



Council of the European Union
General Secretariat

Brussels, 10 February 2025

**Interinstitutional files:
2013/0072 (COD)**

WK 1287/2025 ADD 7

LIMITE

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	WK 9/25
N° Cion doc.:	7615 2013 INIT
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 Finland on the Presidency non-paper (questions 15 to 20)

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

Thank you again for organising the discussion around these important questions. First of all, our comments are preliminary. We are looking forward to discussing more about these questions when we receive the compromise text prepared by the Presidency.

Questions:

15. Does your delegation see any possibility to further clarify the concept of “earliest opportunity” specifically in the case of a missed connection?

The rights of passengers in situations of missed connections is one area that needs some clarification from both passengers’ and airlines’ perspective.

It would be good to clarify at which point rerouting may/should be done with competing airline. Rerouting only to flights of the contracting carrier might lead to unnecessary delay for passengers but on the other hand it might be unreasonable for an airline to have to reroute with another airline immediately, if it can organize own flight within a reasonable timeframe. Also, it would be good to clarify when the passenger can take care of the rerouting by themselves and get the costs reimbursed, although this shouldn’t lead to a situation where passengers are left to take care of the rerouting alone in a difficult situation, and with varying abilities to do so.

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)?

In principle yes, similar approach as in multimodal regulation is reasonable. If there are two clearly separate flights bought by the passenger, the former or latter airline should not be responsible for the delay or cancellation of the other. However, we must be careful on what this means in practice, and examine some possible issues and scenarios related. E.g. is the customer aware of the rights related to the flights he/she is buying, how to deal with screen scrapers, if without the knowledge of the carrier, tickets are sold together etc. At least it should be clear for the passenger that the tickets are separate and what are the consequences of separate tickets/transport contracts.

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)?

This is a difficult question and needs to be examined more. At this point our preliminary view is that this could lead to confusing situations from the passenger’s perspective e.g. when the flights are not individual flights, but part of a chain of connecting flights. However, connectivity is an important aspect to take into consideration as well.

Questions:

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 or a non-exhaustive list?

We are afraid that a non-exhaustive list would only mean that the disputes will continue. There will always be new situations rising. Either the definition should be strictly limited to major situations, perhaps smth comparable to rail passengers rights regulation, or there should be a short exhaustive list. However, the burden for the airlines of a regime close to a strict liability regime should be somehow balanced, perhaps through lower compensation amounts.

In this regard we would need to learn more about why there are so few disputes regarding compensation/extraordinary circumstances in rail transport.

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)?

This is a difficult question as safety is no doubt a top priority. In order to avoid disputes and case to case assessment, our approach is leaning towards a more limited view on the extraordinary circumstances (e.g. major disasters, extreme weather conditions) while at the same time lowering the compensation amounts.

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 case of extraordinary circumstances with lower compensation amounts?

This could be an option to examine, and as it is indicated in the question, this solution would have to be made equitable for airlines as well. The approach would require diverting from the current thinking. The advantages could be avoiding disputes and case by case assessment and more passengers getting a speedier compensation after certain threshold. However, this solution would have to be done so that it would be sustainable for the carriers as well. Therefore, the compensation levels would have to be reconsidered, possibly lowered and/or tied to the ticket price.