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| From: | General Secretariat of the Council |
| To: | Working Party on Aviation |
| N° prev. doc.: | WK 13861/24 |
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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<br>– Preparation of the Council on the basis of a revised non-paper from the Presidency |

Following the Working Party on Aviation of 11 November 2024, delegations will find, in annex, a revised non-paper from the Presidency.

**Non-paper from the HU Presidency on air passengers' rights**

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## 1. ~~Legal Background framework~~Introduction

**The air passengers' rights are specified in different pieces of legislation. Moreover, in 2023 the Commission made two additional proposals which will also apply to air passengers. The legal framework for the air passengers' rights, as mentioned in the Annex, is complex, making it challenging to interpret and implement effectively.**

### ~~a. Rulings of the Court of Justice of the European Union (CJEU) interpreting Regulation (EC) No 261/2004~~

**On many occasions, the Court of Justice of the European Union (CJEU) has been requested by national courts to clarify certain provisions of Regulation (EC) No 261/2004 on air passenger rights. The Commission updates on regular basis a thematic overview of relevant judgments with regard to air passenger rights.** The 2022 March version of the Summary of the most relevant CJEU judgements contains 86 ~~cases~~ **rulings and**~~.~~

~~T~~**t**he CJEU itself issued a leaflet summarising some of its ~~air passenger rights rulings.~~**decisions interpreting different provisions of air passenger rights regulations.**

It should be noted that, in some of its rulings, the CJEU has ~~deviated~~**diverged** from the original intent of the legislators (i.e. compensation in case of a long delay, the interpretation of extraordinary circumstances).

Given the difficulties with interpretation of the air passenger rights regulations, the Commission **has** issued interpretative guidelines **(see Annex).**~~:~~

- ~~Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents~~
- ~~Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19~~
- ~~Interpretative guidelines on Regulation (EC) No 1107/2006 on the rights of persons with disabilities and with reduced mobility when travelling by air~~
- ~~Information Notice to Air Passengers on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities~~

## ~~2. The 2013 Commission proposal~~

~~There is consensus among the industry, regulators and passengers that there are many issues with the application and enforcement of the air passenger rights Regulations.~~

In March 2013 the Commission proposed a revision of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97. The objectives of the proposal are to ensure that air carriers ~~comply with~~**provide** a high level of **protection** ~~of~~for air passengers ~~protection~~ during travel disruptions, while the right balance is ensured between the interests of passengers and the industry. To that end, the Commission proposed to clarify grey areas and close loopholes, to simplify complaint handling, to better coordinate enforcement policies and to ensure a realistic financial cost for airlines.

~~In more detail, this proposal attempts to clarify key principles such as the right to compensation in case of long delays, the right to compensation in case of missed connecting flights, the right to accommodation in extraordinary circumstances, a binding non exhaustive list of extraordinary circumstances, the partial ban of no show policy for return tickets, contingency planning for airports with more than 3 million passengers, a measure to guarantee full compensation for persons with disabilities in case of the loss or damage of their mobility equipment. It also attempts to ensure consistent sanctioning by the National Enforcement Bodies (NEBs) through coordination and effective handling of individual claims and complaints by air carriers. It introduces the possibility for passengers to turn to out-of-Court dispute resolution and aims at better enforcing the passenger rights with regard to mishandled baggage.~~

The European Parliament completed its first reading in February 2014.

Within the Council, the LT, EL and LV Presidencies made significant progress before the file became stalled in 2015 due to considerations unrelated to the file. The FI Presidency started working on the file again in 2019 and the HR presidency was on its way to a possible general approach in June 2020 when progress became hindered due to the COVID-19 crisis.

## 3. Issues identified in the application and enforcement of **the** air passenger rights' ~~in the EU~~**Rregulation**

A study mandated by the Commission in 2018 and published in 2020 identified the following shortcomings and supported ~~to~~**a** relaunch **of** the discussions on the 2013 Commission proposal:

### a. From the passengers' point of view

Regulation (EC) No 261/2004 is difficult to understand **and interpret**, and the related jurisprudence has increased ~~in~~ its complexity. **Overall, passengers expect a simple system that ensures fair outcomes. Instead, they experience a complex system with limited transparency. The low intelligibility of Regulation (EC) No 261/2004 and the related jurisprudence contributes to its complexity, resulting in a lack of trust between passengers and airlines and in an extensive use by passengers from all Member States to claim agencies to get financial compensation from the air carriers in the event of denied boarding, flight cancellations and long delays.**

The air passenger rights Regulation is complementary to other ~~EU~~ pieces of **EU** legislation (for example ~~under~~ the Package Travel Directive (PTD). Moreover, the interaction between the system of redress dedicated to air passengers~~'~~ rights (**e.g. initial claims for compensation to** airlines, **then complaints to** NEBs **when the initial claim has not been addressed**) and the private enforcement tools available more widely (Alternative Dispute Resolution mechanisms

**(**ADR**)**, courts), coupled with the involvement of claim agencies, creates additional complexity and may generate delay and additional cost**s** ~~as part of the process~~. A number of the practices used by claim agencies[1] have been highlighted as problematic by NEBs and stakeholders' representatives.

In addition, rights of passengers with disabilities need to be improved. Compensation for damaged or lost mobility equipment are currently governed by the Montreal Convention and Regulation 889/2002. The **current** ceiling of the maximum amount of compensation (currently approximately 1400 EUR) often prevents passengers with disabilities to receive full compensation from an airline if their expensive, often custom-made mobility equipment is lost or damaged. In case of other transport modes (rail, bus and waterborne) they are already entitled to full compensation. The 2013 proposal ~~intends~~**includes an** ~~to~~ amend**ment of** Regulation **(EC) No** 2027/97, including its modified title.

### b. From the regulators' and enforcers' point of view

~~Significant differences exist across all Member States, both in terms of the handling of complaints by National Enforcement Bodies (NEBs), as well as the enforcement powers NEBs have. Some NEBs have the competence under national law to accept and enforce individual complaints, but others cannot and may refer individual passengers to an alternative dispute settlement body. Those differences in power as well as the binding/non-binding nature of NEBs decisions and sanctioning powers are resulting in differences of treatment for passengers across the EU and in competition distortions for airlines.~~

**Difficulties with enforcement may be a result of a wording which allows a case-by-case assessment (e.g. re-routing under "comparable transport conditions" at the "earliest opportunity") which creates different interpretations of what constitutes a violation of Regulation (EC) No 261/2004.**

The absence of **a** definition and the differences in assessment of extraordinary circumstances by NEBs is an additional source of differences in the treatment of passengers across the EU and of competition distortions for airlines. ~~Other concepts (e.g. re-routing under "comparable transport conditions" at the "earliest opportunity") are also subject to different interpretations.~~ In addition, certain aspects of the Regulation remain difficult for NEBs to assess ex post (e.g. the requirement to ask for volunteers for denied boarding).

A substantial increase in the number of complaints received under Regulation **(EC) No** 261/2004 has been observed over the years, which may result in a delay to complaint handling and/or lack of systematic enforcement by NEBs. Moreover, enforcement by NEBs mainly relies on **individual passenger** complaints**.** ~~and most NEBs lack tools such sanctions, inspections or reporting on compliance by airlines to ensure an effective and uniform enforcement that could drive a systematic change in airlines' behaviour.~~

**It should be noted that the new EU Consumer Protection Cooperation (CPC) Regulation that came into force in 2020, after the study was conducted, granted stronger enforcement powers to consumer protection authorities.**

[1] A business that offers management services of claims for compensation under Regulation (EC) No 261/2004.

### c. From the industry's point of view

Costs incurred by airlines under Regulation (EC) No 261/2004 have grown significantly, overtaking, in the case of low-cost carriers, the cost of marketing and distribution activities in airlines' cost base. The cost per passenger affected by disruption is so high that it may actually generate disincentives for airlines to ~~actually~~ operate severely delayed flights and incur operating costs in addition to the disruption costs.

Moreover, the right to redress defined in Regulation (EC) No 261/2004 is not effective and there are many instances where airlines are not able to recover **the** costs incurred in providing assistance and compensation to passengers for disruption generated by third parties (such as ANSPs, ground handlers, airports and other parties). Where possible, airlines try to pass cost increases on to customers through an increase in air fares. Where this is not possible for competitive reasons, those costs have an impact on profitability and may result in a longer-term reduction in connectivity.

There are certain gaps between the EU legislative framework and ICAO Core Principles (e.g. on keeping passengers informed throughout their journey). In non-EU countries, the approach to air passenger rights may be regulatory or voluntary ~~ones~~. Typically, regulatory and voluntary regimes both recognise an obligation for re- routing/reimbursement, but none of the regimes offer compensation to passengers affected by disruptions. This situation generates competition distortions and differences in treatment of passengers depending on the route and **the** air carrier.

## 4. Special Reports of the Court of Auditors

### a. Special Report of the Court of Auditors: EU passenger rights are comprehensive, but passengers still need to fight for them (30/2018)

Problems with the enforcement of passenger rights as well as the lack of passenger awareness were highlighted by the European Court of Auditors (ECA): ~~S~~**s**everal ECA recommendations of ~~the Special Report of 2018~~ (e.g. ~~recommendations~~ on improving the effectiveness of the passenger rights framework and on further empowering the NEBs) support measures proposed by the Commission in the 2013 proposal **or have been addressed in the 2023 proposals** ~~and~~ **which** are supposed to enhance and clarify air passenger rights.

### b. Special Report of the Court of Auditors on the Air passenger rights during the COVID-19 pandemic (15/2021)

The issues identified by the 2018 study have been exacerbated and new issues have emerged during the COVID 19 pandemic.

The Special Report ~~of the Court of Auditors on the Air passenger rights during the COVID-19 pandemic~~ indicates that the pandemic illustrated clearly that air passengers were not informed fully about their rights.

According to the Special Report, the pandemic also showed limitations to Member States' **capability to** enforce~~ment of~~ air passenger rights with many passengers that were not reimbursed in the initial phase of the crisis and many others that had no other choice than to

accept vouchers. Overall, the ability of passengers to secure reimbursement remained limited both when intermediaries (e.g. travel agencies) were involved, and when vouchers were imposed on passengers.

According to the Special Report, the absence of reporting requirements, for example on the numbers of passengers claiming their money back and on the number of unsolved cases within the legal deadlines across the EU, is in itself an important part of the problem in enforcing air passenger rights. **This report supports also measures proposed by the Commission in the 2013 proposal or have been addressed in the 2023 proposals.**

More generally, the COVID 19 pandemic raised the question amongst regulators whether a specific liability regime should be adopted for times of crisis since the air passenger rights regulations only focused on the cancellation of individual flights but not on the long-term cancellation of all or most flights.

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~~**5. The revision of passenger rights framework proposed by the Commission in 2023**~~

~~This revision complements the 2013 Commission proposal regarding the following problematic areas.~~

- ~~Reimbursement of air passengers in case of a booking via an intermediary ticket vendor. The objective is to ensure a clear reimbursement procedure for all actors involved (e.g., carriers, intermediaries and passengers).~~
- ~~Passenger rights for multimodal journeys : addressed in a separate legislative proposal;~~
- ~~Insufficient enforcement of passenger rights in all modes. The proposal aims to ensure effective and efficient enforcement across all Member States, allowing NEBs to have more effective tools for the monitoring of operators' compliance with passenger rights and to ensure a more effective complaint handling for passengers, providing them with a quick, simple and accessible system.~~

~~**6. WHITE PAPER Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, 2011**~~

~~In its 2011 White Paper, the Commission initiatedto "assemble common principles applicable to passengers' rights in all transport modes (Charter of basic rights), notably the 'right to be informed', and further clarify existing rights. At a later stage, consider the adoption of a single EU framework Regulation covering passenger rights for all modes of transport (EU Codex). "~~

## 7. Questions to delegations

~~Does your delegation agree that the shortcomings outlined in paragraphs 3-4 need to be addressed?~~

~~Does your delegation identify other issues in the application or enforcement of air passenger rights rules that would need to be addressed? If so, which ones?~~

**1.** Do you agree on the need to simplify ~~and codify~~ the air passenger rights legal framework ~~and significant amount of case law~~ to ensure the uniform protection of air passengers through unambiguous legislation?

**2. What are the most important issues in the air passenger rights rules that would need to be addressed?**

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**Annex: Legal framework for air passengers' rights**

## 1. Regulations and Directives applicable to air passenger rights

- 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
- Regulation (EC) No 2027/97 on air carrier liability in the event of accidents
- Regulation (EC) No 1107/2006 on the rights of persons with disabilities and with reduced mobility when travelling by air
- Directive (EU) 2015/2302 on package travel and linked travel arrangements
- Directive (EU) 2013/11/EU on alternative dispute resolution for consumer disputes
- **Regulation (EU) 2017/2394 EU on cooperation between national authorities responsible for the enforcement of consumer protection laws**

## 2. The revision of passenger rights framework proposed by the Commission

**In its 2011 White Paper[2], the Commission set as objectives to "assemble common principles applicable to passengers' rights in all transport modes ("Charter of basic rights"), notably the 'right to be informed', and further clarify existing rights. At a later stage, consider the adoption of a single EU framework Regulation covering passenger rights for all modes of transport (EU Codex). "**

**The 2013 proposal of the Commission clarifies key principles such as the right to compensation in case of long delays, the right to compensation in case of missed connecting flights, the right to accommodation in extraordinary circumstances, a binding non-exhaustive list of extraordinary circumstances, the partial ban of no show policy for return tickets, contingency planning for airports with more than 3 million passengers, a measure to guarantee full compensation for persons with disabilities in case of the loss or damage of their mobility equipment. It also attempts to ensure consistent sanctioning by the National Enforcement Bodies (NEBs) through coordination and effective handling of individual claims and complaints by air carriers. It introduces the possibility for passengers to turn to out-of-Court dispute resolution and aims at better enforcing the passenger rights with regard to mishandled baggage.**

**In its 2020 Sustainable and Smart mobility strategy[3], the Commission identified the need "to transform its legal framework to support multimodal travel information, booking and ticketing services, while at the same time looking at the rights and obligations of online intermediaries and multimodal digital service providers selling ticketing and/or mobility services".**

**In line with those objectives, the Commission adopted two proposals of 29 November 2023:**

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[2] **Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system.**

[3] **Sustainable and Smart Mobility Strategy – putting European transport on track for the future.**

- **Proposal for a Regulation 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**
- **Proposal for a Regulation on passenger rights in the context of multimodal journeys**

**Those proposals complement the 2013 Commission proposal regarding the following problematic areas:**

- **Reimbursement of air passengers in case of a booking via an intermediary ticket vendor. The objective is to ensure a clear reimbursement procedure for all actors involved (e.g., carriers, intermediaries and passengers).**
- **Insufficient enforcement of passenger rights in all modes. The objective is to ensure effective and efficient enforcement across all Member States, allowing NEBs to have more effective tools for the monitoring of operators' compliance with passenger rights and to ensure a more effective complaint handling for passengers, providing them with a quick, simple and accessible system.**
- **Passenger rights for multimodal journeys.**

## 3. Commission Notices

- **Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents of 25 September 2024**
- **Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 of 18 March 2020**
- **Interpretative guidelines on Regulation (EC) No 1107/2006 on the rights of persons with disabilities and with reduced mobility when travelling by air of 4 October 2024**
- **Information Notice to Air Passengers on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities of 9 March 2017.**

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