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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 Slovakia on the compromise proposed by the Polish Presidency

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

SK comments on the 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 – documents ST 6102/25 and ST 6102/25 REV1

Slovakia has a general scrutiny reservation on the entire proposal.

Art. 2 (m), Annex – Extraordinary circumstances

We support the inclusion of a definition of extraordinary circumstances along with a non-exhaustive list of such circumstances, as this approach enhances legal clarity and ensures a more predictable interpretation of the regulation. At the same time, we also welcome the addition of a list of circumstances that cannot be considered extraordinary. This would contribute to a more transparent application of the rules and greater legal certainty for all stakeholders. By explicitly outlining both qualifying and non-qualifying situations, the regulation would help prevent ambiguities and reduce the risk of inconsistent application in practice.

Art. 5 (0) – Cancellation

Informing passengers "no later than at the time of departure indicated in the reservation" may be problematic, as a flight may first be delayed and only later canceled if the issue cannot be resolved.

Art. 6 (3) – Long Delay

The addition of the term "flights in the rotation sequence" expands the scope of flights that an air carrier can invoke when applying extraordinary circumstances. This may create room for broader interpretation and potential misuse, as air carriers could claim extraordinary circumstances not only for the directly preceding flight but also for other flights in the rotation, even if their delay no longer has a direct and necessary impact on the given flight. This could weaken passenger protection and make it more difficult for them to claim compensation, as it would be harder to prove whether the delay was truly the result of extraordinary circumstances or a failure of the air carrier in managing flight operations.

Art. 6-2a (2) – Tarmac delay

We support the three-hour limit for tarmac delays but can also envisage a shorter time limit. However, it is essential to clearly define when this time limit begins to ensure legal certainty and effective enforcement.

Art. 7 – Right to compensation

(1)

We propose considering an increase in the compensation amounts, as they have remained unchanged for years and do not reflect recent economic developments or inflation.

(1a)

We agree with aligning the conditions and thresholds for compensation between cancellations and long delays, as this will contribute to clear and consistent rules. We also support removing the distinction between extra-EU and intra-EU flights to ensure equal treatment of passengers.

However, we do not support the proposed time thresholds, as we consider them unreasonably high. Instead, we propose maintaining the currently applicable time thresholds, which are in line with the established legal practice of the Court of Justice of the European Union. This approach would ensure that passenger rights are not diminished while preserving legal certainty.

(3)

We welcome the introduction of a deadline for the payment of compensation, as it strengthens passenger rights and ensures timely reimbursement. Establishing a clear timeframe enhances legal certainty and encourages compliance with compensation obligations, ultimately benefiting consumers by providing predictability and fairness in the claims process.

Art. 9 (2b) – Right to assistance

Passengers should have a clear idea of how much they are allowed to spend on refreshments. It may be helpful to establish a minimum voucher amount to ensure consistency and prevent disputes over what constitutes "reasonable and proportionate" expenses.

Art. 10 (2) – Upgrading and downgrading

We believe that compensation in the event of a downgrade should be based on the full cost of the ticket rather than just the flight price. When a passenger is downgraded, they are forced to travel in a lower class than expected, experiencing reduced comfort, different service standards, and potentially less favorable conditions. Since the passenger originally paid for a higher level of service, their compensation should reflect the total amount spent on the ticket, including applicable taxes and charges. Excluding these elements from the reimbursement calculation unfairly reduces the compensation amount and does not adequately reflect the inconvenience experienced by the passenger.

Furthermore, given the high cost of airline tickets, it would be appropriate to reconsider the percentage of compensation, ensuring that passengers receive fair reimbursement that better reflects the difference in service and the financial impact of the downgrade.

Art. 10a (1) – Airport contingency plans

We support the threshold of five million annual passengers for requiring airport managing bodies to establish a proper contingency plan. This threshold ensures that contingency planning is targeted at larger airports, where the impact of multiple cancellations or delays is most significant. It strikes a reasonable balance between ensuring passenger protection and avoiding unnecessary regulatory burdens on smaller airports with lower traffic volumes.

Art. 15a (2)

We propose a six-month deadline for submitting complaints, aligning it with the deadline for compensation claims. We believe that, for the sake of consistency and clarity, both deadlines should be the same.

At the same time, we propose establishing a maximum response time of two months for the air carrier to reply to passenger complaints. This timeframe would ensure timely handling of complaints and prevent unnecessary delays while aligning with common EU passenger rights practices.

Art. 16b (5) – Cooperation between Member States and the Commission

We do not support Article 16b (5), as it undermines the independence of national enforcement bodies (NEBs) by allowing the Commission to request investigations and reports. NEBs should remain responsible for enforcement in line with national rules.

This provision creates unnecessary administrative burdens and may disrupt enforcement priorities, especially in Member States where NEBs oversee broad consumer protection matters. We recommend removing or revising this article to ensure NEBs retain full autonomy in managing their enforcement activities.

Art. 17 – Review and Report

We welcome and support the regular review of compensation amounts and the list of extraordinary circumstances. A periodic assessment ensures that compensation remains fair and reflective of economic factors such as inflation and the evolution of airfares. Additionally, regularly updating the list of extraordinary circumstances based on past events contributes to greater legal clarity and predictability for both passengers and air carriers. This approach helps maintain a balanced and effective passenger protection framework while ensuring that the regulation remains relevant and adaptable to evolving challenges in the aviation sector.