalty should only be imposed if the Operator has previously been enabled to submit comments. To this purpose, it is invited by letter with return of receipt to make inspection of the record and give its comments, in a period of no less than a month.

The Minister's decisions to impose a penalty are subject to an appeal overruling the Administrative Court, within one month from the notification.

4.2.18. Malta

131. Malta provides a criminal penalty from 465 € (250 Lm) to 2.350 € (1.000 Lm) for any infringement under the Regulation.

132. In case of infringement, the legal office of the NEB passes the case to the police providing all the evidence available.

It is a criminal procedure instituted by the Police before the Courts of Magistrates.

There is a possibility of appeal before the Criminal Court of Appeal in its inferior jurisdiction.

4.2.19. Poland

133. Poland has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

134. However, according to our national correspondent, penalties scheme will be soon adopted and will provide penalties from 50 € (200 PLN) to 2.000 € (8.000 PLN) depending on the infringement.

According to our national correspondent, the procedure will be soon approved as well.

The procedure will be as follow:

1. Infringement will be found during a Polish NEB's inspection or because of the reception of a complaint. After its receipt, the complaint will be examined to check if all legal requirements are fulfilled and a proceeding can be commenced. If not, a complainant will be instructed to fulfil them.
2. During an inquiry the Polish NEB will examine documents, collect evidence, call parties for explanations, etc.
3. The fines will be imposed by the Polish NEB's decision. The parties can appeal against the decision. After revision of the case, a second stage decision will be issued. The parties can appeal against it to the Administrative Court.

4.2.20. Portugal

135. Portugal provides a penalty from 150 € to 250.000 € depending on the gravity of the infringement, as is committed by a natural or a legal person and in the latter case, depending on its size:

- A fine from 1.000 € to 250.000 € for very serious offences in case of:
 - a) Refusal by the air carrier to accept a reservation for a flight departing from or arriving at an airport situated on the Portuguese territory, on the grounds of disability or of reduced mobility, subject to the exceptions under Article 4 of the Regulation;
 - b) Refusal by the air carrier to embark a DP or a PRM at an airport situated on the Portuguese territory, where the person concerned has a valid ticket and reservation, subject to the exceptions under Article 4 of the Regulation;

- c) Provision of the assistance specified in Annex I of the Regulation in breach of the quality standards set out on the basis on Article 9(1) of the Regulation;
- d) Failure of the air carrier or its representative or agent to make available publicly safety rules applicable to the carriage of DPs and PRMs, as well as any restrictions to their carriage or to mobility equipment due to the size of aircraft;
- e) Failure of the tour operator to make available the safety rules applicable to the carriage of DPs and PRMs, as well as any restrictions to their carriage or to mobility equipment due to the size of aircraft, for flights included in package travel, package holidays and package tours that organises sells or offers for sale;
- f) Failure of the air carrier or its agent or the tour operator to inform the DPs or PRMs of the reason for exercising the derogations under Article 4 of the Regulation;
- g) Failure of the air carrier or its agent or the tour operator to transmit information about the need for assistance;
- h) Failure on the part of the air carrier to inform the managing body of the airport of destination of the number of DPs and PRMs on that flight requiring assistance and of the nature of that assistance;
- i) Failure of the managing body of the airport to ensure the provision of the assistance specified in Annex I of Regulation, whenever a disabled passenger or passenger with reduced mobility arrives at an airport for travel;
- j) Failure of the air carrier or its agent or the tour operator to accommodate the use of a recognised assistance dog, where required, in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft;
- i) Failure of the managing body of the airport or the firm contracted by the latter to provide the assistance specified in Annex I of the Regulation, when a DP or PRM at 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;
- m) Failure of the managing body of the airport to ensure the provision of the assistance specified in Article 7(6) of the Regulation;
- m) Failure to establish separate accounts, in breach of Article 8(5) of the Regulation;
- o) Failure on the part of the managing body of the airport, to disclose in a timely manner or to disclose accurately data relating to cost projections, in breach of Article 8(4) of the applicable decree-law;
- p) Failure to make available an annual overview of charges received and expenses made under the terms and to the bodies specified in Article 8(6) of the Regulation;

- q) Failure to set quality standards, in breach of Article 9(1) of the Regulation;
 - r) Failure on the part, of the air carrier and the airport managing body to ensure that all their personnel, including those employed by any subcontractor, who provides direct assistance to DPs and PRMs have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
 - s) Failure of the air carrier and the airport managing body to provide specific training to all their personnel who deal directly with DPs or PRMs;
 - t) Failure on the part of the managing body of the airport to comply with the assistance arrangements specified in Annex I of the Regulation;
 - u) Failure of air carriers to comply with the assistance arrangements specified in Annex II of the Regulation.
- A fine from 250 € to 10.000 € for serious offences in the case of:
 - a) Breach of the form and the five-day period specified in Article 4(4) of the Regulation;
 - b) Failure on the part of the managing body of the airport to designate points of arrival and departure, at which DPs or PRMs can announce their arrival at the airport and request assistance;
 - c) Breach of the thirty-six hour minimum notice period specified in Article 6(2) of the Regulation;
 - d) Failure to provide information to the Portuguese managing body about the criteria used to determine costs and to separate accounts.
 - A fine from 150 € to 3.000 € in case of minor offences:
 - a) Failure to identify points of arrival and departure, as well as the information specified in Article 5(2) of the Regulation;
 - b) Failure to publish quality standards, in breach of Article 9(3) of the Regulation.

The NEB did not provide any information concerning the procedure.

4.2.21. Romania

136. Romania provides an administrative penalty ranging from 189 € to 591 € in case of infringement.

- A penalty ranging from 236 € up to 591 € in case of infringement of Articles 3, 4, 10 and 12 of the Regulation;
- A penalty ranging from 189 € to 425 € in case of infringement of Articles 5, 7, 9, and 12 of the Regulation.

137. The NEB did not provide any information concerning the procedure except that the identification of contravention to the Regulation and application of the penalties, is the competence of the National Authority for Disabled Persons.

4.2.22. Slovakia

138. Slovakia has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

However, a penalty ranging from 330 € (10.000 SKK) to 332.000 € (10.000.000 SKK) could be imposed on the basis of the Consumer Protection Act which refers especially to the Regulation (as footnotes).

139. Slovakia has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

Penalties according to the Consumer Protection Act Fines may be imposed within one year from the date when the NEB found breach of duty under this Act within three years or within ten years in case the infringement causes an injury to life or health.

4.2.23. Slovenia

Slovenia has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

4.2.24. Spain

140. Spain provides a penalty of 4.500 € to 4.500.000 € for Regulation infringements detailed in the Spanish law:

- A fine from 4.500 € to 45.000 € in case of:
 - Depriving the persons concerned of their legal right to due information on the air transport services offered by the airlines in the computerised reservation systems;
 - Blatantly impolite treatment by the personnel of the company providing the air transport services for passengers;
- A fine from 135.001 € to 450.000 € in case of failure to fulfil the obligation to establish rules for passenger boarding, or not to respect, without justification, their rights and interests in the event of boarding being refused;
- A fine from 450.001 € to 4.500.000 € in case of unjustified refusal of free access by the public to the air transport services.

Moreover, when there is a gross profit obtained as a result of the serious or very serious offense, the penalties may be increased by the positive difference arising, if appropriate, by application of the following rules:

- For committing serious offences, an amount no lower than the sum obtained, nor greater than the double of the profit obtained;
- For committing very serious offences, an amount no lower than the sum obtained, nor greater than the triple of the profit obtained.

The NEB did not provide any information concerning the procedure except that the penalties shall have the consideration of credit under public law and their amount may be collected by administrative foreclosure proceedings.

4.2.25. Sweden

141. Sweden has not yet adopted rules (both substantial and procedural) on penalties applicable to the Regulation implementation.

4.2.26. The Netherlands

142. The Netherlands provide a penalty with a maximum of 74.000 € for any infringement of the Regulation.

143. The procedure is as follows:

- (1) An administrative decision shall be made within the time limit prescribed by statutory regulation, or, in the absence of such time limit, within a reasonable period of time;
- (2) Before making an administrative decision about which an interested party who has not applied for the administrative decision may be expected to have reservations (read in this case: imposing a sanction to a carrier), the administrative authority shall give that interested party the opportunity to state his views;
- (3) The administrative authority shall fix the lump sum ("*astreinte*"), as a sum payable by unit of time during which a duty is not performed, or as a sum per infringement of the duty. The administrative authority shall also fix a sum above which no further penalty will be forfeited. The fixed amount shall be in reasonable proportion to the importance of the interest that has been infringed and the intended effect of the imposition of the lump sum ("*astreinte*");
- (4) The administrative authority shall also set a time limit within which the offender can perform the duty without the lump sum ("*astreinte*") being forfeited.

4.2.27. The United Kingdom

144. The United Kingdom provides a penalty up to 6.024 € (5.000 £):

- A fine up to 1.200 € (1.000 £) in case of failure to the obligation concerning the quality standard imposed by Article 8(2) of the Regulation;
- A fine not exceeding 6.024 € (5.000 £) in case of failure to comply with any obligation imposed by:
 - Article 4(3) – obligation of information on safety rules;
 - Article 5(2) – obligation concerning the signalisation of the points of arrival and departure;
 - Article 6 - obligations concerning transmission of information;
 - Article 7(1), (2), (3), (5) or (6) – obligations concerning the right to assistance at airports;
 - Article 8(6) - obligation to provide an audited annual overview of charges received and expenses made in respect of the assistance provided to DPs and PRMs;
 - Article 9(1) or (3) – obligations to establish and publish quality standards for assistance;
 - Article 10 - obligations of assistance by air carriers;
 - Article 11 – obligation concerning the training.
- A fine up to 6.024 € (5.000 £) which could be unlimited in case of conviction on indictment, in case of failure to comply with any obligation imposed by:
 - Article 3 - obligation concerning the prevention of refusal of carriage;
 - Article 4(1) or (4) – obligations concerning the derogations in order to refuse the reservation or embarkation;
 - Article 5(1) - obligation concerning the existence of the points of arrival and departure;
 - Article 8(1) or (5) – obligation of the managing body to ensure that the assistance specified in Annex I of the Regulation is provided without additional charge to DPs and PRMs;
 - Article 13 - Exclusion of waiver.

The NEB did not provide any information concerning the procedure.

4.3. ANALYTICAL PART ON PENALTIES (SUBSTANTIAL) RULES

4.3.1. Amount of the penalties

145. The MS adopted various amount of penalties. Before analysing the effectiveness of sanctions adopted by the MS, it is appropriate to start by comparing the sanctions adopted by national laws.

Some MS adopted huge amounts of penalties (as, for example, Belgium or Spain) but the theoretical importance of the penalty does not necessarily correspond to their application. Indeed, the effectiveness of a sanction depends more on its effective application than its theoretical importance.

These penalties could be imposed to international companies (i.e. air carriers, tour operators) but could also be imposed to national companies (i.e. managing bodies) and the various amounts of the penalties involve that the same infringement may be punished very differently from one MS to another.

In fact, an international company is not punished in the same way according to the place of the infringement (because the penalty depends on the different national laws). However, all international companies are punished by the same penalty for the same infringement committed on the same place (because the national law is applied to any infringement committed on a MS).

On the contrary, all national companies are punished differently for the same infringement because it depends of their applicable national law. In this case, it seems important not only to compare the amounts of the penalty (changed in Euro for the MS which are not in the Euro Area) but also to compare the amount of the penalty taking into account the economic relative value (in function of the GDP per habitant in the MS).

Hereunder, you will find a list of the amounts of penalties expressed in Euro and expressed in Purchasing Power Standards ("PPS") taking into account the GDP per inhabitant.

PPS is an artificial reference currency unit that eliminates price level differences between countries. One PPS buys the same volume of goods and services in all countries. This unit allows meaningful volume comparisons of economic indicators across countries. Aggregates expressed in PPS are derived by dividing aggregates in current prices and national currency by the respective Purchasing Power Parity (PPP). However, the level of uncertainty associated with the basic price and national accounts data and the methods used for compiling PPPs imply that differences between countries that have indexes within a close range should be interpreted with care.

The amounts expressed in PPS are based on the "GPD per inhabitant for 2009" published by Eurostat⁵⁰ (21.06.2010).

GDP per inhabitant in PPS, 2009, EU27 = 100			
Luxembourg	268	Cyprus	98
Ireland	131	Greece	95

⁵⁰ http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-21062010-AP/FR/2-21062010-AP-FR.PDF

The Netherlands	130	Slovenia	86
Austria	124	Czech Republic	80
Sweden	120	Malta	78
Denmark	117	Portugal	78
The United Kingdom	117	Slovakia	72
Germany	116	Hungary	63
Belgium	115	Estonia	62
Finland	110	Poland	61
France	107	Lithuania	53
Spain	103	Latvia	49
Italy	102	Romania	45
EU 27	100	Bulgaria	41

146. Each amount of penalty was divided by the PPS of the relevant Member State and then multiplied by the average of the EU27. The results allow comparing the amounts in function of these relative values.

Member State	In Euro	In PPS
Austria	up to 22.000 €	up to 17.742 PPS
Belgium	from 200 € to 4.000.000 €	from 174 PPS to 3.478.261 PPS
Bulgaria	from 1.000 € to 5.000 €	from 2.440 PPS to 12.195 PPS
Cyprus	up to 8.000 € or 10 % annual turnover	up to 8.163 PPS or 10 % annual turnover
Czech Republic	from 12.000 € to 200.000 €	from 15.000 PPS to 250.000 PPS
Denmark	amount determined by the Court	amount determined by the Court
Estonia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Finland	amount determined on case by case basis	amount determined on a case by case basis
France	up to 7.500 € (15.000 € in case of recidivism)	up to 7.009 PPS (14.018 PPS in case of recidivism)
Germany	up to 25.000 €	up to 21.552 PPS
Greece	from 500 € to 250.000€	up to 490 PPS to 237.500PPS
Hungary	up to 11.500 €	up to 18.254 PPS

Ireland	up to 5.000 € (or 150.000 € in case of conviction on indictment)	up to 3.817 PPS (114.504 PPS in case of conviction on indictment)
Italy	from 2.500 € to 120.000 € (updated as of 1 st January 2011)	from 2.450 PPS to 117.647 PPS
Latvia	from 71 € to 1.000 €	from 149 PPS to 2.041 PPS
Lithuania	from 300 € to 900 €	from 566 PPS to 1.698 PPS
Luxembourg	from 1.250 € to 10.000 €	from 466 PPS to 3.731 PPS
Malta	from 465 € to 2.350 €	from 596 PPS to 3.013 PPS
Poland	from 50 € to 2.000 € (to be adopted)	from 82 PPS to 3.279 PPS (to be adopted)
Portugal	from 150 € to 250.000 €	from 192 PPS to 320.513 PPS
Romania	from 330 € to 332.000 €	from 733 PPS to 737.778 PPS
Slovakia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Slovenia	NO RULES ADOPTED YET	NO RULES ADOPTED YET
Spain	from 4.500 € to 4.500.000 €	from 4.369 PPS to 4.368.932 PPS
Sweden	NO RULES ADOPTED YET	NO RULES ADOPTED YET
The Netherlands	up to 74.000 €	up to 56.923 PPS
The United Kingdom	up to 6.024 €	up to 5.149 PPS

4.3.2. IDENTIFICATION OF COMMON APPROACHES AND OF DIVERGENCES AMONG THE REGIMES

147. After the comparative analysis, we are able to underline the following approaches and divergences regarding the penalty regimes:

4.3.2.1. Common approaches

148. Penalties scheme of MS are based on a fine regime. However, some MS provide other types of sanction.

Austria, Belgium and Denmark provide that an imprisonment could be sentenced (especially in case of aggravating circumstances) additionally or in the place of the penalty. However, because the imprisonment of a legal person is impossible, it seems that the fine is almost always the only possible penalty.

Article 11.27 of the Dutch Civil Aviation Act requires the periodic publication of a list of companies that were given an administrative fine.

149. Generally speaking, the provisions of law determine the amount of penalty with a maximum (and often a minimum).

The two only MS that have not determined the amount are Denmark and Finland.

In Denmark, the determination of the penalty is an exclusive competence of the Criminal Courts and in Finland (which provides a general provision concerning infringement to any duty (i.e. not only in connection with air travel) the amount of the penalty is determined on a case-by-case basis.

In some MS (Spain, Portugal and the United Kingdom), the amount of the fines varies in function of the nature of the infringement. Refusal of boarding is more severely punished than lack of information.

After the comparative analysis (on the basis of the practical approaches communicated by the NEBs), we could conclude that the penalty regime is not applied by the NEBs. Most of the time, the NEBs try to find an arrangement between the DPs and the PRMs and the Operator who infringed the Regulation but does not apply any sanction to the Operator.

Moreover, when the penalties schemes are applied, it is essential in case of passenger complaint. Therefore, there is (almost) no proactive and protective approach (see the following section concerning the effectiveness of the penalties scheme).

4.3.2.2. 4.3.2.2. Diverging approaches

150. As mentioned above, the amount of the penalties established by national law greatly varies within the EU. The amount varies from 50 € up to 4.500.000 €.

- The MS that imposes the lowest penalties is Latvia (ranging from 71 € to 1.000 €);
- The MS that provides the higher penalties is Spain (ranging from 4.500 € to 4.500.000 €);
- Ten MS impose low penalties (maximum amount below 10.001 €):
 - Latvia imposes penalties ranging from 71 € to 1.000 €;
 - Lithuania imposes penalties ranging from 300 € to 900 €;
 - Poland will impose penalties ranging from 150 € to 2.000 €;

- Malta imposes penalties ranging from 465 € to 2.350 €;
 - Bulgaria imposes penalties ranging from 1.000 € to 5.000 €;
 - Ireland imposes penalties up to 5.000 €;
 - The United Kingdom imposes penalties up to 6.024 €;
 - France imposes penalties up to 7.500 € (but 15.000 € in case of recidivism);
 - Cyprus imposes penalties up to 8.000 € (but imposes also a penalty of 10 % of annual turnover);
 - Luxembourg imposes penalties ranging from 1.250 € to 10.000 €;
- Four MS impose penalties with a maximum amount ranging from 10.001 € to 75.000 €:
 - Austria imposes penalties up to 22.000 €;
 - Germany imposes penalties up to 25.000 €;
 - Hungary imposes penalties up to 11.500 €;
 - The Netherlands impose penalties up to 74.000 €.
- Four MS impose penalties with a maximum amount higher than 100.000 €:
 - Italy imposes penalties ranging from 2.500 € to 120.000 €;
 - Czech Republic imposes penalties ranging from 12.000 € to 200.000 €;
 - Portugal imposes penalties ranging from 150 € to 250.000 €;
 - Romania imposes penalties ranging from 330 € to 332.000 €.
- Two MS impose high penalties (maximum amount over 4.000.000 €):
 - Belgium imposes penalties ranging from 200 € to 4.000.000 €;
 - Spain imposes penalties ranging from 4.500 € to 4.500.000 €.

As mentioned in section 3.3.1. above, the comparative analysis of the penalties have to take into account the relative economic value (in function of the GDP per habitant in the MS and expressed in PPS) in the case of the penalties are applied to national companies.

Expressed in the economic relative value, it appears that the amount of the penalty varies from 82 PPS and 4.368.932 PPS and the classification made above is not very different:

- The MS that imposes the lowest penalty is Lithuania⁵¹ (ranging from 566 PPS to 1.698 PPS);
- The MS that provides the higher penalty is Spain (ranging from 4.369 PPS to 4.368.932 PPS); Nine MS impose low penalties⁵² (maximum amount under 10.000 PPS):

⁵¹ For information, in Euro amount classification, the MS which imposes the lowest penalty is Latvia.

- Lithuania imposes penalty ranging from 566 PPS to 1.698 PPS;
 - Latvia imposes penalty ranging from 149 PPS to 2.041 PPS;
 - Malta imposes penalty ranging from 596 PPS to 3.013 PPS;
 - Poland imposes penalty ranging from 82 PPS to 3.279 PPS;
 - Luxembourg imposes penalty ranging from 466 PPS to 3.731 PPS;
 - Ireland imposes penalty up to 3.817 PPS;
 - The United Kingdom imposes penalty up to 5.149 PPS;
 - France imposes penalty up to 7.009 PPS (but 14.018 PPS in case of recidivism);
 - Cyprus imposes penalty up to 8.163 PPS (but imposes also a penalty of 10 % of annual turnover).
- Five MS impose penalties which a maximum amount ranging from 10.000 PPS to 60.000 PPS⁵³:
 - Austria imposes penalty up to 17.742 PPS;
 - Bulgaria imposes penalty ranging from 2.440 PPS to 12.195 PPS;
 - Germany imposes penalty up to 21.552 PPS;
 - Hungary imposes penalty up to 18.254 PPS;
 - The Netherlands imposes penalty up to 56.923 PPS.
- Four MS impose penalty with a maximum amount higher than 100.000 PPS⁵⁴:
 - Italy imposes penalty ranging from 2.450 PPS to 117.647 PPS;
 - Czech Republic imposes penalty ranging from 15.000 PPS to 250.000 PPS;
 - Portugal imposes penalty ranging from 192 PPS to 320.513 PPS;
 - Romania imposes penalty ranging from 733 PPS to 737.778 PPS.
- Two MS impose high penalty (maximum amount over 3.000.000 PPS)⁵⁵:
 - Belgium imposes penalty ranging from 174 PPS to 3.478.261 PPS;
 - Spain imposes penalty ranging from 4.369 PPS to 4.368.932 PPS.

151. As mentioned above, three different approaches have been chosen:

- Seven MS established a general provision concerning all Community rules (generally, in connection with air transportation);
- Six MS established a general provision especially adopted for Regulation infringements; and

⁵² For information, in Euro amounts classification, these nine MS are also the MS which impose the lowest penalty. However, in Euro amounts classification, Bulgaria is also classified in the category of low penalties (maximum amount under 10.000 €).

⁵³ For information, except Bulgaria, this intermediary category is the same in Euro amounts classification.

⁵⁴ For information, this category is the same in Euro amounts classification.

⁵⁵ For information, this category is the same in Euro amounts classification.

- Nine MS established specific (detailed) provisions, which provide penalties for different kinds of infringements. Within these nine MS, seven MS provide various penalties in function of different kinds of Regulation infringements detailed by the national law.

The two first approaches (to establish a general provision for all rules in connection with air transport or for all rules under the Regulation) allow the full Regulation implementation.

The last approach (to establish specific (detailed) provisions) allows specifying the obligations from the Regulation in a national law. However, this approach has the drawback of entailing the risk that not all types of infringements are pursued.

For example:

- Bulgarian legislation concerns only the air carriers and the managing body but no penalty is provided in case of infringement by a tour operator;
- Luxembourg established penalties only for some infringements:
 - To any air carrier or tour operator who refuses to accept a reservation or to embark DPs or PRMs, subject to the exceptions under Article 4 of the Regulation;
 - To any air carrier who does not respect the obligation of information under the Regulation;
 - To any tour operator that does not provide the safety rules and restrictions available for flights included in package holidays and package tours it organises, sells or offers for sale.
- Romania does not impose any penalty in case of infringement to Article 6 (transmission of information), Article 8 (responsibility for assistance at airports) and Article 11 (training).
- Spain does not impose penalties for each Regulation infringement but only for some of them:
 - In case of depriving the persons concerned of their legal right due to information on the air transport services offered by the airlines in the computerised reservation systems;
 - In case of blatantly impolite treatment by the personnel of the company providing the air transport services for passengers;
 - In case of failure to fulfil the obligation to establish rules for passenger boarding, or not to respect, without justification, their rights and interests in the event of a refused boarding;
 - In the case of unjustified refusal of free access by the public to the air transport services.

We could conclude that the Regulation is not correctly and fully implemented in the MS that provide for specific (detailed) provisions without referring to the entire Regulation.

Especially, in Bulgaria, Luxembourg, Romania and Spain, some obligations under the Regulation are not subject to possible sanctions.

Considering the various amounts of the penalties provided by the MS (even taking into account the relative economic value of the different penalties), we conclude that the penalties amounts vary greatly depending where the infringement is committed.

For example, the infringement to Article 11 (training) is subject to several sanctions.

In case the infringement is committed by an air carrier, sanctions vary according to the MS where it is committed. Therefore, the same infringement to article 11 committed by the same air carrier is punishable of:

- A penalty up to 22.000 € in Austria;
- A penalty ranging from 200 € to 4.000.000 € in Belgium;
- A penalty ranging from 1.000 € to 5.000 € in Bulgaria;
- A penalty up to 8.000 € or 10 % of annual turnover in Cyprus;
- A penalty up to 20.000 € in Czech Republic;
- A penalty determined by the Court in Denmark;
- No specific penalty in Estonia;
- An eventual penalty determined case by case in Finland;
- No specific penalty in France (the amount of the penalty is only determined for the managing body – amount for the air carrier is not legally determined);
- A penalty up to 25.000 € in Germany;
- A penalty up to 11.500 € in Hungary;
- A penalty up to 5.000 € in Ireland;
- A penalty ranging from 2.500 € to 10.000 € in Italy;
- A penalty ranging from 147 € to 1.000 € in Latvia;
- A penalty ranging from 300 € to 900 € in Lithuania;
- No specific penalty in Luxembourg;
- A penalty ranging from 465 € to 2.350 € in Malta;
- No specific penalty in Poland;
- A penalty ranging from 1.000 € to 250.000 € in Portugal;
- No sanction in Romania;
- No sanction in Slovakia;
- No sanction in Slovenia;
- No sanction in Spain;
- No sanction in Sweden;
- A penalty up to 74.000 € in the Netherlands;
- A penalty up to 5.000 € in the United Kingdom.

From the international companies' viewpoint (air carrier, e.g.), discriminations between them and other companies are not really significant. The penalty amount depends on the place where the infringement is committed (Lithuania, e.g.). All companies in the same MS (Lithuania, e.g.) will thus be subject to the same penalty amount. On the contrary, from the national companies' viewpoint (managing bodies, e.g.), for the same infringement, a different penalty is applicable depending on the place where the infringement takes place. The amount difference can be substantial as, as we have seen it above, penalty amounts greatly vary from one MS to the other. Consequently, the differences in rules identified above create discriminations between companies, and more specifically between national companies (managing bodies). This could potentially distort competition conditions between them.

The comparison of the sanctions needs to take into account the economic level of each MS (100 € is not the same in Luxembourg and in Bulgaria). Expressed in PPS, the same infringement to Article 11 committed by a managing body is punishable of:

- A penalty up to 17.742 PPS in Austria;
- A penalty ranging from 174 PPS to 3.478.261 PPS in Belgium;
- A penalty ranging from 2.440 PPS to 12.195 PPS in Bulgaria;
- A penalty up to 8.163 PPS or 10 % of annual turnover in Cyprus;
- A penalty up to 25.000 PPS in Czech Republic;
- A penalty determined by the Court in Denmark;
- No specific penalty in Estonia;
- An eventual penalty determined case by case in Finland;
- A penalty up to 7.009 PPS in France (only for the managing body – amount for the air carrier is not legally determined);
- A penalty up to 21.552 PPS in Germany;
- A penalty up to 18.254 PPS in Hungary;
- A penalty up to 3.817 PPS in Ireland;
- A penalty ranging from 2.450 PPS to 9.800 PPS in Italy;
- A penalty ranging from 300 PPS to 2.041 PPS in Latvia;
- A penalty ranging from 566 PPS to 1.698 PPS in Lithuania;
- No specific penalty in Luxembourg;
- A penalty ranging from 596 PPS to 3.013 PPS in Malta;
- No specific penalty in Poland;
- A penalty ranging from 1.282 PPS to 320.513 PPS in Portugal;
- No sanction in Romania;
- No sanction in Slovakia;
- No sanction in Slovenia;
- No sanction in Spain;
- No sanction in Sweden;
- A penalty up to 56.923 PPS in the Netherlands;
- A penalty up to 4.274 PPS in the United Kingdom.

We could conclude that the managing bodies (which are national companies) are not subject to the same rules and some of them are punishable of a much higher penalty for the same infringement (the difference is between the managing bodies which are not equal). This conclusion is available for the air carriers which are national companies.

4.4. ANALYTICAL PART ON PENALTIES (PROCEDURAL) RULES

152. We did not receive information concerning procedural rules on penalties and our researches did not allow us to find all relevant information.

Therefore, the following analysis is especially based on incomplete information based on eleven MS procedures: Bulgaria, Cyprus, Czech Republic, Finland, France, Hungary, Ireland, Lithuania, Luxembourg, Poland and the Netherlands.

153. Different approaches have been chosen by MS concerning the procedural rules on penalties:

- The authority that imposes the penalty varies from MS to MS:
 - It could be imposed by the NEB as in Czech Republic, Germany, Italy, Lithuania and Poland; or
 - It could be imposed by the Minister as in Cyprus, France and Luxembourg; or
 - It could be imposed by a Court as in Denmark and Malta; or
 - It could be imposed by another authority as in Romania where the identification of contravention to the Regulation and the application of penalties are the competences of the National Authority for Disabled Persons.
- The hearing of the offender's explanations (or objections) is especially provided by a lot of national laws as in Bulgaria, Cyprus, France, Germany, Hungary, Ireland, Luxembourg, Poland and the Netherlands.

However, the hearing of the offender should exist, in principle, in all MS even where the penalty is not a criminal fine (the criminal penalties shall comply with the rights of the defender as provided by the European Convention of the Human Rights but not administrative ones). Unfortunately, we have no further information communicated by the NEBs to take relevant conclusions concerning the hearing of the offender.

- A possibility of appeal against the penalties decision is especially provided by some MS as Bulgaria, Czech Republic, Italy, Lithuania, Luxembourg, Malta and Poland.

It seems that the possibility of an appeal against the penalties decision exists in all MS but all the NEBs did not confirm this point.

- Three MS chose to impose a deadline to pursue an infringement:
 - In Bulgaria, the administrative penalty shall be drawn up within three months following the detection of the offender, or following the elapse of two years since the committing of such violation;
 - In Lithuania, the protocol of administrative violation shall be composed no later than six months after the infringement took place;
 - In the Netherlands, the administrative decision to impose a penalty shall be made within the time limit prescribed within a reasonable period of time.
- Two MS chose to impose a penalty only after a first order to comply with the Regulation and only in case the Operator does not comply with that order, as Finland and Ireland. Therefore, in these MS, no penalty shall be applied in the case of one infringement only. It is only if the Operator fails to comply with the first warning (and therefore if there is another complaint) that the Operator shall be sanctioned.

We could conclude that there is not really a common approach within the procedural rules on penalties even if often MS choose to follow some rules inspired by the European Convention of Human Rights (as the possibility of an appeal for hearing the offender's explanation).

4.4. ANALYSIS OF THE COMPLIANCE AND EFFECTIVENESS, PROPORTIONALITY AND DISSUASIVENESS OF THE IMPLEMENTED REGIMES

154. After the analysis of the Regulation implementation we could conclude that the penalties scheme is often not compliant, not dissuasive and not effective.

155. Some MS do not yet implement the Regulation penalties scheme as Estonia, Slovenia and Sweden. In Slovakia, a penalty could be imposed on the basis of the Consumer Protection Act (which referred to the Regulation as footnotes).

The penalties scheme will be soon adopted by the Parliament in Poland.

Moreover, four MS did not fully implement the penalties scheme.

As mentioned above, these MS that chose to establish specific (detailed) provisions do not fully comply with the Regulation:

- Bulgarian legislation concerns only the air carriers and the managing body but no penalty is provided in case of infringement by a tour operator;
- Luxembourg established penalties only for some infringements:
 - To any air carrier or tour operator who refuses to accept a reservation or to embark DPs or PRMs, subject to the exceptions provided for in Article 4 of the Regulation;
 - To any air carrier who does not respect the obligation of information from the Regulation;
 - To any tour operator that does not provide the safety rules and restrictions available for flights included in package holidays and package tours organising, sells or offers for sale.
- Romania does not provide any penalty in case of infringement to Article 6 (transmission of information), Article 8 (responsibility for assistance at airports) and Article 11 (training);
- Spain does not provide penalties for each Regulation infringement but only for some of them:
 - In case of depriving the persons concerned of their legal right to due information on the air transport services offered by the airlines in the computerised reservation systems;
 - In case of blatantly impolite treatment by the personnel of the company providing the air transport services for passengers;
 - In case of failure to fulfil the obligation to establish rules for passenger boarding, or not to respect, without justification, their rights and interests in the event of boarding being refused;
 - In case of unjustified refusal of free access by the public to the air transport services.

156. The differences between the amounts of the penalties are substantial from one MS to another.

Therefore, the same infringement is not subject to the same sanction depending on the MS. The penalty greatly varies depending on whether the offense is committed. In the MS that provide low penalties, the implemented regime is not dissuasive.

However, all MS chose to provide a large scale of penalties. This allows to impose a proportional penalty depending on the circumstances.

157. Following information communicated by the NEBs, it seems that the penalties scheme is not (or not often) applied.

First of all, there is (almost) no proactive and protective approach by the NEB. Frequently, the penalties are only imposed in case of complaint. The NEBs mentioned various cases of complaints related to the refusal of identification of passengers as DPs and PRMs, lack or inappropriate assistance to the DPs and PRMs, absence of assistance at the airport, Operators refusing carriage of materials, wheelchairs; provide assistance within the airplane, etc. Even though the NEBs admit that there were clear cases of Regulation infringements, they did not ordinarily take any further steps in order to apply penalties. The main reason invoked by the different NEBs in order to justify the absence of penalties is that satisfaction was given to the victim.

Furthermore, some MS invoke the fact that there are still gaps in the legislation and that it is difficult to apply clear sanctions (for example, the precise status of accompanying person). The Regulation implementation by the national authorities varies also substantially from MS to MS. A lot of infringements can already be solved by a more effective Regulation implementation by the NEB. Even in this case, penalties must continue to have an important deterrent effect.

The conclusion of our study on this point is that the MS have implemented the penalty schemes but they are not applied by MS and therefore they are not really effective.

The study reflects that the NEBs do not have always an appropriate interpretation of Article 16 of the Regulation. The penalties provided by MS shall be applicable in case of Regulation infringement irrespective of whether DPs undergo damages or are indemnified.

Actually, at this time it seems that even though some complaints have been introduced, no penalty has yet been applied by any NEB.

However, it seems that the NEBs try mostly to find an amicable solution with the DP or the PRM. Beyond the text of the Regulation, the NEBs were given a role of mediator that should seek to obtain satisfaction of the victim rather than punish or to take the relevant actions against the responsible of the infringement.

Therefore, the penalty scheme is not so effective or dissuasive in the European Union and some recommendations from the Commission should be welcomed (especially in order to ensure that all infringements are subject to effective sanctions by application of a penalty even if the DPs and PRMs are compensated).

5. FINAL CONCLUSIONS

5.1. The understanding of the Regulation varies from one MS to another

158. The study shows that the Regulation is interpreted differently in each MS. There is no uniform and clear definition of the DPs and PRMs. For instance, NEBs are not sure whether persons suffering from obesity shall or not be considered as PRMs. Some MS apply the Regulation to obese persons, other MS not. It is relevant to mention that Article 2 of the Regulation is drafted in a very wide way: *“any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause (...) and whose situation needs appropriate attention and the adaptation to his or her particular needs”*. It should, according to us, not exclude the obese persons from its application. The NEBs are not always sure whether formalities are or not required in order to allow the refusal of reservation and/or embarkation of a DP or PRM. Many issues related to the services provided by the member crew during the flight are not really supervised and depend on the internal rules of each air carriers.

159. The question related to the accompaniment by another person has also raised many questions and complaints as the Operators do not have general guidelines on the situations in which they can impose this condition. Furthermore, the acceptance for embarkation of DPs and PRMs seems to be often in conflict with other rules on air security, such as emergency procedures, etc. Airlines seem to favour the compliance with other security rules on the detriment of the Regulation. This point can be understandable from the airline position, which prefers to face the problem related to the refusal of embarkation rather than that related to a life lost due to the impossibility of evacuation in case of a crash. General and clear guidelines, common to all MS, which take into account all these aspects, shall clarify Operators on this point.

Furthermore, specific attention shall be brought to the question related to the coordination of assistance to the DPs and PRMs. The study shows that, at present, there is no specific procedure of coordination between Operators of different MS. Each airport has its own procedure and this question does not seem to be particularly supervised by the NEBs. General guidelines shall also strongly be recommended on this point.

160. The question related to publicity is another point, which shall attract a particular attention by the NEBs. The study reveals that the websites and the information provided by the tour operators are not always complete and correct. This might lead to confusion and exclusion of PRMs, which might consider that they do not have right to benefit from the assistance. Guidelines containing minimum information, which shall be provided by the Operators, shall be recommended on this point.

It appears from the study that the training provided to the personnel involved in the chain of assistance of DPs and PRMs contain rather practical information on how to assist them. A training containing general information on the obligations issued from the Regulation shall be recommended by the NEBs as well.

161. Finally, the role of the NEBs is interpreted very differently in different MS. Some NEBs see their role as being very wide, other as being very limited. It is in part due to the fact that most of the NEBs are CAAs. As CAAs, they do not always dispose of the time necessary to correctly supervise the Regulation and to issue recommendations.

5.2. The penalty scheme is not uniform and not applied in practice

162. As it is analysed throughout the study, the penalty schemes adopted by MS is also not uniform in all MS. Some penalties are (theoretically) very severe, implying substantial amounts of penalties, other are lower. The nature of penalties is also different and it consequently implies a different application by the judges. It is much more difficult to bring criminal charges against an Operator than civil and/or administrative charges, which could be more easily applicable by the judges.

163. As it was discussed above, the most important finding of the study is that the penalty scheme is actually not applied by MS. The application of the penalties depends firstly on the interpretation of the provisions of the Regulation. If the interpretation of the obligations is very restrictive, then the penalties will apply rarely. Furthermore, this point underlines the significant role of the NEBs. The NEBs are the first body dealing with the violation of the Regulation throughout their regular supervision and the complaints received from the passengers. As stressed throughout the study, the NEBs seem to try to find an acceptable solution between the parties and do not intend to take further steps in order to apply the penalty scheme. Specific and clear guidelines shall be addressed to them on this point.

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ANNEX 1. THE LEGAL BASIS OF THE PENALTIES

ANNEX 2. THE SUMMARY OF ALL THE ANSWERS FROM THE NEBS

ANNEX 3. LEGAL QUESTIONNAIRE TO THE NEBS