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From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 6102/2/25 REV 2

Subject: Proposal for a regulation 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

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- Compromise proposed by the Polish Presidency for Annex I
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In view of the Working Party on Aviation of 8 May 2025, delegations will find, in Annex, a revised compromise proposed by the Presidency on Annex I.

Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~.

Delegations are requested to send their comments, if any, in writing to

avia-mar@consilium.europa.eu by 9 May 2025.

Annex 1

'Annex: non-exhaustive list of circumstances considered as extraordinary circumstances for the purposes of this Regulation

1. The following circumstances shall be considered as extraordinary:
 - (a) ~~extraordinary~~ circumstances not connected with the operation of the aircraft, such as:
 - i. ~~major~~ natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
 - ii. ~~extreme~~ meteorological conditions **and damage to the aircraft linked to meteorological events incompatible with which are deemed to affect** the safe operation of the flight ~~or resulting in capacity restrictions at the airport of departure or of arrival~~ **(such as: lightning strikes, hailstones, thunderstorms, severe turbulence, strong wind, etc.)**;
 - iii. war or insurrection **which are deemed to affect the safe operation of the flight**;
 - iv. ~~serious~~ cross-border threats to health falling within the scope of Articles 2(1) or 2(4) of Regulation (EU) 2022/2371 which are deemed to affect the safe operation of the flight;
 - v. bird strikes or obstacle collision **which are deemed to affect the safe operation of the flight** ~~with the aircraft during a flight which may cause damage that requires immediate compulsory checks and possible repair~~;
 - (b) fault on the part of a passenger, including:
 - i. disruptive passenger behaviour ~~endangering~~ **which are deemed to affect** the safe operation of the flight **or delaying the flight departure**;
 - ii. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or

deviation of the flight;

(c) the behaviour of a third party ~~which the operating air carrier, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent, such as:~~

i. security risks, damages caused by acts of sabotage or terrorism, or unlawful acts, ~~incompatible with~~ **which are deemed to affect** the safe operation of the flight;

ii. ~~a hidden manufacturing~~ **or design** defect revealed, by the manufacturer or a competent authority and which **are deemed to affect the safe operation of the** ~~impinges on flight safety;~~

iii. air traffic management restrictions or closure of airspace;

iv. partial or full unscheduled closure of an airport, including a general airport system failure, or the activation of the contingency plan by the airport managing authority;

v. labour disputes at essential service providers such as airport managing body, Air Navigation Service Providers, groundhandling service providers, or, ~~in relation to demands which only the public authorities can satisfy, at the operating air carrier;~~

vi. ~~the unexpected~~ **staff** absence of a pilot due to illness or death, **at essential service providers such as airport managing body, Air Navigation Service Providers, groundhandling service providers, or,** when it occurs outside the air carrier's base, of a **crew member essential to the operation of the flight**;

vii. damage to the aircraft caused by third parties, for whom the air carrier, ~~in the absence of contractual relations,~~ is not responsible, on the ground prior to departure of the flight and **and which is deemed to affect the safe operation of the flight** ~~requiring immediate assessment or repair.~~

viii. ~~damage to the aircraft which~~ **is deemed to** ~~could affect the safety operation~~ of the flight or the integrity of the aircraft and requires immediate

~~assessment and/or repair and is caused by meteorological events (for example: lightning strikes, hailstones, thunderstorms, severe turbulence, **strong wind**, etc.).~~

~~ix. a collision between the elevator of an aircraft in a parking position and the winglet of an aircraft of another airline;~~

~~×viii. damage to an aircraft tyre caused by a foreign object **and which is deemed to affect the safe operation of the flight**, provided that the air carrier deployed all its resources in terms of staff or equipment and the financial means at its disposal to avoid the damage;~~

~~ixi. **contaminated** petrol on the a runway of an airport **which is deemed to affect the safe operation of the flight**;~~

~~xii. unexpected flight safety shortcomings that could not have been identified in the context of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft; **and**~~

~~**xi after departure, health risks or medical emergencies (such as serious illness) of a crew member necessitating the interruption or deviation of the flight.**~~

2. The following non exhaustive list of circumstances shall not be considered as extraordinary:

- i. technical problems that could have been identified in the context of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft;
 - ii. ~~de-icing delays, aircraft change,~~ operational decisions, late crew / check-in / boarding procedures; and
 - iii. unavailability of flight crew or cabin crew (unless caused by labour disputes covered under 1(c)v or **unexpected absences due to illness or death covered under 1(c)vi**). '
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