

European Regulations on Air Travel

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Most relevant Regulations:

- ◎ 261/2004 common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights
- ◎ 2011/2005 operating ban within the Community / information duty on identity of the operating air carrier
- ◎ 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air
- ◎ 1008/2008 common rules for the operation of air services in the Community



Regulation 261/2004

- ⊙ establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights
- ⊙ repealing Regulation (ECC) 295/91 („Denied Boarding Regulation“)
- ⊙ to raise standard of protection
- ⊙ came into force 17 February 2005



Denied Boarding

- ⦿ refusal to carry passengers on a flight, although they have presented themselves for boarding on time
- ⦿ except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation
- ⦿ carrier supposed to call for volunteers to surrender reservation in exchange for benefits



Remedies

- ⊙ compensation of EUR 250 to EUR 600 depending on flight distance to final destination
- ⊙ regardless of actual damage
- ⊙ reduced by 50% if alternative flight arrives within certain time limits
- ⊙ reimbursement or re-routing
- ⊙ care (meals, refreshments, hotel accomodation , ...)



Cancellation

- ⊙ non-operation of a flight which was previously planned and on which at least one place was reserved
- ⊙ remedies as for denied boarding, but
 - ◆ no compensation if passenger was informed in advance and alternative flight arrives within certain time limits
 - ◆ no compensation if cancellation was caused by extraordinary circumstances



Delay

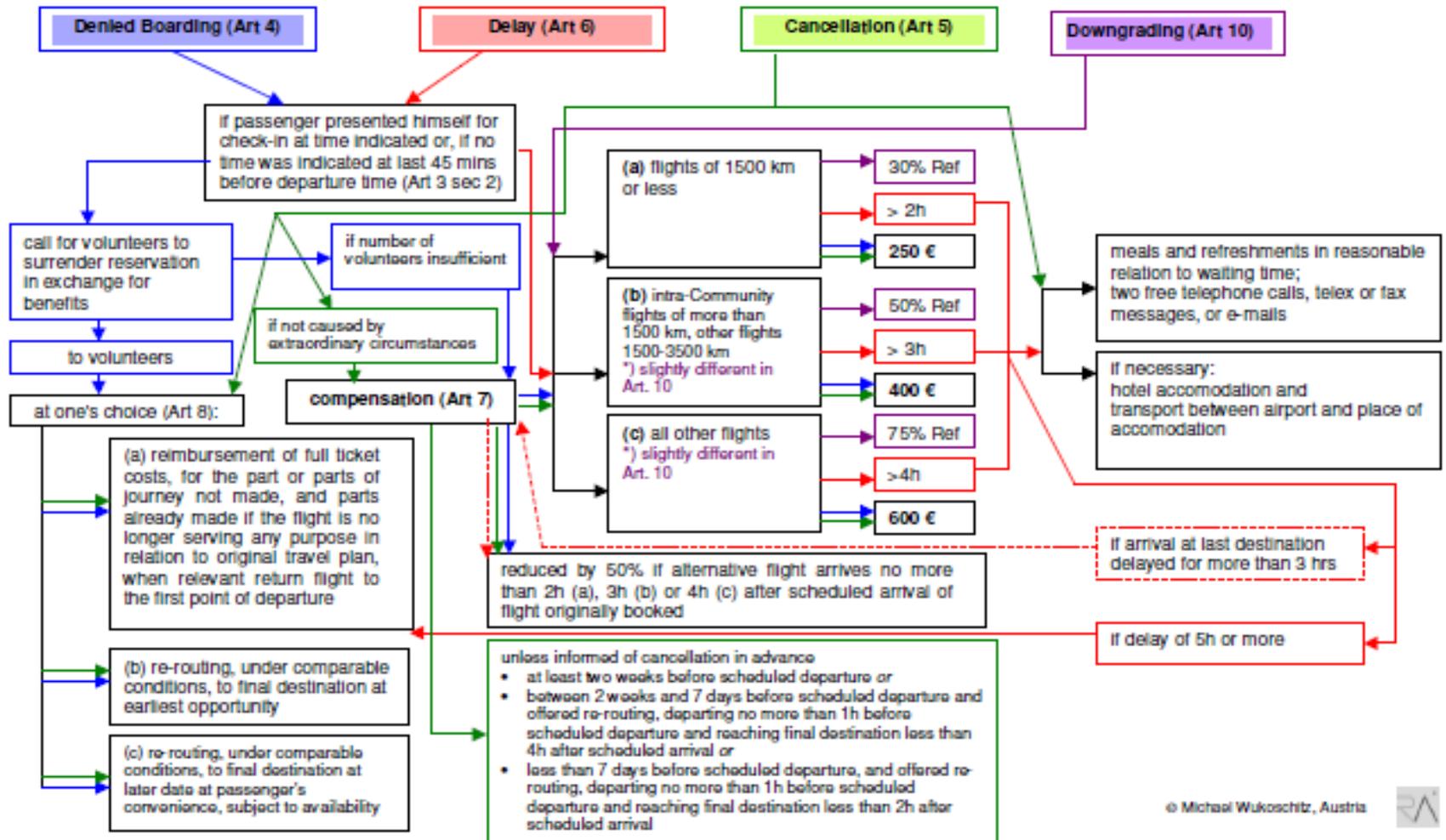
- ⊙ no definition
- ⊙ remedies only if departure is delayed beyond certain time limits (depending on distance)
- ⊙ care/assistance (meals, refreshments, hotel accomodation, ...) according to waiting time
- ⊙ in case of delay of 5 hrs or more: reimbursement or re-routing
- ⊙ ECJ C-402,432/07 – Sturgeon/Böck: pax of delayed flights for the purposes of the application of the right to compensation, may be treated as passengers whose flights are cancelled where they reach their final destination 3 hrs or more after the originally scheduled arrival time



EU-Regulation 261/2004

applicable (Art. 3) to passengers

- departing from an airport
 - located in the territory of a member state (a) or
 - located in a third country to an EU airport with Community carrier (b)
- having a confirmed reservation



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Regulation does not cover

- ⊙ short delays
- ⊙ missed connection flights
- ⊙ diversions
- ⊙ late arrivals



Issues

- ⊙ compatibility with Montreal convention
- ⊙ scope of applicability
- ⊙ differentiation between delay and cancellation
- ⊙ „extraordinary circumstances“
- ⊙ jurisdiction



Compatibility with Montreal Convention ?

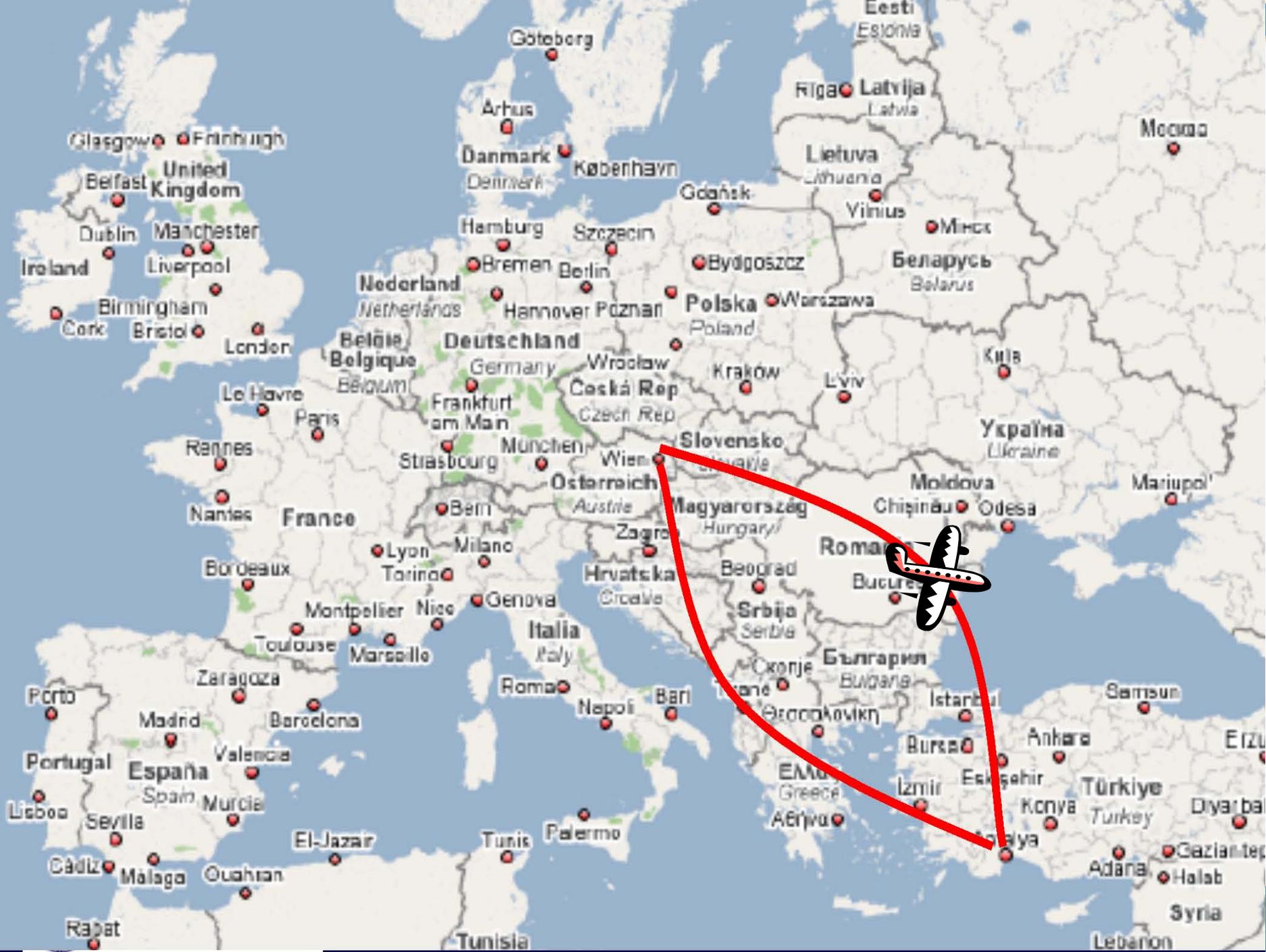
- ⊙ EU is signatory of Montreal Convention
- ⊙ both Montreal Convention and Reg. 261/2004 provide for Passenger Rights
- ⊙ Montreal Convention provides exclusive remedies (Art. 29)
- ⊙ Montreal covers individual damage, while Reg. 261/2004 covers generalised immediate inconvenience
- ⊙ ECJ: MC doesn't prevent European legislator providing (additional) ad hoc compensation as in Reg. 261/2004 (C- 344/04 – IATA)
- ⊙ questionable after ECJ Sturgeon/Böck decision



Applicability (Art. 3 par. 1)

- ⊙ Regulation applies to passengers departing from an airport
 - located in the territory of a member state (a) *or*
 - located in a third country to an EU airport with Community carrier (b)







ECJ C-173/07 - Emirates:

- ⊙ „flight“ means a unit of the transport, performed by an air carrier which fixes its itinerary , while
- ⊙ „journey“ attaches to the person of the passenger, who chooses his destination and makes his way there by means of flights operated by air carriers.
- ⊙ Art. 3 (1) (a) does not apply to the case of an outward and return journey in which passengers who have originally departed from an airport located in the territory of a Member State travel back to that airport on a flight from an airport located in a non-member country.
- ⊙ the fact that the outward and return flights are the subject of a single booking has no effect on the interpretation



Differentiation between „Delay“ and „Cancellation“

Definitions:

- ⊙ CANCELLATION = the non-operation of a flight which was previously planned and on which at least one place was reserved
- ⊙ DELAY – no definition



ECJ C-402,432/07 –

Sturgeon/Böck:

- ⊙ a flight which is delayed, irrespective of the duration of the delay, even if it is long, cannot be regarded as cancelled where the flight is operated in accordance with the air carrier's original planning , **but**
- ⊙ passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and may thus rely on the right to compensation where they reach their final destination **three hours** or more after the arrival time originally scheduled by the air carrier
- ⊙ no compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances



Extraordinary Circumstances

- ⊙ **Art. 5 par. 3**: An operating air carrier shall not be obliged to pay compensation ... if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- ⊙ **Recital 14**: ... Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, **security risks, unexpected flight safety shortcomings** and strikes that affect the operation of an operating air carrier.



Opinion of Advocate General Sharpston

Case C-396/06 - Kramme

- ⊙ with regard to „technical problems“, to rely on the exemption, both the withdrawal and the unavailability of a replacement aircraft must be caused by circumstances which:
- could not have been avoided even if all reasonable measures had been taken;
 - are extraordinary in the normal sense of the word;

„all reasonable measures“ includes

- ⊙ as regards the withdrawal from operation: compliance with the schedule of maintenance and checks on the aircraft and, once signs of the technical problem appear, every reasonable step to resolve it without withdrawing the aircraft from operation;
- ⊙ as regards the unavailability of a replacement aircraft: adequate provision for replacements in the light of past experience;



„extraordinary“ means

- ⊙ as regards the withdrawal from operation: technical problems which are neither of a kind typically occurring from time to time on all aircraft and/or a particular aircraft type nor of a kind known to have affected the aircraft in question before;
- ⊙ as regards the unavailability of a replacement aircraft: circumstances unforeseeable by a carrier making adequate provision for replacements in the light of past experience.



ECJ C-549/07- Wallentin Hermann and C-402,432/07:

- ⊙ a technical problem in an aircraft is *not* covered by the concept of 'extraordinary circumstances' within the meaning of that provision,
- ⊙ *unless* that problem stems from events which,
 - ◆ by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and
 - ◆ are beyond its actual control



- ⊙ The Montreal Convention is not decisive for the interpretation of the grounds of exemption under Article 5(3)
- ⊙ The frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' can be concluded
- ⊙ The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of Article 5(3)



Jurisdiction:

ECJ C-204/08 – Rehder:

- ⊙ in the case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier,
- ⊙ the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation (EC) No 261/2004 is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract



Regulation 2111/2005

- ⊙ establishment of a Community list of air carriers subject to an operating ban within the Community („black list“)
- ⊙ informing air transport passengers of the identity of the operating air carrier





Community List („Black List“)

- ⊙ common criteria based on the relevant safety standards (Annex)
- ⊙ subject to modifications by the Commission to take account of scientific and technical developments
- ⊙ decision on updates at least every three month (last: Nov. 23, 2010)
- ⊙ air carrier shall be given opportunity of being heard
- ⊙ list available at <http://ec.europa.eu/transport/air-ban/>
- ⊙ immediate operating ban by Member State in Case of emergency



Information to Passengers

- ⦿ duties apply whether the flight is scheduled or non-scheduled and whether the flight is part of a package or not
- ⦿ in respect of the carriage of passengers by air, where the flight is part of a contract of carriage and that carriage started in the Community



Information on the identity of the operating air carrier

- ⊙ by the air carriage contractor (= contracting carrier/tour operator/ticket seller) upon reservation
- ⊙ if not yet known: name or names of the air carrier or carriers that is or are likely to act as operating air carrier or carriers + identity of the operating air carrier or carriers as soon as established
- ⊙ in case of changes: information of the change as soon as possible
- ⊙ in all cases: information at check-in, or on boarding where no check-in is required
- ⊙ obligation to be specified in the general terms of sale applicable to the contract of carriage



Remedies

- ⊙ reimbursement or re-routing acc. to Reg. 261/2004
- ⊙ where Reg. 261/2004 does not apply, and
 - ◆ operating air carrier notified has been entered on the Community list and is subject to an operating ban; or
 - ◆ operating air carrier notified has been replaced by another operating air carrier which has been entered on the Community list and is subject to an operating ban
- ⊙ reimbursement or re-routing as provided for in Article 8 Reg. 261/2004, provided that, where the flight has not been cancelled, the passenger has chosen not to take that flight
- ⊙ effective, proportionate and dissuasive penalties for infringement to be established by Member States



Regulation 1107/2006

- ⊙ concerning the rights
- ⊙ of disabled persons
- ⊙ and persons with reduced mobility
- ⊙ when traveling by air



Purpose and Scope

- ⊙ protect against discrimination and ensure assistance
- ⊙ commercial air services on departure from, transit through or arrival at an airport within a member state



Non-Discrimination

- ⊙ no refusal of reservation or embarkation on the ground of disability or reduced mobility, unless due to
 - ◆ national or international safety requirements (carrier can also require accompanying person)
 - ◆ size of aircraft
- ⊙ in event of refusal:
 - ◆ reservation: acceptable alternative
 - ◆ embarkation: re-imbursement and re-routing



Assistance

- ⊙ designated points at airports to announce arrival and request assistance
- ⊙ air carriers, agents and tour operators to receive notifications of the need of assistance at all P.O.S.
 - ◆ transmission to airports of departure, transit and arrival
 - ◆ operating carrier



Managing body of apt responsible for provision of assistance at apt without additional charge:

- ⊙ communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings
- ⊙ move from a designated point to the check-in counter,
- ⊙ 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,
- ⦿ disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- ⦿ 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 as needed,
- ⦿ move to the toilet facilities if required



Air carrier responsible for assistance without additional charge:

- ⊙ carriage of recognised assistance dogs in the cabin, subject to national regulations.
- ⊙ in addition to medical equipment, transport of up to two pieces of mobility equipment per person including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.
- ⊙ essential information concerning a flight in accessible formats.



- ⦿ all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.
- ⦿ assistance in moving to toilet facilities if required.
- ⦿ in regard to accompanying person: reasonable efforts to give such person a seat next to the disabled person



Regulation 1008/2008

- ⊙ common rules for the operation of air services in the community, regulating
 - ◆ licencing of Community air carriers
 - ◆ the right of Community air carriers to operate intra-Community air services and
 - ◆ pricing of intra-Community air services



Licence

- ⊙ required to carry by air passengers, mail and/or cargo for remuneration and/or hire (Art 3)
- ⊙ subject to general (Art 4) and financial (Art 5) preconditions
- ⊙ depending on valid Air Operator Certificate (AOC)
- ⊙ subject to suspension or revocation by licencing authority (Art 9)



Leasing

- ⦿ dry or wet lease agreements possible
- ⦿ subject to prior approval in accordance with applicable Community or national law on aviation safety



Intra Community air services

- ⦿ Community air carriers entitled to operate
- ⦿ no additional requirements by Member States



Pricing

- ⦿ free fare setting (Art 22)
- ⦿ obligatory indication of final price and, in addition
 - ◆ air fare or air rate
 - ◆ taxes
 - ◆ apt charges
 - ◆ other charges or fees (security, fuel, etc.)
- ⦿ clear and transparent communication of optional price supplements on 'opt in' basis
- ⦿ non-discriminatory access to air fares and rates

