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## **WORKING DOCUMENT**

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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 Denmark on the Presidency non-paper (questions 17 to 18)

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Delegations will find, in Annex, comments from **Denmark** on questions 17 to 18 of the Presidency non-paper.

## MEMO

6<sup>th</sup> of February 2025  
Case number: 2022 - 4267

### **Written Danish remarks on the on the Presidency's non-paper regarding Air Passenger Rights**

#### **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)?**

Denmark supports the discussion to introduce exceptions to the right to compensation or other measures to prevent adverse impacts on connectivity. Ensuring connectivity to outer regions, including Greenland, is of particular importance to Denmark. The citizens of Greenland and tourists from EU visiting Greenland rely on the operating air carriers, as this is the only mode of transport to ensure connectivity with EU.

Journeys to Greenland typically require a connecting flight, as there are limited direct flight options to Greenland's multiple destinations. Additionally, air carriers operating in Greenland face unique challenges, including severe, arctic weather conditions. This, together with the limited infrastructure that air carriers have at these outer regions, can exacerbate operational difficulties and increase costs for carriers compared to carriers that operate in other markets.

Denmark would kindly suggest that the Presidency takes into consideration the operational challenges of flights to outer regions as Greenland. Different solutions could optimize the conditions for operating in outer regions.

In this regard, we find the latest revised Presidency compromise by the Croatian Presidency from March 2020 interesting. This approach provides an exception to compensation requirements for stopovers in third-country regions, and it would be particularly beneficial for domestic flights in outer regions, where delays and



disruptions frequently can occur due to the aforementioned arctic weather conditions.

We therefore encourage further exploration of solutions and welcome alternative suggestions, that can mitigate the economic burden on air carriers serving outer regions while maintaining fair passenger rights.

The HR compromise excluded the right to compensation for cancellations or delays which occurred on a connecting flight operated entirely outside the EU, and we support the following text proposal:

- Article 5 (1a)(iv) 'the cancellation occurs on a connecting flight operated entirely outside the EU'
- Article 6(2)(iii) 'the delay is caused by a connecting flight operated entirely outside the EU'.

**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 or a non-exhaustive list?**

Denmark supports the approach of using a definition combined with a non-exhaustive list of extraordinary circumstances as well as non-extraordinary circumstances. This approach, as proposed by the Commission in 2013, ensures a balance between flexibility and legal certainty.

It is essential to ensure that new and unforeseen extraordinary circumstances still can be recognized as such, preventing unfair compensation obligations on air carriers.

Moreover, Denmark strongly supports including 'labour disputes' on a potential non-exhaustive list as an extraordinary circumstance. This was part of the Commission proposal from 2013, and we believe it remains a crucial element to ensure a fair and predictable framework.

We would like to draw attention to recital no. 14 in regulation (EC) No 261/2004, which states that '*obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been*



taken'. The recital further includes 'strikes that affect the operation of an operating air carrier'. The ECJ seems have narrowed the concept to very large extent through case law.

Under the current state of law, strikes by an airline's own staff are not considered as an extraordinary circumstance, despite the fact that such events are often beyond the airline's direct control. Strikes can be used as a mean to destabilize operations, where the carriers in many situations have no or very limited room to remedy the consequences of the cancelled flights.

This creates an imbalance where air carriers have to cope with a disproportionate financial burden, even when disruptions result from internal labour disputes. Recognizing internal strikes as extraordinary circumstances would restore a fair balance between passenger rights and the operational realities of air carriers. With that said, carriers must by all possible and accessible means devote their time and resources to remedy unforeseen and anticipated incidents in order to minimize the inconveniences for the passenger.

Denmark therefore advocates for reinstating internal strikes as an extraordinary circumstance in the non-exhaustive list. We encourage further discussions based on the Commission's 2013 proposal, as this remains the most balanced approach to the issue.

### **Final remarks**

Denmark remains committed to constructive discussions on the issues. We emphasize the need for a regulatory framework that ensures fair passenger rights while considering the operational realities of air carriers, particularly in remote and outer regions.

We look forward to continued engagement on these topics and to working towards solutions that enhance and safeguards connectivity, and ensures a balanced, stable and clear regulatory framework.