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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
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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 – Comments from Sweden on the Presidency non-paper (questions 15 to 20)

Delegations will find, in Annex, comments from **Sweden** on questions 15 to 20 of the Presidency non-paper.



Ministry of Justice

Division for Intellectual Property and Transport Law

**Written comments from SE on questions 15-20 in Presidency
non-paper**

Sweden would like to thank the Polish Presidency for the opportunity to submit written comments. Please find our preliminary comments to questions 15-20 below.

Question 15: Does your delegation see any possibility to further clarify the concept of 'earliest opportunity' specifically in the case of a missed connection?

Comments: The concept of 'earliest opportunity' has led to many disputes and we are open for suggestions that would clarify this.

Apart from that, airlines should get some time, e.g. 2-3 hours, to find an alternative route for the passenger just like in the regulation on rail passengers rights where the rail carrier gets 100 minutes to find alternative routes. After that time, the passenger can find re-routing options itself and receive the difference from the first airline.

Question 16: Does your delegation consider that a way forward on this issue could be to exclude from compensation flights that are not part of the same transport contract (similar to the approach followed under the multimodal journeys proposal)?

Comments: We are still analyzing this proposal. However, it is important that the concept of 'single contract' in the definition of connecting flight in article 2.o in the COM proposal is clarified, also when it comes to bookings that are provided by intermediaries as it was in the case C-436/21 flightright.

Comparisons with the multimodal proposal leads to questions and perhaps it is not always appropriate to regulate it exactly as in the multimodal proposal when it comes to air, especially in light of the case flightright which gives a broad interpretation for consumer protection.

Question 17: Does your delegation consider that there should be some exceptions to the right to compensation to prevent adverse impact on connectivity (e.g. exclusion of flights operated under public service obligations)?

Comments: Such flights should not be excluded from compensation as the inconvenience for the passenger is the same.

Question 18: Does your delegation support listing extraordinary circumstances in the regulation, or would your delegation prefer relying on a definition? If your delegation favours a list, does your delegation support an exhaustive list or non-exhaustive?

Comments: We are still analyzing extraordinary circumstances when it comes to all of these questions but prefer a non-exhaustive list. Such list can be combined with a clear definition.

We also want to emphasize that it is very important to clarify the concept of ‘reasonable measures’ as well, as this term has led to many disputes and has been interpreted differently by courts.

Question 19: Does your delegation consider that it would be appropriate to exclude from the scope of rights to compensation the flights cancelled or delayed for operational safety reasons (such as technical defects that could not be mitigated by the operator by safety checks and regular maintenance)?

Comments: We need further analysis but safety is of great importance. Therefore, to allow compensation for e.g. technical defects that could not be discovered through regular safety checks, could lead to incentives for airlines to prioritize short-term decisions over the safety.

Question 20: Could your delegation support, instead of a list of extraordinary circumstances and in order to avoid the need for case-by-case review, a strict liability regime applicable even in the case of extraordinary circumstances with lower compensation amounts?

Comments: For the Swedish delegation, it is important to reduce the number of disputes and to ease financial burdens for airlines. Therefore we would be open to analyze this proposal further. Regardless of which system we decide to have, it is important that the rules do not become financially burdensome for airlines so that it in turn leads to an increase in ticket prices, commercial practices or safety aspects that could affect passengers and airlines negatively.