



Strategic note about the European regulation on air passengers' rights | 6 January 2016

On Feb. 5th, 2014, The EU Parliament adopted a revised Regulation on air passengers' rights. Article 6e of this text satisfactorily addressed the concerns expressed by the sector regarding the transport of musical instruments on planes.

This Regulation has since then remained on the agenda of the European Council, which has not yet delivered any official position.

This document is an update about the situation, based on reliable – although non-official – information.

I. A long process

Negotiations between Member States have slowed and been exacerbated by a few sensitive issues on which Member States have not yet come to an agreement.

The Dutch EU Presidency (1 Jan. to 30 June 2016) has not even included this item in the Council's agenda for the next semester. The Trilogue should therefore not be expected to start at all before the second half of 2016.

Air carriers are not particularly happy about this delay, especially because the current Regulation does not take account of recent rulings by the European Court of Justice addressing the responsibility of airlines on issues related to passengers' rights. They are currently lobbying the Council in order to speed up the negotiation process. In the meantime, the European Commission has announced the introduction of guidelines aimed to reflect these ECJ rulings.

II. What is the position of the Council about the transport of musical instruments on airplanes?

As you know, the revised Regulation will not enter into force until the Parliament and the Council adopt it in the exact same terms. Considering the state of negotiations at the Council, we already know that the latter will not adopt the Parliament's version as it is.

Member States regard the transport of musical instruments as a minor issue. Article 6e has even been deleted from the text on which the Council is currently working. Very limited references to musical instruments have been kept in that document.

A footnote indicates that Belgium, the Czech Republic, Ireland, The Netherlands, Sweden, Slovakia and the United-Kingdom consider that:

- No specific rule on personal items is needed except an obligation of information
- It should be left to each air carrier to establish its own policy on the matter.

In the latest version that has been made available to us, article 6d on personal items reads as follows:

"Article 6d

1. Without prejudice to Regulation (EC) No 1008/2008, Community air carriers shall clearly indicate, at booking and on their website, and also make available on request at the airport (including at self-service check-in machines):

- the maximum baggage allowance in terms of dimension and weight that passengers are permitted to carry within the cabin, and in the hold of the aircraft on each of the flights included within a passenger's reservation, any restrictions on the number of items that would be applied within a given maximum baggage allowance.*
- the conditions under which fragile or valuable items, **such as musical instruments**, sports equipment, children's pushchairs and infant seats shall be transported in the passenger cabin or in the cargo hold of the aircraft, potential additional charges applied for the carriage of baggage.*

1a. Without prejudice to Regulation (EC) No 1107/2006 and to Article 23 of Regulation (EC) No 1008/2008, irrespective of the prescribed maximum cabin baggage allowance, passengers shall be permitted to carry in the cabin, at no extra cost, essential personal items or belongings, and at least one bag of airport shopping.

2. Where specific reasons, such as safety reasons, capacity reasons or a change of the aircraft type since the booking was made, preclude the carriage in the cabin of items included in the carry-on baggage allowance, the air carrier may carry them in the hold of the aircraft, but at no extra cost to the passenger.

3. This Article does not affect the restrictions on carry-on baggage established by EU and international security and safety rules such as Regulations (EC) No 300/2008, (EC) No 820/2008 and (EC) No 216/2008.”

A draft recital attached to article 6d introduces a reference to “small musical instruments” as items allowed in the cabin:

*“In order to ensure a sufficient personal comfort during their travel, passengers should be allowed to take at no cost personal items and belongings into the cabin, provided that their weight and dimension is reasonable and the items comply with applicable safety and security requirements. Such items may include, for example, a lady's handbag or purse, infant's food, medication, **small musical instruments**, an overcoat, an umbrella, a small camera, a small music player, reasonable amount of reading material and airport purchases.”*

III. What actions should we take at this stage?

Discussions at the Council have not gone in our favour so far. The deletion of article 6e would mean that the case of musical instruments would not be given any special attention anymore.

There is still a window of opportunity however, as the Council, the Parliament and the Commission will have to reach a compromise during the Trilogue in order to adopt the text in the same terms.

We are confronted to some difficulties:

- The position of the Council and of the Parliament on the transport of instruments are far apart, which makes consensus less likely to satisfactorily reflect our concerns
- Recent terrorist attacks might lead Member States to impose more restrictions on passengers for safety reasons
- As the Commission and the Parliament have both been renewed since the adoption of the text by the Parliament, we might not be able to find in these institutions the support that we had two years ago.

On the other hand:

- There is no indication that the Parliament is ready to accept the deletion of article 6e
- A US Regulation on the same matter is now in force with specific provisions regarding musical instruments, which shows that it is feasible without any adverse impact on the economy of the sector nor on passengers' security
- There is a strong, united support from the music sector to the provisions of article 6e.

Given the above, we recommend the following actions:

- Undertake a strong lobbying campaign, in all Member States, towards both national governments and national MEPs. To this end, FIM and PEARLE* national members should set-up meetings (separately or jointly) with their respective governments and MEPs. Where necessary, representatives from the FIM and/or Pearle* secretariats could make themselves available to join such meetings.
- Launch and advertise a new online petition in order to put maximum pressure on governments and MEPs. We will let you know as soon as the petition is open, so that you can circulate the information as widely as possible, to your membership as well as on social media.

Please keep us updated of any initiative you will be taking. Co-ordination and exchange of information are a key to the success of this crucial campaign.

Benoît Machuel
General Secretary

