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From:	General Secretariat of the Council
To:	Working Party on Aviation
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Subject:	Proposal for a regulation 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 Italy on the compromise proposed by the Polish Presidency

Delegations will find, in annex, comments from **Italy** on the compromise proposed by the Polish Presidency.

ST 06102/1/25 REV1

Proposal for a regulation 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

Revised compromise proposed by the Polish Presidency, including less contentious issues

WRITTEN CONTRIBUTION – ITALY

6 March, 2025

Particular care must be paid to the fundamental principles (recitals) to be integrated into the text, in particular:

- simple and clear rules without ambiguity and consistent with other regulatory proposals
- importance of balancing interests
- importance of information and assistance
- importance of getting the passenger to their destination as soon as possible, even with flights from other airlines

Article 1, par. 1

Italy would keep the original text reporting those cases that define the scope of application of the Regulation. Otherwise the risk is burdening and complicating the Regulation (going against the core principles of the revision) to the detriment of its effectiveness.

Furthermore, some aspects of passenger protection as a consumer involve the participation of different NEBs in the same Member State, an unclear scope complicates references for both passengers and the NEBs themselves.

Article 4, par. 2

Regarding the last sentence, “*immediately*” risks creating an expectation that not all carriers are currently able to meet, with the risk of increasing disputes. In Article 7, the compensation times are established with reference to this article as well. Given that overbooking is a disruption certainly attributable to the carrier (no liability assessments are required), it could be rephrased “*immediately, where possible and in any case no later than the 30 days established by Article 7*” so as to provide a clear time limit for passengers and sustainable for all carriers.

Article 4, par. 5

This paragraph concerns contractual aspects between the carrier and the passenger, for which the responsible authority does not always coincide (in Italy, for these aspects, it is the AGCM that deals with competition and unfair commercial practices issues). In this case, there would be a risk of a ping-pong effect between authorities, to the detriment of the passenger.

Article 5, par. 0

The obligation to inform passengers (former art. 14) has been split among the articles related to the disruptions but there are no different mandatory timeframes reported for each type of disruption. It remains generic, risking only an increase in the complexity of the provision, contrary to the principles of the revision.

Since information is a priority for passenger protection, we propose to keep a single article on the obligation to inform passengers, placed before all the articles on specific disruptions, specifying that it refers to all disruptions.

This article should explicitly state mandatory timeframes (for example: in any event that occurs at the airport, information must be provided within the first 30 minutes and, subsequently, the carrier will provide new information as soon as available and in any case no later than one hour from the first information).

In this way, the passenger can make timely decisions, without prejudice to the consequences under Regulation and all the legal protections of the individual case (for example, changing means of transport independently without waiting for rerouting and then seeking private actions against the carrier).

In general, the structure of the provision should list the protections in order of importance, therefore:

1. Information
2. Assistance
3. Rerouting/refund
4. Compensation

Article 5, par. 2

Regarding the last sentence: “[...] *flights in the rotation sequence operated by the same aircraft* [...]”, rotations can be numerous in a day in the case of short-haul flights and have different time references in the case of long-haul flights; moreover, for the purposes of an assessment, it is difficult to verify events that occurred beyond 3 rotations. Therefore, it is proposed to keep the limit of 3 rotations established by the CJEU case law.

Article 5, par. 3

In order to avoid any misunderstanding, it should be always specified if the number of days are the calendar days or working days.

Article 5, par. 4, 1st indent

Information timelines for the passenger should be provided that are suitable to minimize the inconvenience caused by the flight moved forward. The passenger, in fact, should have time to reorganize to reach the airport; otherwise, they risk missing the flight. In any case, it can cause inconvenience to the passenger who had organized their activities based on the initial schedule.

“[...] *unless there is no change in the check-in and boarding times*”: is it possible that a flight could depart earlier than scheduled and the check-in and boarding times remain unchanged?

“[...] *or the passenger has taken the rescheduled flight*”: is it intended that the passenger was informed in a timely manner and within what time frame?

Article 5, par. 4, 2nd indent

Is it intended that the passenger was informed in a timely manner? Within what time frame?

Article 6, par. 0

See comment in Art.5, par.0

Article 6. par. 1

We agree with the increase in the delay threshold to 5 hours, without prejudice to the obligation to provide assistance which must be triggered after 2 hours, as it is currently.

Article 6. par. 3

Regarding the last sentence: “[...] *the preceding flight or flights in the rotation sequence operated by the same aircraft* [...]”, see comment in Art. 5, par. 2.

Article 6. par. 6

Regarding the first sentence, for the purpose of simplification, the actual arrival time at the destination should be considered as the delay time compared to the scheduled time, regardless of the city of landing (therefore even if it is not part of the same region).

Article 6-2a, par. 2

We agree to a maximum time of 3 hours beyond which passengers must be disembarked, except in the truly exceptional cases mentioned.

Article 6a, par. 0

See comment in Art.5, par.0

Article 6a, par. 3

It should be more clearly specified that this is the only case in which the contract was purchased from the EU carrier. The following rewording is proposed (changes highlighted in bold):

*“By way of derogation from Article 3(5), in the case of connecting flights booked as a single air transport contract **purchased from a Union carrier**, departing from a non-EU country to the territory of a Member State with a stopover in the territory of a Member State, where the cause of a long delay arises in the first flight operated, under a code-share agreement, **between a the Union carrier and** ~~, by~~ a carrier established in a non-EU country, a passenger may bring his or her action for compensation against the Union air carrier that performed the second flight.”*

Article 7, par. 1a

The last two thresholds (9 ad 12 hours) are excessively penalizing for the passenger. A single threshold of 5 hours is proposed regardless of the distance.

Article 7, par. 2

It should be noted that limiting compensation only to the last leg is contrary to the orientation of the CJEU (referring in particular to case C-832/18).

Of course, it would be fully legitimate for the legislator to adopt a decision that is not in line with the case law; however, it should be noted that in many other parts of the Regulation the case law of the Court has been taken as an important point of reference.

Article 7, par. 3

We agree on the 6 months to present the claim for compensation and on the 30 days for the payment which should also be extended to the reimbursement to give the carriers adequate time to process the request.

In the last sentence the concept that cash compensation is the normal form of compensation and that the alternative of vouchers or other services must be expressly and specifically accepted by the passenger should be further reinforced.

Article 8, par. 1(a)

We propose to extend the payment of the reimbursement, as well as the compensation, to 30 days, to give carriers adequate time to process the request, also for the purpose of harmonization with the Regulations relating to other modes of transport.

Article 9, par. 1(aa)

It should be better clarified from what moment the “refreshment” and the “meal” are provided: are both already provided starting from the 2 hours and does the frequency change?

Regarding the value of the “meal” it is difficult to establish a value as the price levels are very variable between the Member States, it is a topic to think about.

Article 9, par. 3

We agree on the limit of 3 nights in case of a disruption caused by extraordinary circumstances.

Article 9, par. 4

Neither the objective nor the rationale behind this exemption are clear.

Article 10, par. 2

Reimbursements should all be aligned to 30 days, harmonizing the timing with those provided for by the Regulations of other modes of transport.

Article 10a

Given that the most frequent cause of activation of the Contingency Plan for delays/cancellations is airport congestion, could the activation of the Contingency Plan in itself constitute an extraordinary circumstance?

Article 11

“*Recognised assistance dogs*”: the definition – aligned with the General Approach of the Regulation for multimodal travel – is not complete. It is in line with the current ECAC definition which is however under review. The current wording would in fact lead to a disalignment between Member States (“[...] *officially recognised in accordance with applicable national rules, where such rules exist*”).

Article 15a, par. 2

- “[...] *such a complaint shall be submitted within three months*”: the timeframes within which passengers can submit a complaint to the carrier are not aligned: 6 months have been set for compensation, but not specified for reimbursement and this article provides 3 months. It is proposed to align all the timeframes relating to the complaint to the carrier (within a maximum of 3 or 6 months to be defined).
- “[...] *Within one month of receiving the complaint, the air carrier shall either provide a reasoned reply or...*” This provision makes the reimbursement time very long. Shouldn't it be within 30 days of the request?

- “[...] *The answer shall also contain the relevant contact details of bodies...*” The reference to the NEB must be made in such a way that it is not a waiver of liability from the carrier to the NEB in the event that the passenger is not satisfied.

Lastly, we support the provision of service quality standards for both airport managing bodies and air carriers, as provided by the original Commission’s proposal of *Regulation of the European Parliament and of the Council 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*, Art. 15a (below for ready reference).

Based on the Italian experience, Quality is a fundamental requirement for the protection of passengers' rights. Furthermore, the aforementioned provision would guarantee a harmonized approach at EU level on the aspects of quality of AMBs and carriers.

In Italy, this provision is already in force (obligation to draft Service Charters for AMBs and carriers - articles 705 and 783 of the Navigation Code).

“Service quality standards

- 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.*
- 3. Airport managing bodies located in a Member State shall establish service quality standards based 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 the national public authorities on request.”*