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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.:	ST 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 Germany on the Presidency non-paper (Less Contentious Issues)

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Delegations will find, in Annex, comments from Germany on less contentious issues.

## Comments by Germany on the

**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 (COM(2013)130 = ST 7615/13)**

### **WK 9/25 attachment 1 (Less Contentious Issues)**

#### **1. Germany's negotiation objective/key message**

Scrutiny reservation, initial comments on the questions raised

##### **a. Preliminary comments**

- We still maintain our general scrutiny reservation.

##### **b. Concerning the questions in WK 9/25**

#### **1. INFORMATION**

- Both the existing Regulation and the Commission's proposal seem to us to be outdated in parts. Nowadays, flight tickets are ordinarily booked online or via apps, and the new rules should take this into account.
- The general approach for the Omnibus Regulation also amends Article 14 of the Air Passenger Rights Regulation. We need to make sure that a coherent regime is created in the end.

#### **2. COMPLAINT AND CLAIM HANDLING**

- Question to the Presidency and the Commission: What is the intended impact of the time limits proposed here on the civil law of the Member States, including the limitation period and the start of default?
- Are any proposals being considered as to how to simplify the ways in which passengers can exercise their rights?
- Does the Commission have any data on the time frame within which air passenger rights are usually exercised so far?

### 3. TARMAC DELAY

- We are still examining the proposed shortening of the time lapse for disembarkation.

### 4. REROUTING

- From our perspective, the rule would only cover cancellations and denied boarding. Do the Commission and the legal service believe there may also be any impacts on delays of more than 12 hours? Might the CJEU be led, on grounds of equal treatment, to extend the rule to cases of delay, following the Sturgeon judgment? Page 19 of the Presidency working paper of 3 January 2025 (WK 9/2025) provides an overview of the re-routing judgments issued since the 2013 Commission proposal. In the light of these decisions, we should carefully consider whether or not the Commission's proposal is still up-to-date in this respect or whether it might need to be adapted to the case-law that has been handed down in the meantime.
- Wherever ambiguities arise from case-law or where regulatory gaps persist, we should strive for clear and comprehensive rules to facilitate the application of the law in the interest of all parties involved.

### 5. RESCHEDULING (TO A LATER TIME)

- We are still assessing the question of how to deal with the rescheduling of flights to a later time.
- The question of whether it is appropriate to treat passengers whose flight has been rescheduled in the same way as passengers on a delayed flight also depends on what loss or inconvenience the compensation for delay is intended to address. Passengers who have been informed in good time of the change of departure time will not arrive early at the airport and will therefore not suffer any loss of time due to waiting at the airport. This distinguishes them from passengers whose flight has been cancelled at short notice or delayed.

### 6. CHANGE OF SCHEDULE (BRINGING FORWARD OF DEPARTURE TIME)

- We are still examining this point also. If passengers are informed in good time that their flight has been brought forward, then they do not face unnecessary waiting times at the airport. This distinguishes them from passengers whose flight has been cancelled at short notice or is delayed.

### 7. OUT-OF-COURT DISPUTE RESOLUTION

- In Germany, there is conciliation body organised under private law, which is responsible for conciliation procedures with airlines that are members of that body. There is also an official conciliation body that is responsible for cases involving airlines that are not members of the private conciliation body. In both cases, conciliation can be a valuable method to enable rapid dispute resolution. This is in the interest of all parties involved and at the same time relieves the burden on the courts, which are already dealing with heavy workloads due to the sharp increase in the number of cases concerning air passenger rights.
- In Germany, the separation of national enforcement bodies (NEBs) and conciliation bodies has proven to be helpful. Both bodies carry out different tasks with different

purposes, so we wonder what the benefits could be of grouping together these tasks within one body. Moreover, an amalgamation of the organisational structures for supervision and out-of-court dispute resolution would, in any event, potentially undermine the independence and neutrality of the arbitration bodies from the perspective of the parties concerned. We therefore take the view that such a step would entail significant and unjustified disadvantages.

#### 8. ENFORCEMENT – SANCTIONING

- Air Passenger rights are established as claims under private law and should in principle be enforced in the same way as other rights under private law. In addition to the courts, the Member States have conciliation bodies for this purpose, which are ordinarily free of charge for consumers.
- Additional obligations for NEBs result in additional red tape for businesses and public authorities. Any unnecessary bureaucracy should be avoided.

#### 9. LIMIT TO ASSISTANCE (CAP ON ACCOMMODATION)

- In general, it should be noted that price levels at different destinations can vary widely and that limiting the cost of overnight stays to EUR 100 is likely to have a very different impact depending on the location.
- At the same time, it should also be borne in mind that it must realistically be possible to find an appropriate hotel room for the amount.
- Account should be taken of the fact that persons with disabilities may require overnight accommodation that fulfils accessibility requirements – the Commission proposal already provides for an exception to the cap on accommodation costs for this reason (Article 11(3)).
- In general, the rules should not be overly complex, otherwise there will be greater potential for litigation.
- We are opposed to any additional obligation for persons with reduced mobility, unaccompanied children and pregnant women to notify the air carrier of their particular needs at least 48 hours before departure. Such persons should be entitled to adequate assistance and accommodation, even without prior registration.

#### 10. "NO-SHOW" POLICY

- We are still examining this point also. It is important to distinguish between two questions here:
  - Firstly, it is necessary to clarify whether the airline may deny passengers boarding on a flight segment if they have not taken the entire journey. In Germany, there is a supreme court ruling of the Federal Court of Justice that prohibits such clauses in general terms and conditions. In our view, this legal situation should remain unchanged.
  - However, this is a separate matter to the question of whether, in such cases, airlines may charge a surcharge where the flight segment taken was offered at a higher price at the time of the booking than the total journey purchased.

## 11. CONTINGENCY PLANNING

- Question to the Commission: How does this arrangement relate to the Commission's Communication "Contingency Plan for Transport", COM(2022) 211 final?

## 12. LIABILITY FOR BAGGAGE, INCLUDING THE MOBILITY EQUIPMENT OF PRM

- The latest adjustment of the upper limits of liability under the Montreal Convention entered into force at the end of last year. In our understanding, these updated upper limits therefore also apply in so far as Regulation 2027/97 declares the Montreal Convention to be applicable to Community air carriers.
- The update of the upper limits of liability presumably also necessitates a review of the minimum amounts of insurance cover under Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators. Could the Commission say whether it will present a delegated act for this purpose and if so, when will this be?
- As far as liability for baggage damage is concerned, we need to carefully assess whether the proposals are compatible with the Montreal Convention, to which both the Union and the Member States are parties.
- We are in support of a mechanism that is compatible with the Montreal Convention, and which prevents incomplete compensation of damage to disabled people's mobility equipment (such as electric wheelchairs) under the Montreal Convention.