



## **ANIMALS ON BOARD: LEGAL CHALLENGES IN AIR TRANSPORT**

On 4<sup>th</sup> November 1909, at Leysdown, Kent, the first recorded flight of an animal took place, when J.T.C. Moore-Brabazon, carried a small pig in his French-made Voisin aircraft. Since that historic moment, the transport of animals has undergone significant evolution, expanding beyond mere pets to include the transport of assistance and service animals for passengers, animals for agricultural, livestock or zoological purposes, among others.

Additionally, the increased of mobility and globalisation in modern society has rendered the transportation of companion animals an increasingly common practice. Particularly noteworthy is the regulation of a new concept: emotional support animals, which are those that provide support and well-being to their owners in times of stress or emotional difficulties.

However, given the unfortunate trend of passengers falsely claiming their pets as emotional support animals, the regulation did not move forward. Such behaviour contradicts the social progress made in support of individuals who genuinely require the emotional assistance of their companion animals.

Hence, in this newsletter we delve into the issue of transporting companion, service and emotional support animals, and advocate for the implementation of specific regulations to help airlines manage this growing need more effectively and defend themselves against abusive passenger practices.

### **REGULATORY FRAMEWORK**

Commencing this regulatory overview, it is crucial to note that, up to the present, the carriage of animals in the cabin remains unregulated by any multilateral convention or within the context of the regulations of the International Civil Aviation Organisation (ICAO).

Perhaps in response to this regulatory vacuum, the International Air Transport Association (IATA) released the Live Animals Regulations (LAR) in 1969. Serving as a comprehensive guide, these regulations offer fundamental principles for the global transport of live animals.

Since their first publication, the LAR have experienced significant evolution to accommodate the increased air transport of a wide variety of animal species. With a focus on ensuring safe and humane transport, whether for pets -in the cabin or in the hold-, zoological, agricultural, or other purposes.

These regulations, widely recognized and utilized in the industry, address aspects such as handling and loading procedures or animal welfare standards. They also provide rules and recommendations on caging or containerisation and documentation requirement, thereby facilitating the safe and responsible air transport of animals internationally.

At regional level, particularly within the European Union, we find a somewhat more specific regulatory framework. To begin with, it is imperative to distinguish between the existing regulations for the transport of animals for economic purposes (Regulation (EC) No 1/2005<sup>1</sup>) and those for non-commercial pet animals (Regulation (EU) No 576/2013<sup>2</sup>).

The latter regulation provides a set of rules and procedures for the transport of pet animals, which according to its Annex I, categorises them into two distinct groups, namely: dogs, cats, and ferrets; and mammals, rodents, certain birds, reptiles, amphibians, certain aquatic animals and other invertebrates.

However, both this and the implementing regulation<sup>3</sup>, are limited to establishing animal health requirements (including vaccination, with special emphasis on rabies) and documentary requirements (identification, registration, etc.). They do not include rules on weight or size, nor do they specify which animals may or must be transported in the hold or in the cabin. There is also no distinction between animals that are service animals, emotional support animals or simply pets.

In fact, Article 3 of Regulation (EU) No 576/2013 provides a generic reference to pet animals as any animal of the species listed in Annex I accompanying its owner or an authorised person during non-commercial movement, and which remains for the duration of such non-commercial movement under the responsibility of the owner or the authorised person. However, there is a brief mention, in Article 7 of Regulation (EC) No 1107/2006<sup>4</sup>, of the obligation for carriers to allow the carriage of guide dogs -as service dogs- when passengers so require, in accordance with national legislation.

In line with the above, in Spain, the Spanish Aviation Safety Agency (AESA) has defined what should be understood by assistance dogs that can travel in the cabin at no additional cost to their owners, referring to them as dogs that are trained for the specific disability of the passenger and by a recognised training entity<sup>5</sup>. In addition, AESA notes that the passenger must also

<sup>1</sup> Council Regulation (EC) No 1/2005 of 22<sup>nd</sup> December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.

<sup>2</sup> Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12th June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 Text with EEA relevance.

<sup>3</sup> Commission Implementing Regulation (EU) No 577/2013 of 28<sup>th</sup> June 2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions provided for in Regulation (EU) No 576/2013.

<sup>4</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5<sup>th</sup> July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.



have the necessary liability insurance, identification and veterinary requirements to transport the animal.

However, beyond the above, there are no specific regulations in Spain regarding the transport of pets or the transport of emotional support animals.

Consequently, in the absence of a specific regulation, the current regulations for the carriage of pets are established by the airlines in their general conditions of carriage. Thus, airlines are responsible for determining the specific requirements and conditions of breed, size and weight for the carriage of these animals in the cabin, varying, for this reason, between different operators.

For example, companies like Aeromexico or Avianca include in their conditions the transport of pets and emotional support animals in the cabin, limiting them, in any case, to dogs and cats, with a maximum weight of 12 kg and 10 kg, respectively; others like TAP or Lufthansa restrict the maximum weight of the carrier and the animal to 8 kg, while Iberia and Air Europa accept, in addition to dogs and cats, the transport in the cabin of birds, fish, or turtles, with a maximum total weight of 8 kg and 10 kg, respectively<sup>6</sup>.

The fact is that advances in this field are constant, as evidenced by Air Europa's recent announcement of a new animal transportation policy based on the creation of what they have termed a "canine passport" with the aim of "standardizing" and "facilitating" onboard dog transportation<sup>7</sup>. This measure, aimed at fostering cohesion between increasing social consciousness and regulatory developments, serves as just one example of the progress –and accompanying challenges– in this area, highlighting the need for comprehensive and standardized regulation.

### THE CASE OF THE UNITED STATES OF AMERICA

Considering the above, it is worth remembering that in the United States of America, there was an effort to regulate the transportation of emotional support animals. Even though service animal transportation –defined in line with AESAs consideration, see above– was already allowed in this country under the American with Disabilities Act<sup>8</sup>, the American legislator sought to establish a legal framework for the transport of other animals that provide emotional support to their owners.

This initiative was made through the Air Carrier Access Act, which categorized emotional support animals as service animals. Consequently, they were entitled to fly onboard the aircraft, provided they possessed the necessary documentation.

However, this situation, as outlined by Ben Baldanza (former CEO of Spirit Airlines) in December 2020 in an article published in Forbes, resulted in the misuse of pets as emotional support animals by passengers. Notable incidents occurred, such as a passenger on United Airlines claiming their peacock was an emotional support animal, and another passenger on American Airlines attempting to fly with their pony in the cabin using a similarly absurd rationale.

These episodes, alongside numerous others documented in the press involving the transportation of monkeys, snakes, or untrained dogs and cats as emotional support animals, prompted a revision of US regulations, as the original aim of ensuring the safe transport of such animals was compromised.

This amendment, implemented in December 2020, invalidated the qualification of emotional support animals as service animals, effectively making it difficult, if not prohibiting for individuals with emotional situations where their animals provide support from flying with them. In other words, the American legislator was forced to return to the previous situation to prevent the abusive and irrational misuse –and the industry that emerged to support it within the medical community– of the concept of emotional support animal by passengers.



### THE CHALLENGE FOR THE EUROPEAN LEGISLATOR REGARDING THE TRANSPORT OF EMOTIONAL SUPPORT ANIMALS

As we have seen, at European –and even global– level, there is no specific regulation that adequately addresses the necessity of traveling with animals that, while not classified as service animals, do serve an emotional support function for their owners. As we mentioned above, these emotional support animals –generally dogs– have been medically proven to enhance the mental and emotional well-being of their owners, particularly in cases of disability (such as autism, Down's syndrome, etc.), depression, post-traumatic stress, or other psychological or psychiatric conditions affecting passengers.

In an era where air travel is increasingly common and efforts to ensure inclusivity and respect for individuals with disabilities (or individuals with special abilities, a term gaining preference despite its legal ambiguity) are expanding, it becomes increasingly imperative for the European legislator to address the regulatory requirements for this type of situations. However, to do so effectively, lessons must be learned from the unintentional mistakes made by American legislators and preemptive measures taken to prevent passenger abuses. The definition established should encompass the maximum number of people and situations necessitating emotional support, while ensuring the security and comfort of all passengers onboard.

This regulation must also uphold the rights of other passengers who, having purchased their tickets, have the right to fully enjoy their flights, without being disturbed by unpleasant smells, noises, or concerns regarding animal presence.

This is particularly sensitive concerning allergies that some people have to certain species, as exemplified by incidents like the 2018 case on Alaska Airlines flight 153, where a passenger was forced to disembark due to a severe feline allergy or the case that occurred

<sup>5</sup> The Agency hereby identifies the following accredited training organizations: International Guide Dog Federation (IGDF) or Assistance Dogs International (ADI) or the guide dog user credential issued by the Spanish National Organization for the Blind (ONCE). For additional information, kindly consult the details provided on the [Agency's website](#).

<sup>6</sup> For further details on the requirements for the carriage of animals in the cabin and the exceptions provided for by each of the airlines mentioned, please refer to the general conditions of carriage published by the airlines.

<sup>7</sup> For better reference, please be referred to the announcement made by Air Europa on its [social networks](#).

<sup>8</sup> This act defined service animals, like Spanish legislation, as "a dog that has been individually trained to do work or perform tasks for a person with a disability" and required airlines to transport these animals at no additional charge.

a year earlier in which a Southwest Airlines flight was forced to evict a passenger who reported suffering from a "deadly allergy" to the animals on board.

The regulation of this issue also brings forth additional considerations regarding operational safety, logistical challenges, and the collaboration of medical professionals who must prescribe the need for specific passengers to travel with emotional support animals, with animal welfare remaining a priority. In light of this, to ensure that the abuse of this situation by passengers does not occur again, we believe it could be advisable to establish a liability framework for passengers and medical practitioners who, by aligning with their clients, may indiscriminately issue various certificates without considering the societal impact of their actions.

Finally, it is worth asking whether, by leveraging the regulation of emotional support animals, a specific legal framework could also be provided for the transportation of companion animals that harmonizes transportation rules among European operators. Such a framework would mean that pet transportation would no longer depend on the various conditions and rules imposed separately by each airline. As we saw earlier, this would result in a more harmonized and homogeneous legal environment.

### CONCLUSIONS

In summary, the air transport of companion and emotional support animals presents complex challenges that require clear and specific regulation. The lack of such has resulted in abuses and operational difficulties, compromising both the welfare of the animals and the overall flight experience for passengers. It is therefore imperative that the European legislator enacts comprehensive regulations that effectively address these issues, ensuring safe, inclusive and respectful air transport for both animals and passengers with special needs.

These regulations must carefully consider the needs of these people and ensure the safety and welfare of all parties involved. This includes establishing clear criteria for the classification and transport of emotional support animals, as well as addressing concerns regarding safety and the rights of all passengers. Ultimately, robust regulation in this area will enhance the travel experience and promote more inclusive and harmonious air transport across the European Union.



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