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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
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Subject:	Proposal for a Regulation amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/20, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union - Presidency non-paper

With a view to guiding a discussion in the Working Party on Transport - Intermodal Questions and Networks meeting on 18 November, delegations will find attached a document on the above.

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

Presidency non-paper

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During the ongoing discussions with the Parliament on the enforcement of passenger rights, the Presidency has taken note of several issues identified as high priorities for the Parliament. To facilitate further progress, the Presidency considers it necessary to explore Member States' flexibilities regarding possible compromises on the risk-based approach and service quality standards. The compromises can be found in Annex 1. In addition, the Presidency wishes to explore Member States' views on the Parliament's concerns related to two specific amendments concerning PRMs and intermediation fees. Lastly, the Presidency is seeking to understand the current complaint-handling mechanisms in Member States.

The compromise proposals in Annex 1 build on the provisions proposed by the Commission with regards to the Air Passenger Rights Regulation. For both proposals, the Presidency is seeking delegation's view on either limiting the approach to solely Air Passenger Rights or whether Member States could see the benefit in harmonizing the approach across transport modes, to the extend it is possible within the framework of the current legislations.

The Presidency invites delegations to share their views on these suggestions and to respond to the specific questions outlined under each topic.

Furthermore, the Presidency invites delegations to share, in their written comments, information on their national individual complaint-handling mechanisms in the area of Air Passenger Rights.

1. Monitoring and oversight

It is the Presidency's understanding that the Parliament's main concern relates to the lack of sufficient monitoring and oversight of the sector. The Parliament wishes to ensure that proper mechanisms are in place for supervision and enforcement.

The Presidency also notes that one of the Parliament's top priorities is for passengers to have their individual complaints handled by a NEB. The Presidency is aware that this represents a red line for many Member States. Many consider the primary role of NEBs to be ensuring sectoral oversight, while the resolution of individual disputes between passengers and carriers is better handled by courts or dedicated complaint-handling and ADR bodies.

Bearing this in mind, the Presidency aims to pursue a balanced compromise with the Parliament by strengthening the monitoring role of NEBs, thereby facilitating a more constructive discussion with the Parliament on the issue of complaint-handling.

1.a Service Quality Standards

It is the Presidency's understanding that the Parliament sees the Service Quality Standards (SQS) as means to provide information which would enable NEBs to effectively supervise the industry, particularly under the Air Passenger Rights Regulation. Additionally, the Presidency notes, that Parliament is especially focused on information regarding extraordinary circumstances.

As the Parliament's primary focus is on the Air Passenger Rights Regulation, and since the regulations on waterborne transport and PRMs already contain (some) references to SQS, the Presidency proposes not to harmonise this provision across all modes. Instead, the Presidency suggests introducing an amendment on SQS only in the Air Passenger Rights Regulation.

For this purpose, the Presidency proposes to agree to a dedicated article on Service Quality Standards, however aligning the article with what is included in the Council mandate on the proposal for passenger rights in the context of multimodal journeys (MMJ). This would ensure that the quality standards primarily serve as a monitoring tool for NEBs and that they have a clear legal basis to request this data from carriers. For the information points, the Presidency proposes to limit them to only cover those related to persons with reduced mobility and with disability in the MMJ-mandate and those related to delays and cancellations linked to extraordinary circumstances from the Commission's original proposal.

Q1: Can delegations support the compromise proposed by the Presidency in Annex 1?

Q2: Can delegations show any further flexibility towards extending and harmonizing the SQS across all modes?

1.b Risk-based approach

It is the Presidency's understanding, that the Parliament seeks to ensure that the NEBs have sufficient powers to effectively monitor the sector. In addition, the Parliament is seeking greater clarity regarding the specific enforcement tasks to be performed by the NEBs.

The Presidency recognises the need to show flexibility concerning the NEBs' main tasks of monitoring and maintaining general oversight of the sector. At the same time, the Presidency wishes to safeguard NEBs' flexibility.

To demonstrate openness towards the Parliament, the Presidency proposes to reintroduce an article on the monitoring of the sector.

Q3: Can delegations show any flexibility on reintroducing a reference to monitoring tasks or similar set-ups in the text?

Q4: Can delegations support the compromise proposed by the Presidency in Annex 1?

2. Ticket for the accompanying person

The Presidency notes that the Council and the Parliament agree that the cost of the airfare should be covered by the carrier when a carrier requires a person with reduced mobility or with disability to be accompanied. However, the Parliament and the Council remain fundamentally divided on the question of who should bear the cost of the airport fees The Parliament considers that, in such cases, the carrier should always bear the cost, whereas the Council maintains that this should not automatically be the carrier's responsibility.

Q5: What are delegations' flexibilities towards the EP's approach?

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3. Intermediation fees

Here too, the Presidency has identified a fundamental difference in positions between the Parliament and the Council. The Council underlines that, subject to clear information by the intermediary to the passenger at the time of purchase of the ticket, not all intermediation fees should necessarily be reimbursed in the event of a cancellation. The Parliament, however, takes the view that all fees, including those related to intermediaries, should be reimbursed in such cases.

Q6: What are delegations' flexibilities towards the EP's approach?

4. Individual complaint-handling

In view of the Parliament's amendments on individual complaint-handling by NEBs or other bodies, the Presidency seeks to assess what is feasible within the current national frameworks of Member States. To that end, the Presidency wishes to better understand how Member States currently handle individual passenger complaints in relation to Air Passenger Rights. In particular, whether there are bodies outside the courts responsible for this task. This may include NEBs, ADR bodies, or other dedicated complaint-handling mechanisms.

Q7: The Presidency invites delegations to share written comments related to their national complaint-handling mechanisms.

Annex 1

Overview of the PCY's proposed compromise text.
Black indicates the Commission's proposal.
Blue reflects the wording proposed to be taken from the EP's position.
Orange reflects the wording included in Council's general approach on Multimodal Journeys.
Red reflects the new wording proposed by the PCY.

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1.a Service quality standards

EP Mandate	**Compromise proposal**
Article 15a	Article 15a
Service quality standards	Service quality standards
1. Air carriers shall establish service quality standards and implement a quality management system to maintain **and improve** service quality. The service quality standards shall at least cover the items listed in Annex II.	1. Air carriers shall establish service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex II.
2. Air carriers shall monitor their performance as reflected in the service quality standards. They shall publish a report on their service quality performance on their website by [2 years after the Regulation becomes applicable], and every two years thereafter. This report shall not contain personal data.	2. Air carriers shall monitor their performance as reflected in the service quality standards **and shall upon request share information on their performance with the national enforcement body or bodies.**
2a. Air carriers shall monitor their performance as reflected in the service quality standards. They shall publish a report on their service quality performance on their website by [2 years after the Regulation becomes applicable], and every two years thereafter. This report shall not contain personal data.	***Deleted.***
3. Airport managing bodies located in a Member State shall establish service quality standards based on the relevant items listed in Annex II and which are under their direct responsibility. They shall monitor their	3. **With the exception of airports which annual traffic is less than 150.000 commercial passenger movements, the** airport managing bodies located in a Member State shall establish service quality

performance pursuant to those standards and provide access to the information on their performance to the national public authorities on request.	standards based on the relevant items listed in Annex II and which are under their direct responsibility. They shall monitor their performance pursuant to those standards and **shall upon request share information on their performance with the national enforcement body or bodies**.
3a. Intermediaries which are not SMEs, located in a Member State shall establish service quality standards based at least on the relevant items listed in Annex II. They shall monitor their performance pursuant to those standards and provide access to the information on their performance to national public authorities on request.	***Deleted.***
	ANNEX 2
	MINIMUM SERVICE QUALITY STANDARDS
	Information on safety provisions and restrictions applied
	Comprehensive information on the rights of persons with disabilities and persons with reduced mobility in air transport sectoral legislation:
	- requirements regarding accompanying recognised assistance dogs (in case of carriers)
	- conditions under which an accompanying person is required
	- the accessibility of aircrafts
	- the accessibility of the terminal (in case of airport managing bodies)
	- general guidance on minimum presentation time at points within the terminal and general guidance on minimum connecting times between terminals

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	- the transport of mobility equipment
	- the complaints and compensation procedure for damaged equipment
	- training of staff on the rights of passengers with disabilities and assistance procedures
	Punctuality of flights:
	- overall average delay of flights;
	- percentage of delays caused by extraordinary circumstances;
	- cancellation of flights;
	- percentage of cancellations of flights caused by extraordinary circumstances.

1.b Risk-based approach

EP Mandate	Compromise proposal
Article 16ba	Article 16ba
Tasks of national enforcement bodies related to risk-based approach ~~**to the**~~ **concerning** monitoring of compliance with passenger rights	**Monitoring tasks**
1. The national enforcement bodies shall develop a compliance monitoring programme to monitor compliance of air carriers, airport managing bodies and intermediaries with the obligations laid down in this Regulation on the basis of a risk assessment. The programme shall allow for the detection and correction of recurrent non-compliance in the implementation of passenger rights. The compliance monitoring programme shall include a representative sample of monitoring activities.	1. The national enforcement bodies shall ~~develop a compliance monitoring programme to~~ monitor **the application** ~~compliance~~ ~~**of**~~ **by** air carriers **and**~~**,**~~ airport managing bodies ~~and intermediaries~~ **of** ~~with~~ the obligations laid down in this Regulation~~ on the basis of a risk assessment~~. The **monitoring** ~~programme~~ shall allow for the detection and correction of ~~major,~~ recurrent non-compliance ~~and risk of non-compliance~~ in the ~~implementation~~ **application** of **provisions of this Regulation on** passenger rights. ~~The compliance monitoring programme shall include a representative sample of monitoring activities.~~

2. The risk assessment shall be based on a factual assessment that takes into account complaints made by passengers to these bodies, where available, as well as findings of the monitoring activities carried out by these bodies, information referred to in Article 16bb (1) and (3), and other sources of information pertaining to the application of this Regulation on the territory of the respective Member State.	2. The **monitoring** ~~risk assessment~~ shall be **proportionate and in accordance with national standards and applicable rules. It may be** based on a factual assessment that takes into account complaints made by passengers **under Article 16b** *[PCY note: Article related to complaints submitted to NEBs]*~~to these bodies~~, where available, as well as findings of the **previous** monitoring activities carried out by these bodies, information **received pursuant to** ~~referred to in~~ **Article 16a** *[PCY note: Article related to enforcement tasks]* **and Article 15a** *[PCY note: Article related to complaints submitted to Service Quality Standards]* ~~(1) and (3)~~, and other sources of information pertaining to the application of this Regulation on the territory of the respective Member State. **Monitoring activities may include audits, inspections, interviews and examination of documents.**
3. The risk assessment shall be carried out for the first time by 30 June XXXX [1 year after the Regulation becomes applicable], and every two years thereafter.	3. The **monitoring** shall be carried out for the first time by 30 June ~~XXXX~~ **... [4 years from the date of entry into force of this Regulation** ~~1 year after the Regulation becomes applicable~~], and every two years thereafter.
4. Compliance monitoring activities shall be based on the assessment of risks ~~and~~ **that could be** carried out by means of audits, inspections, interviews, verifications and examination of documents **and discussions** as appropriate. They shall include both announced and unannounced activities. The monitoring activities shall be proportionate to the risks identified.	***Deleted.***
5. National enforcement bodies shall ensure the swift rectification of non-compliance by air carriers, airport managing bodies and intermediaries as identified during their monitoring activities. They shall require carriers, **airport managing bodies and intermediaries** to submit an action plan to remedy non-compliance, as appropriate.	5. ~~National enforcement bodies shall ensure the swift rectification of non-compliance by air carriers, airport managing bodies and intermediaries as identified during their monitoring activities. They shall require To ensure swift rectification of non-compliance identified during the monitoring activities by the national enforcement bodies,~~ **Without prejudice to the competence of national**

	enforcement bodies to impose rectifying measures in accordance with national law, air carriers **and** ~~,~~ airport managing bodies ~~and intermediaries~~ shall ~~to~~ submit **to the national enforcement bodies** an action plan to **address** ~~that remedy~~ non-compliance **identified during the monitoring activities without undue delay.** ~~, as appropriate.~~
5a. If action plans are deemed insufficient, or if non-compliance necessitates an immediate action, National Enforcement Bodies may take enforcement actions as defined in Article 16a.	***Deleted.***
6. The compliance monitoring programme under paragraph 1, the risk assessment under paragraph 2 as well as their findings shall be communicated to the Commission by 30 June XXXX [2 years after the Regulation becomes applicable], and every two years thereafter.	***Deleted.***

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