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From:	General Secretariat of the Council
To:	Working Party on Aviation
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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 - Technical input from the Commission in response to Hungary's request during the Council's discussions at the TTE on 5 June 2025

Following the Working Party on Aviation of 11 September 2025, delegations will find, in Annex, a non-paper from the Commission on the above-mentioned subject.

Non-paper

The Commission is providing this technical input in response to Hungary's request during the Council's discussions at the TTE on 5 June 2025.[1] The request concerns the Commission's proposal to amend 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 ("the 2013 proposal").[2]

In its 2013 proposal, the Commission put forward a revision of the compensation thresholds—from 3 hours to 5, 9, and 12 hours depending on flight length to avoid unnecessary cancellations (since the available evidence indicates that, due to operational reasons, the 3-hour limit may incentivise airlines to cancel rather than face delays). The 2013 proposal aimed to create a fairer financial balance for airlines, without eroding passenger rights and aligning with their preferences. The Council's political compromise on the first reading position proposes to increase the threshold from 3 hours to 4 and 6 hours (for flights under 3500 and over 3500 km respectively).

1. Passenger priorities during air journey disruptions

The Commission's 2020 study on the level of protection of air passenger rights in the EU indicates that passengers' priorities remain unchanged since Regulation (EC) No 261/2004 entered into force. By order of priority, the Commission's analysis shows that these priorities are: first, the provision of care and assistance in the event of travel disruption; second, re-routing so that passengers may arrive to their destination as soon as possible; and finally, receiving reimbursement and/or compensation.[3]

The European Court of Auditors came to similar conclusions in its Special Report on passenger rights:[4] The most common response to the question, which passenger right was the most important, was the "right to receive alternative transport in the event of long

[1] https://video.consilium.europa.eu/event/en/27975 *"(…) we can support going forward by saying that we would like the Commission to prepare an analysis which is much more detailed than the one from two days back* [WK WK7313/2025 INIT]*, a report that could have information from the industry and also what the impact would be on the travellers, also I would like to underline that Hungary would only be able to support this proposal based on such information and going forward as well".* TTE Council, Hungary's intervention. Public session (afternoon). 5 June 2025.

[2] COM/2013/0130 final – 2013/0072 COD of 13 March 2013.

[3] Study on the current level of protection of air passenger rights in the EU, 2020, p. vii; point 3.125 p. 84; 2023 Impact Assessment Report SWD (2023) 386 final accompanying the documents *Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union* and *Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys*, 2023, p. 132.

[4] Special report no 30/2018: EU passenger rights are comprehensive, but passengers still need to fight for them, point 40, p. 21-22

delays, cancellations or denied boarding" with 65% of people putting it as their first choice in the open survey, and 42% of people in the statistical survey, of 10 350 randomly chosen citizens from the 10 Member States visited during the audit. Second was in the statistical survey the "right to compensation in the event of long delays, cancellations or denied boarding," with 40 %, and third in the statistical survey the right to assistance with 36 %.

For the European Passengers' Federation, the top priorities in this regard are 1) journey continuation guarantee, 2) practical information, advice and support, and 3) straightforward and appropriate compensation.[5] There is indication that in most circumstances, passengers would prefer a delay over a flight cancellation. Given these preferences, it is examined how compensation thresholds may influence airline decisions when faced with delays and cancellations.

2. Data on delays and cancellations

Table 1 – Change in cancellations and delays (source: Council's Working Document WK7313/2025 INIT)

	Change	Change
Change in delays > 3 hrs (% of flights)	+86% (since 2004)	+36% (since 2019)
Change in cancellations (% of flights)	+32% (since 2014)	+25% (since 2019)

3. Causes for delays and cancellations

European aviation classifies all-causes **delays** (or the passenger experience of delay based on the flight schedule) and operational cancellations through EUROCONTROL's CODA (Central Office for Delay Analysis) based on the IATA delay codes. This provides robust oversight of flight disruptions.

Delays in Europe are rarely caused by a single issue. Weather, technical faults, crew shortages and air traffic congestion play a role, but it is the knock-on effect that hits hardest. Just one late flight can set off a chain reaction, with reactionary delays now making up around 40% of all delay minutes. Minor setbacks quickly spiral, impacting aircraft, crews, and gates across the network. Based on the data provided by Eurocontrol, average reactionary departure delay (mins/flight) has increased from 4.7 mins/flight (2009) to 8.0 mins/flight or above in the period 2022-2024. Please refer to Annex 1 for latest data on all-causes delays from July 2025.

For the purpose of the 2013 proposal and its underlying impact assessment, CODA has segmented delays into five broad causes to indicate which of them can be attributed to

[5] Better protection for passengers and their rights, EPF position, 2023. Better-protection-EPF-position-final.pdf

the airline and can engage its liability under Regulation (EC) No 261/2004: (i) reactionary delay; (ii) airline delay; (iii) ATFM delay; (iv) weather delay; (v) other delay. Based on the Commission's 2020 study, and information provided by airlines and reconfirmed by the Commission with EUROCONTROL, approximately 45% of primary delay (departure delays excluding reactionary / knock-on delays) could be assumed to be attributable to airlines[6]; or 65-75% of overall departure delays that could be assumed to be attributable to airlines under Regulation (EC) No 261/2004, with all reactionary and airline delays that could be assumed to be attributable up to 100% to airlines for the years 2011 till present.[7] It needs to be noted that the airline's liability under Regulation (EC) No 261/2004 is to be decided on a case-by-case basis taking due account of the jurisprudence of the Court of Justice of the European Union. [8] EUROCONTROL confirmed that for delays over 3 hours, the difference between departure and arrival delays are not significant as the impact of airline mitigation measures (e.g. schedule buffering or increasing cruising speed) weakens.

With regard to **cancellations**, and based on the data provided to the Commission by EUROCONTROL, the main reasons for operational cancellations[9] in the period 2019-2024, have been (please refer to Annex 2 for further information and detailed breakdown, including on which operational cancellations could also be related to ATC (air traffic control)):

- **Aircraft rotation operational cancellations (ROTA)** – an aircraft rotation describes the sequence of flights operated by the same aircraft throughout the day. Airlines schedule aircraft to fly multiple routes consecutively to maximise fleet utilisation and efficiency – for example, an aircraft may fly Budapest-Warsaw-Rome-Brussels before returning to its base. However, when an aircraft arrives late from its previous flight, it creates a **reactionary delay** that can cascade through

[6] For primary delays (i.e. all delays except for reactionary delays) – EUROCONTROL confirms that in July-2025, around 51% of such delays are caused by ATFM regulation delay. Of these, ATFM Weather (weather at airport) accounting for 3%, ATFM Airport (non-Weather) for 11%, and ATFM En-Route (incl. weather which made up 30% of En-Route regulation delays) for 37%. Based on EUROCONTROL data, Airlines (ground and passenger handling, aircraft technical, etc.) caused 36% of primary delay minutes. Please refer to Annex 1 for detailed breakdown on Primary Delay causes.

[7] Study on the current level of protection of air passenger rights in the EU, 2020, points 2.44-2.45, p. 21 covering the years 2011-2018. Eurocontrol has confirmed that the share of delays attributable to airlines (primary airline delays) and knock-on delays has not changed since 2018 and represents approximately 65-75% of all-causes delays.

[8] In accordance with the jurisprudence of the Court of Justice, an event which is, by its nature or origin, outside the air carrier's actual control and is not inherent in the normal exercise of the activity of the air carrier, is to be classified as an extraordinary circumstance. The air carrier is exempted from paying compensation if it can prove that the cancellation or long delay was caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken (Article 5(3) of Regulation (EC) No 261/2004).

[9] Operational cancellations are those in which the flight received an airport slot and was confirmed by the air carrier or was contained in the daily list of flight schedules produced by the airport operator the day before of operations, but for which the actual landing or take-off never occurred (Commission Implementing Regulation (EU) No 390/2013, Annex V).

the entire rotation sequence. If the delay becomes too severe, airlines may choose to cancel the affected flight rather than risk further disruption to subsequent flights in the rotation. ROTA cancellations have accounted for approximately 17-19% of all operational cancellations in the period 2019-2024. Such cancellations could in principle engage the airline liability under Regulation (EC) No 261/2004.

- **Technical operational cancellations (TECH, OPER, CREW)** – Operational cancellations under TECH arise from aircraft malfunctions or maintenance issues that render the aircraft unairworthy, forcing airlines to ground flights for safety. OPER cancellations stem from operational choices—such as flight-plan changes, fleet repositioning—that fall within the airline's control and entitle passengers to compensation. CREW cancellations occur when pilots or cabin staff are unavailable—due to scheduling conflicts, duty-time limits, illness or last-minute roster changes—disrupting planned services and requiring rebooking or refunds. Such cancellations collectively account for approximately 20-25% of operational cancellations in the period 2019-2024. Such cancellations would in principle engage airline liability under Regulation (EC) No 261/2004.

- **Weather cancellations (WEAT)** - weather operational cancellations refer to flights cancelled due to severe weather conditions. WEAT operational cancellations have accounted for approximately 10-12% of all operational cancellations in the period 2019-2024. Such cancellations would typically not engage the airline liability under Regulation (EC) No 261/2004.

- **Commercial reasons (COMM)** – this stems from airlines' business choices—such as cutting unprofitable routes, adjusting frequencies, overbooking, slot re-allocations or network restructuring. EUROCONTROL data indicates they represent around 4–5% of all operational cancellations in the period 2019-2024. Because these decisions are within an airline's control, they do not qualify as "extraordinary circumstances" under EU Regulation 261/2004.

The industry states that delays that engage their liability under Regulation (EC) No 261/2004 (i.e. those longer than 3 hours) result predominantly (70-80%) from technical and crew-related issues.[10]

[10] A4E submission to the Danish Presidency of the Council of the EU.

4. Compensation threshold impact on airline operational decisions

The Commission's 2013 impact assessment and the 2012 support study indicate that many technical/crewing issues that lead to delays (and potentially to compensation) cannot be solved by the airline within the 3-hour compensation threshold.[11] This is particularly evident in case of issues outside the carrier's base or in case of long-haul connections where the time needed to bring a replacement plane, a spare part, or crew members to a distant location (often far outside the EU), including compliance with the underlying safety rules (e.g. crew working time limitation), may extend (well) beyond the current 3-hour threshold.

The 2020 Study on the current level of protection of air passenger rights in the EU indicates that, while airlines sometimes buy or lease spare aircraft to be deployed in case of disruption, they are generally not in the position to keep spare aircraft beyond the requirements of their network or schedule, as the cost would be financially prohibitive.[12]

The impact of reactionary delays may further compress the current 3-hour compensation threshold window during which the airline must rectify the situation without engaging its liability for compensation under Regulation (EC) No 261/2004. As presented in the Commission's 2013 impact assessment, airline schedule optimisation models show that a 3-hour threshold may increase the number of flight cancellations where airlines reduce the knock-on effects of delayed flights on the subsequent flights by cancelling one or several flights to reposition the aircraft for a next flight.[13]

In addition, according to the industry, with longer thresholds, airlines have more flexibility to rebook passengers and invest in better recovery tools, potentially offering quicker, direct and more convenient alternatives for passengers, including on busier routes. By contrast, the industry argues that the current 3-hour compensation limit pressures airlines to act fast but often forces them to cancel flights or opt for simple compensation rather than explore better re-routing options, especially when facing higher costs. Extending these thresholds, according to the industry, would encourage a more resilient, passenger-friendly approach to disruption management.

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[11] Commission's 2013 Impact Assessment SWD(2013) 62 final, accompanying the document 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 delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, p. 19; and the Exploratory study on the application and possible revision of Regulation 261/2004, 2012, p. 303.

[12] Study on the current level of protection of air passenger rights, 2020, point 4.56, p. 102.

[13] Commission's 2013 Impact Assessment SWD(2013)62 final, p. 56. For further support of this argument please see for example "Sensitivity analysis of airline optimisation (ASO) - advanced model" by Danica Pavlovic, Journal of Air Transport Studies, volume 1, issue 2, 2010 (referred to in the footnote 54 of the impact assessment).

Based on the information provided by the industry, while each operational decision is assessed by the airline on a case-by-case basis, the airline, when faced with its inability to deal with a technical/staffing/etc. issue within the period of 3 hours, thereby potentially inevitably facing compensation liability, may take a decision to cancel the operation and re-imburse or re-route passengers. The industry argues that the airline is likely to cancel the operation if the opportunity costs of maintaining it (fuel, crew, ETS charges and unavoidable compensation, etc.) exceed the cost of cancellation and compensation. The EUROCONTROL data on the reasons of delays and cancellations supports the industry's argument.

5. Data on competitiveness of EU airlines

Regulation (EC) No 261/2004 applies: (1) to all passengers departing from an airport located in the territory of a Member State to which the Treaty applies; and (2) 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 Treaties apply, if the operating air carrier of the flight concerned is a Union carrier - unless they received benefits or compensation and were given assistance in that third country.

Few third-country jurisdictions grant compensations.[14] According to the information provided by the industry, discrepancies between the EU and the rest of the world are particularly disadvantageous for EU airlines (and passengers!) on dense routes where competition is particularly strong between EU and non-EU carriers (routes to the US, China, Gulf countries).

As a consequence, Union carriers have comparatively a higher financial burden to pay compensations than carriers of third countries. In cases where EU airlines compete with non-EU airlines on routes from third countries to the EU, the 2013 impact assessment showed that they could in principle suffer a cost disadvantage against the non-EU airlines.[15] Furthermore, EU carriers can also be liable for compensation when the journey involves connecting flights, even outside the EU and operated by non-EU carriers, as long as there is a codeshare agreement.

The projected costs for airlines for the provision of passenger rights due to delays and cancellations are expected to increase in the next years, from €8.1 billion in 2019 to €9.2 billion in 2030 and €13 billion in 2050.[16] Overall, the average direct cost per passenger

[14] Study on the current level of protection of air passenger rights in the EU, 2020, point 7.27, p. 179. For example, Canada introduced rights to compensation in 2019, while in the United States such right is not established yet.

[15] 2013 Impact Assessment SWD (2013) 62 final, pp. 52 and 78.

[16] 2023 Impact Assessment Report SWD (2023) 386 final, Annex 4, p. 31. These findings are also reflected in a 2025 external study for A4E, which concluded that "under a very conservative estimate, 261 costs represent a total cost for A4E members of €3.9 billion in 2024 vs €3.2 billion in 2018, whilst under a less conservative estimate 261 costs represent a total cost for A4E members of €5.8 billion in 2024"

incurred by airlines through the implementation of Regulation (EC) No 261/2004 has grown significantly since 2011, with it estimated to have increased at a compound annual growth rate (CAGR) of 13.6%, from €1.8 in 2011 to €4.4 in 2018.[17] Additionally, administrative costs and legal costs for handling passenger claims are also relevant for airlines, representing around 0.6% of the overall airline cost base in 2018.[18]

This cost disadvantage faced by EU airlines risks that passengers may potentially start shifting to non-EU carriers when travelling to/from the EU. This may in turn undermine both the competitiveness of EU airlines and reduce EU passengers' protection since they would in principle be only covered by Regulation (EC) No 261/2004 on their flight out of the EU when travelling with a non-EU carrier but are not protected on in-bound traffic with non-EU carriers.

It needs to be however noted that there may be other factors which have an impact on relative competitiveness versus non-EU carriers, in particular on routes to Asia and/or in respect of indirect long-haul traffic via third country hubs. The impact of such factors is being looked at as part of the review of Regulation (EC) No 1008/2008, where the public consultation is currently open.

6. Impact of higher compensation thresholds on passengers

If the threshold is raised to 4 and 6 hours, as proposed in the draft Council position at first reading, it would not exonerate airlines from compensation liability as passengers would still be entitled to compensations, albeit in fewer cases.

Table 2 - Share of long delays (source: Eurocontrol)

	Share of long delays on ARRIVAL			Share of long delays on DEPARTURE		
Year	Share of flights >3h delay on arrival	Share of flights >4h delay on arrival	Share of flights >6h delay on arrival	Share of flights >3h delay on departure	Share of flights >4h delay on departure	Share of flights >6h delay on departure
2004	0,31%	0,15%	0,06%	0,30%	0,13%	0,05%
2005	0,35%	0,17%	0,06%	0,35%	0,16%	0,06%
2006	0,44%	0,24%	0,11%	0,43%	0,22%	0,10%
2007	0,48%	0,25%	0,11%	0,49%	0,25%	0,10%
2008	0,52%	0,28%	0,12%	0,53%	0,28%	0,12%
2009	0,50%	0,27%	0,11%	0,50%	0,26%	0,10%
2010	0,82%	0,44%	0,19%	0,80%	0,44%	0,19%
2011	0,43%	0,25%	0,12%	0,44%	0,25%	0,12%
2012	0,44%	0,25%	0,11%	0,44%	0,24%	0,11%
2013	0,44%	0,24%	0,11%	0,45%	0,25%	0,11%
2014	0,40%	0,22%	0,10%	0,41%	0,23%	0,10%
2015	0,41%	0,22%	0,09%	0,42%	0,22%	0,09%
2016	0,43%	0,22%	0,09%	0,45%	0,23%	0,10%
2017	0,47%	0,26%	0,12%	0,49%	0,27%	0,12%
2018	0,55%	0,29%	0,13%	0,57%	0,29%	0,13%
2019	0,42%	0,22%	0,10%	0,44%	0,22%	0,10%
2020	0,30%	0,17%	0,09%	0,32%	0,18%	0,09%
2021	0,27%	0,14%	0,06%	0,28%	0,15%	0,06%
2022	0,59%	0,29%	0,12%	0,63%	0,30%	0,12%
2023	0,58%	0,29%	0,12%	0,61%	0,30%	0,12%
2024	0.58%	0.28%	0.12%	0.61%	0.30%	0.12%

(Assessment of the cost of regulatory compliance of European Airlines, Final Report for Airlines for Europe, 2025, p. 22).

[17] Study on the current level of protection of air passenger rights, 2020, p. viii.

[18] Ibid.

7. Impact on enforcement authorities and their ability to verify "extraordinary circumstances"

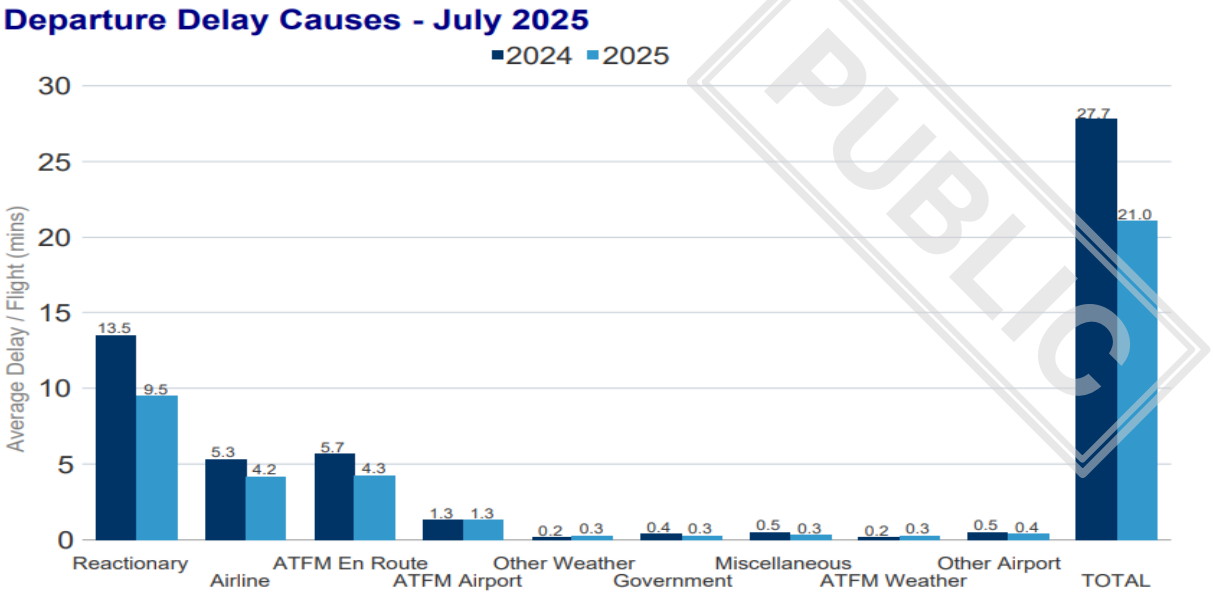
The volume in complaints received under Regulation (EC) No 261/2004 has increased substantially since 2011, presenting challenges for National Enforcement Bodies' (NEBs) resources. Between 2011 and 2018, the number of complaints received by the NEBs more than tripled, whereas the total number of air passengers in the EU has increased by 35% in the same time period[19]. Many NEBs reported increases of up to 200% in the number of complaints received between 2013 and 2020, possibly resulting in delays to complaint handling and increases in the number of their staff (where possible)[20].

As regards the determination/verification of extraordinary circumstances, several NEBs consider extraordinary circumstances on a case-by-case basis. However, there is agreement that scrutiny of "extraordinary circumstances" may be resource-intensive and may lead to divergent approaches across the Union. The 2013 proposal increases the threshold also to ease the enforcement burden.[21]

It is worth noting that both the 2013 Commission proposal and the compromise text of the Council (under the political agreement on 5 June 2025) provide for a more precise definition of the concept of "extraordinary circumstances". In addition, they include a non-exhaustive list of (1) circumstances which constitute extraordinary circumstances and can lead to the exemption of air carriers from paying compensation; and (2) of circumstances to be regarded as non-extraordinary circumstances. These improvements would increase legal certainty for air carriers and passengers, while potentially facilitating the work of the NEBs in assessing extraordinary circumstances.

[19] Study on the current level of protection of air passenger rights, 2020, section 5.14, p. 125.
[20] Ibid, section 5.79, p. 142.
[21] Study on the current level of protection of air passenger rights, 2020, section 9.59, pp. 229 and 233.

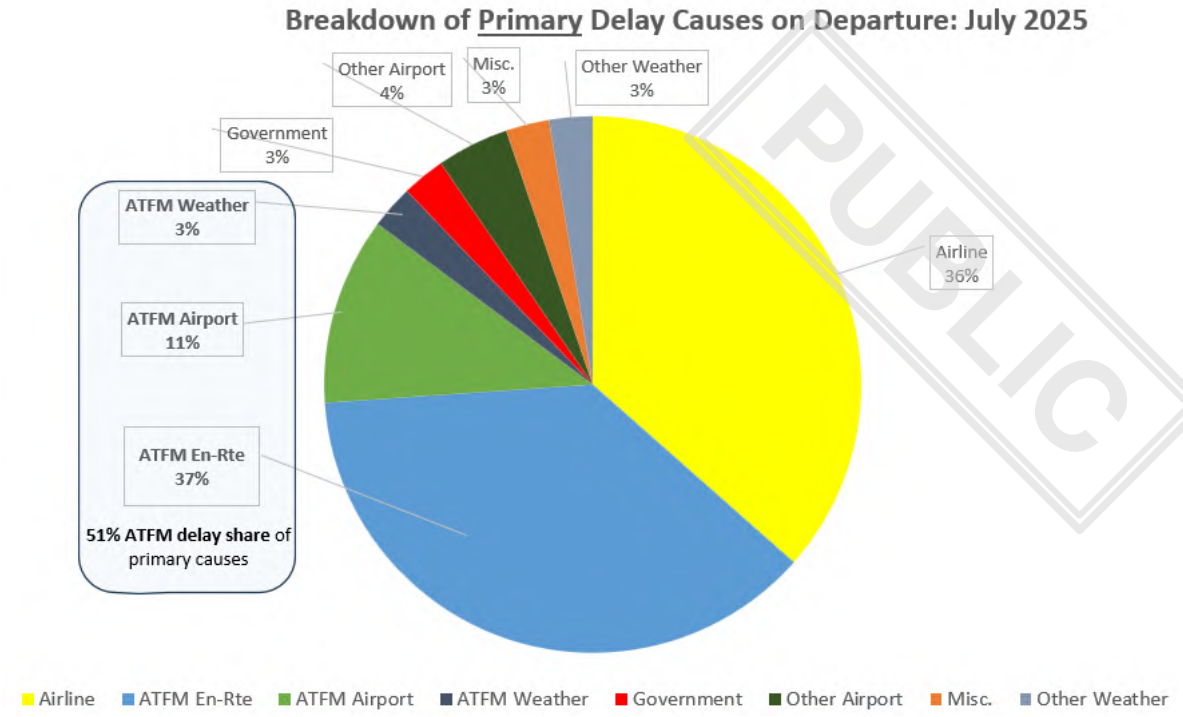
Annex 1 – reasons for operational delays (source: Eurocontrol)



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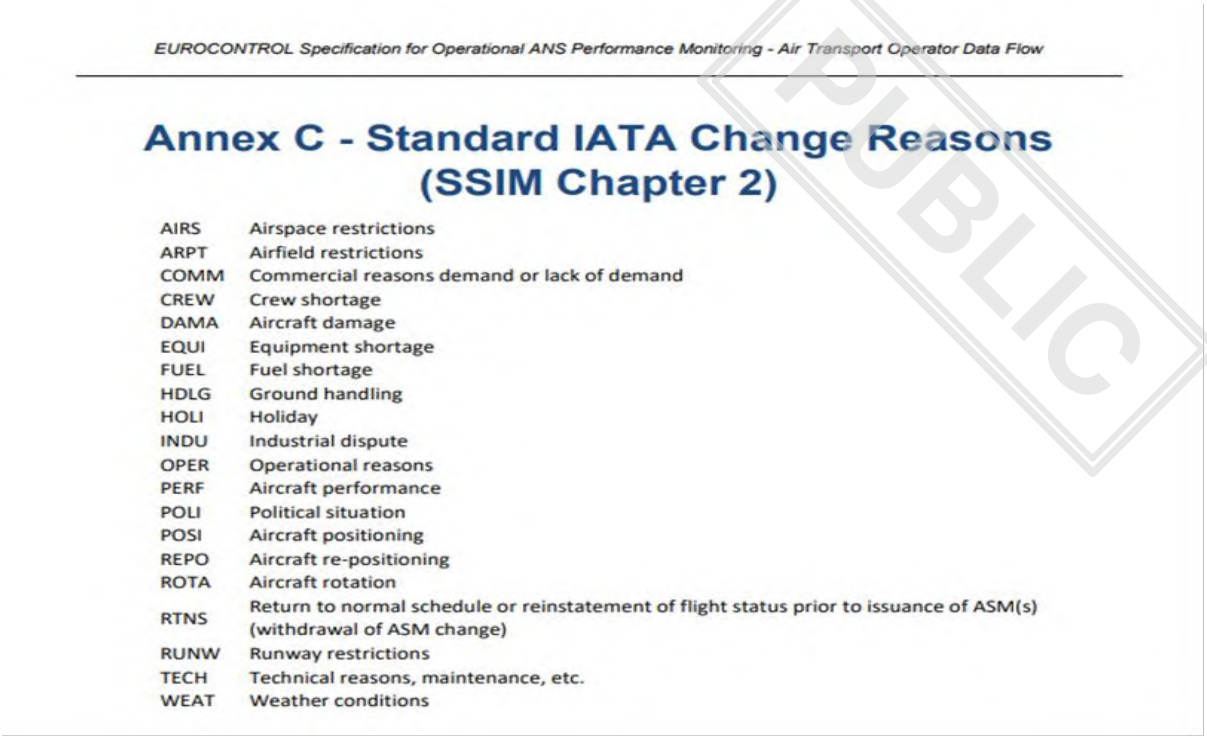
Year	Average Departure delay per flight - All Causes (mins/flight)	Average Primary Departure delay (mins/flight)	Average Reactionary Departure delay (mins/flight)
2009	10.7	6.0	4.7
2010	14.6	7.8	6.8
2011	10.0	5.5	4.5
2012	9.4	5.1	4.3
2013	9.3	5.1	4.2
2014	9.4	5.2	4.2
2015	10.2	5.6	4.6
2016	11.2	6.1	5.1
2017	12.3	6.8	5.5
2018	14.7	8.0	6.7
2019	13.1	7.4	5.7
2020	7.4	4.6	2.8
2021	9.2	5.6	3.6
2022	17.8	9.6	8.2
2023	17.6	9.5	8.1
2024	17.5	9.5	8.0
2025 (Jan-Jul)	*14.1*	8.0	*6.1*

Source: EUROCONTROL AODF provided data


Breakdown of Primary Delay Causes on Departure: July 2025
Other Airport 4%
Misc. 3%
Other Weather 3%
Government 3%
ATFM Weather 3%
ATFM Airport 11%
ATFM En-Rte 37%
51% ATFM delay share of primary causes
Airline 36%
Airline
ATFM En-Rte
ATFM Airport
ATFM Weather
Government
Other Airport
Misc.
Other Weather

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Annex 2 – reasons for operational cancellations (source: Eurocontrol)



EUROCONTROL Specification for Operational ANS Performance Monitoring - Air Transport Operator Data Flow

Annex C - Standard IATA Change Reasons (SSIM Chapter 2)

AIRS	Airspace restrictions
ARPT	Airfield restrictions
COMM	Commercial reasons demand or lack of demand
CREW	Crew shortage
DAMA	Aircraft damage
EQUI	Equipment shortage
FUEL	Fuel shortage
HDLG	Ground handling
HOLI	Holiday
INDU	Industrial dispute
OPER	Operational reasons
PERF	Aircraft performance
POLI	Political situation
POSI	Aircraft positioning
REPO	Aircraft re-positioning
ROTA	Aircraft rotation
RTNS	Return to normal schedule or reinstatement of flight status prior to issuance of ASM(s) (withdrawal of ASM change)
RUNW	Runway restrictions
TECH	Technical reasons, maintenance, etc.
WEAT	Weather conditions

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Distribution of Ops CNL Reasons	2019	2023	2024
UNKNOWN	26.0%	15.0%	24.5%
ROTA	16.8%	19.1%	18.2%
WEAT	9.9%	12.4%	10.6%
TECH	11.9%	8.8%	9.8%
OPER	9.2%	8.8%	9.8%
OTHER	7.1%	5.9%	8.7%
INDU	9.5%	12.4%	6.2%
COMM	2.6%	5.0%	4.3%
CREW	2.3%	2.9%	2.8%
ARPT	1.9%	7.2%	2.2%
AIRS	1.4%	1.4%	1.5%
DAMA	0.7%	0.7%	0.7%
EQUI	0.2%	0.1%	0.3%
HDLG	0.1%	0.2%	0.2%
POLI	0.1%	0.1%	0.1%
RUNW	0.0%	0.0%	0.1%
POSI	0.1%	0.0%	0.0%
FUEL	0.0%	0.0%	0.0%
PERF	0.0%	0.0%	0.0%
REPO	0.0%	0.0%	0.0%

Source: EUROCONTROL APDF provided data. The Operational Cancellations that could be ATC-related (directly or indirectly) have been highlighted in grey in the table above – confirmed by EUROCONTROL.