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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air
– Draft Statement of the Council's reasons

I. INTRODUCTION

1. The Commission adopted its proposal¹ for the revision of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 in March 2013.
2. The European Economic and Social Committee adopted an opinion on 11 July 2013. The Committee of the Regions decided not to issue an opinion.
3. The European Parliament completed its first reading in February 2014.²
4. The Council adopted its position at first reading on [XXX].

II. OBJECTIVE

5. The objectives of the proposal are to ensure that air carriers provide a high level of protection for air passengers during travel disruptions, whilst ensuring the right balance between the long-term interests of both passengers and the industry.

¹ ST 7615/13

² ST 5941/14

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

6. The European Parliament adopted 168 amendments to the Commission proposal. Many are broadly acceptable to the Council and the Council has therefore included them in its position at first reading wholly, partly or in principle.
7. The Council did not accept the other amendments among other things because their added value was unclear or because they were not consistent with other parts of its position at first reading, or because they are not compatible with other EU legislation or have become redundant due to subsequent legislative proposals.
8. The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's position. Section D below describes the principal changes of substance. Moreover, significant rulings by the Court of Justice since 2013 have been reflected and certain provisions have been further specified in light of those rulings and experience gained in the application of the Regulations. Furthermore, to ensure consistency with the Commission proposals on enforcement and multimodal journeys, the Council's position aligns deadlines and terminology to the maximum possible extent with the General Approaches agreed by the Council in December 2024 on those proposals. Finally, there are drafting changes to clarify the text and to ensure the overall coherence of the proposed Regulations.

B. EP amendments included in the Council's position at first reading

9. The Council's position at first reading incorporates the following amendments, either fully or partly, or text with the same or partly the same objective: 38, 39, 174/REV, 52, 57, 64, 66, 70, 71, 77, 78, 82, 86, 90, 92, 94, 97, 107, 108, 109, 111, 126, 128, 141, 151, 150, 158, 162, 163, 164.

10. However:

- The airport contingency plans are defined in Article 10a and are mandatory for Union airports whose annual traffic is above 5 million passengers with a possibility for Member States to opt-in their airports below that threshold; those reports are sent to the National Enforcement bodies upon their request only.
- Compensation amounts are to be updated under the ordinary legislative procedure on the basis of a proposal by the Commission.
- If the passenger self-reroutes, the reimbursement of costs may amount up to 400% of the full cost of the ticket.
- The requirements in terms of passengers' information in case of disruption have been specified further and added under Articles 4, 5 and 6 to increase the clarity of the Regulation.
- All information provided to passengers under Regulation 261/2004 shall be in accessible format.
- The deadlines set under Article 16a in the Council's position are more favourable to passengers.
- Whereas the European Parliament provides for the adoption of delegated acts, the Council considers it is more appropriate, given the political importance, that the list of extraordinary circumstances is to be updated by both co-legislators under the ordinary legislative procedure on the basis of a proposal by the Commission.
- The principle of freedom of pricing under Regulation (EC) 1008/2008 should be upheld.

C. EP Amendments not included in the Council's position at first reading

11. The following amendments were not acceptable for the Council: 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 58, 59, 60, 61, 63, 65, 67, 68, 69, 72, 73, 74, 75, 76, 79, 80, 81, 83, 84, 85, 87, 88, 89, 91, 93, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 110, 113, 112, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148, 149, 152, 153, 154, 155, 156, 157, 160, 161, 165, 166, 167, 168, 169.
12. They were not acceptable for the following reasons.

Interplay with other pieces of EU legislation and principles of law

- Amendment 40 and amendment 56 are not consistent with Directive (EU) 2015/2302.
- Amendments 42 and 55 are redundant in the light of the Commission proposal on passenger rights in the context of multimodal journeys.
- Amendment 47, 48, 102, 114, 115 and 117 are redundant in the light of the Commission proposal on enforcement of passenger rights.
- Amendment 96 is not in accordance in the light of limits defined under Directive (EU) 2015/2302.
- Amendment 69 defines obligations in case of an air carrier's insolvency which would be better addressed in the context of the revision of the Regulation (EC) 1008/2008.
- Amendment 101 contradicts the obligation of airport managing bodies under Article 7 of Regulation (EC) 1107/2006.
- Amendment 104 is inconsistent with civil law and principles of commercial contracts.
- Amendments 116 and 156 are out of the scope of Regulation (EC) 261/2004 and interfere with other pieces of EU legislation.
- Amendments 119, 120, 121, 122, 129, 130, 131, 132 and 135 interfere with the principle of procedural autonomy of Member States.

- Amendment 145 deviates from the Montreal Convention.
- Amendment 147 contradicts the obligations set under Regulation (EC) 1107/2006.

Limited added value

- Amendment 93, 112 and 127 are no longer up to date.
- Amendments 59, 134, 161, 165, 166, 167 and 168 could, in the Council's view, create legal confusion.
- Amendments 41, 136, 137, 138, 139, 140, 142, 143, 146, 149, 152, 155, 159 would not, in the Council's view, provide added value.

Divergence from case law

- Amendments 43 and 61 consider the change of schedule as denied boarding which the Council assessed as inappropriate.
- Amendment 73 seeks to define a right to reimbursement and rerouting in case of rescheduling by more than three hours before the initial departure time, but the principle of equal treatment requires that the time-threshold in case of reimbursement, rerouting and compensation be aligned.
- The Council's position is that a diverted flight is to be considered as a cancellation under certain conditions which diverge from the conditions proposed in Amendments 44 and 51.

Commission proposal more suitable

- Extraordinary circumstances cannot by their nature be foreseen. The list of extraordinary circumstances should remain non-exhaustive in line with the proposal of the Commission and contrary to Amendments 45 and 160.
- Rights should be limited to connecting flights under a single air transport contract in accordance with the case law and the Commission proposal, contrary to Amendment 46.
- The flight price is calculated in accordance with the Commission proposal, contrary to Amendment 49.

- Amendment 58 deletes immediate assistance and compensation without a request as proposed by the Commission and undermines passengers’ rights.
- Compared to the Commission proposal, the amendment 98 increases the complexity of the options being offered to the passengers and creates legal confusion about the extent of the expenses that could be covered.
- Under the amendment 100, the notification covers all journeys under a same ticket, whereas the Council considers the notification covers all journeys under a same contract, as proposed by the Commission.

Different approach followed by the Council

- Amendments 50, 63, 72, 74, 76, 79, 81, 83, 84, 85, 87, 88, 99, 105 are not consistent with changes that the Council has introduced, the key elements of which are set out in section D below.
- The obligation for the passengers to present themselves for boarding only applies in case of denied boarding unless passengers were informed in advance, by contrast with amendment 53 which applies that obligation to all disruptions.
- Amendment 54 excludes children under the age of two for whom no separate seat has been booked from the scope of the Regulation on air passenger rights which could cause significant issues for rerouting and assistance of passengers.
- Amendment 60 extends the possibility of correction to several spelling mistakes and amendment 169 limits the possibility for air carriers to deny boarding to a passenger with invalid documentation. Those amendments could have significant legal and operational implications for air carriers.
- Amendments 65 and 75 limit the possibility to invoke extraordinary circumstances to two flights in the rotation sequence whereas the Council position limits that possibility to three flights in the rotation.
- Amendment 103 is inconsistent with the Council’s approach and the current state of the law which excludes double compensation.
- Amendments 80 and 118 are not aligned with the scope of Regulation (EC) 261/2004.

- Amendment 124 is not consistent with the approach followed by the Council on Out-of-Court dispute resolution mechanisms.

Undue burden

- Amendments 67, 68, 106, 110 and 144 impose disproportionate obligations on Airport managing bodies and air carriers.
- The application of the provisions regarding connecting flights to other modes of transport used for rerouting provided for by Amendment 89 generates operational difficulties.
- Amendment 91, 152, 153, 154 and 157 introduce a disproportionate burden on the air carrier and could generate serious operational difficulties.
- The introduction of amendment 95 would require an impact assessment.
- Amendment 113 imposes disproportionate costs for air carriers.
- Amendments 123 and 148 would place an undue administrative burden on National Enforcement Bodies.
- Amendment 125 would place an undue and disproportionate administrative burden on air carriers and National Enforcement Bodies.

D. Other changes included in the Council's position at first reading

13. The changes of substance compared to the Commission's initial proposal concern principally the rules on compensation:
 - Passengers who are informed of the cancellation of their flight less than 14 days before departure are now entitled to compensation in most instances. To that end, air carriers have to provide passengers on cancelled flights with a pre-filled form to request the compensation.

- The same distances thresholds are applied for the calculation of the delay and of the amount for compensation: (1) for intra-Union journeys and journeys below 3500 km and (2) for journeys above 3500 km. These thresholds reflect differences in operational constraints, passenger experiences and competition conditions and ensures equal treatment of passengers on journeys within the Union.
- The Council ‘s position sets the time thresholds for compensation at 4 and 6 hours of delay whereas the Commission proposed three thresholds of 5/9/12 hours depending on the distance.
- The amount of compensation on intra-EU flights or flights below 3500 km was slightly increased to counterbalance the increase of one hour in the time threshold for delay. The amount of compensation on flights above 3500 km was slightly decreased in order to reduce competition distortions stemming from international competition on long haul flights.
- Air carriers may not reach a voluntary agreement with the passenger that replaces the compensation in any other instance than that of denied boarding.
- Within 3 years of the application of Regulation (EC) 261/2004 in the version that will result from the present legislative amendment, the Commission is mandated to assess the need to adjust the thresholds for compensation on the basis of statistics regarding the evolution of cancellations and delays from five preceding years and every year since the date of application of this Regulation.
- A passenger has up to 6 months from the date of disruption to submit a request or a complaint to the air carrier. A deadline of 14 days from the submission of the request is introduced for the air carrier to pay the compensation or to provide a substantiated reply to the passenger.

14. Other changes of substance are summarised below:

- Obligations of air carriers and intermediaries in terms of pre-contractual information and information in case of disruption have been strengthened.
- Where, in case of disruption, a passenger requests the reimbursement of its flight, such reimbursement is automatic.

- Rerouting rules have been significantly improved. An air carrier must provide passengers with alternatives to its own services (e.g. services by another air carrier or another transport mode) so that passengers arrive at the earliest possible opportunity. If the air carrier does not offer rerouting within 3 hours after the passenger confirmed its choice to be rerouted, the passenger can make his or her own arrangements.
- Rules on assistance to passengers have also been clarified and strengthened. The rights to refreshments, food, accommodation are detailed. Should the air carrier not fulfil its assistance obligations, the passengers have the right to make their own arrangements and be reimbursed by the air carrier within 14 days.
- In alignment with the Package travel Directive, in case of extraordinary circumstances, an air carrier may limit the accommodation provided to 3 nights, without a cap on hotel price. The limitation on the number of nights does not apply to persons with specific needs.
- In case of tarmac delay, defined from the opening and the closing of the doors, passengers are entitled to minimum assistance and must be disembarked after 3 hours.
- The rights of passengers with specific needs, such as persons with reduced mobility and persons with disabilities, but also pregnant women, children and persons with specific medical needs, are significantly strengthened. Denying boarding to persons with specific needs is prohibited. The possibility to be accompanied by recognised assistance dogs is introduced and persons with specific needs may be seated together with persons accompanying them. In case of damage, loss, destruction of mobility equipment or injury or death of recognised assistance dogs, the air carrier must provide temporary replacement or an alternative replacement solution.
- With a view to improving the level playing field between Union and third country air carriers, the Commission is mandated to assess, within 3 years of the application of Regulation (EC) 261/2004, the feasibility of an extension of scope of the Regulation to passengers arriving from third countries on flights operated by third country air carriers, and to recommend possible ways forward to solve conflicts of jurisdiction and enforcement issues.

- The Council has clarified the dimensions of the personal item constituting an essential element of the passengers' journeys that they can bring with them in the cabin at no extra-cost.

IV. CONCLUSION

The Council believes that its position at first reading represents a balanced text taking into account all the various interests involved. It looks forward to constructive discussions with the European Parliament at second reading with a view to the adoption of the Regulation.
