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DEFINITION OF AN INTERNATIONAL REGULATORY FRAMEWORK AIMED AT DEVELOPING A PORTAL FOR RESERVATION OF INCOMING TOURISM SERVICE FROM CHINA

**Tourism and Transportation accessible for person with
disabilities**

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INDEX

INTRODUCTION	p. 1
---------------------------	-------------

<i>Table 1. CHINA AS A SOURCE OF AN INCOMING OF TOURISTS WITH DISABILITIES?</i>	p. 16
--	--------------

Chapter 1,

TERM AND CONDITIONS FOR THE SALE OF TOURIST PACKAGES	p. 23
---	--------------

Legislative sources	p. 23
----------------------------------	--------------

Administrative regime	p. 23
------------------------------------	--------------

Content of the contract-purchase proposal and documents	p. 24
--	--------------

Information to the tourist	p. 25
---	--------------

Payments	p. 28
-----------------------	--------------

Cost	p. 29
-------------------	--------------

Change or cancel of the tourist package before departure ...	p. 30
---	--------------

Organizer's liability	p. 31
------------------------------------	--------------

Substitutions and variations in the contract	p. 34
---	--------------

Obligations of travelers	p. 34
---------------------------------------	--------------

Hotel classification	p. 36
-----------------------------------	--------------

Liability regime	p. 36
-------------------------------	--------------

Limits of compensation and prescription	p. 37
Duty of assistance	p. 38
Alternative Dispute resolution	p. 38
Guarantees to the traveler	p. 39
<i>Table 2</i> PRINCIPLES ON ACCESSIBLE TOURISM – CODE ON TOURISM.....	p. 40
 Chapter 2, MARITIME TRANSPORTATION OF PASSENGERS	p. 41
 Shipping contract: peculiarity	p. 41
Liability and its limitations in a uniform international law framework.....	p. 43
The protection of the rights of persons with disability in the European maritime transportation.....	p. 45
Application of the EU Regulation No. 1177/2010	p. 48
<i>Table 3</i> OTHER PERFORMING PARTIES	p. 49
<i>Table 4</i> DEFINITION OF DISABILITY	p. 51
Derogation to the maritime transport access for persons with disabilities	p.51
STCW requirements to avoid discrimination based on disabilities	p. 53
<i>Table 5</i> DISABILITY-RELATED TRAINING FOR SEAMEN	p. 57
<i>Table 6</i> ILLICIT ADMINISTRATIVE AND SANCTIONS.....	p. 59
Complaints	p. 61

Chapter 3,

PASSENGERS' TRANSPORT BY COACH AND BUS	p. 63
---	--------------

Road transport: Coaches and Bus Lines	p. 63
--	--------------

Accessible transportation by bus for passenger with disability or with reduced mobility in the EU	p. 64
--	--------------

Table 7 RIGHTS APPLICABLE TO LONG-DISTANCE SERVICES.....	p. 70
---	--------------

The reasonableness of the unequal treatment: the sunset of "<i>First come, first served</i>" rule on buses	p. 73
---	--------------

Table 8 DISABILITY-RELATED TRAINING FOR COACH AND BUS PERSONNEL	p. 76
--	--------------

Complaints	p. 77
-------------------------	--------------

Table 9 ILLICIT ADMINISTRATIVE AND SANCTIONS.....	p. 78
--	--------------

Chapter 4,

AIR TRAVEL	p. 81
-------------------------	--------------

The sources and the law applicable to the air travel contract.....	p. 81
---	--------------

The Air transport contract and the obligations of the carrier towards the passengers	p. 85
---	--------------

Period of limitation applicable to actions.....	p. 88
--	--------------

Protection of passengers' rights with disabilities	p. 89
---	--------------

Limits to the free choice of place for people with disabilities: answer to a blind passenger.....	p. 92
<i>Table 10</i> THE QUESTION	p. 93
<i>Table 11</i> ASSISTANCE UNDER THE RESPONSIBILITY OF THE MANAGING BODIES OF AIRPORTS	p. 97
<i>Table 12</i> DISABILITY-RELATED TRAINING FOR AIR COMPANIES' PERSONNEL.....	p.100
Complaints	p.101
<i>Table 13</i> ILLECIT ADMINISTRATIVE AND SANCTIONS	p.102
Chapter 5,	
RAIL TRANSPORTATION OF PASSENGERS.....	p.103
Rail transportation: passengers' rights and obligations	p.103
<i>Table 14</i> LACK OF INFORMATION – AN ITALIAN CASE.....	p.106
Trenitalia and NTV: general conditions of transport.....	p.108
The protection of passengers in rail transport	p.110
The rights to transport by rail of persons with reduced mobility e liability issues	p.112
<i>Table 15</i> TRENITALIA. ASSISTANCE TO PERSONS WITH DISABILITIES OR REDUCED MOBILITY	p.114
Complaints	p.117
<i>Table 16</i> ILLICIT ADMINISTRATIVE SANCTIONS. Penalties for failure to comply with obligations to protect the right to transport of persons with disabilities or with reduced mobility	p.118

Table 17 INTERVIEW TO EDF EUROPEAN DISABILITY

FORUM..... p.119

CONCLUSION..... p.123

ANNEX I

**A SURVEY TO UNDERSTAND IF ITALIAN TRAVEL
AGENCIES ARE INFORMED ON THE RIGHTS OF
PASSENGERS WITH DISABILITIES OR REDUCED**

MOBILITY..... p.127

Air Travel p.128

Coach and Bus transportation p.132

Maritime transportation..... p.136

Rail transportation p.140

ANNEX II

**A SOCIAL PROJECT: DISABILITY MANAGEMENT AND
ACCESSIBLE TOURISM p.145**

Aili – Lactose intolerance p.146

Cibo Amico - Food allergies and anaphylaxis p.150

Reduced Mobility p.163

Omphalos – Autism p.171

Blindness..... p.185

Deafness p.192

Celiac Disease..... p.196

ANNEX III

POSTER – ACCESSIBLE TOURISM AND TRANSPORTATION FOR THE INCLUSION OF PERSON WITH DISABILITY.....	p.199
BIBLIOGRAPHY	p.201

INTRODUCTION

Topic of this research is tourism aimed at developing a portal for reservations of incoming tourist services in Italy. Tourism is a sector with a wide choice of services, customers, and opportunities. So, this work focuses on tourism and transportation in order to define a legal and social framework that is useful for every tourist stakeholder.

Especially, this work seeks to define peculiarities in the contractual and social relationship between who offers commercial services and his customer with disabilities or with reduced mobility.

In fact, addressing to every kind of tourist stakeholder, such as tour operators, the proposal of this work is to giving information on the latest national, European and international regulations. The goal is allowing them to offer accessible tourist packages, and accessible transportation services in order to protect the rights of customers with disabilities or with reduced mobility, and at the same time, allowing tour operators, carriers, and other stakeholders, to avoid discrimination and administrative sanctions.

Why choosing tourism and transportation accessible as a topic?

Area of my research is Legal and Social sciences, so the choice of the rights of persons with disabilities as a point of view for tourism services, is based on the recent European strategies for the social inclusion of persons with disabilities¹. These strategies have focused on self-regulate markets which for a long time have been causes of marginalisation of persons with disabilities as a vulnerable customers and vulnerable people (for their own physical, social, and economic conditions).

Nowadays, the European policy asks member States to respect the equality principle and the social justice, in a double meaning: in a positive way, i.e. with “equal opportunities”, and in a negative way, i.e. with the “non-discrimination”. Furthermore, Italian Constitution recognizes the equality principle both as a prohibition of discrimination based on

¹ The number of disabled people in Europe at the beginning of the new millennium is onesixth of the population and it is increasing. With the EU-28, the employment rate of Persons with disabilities did not reach 50%, causing a risk of poverty for about one-third of those in working age. It is proper to devote attention to this group of people who are still unable to find a definite position into society nowadays. Strategic fields are, e.g. training and in work: failure in these areas would mean condemning them to be isolated and precluding economic independence and autonomy as well. The attention that the institutions of the European and International level have devoted them, shows they are crucial for the enhancement and standardisation of Persons with disabilities. However, there something more to do in these issues of life and many others.

biological and cultural reasons², and as effort to remove the conditions that don't allow these people to grow up in the society. Article No. 3, sub. 2 of the Italian Constitution asks the protection of social justice and it <<assumes the value as an historical and permanent choice>>³. This is a useful tool to exclude unjustified privileges⁴. The law No. 67/07⁵ – "Measures for judicial protection of persons with disabilities who are victims of discrimination" – is a guarantee, but it needs a support by information activities on the rights of persons with disabilities. It also needs social campaigns aimed to prevent discrimination and disputes.

Sometime, interventions aimed to overcome social obstacles are not enough, but what it is necessary is just to realize a

² P. PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo comunitario delle fonti*, Tomo II, ed. III, Edizioni Scientifiche Italiane, Napoli, 2006, p. 448. On the State's commitment to removing barriers to the persons development: P. PERLINGIERI, *Eguaglianza, Capacità contributiva e diritto civile*, 1980, p. 135 ff.; R. DWORKIN, *Eguaglianza*, in *Enc. Sc. Soc. Treccani*, III, Roma, 1993, p. 478 ff.; N. BOBBIO, *Eguaglianza e libertà*, Torino, 1995, p. 22 ff.

³ P. PERLINGIERI, *Il diritto civile nella legalità costituzionale*, (Note No 2), p. 455.

⁴ Cf. P. PERLINGIERI, *Eguaglianza*, (Note No 2), p. 147. Especially, subparagraph 1 and 2, art. 3 of Italian Constitution should be read in a uniform sense because they lay down a unique regulation, which is equality: L. PALADIN in "In tema di leggi personali", in *Giur. cost.*, 1961, p. 1262 ff., talks of ontological and substantive differences. Furthermore, A. CERRI, in "Regime delle questue: violazione del principio di eguaglianza e tutela del diritto alla riservatezza", in *Giur. cost.*, 1972, p. 48 ff., thinks that 'reasonableness' refers to the natural human rationality, Cf. P. PERGLINGERI, (Note No 3), p. 450 ff.

⁵ In *Gazzetta Ufficiale* No. 54, March 6th, 2006.

‘positive’ value. So, the equality principle could be violated both when equal situations are subjected to different treatment (without any significant justification in harmony with the constitutional system of principles) and when individuals, acting into unequally situations, receive identical treatment⁶.

European policy takes motivation from the awareness of how much pervasive the market can be as an institution; and how it can crop its own rules aimed at deciding prices⁷ and managing human behaviours⁸.

This concept of freedom, assuming also constitutional relevance, becomes a “flag” of the liberal political movement

⁶ Constitutional Court judgment No 15 of 1960 (in Giur. cost., 1960, p. 147 ff., annotation of L. PALADIN, Una questione di eguaglianza nell’accesso ai pubblici uffici: <<Una differenza di trattamento è giustificata se si fonda su un criterio obiettivo e ragionevole, vale a dire qualora essa sia rapportata a un legittimo scopo perseguito dalla normativa in questione e tale differenza sia proporzionata allo scopo perseguito dal trattamento di cui trattasi>>. It means that we may justify different treatments if they are based on an objective and reasonable criterion, aimed to pursue the legislation goals, in relation to that specific case. As well Arcelor Atlantique et Lorraine and others, C 127/07, EU:C:2008:728, n° 47, and Schaible, C 101/12, EU:C:2013:661, n° 77).

⁷ P. PERLINGIERI, Iniziativa economica, solidarietà sociale e diritti della persona, in Rass. dir. civ., 1995, p. 84 ff.

⁸ M.R. FERRARESE, Diritto e mercato. Il caso degli Stati Uniti, Giappichelli, Torino, 1992 p. 20. The author orders various market meanings in four categories: a) market as place; b) market as an ideology; c) Market as a paradigm of social action; d) Market as institution; p. 17. On Institutional theories, F. LOMBARDI and R. MOTTA, Traffici e mercati: l’istituzionalismo of Karl Polany, in Mat. St. cult. giur., 1980, p. 231 ff.

and it has been so emphasized that it ends to be setting of an unceasing conflict as P. Perlingieri says literally: *<<rischiando ... di relegare la dignità personale a semplice valore di scambio esponendo i soggetti deboli, sopraffatti o sfruttati, alla marginalità>>*⁹, which means that human dignity risks to become simply exchange goods, and the marginalization of vulnerable people take origin from this conception. The result is an inevitable weakening of social relations¹⁰. In that direction, general opinion concluded that the market created this world system, and no one could change it¹¹. Historically, in the last twenty-five years, political compromises have reduced this conflict, but however on the other side it has entailed the inevitable weakening of democracy. A better solution should be a cooperation between market and democracy. Likewise, on the 'conflict' (the relationship between democracy and market), someone reflects also on the existence of an “anarchist egoism” of the market, in which there is no space for solidarity into human relationships. The failure of the power of the State is the result; a market system in which the State loses the control, defined as an economic “deregulation”¹². Furthermore,

⁹ P. PERGLINGERI, (Note No 3), p. 475.

¹⁰ M.R. FERRARESE, (Note No 8), p. 42.

¹¹ Cf. S. ZAMAGNI, L. BRUNI *L'economia civile, Un'altra idea di mercato*, Il Mulino, Bologna, 2015, p. 24 f.

¹² Cf. P. PERGLINGERI, (Note No 3), p. 475 ff., where he talks on deregulation which, on the constitutional level, leads to delimit the powers of intervention,

the consequence is the need to find ethical and legal-political restrictions imposed by human behaviour¹³. How get out of that situation? “Third sector” experts suggest the Law to regulate society. Through a system of checks and balances, the Law should aim to ensure not only “richness” but also other specific values¹⁴, such as solidarity¹⁵ and reciprocity, as well as prize culture¹⁶, according to the logic of a “civil economy”, as a form of civilization in which civil virtue, public happiness and institutions take the place of the egoism (but different from the Hobbesian state of nature)¹⁷. Differently, persons with disabilities run the risk of the marginality. In this way the inaccessibility to services and the dissatisfaction of their needs have forced them to live in a state of marginalization. Effectively, in the last twenty-years, European Union have been trying to reverse this trend, offering joint actions in several

legislation and administrative, in economic matters: <<Costituzionalismo Economico>> (Economic constitutionalism).

¹³ J.M. BUCHANAN, Buona economia – Cattivo diritto, in *Libertà nel contratto costituzionale*, Il Saggiatore, Milano, 1990, p. 48.

¹⁴ Cf. A. SEN, *Etica ed economia*, Laterza, Roma-Bari, 2002, p. 19 ff.

¹⁵ On ‘solidarity’ as a prerequisite of the primacy of the “political” on the economic field: P. PERLINGIERI, *Economia in bilico, tra pubblico e privato: una formula per la crisi?* in *Riv. di diritto dell’impresa* 2/1982, p. 231.

¹⁶ Cf. S. ZAMAGNI, L. BRUNI, (Note No 11), p. 76, in which, as ‘Genovesi’ said, they speak of selfishness and social altruism as <<forza primitiva>> (primitive force), stigmatizing the latter as <<virtuosa>> (virtuous), and which needs of special <<premi>> (prizes) so that it does not die.

¹⁷ Ibid, p. 43.

strategic areas: education, employment, health, etc. Tourism, for example, is an important sector for social aggregation. Moreover, the transportation stands for not only a crucial aspect of tourism but also of the other strategic sectors, mentioned previously. Accessibility policies let persons with disabilities to participate in each field above mentioned, but also, they make them part of the social life, giving civic, social and economic benefits. Benefits and opportunities offered by travel and tourism should granting also to persons with disabilities at those conditions of comfort and security currently available to all other European citizens¹⁸. Consequently, the accessible transportation is a right to everyone; carriers, terminal managing bodies, and tour operators cannot refuse to provide services to a person solely for disability's reason or reduced mobility. They have the duty¹⁹ of ensure adequate information and travel offers to the persons with disabilities, to let them enjoy their free time at normal price.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe', aimed to the social inclusion, well-being, and to the full exercise of their rights.

¹⁹ As the European and International rules require about free and independence mobility.

The European Disability Strategy 2010-2020²⁰ (from now on "Strategy 2010-2020") and the United Nations Convention on the rights of persons with disabilities (2006)²¹ (from now on "CRPD") are the main sources for the rights and protection of persons with disabilities. According to them tourism is a fundamental and strategic area to promote the inclusion of persons with disabilities; to find confirmation in these sources it is crucial knowing briefly their historical course. The Strategy 2010-2020 and the CRPD are the result of a social and political process matured over more than half a century. Their aim is to abolish discrimination and marginalization, allowing persons with disabilities – on a basis of equality with other individuals – the real exercise of their rights. As well, to benefit from a full and autonomous participation in social and economic processes. Thanks to the Disability Strategy (1996)²²,

²⁰ 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe'

²¹ The CRPD was approved on December 13th, 2006 by the UN General Assembly and entered into force on May 3rd, 2008. The EU ratified it by Council decision 2010/48/EC of November 26th, 2009, but the deposit of ratification at the United Nations was only December 23rd, 2010. Italy, by law n ° 18 of March 2nd, 2009 (published in the Official Gazette No. 61 of March 14th, 2009) has ratified and made it enforceable.

²² Communication of the Commission on equality of opportunities for people with disabilities, A new European Community Disability Strategy, Brussels, July 30th, 1996, COM (96) 406 final.

European Community has worked more carefully than in the past²³ to correct social distortions and to protect a full power of the rights of those who has any kind of physical or psychic impairment. It proposed <<a stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life>>²⁴, to let persons with disabilities contribute to the economic and social development. This plan was inspired by the Standard rules on the Equalization of Opportunities for Persons with Disabilities (1993)²⁵ and by the "International Year Disabled Persons" (1981), followed by the "World Program of Action concerning disabled Person"²⁶. Since then, a new vision of the Handicap is the result of the relationship between persons with disabilities and their environment²⁷. From a mere assistance approach, we

²³ The European Community has begun to deal with disability since the second half of the 1970s, in a mostly marginal manner, by lightening the States from any instrument that binds them. Waddington L., Diller M., Tensions and coherence in disability policy: the uneasy relationship between social welfare and civil rights models of disability in American, European and international employment law, disability rights law and policy, Ardsley, transnational Publishers, 2002, pp 241-244.

²⁴ Communication of the Commission on equality of opportunities for people with disabilities, quoted above, Executive Summary and Policy Conclusions, p. 1.

²⁵ Adopted by the United Nations General Assembly with Resolution of December 20th, 1993, 48/96.

²⁶ Adopted by the United Nations General Assembly with resolution 37152 of 3rd December 1982.

²⁷ This vision moves from the so-called social model of disability, for which the conditions of "diversity" of the disabled arise from the social factors and are not

are moving to an inclusive one, in which emerges the need to know what disability is and how to involve persons with disabilities into dynamic social aspects; it becomes essential identifying and exalting the abilities of everyone, transforming them from passive persons to active citizens, able to produce for themselves and for the society. These goals are achievable through the affirmation of the rights and the principles of autonomy, dignity, independence, non-discrimination. Thanks to the Disabled Strategy (1996) the Member States have been invited to examine their national policies in order to achieve equal opportunities for persons with disabilities in all strategic sectors: education, training, employment, health, social services, information and leisure time. Therefore, this greater awareness of the necessity to protect the rights of persons with

direct consequence of the impairment of the individual. The "incapacities" depend, therefore, on personal, environmental, economic, institutional factors, etc. We move away from the traditional conception based on the medical approach (limited only to provide for care and assistance) taking into consideration the social model as a keystone for new social policies (without architectural, psychological and relational barriers). Today, moreover, an additional model of interpretation of disability has been added, the so-called Capability approach, taken up by Amartya Sen and contextualized in the field of disabilities, through which it is possible to decipher social barriers and to place people with disabilities at the centre of the decision-making process. This type of approach emphasizes the skills and awareness (any kind) transmitted and acquired through a life project. Cf. R. BARBUTO; M. BIGGERI; G. GRIFFO, Life Project, peer counselling and self-help groups as tools to expand capabilities, agency and Human Rights, *Alter-European Journal of disability research*, *Revue européen de recherche sur le Handicap*, 2011, vol. 5, No. 3, pp. 192-205.

disabilities and their families has encouraged the development of a new strategy, adopted by the European Commission simultaneously with the ratification of the CRPD. The Strategy 2010-2020 allows the EU and its member States to give effect to the provisions of the CRPD²⁸ identifying the social necessities and rights that might require greater protection and development²⁹, that are “accessibility, participation, equality, employment, education and training, social protection, health, external action”: EU and its Member States³⁰ represent a real

²⁸ CRPD has a programmatic nature: its provisions require further action by the Parties. In fact, it doesn't have unconditional and sufficiently precise content; it lacks the requirements that serve to produce direct effects in EU law (for the concept of direct efficacy see Court of Justice of the European Union, Judgment of February 5th, 1963, C-26 /62, Van Gend en Loos, in ECR 3). However, CJEU has stated several times (from the “Ring and Werge” case, judgment of April 11th, 2013, joined cases C-335/11 and C-337/11, in ECR Digital, April 2013) that the secondary law (regulations and directives in particular), should be interpreted in conformity with CRPD, recognizing the its interpretative effects. That issue is fine explained by D. FERRI, in *L'Unione europea e i diritti delle persone con disabilità: brevi riflessioni a vent'anni dalla prima 'Strategia'*, *Salute e diritto, Politiche sanitarie*, vol. 17, No. 2, p. 123, April-June 2016.

²⁹ It focuses, firstly, on the obstacles to the exercise of rights and the need to eliminate them in favor of more accessibility. Through “Participation” is possible to remove the administrative and behavioral obstacles, which are causes of substantial inequalities. Secondly, another important objective is to enable persons with disabilities to enjoy all the benefits of EU citizenship for the benefit of the entire community.

³⁰ Strategy 2010-2010 provides for complementary action at European and national level, as well as in agreement with the EU Charter of Fundamental Rights and the non-discrimination policy (as provided for in the TFEU arts. 10 and 19).

instrument to protect and safeguard all human rights. CRPD drives Member States of the General Assembly to adopt laws to prevent social diversity protecting any form of handicap; it strives to be a concrete tool against discrimination and human rights violations, in favour of all persons with disabilities in the various social fields, from education to leisure³¹. Then, considering this analysis, society cannot longer exclude persons with disabilities from those activities useful to give course to the primary and natural vocation of the man: the socialization. Tourism, as a special form of leisure, appears a crucial field of inclusion because of its great types of proposals. For this reason, Tourism, same as many other sectors, must involve stakeholders at any levels of the action, both in the public and in the private area. EU chooses a sustainable and inclusive development, in harmony with principles of the CRPD: EU has become for the first time a 'contracting party' of a treaty

³¹ It recalls the Un Charter's principles, as well as the rights and freedoms mentioned in the Universal Declaration of Human Rights and International Covenants; It reaffirms the need for persons with disabilities and their families to be guaranteed in their full enjoyment without discrimination based on disability. About this analysis, arts. 9 and 30 are relevant. The former focus on "accessibility" – <<to enable persons with disabilities to live independently and participate fully in all aspects of life>> – and the latter on the "participation" of persons with disabilities on an equal basis with others in cultural, recreational and sports life, as well as enjoyment of leisure.

on Human rights³². Recognized as a historical ratification, it represents for Member States an institutional and moral commitment to protect the rights of persons with disabilities³³. To support the vision of tourism as a tool for the inclusion of persons with disabilities, it is possible to mention the Treaty of Lisbon, signed in 2007; thanks to this treaty the European policy recognizes expressly the existence of a collective touristic area inside the primary law: tourism assumes a value

³² Council decision 2010/48/EC of November 26th, 2009 lodged on November 23rd, 2010.

³³ Ratification involves the integration into EU law of the CRPD, which assumes 'subconstitutional' rank: in consideration of art. 216, paragraph 2, TFEU (<<Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States>>) it prevails over European Union acts. The road is well plotted, although someone believes that the goals of the Strategy 2010-2020 were partly disregarded. D. Ferri, (Note No 29), points out that the same UN Committee on the Rights of Persons with disabilities, which examined the initial EU report on the implementation of the CRPD (2006), had to recommend an acceleration of the procedure for adopting the new Anti-discrimination Directive (Proposal for a Council directive (July 2nd, 2008) on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM (2008) 426 final) and accessibility legislation including, in particular, the so-called European Accessibility Act [COM (2015) 615 final: See also http://europa.eu/rapid/press-release_IP-15-6147_en.htm], which is part of the various legislative initiatives of the strategy (Ahtonen A, Pardo R, The Accessibility Act – Using the single market to promote fundamental rights, European Policy Center, March 12th, 2013, available online: http://www.epc.eu/pub_details.php?pub_id=3393).

of supranational interest³⁴. From a practical point of view, in the specific tourism sector, the success of these politics needs a greater moral and factual contribution by those who offers tourist services, primarily the transportation.

The CRPD, e.g. asks Member States to guarantee that <<those involved in the organization of recreational activities, tourism, leisure and sports>> ensure access – and enjoyment – to all persons with disabilities (art. 30, n.5, lett. e)³⁵.

Firstly, the sense of this work is to consider tourism as a significant tool of social integration, highlighting the recent European regulations and directives for tourist and transportation contracts, addressed to those offering a service to travellers with disabilities in order to meet their needs. Significant is that some regulations provide a mandatory staff training as a prerequisite to ensure the respect of customers with disabilities' rights.

³⁴ M. GESTRI – F. CASOLARE, Il turismo nel trattato di Lisbona: un personaggio non più in cerca di autore, in *Rivista Italiana di Diritto del Turismo*, 1, 2011, pp. 5-18; Cf. G. Gianna, *La tutela del viaggiatore*, Giuffrè, Milano, 2013, p. 15.

³⁵ The Italian Code of Tourism – D. LGs. May 23rd, 2011, No. 79 (O.J. No. 129 of June 6th, 2011), art. 3 No 1 – introduced, expressly, the accessible tourism principle claimed by art. 30 of CRPD, so that even people with disabilities could enjoy the tourist offer in a complete and autonomous way, receiving quality services without escalates on the price.

Secondly, it tries to brief stakeholders³⁶ on the accessibility, providing them information aimed to ensure good assistance as well, as bases for equality and social inclusion of persons with disabilities.

At the end of this work, a legal and social framework will be available to those would like to offer tourist services ensuring the respect of the rights of persons with disabilities.

³⁶ Transport companies, tour operators, travel agencies, representative organizations of persons with disabilities, etc.

Table 1

China as a source of an incoming of tourists with disabilities?

Michael Ashley Stein, in *China and Disability Rights*, analysed the behaviour of People's Republic of China (PRC or China). His studies may be could give us interesting information in order to answer this question.

In China are 83 million the people with disabilities and 220 million people aged 60 or above who desire to travel as much as anyone else³⁷. Cultural services, transportation and catering for persons with access needs is becoming increasingly important for mainstream tourism service providers, entrepreneurs and NGOs alike.

PRC supported disability-based rights more in the international arena than it did domestically, someone affirms³⁸, *a fortiori* because of the various human rights that are shortcomings in China³⁹.

³⁷http://www.accessibletourism.org/?i=enat.en.enat_projects_and_good_practices.2062; www.superando.it/2008/10/31/83-milioni-di-disabili-cinesi-ancora-troppo-invisibili/; www.superabile.it/cs/superabile/sportelli-e-associazioni/cina-il-governo-promette-nuove-politiche-agli-83-milioni-di.html

³⁸ Michael Ashley Stein, *China and Disability Rights*, 33 Loy. L.A. Int'l & Comp. L. Rev. 7 (2010).

³⁹ For example, the Chinese government highly censors many avenues for free speech, "from cellphone text messages to social networking services; from online chat rooms to blogs, films and e-mail." Michael Ashley Stein, *ibidem*, Michael Wines

The PRC has made efforts to facilitate awareness and acceptance of disability human rights, and its policies confirm it⁴⁰.

Some 'media', in order to emphasized the PRC's commitment to disability rights⁴¹, has consistently portrayed the government as a global promoter of the rights of persons with disabilities, with special emphasis on investment in education⁴² and in rehabilitation services⁴³, subsidies paid to municipal

et al., China's Censors Tackle and Trip Over the Internet, N.Y. TIMES, Apr. 8, 2010, at A1.

⁴⁰ Cf. Michael Ashley Stein, *ibidem*, in which the author underlines that support from China enables various processes that international law scholars have described as "transnational legal process," "socialization," "acculturation," "signaling," and a "New World Order." See, e.g., Harold Hongju Koh, Why Do Nations Obey International Law? 96 YALE L.J. 2599, 2625, 2630, 2646 (1997); Ryan Goodman & Derek Jinks, How to Influence States: Socialization and International Human Rights Law, 54 DUKE L.J. 621, 628, 630 (2004); Daniel A. Farber, Rights as Signals, 31 J. LEGAL STUD. 83, 87-88 (2002); ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 15-19 (2004).

⁴¹ Michael Ashley Stein, China and Disability Rights, p. 9 ff.

⁴² See, e.g., China Vows to Spend More on Education for Disabled, CHINA DAILY (Sept. 12, 2008, 07:13), http://www.chinadaily.com.cn/bizchina/2008-09/12/content_7021268.htm (describing the government's \$87 million investment in 190 new schools for disabled children in 2008); Liu Weifeng, Disabled Students Get New Focused Attention, CHINA DAILY (Apr. 6, 2004, 00:32), <http://www.chinadaily.com.cn/english/doc/2004-04/06/content320831.htm> (surveying various tuition-free and blind and deaf schooling initiatives in the Guangdong province).

⁴³ See, e.g., Cao Li, Nationwide Drive Launched to Aid Disabled, CHINA DAILY (Oct. 6, 2009, 13:31), <http://www.chinadaily.com.cn/china/2009-10/06/content>

governments and businesses that hire employees with disabilities⁴⁴, job creation programs⁴⁵, initiatives for improved access to information⁴⁶, legal aid services⁴⁷, and medical and

8765637.htm (describing a new two-year campaign to train "100,000 community-based rehabilitation professionals"); All Handicapped Chinese to Enjoy Rehabilitative Services by 2015, CHINA DAILY (Aug. 30, 2002, 14:23), http://www.chinadaily.com.cn/en/doc/2002-08/30/content_134317.htm (citing the government's announcement of goal to provide all disabled persons in China with access to rehabilitative services by 2015).

⁴⁴ See, e.g., Wang Qian, Career Boost for Disabled Beijingers, CHINA DAILY (Apr. 1, 2009, 07:52), http://www.chinadaily.com.cn/cndy/2009-04/01/content_7636185.htm (outlining Beijing government's \$32 million employment subsidy program covering 16,400 companies).

⁴⁵ See, e.g., Nation to Create More Jobs for Disabled, CHINA DAILY (May 16, 2005, 05:21:08), http://www.chinadaily.com.cn/fortune/en/doc/2005-05/16/content_442403.htm (describing 'redoubling' of government efforts called for by Vice-Premier Hui Liangyu to create a better work environment for the disabled); China Regulates to Help Disabled Find Jobs, CHINA DAILY (Feb. 14, 2007, 19:13), <http://www.chinadaily.com.cn/china/2007-02/14/content809697.htm> (announcing passage of government regulation in 2007 to "provide more training opportunities to the disabled and help them find jobs").

⁴⁶ See, e.g., \$22M Program to Make Disabled Chinese Better Informed, CHINA DAILY (Jan. 13, 2009, 15:30), http://www.chinadaily.com.cn/bizchina/2009-01/13/content_7393245.htm (highlighting public investment in a program to establish a website providing information on "rehabilitation training courses, distance education and entertainment," as well as a national database of disabled persons).

⁴⁷ See, e.g., 2,500 Legal Aid Centers Help Disabled, CHINA DAILY (Sept. 15, 2008, 10:07), http://www.chinadaily.com.cn/china/2008-09/15/content_7027843.htm ("China has made strenuous efforts to protect the interests of the disabled by both offering legal aid and carrying out random checks on the implementation of the Law on Safeguarding the Legal Rights of the Disabled...").

housing benefits⁴⁸. Contrary to that, there are reports outside of the PRC that detail negative aspects regarding the daily lived experience of persons with disabilities as are reported, from socially exclusionary lack of physical accessibility⁴⁹ to egregious labour exploitation⁵⁰ and servitude as beggars⁵¹. Furthermore, seems that for China some persons with disabilities cannot exercise their rights even with facilitation from their supporters and families, and therefore require substituted decision making⁵².

⁴⁸ See, e.g., China Seeks More Medical, Housing Benefits for Disabled, CHINA DAILY (Nov. 12, 2008, 19:51), http://www.chinadaily.com.cn/china/2008-11/12/content_7198939.htm (citing CDPF efforts to bring "costs of psychiatric care, eye operations, hearing aids for disabled children, and rehabilitation" within coverage of individual medical insurance, as well as obtaining housing subsidies and home-renovation assistance for low-income families with disabled persons).

⁴⁹ See Peter Ford, Paralympics Bring Forward Plight of China's Disabled, CHRISTIAN SC. MONITOR, Sept. 8, 2008, <http://www.csmonitor.com/World/Asia-Pacific/2008/0909/p01s02woap.html>.

⁵⁰ See Barbara Demick, China's Disabled Exploited as Slaves, L.A. TIMES, Feb. 26, 2011, <http://articles.latimes.com/2011/feb/26/world/la-fg-china-brick-factory-20110226>.

⁵¹ See John Ray, China's Disabled Children are Sold into Slavery as Beggars, GUARDIAN OBSERVER, July 22, 2007, <http://www.guardian.co.uk/world/2007/jul/22/china.theobserver>.

⁵² See Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 10 (Feb. 4, 2005), <http://www.un.org/esalasoedev/enable/rights/ahc5sum4feb.htm> ("China proposed amending the [Coordinator's Report] to read 'some delegates expressed grave concern about the wording 'legal capacity,' and if these words need to be used they should be interpreted in each language to reflect legal capacity as to rights, not

So, the idea of China as source incoming of tourists with disabilities seems a good chance for the European market if we look at PRC's behaviour abroad, on the international field, or if we hear from some media; we cannot say the same if we look at national reality, as other reports affirm.

From another hand, we have to consider Chinese's action in Europe in the field of accessible tourism, as some interesting project documents⁵³, such as "*Rare & Roll: Access China and Culture*", published by ENAT (European network for accessible tourism). It is wholly financed by a grant from the Booking Cares Fund awarded to Ms. Xun Ji, a young disabled Chinese woman, and it will provide accessible tourism information services and cultural experience opportunities for both Chinese and foreign travellers with particular access needs, while at the same time engaging professionals in the travel industry,

legal capacity to act.' In legal systems legal capacity can mean two different things."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 3 (Jan. 26, 2005), <http://www.un.org/esalsocdev/enable/rights/ahc5sum26jan.htm> ("China stated that ... [i]f legal capacity means legal entitlement or legal rights, there is no problem. Capacity to act is a different concept in the Chinese language."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 2 (Jan. 25, 2005), <http://www.un.org/esa/socdev/enable/rights/ahc5sum25jan.htm> (noting China's position that "[i]f 'legal capacity' refers only to rights and entitlements, and not to the capacity to act, this concept should be supported").

⁵³http://www.accessibletourism.org/?i=enat.en.enat_projects_and_good_practices.2

preparing them for the new caring economy. Likely, it shows a real will to support both incoming and outgoing tourism from China.

Anyway, if we consider that Chinese tourists in the world are 129 million, and just 1,5 million⁵⁴ arrived in Italy in the 2017, we can imagine how important is China as a partner for our tourist sector, and how much more Italy have to do for increasing his market. Definitely, supporting accessible tourism and accessible transportation and establishing relations with China are strategic way in order to develop social and economic system. We should therefore support this strategy with another one, which is aimed at disseminating information on the rights of persons with disabilities, for the benefit of the whole society.

⁵⁴https://www.ilmessaggero.it/viaggi/news/boom_turisti_cinesi_129_milioni_nel_mondo_1_5_solo_in_italia-3492555.html

Chapter 1

TERM AND CONDITIONS FOR THE SALE OF TOURIST PACKAGES

Legislative sources

The sale of tourist packages in Italy, for services provided in both national and international territory, is governed by the code on tourism⁵⁵, specifically by articles 32 to 51- *Novies* as amended by the Italian Legislative Decree No 62 of May 21, 2018, which implements the EU directive 2015/2302. The sale of tourist packages is ruled also by the Italian Civil Code in the field of 'transport' and 'mandate', as applicable.

Administrative regime

Before the conclusion of the contract, the organizer and the intermediary inform clients about the details of the insurance policy regarding coverage of risks arising from professional liability, as well as terms of other optional or mandatory insurance policies.

⁵⁵ Legislative decree 79/2011.

Insurance policies protect travelers when a trip is cancelled, when there are medical expenses, in the case of a early return, or lost or damaged baggage.

Moreover, these insurance policies insure against possible risks of insolvency or bankruptcy of organizer and intermediary, and to return sums paid or for other circumstances.

Content of the contract-purchase proposal and documents

At the time of conclusion of sale of tourist package or, however, as soon as possible, organizer or seller give a copy or a confirmation of the contract to the traveler on a durable medium.

If the contract of sale of tourist package was stipulated at the presence of all involved parties, the traveler has the rights to receive a hard copy.

If the contract was stipulated away from the business premises⁵⁶, the traveler has the right to receive a hard copy of the contract or its confirmation, or, if the traveler agrees, he/she will receive a copy on another durable medium.

⁵⁶ Article 45, paragraph 1(h), of Legislative Decree No. 206 of 6 September 2005.

Information to the tourist

Before the start of the trip the organizer and the intermediary shall communicate the following information:

- a) timetables, intermediate stops and transport connections; the approximate time of departure and return, in the event that the exact time is not yet established;
- b) information on the identity of the operating air carrier, if not known at the time of booking⁵⁷.
- c) location, main features and, where appropriate, the tourist category of accommodation according to the regulations of the country of destination;
- d) meals provided (and if they are included or not);
- e) visits, excursions or other services included in the total price of the package;
- f) tourist services provided to the traveler as a member of a tourist group and, in this case, the approximate size of the group;
- g) the language in which the services are provided;
- h) if the trip (or vacation) is suitable for persons with reduced mobility and, at the request of the traveler, information on the suitability of the trip or vacation that considers the needs of the

⁵⁷ Article 11 Reg. Ce 2111 \ 05.

traveler⁵⁸.

i) total price of the package including taxes and all charges, and other additional costs;

j) methods of payment;

k) the minimum number of people required for the package and the deadline⁵⁹ for any termination of the contract in the event of failure to reach the number;

l) general information concerning the conditions on passports and/or visas;

m) information on the ability the traveler has to withdraw from the contract at any time before the start of the package⁶⁰;

n) Information on the optional or mandatory subscription of an insurance covering the costs of unilateral withdrawal from the contract by the traveler or the costs of assistance, including repatriation, in the event of an accident, illness or death;

o) the details of the insurance coverage as provided in article 47, sub. 1, 2 and 3 of the Legislative Decree 62/2018.

p) If the contracts were negotiated outside the commercial premises, the traveler has the right to withdraw from the

⁵⁸ The traveler must specify his or her needs in the booking phase in order to agree with the organizer – if necessary also behalf the travel agency – on the methods of disbursement and/or execution of certain services belonging to the tourist package, including the need for help at the airport for people with reduced mobility, request special meals on board or in the resort;

⁵⁹ Article 41, sub. 5 (a), Legislative Decree No 62 of 21 May 2018.

⁶⁰ The traveller shall pay an adequate withdrawal costs or, standard cost fixed by the organiser, as provided for in article 41 of Legislative decree 62/2018, sub 1 and 2.

contract of sale of tourist package within a period of five days from the date of the conclusion of the contract or from the date on which it receives the contractual conditions and the preliminary information, without penalties and without giving any motivation.

In the case of competing bids, (such as a low cost) the right of withdrawal is excluded⁶¹.

Finally, the organizer prepares a technical data sheet in the catalogue or in any other program – also on electronic or telematic support –. The technical data contains the technical information relating to the legal obligations to which the Tour Operator is subjected⁶².

⁶¹ The organizer must document the price variation, highlighting adequately the exclusion of the right of withdrawal. In case of trips that include the use of scheduled flights with special rates, the conditions relating to the cancellation penalty are much more restrictive and are previously indicated in the quotation phase of the travel package.

⁶² For example: details of administrative authorization (“S.C.I.A.” in Italian) to the organizer; details of the guarantees for travellers in case of insolvency or bankrupt ex article 47 - Code on tourism; details of the civil liability insurance; period of validity of the catalogue; criteria for adjusting the travel price ex article 39 Code on tourism.

Payments

At the time of subscription of the proposal to purchase the tourist package, the traveler must pay a deposit as down payment for the package published in the catalogue.

During the period of validity of the proposal for the sale of the tourist services and before the receipt of the booking confirmation (which seals the contract), the provisions of article 1385 - Italian Civil Code will not apply if the reasons for the withdrawal depend on an unexpected and not attributable fact. The payment of the balance will need to deposit without delays within the deadline set by the Tour Operator in their catalogue or in the booking confirmation of the requested service – or tourist packages⁶³.

If the organizer doesn't receive the payment, the contract will be automatically cancelled the organizer will send written communication, via fax, or e-mail to the client at the address of the travel agency (intermediary).

⁶³ For bookings after the deadline, the full amount must be paid at the time of the purchase proposal.

Cost

The balance of the purchase price is generally paid directly by the traveller or by the intermediary.

The price of the tourist package is determined in the contract, with reference to what is indicated in the catalogue, or with reference to any updates to the same catalogues or on the operator's website.

The price may change, it may increase or decrease, only as a result of changes in transport costs, including cost of fuel; charges relating to air transport, landing or boarding rights in ports and airports; exchange rates applied to tourist packages, ex article 39 Legislative decree 62/2018.

In any case the price cannot be increased in the 20 days preceding the departure and the revision may not exceed 8% of the price in its original amount.

In the event of a price decrease, the organiser shall have the right to deduct actual administrative expenses from the refund owed to the traveller.

Change or cancel of the tourist package before departure

The Tour Operator can reserve the right to unilaterally change the terms of the contract, other than the price, where the change is of little importance⁶⁴.

If before departure the organizer needs to change significantly one or more of the main characteristics of the tourist services mentioned in article 34 sub. 1(a), or cannot meet the specific requests made by the traveler that were already accepted by the organizer, or proposes to increase the price of the package by more than 8%, the traveler can accept the proposed change or withdraw from the contract without corresponding expenses of withdrawal⁶⁵.

If the traveler does not accept the proposed change, exercising the right of withdrawal, the organizer may offer him an alternative package of equivalent or higher quality⁶⁶.

The traveler shall communicate his or her choice to the organizer or intermediary within two working days from the time of receipt of the notice. In the event of lack of communication, the proposal formulated by the organizer is accepted.

⁶⁴ Communication is made in a clear way through durable support, such as e-mail.

⁶⁵ The organizer shall inform by mail the traveler clearly and accurately on the changes, without undue delay.

⁶⁶ If the changes to the tourist package or replacement package sales contract entail a lower quality or cost package, the traveler is entitled to an adequate price reduction.

In the event of withdrawal from the contract of sale of the tourist package, and if the traveler does not accept a replacement package, the organizer shall reimburse all payments made by or on behalf of the traveler within 14 days of the withdrawal from the contract, moreover, the traveler is entitled to be compensated for the non-execution of the contract, except when the cancellation of the tourist package depends on the failure to reach the minimum number of participants when required; or when the organizer proves that the lack of conformity is attributable to force majeure or unforeseeable circumstances; or when the organizer proves that the lack of conformity is unpredictable or inevitable and it is attributable to the traveler or a third persons unrelated to the provision of tourist services included in the package contract.

For cancellations other than those mentioned above, the organizer that cancels a travel will return the traveler a sum equal to twice the amount of the same paid by him.

In the event of unavoidable and extraordinary circumstances occurring at the place of destination or in its immediate areas and having a substantial impact on the implementation of the services included in the package or on passenger transport to the destination, the traveler is entitled to withdraw from the contract, before the start trip, without corresponding withdrawal costs, and the full refund of payments, but is not entitled to

additional compensation⁶⁷.

In unforeseen circumstances different from those listed above, the cost of practical management and insurance coverage – or other services and penalties – already requested and communicated at the time of the conclusion of the contract, will be charged to the traveler who terminates the contract before the departure⁶⁸.

Organizer's liability

The organizer is responsible for providing the tourist services included in the contract, regardless if who effectively provides the tourist services (the organizer himself, or persons acting his behalf, or by other providers of tourist services ex article 1228 Italian Civil Code).

The traveler, in accordance with the obligations of correctness and good faith referred to in articles 1175 and 1375 of the Civil Code, shall inform the organizer, promptly, of any reasonable defects of conformity detected during the execution of a tourist service provided by the contract.

⁶⁷ On withdrawal see article 40 Code on tourism, and 41 Legislative decree 62/2018.

⁶⁸ In these cases, any lack of liability to the traveler for the impossibility to enjoy the holiday does not allow him to withdraw without penalties. In fact, the traveler had the opportunity of guaranteeing himself from the economic risk related to the cancellation of the contract, with the stipulation of a special insurance policy, where not foreseen in the organizer's compulsory form.

In these circumstances, the organizer remedies the lack of conformity, unless it is impossible or is excessively costly, in consideration of the value of the related tourist services. If the organizer does not remedy the defect, the traveler is entitled to the reduction of the price and to the compensation for the damage suffered as a result of the defect in conformity, unless the organizer proves that the defect in conformity is imputable to the traveler or to a third persons unrelated to the provision of tourist services or due to extraordinary and unavoidable circumstances.

When appropriate, if the organizer does not remedy the lack of conformity, the traveler can personally remedy the defect and ask for reimbursement of the reasonable and documented expenses, as well as he may terminate the contract with immediate effect if the defect in conformity is relevant.

The organizer, if after departure is unable to provide an essential part of the services, will have to offer suitable alternative solutions for the continuation of the planned trip, which the traveler must accept. If no alternative solution is possible, the organizer arranges his early return and reimburse him for the services not provided.

Substitutions and variations in the contract

The traveler may notify the organizer of his/ her intention to transfer the contract to another person by a durable support no later than seven days before the start of the trip included in the package.

The transferor and the transferee of the contract for the sale of a tourist package are jointly responsible for the payment of the balance of the price and of any fees, taxes and other additional costs, including any administrative and management expenses and paper work.

The organizer must inform the transferor of the actual costs, which cannot exceed the real expenses incurred, taxes or other additional costs arising from the sale of the contract. In the case of a travel contract with low cost and not refundable air transport the transfer may require the purchase of another ticket.

Obligations of travelers

Travelers must observe the following requirements:

Minors need a valid personal document to travel abroad or a passport or, for EU countries, also a valid identity card for

expatriation⁶⁹.

Foreign nationals will have to find the corresponding information through their diplomatic representations in Italy and/or their respective official government information channels; Italian citizens can visit the local police headquarter or the Ministry of Foreign Affairs or call the operating Centre at number 06.491115⁷⁰. In the absence of such verification, no liability for the non-departure of one or more travelers may be attributed to the intermediary or the organizer.

In any case, travelers must inform the intermediary and the organizer of their citizenship at the time of reservation of the tourist package or tourist service. At the time of departure, they must provide vaccination certificates, individual passports and any other document valid for all countries concerned on the designated routes, as well as visa, transit and health certificates which may be required.

Travelers must also comply with the rules of prudence and diligence and the specific regulations in force in the destination

⁶⁹ Regarding minors of 14 years and for those for which it is necessary the authorization issued by the judicial authority, must be followed the prescriptions indicated on the site of the police of Italian State <http://www.poliziadistato.it/articolo/191/>.

⁷⁰ In addition, in order to assess the social security situation, policy, health and any other useful information relating to the countries of destination the traveler will have the responsibility to assume official information at the Ministry of Foreign Affairs, by the institutional site of *Farnesina* www.viaggiasesicuri.it.

countries, all information which the tour organizers will have already provided to them

Finally, before the confirmation of the booking⁷¹, the traveler must communicate in writing any specific personal request which may require special travel arrangements, provided that the organizer will be able to comply with such requests.

Hotel classification

The official classification of hotel structures is provided in the catalogue or other informative material solely based on the explicit and formal indications of the competent authorities of the country where the service is supplied⁷².

Liability regime

The organizer responds to damage caused to the traveller because of total or partial breach of the contract, unless he proves that the disruptive event was caused by the traveler or a third party, or it was the result of unforeseeable circumstances

⁷¹ Cf. art. 6, sub. 1(h).

⁷² In the absence of official classifications recognized by the competent public authorities of the EU Member States to which the service relates, or in the case of structures marketed as a "tourist village", the organizer reserves the right to provide in the catalogue its own description of the accommodation structure, allowing an evaluation by the traveler.

or force majeure or was caused by circumstances which the same organizer could not resolve, according to professional diligence. The intermediary is not liable for the planning and execution of the journey, but it is responsible exclusively for the execution of the mandate given by the traveller, ex article 50 Code on tourism.

Limits of compensation and prescription

Sources for the compensation and the prescription are articles 43 and 46 of Code on Tourism; articles 1783 and 1784 of the Civil Code Italian; general international conventions governing the tourist packages apply.

The traveler has two years from the date of return to the place of departure to exercise the right to receive a reduction in price or to receive compensations for the modifications of the package travel contract.

The traveler has three years from the date of return to the place of departure to exercise to exercise his right to receive compensation for damages to the person.

The traveler can direct messages, requests or complaints about the execution of the package directly to the seller through

which he purchased it, which, in turn, forwards them promptly to the organizer⁷³.

Duty of assistance

The organizer provides adequate assistance without delay to the traveler in difficulty by providing the appropriate information regarding health services, local authorities and consular assistance and helping him find alternate tourist services.

Within the limits of the actual costs incurred, the organizer may request the payment of a reasonable fee for such assistance if the problem is intentionally caused by the traveler.

Alternative Dispute resolution

In the case of disputes, the organizer can propose the traveler alternative modalities of dispute resolution, ex article 67 Code on tourism. The organizer will indicate the type of alternative resolution proposed and the effects of such agreement.

⁷³ The date on which the seller (intermediary) receives messages, requests or complaints shall be deemed to be the date of receipt for the organizer as well.

Guarantees to the traveler

The organizer and the travel agent intermediary, for travel abroad and trips that take place within a single country, guarantee the reimbursement of the price paid for the purchase of the tourist package and the immediate return of the traveller if there is an insolvency or bankruptcy of the intermediary or of the organizer⁷⁴.

The Legal entity which is obliged to provide the guarantee, on behalf of the organizer, is indicated in the catalogue or on the organizer's website, as well as in the booking confirmation.

⁷⁴ Article 47 Code on Tourism.

Table 2

Principles on Accessible tourism – Code on Tourism

In order to implement the article 30 of the United Nations Convention on the Rights of persons with disabilities, signed in New York on 13 December 2006, ratified and brought into effect by Italian Law No 18 of 3 March 2009, it is the duty of the Government – in collaboration with public bodies and local authorities, tour operators, associations of people with disabilities and social tourism organizations – to combat discrimination and ensure that persons with disabilities have access to the tourist offer in a complete and autonomous way, at the same level of quality as the other users and without any rise of the price: that is what article 3 Code on tourism says, but the Italian Constitutional Court, by judgment of 5 April 2012 No 80 pronounced the unconstitutionality of this article as it *"attiene, con evidenza, ai rapporti tra Stato e Regioni in materia di turismo e realizza un accentramento di funzioni, che, sulla base della natura residuale della competenza legislativa regionale, spettano in via ordinaria alle Regioni, salvo che lo Stato non operi l'avocazione delle stesse"*. I.e. it cannot be a task of the State, since it should be a task of the Regional authorities

Chapter 2

MARITIME TRANSPORTATION OF PASSENGERS

Shipping contract: peculiarity

Passengers maritime transport contract obliges carriers⁷⁵ to transfer persons by sea from one place to another with their baggage; passengers are required pay a fee for this service. So, it is a “consensual” contract⁷⁶.

The definition above is in accordance with the art. 1.2 of the Athens Convention of 1974, that expressly specify that maritime transport of passengers is a *<<contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be>>*⁷⁷.

⁷⁵ We may use EU meaning: a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the public.

⁷⁶ It could be also *facta concludentia*.

⁷⁷ The Italian navigation code doesn't offer any contractual definition. However, the road transport contract, at art. 1678 C.C. can provide for the transportation activities carried out in the sea environment, if we apply articles. 1, paragraph 2, cod. nav. in combination with art. 1680 cod. civ. The latter, and other special laws as well, allows to external (European or International) sources to derogate or integrate national system.

As a crucial requirement, this transport contract must have written form⁷⁸ *ad probationem*⁷⁹. The passenger's name allows carrier to find the person entitled, and such titles are the “*documenti di identificazione*” (identification documents). Passengers without ticket onboard will pay a fine (which is double the price of the ticket)⁸⁰.

Basics indications to satisfy the requirement of written form, are those relating to the data of the carrier and the place of departure and arrival.

⁷⁸ Carriers must issue a ticket, which provides the evidence that they have a contract/there is an agreement. Sometimes, there is a reservation condition before the conclusion of the contract: see FRANCESCHELLI e F. MORANDI, *Manuale di diritto del turismo*, Giappichelli 2013, p. 224 ff; The ticket must have a series of indications expressly listed in art. 397 cod. nav., and it cannot be given to others without the consent of the carrier if the ticket indicates the name of the passenger, or, otherwise, if the passenger has already started the journey: see S. FERRARINI, *I contratti di utilizzazione della nave e dell'aeromobile*, Roma 1947, p. 43 e G. RIGHETTI, *Trattato di diritto marittimo*, Giuffrè, II, p. 1137.

⁷⁹ Unless the ship having a gross tonnage of less than ten tonnes, whether with mechanical propulsion or twenty-five tonnes in other cases, as indicated by art. 396, paragraph I of Italian cod. nav.

⁸⁰ Italian code of navigation, art. 399, which define two hypotheses: first, the passenger on board without a ticket (payed); second, the passenger who, despite having concluded the contract, embarked without having with him the ticket. Consequently, could be non-contractual liability in the first case, and contractual liability in second one. About that, and on form and conclusion of the contract, see A. CORRADO, *Il contratto di trasporto marittimo di persone, Trasporti e turismo, profili privatistici*, a cura di C. Vignali, Giuffrè, Milano, 2016, p. 217.

If the contract form, however, is not written, it is valid but more difficult to prove in court⁸¹.

If obstacles to departure depend on reasons beyond the control of the carrier⁸², the contract will be terminated by law. In these cases, the carrier will reimburse the price paid by the passenger for the purchase of the ticket passing.

If the departure is cancelled but there is still the chance to offer alternative departure plans with ships of the same carrier, the passenger is entitled to complete the journey on one of those ships, if it is possible, or to rescind the contract⁸³.

Liability and its limitations in a uniform international law framework

For the contract related to the transfer of persons from one place to another by sea, there is a uniform international law framework, whose relevant sources are especially the Brussels Conventions of 1961 and 1967, as well as the Athens convention of 1974⁸⁴.

The Athens Convention of 1974, regarding the transportation of passengers and their luggage by sea, defines international

⁸¹ art. 2725 Italian cod. civ.

⁸² art. 401 cod. nav.,

⁸³ The same happen if the itinerary of the voyage has changed despite passenger interests.

⁸⁴ In Italy, the proper national law is navigation code, arts. 396-418.

transport as occurring between two ports situated in different States, and on vessels registered by a one of the Contracting States (art. 1)⁸⁵. The Athens Convention was later amended by the London Protocol (PAL 2002), which involves the “two tiers liability” with reference only to claims caused by shipping incidents⁸⁶.

Art. 6 provides that the Court may exempt all or part the carrier liability if the company proves that there is a direct or indirect fault or negligence on the part of the passenger for the death or personal injury of the passenger himself (or for the damage and loss of his baggage).

Furthermore, the Convention limits carrier liability in the case of the death or personal injury to a passenger, the liability of the

⁸⁵ The Athens Convention, as amended by the London Protocol, is valid in Italy thanks by the EC Regulation of Parliament and of the Council of 23 April 2009 on the Responsibility of carriers carrying passengers by sea.

⁸⁶ On this issue see F. BERLINGIERI *The Athens Convention on The Carriage of passengers and their Luggage by Sea and the European Parliament Regulation No. 392/2009*, in *Dir. Mar.* 2011; N. GASKELL, *Revision of the Athens Convention 1974 on the Carriage of Passengers and their Luggage by sea*, in *Liability to pay damages under Greek and International Maritime Law*, 4th International Conference on Maritime Law, Pireus 6th-9th June 2001 (Reports, Pireus 2001); C. HILL, *Passengers' progress*, in *P&I International*, vol. 16, n. 7, 2002; F. WISWALL, *2002 Protocol to the Athens Convention: an Internationalist's Commentary*, in *Benedict's Maritime Bulletin*, I, 2003.

carrier must in no case exceed 400,000 SDRs (special drawing rights) per carriage⁸⁷.

No limit of liability, instead, exists if the carrier or its employees caused the damages with their own conduct, or with acts or omissions committed with the intention or just with the knowledge that a damage would occur.

It is noteworthy that regardless of whether the injured party acts on a contractual or a non-contractual basis, the Athens Convention – PAL 2002 nevertheless supports its application.

Finally, in the interests of the passenger, the Athens Convention 2002 stipulates that when the transport is carried out by a “performing carrier” it is jointly responsible with the contractual carrier (art. 4.4).

The protection of the rights of persons with disability in the European maritime transportation

As said above, the European Union adopted the Athens Convention (and the London Protocol 2002), which was included as *Annex I*⁸⁸ to the EC Regulation No. 392/2009 of the

⁸⁷ Art. 7, par. No 1, which, in par. No 2, specifies that: *Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher per capita limit of liability.*

⁸⁸ Annex I: *“Provisions of the Athens Convention relating to the carriage of passengers and their luggage by sea relevant for the application of this regulation*

European Parliament, and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in case of accidents.

The regulation provides a compensation⁸⁹ in accordance with the liability of the carrier as described by Athens Convention, article 3, i.e. *in the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility*.

The issue of reduced mobility into the field of accessible transportation by sea for passengers with a disability is ruled by the EU Regulation No. 1177/2010 of the European parliament and of the Council of November 24th, 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending EC Regulation No. 2006/2004. With this regulation the European institutions intended to ensure an adequate level of protection also in the maritime transport sector⁹⁰, as already done in the past for air transport⁹¹.

(Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention).

⁸⁹ The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

⁹⁰ Whereas No 2: <<*Since the maritime and inland waterway passenger is the weaker party to the transport contract, all passengers should be granted a minimum level of protection. Nothing should prevent carriers from offering contract conditions more favourable for the passenger than the conditions laid down in this Regulation*>>.

The main drive is to ensure access to the services for all, at the same condition available to the other citizens; rights and obligations laid down cannot be renounced *“in particular by a derogation or restrictive clause in the transport contract”* (exclusion of waiver, art. 6).

Furthermore, European legislator intends to achieve the goal of safeguarding free movement and freedom of choice⁹², and the measures chosen to achieve these objectives are: non-discriminatory services and adequate assistance to the customer.

Another decisive tool should be “information”. Nowadays, information is a crucial key open the door of “accessibility”.

Carriers, tour operators and terminal operators shall set up, or have in place, non-discriminatory access conditions for the transport of persons with disability⁹³.

At the same time, carriers, tour operators and terminal operators shall make these access conditions publicly available, physically or on the Internet, in accessible formats on request⁹⁴.

⁹¹ The EU Regulation No. 1177/2010 gives a special attention to persons with disabilities and/or with reduced mobility in the whole of chapter II (arts. 7-15).

⁹² Whereas No 4.

⁹³ Carriers, tour operators and terminal operators shall communicate the access conditions upon request to national enforcement bodies.

⁹⁴ EU Regulation No. 1177/2010, article 9 (accessibility and information).

The EU, moreover, for the same purposes listed above, calls a co-participation and cooperation of all stakeholders involved, a topic which we will discuss later.

Application of the EU Regulation No. 1177/2010

This Regulation shall apply in respect of passengers travelling on a passenger services, or on a cruise⁹⁵, where the port of embarkation is situated in the territory of a Member State. The same applies if the port of embarkation is situated outside as well, but, in this case, the port of disembarkation must be situated in the territory of a Member State.

On the contrary, EU Regulation No. 1177/2010 is not applicable when a vessel has a crew composed of not more than three persons responsible for the operation of the ship, or where the distance of the overall passenger service is less than 500 metres⁹⁶.

The regulation defines also the position of the subject, other than the contractual carrier, which performs – in whole or in part – the service (so-called performing carriers or parties).+

⁹⁵ 'Cruise' means <<a transport service by sea or in land waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board>>, *ibid* art. 3 (t).

⁹⁶ *Ibid* article 2 (b).

Table 3

Other performing parties⁹⁷

1. Where the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal operator who has entrusted such obligations shall nevertheless be liable for the acts and omissions of that performing party, acting within that party's scope of employment.

2. The party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal operator shall be subject to the provisions of this Regulation, including provisions on liabilities and defences, with regard to the obligation entrusted.

Finally, considering the definition of 'person with disability' and 'person with reduced mobility' adopted by the EU in this Regulation, we cannot share the point of view of those who think there is a possibility that this broad definition can

⁹⁷ Table. EU Regulation No. 1177/2010 (article 5).

somehow grant some abuse⁹⁸. In fact, the link between the breadth of the definition adopted by the regulation and the apprehension for potential abuse. appears inconsistent.

On the contrary, keeping high the attention on the goal of non-discrimination, here it is relevant to quote the European Court⁹⁹ for which European Law recognizes that obesity could be a type of disability if size is an obstacle to the full and real participation in social life, showing us the multiple faces of disability; moreover it should also be considered how intersectionality factors expand and complicate issues regarding persons with disability, and one should also pay more attention to avoid any kind of discrimination in cases of so-called “hidden disability”¹⁰⁰ rather than focusing on finding a sort of brief and polite definition of the term “disability”.

⁹⁸ S. ZUNARELLI, *Il Regolamento (EU) n. 1177/2020 sui diritti dei passeggeri che viaggiano per mare: obblighi di vettori e di operatori terminali e problemi applicativi*, in *Dir. Mar.*, 2012, 782.

⁹⁹ Judgment of December 18th, 2014 of the European Court (Section IV), case No C-354/13.

¹⁰⁰ On “hidden disability”, and how to resist and mitigate disability stigma, see J. E. HARRIS, *Processing*

Disability, 64 *Am. U. L. Rev.* 457 (2015), on Hein Online.

Table 4

DEFINITION OF DISABILITY¹⁰¹

...‘disabled person’ or ‘person with reduced mobility’ means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the service made available to all passengers.

Derogation to the maritime transport access for persons with disabilities.

The right to transport, and therefore to access to services, for persons with disability or persons with reduced mobility is laid out by art. 7. It states that carriers, travel agents and tour

¹⁰¹ Table. EU Regulation No. 1177/2010 (article 3). This definition is the same in EC Regulation No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, and of EU Regulation No. 181/2011 concerning the rights of passengers in bus and coach transport, as well as EC Regulation No. 1371/2007 on rail passengers’ rights and obligations.

operators shall not refuse to accept a reservation, transport or embark persons on the grounds of disability or of reduced mobility. In addition, carriers cannot charge additional cost for reservations or tickets. This general principle finds, however, some limitations.

The principle, in fact, could be derogated <<*in order to meet applicable safety requirements established by international, Union or national law or in order to meet safety requirements established by the competent authorities*>> or <<*where the design of the passenger ship or port infrastructure and equipment, including port terminals, [it would become] makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner*>>¹⁰².

In this instance, the regulation tries to provide a system of checks and balances. In fact, immediately after having stated these special exclusions, however, it requires carriers, travel agents and tour operators to make every reasonable effort to propose alternative solutions to the passenger with disabilities or reduced mobility who has been rejected for one of the reasons explained above.

¹⁰² EU Regulation No 1177/2010, article 8 (exception and special conditions).

STCW requirements to avoid discrimination based on disabilities

The first general contractual obligation of the carrier is to transfer the passenger from one place to another. The second, is to transfer the baggage of the passenger. But not less important, as generally known, is to ensure the safety of the transported passenger during the entire duration of the operations (embarkation, transportation, disembarkation). Ensuring the safety of the passenger with disabilities involves a general duty of diligence, and, especially, an establishment of disability-related training procedures.

The International Maritime Organization (IMO) Facilitation Committee recognised that inclusion of persons with disability – in social and economic life of the community in which they live – is not adequate in consideration of the considerable number of people with disabilities¹⁰³. To contribute to the implementation of disabled people's rights, IMO found four areas of concern: transportation to and from ports; parking facilities and exterior access to marine passenger terminals; movement within the terminal, to and from the ship, and on-

¹⁰³ This number in 1989 was about up to 10%, of international population, in 2011 was 15%, and the data is growing further.

board ships (including use of facilities and services), communication and training of staff¹⁰⁴.

EU Regulation No. 1177/2010 specifically provides that “carriers”, should consider the relevant requirements of the International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers as well as the Recommendation of the International Maritime Organisation (IMO) on the design and operation of passenger ships to respond to the needs of elderly and disabled persons. In that work the EU requests cooperation with organisations that represent disabled persons *“in organising assistance to disabled persons and persons with reduced mobility, and the training of their personnel”*. It also asks a cooperation between tourist stakeholders in order to ensure accessible service. For example, carriers, terminal operators, travel agents, and tour operator shall notify to the customers the specific assistance condition required by the passengers. Carriers and terminal operators must designate a point inside or outside port terminals where persons with disability or with reduced mobility can alert (the appropriate personnel) of their arrival and request assistance¹⁰⁵.

¹⁰⁴ IMO, Fal. 5/circ.3 of the 23th august 1989 - Ref. T3/4.01: Introduction of “Access to Marin passenger terminals for elderly and disabled passengers”.

¹⁰⁵ EU Regulation No. 1177/2010, article 12 (reception of notifications and designation of meeting points).

Furthermore, a recent activity report of UK National Enforcement Body (2017)¹⁰⁶, on a “step test” for passengers with reduced mobility when boarding or disembarking from a tender, stipulates that the requirements need to be more “customer sensitive”, in order to consider the needs of disabled passengers, as well as to set out safety measures on board the vessel for which the Captain has ultimate responsibility.

In “Costa Concordia – Passenger Evacuation”, a recent paper published by The Royal Institution of Naval Architects, the authors state that “*in a real emergency situation on a cruise ship lifeboat many people believe that embarkation would take longer than the design ideal of 10 minutes*”¹⁰⁷ in fact one must take into consideration that “*a typical cruise contains a fair portion of passengers with impaired mobility and families with young children*”.

Frequently, maritime authorities highlight the STCW requirements to their shipowners, i.e. the Bahamas Maritime Authority mentions the importance of the implementation of the STCW requirements¹⁰⁸ as done in *Bulletin No. 135* (2017)¹⁰⁹.

¹⁰⁶ The report focuses on a description of actions taken to implement the provisions of the EU Regulation No. 1177/2010 (www.gov.uk/government).

¹⁰⁷ In accordance with the IMO Life Saving Appliances (LSA) Code 4.4.3.1 states: “*Every passenger ship lifeboat shall be so arranged that it can be boarded by its full complement of persons in not more than 10 minutes from the time the instruction to board is given*”.

¹⁰⁸ Which will be effective from 01 July 2018.

Therefore, a complete training on disability allows to achieve not only a higher safety degree and better assistance on board, but it also contributes to an equalisation of opportunities, elimination of discrimination based on disabilities, and support of social inclusion policies, as well as it allows disabled persons accessibility to transportation, as the Convention on the rights of persons with disability (2006) requires¹¹⁰.

¹⁰⁹ BMA asks, in fact, that all persons serving onboard passenger ships shall complete passenger ship emergency familiarization training or instruction appropriate to their capacity, duties and responsibilities.

¹¹⁰ As art. 9 of CRPD – signed by Bahamas on 24 Sep 2013 and ratified on 28 Sep 2015 – requires, asking States to take appropriate measures to ensure that private entities that offer facilities and services which are open or provided to the public, take into account all aspects of accessibility for persons with disabilities, as well as to provide training for stakeholders on accessibility issues facing persons with disabilities.

Table 5

DISABILITY-RELATED TRAINING FOR SEAMEN¹¹¹

Disability-awareness training, including instructions, includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation or communication may be reduced;
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers;
- recognised assistance dogs, including the role and the needs of an assistance dog;
- dealing with unexpected occurrences;
- interpersonal skills and methods of communication with people with hearing impairments, visual impairments or speech impairments and people with a learning disability;
- general awareness of IMO guidelines relating to the Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

¹¹¹ Table. Annex IV, EU Regulation No. 1177/2010 of the European Parliament and of the Council, including instructions, as referred to in article 14.

Disability-assistance training, including instructions

Disability-assistance training, including instructions, includes:

- how to help wheelchair users make transfers into and out of a wheelchair;
- skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs;
- techniques for escorting passengers with visual impairments and for the handling and carriage of recognised assistance dogs;
- an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to carefully handle such equipment;
- the use of boarding and deboarding assistance equipment used and knowledge of the appropriate boarding and deboarding assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility;
- understanding of the need for reliable and professional assistance. Also, awareness of the potential of certain disabled persons and persons with reduced mobility to experience feelings of vulnerability during travel because of their dependence on the assistance provided;
- a knowledge of first aid.

Below is a table¹¹² with sanctions which apply in Italy in case of violations of the regulation provisions¹¹³ on the obligation imposed on the carriers and on the operators of the terminals to establish disability-related training procedures¹¹⁴, and other pertinent mandatory requirements of EU Regulation No. 1177/2010 (article 14).

Table 6

ILLICIT ADMINISTRATIVE AND SANCTIONS¹¹⁵
- refusal of reservation, ticket or boarding from 500€ to 5.000€; - legal refusal of reservation, ticket or boarding, but without proposal of alternative solution from 150€ to 1.500€; - lack notification, within 5 days, in writing, the reasons for the refusal of the reservation, ticket or embarkation from 150€ to 1.500€;

¹¹² *Atto del Governo 149, Dossier n° 156 - Schede di lettura*, 24th March 2015.

¹¹³ *Decreto legislativo 29 luglio 2015, n. 129*.

¹¹⁴ *Ibid*, article 11 (training) provides 30.000€ as a sanction in case of violation of art. 14 of the EU Regulation No. 1177/2010: <<Il vettore e l'operatore del terminale che violano gli obblighi attinenti alla formazione del proprio personale di cui all'articolo 14 del regolamento, sono soggetti ad una sanzione amministrativa pecuniaria da euro 1.000 a euro 30.000>>.

¹¹⁵ Table. Cf. Italian Legislative Decree No 129/2015 “*Disciplina sanzionatoria delle violazioni delle disposizioni del Regolamento (UE) n. 1177/2010*” (*Gazzetta Ufficiale n. 191 del 19 agosto 2015*)”.

- application of additional charge on the ground of the disability **from 150€ to 1.500€;**
 - discriminatory conditions of access **from 1.500€ to 15.000€;**
 - lack of a public communication on accessible conditions **from 500€ to 5.000;**
 - violation of the mandatory public information on travel and transport conditions **from 150€ to 1.500€;**
 - lack of training (on disability) of the personnel **from 1.500€ to 30.000€**
- violation of the obligations inherent to the damage of mobility equipment, with particular reference, to the provision of temporary replacement equipment **from 150€ to 900€;**
- lack of free assistance **from 300 € to 1.200€;**
 - lack of assistance for special need regularly notified **from 150€ to 900€.**

So, expressly, the table of sanctions shows us how violations on accessibility, assistance, training and information (crucial keys of this research) are significant to ensure protection to the disabled customers. The high sanctions (for example, up to 15.000 € in case of discriminatory access conditions or up to 30.000 € for lack of training – on disability – in fact, are a great disincentive to the violations.

It is desirable, for the future, that these sanctions are really inflicted on offenders.

Complaints

In the case of violation of the rights and obligations covered by the regulation, carriers and terminal operators of the terminals must allow access to a public system of complaints. The deadline to submit a complaint is within two months of the date on which the service was completed or should have been provided. In addition, the complaints handler will have two months to decide on the acceptance or rejection of the complaint¹¹⁶.

Furthermore¹¹⁷, each Member State must choose an Authority that will have to decide on complaints that each passenger is entitled to submit in case of violations of regulations, within a reasonable period.

In Italy, the national body responsible for the application of regulations is the so-called “*Autorità di regolazione dei trasporti*” (Authority)¹¹⁸ whose principal tasks are:

- a) ensure the correct application of regulations;
- b) evaluating complaints;
- c) assessing penalties in case of violations of regulations.

Sixty days after having lodged a complaint against the carrier or the operator of the terminal, each passenger may file a

¹¹⁶ EU Regulation No. 1177/2010, article 24.

¹¹⁷ *Ibid*, article 25.

¹¹⁸ Italian Legislative Decree No 129/2015, *ibid*, article 3 “National Authority” (*Organismo nazionale responsabile dell'applicazione del regolamento*).

complaint with the Authority for alleged infringements of regulations. Such complaint can be filed also using telematic and instruments, according to technical modalities set up by the same authority.

Chapter 3

PASSENGERS' TRANSPORT BY COACH AND BUS

Road transport: Coaches and Bus Lines

The discipline of coach bus rental with driver was introduced in the national law Italian by Law of 11 August 2003, No 218: "*Disciplina dell'attività di trasporto di viaggiatori effettuato mediante noleggio di autobus con conducente*"¹¹⁹ can be offered directly to pre-established groups. The dates of departure, the duration of the trip, the costs and further details are established in advance¹²⁰. Payment of the service will be paid individually (divided between each member of the group) or in a single payment of the total price.

At the European Union level, EC Directive No. 22/06 concerning social legislation relating to road transport activities is relevant, as well as EC Regulation No. 561/06 is particularly significant as it provides a common set of EU rules for maximum daily driving times.

¹¹⁹ Which are transport services carried out by a professional company, with vehicles intended for the transport of persons equipped with more than nine seats including the driver.

¹²⁰ *Legge 11 agosto 2003, No 218*, article 2.2 (Italian law).

The new framework introduced by EC Regulation No. 561/06¹²¹, with effect from April 2007, repealed the pre-existing legislation, with some exceptions¹²².

The regulation identifies as a driver not only the individual who is driving the vehicle, even for a short period, but also the individual who travels in a vehicle as part of his duties in order to be available to drive necessary¹²³.

Furthermore, irrespectively of the country in which the vehicle is registered, the regulation applies to road transport carried out exclusively within the community or between the community¹²⁴ and the countries which are part of the “European Economic Area” agreements.

It does not apply to vehicles used to transport passengers in regular services whose route does not exceed 50 kilometers.

Accessible transportation by bus for passenger with disability or with reduced mobility in the EU.

Nowadays, the coach bus transport assumes relevance in our life, for the purpose of tourism or to perform daily activities.

Accessible transportation service, indeed, is a critical factor for the life of persons with disabilities, since it allows them to go to

¹²¹ It repealed Council Regulation (EEC) No. 3820/85.

¹²² If expressly established, as well as the old rules that defined sanctions.

¹²³ Article 4 EC Regulation No. 516/2006

¹²⁴ Switzerland as well.

work, to go shopping, and to visit friends and relatives. In West Yorkshire (UK) alone passengers with disabilities have taken more than 5 million trips between 2012 and 2013¹²⁵. In Italy, recent studies carried out by the research centre "*Transpol*" state that currently transport by bus is a very fluid market: in Italy the number of transactions recorded has been growing¹²⁶ as well as the number of bus companies.

EU Regulation No. 181/2011 of the European Parliament and of the Council of 16 February 2011, concerning the rights of passengers in bus and coach transport¹²⁷, gives special protection to persons with disability. The latter are vulnerable people, first of all as the status of "customer" is for its own nature, and then, because of the structural, moral, and psychological barriers placed in and by the society, according to the interpretation of social models of disabilities.

Consequently, EU Regulation No. 181/2011 has become an indispensable landmark – a *vademecum* – for carriers, managers of terminals (terminal managing body) and tour operators who must take it in consideration before, during and after the performance of their services, to protect the rights of passengers with disabilities or reduced mobility, but also to

¹²⁵ On web: www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/paulley-v-firstgroup-plc.

¹²⁶ This monitoring activity shows the classical relations north-south, middle-north and middle-south of the Country.

¹²⁷ The EU Regulation No. 181/2011 amending EC Regulation No. 2006/2004.

safeguard their responsibilities in case of complaints¹²⁸ and penalties¹²⁹.

This regulation – whose main sources are TFEU (art. 91, par. 1, especially)¹³⁰, CRPD (art. 9, 'Accessibility')¹³¹, and Charter of

¹²⁸ To guarantee their rights, appropriate complaint procedures are envisaged through a system established or arranged by the carrier, as said by *whereas* No. 20 of EU Regulation No 181/2011: <<Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers...>>; No. 22: <<...a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation...>>. There could be, therefore, a double system of transmission of the complaints provided by this regulation. The first one, through the carriers (art. 27); the second one, through a national body designated by the Member State (art. 28). So, <<carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in this Regulation>> (art. 26, and cf. art. 28, 1, 3). About timeline: <<Within 1 month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered>>. In the latter case the new deadline is just a month (art. 27).

¹²⁹ Effective, proportionate, and dissuasive penalties are applicable and ensured by Member States to infringements of the regulation above mentioned. and shall ensure its application (*whereas* 24 and art. 31, EU Regulation No. 181/2011).

¹³⁰ For applying of art. 90 (according to which the objectives of the treaties are pursued under a common transport policy) and considering the aspects of transport, the European Parliament and the Council, after consulting the Economic and Social Committee and the Committee of the Regions, establish common rules applicable to transport, and measures to improve safety as well as any other useful provisions.

¹³¹ In order to offer people with disabilities or reduced mobility the possibility of take the bus or carry out a coach trips under equal conditions with other citizens, it is necessary to establish rules on non-discrimination and assistance during the journey. About that also, Directive 2003/59/EC of the European Parliament and of the Council of July 15th, 2003: on the training of drivers of certain road vehicles used for the carriage of goods or passengers (OJ L 226, 10.9.2003, p. 4); Council

Fundamental Rights¹³² – shows the primary needs of passengers with disabilities or reduced mobility that must be safeguarded by those who offer a transport service.

EU Regulation No. 181/2011 pays special attention to assistance service: Member States shall designate bus stations in which passengers with disability or with reduced mobility have guaranteed assistance. When it is required, they will receive assistance in designated points, to facilitate movement to check-in counters, waiting rooms and embarkation areas. Moreover, they will receive assistance on board (and during their journey) for their seats, luggage accommodation, certified services dogs and to obtain essential information in accessible format¹³³.

In this context, the request of proper training programs for employees appears to be essential to ensure accessibility and assistance to persons with disabilities in transportation¹³⁴.

Directive 90/314/EEC of 13 June 1990: concerning travel, holidays and all-inclusive holidays (OJ L 158, 23.6.1990, p. 59).

¹³²EU recognizes rights, liberties and principles enshrined in the Charter of Fundamental Rights of the European Union of 7 December 2000, adapted on December 12th, 2007 in Strasbourg, which has the same legal force as the Treaties (Art. 6 TFEU).

¹³³ Annex I, EU Regulation No. 181/2011.

¹³⁴ *Whereas* 12, EU Regulation No. 181/2011, in order to respond to the Persons with disabilities or reduced mobility needs, it provide that <<disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of

Moreover, the cooperation with organisations representative of persons with disabilities or with reduced mobility is crucial to prepare the content of disability - related training¹³⁵.

EU expressly aims its policies of accessibility and non-discrimination at transportation stakeholders. They must comply with all of these recommendations in each operation: for example, for ticketing, booking¹³⁶ and terminal managing¹³⁷;

15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers>>.

¹³⁵ *Whereas* 13, on the training also, the art. 16 par. 1: it specifies that carriers and terminal managing bodies must ensuring training of their personnel, drivers or other than it, which provide direct assistance to persons with disabilities or reduced mobility (as indicated also into Annex II, Parts A and B). Sharable is the opinion of G. CAMARDA, *ibid* (note No 6) about the necessity to ensure the participation, in Italy, of the associations of persons with disability to the preparatory works for the *Carta dei servizi del passeggero* (Charter of passenger services) for <<la specificità delle esigenze di cui sono portatrici>> (their specific needs). In fact, Law No. 133 of 2008 (and subsequent amendment), art. 23 *bis*, provides that the *Carta dei servizi* must be wrote with the involvement of representatives of consumers' associations. Since this law allows the introduction of ad hoc and further facilitations for passengers with disabilities, it appears appropriate to receive a proper contribution by their representatives, in order to frame facilities within the service contract (that is stipulated with the local public transport office, and indirectly, insert in the *Carta dei servizi*).

¹³⁶ Cf. art. 9, EU Regulation No. 181/2011: carriers, travel agents, and tour operators do not refuse to accept a reservation from, or to take on board, a person on ground of disability or reduced mobility, and, they have to offer them these services at no additional charges.

¹³⁷ Member States shall designate bus stations where assistance to persons with disabilities or reduced mobility is provided (cf. art. 12, *ibid*).

free of charge assistance¹³⁸, especially in case of cancellation or delay at departure¹³⁹, in the designated stations, and on board¹⁴⁰; information on any alternative services managed by the carrier¹⁴¹, on access conditions¹⁴², and on assistance services¹⁴³, or finally, on cancellation or delay at departure¹⁴⁴.

¹³⁸ Cf. art. 13, *ibid*: carriers and terminal managing bodies, at terminals designated by the Member States, as well as on board buses, must give assistance free of charge to persons with disabilities.

¹³⁹ Cf. art. 21, *ibid*.

¹⁴⁰ Cf. Annex I. b, *ibid*, which shows a series of assistance measures "on board", to ensure that weak travelers enjoy a comfortable journey in relation to their disability or reduced mobility.

¹⁴¹ Cf. art. 10, par. 2, *ibid*: in case of an unaccepted reservation or a ticket unissued. As a matter of fact, Article 10 confer carriers, travel agents and tour operator the right to refuse to accept reservation, issuing ticket, or take on board on the grounds of disability or reduced mobility, on any exceptional assumptions and special conditions *<<in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities>>*, or when *<<where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner>>*

¹⁴² Cf. art. 11, *ibid*: in collaboration with organizations representing persons with disabilities or reduced mobility, the carriers and terminal managing bodies establish the safety requirements, on which these non-discriminatory access conditions are based. It shall be made publicly available by carriers and terminal managing bodies physically or on the Internet, in accessible formats on request.

¹⁴³ Cf. arts. 14 and 15, *ibid*: travel agents or tour operators shall cooperate with the carrier or the terminal managing bodies, by facilitating the transmission of information relating to the need, and measure of assistance to allow persons with disabilities or reduced mobility to use the service.

Table 7

Rights applicable to long-distance services

(i.e. more than 250 km)¹⁴⁵

- Adequate assistance (providing meals and beverages and, if necessary, up to two nights in a hotel) in case of cancellation or of a delay of more than 90 minutes;
- Guaranteed reimbursement of the ticket or a re-routing under satisfactory conditions in the case of overbooking, cancellation or delay in departure (more than 120 minutes);
- Compensation amounting to 50% of the ticket price (if the carrier fails to offer the passenger the choice referred to above);
- Protection of the passenger for death, injury, loss or damage, in the event of road accidents.
- Receiving information regarding the service before and during the journey, which could be provided, upon request, in alternative formats accessible to persons with disabilities.
- Free assistance for persons with disability or with reduced mobility both at terminals and on-board, as well as free

¹⁴⁴ Cf. art. 20, *ibid*: carriers or, where appropriate, terminal managing bodies, shall inform the passengers on the cancellation or delay at departure, and they do it as soon as possible and in accessible formats. Even more, they shall make reasonable efforts to inform the passengers concerned of alternative connections if they miss a connecting service due to a cancellation or delay.

¹⁴⁵ Table. Cf. EU Regulation No. 181/2011.

transport for any accompanying person, which may seat next to him/her.

Non-discrimination Rights are always applicable for:

- Acceptation of reservations, issuing of tickets, taking on board persons with disability;
- Contract conditions or tariffs;
- Information before, during, and after the transportation (they must be complete and accessible);
- In the event of an accident, compensation for the loss or damage of wheelchairs and other mobility equipment belonging to people with disability or with reduced mobility;
- Management of complaints.

In the last part of the table above, we can see the right to receive non-discriminatory contract conditions (article 4). It means that contract conditions and tariffs applied shall be offered with equal treatment without consideration of the nationality of the customer.

Regarding specifically non-discrimination on the base of nationality of the passenger with disabilities, there is an interesting judgment of the Court of Justice of the European Union¹⁴⁶: the question was about the interpretation of article 12 of the EC Treaty, which reads "*within the scope of application*

¹⁴⁶ Judgment of the court (first chamber) C-103/08 – Gottwald, 1st October 2009.

of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on ground of nationality shall be prohibited"; the judgment highlights that unequal treatment can't be reserved between persons with disabilities who have different nationalities. However, such different treatments of the law must be justified, for example when the law gives a benefit (such as a parking permit) only to residents and not also to those are occasionally there¹⁴⁷.

In conclusion, key word for a successful management of clients – in transportation services – is “equality”. All stakeholders must respect it. European policy asks member States to respect the equality principle and issues of social justice, in a double meaning: in a positive way, i.e. as “equal opportunity”, and in a negative way, i.e. as “non-discrimination”.

Sometime, interventions aimed at overcoming social obstacles are not sufficient, but what is necessary is simply to realize a positive value. Thus, the equality principle could be violated both when equal situations are subjected to different treatments (without any significant justification in harmony with the constitutional system of principles) and when individuals acting in different situations, receive identical treatment.

This will let us transition to the next paragraph which is dedicated to the reasonableness of the unequal treatment.

¹⁴⁷ For a more complete analysis of this European Court of Justice judgement, let see G. CAMARDA, *ibid.* (note No 6), pp. 201-202.

The reasonableness of the unequal treatment: the sunset of "*First come, first served*" rule on buses.

The reasonableness of disparity in treatment concerns interventions aimed to overcome differences not only of economic but also social and cultural background¹⁴⁸, and to remove any active or passive form of discrimination. Therefore, a law favourable to subjects and categories of subjects particularly in need of solidarity will be constitutionally legitimate, because it was expressly envisaged to do so , or because it aims at removing any kind of obstacles which may prevent individuals to fully participate in the life of the country (Italian Constitution, article 3.2). Conversely, a law that realises

¹⁴⁸ P. PERLINGIERI e P. FEMIA, *Nozioni introduttive e principi fondamentali del diritto civile*, Edizioni Scientifiche Italiane, Napoli, 2004, p. 75 f., and P. PERGLINGERI, (Note No 4), p. 457, note No 103, on the Italian Constitutional Court judgement No. 54 in 1968, which stated that <<*nel giudizio sulla razionalità di una certa disciplina non si deve guardare soltanto alla posizione formale di chi ne è destinatario ma anche alla funzione od allo scopo a cui essa è preordinata*>>, it means that every legal discipline are based not only on the formal *status* of its recipient but also on its main – primary – goals. Disparities generating equal dignity and development of the persons are reasonable; every disparity is legitimate if it implements constitutional principles. P. PERLINGIERI, (Note No 4), compares it with A. CERRI, (Note No 5) p. 48 ff., for whom the reasonableness is a natural factor of human rationality.

a singular unfavourable condition for subjects in a strong position; should be legitimate¹⁴⁹.

In order to clarify this general issue, it is pertinent to refer to a UK case: "*Doug Paulley*"¹⁵⁰. On the 18th of January 2017, the Supreme Court issued an historical sentence, which exceeded the principle of the "*first come - first served*", so far adopted by the transport companies: transportation companies must satisfy the needs of passengers on wheelchair. The judgement¹⁵¹ states that drivers may stop the bus "*in order to persuade who does not want to leave the reserved seats to wheelchair passenger*" if they judge that refusal is unwarranted. Lord Neuberger, president of the Supreme Court, said that if the driver takes note of the refusal of the passenger who does not

¹⁴⁹ Cf. P. PERLINGIERI., *Il diritto civile nella legalità costituzionale*, (Note No 4), pp. 457-458, note No 105.

¹⁵⁰ On the 24th February 2012, Doug Paulley, a man in a wheelchair, tried to take advantage of the service offered by *First Group*, transport company to move from Wetherby to Leeds. At the bus stop, the driver asked Mr. Paulley to wait as a mother occupied the place reserved to wheelchairs with a stroller. This lady refused to change her seat, and this caused the impossibility for him to get on the bus and so he lost the connecting train to get his destination: his Parents' house for the family lunch. So, he sued the First Group at Leeds County Court to obtain justice against the act of discrimination suffered as a person with disabilities. He won the cause, but the First Group appealed, subjecting the case under the decision of the Supreme Court.

¹⁵¹ Hilary Term [2017] UKSC 4 - On appeal from: [2014] EWCA Civ 1573 – *First Group Plc v Paulley* –Judgment given on 18 January 2017 Heard on June 15th, 2016.

On web: www.supremecourt.uk/cases/docs/uksc-2015-0025-judgment.pdf.

use the wheelchair, the denying policy of the transport service – to the user with disability – is “*unjustifiable*”.

The Court also suggested that the law should be updated in order to be clearer towards transport companies and their users. Transport companies should adopt clear rules and, primarily, they should train their drivers to enable them to remove any type of barrier to the free enjoyment of transport service.

In relation to the *Paulley case* and drivers’ training, even the *Transport Committee*¹⁵² highlighted how crucial is to guarantee a proper training course on disabilities, based on the EU Regulation No. 181/2011 – *inter alia* in accordance with the *Equality Act* 2010¹⁵³ – which requires a mandatory training,

¹⁵² The transport Committee is charged by the House of Commons to check the Transport Department. His formal mandate is to examine the expenses, administration and policy of the Department of Transport and its associated public bodies.

The Transport Committee consists of eleven members of Parliament, appointed by the House of Commons and chosen within the three major political parties. The Committee chooses its own topics of investigation. Depending on the subject matter, the external deadlines and the amount of oral evidence that the Committee decides to take, an investigation can last several months and give rise to a report to the Assembly; Other requests can simply consist of an oral testimony of daily duration that the Committee may decide to publish without making a report –

www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/role/.

¹⁵³ The Equality ACT requires reasonable solutions when a person with disabilities is disadvantaged compared to all others, in accordance with regulations or uses. This

asking Parliament to incorporate it into the national legislation.

As an effect of *Brexit*, the real risk in the United Kingdom is that the adoption of the regulations may be not implemented.

The table below inform stakeholders of transportation by bus on the obligation they must follow if the scheduled distance of the service is 250 km (or more). If it is shorter stakeholders will need to abide by articles 16.1(b) and 16.2¹⁵⁴.

Table 8

DISABILITY-RELATED TRAINING FOR COACH AND BUS PERSONNEL¹⁵⁵

1. Carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, and ensure that:
--

(a) their personnel, other than drivers, including those employed by any other performing party, and providing direct assistance to disabled persons or with reduced mobility be

means that the stakeholders must adopt any measures to ensure persons with disabilities access to their services.

¹⁵⁴ For the “Scope” related, see article 2.2, EU Regulation No. 181/2011, in which it points out the different rules for service of 250 km (or more), and services of less than 250 km.

¹⁵⁵ Table. Article 16 EU Regulation No. 181/2011.

trained or instructed as described in parts (a) and (b) of Annex II; and

(b) their personnel, including drivers, who deal directly with the travelling public or with issues related to the travelling public, be trained or instructed as described in part (a) of Annex II.

2. A Member State may for a maximum period of 5 years from 1 March 2013 grant an exemption from the application of point (b) of paragraph 1 with regard to training of drivers.

Complaints.

Passengers may file claims to request compensation for damages resulting from losses due to cancellation or delay of regularly scheduled services. The system of transmission of complaints allows passengers to submit a complaint to the carrier, within three months of the disservice. Within one month of receipt of the complaint, the carrier shall notify complainants if their complaint has been accepted, rejected or is still under consideration. The deadline to provide a definitive answer should never exceed three months.

Table 9

ILLECIT ADMINISTRATIVE AND SANCTIONS¹⁵⁶

- refusal to provide reservations, tickets or boarding **from 500€ to 5.000€**;
 - refusal to provide free transportation to the companion of the passenger with disability or reduced mobility **from 500€ to 5.000€**;
 - discriminatory conditions of access for the transport of persons with disabilities or reduced mobility **from 1.500€ to 15.000€**
- application of additional charge on the ground of the disability **from 150€ to 1.500€**;
- lack of a public communication on accessible conditions **from 500€ to 5.000**;
 - violation of the mandatory public information on travel and transport conditions **from 150€ to 1.500€**;
 - lack of training (on disability) of the personnel **from 1.500€ to 30.000€**;
 - violation of the obligations inherent to the damage of mobility equipment **from 150€ to 900€**;
 - lack of (free) assistance **from 300 € to 1.200€**;

¹⁵⁶ Table. Cf. Decreto legislativo 4 novembre 2014, n. 169, Disciplina sanzionatoria delle violazioni delle disposizioni del regolamento (UE) n. 181/2011, che modifica il regolamento (CE) n. 2006/2004, relativo ai diritti dei passeggeri nel trasporto effettuato con autobus, (GU n.271 del 21-11-2014)

So, Italian Government, within the sanctions system, points out that if carrier or terminal operators doesn't establish non-discriminatory access conditions for the transport of persons with disabilities or reduced mobility¹⁵⁷, they will receive fines according to EU Regulation No. 181/2011, up to 15,000 €; a fine of 30,000 € in case of lack of training (on disability) of the personnel.

These provisions seem a good disincentive to the discrimination of passengers with disabilities, but the primary goal is prevention.

¹⁵⁷ In cooperation with the organizations representative of persons with disability
Referred to in article 11 (1) of the Regulation 181/2011.

Chapter 4

AIR TRAVEL

The sources and the law applicable to the air travel contract

The discipline of passenger's air transport was standardized by the application of the Montreal Convention of 28 May 1999 on international air transport. Before that, the document regulating air transport was the Warsaw Convention of 12 October 1929 (ratified in Italy by L. 19 May 1932, no 841), as amended by the Hague Protocol of 28 September 1955 and the Montreal Protocol of 25 September 1975 no 4. Simultaneously there coexisted a plurality of normative sources at international, European and national level.

In the Italian regulations, the Convention was ratified by Law No 12 of January 10, 2004 and come into effect on June 28, 2004¹⁵⁸.

¹⁵⁸ On the relevant sources, see S. BUSTI, *Contratto di trasporto aereo*, Milan, 2001; E. G. Rosafio, *Problemi applicativi a seguito dell'entrata in vigore della Convenzione di Montreal del 28 maggio 1999, per l'identificazione di alcune norme relative al trasporto aereo internazionale*, in *Dir. Tur.*, 2004, 32 ff.; G. Mastrandea – L. Tullius, , *Il compimento della revisione della parte aeronautica del codice della navigazione*, in *Dir. Mar.* 2006, 699 ff.; M. M. Comenale Pinto, *Riflessioni sulla nuova Convenzione di Montreal del 1999 sul trasporto aereo*, in *Dir. Mar.* 2000, p. 798 ff.

Since the Warsaw Convention was not expressly repealed by the Montreal Convention, the two regulations co-exist (such as in Italy) but the Montreal Convention which shall prevail (article 55).

The Montreal Convention of 1999 was then ratified by the then European Community on April 5, 2001, thanks to the article 53 (2)¹⁵⁹.

At the European level, we must mention the Reg. EC No 261/2004 of the European Parliament and of the Council of February 11, 2004, which repealed Council Reg. EEC 295/9 of February 4, 1991 and established common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellation or prolonged delay. Also, at the European level, we may mention the Council's EC Regulation No. 2027/97 "on the liability of the air carrier with regard to air transport of passengers and their baggage", subsequently amended by Reg EC No. 889/ 2002 of the European Parliament and of the Council of May 13, 2002¹⁶⁰.

¹⁵⁹ On the ratification of Montreal Convention by European Community, see M. BRIGNARDELLO, *Problematiche relative alla firma e alla ratifica della Convenzione di Montreal del 1999 da parte della Comunità Europea*, in Dir. Mar., 2001, p. 3 ff.

¹⁶⁰ This Regulation expressly operates a reference to the Montreal Convention 1999. Moreover, it deserves to be reported the Reg. CE of the Council and of the European Parliament No. 2111/2005 of 14 December 2005, which foresees the obligation to communicate to the passenger the identity of the actual carrier in case it does not coincide with the contractual carrier (on *Contracting Carrier* and *Actual carrier*, see S. Zunarelli, *La nozione di vettore*, Milan, 1987).

The Montreal convention applies to any international air transport of persons, baggage, goods. International transport is defined as the place of departure and the place of arrival are situated in the territory of two foreign Contracting States. The legislation also applies to transport performed by the actual carriers, instead those which had sold the flight.

The scope of the Montreal Convention has also been extended by the European legislator – EC Regulations No. 2027/97 as amended by Reg. No. 889/2002.

In Italy, with the Legislative decree May 9, 2005 No 96 there was a revision of the aviation part of the navigation code, as requested by art. 2 of the Act November 9, 2004 No 265. This provides that air transport of persons and baggage, as well as the liability of the carrier for personal injury of the passenger, is governed by Community and International rules¹⁶¹.

With regards to the European legislation¹⁶², the Reg. 2027/97, as amended by the following Reg. 889/2002, regulates the

¹⁶¹ The referral made by this rule, according to the doctrine, present grounds for perplexity, as the new text of art. 941 Cod. Nav. in truth allows both Conventions are in force: cf. S. Zunarelli – M. M. Comenale Pinto, *Manuale di diritto della navigazione e dei trasporti*, Padova, 2013, 83 ff.

¹⁶² Noting that the Regulation EC 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations provides that the contractual subjects may choose the law applicable to the contract, following the provisions of art. 3 for which the choice is made between the law of the country in which a) the passenger is habitually resident; or b) the carrier has the current

responsibility of the Community air carrier, extending the scope of application to air carriers which have a valid operating license issued by a Member State (article 2) without consideration based on the geographical position of the points of departure or arrival which, therefore, could be located in one of the Member States or outside the Member States of the Union.

To conclude this brief excursus on the rules applicable to air transport we can't forget the EC Regulation No. 261/2004 and the EC Regulation No. 1107/2006. It applies taking in consideration the place of departure or arrival of the passenger¹⁶³ "because it applies not only to passengers departing from an airport located in the territory of a Member State to which the Treaty applies, but also to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies¹⁶⁴.

EC Regulation No. 1107/2006 is aimed to achieve social integration into the European area through mobility rights for

residence; or c) the carrier has its central administration; or d) the place of departure is situated; or e) where is located the place of destination (art. 5).

¹⁶³ This regulation does not apply to tourists/customers who have undergone the cancellation of the package not for the cancellation of the flight but for other reasons. See S. D'Urso, *Trasporti e Turismo, profili privatistici*, (by C. Vignali), Milan, 2016.

¹⁶⁴ Unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

all. European policies of protecting passengers' rights are aware that transport is a tool of cohesion. The principal regulation for the protection of the rights of people with disabilities is the EC Regulation No. 1107/2006, and its goal is to establish a set of rules for the protection and assistance of such persons; to protect them from discrimination and to ensure specific measure of assistance (art. 1, par 1).

The Air transport contract and the obligations of the carrier towards the passengers

An air transport contract means the contract by which a “carrier” is obliged to transfer people or things, from one place to another, by aircraft. With art. 941 Italian C. Nav. this type of contract is governed by the international conventions and the applicable ‘Community Regulations’. It is a consensual contract that is valid at the time when the passenger agrees to the contract prepared by the carrier. The written form is provided *ad probationem*.

Airlines usually use the models prepared by the I.A.T.A.¹⁶⁵ with a contractual scheme trying to regulate the various aspects of

¹⁶⁵ International Air Transport Association

the international air transport discipline in accordance with to the National air transport¹⁶⁶⁻¹⁶⁷.

If the air carriers fail its transfer obligations, as stated in the contract, it is in default. But carriers are exonerated from compliance to such obligations if they adopt all necessary measures to avoid damage, or were incapacitated to adopt it, as in the demonstrated existence of a unforeseeable circumstances or *force majeure*, or if the damage was a third person's fault (or the fault of the same injured passenger)¹⁶⁸.

¹⁶⁶ < < (...)(translation) while putting the user of the service at a disadvantage because it does not have to adhere to everything already established by the other Contracting Party, however, it has the advantage of allowing greater consistency in the air transport discipline. A consistency that is reflected in different directions, both within the contractual relationships of a company with its customers, and in relations to other national and international airlines> >. E. FOGLIANI, Le condizioni generali di contatto di trasporto aereo, in <www.fog.it/articoli/relazione-cond-gen.htm>.

<< (...) pur mettendo l'utente del servizio in una situazione di svantaggio perché non ha che aderire a tutto quanto già stabilito dall'altro contraente, presenta tuttavia il vantaggio di consentire una maggiore uniformità della disciplina del trasporto del trasporto aereo. Una uniformità che si riflette in diverse direzioni, sia all'interno dei rapporti contrattuali di una Compagnia con la propria clientela, sia in relazioni alle altre Compagnie Aeree nazionali ed internazionali>>:

¹⁶⁷ The general conditions of carriage, laid down by IATA, must be kept separate from the general conditions of contract. The first ones are, in fact, enacted with resolutions that bind the behavior of the companies affiliated to it and whose non-observance imports the application of the foreseen penalties. The latter, on the other hand, are only recommended practices, i.e. behaviors simply suggested by IATA and therefore may not be applied.

¹⁶⁸ See S. BUSTI, *Contratto di trasporto aereo*, Milano 2001.

The air carrier is obliged not only to send passengers, baggage and cargo safely to destination, using the aircraft, but it must do so within a short time.

Among the ancillary services the carrier is obliged to perform, which are instrumental to the execution of the main service, , there are those relating to embarkation and disembarkation operations and transport of baggage¹⁶⁹.

if the ticket is in a person's name, or, in the case in which the passenger has already started his/her journey, if the passenger's name is missing, the right to travel – in accordance with art. 944 C. Nav. – is not transferrable to another person without the carrier's consent

If the departure of the passengers – and their relatives or who travels with them – is prevented for reasons not attributable to the carrier, the contract is terminated, and the carrier is obliged to refund the price of the ticket.

Vice versa, if the departure of the passengers – their relatives or those who travels with them – is prevented for reasons not attributable to them, the contract is terminated, and the carrier is obliged to refund the price of the ticket.

In order to obtain their refund, passengers are obliged to communicate promptly the news of their inability to depart. In fact, the passenger who does not board the plane cannot request a refund for the ticket, unless the carrier agrees to let

¹⁶⁹ See art. 1681 Italian Civil Code, and art. 410 C. Nav.

another passenger board, in lieu of the one who did not board.

In this circumstance the passenger could receive a partial refund of the paid price.

In another hypothetical circumstance if a passenger is forced to interrupt the already initiated journey for reasons not directly attributable to him or to a family member with whom he travelled, the passenger will be reimbursed only for the unused leg(s) of the journey. Finally, sometimes the contracting carrier makes use of airplanes transport of other airlines partner – that become carriers *de facto*. When this circumstance happens, passengers must be promptly informed, in accordance with the provisions of art. 943 C. Nav.¹⁷⁰

Period of limitation applicable to actions

Regarding the statute of limitation, art. 949-ter C. in Rules of Navigation contractual air transport rights for persons and baggage a remission follow the norms on statutory limitations contemplated by the European Community and International standards.

¹⁷⁰ On the relationship between the contracting carrier and the carrier *de facto* and their own responsibilities towards the passenger, see chapter V of the Montreal Convention 1999 – Air transport carried out by a person other than the contractual carrier (arts. 39-48).

Passengers have a two-years term to assert their rights and address issues deriving from a breach in air transport contract. However, as the art-35 Montreal Convention provides, this term is not a term of statute of limitation but a revocation (or loss of rights) (in Italian “*decadenza*”), and so it is not susceptible to be interrupted¹⁷¹.

Protection of passengers’ rights with disabilities

The evolution of rules on passenger transport has aimed to increase the liability of the carrier in order to protect passengers, who are exposed to travel risks (*contraente debole*).

As we saw in the above paragraphs, the ‘safety’ of the passengers, together with timeliness, is a crucial characteristic, of the transport contract. It is an intrinsic obligation of the transfer contract,¹⁷² and not just a mere obligation to transfer goods and/or persons from one place to another.

With regard to the protection of passengers with disabilities, EC Regulation No. 261/2004, art. 11 provides that in the case of

¹⁷¹ In order to clarify the difference between prescription and loss of right, the first may be interrupted by any act as a formal notice (“*messa in mora*”), while the loss of right may be prevented only by a document instituting proceeding in order to obtain a judgement.

¹⁷² The obligation of custody, supervision, and protection is an essential effect of the transport contract, even in the absence of a specific prediction: in the execution of the contract of transport, the passenger totally entrusts himself to the carrier.

denied boarding or flight cancellation, persons with reduced mobility or with special needs have the right to receive the assistance indicated in point C) of the protection modalities (art. 9). However, it is only with EC Regulation No. 1107/06 that the rights of persons with disabilities and/or reduced mobility during air travel are widely recognized.

This regulation is based on the principle that during air travel, as in other aspects of life, people with disabilities and persons with reduced mobility have the same rights to free movement freedom of choice, and non-discrimination¹⁷³ as all other passengers. In an attempt to protect these rights, a provision explicitly prohibits to refuse the transport of passengers on the ground, of their disabilities: according to article 3, in fact, an air carrier or a tour operator may not refuse, for reasons of disability or reduced mobility, to accept a reservation for a flight departing from or arriving to an airport, or to embark a person with disabilities or with reduced mobility.

However, as seen in the preceding paragraphs in relation to the various types of transport, there are several derogations and

¹⁷³ The Regulation seeks a balance between the need to combat discrimination and the need to meet operational requirements by laying down a general principle of non-discrimination and by, on the one hand, imposing on operators a set of obligations relating to the information and assistance provided to passengers and, on the other, requiring PRMs to provide prenotification of the need for assistance and allowing for strictly defined derogations from the obligation to provide assistance. The existence of and respect for this balance are essential to the functioning of the regulatory instruments.

special conditions. In fact, an air carrier, a travel agent or a tour operator may refuse to accept reservations or boarding for reasons of disability or reduced mobility in order to fulfil the security obligations established by international, community or national legislation, or by the security obligations spelled out by the authority which issued the air operator's certificate. Likewise, passengers with disabilities may be prevented to travel if the size of the aircraft or its doors makes it physically impossible to embark or transport the person with disabilities or with reduced mobility.

In any case in which passengers (and their companions) have been prevented from boarding an aircraft due to their disabilities or reduced mobility, they are guaranteed the right to reimbursement, or an alternative flight.

As said above, embarkation and disembarkation operations and transport of baggage are known as ancillary services, although they are instrumental to the execution of the main service of transportation. We could imagine, perhaps, that in case of passengers with disabilities these operations are essential to ensure their right to access to the transport service. Then, as far as possible, the airport operator must ensure the provision of assistance related to the specific needs of the

individual passenger¹⁷⁴. In this perspective a correct information is essential¹⁷⁵.

Assistance measures provided by art. 10, are specified by the 'Annex II' of the same regulation, which is dedicated to passengers in transit, arriving or departing from an airport to which the regulation applies. Article 12 also foresees a compensation in the event of loss or damage to wheelchairs, or other equipment to facilitate mobility and assistance devices. The damage shall be compensated in accordance with the provisions of International, European and National regulations.

Limits to the free choice of place for people with disabilities: answer to a blind passenger

After the 10^o *International Disability Law* Summer School, organized by the Centre for Disability Law and Policy, NUI Galway, Ireland (June 2018), an attendant with disability

¹⁷⁴ To analysis deeply the provision of assistance by the Airport manager, see annex I to EC Regulation No. 1107/2006.

¹⁷⁵ The 'Report from the commission to the European parliament and the council' on the functioning and effects of EC Regulation No 1107/2006 of the European Parliament and of the Council of 5 July 2006 – concerning the rights of disabled persons and persons with reduced mobility when travelling by air – (2.2.1. *Difficulties related to the obligations of airports (b)*), recognizes that the information provided to passengers is often considered insufficient or inaccessible. This element, essential to the good functioning of the Regulation, remains one of the weakest points of its implementation.

(blindness) asked for information on the right to choose the place nearest the exit doors for people with disabilities.

Table 10

THE QUESTION

<<During last several times I had to fly on a plane, I have encountered a situation, when I was told, I could not sit on a particular seat, because it was near the emergency [exits]. This really has puzzled me. In the case of emergency due to my blindness, I wouldn't be able to follow the lighted path to the [exits]. While if sitting nearby, I would have more chance to use it promptly. However, when not allowing to sit me there, the airline personal sees me more as a "blocker" of the [exits]., Please, share your opinion on this issue. I believe, it is an important discussion, how much are persons with disabilities equipped with the means of travelling safely during flights>>.

'Esma Gumberidze'¹⁷⁶

I reckon that, as far as we know, the purpose of the EC Regulation No. 1107/2006 is to establish a set of rules for the protection and assistance of persons with disabilities and

¹⁷⁶The question was expressed on *Facebook*, in the official profile of the International Summer School.

https://www.facebook.com/groups/10thdss/?multi_permalinks=288731028386940¬if_id=1534939544010172¬if_t=group_activity

persons with reduced mobility in aviation, which aim both to protect passengers from discrimination and to provide them with assistance.

According to the definition of disability in article 2, a passenger with a disability (e.g. blindness) is considered a person with reduced mobility. This entails that the carrier must pay attention to security measures. Generally, air transport companies specify, for example on their website, that for safety reasons the seats in the rows corresponding to emergency exits cannot be assigned to passengers with reduced mobility.

Furthermore, additional requirements such as knowledge of English, age (older than 15 years), availability to support on-board personnel, etc., may also be specified¹⁷⁷. It is reasonable to assume that having a disability does not imply an impossibility to find a place close to the exits. In fact, if the disability were to prevent the rapid opening of the emergency doors, it does not mean that – for personal safety – the passenger could not sit near an emergency exit or on the corridor seat, although not in the seats of the row corresponding to the exit. As an additional security measure, the transport company is obliged to inform passengers with disabilities about their rights (art. 14 EC Regulation 261/2004

¹⁷⁷ According to the ICAO (Doc. 7192 Training manual Part E-1), able-bodied passenger refers to passengers selected by crew members to assist in managing emergency situations if and as required, for example in opening doors or helping other passengers evacuate the plane.

and article 4 No 3, 5, 6 etc. EC Regulation No. 1107/2006) and on the company's assistance and security measures. For this reason, many companies, sometimes on request, provide information material accessible to people with disabilities.

In the case of accompaniment with a trained dog, article 11 provides that the operational air carriers give precedence to persons with reduced mobility and to their conductor or certified accompanying dogs. This implies, in theory, the possibility of taking advantage of the seating in front of a bulkhead or otherwise corridor side, to accommodate more comfortably the animal.

Finally, depending on the passenger's disability it is also expected that the air carrier or the tour operator impose the presence of a companion¹⁷⁸. This shows the importance of a frank and complete dialogue when a person with disabilities books a trip, in order to avoid any complications and complaints during and after the service. On the other hand, the assessment of the need for accompaniment must be non-discriminatory and therefore must reflect the real conditions of necessity.

In conclusion, on the one hand, the Community's intervention in the field of air transport should aim, among other things, at

¹⁷⁸ 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 (article 4 EC Regulation No. 1107/06).

ensuring a high level of protection for passengers. At the same time air carriers must take into consideration persons with disabilities or reduced mobility and their needs as persons and as customers. Persons with disabilities or with reduced mobility, due to disability, age or other factors, should therefore have the possibility of travelling by air on conditions similar to those of other passengers. Persons with disabilities and persons with reduced mobility have the same the rights of all other passengers to free movement, freedom of choice, and non-discrimination (whereas 1 and 4 regulation 1107/2004). On the other hand, we must also consider that the right of access to transport and non-exclusion for persons with disabilities and persons with reduced mobility shall find a limit in the justified safety reasons provided for by law (whereas 2 EC Reg. No. 1107/2006 and art. 4 EC Reg. No. 1107/2006).

For all the reasons listed above, it is possible to state that the airline and the tour operator shall give adequate information on security and assistance measures before a passenger is assigned a seat. At the same time, passenger with disabilities have the right to take a seat on the aisle, and near the exits although not, for security reasons, in the rows which are closest to the emergency exits. Generally, it is desirable that every time passengers fail to receive adequate information, they must react positively trying to be proactive in requesting all

information before the day of service in order to avoid subsequent complications.

Table 11

**ASSISTANCE UNDER THE RESPONSIBILITY OF THE
MANAGING BODIES OF AIRPORTS¹⁷⁹**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings mentioned in Article 5,
- move from a designated point to the check-in counter,
- check-in and register baggage,

¹⁷⁹ Table. *Annex I of EC Regulation No. 1107/2006 of the European Parliament and of the Council Of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. Annex II is dedicated to the 'Assistance by air carriers', and it recognizes the importance of 'assistance dogs'; of communication and information concerning flight in accessible format; Assistance in moving to toilet facilities, etc.*

- 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.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if

requested, be allowed to provide the necessary assistance in the airport and with embarking and disembarking.

Ground handling of all necessary mobility equipment, including equipment such as 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.

Temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis.

Ground handling of recognised assistance dogs, when relevant.

Communication of information needed to take flights in accessible formats.

Table 12

**DISABILITY-RELATED TRAINING FOR AIR COMPANIES’
PERSONNEL¹⁸⁰**

Air carriers and airport managing bodies shall:

- (a) ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
- (b) provide disability-equality and disability-awareness training to all their personnel working at the airport who deal directly with the travelling public;
- (c) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

¹⁸⁰ Article 11 EC Regulation No. 1107/2006.

Complaints

Passengers with disabilities or reduced mobility who believe that their rights have been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned. However, if these passengers cannot obtain satisfaction in such way, complaints relating to the alleged infringement of EC Regulation No. 1107/2006 may be made to the competent body designated by a Member State¹⁸¹.

The Italian authority designated to receive complaint in the field of air transportation is ENAC¹⁸².

Tour operators must take care of the rights of passengers with disabilities since sanctions for illicit are very high, as the table below shows.

¹⁸¹ Article 15 of EC Regulation No. 1107/2006.

¹⁸² ENAC (*Ente Nazionale per l'Aviazione Civile*) is the 'Italian national body for civil aviation', the only authority of technical regulation, certification, supervision and control in the field of civil aviation in Italy. It was established on 25 July 1997 by the *Decreto legislativo* No. 250/97.

Table 13

ILLICIT ADMINISTRATIVE AND SANCTIONS¹⁸³

- refusal of reservation **from 10.000€ to 40.000€;**
- refusal of boarding **from 30.000€ to 120.000€;**
- lack mandatory information **from 5.000€ to 20.000€;**
- lack of assistance **from 10.000€ to 40.000€;**
- lack of training (on disability) of the personnel **from 2.500€ to 10.000€.**

¹⁸³ Table. Cf. Italian Legislative Decree No 24/2009 “*Disciplina sanzionatoria per la violazione delle disposizioni del regolamento (CE) n. 1107/2006 relativo ai diritti delle persone con disabilità e delle persone a mobilità ridotta nel trasporto aereo*”.

Chapter 5

RAIL TRANSPORTATION OF PASSENGERS

Rail transportation: passengers' rights and obligations

The rail sector has been affected by a radical process of liberalization and privatization, after a long tradition of public management¹⁸⁴.

EC Regulation 1371/2007, on passenger rights and obligations in rail transport is extremely relevant as it lays down rules governing:

- The information to be provided by railway companies;
- The conclusion/stipulation of transport contracts, issuing of tickets and implementation of telematic systems of information and reservations;
- The responsibility of railway companies and their insurance obligations towards passengers and their baggage;
- The obligations/responsibilities of railway companies towards passengers in case of delays;
- The protection of persons with disabilities or with reduced mobility in the train journey and their assistance;

¹⁸⁴ Directives 2001/12, 2001/13, and 2001/14 have given a crucial input to the process of liberalization of the rail transport.

- The definition and monitoring of standards of service quality, the management of risks for passenger safety and the treatment of complaints.

Nowadays¹⁸⁵, the provisions of Reg. EC No 1371/2007 applies to all rail journeys and services throughout the European Community provided by one or more railway companies. Each railway company must have a license and they must observe EC Regulation's provisions. If they want, they might allow for even more favorable conditions for passengers.

As it happens in the majority kinds of transport/travel, the agreement between participating parties (i.e. the railway company and the passenger) is the essential factor that allows consensual stipulation of the contract.

Thus, the passenger shows his/her acceptance of the contract (of transport service) by buying his ticket. His request to travel coincides generally with the issuance of the travel document, i.e. the ticket¹⁸⁶, without any specific form¹⁸⁷.

¹⁸⁵ In national law, the private discipline of rail transport had been characterized by rules named "Conditions and tariffs" provided by who carried out the railway service and subsequently approved by the law.

¹⁸⁶ The ticket is a legitimization document which allows the carrier to identify the person entitled to travel and, moreover, it proves the stipulation and the contents of the transport contract.

¹⁸⁷ The form of the travel document is a choice of the carrier; however, railway companies must provide tickets to passengers in at least one of the following modes: traditional sale; via electronic and/or telephone systems; on board trains.

The passenger must pay the fee for the transport and, whenever required, he must show his ticket to the railway personnel.

If the ticket is nominative, the passenger must show his id card (or other identification document), and, cannot transfer it to anyone else. Vice versa, when the ticket is not nominative it can be transferred before trip starts.

With regard to the obligations of the railway carrier, the carriage of goods, the so-called hand luggage, can be considered an ancillary benefit to the main transfer obligation of the passenger.

Moreover, the railway carrier has the obligation to provide information to customers in order to allow them to travel in the most convenient manner, also considering issues of pricing and timing; the railroad carrier has also the obligation to specify how to access the chosen convoy.

Table 14

LACK OF INFORMATION – AN ITALIAN CASE

In 2017 the Italian Competition Authority¹⁸⁸ (AGCM) penalized Trenitalia with an administrative sanction amounting to 5 million euro because it had excluded from its reservation systems some options of transportation on regional trains which were generally cheaper.

The authority ascertained that the set of travel solutions/options proposed by Trenitalia on its self-service and APP issuers omitted numerous alternative solutions with regional trains, thus limiting consumer choice. Trenitalia always proposed the most expensive travel options, i.e. with the services *Freccia* and *Intercity*, even though such services (Companies) offered minimally faster travelling time than other more economical choices. Alternative solutions were available only through a specific search on the website. Thus, Trenitalia did not adequately inform consumers, and used the misleading

¹⁸⁸ The Italian Competition Authority is an administrative independent Authority, established by Law no. 287 of 10 October 1990, which introduced antitrust rules in Italy. Subsequent laws endowed it with additional powers, the most important of which concern the repression of unfair commercial practices, misleading and unlawful comparative advertising and the application of conflict of interest's laws to government-office holders. Being an independent Authority, it has the status of a public agency whose decisions are taken based on the Act without any possibility of interference by the Government: <http://en.agcm.it/en/about-us/>.

designation 'all trains', on the company website, in fact, omitting all regional trains. In order to correct the adverse effects suffered by consumers who were not given all travel options, the Authority also imposed Trenitalia the obligation to publish an amending declaration to inform consumers/travelers on their website, on the APP and on the self-service, machines present at the station.

A travel pass shall provide information about the total price paid, the validation in the appropriate validation /stamping (as it is the case in Italy for regional services), the date and time of validity of the document and the data about the railway company which performs the purchased service.

It is the duty of the carrier to provide information concerning the regularity of the convoy circulation; to give notice to passengers about interruptions, delays and irregularities in the service, and in particular on connections¹⁸⁹; to provide Indications on how to submit complaints and how to recover any lost baggage.

Rail carriers, together with station operators, have the general obligation to make passengers aware of their rights, as well as of their duties, and inform them of the fact that the carrier is liable for any breach in their obligations towards the passenger.

¹⁸⁹ As foreseen by the provisions of art. 8, second subparagraph, and annex II, part II, of Reg. EC 1371/2007.

Passenger must also comply with rules of appropriate behavior. In case of non-compliance he/she is considered responsible for any harmful consequences.

Trenitalia and NTV: general conditions of transport.

In Italy the two main railway companies are “Trenitalia”¹⁹⁰ (a public service of “*Gruppo ferrovie dello Stato italiano*”), and NTV, generally known as “Italo”, which is a private Italian company which was recently sold to an American company.

The general conditions of carriage of passengers of Trenitalia, apply to passenger rail transport carried out in regional, national and international¹⁹¹.

According to the general conditions, Trenitalia is obliged to transport passengers who paid for the ticket, from the place of departure to the place of destination, while NTV is obliged to

¹⁹⁰ Trenitalia is the primary train operator in Italy. A subsidiary of *Ferrovie dello Stato Italiane*, itself owned by the Italian government, it was established in 2000 following a European Union directive on the deregulation of rail transport.

¹⁹¹ On the passenger rail transport service carried out at national level by Trenitalia: <http://www.trenitalia.com/tcom/Informazioni/Condizioni-Generali-di-trasporto/Condizioni-Generali-di-trasporto>. On the passenger rail transport service carried out at national level by NTV s.p.a.: <https://www.italotreno.it/it/termini-condizioni>.

transport any physical person (passenger) to the place of destination¹⁹².

NTV issues a transport document attesting to the existence of the Transport contract. The transport document, generally dedicated to a single trip¹⁹³, shall be considered *prima facie evidence* of the conclusion of the contract and thus give rights as provided for in its own Regulation.

As said before, the travel document shall contain all the DETAILS necessary to define the contents of the transport contract and may consist of a paper document or a booking identification code.

The lack, irregularity or loss of the travel document does not exempt passengers from full compliance with general conditions.

The latter conditions are shared by both Italian railway companies¹⁹⁴.

¹⁹² The Transport contract by NTV is constituted by the "General Conditions of transport" (CGT), by "Special conditions and tariffs" (CPT), Annex I and annex II.

¹⁹³ A single trip could consist in more than one train/successive service using a "global ticket"; in all other cases, any single train ride must consider separate and each one is traceable to a single transport contract. In case of National services (Part II of the general conditions) passengers can buy from Trenitalia a "global" travel title, represented by one or more tickets tied together by a sequential numbering.

¹⁹⁴ When purchasing a transport document, passengers are obliged to verify immediately the accuracy of the data contained therein (name indicated, price paid,

The protection of passengers in rail transport

Having the aim of protecting passengers from any discrimination, The European process of Regulating rights and safeguards in transport, takes into consideration also the rail sector.

Thus, even passengers travelling by train should receive the same guarantees as those travelling by air or ship/boat.

With Regulation No 1371/2007, applicable throughout the European Union since December 2009, new rights were introduced for rail passengers.

Article 11 governs the carrier's liability for passengers and baggage by providing that <<without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway companies in respect of passengers and their luggage shall be governed by Chapters I, III, and IV of Title IV, Title VI and Title VII of Annex I>>.

This annex contains the extract of the Uniform Rules concerning the International carriage contract for passengers and baggage (CIV)¹⁹⁵.

number of persons, route, date and time of departure and arrival of the train, as well as ancillary services purchased).

¹⁹⁵ *Convention Internationale pour le transport des Voyageurs:*
<https://www.admin.ch/opc/fr/classified-compilation/19800102/200407060000/0.742.403.1.pdf>.

Regulation also contain rules pertaining to the information to be provided to passengers and concerning services and rights, as well as provisions on the transport of passengers with disabilities and with reduced mobility.

The new rules ensure that special care be provided to passengers with disabilities and reduced mobility, and it should also guarantee their access to trains.

In addition, article 25 guarantees unlimited compensation for damage, or for the partial or total loss of equipment used for mobility, or other specific equipment.

In case of train delays, the minimum compensation is 25% of the ticket price for delays between one and two hours and 50% for a delay of two or more hours.

If the passenger is correctly informed¹⁹⁶ of the delay before the purchase of the ticket, the regulation establishes that the passenger can choose immediately between obtaining the reimbursement of the ticket or follow an alternative route if possible.

¹⁹⁶ In September 2017, the Italian Transport Regulation Authority fined Trenord s.r.l. (the only company in Italy that deals exclusively with public transport by rail of a single region) for violating the rights of passengers according to the Legislative Decree No 70 of 17 April 2014 concerning "disciplinary rules for infringements of the provisions of EC Regulation No. 1371/2007 on rail passengers' rights and obligations" (fine of 25.000€), because Trenord did not inform passengers that the Verona-Milan interregional train had a delay of 245 minutes and did not provide compulsory assistance for meals and beverages: <http://www.autorita-trasporti.it/>.

If there is a delay of one hour or more, the railway company must provide assistance by offering also free meals and drinks¹⁹⁷.

Moreover, if because of a delay, an overnight stay in a city would be necessary, the railway company must offer both accommodation in a hotel and transfer service to and from the hotel.

The rights to transport by rail of persons with reduced mobility e liability issues.

European Union, moving from the assumption that passenger rail services must benefit all people, provide in the whereas No 10 and in the Art. 19 of Reg. CE 1371/2007, entitled "Right to transport", the obligation for the railway company to establish non-discriminatory access rules applicable to the transport of persons with disabilities and with reduced mobility¹⁹⁸.

¹⁹⁷ In September 2017 the Italian Transport Regulation Authority fined Trenitalia for violating the rights of passengers in observance of the Legislative Decree No 70 of 17 April 2014 concerning "disciplinary rules for infringements of the provisions of EC Regulation No. 1371/2007 on rail passengers' rights and obligations" (fine of 5.000€), because Trenitalia didn't provide the "comfort kit" to the passengers during the night service 'Intercity' Messina – Naples that was in a strong delay. Trenitalia, in fact, provided it only on arrival at the station of Salerno (at 8:30): <http://www.autorita-trasporti.it/>.

¹⁹⁸ With the EC Regulation No. 1371/2007, the terms "person with disabilities" or "person with reduced mobility" (PRM) refer to any physical disability (sensory or

Railway companies, tour operators or ticket vendors may not refuse to accept a reservation from, or issue a ticket to, a person on the ground of his/her disability or reduced mobility.

Moreover, Railway companies may not require additional fees, even if there could be some limits to their access¹⁹⁹.

In fact, railway companies, tour operators or station managers are entitled to claim that passengers with reduced mobility should notify them their specific access request at least forty-eight hours before the trip.

Thus, even if the lack of such notification may not guarantee any kind of assistance and, consequently, the right to travel by train, the railway companies, and the station managers shall make all reasonable efforts to ensure that persons with disabilities or persons with reduced mobility may travel.

For that reason, Trenitalia opened in railroad station the so-called “*sala blu*” which are information desks that host and give assistance to passengers with disabilities or reduced mobility.

locomotor, permanent or temporary), mental disability or handicap, or due to any other disability cause, or for reasons of age, and whose condition requires adequate attention and service adaptation in order to meet their specific needs.

¹⁹⁹ The railway carrier may refuse the transport of persons with disabilities only if the size of the train makes it physically impossible to access or for the number of accessible seats available. In these cases, if the carrier is unable to fulfil the contract he is not in default, being the reason of the impossibility a cause of extinction of the obligation (article 1256 of Italian code civil), so this clause is not vexatious. In case of justified refusal of transport or in case of imposition of accompaniment, the carrier shall inform in writing, at the passenger's request, the relevant reasons within the period of 5 subsequent working days.

unfortunately, these desks have been opened in just very few Italian stations.

Despite the attention paid to these passengers, it should be noted that the limit imposed by the rule of the notification with an advance of 48 hours is discriminatory²⁰⁰.

Table 15

TRENITALIA

Assistance to persons with disabilities or reduced mobility

Their assistance service is provided by RFI - *Rete Ferroviaria Italiana* – and is addressed to:

- individuals in a wheelchair because of illness or disability;
- individuals with limb problems or with difficulty in walking;
- elderly people;
- pregnant women;
- blind or visually impaired people;
- deaf or hearing-impaired people;

²⁰⁰ Although IT justified by organizational reasons, IT is discriminatory to oblige a person with disability to communicate his intention to travel two days before, without having the chance – in REALITY– to take a train when he/she prefers, and to receive assistance at the same time, such as any other passenger. In fact, the need for assistance on the ground and on board must be communicated (paying most of the times) with an advance of 48 hours by calling the *Call Center* dedicated or to the *Sala blu*. So, this PROCEDURE can be discriminatory.

- people with mental handicap

Sale Blu of RFI are the reference point for all the travel needs of people with reduced mobility. They arrange for assistance in a circuit of certified railway stations.

The 48 hours-rule involves an absolute consumer commitment²⁰¹, and moreover it could be considered vexatious since it may not be justified under a vague and indeterminate principle of “reasonableness”.

If the refusal of the service depends on a shortage of personnel or instruments, this would not exclude the liability of the railway company, which would therefore make the rail service inaccessible to passengers with disabilities or with a reduced mobility²⁰².

Finally, there is another potential clause that has discriminatory elements, i.e., the event in which the railway carrier considers a passenger with disability not self-sufficient and for this reason asks him/her to be accompanied by another passenger to be

²⁰¹ Article 33, sub. 2 (d), code of consumers: “*prevedere un impegno definitivo del consumatore mentre l'esecuzione della prestazione del professionista è subordinata ad una condizione il cui adempimento dipende unicamente dalla sua volontà*”, (i.e. “Providing for a definitive commitment of the consumer while the performance of the professional is subject to a condition whose fulfilment depends solely on his will”).

²⁰² Articles 19 and 20 EC Regulation No. 1371/2007.

given the necessary assistance. The crucial element is the discretion of the carrier company that assesses this necessity²⁰³. In the last general conditions of transportation, Trenitalia specifies beforehand what are the cases of compulsory assistance. Trenitalia can, in fact, require the person with disabilities or reduced mobility to be accompanied by an adult able to provide him/her with the necessary assistance, if he/she is not self-sufficient in the performance of the following acts: *a) Breathe without the aid of supplemental oxygen; b) Feed him/herself; c) communicate with the on-board staff and understand their alerts/instructions; d) use the toilets by him/herself (the crew can assist the passenger to move through the wheelchair to the bathroom); e) take drugs or carry out his/her own medications; f) lift up/ get up from the seat.*

Trenitalia will inform in writing the passengers of the motivating reasons, within 5 consecutive working days, of the refusal of transport or in the case in which a traveller has been requested to have an accompanying person.

The last point may be discriminatory because, if the passenger asks for the motivations for which he/she cannot travel alone,

²⁰³ Cf. C. Vignali, *Le condizioni generali di contratto nel trasporto ferroviario e di persone e la disciplina delle clausole vessatorie*, *Trasporti e turismo, profili privatistici*, Giuffrè, Milano, 2016, p. 286. The author underlines the ambiguity of this clause can therefore prove to be vexatious, according to art. 33 Comma 2 letter L, C. Cons., because the consumer did not have the possibility to know before the conclusion of the contract.

Trenitalia may take up to *5 consecutive working days* to inform / him/ her. so, ultimately, passengers with disabilities or reduced mobility have to organize their trip at least 48 hours ahead of time, and furthermore, they must wait for up to 5 full days to know the reason for any refusal to travel accompanied or alone.

Complaints

As we saw for the other means of transportation, also railway carriers must define a system of complaint management in order to protect passengers' rights.

Article 27 EC Regulation No 1371/2017 informs the public on the proper system of complaints management and furthermore it explains well how access to this system will allow passengers to file a complaint.

Passengers may complain to any railway company involved within one month the consignee of the complaint must provide a reasoned reply.

Table 16

ILLICIT ADMINISTRATIVE SANCTIONS

Penalties for failure to comply with obligations to protect the right to transport of persons with disabilities or with reduced mobility²⁰⁴

For each case of non-compliance with the requirements laid down in articles 19 (2), 20, 21 (2), 22 (1) and (3), (23) (1), (24) and (25) of the regulation, concerning bookings and ticket sales, Information, accessibility to rail transport, assistance in stations and assistance on board of persons with disabilities and persons with reduced mobility, railway companies, station managers, the ticket vendor or the tour operator by reason of their respective obligations are subject to the payment of a financial administrative penalty **from 200€ to 1.000€**.

In the case of a failure or non-conforming adaptation to the TSIs²⁰⁵ envisaged to protect the accessibility of the stations, of the platforms and other services to persons with reduced mobility, in accordance with article 21 (1) of the regulation, railway companies and station managers are subject to the

²⁰⁴ Article 16 of 'Sanction Schema' of Italian D.lgs: "*Disciplina sanzionatoria per la violazione sui diritti e obblighi dei passeggeri nel trasporto ferroviario*", i.e. for the rights violations of the railway passengers as provided by EC Regulation No. 1271/2007.

²⁰⁵ Technical specifications on interoperability.

payment of a financial administrative penalty **from 2.000€ to 10.000€**, for each individual case.

There are no provisions for lack of training on disability for personnel of stations, contrary to what the other regulations on transportation (ship, bus, flights) provided.

Table 17

Interview to EDF European disability forum

Question No 1:

What do you think about the lack of obligation of training procedures on disability - into the EU rail regulation - for the personnel employed in the rail station? Do you think it could be useful to avoid some discrimination to the persons with disability in their trip experience?

Answer No 1:

We know that good quality training is a major lever to ensure quality assistance and therefore better accessibility of rail transport, so yes, we see training as a way to avoid discrimination.

Question No 2:

The other EU regulations on accessible transportation (by sea, bus, flight), obligate 'carriers' and 'terminal operators' to establish training procedures on disability for their personnel employed. Member States must control on it (through their National Authority). So, do you think there is a (real) adequate control nowadays by States? If not, how they could do it better?

Answer No 2:

In short, no. We need better quality control, including well-resourced National Enforcement Bodies and strong penalties. We also want to see legally binding disability-related training specifications included in the EU rail passenger's rights regulation, as was the case for the bus and coach regulation. It is also essential to involve persons with disabilities and DPOs in this process.

Question No 3:

If we consider as essential the training procedures on disability into transportation services, how much important is that 'carriers' or 'terminal operators' or 'tour operators' cooperate with DPOs in order to establish correct procedures of training?

Answers No 3:

It is absolutely essential, from design to delivery and evaluation.

Carine Marzin

Accessibility Expert

European Disability Forum | nothing about us without us

CONCLUSION

The European Union, in line with the international interests, is heading towards the realization of the so known Universal Design of products, environments, programs and services that can be used by all people without any other adaptations.

The States and civil society are responsible for the promotion and observance of fundamental rights, for one hand to ensure the future of persons with disabilities for their independent living, and on the other to develop new professionalism, such as the disability manager, in various social sectors.

University and Research could have a crucial role for universal design, information, and formation of the future ruling class; as well DPOs should be involved in the definition of accessible procedures in every commercial sector by the companies.

Social inclusion of persons with disabilities will determine their openness to the market as consumers. Hence, there is the need to raise awareness and inform commercial agents and other operators, such as those operating in the tourism and transportation of passenger's sectors, on disability and on the right of non-discrimination.

Surely, in the fields of tourism and transportation – as in many other areas – for a *vision* of an open and accessible space we have to remember that the “law” is the main instrument of

regulation of society. So, in the name of equality²⁰⁶, the law must regulate market, both touristic²⁰⁷ and of the transport in such a way to ensure respect for the principle of equality and social justice²⁰⁸.

In that sense, European Union intervened with its regulations²⁰⁹ in order to ensure a system of protection that is common among the Member States. Tourist and transport stakeholders must follow a set of coherent principles and rights, that EU defined with its regulations, to protect all travellers, particularly those who are vulnerable: accessibility, assistance, information, in favour of persons with disabilities. Furthermore, sometimes EU requires something more, such as carriers have to provide training programmes for personnel employed. In effect, they must prove sensitivity and ability to approach passenger with

²⁰⁶ Article 3 of Italian Constitution need unitary interpretation: <<equal social dignity and equality before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions>>, linked to the duty of the (Italian) Republic <<to remove all obstacles of an economic and social nature which constrain the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in the political, economic, and social development of the country>>, cf. P. PERLINGIERI, (Note No 3) p. 448 f

²⁰⁷ Treaty of Lisbon, 2007.

²⁰⁸ Effectively, Italian jurisprudence only recently has reserved acceptable attention on it, but also, it must be considered that <<equality does not mean egalitarianism: it has not demanded the equality of all in all, regardless of the merits and skills>>. Cf. P. PERLINGIERI, (Note No 3), p. 449.

²⁰⁹ EU Reg. No. 181/2011; EU Reg. No. 1177/2010; EC Reg. No. 1371/2007; EC Reg. No. 1107/2006.

disability or with reduced mobility and, of course, also assistance capacity²¹⁰; they must demonstrate a competence in disability and approach to persons with disabilities.

The Italian tourist market, in general, is still not sufficiently adequate to offer accessible services for everyone who essentially needs it²¹¹. Not only does this generate discrimination, but it also economic losses for the tourism stakeholders.

In the light of the EU Regulations, for example, Italy should control the effective application of all sanctions provided by the law in case of violations of the rights of tourists and passengers with disabilities. As well, Italy must support cooperation between carriers and/or management bodies of the stations, and all organizations representative of persons with disability or with reduced mobility, by monitoring contracts, activities, social projects and research studies. Generally, through a series of limits and corrective by the law, Italian market of tourism and transportation must pursue not only the purpose of wealth, but also other values and interests, among all solidarity and reciprocity. In the absence of this, the risk is to expose the

²¹⁰ Cf. art. 16 and Annex II EU regulation No. 181/2011. Annex like that are into each other regulation related on accessible transport, which are mentioned above.

²¹¹ The number of people with any form of impairment that does not travel because of the inadequacy of services is consistent, reaching the threshold of 10 million units. "*Osservatorio Vacanze italiani*", Doxa Europcar. 2015. Accessed on January 3, 2017; www.doxa.it/news/osservatorio-vacanze-italiani-2015-doxa-europcar/.

vulnerable part of society to the marginality, with consequent exaltation of the selfishness of society²¹².

Preamble to the CRPD says, “[that] *disability is an evolving concept and [...] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others*”²¹³. To overcome these limits, markets must respect ethic, and we must support a ‘Cultural Revolution’²¹⁴ that may raise awareness on priceless values, that are the result of social ties, such as the family²¹⁵. As well as we must support cooperation of Government, opposition’s parties, non-profit organizations (third-sector), and all civil society for a change to the independent and freedom of persons with disabilities²¹⁶.

²¹² P. Perlingieri, *Prolusione letta al Congresso Nazionale dei Giuristi Cattolici Italiani*, 1994. In effect, ethics is essential to match economic efficiency and of human rights or, in other words, to match market and democracy. Cf. F. Campanella, *Lo Stato e il mercato. Le idee e i miti di un passato più o meno prossimo*, in *Pubblico e privato nel sistema economico* S. Beretta (ed.), Milano, 1992, p. 99.

²¹³ CRPD Preamble, (e).

²¹⁴ P. Perlingieri, *ibid.*

²¹⁵ R. Dahrendorf, *Lebenschancen. Anlaufe zur sozialen und politischen Theorie*. Suhrkamp Verlag, Frankfurt am Main – (1995), Roma – Bari, Laterza, 1979.

²¹⁶ M. Sacconi *Ministro del Lavoro, della Salute e delle Politiche Sociali, Direzione Generale della Comunicazione e della Direzione Generale per l’Inclusione e i diritti sociali e la responsabilità sociale delle imprese (CSR)*, , red by S. Tognoloni e A. Sanna. *Ministero del Lavoro, della Salute e delle Politiche Sociali*, September 2009; www.esteri.it/mae/resource/doc/2016/07/c_01_convenzione_onu_ita.pdf

ANNEX I

A SURVEY TO UNDERSTAND IF ITALIAN TRAVEL AGENCIES ARE INFORMED ON THE RIGHTS OF PASSENGERS WITH DISABILITIES OR REDUCED MOBILITY.

58 total answers show that Italian travel agencies need a specific disability-related training in order to offer better services and to protect the rights of the passengers with disabilities, as well as to avoid administrative sanctions²¹⁷.

Air Travel

Coach and Bus transportation

Maritime transportation

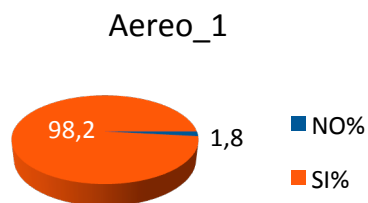
Rail transportation

²¹⁷ <http://www.associazionego4all.it/>

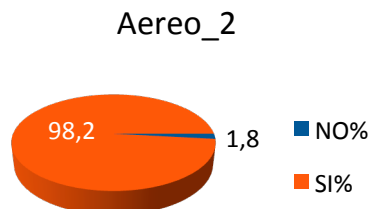
YES (SI) OR NOT?

AIR TRAVEL

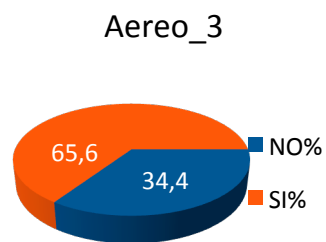
1- Do you know that carriers, travel agents and tour operators cannot refuse to accept a reservation or to board a person only for reasons of disability or reduced mobility?



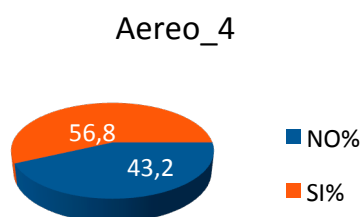
2- Do you know that the airport manager and the carriers must offer assistance services without additional charges to passengers with disabilities or with reduced mobility (in transit, arriving or departing)?



3- Do you know that booking or boarding on the plane for the person with disabilities can be refused for safety reasons or for the size of the aircraft?

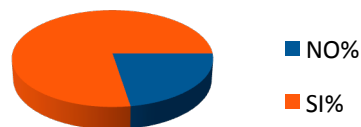


4- Do you know that in case of non-booking or boarding by air for the previous reasons the person with disabilities is entitled to receive information on an acceptable alternative from the air carrier, its agent or the tour operator?



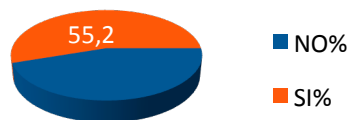
5- Do you know that airport managers must designate arrival and departure points within the airport where passengers with disabilities or with reduced mobility can receive assistance?

Aereo_5

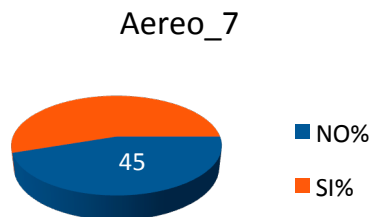


6- Do you know that in case of damage or loss of equipment to facilitate mobility or assistance devices, during the management at the airport or in the transport on board aircraft, the passenger to whom they belong is entitled to be compensated?

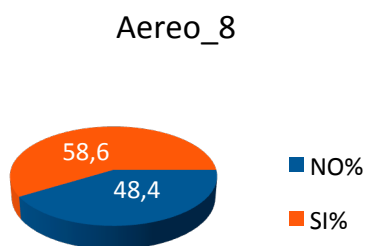
Aereo_6



7- Do you know that in case of lack of satisfaction as a result of complaints concerning an alleged infringement of the passenger with disabilities or with reduced mobility, ENAC can be used?

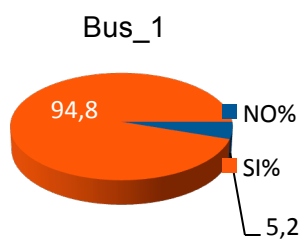


8- Do you know that all staff employed in air transport companies and airports should receive training focused on disability and equality?

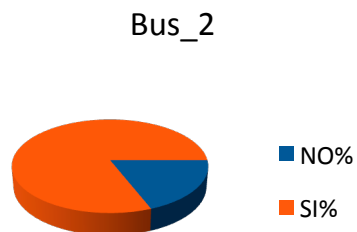


COACHES AND BUS TRANSPORTATION

1- Do you know that carriers, travel agents and tour operators shall not refuse to accept a reservation or issue a ticket, or to take on board, a person on the grounds of disability or of reduced mobility?

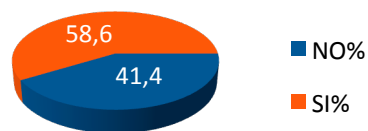


2- Do you know that reservations and bus tickets shall be offered to disabled persons or with reduced mobility at no additional cost?



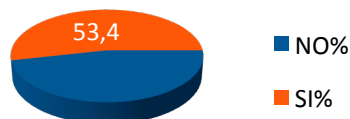
3- Do you know that bus carriers, travel agents and tour operators may refuse a reservation or to issue a ticket or to take on board a person on the grounds of disability or of reduced mobility to meet applicable safety requirements or when the design of the vehicle makes it physically impossible to take on board, alight or carry him/her?

BUS_3

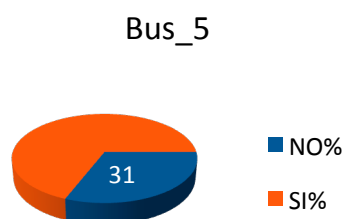


4- Do you know that in the event of a refusal, for the reasons said before, passengers with disabilities or reduced mobility, carriers, travel agents and tour operators shall inform the person concerned about any acceptable alternative services operated by the carrier?

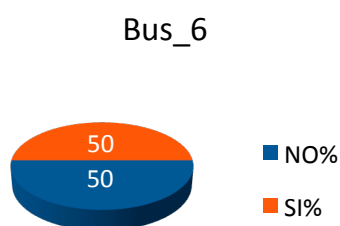
BUS_4



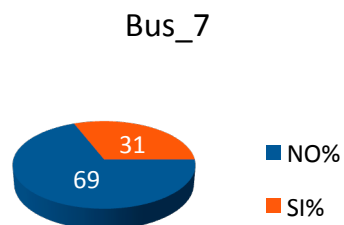
5- Do you know that carrier shall, on board buses and coaches, provide assistance free of charge to disabled persons and persons with reduced mobility?



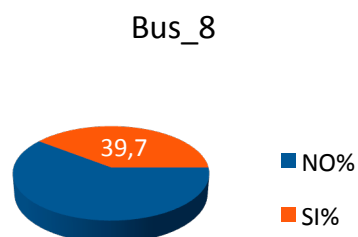
6- Do you know that the non-discriminatory access conditions and assistance in the bus transportation, provided by the laws, shall be made publicly available by carriers, tour operators and terminal managing bodies physically or on the Internet, in accessible formats on request?



7- Do you know of the existence of the National Transport Authority to which make complaints, in case of violation of rights on bus transportation?



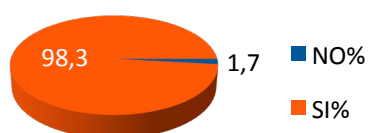
8- Do you know that carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, to their personnel, including drivers and those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility?



MARITIME TRANSPORTATION OF PASSENGERS

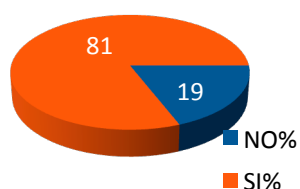
1- Do you know that carriers, travel agents and tour operators cannot refuse to accept a reservation or issue a ticket or pick up a person on board a ship only for reasons of disability or reduced mobility?

Nave_1



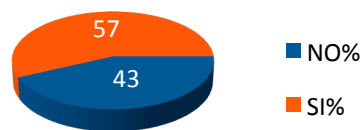
2- Do you know that people with disabilities have the right to purchase a ticket for maritime transport at no additional cost?

Nave_2



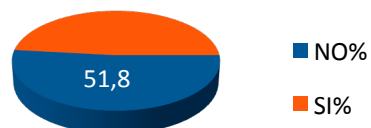
3- Do you know that the reservation or boarding of a person with disabilities can be refused for safety reasons or for the design of the ship?

Nave_3



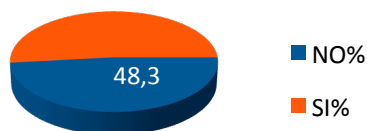
4- Do you know that in case booking or boarding by ship are rejected for the previous reasons the person with disabilities is entitled to receive information on an acceptable alternative by the naval carrier, its agent or the tour operator?

Nave_4



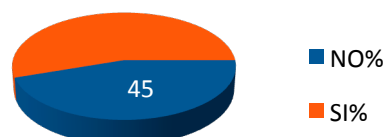
5- Do you know that the non-discriminatory conditions of access and assistance in transport by ships established by the laws must be publicly available by carriers, tour operators and station management entities materially or on the Internet, in Accessible formats, on request?

Nave_5



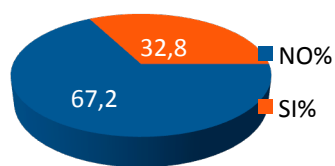
6- Do you know that naval carriers and terminals must designate a meeting-point inside or outside the port terminal where passengers with disabilities or reduced mobility can announce their arrival and seek assistance?

Nave_6



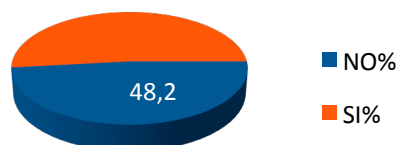
7- Do you know of the existence of the Transport Regulation Authority to which make complaints, including online, concerning the violation of rights and obligations on maritime transportation?

Nave_7



8- Do you know that staff employed in shipping companies and, where appropriate in ports, must establish – for the staff employed – training procedures in the field of disability awareness and assistance?

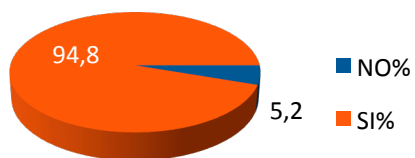
Nave_8



RAIL TRANSPORTATION

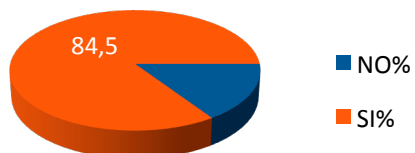
1- Do you know that a ticket vendor, or a tour operator cannot refuse to accept a reservation or issue a ticket to a person only for reasons of disability or reduced mobility?

Treno_1



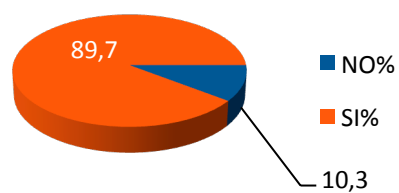
2- Do you know that people with disabilities or reduced mobility are entitled to purchase a ticket for rail transport at no additional cost?

Treno_2



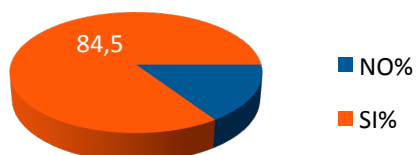
3- Do you know that people with disabilities or reduced mobility have the right to receive information from the railway undertaking, the ticket vendor or the tour operator regarding the accessibility of rail services and the services on board?

Treno_3



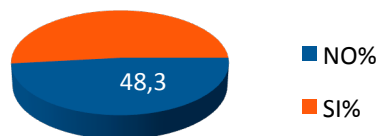
4- Do you know that the terminal managing body must provide free assistance to the disabled or mobility-impaired passenger on board the train, as well as getting on and off the train?

Treno_4



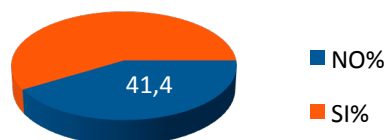
5- Do you know that in the case of stations that are not staffed, railway undertakings and station operators ensure accessible information about the nearest accessible stations?

Treno_5



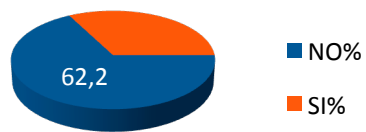
6- Do you know that in the event of a lack of accompanying personnel on board a train, railway undertakings must reasonably strive to enable persons with disabilities or reduced mobility to have access to rail transport?

Treno_6



7- Do you know of the existence of the Transport Regulation Authority to which make a complaint, including online, concerning the violation of rights and obligations on rail transportation?

Treno_7



ANNEX II

A SOCIAL PROJECT: DISABILITY MANAGEMENT AND ACCESSIBLE TOURISM

PARTNERSHIP:



Pamela Cazzaniga: an accessible tourism expert

Alessandro Bordini: a blind globe trotter.

The project was financed by Unicam for cultural activities realized by association of students 2018.

AILI

Who are we?

Associazione Italiana Latto-Intolleranti Onlus (AILI) (Italian Lactose-intolerant Association NPO), the national reference point for lactose-intolerants in Italy.

www.associazioneaili.it

Follow us on Facebook @AssociazioneAILI

Goals:

AILI's primary objective is ensuring lactose-intolerants wellbeing so then they can live happily without feeling "different" from the general population. AILI aims to raise public awareness about lactose-intolerance (also called hypolactasia), which is estimated to affect about 50% of the Italian population. In order to achieve this goal, AILI is committed towards the education of several working classes, including hotel managers and travel agencies, which should be aware of this common dietary requirement and should be able to handle it properly thereby meeting the needs of the costumers.

Description of the disability:

Lactose-intolerance is observed in people who do not produce an intestinal enzyme called "lactase", which enable the hydrolysis and therefore the digestion of ingested lactose.

Lactose is the main sugar in maternal milk and in milk derived from cows, goats, donkeys, and it is highly present in dairy products. Lactose-intolerants need to follow a lactose-, milk- and dairy-free diet.

How to help lactose-intolerants in safely planning a holiday/travelling:

1. for travel agencies and managers of accommodation:

-Educate staff about lactose-intolerance and dietary requirements of lactose-intolerants thereby ensuring the preparation of safe and appropriate food. -Learn how to host a lactose-intolerant costumer by asking appropriate and welcoming questions. -Inform the lactose-intolerant costumers that the staff is well aware of what hypolactasia is and how to handle it, and therefore is able to satisfy their dietary requirements in a safe and informed environment. -Inform the lactose-intolerant costumers that an appropriate (i.e. lactose-free) and rich menu is available for their breakfast/lunch/dinner. -Avail of graphical tools (on the website, at the reception desk,..) to communicate the sensitivity of the travel agency/accommodation towards lactose-intolerance.

2. for transport companies:

-Educate staff about lactose-intolerance and dietary requirements of lactose-intolerants thereby ensuring the

preparation of safe and appropriate food. -Learn how to host a lactose-intolerant customer by asking appropriate and welcoming questions. -Inform the lactose-intolerant customers that the staff is well aware of what hypolactasia is and how to handle it, and therefore is able to satisfy their dietary requirements in a safe and informed environment.

-Inform the lactose-intolerant customers that an appropriate (i.e. lactose-free) snack/catering service is available on board. -Avail of graphical tools (on the website, on board) to communicate the sensitivity of the transport company towards lactose-intolerance.

3. for travel agencies, managers of accommodation and transport companies:

Three keywords to perfectly host lactose-intolerant customers:

• Availability • Sensitivity • Awareness

They will come back if they feel welcomed and they will spread the word!

What to NOT to say/ask to lactose-intolerant customers:

1. "Are you very intolerant?" 2. "Do you feel very unwell even if the lactose amount in the food is minimal?" 3. "Are you intolerant or allergic to lactose?" Please note that allergy to lactose does not exist as lactose-intolerance does not involve any immunity response 4. "We provide vegan products,

therefore you are safe” Please note that not always vegan products are suitable for lactose-intolerants 5. “We know everything about lactose-intolerance, we provide gluten-free products”

What to ask to lactose-intolerant costumers:

1. “Do you have other allergies/intolerances?” 2. “Would you like some sweet/savoury lactose-free options?” Please note that finding a lactose-free dessert is extremely challenging and having one on the menu could represent a clever move to attract lactose-intolerant costumers.

The marketing strategy and costumer’s service attitude explained above will positively affect the reputation (and the commercial return) of travel agencies, accommodation and travel companies that will support this initiative.

For more info, contact us at:

info@associazioneaili.it

segreteria@associazioneaili.it

CIBO AMICO

WHO IS CIBO AMICO?

Cibo Amico is an association started in 2009 to protect children and young people with food allergies and anaphylaxis. It brings together about 2,500 families from all over Italy.

It works in collaboration with the Meyer pediatric hospital in Florence.

Its official page on Facebook is 'Cibo Amico Allergia Alimentare e Anafilassi' with other pages linked to specific topics.

Its website is: www.ciboamico.it

What are the targets of cibo amico and, in particular, those which it would like to reach with the module?

- Informing about what food allergy is and how to manage it;
- Offer help with the exchange of experiences, suggestions, 'allergen-free' recipes and much more;
- Support the rights of allergic people, such as:

1. The right to have more and more people informed about what food allergy is and how to manage it;
2. The right to have entire trips organized to minimize the risk of possible allergic reactions, potentially fatal;
3. The right to have travel, hotel and room staff informed and ready to satisfy every customer request.

WHAT IS FOOD ALLERGY?

'Food allergy' is an adverse reaction to one or more proteins of a certain food (allergens) triggered by an immunological mechanism.

Food allergy occurs only in some predisposed subjects after the ingestion of even minimal amounts of food and is not related to any physiological effect of the same.

The symptoms may be less or more severe and affect the respiratory system (rhinitis, sneezing, coughing, asthma, choking, difficulty in breathing), the skin (urticaria, pruritus, edema, dermatitis), the gastrointestinal tract (nausea, cramps, abdominal pain, vomiting, diarrhea), the cardiocirculatory system (pressure drop, collapse), the neurological system (sense of dizziness, loss of consciousness), up to 'anaphylactic shock', a generalized life-threatening allergic reaction. It is advisable to know that symptoms may occur not only with the ingestion of the allergen, but also with inhalation and skin contact.

THE SPECIALIST, THE DIAGNOSIS AND THE THERAPY

The specialist to turn to is the allergist.

There are validated tests such as the prick test, i.e. the skin allergy test, the search for specific IgE in the blood (RAST), and the oral provocation test (TPO), which, together with the

patient's clinical history, allow a diagnosis to be reached.

Alternative tests are to be avoided.

The therapy is the total allergen exclusion diet. It is essential to always have the drugs prescribed by the allergist with you and know how to use them correctly, especially the epinephrine auto-injector, a life-saving medication in anaphylaxis reactions.

Some experimental studies suggest the effectiveness of desensitization therapy, but to date there are no official acknowledgments for such approaches.

EPINEPHRINE, WHAT IS AND HOW TO USE IT

The intramuscular administration of epinephrine is the first-choice treatment in cases of anaphylaxis, because it is able to promptly reverse the symptoms.

It should be given immediately at the onset of symptoms, such as: difficulty in breathing, loss of consciousness even partial, sudden lowering of pressure, until collapse. The epinephrine acts within a few minutes and its effects are constriction of vessels, increased heartbeat and bronchodilation. The injection is not painful, and it is much better to act promptly, rather than waiting for the onset of a severe and potentially fatal anaphylactic reaction (anaphylactic shock).

The self-injecting version is available on the market. The epinephrine injector, also called the 'epinephrine pen', is available in both children's and adult's format, and contains a

pre-dosed and specific amount of medication. The self-injecting epinephrine is ready to use and can also be administered through clothes. International guidelines recommend that you always have with you two epinephrine pens: if after a first administration the symptoms do not regress, it is possible to make a second one, at least fifteen minutes after the first, as indicated in the therapeutic plan that each patient must request from their allergist.

The epinephrine injector can easily be taken with you anywhere and should be kept away from the sun and from possible sources of heat. In fact, the drug must be stored at room temperature.

The epinephrine injectors on the market are similar in the way they are used. Below we will provide guidelines on how to perform the injection (it is advisable to consult the instructions for use anyway).

1. Grip the injector and remove the safety cap.
2. Apply the tip of the injector to the outside of the thigh.
3. Press firmly until the activation trigger is heard. Hold in place for ten seconds.
4. Remove the epinephrine injector.
5. Massage the injection point for ten seconds.
6. Call 112 to be transported to the hospital.

ALLERGENS DECLARATION

Many continents have their own list of allergens to be declared on the label, whether they are present as ingredients, additives or have been used in the production process.

In Europe, from 13 December 2014, Regulation (EU) 1169/2011 entered into force (<http://www.infoetichetta.eu/wp-content/uploads/2014/02/AllegatoII.pdf>), which obliges the operator to inform the consumer about the presence or absence of the following allergens, which in total are 14:

- Milk and lactose
- Eggs
- Cereals containing gluten
- Nuts
- Peanuts
- Soy
- Fish
- Crustaceans
- Clams
- Celery
- Mustard
- Sesame seeds
- Lupini
- Sulfur dioxide and sulphites in concentrations higher than 10 mg/kg or 10 mg/liter

GENERAL GUIDELINES

Allergic meal must be absolutely free from the allergen.

The terms 'may contain traces' or 'produced in a plant that uses' identify a high risk of contamination.

Specific products for food-related diseases, other than allergies, are often not suitable for people with food allergies. A classic example is 'lactose-free' products, suitable for those who are lactose intolerant, but forbidden to the allergic people.

Vegan or vegetarian products are often not suitable, as they may contain traces of the allergen.

Those who work in restaurants are obliged to completely separate the preparation of dishes that do not contain the allergen from those who have it. Machinery, hands, tools, work surfaces and ingredients must absolutely be free from the allergen.

THE ADVICE OF CIBO AMICO TO TRAVEL AGENCIES

Know the topic

Knowing what the food allergy is and how to manage it certainly facilitates the search for valid solutions.

Interact with the customer

The client with a food allergy, and their family, are available and happy to be able to clarify any doubts or take an active part in the research.

Try to speak with a person who is informed and available to follow the client with a food allergy during the trip.

THE ADVICE OF CIBO AMICO TO TRANSPORT COMPANIES

Drugs on board, always

The allergic client must always have their medication kit with them.

It would be useful to be able to download from the transport company's website a document to be filled in and that this document is valid for one year's travel with the same company.

'Allergen free' meal in the baggage on request

The allergic client may need to bring with them 'allergen free' meals to be consumed during the trip. In the most serious cases one not only reacts to ingestion of the allergen, but also to contact or inhalation.

In these cases, the customer will appreciate being able to communicate this need with special forms and take advantage of a safe journey.

Have a person informed and available to follow the customer with a food allergy during the trip

Staff able to assist the patient in case of emergency

It would be nice if all the travel staff knew how to recognize an allergic reaction and use the epinephrine injector.

No increase in costs

In case of an allergen-free meal request, and medical certification attesting to the condition, it would be preferable not to require an additional cost. Indeed, sometimes the diet is a therapy and not a free choice.

THE ADVICE OF CIBO AMICO TO HOTELS

Kitchenette and fridge in the room

The customer with a food allergy would greatly appreciate the possibility to have a small kitchenette and a refrigerator in the room.

It would be nice to be able to eat at the table with others, the meal prepared independently.

Food allergies and respiratory problems

Often the person with severe food allergies also has respiratory problems.

The ideal situation would be to be able to have rooms without curtains, carpets, upholstered furniture, and equipped with mattresses and anti-dust pillows, clean linen, air conditioners with cleaned filters, with the ability to open windows, without

moisture, without plants and without smelling paints or chemicals. The use of detergents with strong odors, air freshener and pets must be avoided.

Care must also be taken to ensure that the ingredients in the bath and cleaning products are free of the allergen.

Have a person informed and available to follow the customer with a food allergy during their stay in the hotel

THE ADVICE OF CIBO AMICO TO RESTAURANTS

Responsibility

It is very important to have in the dining room and in the kitchen a person prepared and available to take care of all dishes intended for the person with a food allergy.

Hand hygiene

Wash hands thoroughly with soap and water before handling the allergic person's food.

If you are used to wearing gloves, use a new pair. It is Important that they are latex free.

Environmental hygiene, tools and accessories

Thoroughly clean the worktop, the tools, the machines and all the pots and dishes that will be used.

If possible, use steel or resin, rather than wooden utensils.

Always check the cleanliness of the oven and use disposable pans to avoid contamination.

Also take care to clean worn clothes and kitchen linen.

Choice of the menu

Develop a menu keeping in mind food allergies, then choose dishes that do not include the use of the prohibited food, or that allow you to easily replace them.

Respect and follow the food-allergen related laws in force in your country.

Verification of the ingredients

Read carefully all the ingredients of each food, both at the time of purchase and before use. Make sure that it does not contain the allergen: if in doubt, do not use it.

It is good to know that the allergen can appear on the label with misleading or poorly recognizable words, such as: 'caramel' can indicate the presence of milk, 'lysozyme' indicates presence of egg, etc. Despite 1169/11, some manufacturers do not correctly show allergens.

Check the data sheet and, if in doubt, contact the manufacturer.

Preparation of dishes

Never prepare or cook dishes with and without the allergen at the same time: a simple exchange of ladles could cause life-threatening reactions. Always give priority to the preparation of menus without allergens, in case you do not have the possibility of allocating a kitchen area to the preparation of dishes intended for the allergic person.

Never cook dishes with and without the allergen in the oven at the same time: the allergen will settle on the other dishes, causing serious problems for the person with food allergy.

A good strategy could be to prepare some dishes without allergens, with the necessary precautions, and then freeze them until needed.

Storage in the freezer

If you decide to cook in advance the dishes without allergens and then freeze them, remember to label that food as 'without the allergen x', using an indelible marker.

Place them in the freezer in a dedicated area, gathering the packs of foods without allergens in a large sealed bag, away from other foods.

Do not use the food if the writing is not clearly readable or in case of doubt.

How to defrost

Never defrost other foods in the microwave together with foods without the allergen.

Always check that the microwave is perfectly clean before introducing food for those with a food allergy.

How to serve food

The ideal situation is that there are only dishes without the allergen(s) on the table. If the menu includes some dishes without the allergen(s) and others with the allergen(s), you will need to place the food in different containers, so that dishes without the allergen(s) are easily identifiable (for example, putting dishes without the allergen(s) in disposable red containers and dishes with the allergen(s) in containers of other colors and different materials).

Equip each cutlery container to serve.

It is advisable not to offer dishes similar to those without the allergen (for example gluten-free breadsticks): the risk of confusion is too high.

In the case of a mixed menu, i.e. with and without the allergen(s), it is important to always serve first the person with the food allergy.

LIST OF BENEFITS THAT MAY BE DRAWN FROM THE PROJECT

The client with the food allergy usually avoids trips that are too long, especially toward destinations where, due to linguistic differences, communication is more difficult. They often do not even take part in trips of a few days organized in their own country.

Having staff informed about food allergies, who know how to manage and take care of the 'special' customer and their family would undoubtedly generate considerable word of mouth, which would allow the manager greater visibility and an increase in the usual clientele.

CONTACTS

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CIBOAMICO

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REDUCED MOBILITY

Always believe, never give up!

My name's Pamela Cazzaniga and in 1997 I had a car accident.

Since then I'm on a wheelchair. Medullar lesion D4/D5 with consequent paraplegia. I have always tried to not give up, but to enjoy my life in the best way in spite of everything.

In July 2014 I started my travel-blog, ilmondodipamela.it, where I write about my trips all over the world with my wheelchair.

Travelling is my life and it helped me to overcome every difficulty.

The following year I began a cooperation with Ludovico Scortichini, CEO and holder of Goworld. Www.goworld.it

Together we have launched Go4all, www.go4all.it, tour operator specialized in disabled travel where I'm the consultant for the accessible tourism: I advise and explain to people who have limited mobility how to face up to a travel and how to overcome architectural barriers thanks also to the help of local assistants we make available for some destinations.

I also cure a column called "Viaggi senza barriere" (Travel without barriers) on the magazine on line Agenda Viaggi. www.agendaviaggi.com

AIMS - INFORM:

Associations, innkeepers and travel-agencies how to receive people who suffer from limited mobility.

The target of this form is to emphasize the credibility of the information that derive from associations, travel-agencies and tourist facilities.

BUT NOT ONLY

Besides a rediscounting of imagine, you'll also have a value added commercially:

nowadays the traveller has special needs about the disability and the vulnerability.

The statistics speak out and, to the knowledge, unfortunately Italy isn't ready yet to manage a person with limited mobility.

REDUCED MOBILITY

It involves a reduction or a lack about motor functions.

- PARAPLEGIC He/she doesn't walk but can move the arms.
- TETRAPLEGIC He/she can't move arts and neither legs.

MOTOR IMPAIRMENTS

- They restrict or prevent to move

CHILDISH CEREBRAL PARALYSIS

- They are due to traumas or cerebral haemorrhage occurred during the birth. It varies from a light difficulty in moving to a paralysis.

REDUCED MOBILITY

SPINA BIFIDA

- Genetic malformation of the vertebral column

HEMIPARESIS

- Paresis limited to only half, right or left of the body

MUSCULAR DYSTROPHY

- Degenerative neuromuscular diseases that cause atrophy and the impairment of skeletal musculature significantly reducing the motor skills.

SLA

- Rare disease that affects the brain cells responsible for muscle control.

VOYAGE PLANNING - INFORM YOURSELF

Persons with disabilities customer needs airport assistance (or in railway station).

Don't forget to book it while you are making the ticket's reservation to the airline company specifying:

- the kind of the disability of the customer

- if he/she has got an own wheelchair
- or if he/she needs a wheelchair only from the check-in to the means of transport

VOYAGE PLANNING - QUESTION

Some airline companied ask to the travel-agent if:

- persons with disabilities are able to take off and land being in vertical position on the plane's seat
- if persons with disabilities customer is able to eat and drink alone
- if he/she is accompanied by someone or if he/she travels alone
- if he/she is able to go to the toilet alone (on the plane) or if he/she needs help from someone on board
- if he/she takes some pills and if yes which

VOYAGE PLANNING - REQUEST

Don't underestimate the choice of the means of transport and about the hotel

- Means of transport must be fitted, that is provided of a footboard to allow to persons with disabilities to get on and get off without difficulty from the means

- Don't underestimate that every railway station is equipped with elevator

TRAVEL PLANNING

- Choose hotels/apartments with ramps and so without architectural barriers to approach in total freedom
- Ramps could also be movable
- The structure must have handicap-friendly rooms with comfortable bathroom

MEAN OF TRANSPORT

WHILE ARE YOU CHOOSING A TRANSPORT-COMPANY
MAKE SURE THAT:

- It is able to embark a disabled through an elevator, electric or manual ramp
- It predisposes of means of transport with footboard

CUSTOMER APPROACH

IN THE TRAVEL-AGENCY, PUT THE CUSTOMER AT EASE

- Create and reserve a place inside the agency/office where you could accommodate persons with disabilities customer.

For example, low desk, empty space to approach with the wheelchair and an empty chair near the customer for a possible companion

IN HOTEL ADAPT YOUR STRUCTURE

- It must be without architectural barriers
- The room must be large enough to move inside it with the wheelchair
- Space bed/wall large enough to position with the wheelchair
- The bathroom must have floor lever shower with a seat and handles near (also for the wc) to allow to persons with disabilities to move alone
- The bathroom sink must be empty under it to allow to approach as much as possible with the wheelchair
- The lift and the doors must be wide 90 cm

AND... NOT EXCLUDE HIM/HER

- Plan a suitable area where you can receive and welcome persons with disabilities customer in a considerate way without logging in him/her to the reception desk that, almost always, is not an adequate measure
- Allow the access to the common spaces to every tourist: persons with disabilities are entitled to enjoy a conventional holiday without feels ghettoized

CUSTOMER APPROACH

- Extreme sensitivity, the disabled are often vulnerable. Also, for this reason the kindness must be higher than an able-body customer.

The smile mustn't be missing, remember that not every disabled have accepted and exceeded their condition. Make he/she feels like home but above all, treat him/her like a normal customer

- Be accurate about the requests that every kind of disabled with limited mobility makes. Don't underestimate any appearance

- Specify if there are a little impediments or barriers in the proposal structure. This help to prepare the customer about what he/she will find

IT'S GOOD TO IDENTIFY THE NECESSITY OF THE SINGLE CUSTOMER BASED ON HIS/HER DISABILITY, BUT DISTINGUISHING CASE BY CASE

Can be useful make some questions, what:

- Can you take a few steps?

- Is your wheelchair foldable and manual or electrical with batteries?

- What's your weight? (It needs to know how and who must transport him/her)

- What's the wheelchair's weight and what are its measures?

Height and width

- Do you suffer from particularly allergies?

- Are you self-sufficient?

- From whom are you accompanied?

If you are a travel-organizer, preserve the answers and transmit them to the accommodation.

OMPHALOS “AUTISM & FAMILIES” (ONLUS)

Since 2008 Omphalos Onlus Association, born of the initiative of a groups of children's parents taken over to the Centre Autism childhood of Fano, it's an important point of reference for the families affected by this disability.

Omphalos, belly button in Greek, is the symbol that the association has chosen to represent the starting point from everyone's life experience, but also, the convergence point of everyone's life experiences.

The association promotes the circulation and the exchange of knowledge, the strategies and the instruments that support the families in the great task of dealing with the daily problems which autism involves.

Omphalos undertakes to process life projects thought for specific needs of every single subject involved in the autism experience, to guarantee present and future serenity.

It works to offer services as teaching assistance and to sports activity, insertion opportunity in both public and private productive realities, legal assistance, partnership in the use of existing services through forms of volunteering with the direct involvement of families.

In order to organize a concrete network of solidarity The Association has activated local offices which offers psychological support and hosts self-help help.

The autism is defined as a complex disability in development which results from a neurological disorder which attacks normal brain functions. It has significant impact on the development of communication facilities, social and behavioural, often accompanied by anomalies in the process of cognitive functions, sensory, of learning and attention, symptoms that appear right during the first three years of life. Affected people have poor visual contact, delay in language and show stereotyped and repetitive behaviour. It's very frequent and widespread the attitude of estrangement towards other people as the affected subjects very often ignore others since they are not able to interact and communicate with them, they prefer to remain totally absorbed in their private world. This is the reason for which it's used the word "autism" in reference to the delay, word that originates from the Greek word "autos" or "the same". The symptoms and characteristics of autism can manifest in a big variety of combinations and degrees, from the slighter to the higher, some people present more evident behaviours while others, have more connective abilities and are able to communicate relatively well using spoken language. Therefore, it's clear that the various symptoms can be appeared differently in every individual so that two individuals with autism can behave differently from each other.

For these reasons it's commonly known that "If you know a person with autism, you could exclusively know only a person with autism".

- It's "Onlus of law", being registered to the regional register of voluntary service of Marche sequential number 1736 of the 19.11.2008

- Enjoy legal personality since 2014, having passed the strict examination from the Prefecture of Bergamo

- Has legal and tax protection from Reiner studio with associated of Fano

- It's in compliance with the insurance coverage obligations ex. L. 266/1991 for injuries to volunteers and for civil responsibility

Autism is a phenomenon that can appeared anywhere in the world and at any time. It isn't associated with a specific ethnic group, area, social or economic status. The WHO (World Health Organization) doesn't own global statistics on the spread of autism because the ASDs may occur concurrently with other disabilities and then because autism diagnosis doesn't depend only on medical examinations but also from behavioural observations. The spread is five times more common among males than among females.

Already during childhood, the problems related to the social interaction of the autistic child are evident in the autistic child who finds difficulty in the visual channel. Their parents perceive the elusive glance of the child and his refusal to get in touch

with them. Also, the oddities related to the posture of the body are typical of the first year of age. In fact, parents encounter serious difficulties in keeping the baby in their arms given his impatience for physical contact and his inability to abandon himself in the arms of the person who holds him. Such incapacity is defined as disorder of “tonic dialogue”³². During the stages of child development, his social interaction presents increasingly clear and characteristic behaviours.

The child behaves as if others didn't exist, he lives in isolation, he doesn't answer when called, he doesn't have relationship with others and he doesn't involve anyone in his activities, for example he approaches other people only when he absolutely needs them, when he can't do something autonomously. Even if a lot of autistic children refuse the company of their peers, it is not always like this. There are some cases of autistic children who don't refuse other children, and for which have been studied some programs to increase both their interaction with the person they are interacting and to improve their individual social skills. Others autistic children research physical contact even in an excessively inadequate way. (for instance, also giving kisses to unknown people).

Some scholars recognize the existence of three types of autistic children:

- Passive children, that is those who tend to isolate themselves from the rest of the world, but are able to interact with others if stimulated
- Inaccessible children, those who absolutely do not research any kind of relationship and social relationship
- Active children but with abnormal behaviour

The same children can present the features of each of the profiles presented above at different times in his development process.

These attitudes can be summarized by the following points:

- he/she shows indifference
- he behaves strangely
- sometimes he/she demonstrates particular skills which involves social understanding
- he/she doesn't work with other children
- he/she manipulates and rotates objects
- absence of creativity
- he/she only participates if the adult insists and helps
- he/she laughs without reason
- echolalia: he/she repeats the phrases like a parrot

The autistics manifest repetitive and stereotyped behaviours accompanied by limited interests and activities. It's mostly about

atypical and bizarre behaviour characterized by movements and gestures exercised with frequency and out of context.

There are numerous clearly observable behaviours whose nature is highly variable:

- play with hands
- swing
- observe electro domestics in operation
- assume abnormal positions
- look at the mirror
- to lick
- draw the same object continuously
- transfer water from one container to another
- observe the same object for a long time
- recite and repeat the same words or phrases

The same daily and usual actions as wash, eat, get dressed and go out, are always carried out following a rigid and pre-established order.

This scheme is also used in the arrangement of objects in their bedroom, in games or in the paths to follow for exit. The change in what is normal or the rule for the autistic child, can cause a great sense of discomfort springing reactions as aggression, anger and nervousness. Moreover, children often show exasperated attachment towards objects apparently insignificant for others: a piece of plastic, fabric, a little ball.

The idea we do in an autistic subject, be he a child or an adult, generally varies between that of a subject sitting in isolation who avoids any form of contact and that of a person with extraordinary abilities, absurd for any other person. It's doubtful to define who is autistic, because there isn't an unambiguous and precise definition for all subjects because of the immense variety of behaviours and symptoms that they can present.

All this leads to the creation of false stereotypes and beliefs that must be debunked so that inaccurate and erroneous information doesn't spread.

We can't say that an autistic child can't speak. There are some subjects who can express through the vocal language even if they develop it later than their peers or use it inappropriately.

Those who don't develop it in the first years of life can be subjected to interventions or learn to communicate their desires through alternative communication tools. It is incorrect to say who a child with autism don't want to communicate with the others. The real problem is that he isn't able to do it, he isn't able to play and to report with the others.

But through a specific stimulation and particular interventions is possible that it increases his spontaneous interactions with the people around him.

It isn't correct to say that every autistic child don't want to be touched and who they live in their world. To some of them

doesn't like to be touched but that doesn't mean that everyone doesn't like it.

For some of them, physical contact and play are fun just think of hugs, kisses a tickling. Finally, it isn't true that they will never improve.

The literature demonstrates numerous cases of improvements in the respective areas of social interaction, of communication and cognitive skills following behavioural interventions.

Another widespread symptom is hyperactivity, which occurs through hyperkinetic behaviour characterized by poor attention or even by aggressive self-behaviours (hit your head with your fist or beat the head against a wall). However, some peculiar capacities must also be remembered among the characteristic symptoms as the exceptional memory for dates and numbers and the ability to read and recite tracks.

About 75% of autistic people are affected by mental retardation and for this reason is difficult to define if the anomalous nature of some behaviour is due to the autism or the mental retardation who they manifest.

The three characteristic symptoms of the autistic disorder (impairment of social interaction, communication problems and abnormal behaviour) may present variable intensity and incisiveness.

The parameters for the diagnosis of autism fall into the three categories of analysed problems that so not however freer to

the global intellectual functioning for which, a diagnosis of autism can also be attributed to intelligent children (called “high functioning”) or even to a subject with excellent intellectual abilities.

The autism has been an object of great interest for its particular characteristics, for its seriousness, for the mysteries that resolve around its nature and its origins and by coexistence in affected children of both fascinating traits such a physical beauty and also for specific talents.

The diagnosis of autism disorder is essentially based on behaviour observation. For the classification of disorders, two important tools are used internationally: The DSM V (diagnostic statistical Manual V) elaborated by the American Psychiatric Association and the ICD-10 (international classification of diseases 10 edition) of the World Health Organization.

Experts advocate the validity of a wide variety of behavioural approaches useful for the treatment of people with autism spectrum disorders. Such methods, widely cited in the literature, allow to reduce inappropriate behaviour and increase the inadequate ones related to the development of communication, learning and socialization.

The Italian Ministry of Health (2011) suggests specific behavioural approaches to treat autism such as the principles of applied behavioural analysis and verbal behaviour (Applied Behaviour Analysis and Verbal Behaviour- ABA/VB) to which is

possible to integrate additional methods such as TEACCH, DIR/Flor-time and sensory integration. The combination of the various alternative methods provides solutions to maximize the potential of individual subjects.

The purpose of the Applied Behaviour Analysis (ABA), is that to increment significant social behaviour or various aspects of communication, of self-care, of the game, of school and domestic skills. This approach also aims to reduce violent behaviour such as self-harm, the destruction of the environment or aggression and stereotypical behaviour.

The main feature of this approach is that being easily involved in normal daily activities and be incorporated into the lifestyle of a family by involving everyone, from parents, to relatives, to the teachers, assistants and therapists. The ABA can also be applied in other environments like the school, the job and in public places (restaurants, transports). The scientific principles on which it's based, provide a collection of data on the answers from the autistic subject to see if they are progress or not.

The ABA allows to draw up graphs on developments and if there aren't, allows to make some changes to the program, based on the seven basic conceptual conditions.

It uses a teaching procedure "one to one", to be able to teach skills in a more controlled and orderly way, defined Discrete Trial Teaching (DTT).

This way of teaching is used to teach a skill which can be decomposed into smaller elements, giving rise to a series of tests, each of which is divided into distinct phrases with a well-defined beginning and end. Tangible recognition is used to strengthen the skills and achieve results that you want to achieve, as well as physical and verbal support is provided to increase the possibility of the subject to provide correct answers.

Central part of the DTT is the data collection that allows operators to obtain useful information on the initial starting level, on the progress made, the maintenance, the developing and the learning of new skills.

The therapy Verbal Behavior (VB) allows a child, a teenager or an adult to use the words he needs to achieve his goals. The autistic subjects can in fact use useful words to obtain objects or results. The therapy is mainly based on word learning “tag” (cat, car etc) and only with the time the subject learns to use language to express more complex requests. In a sense, the therapy focuses on understanding why we use words.

Skinner, in his book “Verbal Behaviour” identifies verbal operatives.

Each one with a specific function. In particular they recognize themselves in four kind of words: mand (a request), tact (a comment used to aware an experience or to draw attention), and echoic (a word who is repeated).

The therapy Verbal Behaviour considers the expression of commands or requested as bases of language. The subject doesn't necessarily have to say the word corresponding to the desired object to get in especially at the beginning, important is that you express your request in some way.

Indicating the object is certainly a good start. All that, allows to autistics to learn that the communication produces positive results.

The therapist provides immediate and frequent suggestions to help the subject to communicate. Such suggestions become less and less intrusive, until the subject is able to express himself in total autonomy.

As it is widely discussed It's obvious that people with autism can experience full support to satisfy their needs so that they can enjoy a happy life and a meaningful existence. That includes equal and impartial opportunities in the workplace, as well as in the domestic one, of education, of health and much more. Autistic people have the right to be included in all social effects.

It is therefore essential provide them some help and support them in developing interactions in order to favour a simple better social integration. Scientific researches discussing this phenomenon from a purely medical point of view investigate prevention, and treatments but the articles of the academic

literature focus on the real life of the autistic people and their interests.

It is clear that for an increase in the quality of their life, it is necessary that the academic researches shift their focus on the specific barriers of experience and focus more on their needs and on the characteristics of their social life. It should also be considered that much of the research and autism studies focus on children and only a few studies concern the challenges that adults face every day.

Such research is still based primarily on information found through the contribution of relatives, assistants and educators.

In particular, a field of investigation that appears to be still scarcely explored and of which little is known yet, is what studies the way in which the autistic people are related to the difficulties related to travel and tourism. Travel and live unique experiences, for an autistic person, is something overwhelming as it involves a significant change of the routine, causes anxiety and sensory problems. Because research shows how to prepare an autistic person to the travel experience, most of what was published about it, refers to children with physical or cognitive disabilities but not specifically affected by autism. In reality tourism plays a fundamental role in autistic people's life, because it allows to increase social inclusion, to improve the quality of life, increase self-esteem and a sense of independence. For these reasons, all activities and constituent

elements of tourism should be adapted and modified in view of their needs, desires, preferences and abilities. If you decide to create a travel experience that involves or concerns only autism people, it's necessary to be planned by experts in the fields in collaboration with travel-agencies and organizations that provide support, assistance and safety during the experience.

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BLINDNESS

Translate by Go4all.

Visual disability is a pathological condition in which the view is reduced or there isn't.

Visual impairments may be classified, based on the visual residue and/or field of view, in:

- Total Blinds
- Partial Blinds
- Severe visually impaired
- Low-vision medium-severe-visually impaired

The advice of Mary Grace Seva – a blind person – to approach the tourist client:

In the agency let blind person be fine, at ease:

- If you notice a customer with a white stick or a dog guide, add it to the door
- Of course, the guide dog has free access to all the exercises open to the public; Accompanying the customer to the chair in the appropriate manner

CASE BY CASE

With a few simple questions you can receive important information regarding any specific needs of the customer:

Travelling alone, with guide or accompanying dog?

Do you have special preferences or needs about the room and bathroom amenities?

Do you have general needs?

It may be useful to keep the answers: a copy for you and a copy to transmit to the accommodation facilities

ABOUT RESERVATIONS...

Contact the hotel and make sure that:

- They have staff adequately trained on the reception of blind people
- That the structure is accessible (lifts and doors of rooms with braille or raised numbers, restaurant menu in Braille and/or enlarged characters, map of the structure in relief) and if it is not, if the customer still agrees, to guarantee the availability to remedy to any obstacles
- It reminds the structure, if the customer wants it, to prepare the service at the table even when the self-service is foreseen.

THE HOLIDAY È SHARING... DON'T LET ANYONE BE
LEAVE OUT!

Make sure that all the tourist sites and circuits booked are
allowed access to common spaces by all tourists:

Even the blind customer has the right to enjoy a conventional
holiday without feeling "isolated".

For this reason, please help make your holiday enjoyable.

For example, you could:

- Ask if the customer is willing to visit particular points of interest
- Identify, among those indicated, the possible presence of specific guided routes for blind people and thus inform the customer of these possibilities
- If there are none, check whether, with regard to any scheduled visits indicated by the customer, there is the possibility of facilitating their performance
- Make sure that the accompanying/moving services are always available or that there are still the prerequisites for a comfortable customer mobility

CARE EACH STEP

The Accessibility line:

- From home to the means of transport (airport, train or bus station, port) and vice versa
- Within the stations/ports/airports
- From the stations/ports/airports to the taxi (or similar)
- From the taxi to the HOTEL entrance (or similar)
- Inside the HOTEL

CONTRIBUTED BY ALESSANDRO BORDINI, A BLIND PERSON AND A GLOBE TROTTER

A blind person is first of all a person.

It is important to start from this firm point if you are willing to interact in a respectful and effective way with a person who can't see.

In order to understand how it is best to behave, you should understand what it means to be blind.

It seems trivial, and yet people often ignore these balances and comes directly to conclusions, often incorrect, which give rise to embarrassing and inconvenient situations.

Who are the blind people?

A blind person is a person who cannot autonomously have visual information; he/she can still listen, talk, walk, as well as use technological aids, and perform a whole series of daily actions that are not necessarily constrained to the use of sight.

It is obviously not easy to put yourself instantly in the shoes of someone else, especially if the latter has one or more characteristics that are totally extraneous.

Take note...

Ecco quindi alcuni atteggiamenti che possono essere utili se ci rapportiamo con una persona cieca:

- When you want to establish a first contact, you greet and introduce yourself in a clear way (which does not mean yelling), giving your hand informing him that you are doing it, or when he/she is offering his/her hand to you.
- At least at the first approach limit his own *goliardia*. The grandfather of an ex-girlfriend of mine, withdraw his hand a very second before I gave mine, remarking his act with a sound effect almost funny... almost, exactly! I have never meet him anymore!

- Avoid using words supported by gestures, a blind person does not see your fingers! Rather get used to giving precise indications about the person (to your right, two steps in front of you).

Than...

- If after insisting a dozen times in indicating the free place with the finger, repeating "There! There! There!" the blind subject begins to bang his head against the nearest wall, that mean he/she want to faint in despair!
- If more people are present during a conversation it may not be clear to whom we are talking to, especially for a blind person; With a light touch on the arm or shoulder we can guarantee that the blind person is following us.
- Before you leave you should warn, a blind person could be not noticing it! You do not know what excuses I had to tell after making a declaration of love to a busty young lady of 79 years, who was simply queuing behind the girl I was infatuated with, but she had moved away just a few moments before I started my speech!
- If you think that a person may need something politely offer your help, do not impose it; You can't actually know if your support is really needed. If this is accepted, listen well what you are told, it will be He/she to explain everything to you and

I recommend:

Care of details

- You must speak Directly with the person concerned and not with the possible escort.
- You have to spend all the words you know related to visual, so maybe instead of saying that “The view from the balcony is spectacular” You can quickly describe what is in that direction. If you ignore this suggestion do not be surprised by a very likely uncheerful reaction on the part of the Your blind listener, that by stepping on a foot can show you immediately that aiming at times, regardless of sight!
- In case a blind person is guided by a guide dog do not distract him: you would play with the satellite navigator of someone else while he is driving?
- As for the environment in which a blind person might have to manage independently, like a bedroom, it is essential not to move things on their own, because moving something can mean hiding it. And if you just do not resist the temptation to impose your habits at least avoid moving the toilet paper... everything but not the toilet paper!

DEAFNESS

Martina Lorenzotti, Pamela Cazzaniga

THE DEAFNESS: WHAT IS IT?

... It's the dysfunction of the hearing system

CAUSES

- illness
- excessive exposure to noise
- taking certain medicines and antibiotics
- injuries to the ear

The pathology can arise from birth or during the life, after a trauma.

It is also called “communication handicap” and “invisible handicap”, because for the surrounding environment it isn't immediately perceivable.

INTENSITY

- The damage can be slight, medium, serious or even deep.

- When the deafness concerns on only ear, we talk about “anacusia”, otherwise of “cofosi”
- The partial deafness is called ipoacusia, wich can be introduced from damages concerning noises (NIHL) or from the aging (ARHL or presbiacusia)
- IPOACUSIA is divided into some types based on the damage that has produced it
- TRANSMISSIVE: the damage is happened on the level of the external ear or on the level of the transmission facilities of the medium ear
- SENSORINEURAL the damage is localized on the level of the cochlea (hearing loss sensorineural cochlear) or on the level of the acoustic nerve (hearing loss sensorineural retro cochlear). The deficit depends on the identity of the damage and from the mono or bilateral location. In case of the acoustic nerve wouldn't be excessively damaged, part of the auditory input can be recovered through interventions with cochlear implant and consequent rehabilitation.

STEPS TO TAKE

- Detailed inspection of the ear using special instruments, as the otoscope or also with special microscopes
- Auditory texts to define the extent of hearing loss
- The therapeutic approach depends on the cause and the seriousness of the symptoms: the infections can be treated with

antibiotics, less severe cases of deafness where it's possible to act outpatient, others more serious where the surgery set in

- In case of reduction of the hearing from noise exposure or from age it generally occurs to the use of hearing aids , that can serve to make sounds more high and to isolate background noises

- Is it possible the prevention?

- Only hearing loss from exposure to noise is the only disturbance of the hearing that can be prevented, avoiding the exposure or wearing special protections (as earplugs or insulating headphones)

THE SIGN LANGUAGE

THE NEW ITALIAN MANUAL ALPHABET

SOME PLACES THAT SPEAK SIGN LANGUAGE

- In the United Kingdom one sixth of the population , more than 10 million people, has some form of hearing loss, so it's a properly equipped country: every areas and public spaces , as museums, theatre, cinema, hotel, must use microphones and sound amplification devices, reported by clearly visible signs; public locals must accept guide dogs for the deaf; in public spaces as a fire protection system must be prepared some

lights suitable to allow the deaf subject to perceive the danger, what about transport? It is in the subways that a lot has been done: LED screed in every stop of the subway and in plenty bus stations; on board there are clearly screens that inform the route

- Victoria & Albert Museum, British Museum, Science Museum, with services for deaf people

- In France, the 98% of the buses is equipped with sound announcements, the 93% of the visual ads

(Reggia di Versailles offers services to deaf visitors, as a video-guide in French sign language with subtitles in French)

- In Italy, Vatican museums, offer guided tours entirely in LIS

- The majority of the railway stations can offer visual information; possibility for the deaf users to use a very useful smartphone application, because let them to obtain information about the timetable, in real time and to find every information about the delays, track changes and others appropriate needs.

CELIAC DISEASE

Sara Caprì, Pamela Cazzaniga

WHAT IS THE CELIAC DISEASE?

The celiac disease is a chronic inflammation of the small intestine raised from the ingestion of gluten in genetically predisposed people, according to the definition from the Italian celiac association (AIC)

WHAT ARE THE SYMPTOMS?

The symptoms are: abdominal pain, strong slimming, tiredness, sickness, but also delay in the growth of the youngest and bone and joint pains.

The symptoms are different, for this reason the celiac disease is only diagnosable through a blood test and a biopsy of the duodenal mucosa.

THE THERAPY

The only therapy is the total absence of gluten from the diet. Who suffers from celiac disease can't even eat food who has been in contact with gluten. For this reason, even, the contamination is extremely dangerous!

It's necessary to pay attention when you go to the supermarket!
You can usually be on the safe side choosing meat, fish, fruit, vegetables, milk, butter, wine, the, coffee, but for all the rest it's always important to check labels that must have the wording and the gluten-free mark.

HOW DO WE DO WHEN WE EAT OUTSIDE THE HOME?

It isn't a problem to eat outside the home, just pay attention, and must not hesitate to always ask the chef, without fear, if he has taken preventive measures to avoid contamination.
Nowadays the restaurants are equipped, and if you asked them with kindness, they will be comprehensive and kind, too.

The only preparations and the ingredients to pay attention are the fires (because there is a lot of oil in the flour and can be dangerous if they don't have separated pots), spices and dried fruit (because it is kept in containers that are used for different aliments)

TO BE CELIAC IS NOT EASY!

However, we must not get knocked down, and you have to know that there are plenty of recipes and preparations which will satisfy you, without making you feel the lack of gluten!

For instance, at breakfast, instead of rusks we could make muffins with gluten free flours, or yoghurt, or fresh fruit, or fruit juices and extracts, or like English people, scrambled eggs.

For Lunch you could enjoy some quinoa or buckwheat pasta, while at dinner some soups or omelettes, as well as grilled steaks or grilled chicken, with some seasoned salad.

At the end, we must always look at the positive side! You have to search the celiac disease as a constant deprivation, but rather as an improvement in the quality of your life!

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ACCESSIBLE TOURISM AND TRANSPORTATION FOR THE INCLUSION OF PERSONS WITH DISABILITY

RESEARCH

Dottorato Eureka

The research is co-financed by:
University of Camerino, Regione Marche and Go Word tour operator.

Abstract

My research defines a regulatory framework on accessible tourism and transportation for the inclusion and protection of persons with disabilities.

CRPD

Accessibility to cultural life (articles 9 and 30):

States Parties recognize the rights of persons with disability to enjoy access to cultural services:

- theatre
- museum
- sport
- tourism

EU Regulations

Accessible transportation:

No 1177/2010



No 1107/2006



No 181/2011



No 1371/2007



Expected Outcomes

Improving tour operators' knowledge on disability rights ensuring accessible tourist services.

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INCLUSIVE RESEARCH AND DEVELOPMENT STRATEGIES

Association Go 4 all

European policies ask the cooperation between:

- carriers or terminal managing bodies of stations, and
- organizations representative of persons with disability.

Go 4 all tries to realize a cooperation through monitoring activities, social projects, and research studies, with the help of tourist experts and academic people.

www.associazionego4all.it

Vision

Real access for all to leisure, tourism, transportation, sport, and any other cultural service.

Mission

Disseminating information on the rights of persons with disabilities into tourist and transportation fields.

Go 4 all Team

Dario Imperatore (Team Coordinator), and Ila Moore, Kristian Massime, Roberta Lo Giudice, Martina Lorenzotti, Alex Messina, Sara Capri, Samuele Cucchi, Elisabetta Scordino, Antonella Valentino, Matteo Caponi, Giuseppe Vertucci, Nicolò Fico, Pamela Cazzaniga, Catia Eliana Gentilucci.

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MONITORING ACTIVITY

Survey on accessible transportation

Double goals:

1) Monitoring information on the rights of persons with disability

2) Giving information through the survey itself

Interviewees

Tourist stakeholders, students, people with disabilities.

<http://goo.gl/forms/nfOz5AdrBfanPrpV2>

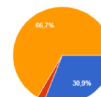
Crucial Data

General knowledge on disability rights is not adequate to ensure their protection

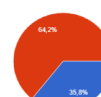
Do you know that in case of a legitim refusal on the ground of the disability, carriers travel agents and tour operators shall inform the client about any acceptable alternative services offered by the carrier?



Do you know the National Transport Authority to which send complaints in case of violation of your rights?



Do you know that carriers and terminal managing bodies shall establish disability-related training procedures to their personnel?



What to do

Disseminating Information through social projects.

What we have done

With our partner associations, Go 4 all has drawn up an e-Learning course on disability, accessible tourism, and rights.

It is available on a platform for Italian tour operators.

www.goacademy.it

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