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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for 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 – Preparation for the trilogue

I. INTRODUCTION

1. The Commission adopted its proposal for a revision of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 (hereinafter "the 2013 proposal") in March 2013.[1]

2. The European Parliament completed its first reading on the 2013 proposal in February 2014.[2] On 5 December 2024, the Committee on Transport and Tourism ("TRAN Committee") of the EP appointed a new rapporteur (Andrey Novakov, EPP, Bulgaria).

3. The Council adopted its position on the 2013 proposal at first reading on 29 September 2025.[3]

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1 ST 7615/13
2 5941/14
3 10015/25

4. On 21 January 2026, the European Parliament adopted 243 amendments to the Council's first reading position.

5. On 24 March 2026, the Council did not approve the European Parliament's amendments to the Council's first reading position. Consequently, the Conciliation Committee was convened on 20 April 2026.

6. As the European Parliament considers that, in view of the importance and complexity of the file, additional time is necessary to allow the Conciliation Committee to conclude its work, it has therefore taken the initiative on 27 April 2026 to extend by two weeks the period provided for in Article 294(10) TFEU in accordance with Article 294(14).

7. At the latest on 15 June 2026, the Conciliation Committee may approve a joint text agreed by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament.

II. NEGOTIATIONS WITH THE EUROPEAN PARLIAMENT

8. A first trilogue was held on 15 October 2025. The second, third and fourth trilogues took place on 19 November 2025, 1 December 2025, 23 March 2026 and 20 April 2026, respectively, and allowed for a provisional political agreement on a number of provisions. Those provisions as well as the lines where the European Parliament did not amend the Council position and which have not then been subject to change are highlighted in green in the three-column table contained in 8866/25 ADD1.

9. Since then, five interinstitutional technical meetings have taken place. The trilogue will aim to confirm agreement on some texts tentatively agreed at the technical level set out in detail and labelled as "To be greened at trilogue" in the third column of the table contained in ADD1

10. The trilogue will aim to pave the ground for the next meeting of the conciliation committee scheduled on 2 June 2026, where an agreement on a joint text will be sought.

11. Open political lines for discussion at the trilogue are highlighted in yellow and red in the third column of the table contained in 7968/25 ADD1.

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12. A number of provisions labelled as "Enforcement" are in relation to the enforcement of Regulation 261/2004, and which the Presidency considers would best be negotiated in the context of the interinstitutional negotiations on the enforcement file.

III. PREPARATION FOR THE TRILOGUE

13. The Presidency is seeking a mandate for the trilogue, building on the mandate provided for the 23 March and 20 April trilogues, and bearing in mind the mandate given by the Ministers in June at the Transport Council to achieve a clear and balanced Regulation and to meet the passengers' main wish, which is to reach their final destination without further delays.

14. The Presidency has also conducted in-depth discussions with all delegations and has taken careful note of the objectives and concerns raised therein.

15. Against this background, the Presidency is fully committed to reflect the Ministers' intentions, as recalled during discussions:

- Air Passenger Rights should be simple, enforceable, and balanced, ensuring high passenger protection while maintaining reasonable operational costs for airlines.
- Passengers should benefit from seamless processes to exercise their rights and should not have to resort to intermediaries for assistance, which can ultimately reduce compensation the passengers receive.
- Connectivity should be preserved and a level playing field for the aviation sector within the Union's internal market should be ensured.
- Competitiveness of Union air carriers against third-country carriers should be improved.

16. The Presidency will confirm the Council's aim of reaching a political agreement with the European Parliament, provided each of those specific objectives are met. To that extent, the Presidency will continue to seek the assistance of the European Commission to provide the necessary data and modelling expertise.

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Time thresholds, amounts for compensation and pre-filled forms

17. On time thresholds and amounts for compensation, and pre-filled forms, the interinstitutional negotiations have confirmed that the three topics need to be addressed together.

18. Since the opening of the interinstitutional negotiations, the European Parliament has reiterated its red line on a three-hour threshold for all passengers. The European Parliament has also expressed its willingness to significantly facilitate the passengers' process for requesting compensation through the systematic use of pre-filled forms.

19. With the objective of fostering the interinstitutional negotiations together with the need to rely on a data-driven approach, the Commission developed a calculation tool which estimates the financial costs of different policy options for delay compensations. The Commission notably presented on 23 April at the Aviation Working Party and to the 16th interinstitutional technical meeting held the same day, the output data for the status quo, Council's first reading and EP's second reading.

20. With the objective of providing a complete overview of the financial costs, the Presidency, based on the data presented previously by the Commission services, estimated the cancellation compensation costs.

21. The European Parliament's requests to maintain a three-hour threshold for all passengers and to apply pre-filled forms to both delays and cancellations could be considered, provided that other parameters of the triangle are modified.

22. The Presidency also recognises the different situations passengers are in, and the different operational constraints air carriers face and therefore the necessity to maintain, as per current Regulation 261/2004, amounts for compensation depending on the distance of the journeys. Such distinction enables to maintain lower compliance costs for the shortest air routes which ensure essential connectivity across Europe in line with the Council's third objective under point 15.

23. Finally, the Presidency also notes that current Regulation 261/2004 incentivises, in its Article 7(2), air carriers to timely reroute passengers. Following case-law, that Article currently enables air carriers to reduce compensation from €600 to €300 for delays between 3h and 4h for non-intra-EU flights of more than 3,500km.

24. Against this background, based on the hypothesis that the European Parliament maintains its lines on the time threshold and pre-filled forms, the Presidency seeks a mandate on the following (see ADD 1):

- A three-hour threshold for all passengers;
- A systematic use of pre-filled forms, for delays and cancellations;
- Unchanged amounts for cancellation compensation compared to the current regulation;
- Incentivising air carriers to ensure passengers arrive at their final destination in a timely manner, by progressively adjusting delay compensation amounts, up to a maximum equal to the cancellation compensation amounts, depending on the duration of the final delay.

25. With the aim to fully respect the objectives set out in point 15, the Presidency will raise the need to explore additional measures, such as better targeting when cancellation compensation rights arise where flights are cancelled with sufficient notice. Such measures could also encompass the issues of the direct causal link which must exist between the extraordinary circumstance and a disruption, and of the measures air carriers must take to limit the passengers' inconvenience, with the objective of further clarifying the expectations and obligations falling on air carriers and thus increasing legal certainty.

Scope

26. The Presidency suggests maintaining Council text as regards scope. The extension of the scope to all journeys arriving to the Union, requested by the Parliament, is not acceptable by the Council. The current geopolitical context is certainly not favourable, and the Commission should provide a complete analysis of implications as regards enforcement and conflict of jurisdictions before considering such an extension.

27. The Presidency suggests standing firm on the principle of the liability of the operating air carrier.

28. The Presidency also noted the European Parliament's opening as regard the establishment of an EU Air Passenger Rights Label. The Presidency intends to show openness towards such proposal, provided compliance costs for air carriers and intermediaries, as well as additional tasks for National Enforcement Bodies remain strictly limited.

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29. To that extent, the Presidency seeks a mandate on the establishment of an EU Air Passenger Rights label, for both air carriers and intermediaries, the use of which would be limited to tickets falling under the scope of Regulation 261/2004.

30. The Presidency intends to exercise the mandate granted by delegations under the condition that the European Parliament agrees on the scope of Regulation 261/2004 as per the mandate outlined in points 26 and 27.

Extraordinary circumstances

31. During the 23 March 2026 trilogue, the European Parliament indicated that it had received a revised mandate on the issue of extraordinary circumstances, including a non-exhaustive list of extraordinary circumstances together with empowering the Commission to complement the list by delegated acts.

32. Ahead of the trilogue of 20 April 2026, the Presidency requested and was granted flexibility on complementing the list through delegated acts, provided it is made clear that the Commission can only add new instances to the list.

33. As regards the content of the list of extraordinary circumstances, the Presidency will keep the list as close as possible to the Council's first reading, as per ADD 1 in line with the jurisprudence of the Court of Justice of the European Union.

34. In view of reaching a compromise with Parliament, the Presidency also intends to ensure that the wording in ADD 1 (row 180a) introducing the list of extraordinary circumstances as set out in the Annex remains in essence the same as per the Council's first reading

Cancellation and delay regimes

35. The Court of Justice held, in joined Cases C-402/07 and C-432/07 ('Sturgeon')[4], that passengers whose flights are delayed and passengers whose flights are cancelled cannot be treated differently without the principle of equal treatment being infringed.

36. The Presidency will remain firm on maintaining the alignment of the cancellation and delay regimes, as per the Council's first reading position.

[4] ECLI:EU:C:2009:716

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37. The Presidency will also remain firm on maintaining the principle that rights to compensation only arise, in case of delays or rerouting at the earliest opportunity, on the basis of the actual delay at arrival at the final destination. The Presidency will thus reject a broad interpretation and inclusion of the concept of 'loss of time', as per the European Parliament's amendments, seen as intricate and detrimental to legal certainty.

38. The Presidency intends to express limited openness to providing compensation rights where passengers voluntarily take a flight brought forward by more than an hour. From the work at technical level, it has become clear that further steps remain necessary to find common ground with the European Parliament. The Presidency therefore seeks a mandate to open compensation rights to those passengers whose flight is brought forward by more than three hours.

39. If that were necessary for reaching an agreement, and under the strict principle of reciprocity, the Presidency seeks additional flexibility to open compensation rights to passengers referred to in point 38 where the rerouting flight departs more than one hour before the originally scheduled time of departure of the cancelled flight. Such opening would be conditional on the deletion of Article 6(3) of the Council's first reading (row 163 in ADD 1).

No-show policy

40. The Presidency assesses that discussions held with the European Parliament previously, had already enabled the co-legislators to identify the final agreeable landing zone on the issue of no-show, before the trilogue held on 20 April 2026.The European Parliament was nevertheless not in a position to express its agreement during that trilogue. The Presidency therefore seeks an equivalent mandate as the one outlined in points 37 and 38 in ST 7968/1/26 REV 1.

Check-in and boarding pass format

41. On the issue of check-in at airport and boarding pass format, the Presidency acknowledges those topics largely fall outside the scope of the regulation as they affect the Union internal market for air services, tackled in Regulation 1008/2008[5] ('Air Services Regulation').

[5] OJ L 293, 31.10.2008, pp. 3–20

42. Whilst the European Parliament insists on regulating the matter under Regulation 261/2004, the European Commission clearly expressed its opposition to widening the scope particularly for check-in.

43. Against this background, the Presidency therefore suggests remaining firm on the issue of check-in. The Presidency also seeks a mandate to enable passengers to use boarding passes in a format of their choice where possible, at no extra costs, provided those boarding passes meet necessary operational requirements.

44. The Presidency seeks additional flexibility towards making it mandatory for air carriers to provide passengers who have already checked-in, with a paper boarding pass at airports, upon request and at no extra-costs.

45. The Presidency intends to exercise the mandate and/or flexibility granted by delegations under the condition an overall agreement is found with the European Parliament on both the issues of check-in and boarding pass.

Hand baggage

46. In the context of the ongoing revision of the Air Services Regulation, the Commission is currently assessing the systematic inclusion, in the basic air fare, of the possibility to carry, as unchecked baggage, a standardised hand baggage. In light of this, the Presidency is therefore suggesting remaining firm on the Council's first reading, namely refusing regulating standardisation and pricing of hand baggage in this Regulation.

47. Should the European Parliament insist on addressing together the issues of the personal item and of the systematic inclusion, in the basic air fare, of the possibility to carry, as unchecked baggage, a standardised hand baggage, the Presidency will insist on dealing with the two issues in the context of the ongoing revision of the Air Services Regulation.

48. Additionally, the Presidency will show openness into exploring the European Parliament's new proposal to enhance transparency and easy comparison of air fares, provided that this does not impinge upon air carriers' freedom of pricing. The Presidency will remain cautious on the interplay with the Air Services Regulation and its upcoming revision.

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Role of National Enforcement Bodies

49. With a view to limiting low-value administrative tasks, the Presidency suggests remaining firm on the Council's first reading position as regard the designation of National Enforcement Bodies for Regulation 2027/97.

IV. CONCLUSIONS

50. The Presidency seeks the flexibilities listed in point III in order to make progress in the interinstitutional negotiations. Any openness from the Presidency towards the European Parliament will be on the understanding that the Council's flexibility needs to be reciprocated by the European Parliament and situated in the overall context of reaching a balanced compromise.

51. The Permanent Representatives Committee is invited to provide the Presidency with a mandate for the trilogue planned for 19 May 2026, based on the main issues outlined in point III above and the three-column document in ADD 1.

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