



Council of the European Union
General Secretariat

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

Brussels, 02 March 2020

WK 2387/2020 ADD 2

LIMITE

**AVIATION
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CODEC**

WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 5123/20
N° Cion doc.:	ST 7615/13
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 Member States on the Presidency compromise

Delegations will find attached comments from Slovakia on the above mentioned document.

Written comments of Slovakia

Presidency Compromise Proposal ST 5123/20 on the Proposal for Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 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.

Slovak Republic takes note of the progress and is also of the opinion that the agenda of air passenger rights and particularly new proposal of 261/2004 regulation still needs more careful examination in following areas:

Art. 2 (m) + Annex 1 - Extraordinary circumstances: Concerning extraordinary circumstances, we are of the opinion, that non exhaustive list of extraordinary circumstances should be considered. Extraordinary circumstances listed in Annex 1 of this proposal should be binding but not exhaustive as it will be difficult to cover and predict some possible extraordinary circumstances, which may appear in the near future. In case of non-exhaustive list, we propose that strikes of air carrier crew and air carrier staff should never be considered as an extraordinary circumstance.

Nevertheless we must also be logical and must not create unnecessary burden for air carriers. Recent experience with the coronavirus shows that some airlines are decreasing the number of flights to northern Italian cities, but this decrease comes only into force 15 days after the announcement, as they fear they would need to pay substantial amount of compensation if flights are cancelled sooner.

We are open to an exhaustive list under the condition of a flexible review clause.

Art. 2 (o) – Connecting flight: Preserving stopovers in the text of this definition as was stipulated in the LV PRES proposal makes the definition of connecting flights more complex and it ensures legal certainty as stopovers happen daily and their regulation in this paragraph should not be omitted.

Operating air carrier: We propose to include a new definition of Operating air carrier in this Regulation. Inclusion of this definition is necessary in the context of wet-lease flights and could be based on the ECJ Judgement in case C 532/17 Wolfgang Wirth a.i. against Thomson Airways Ltd, which states the following: “...in particular, of Article 2(b) thereof must be interpreted as not covering the case of an air carrier, such as that at issue in the main proceedings, which leases to another air carrier an aircraft, including crew, under a wet lease, but does not bear the operational responsibility for the flights, even where the booking confirmation of a seat on a flight issued to passengers states that that flight is operated by the former air carrier.”

Art. 2 para. 5 – need for a clarification of the phrase “the performer of rights and obligations under this Regulation” in the context of charter flights. These flights are arranged by a charterer or a broker and there is no direct contract between the passenger and the airline.

Art. 4 para. 4 - Spelling mistakes: Passengers who make reservation later than 72 hours before departure should have the right to report a spelling mistake without any additional charge within a certain period of time after the reservation is made (f.e. within 30 minutes). It would ensure better equality of rights within this paragraph as many passengers make reservation later than 72 hours before departure. We are also in favour of decreasing 72 hours’ time limit to 48 hours’ time limit.

Art. 5 para. 3a of the LV PRES proposal: The rule on how many consequent flights of a single aircraft can be delayed due to extraordinary circumstances should be kept in order to ensure better legal certainty in case of extraordinary circumstances. We therefore support the re-installment of the text of para 3a of the LV PRES proposal.

Article 5 para. 1a (v) - Smaller airports, outermost airports, public service obligation: We do not support the inclusion of the provisions of this paragraph. These exceptions are discriminatory towards passengers, decrease their rights within this regulation and violate equality of passenger rights falling under this regulation. In Slovakia, this paragraph would affect all international airports except for Bratislava airport and many other airports across Europe along with thousands of passengers.

Art. 5 (1a) (ii) threshold at offered re-routing in case of cancellation and Art. 6 (1a) (ii) threshold at delay: We support the alignment of criteria for delay and cancellation. However, for threshold at delay on arrival or re-routing after the cancellation, the right for compensation should be provided already **after three hours** of delay at arrival, as was ruled by ECJ. We support threshold of 3-5-7 hours, but we are open to discuss 3-7-9 hours threshold as well. In our view, proposed threshold of 5-9-12 hours decreases passenger rights and goes against the prior purpose of this regulation. In addition, we consider criteria based on travel distances as discriminatory as every passenger wants to reach the final destination on time no matter what the flight distance is.

Art. 5 (1a) (ii) - the wording of the LV PRES proposal with reference to 24 hours time limit to inform passengers before the time of departure about cancellation and offer re-routing under conditions stipulated in the previous wording should be kept. It can motivate airlines to offer re-routing in reasonable time before the departure.

Art. 14 para. 5: In the event of cancellation or delay, we support the obligation to inform passengers as soon as possible, without specifying the time limit (deletion of the reference to 40 minutes).