



Council of the European Union
General Secretariat

Brussels, 07 March 2025

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

WK 3002/2025 REV 1

LIMITE

**AVIATION
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CODEC**

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	WK 3002/25
N° Cion doc.:	ST 7615 2013 INIT
Subject:	Non-paper from Presidency on the scope of the regulation and codification of case law in case of connecting flights

In view of the Working Party on Aviation on 13 March 2025, delegations will find, in Annex, a revised table.

The Presidency has become aware there was a mistake in row 5. Indeed the interpretative guidelines of the European Commission state (paragraph 2.1.3):

"If a connecting flight from the EU to a non-EU country was operated in its entirety by a non-EU air carrier and the booking was made with an EU air carrier, a passenger is entitled to compensation from the non-EU air carrier that operated the flights on behalf of that EU air carrier, if this passenger reached their final destination with a delay of more than 3 hours caused in the second leg of the said flight (28)."

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Non-paper from Presidency on the scope of the regulation and codification of case law in case of connecting flights

In the context of discussions in the Working Party on Aviation on the revision of Regulation 261/2004, two issues, closely interlinked, have been raised: the asymmetry of the scope and the codification of case law regarding connecting flights, in particular when one leg is operated by a non-EU operator, entirely outside the EU. The objective of this non-paper is to provide some background to those questions and seek the views of delegations.

Article 3(1) of Regulation 261/21004 defines the scope as follows:

“This Regulation shall apply:

- (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
- (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.”

The question whether a certain flight is within the scope is explained in the [Interpretative Guidelines](#) on the basis of the whole CJEU case-law.¹ It is explained that the decisive element in deciding whether a flight (or more correctly a passenger on a certain flight) is covered by Regulation 261/2004 is the fact that two or more flights are booked as a single unit (Wegener case).

Moreover, the Court has clarified certain rights of passengers in the case of connecting flights:² The Court clarified that it follows from the wording of Article 3(1) of Regulation (EC) No 261/2004, that defines its territorial scope, that the Regulation applies to passengers and not to the flights that those passengers have taken, meaning that only the location of the passenger’s airport of departure and airport of arrival matter, and not those of the airports where the passenger undertakes a stopover in order to reach the final destination. Therefore, the Regulation does not apply to connecting flights operated by an EU carrier which have been the subject of a single booking,

¹ OJ C, C/2024/5687, 25.9.2024.

² Source : AIR PASSENGER RIGHTS – EUROPEAN CASE LAW, page 7, Commission, March 2022

where both the airport of departure of the first leg of the journey and the airport of arrival of the second leg of the journey are located in a third country, and only the airport where the stopover takes place is located in the territory of a Member State.

Case C-451/20 Airhelp <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-451/20>

Conversely, the Court confirmed that the right to compensation for long delays of flights applies to connecting flights from the EU to non-EU countries with stopovers outside the EU where these flights were booked as a single unit. This also applies where that delay takes place outside of the EU and there was a change of aircraft at the stopover. Moreover, where such connecting flights that were subject of a single reservation were performed under a code-share agreement with an EU carrier performing the first leg and a non-EU carrier performing the second leg, a passenger may bring his or her action for compensation against the EU carrier.

Cases C-537/17 Wegener and C-502/18 České aerolinie <http://curia.europa.eu/juris/liste.jsf?num=C-537/17> <http://curia.europa.eu/juris/documents.jsf?num=C-502/18>

Similarly, in the case of connecting flights booked as a single unit from a non-EU country to the EU with a stopover in the EU, where the cause of a long delay arises in the first flight operated, under a code-share agreement, by a carrier established in a non-EU country, a passenger may bring his or her action for compensation against the EU air carrier that performed the second flight.

Case C-367/20 KLM Royal Dutch Airlines

<http://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-367/20&jur=C>

An interrelated question is therefore which carrier is liable for paying compensation in case of two or more carriers involved in a connecting flight. This question was solved in the Česke case: “where, in the context of connecting flights consisting of two flights that were the subject of a single reservation, the second flight is performed under a code-share agreement by an operating air carrier other than the operating air carrier that entered into the contract of carriage with the passengers concerned and that performed the first flight, the latter carrier remains subject to contractual obligations to the passengers, even in relation to the performance of the second flight”. That question is interrelated to the issue of scope because, if an EU operator is performing the first leg of a journey from the EU to non-EU countries with stopovers outside the EU under a single reservation and under a code-share agreement with a non-EU carrier performing the second leg, the EU carrier becomes liable for delays incurred by the non-EU operators. Similarly, in the case of connecting flights booked as a single unit from a non-EU country to the EU with a stopover in the EU, where the cause of a long delay arises in the first flight operated, under a code-share agreement, by a carrier established in a non-EU country, the EU air carrier that performed the second flight

becomes liable for delays on the first flight. By contrast, in the case of connecting flights booked as a single unit from a non-EU country to the EU with a stopover in the EU, where the cause of a long delay arises in the first flight operated, under a code-share agreement, by a carrier established in a non-EU country, the non-EU air carrier that performed the second flight would not become liable for delays on the first flight. In sum, passengers are covered by the Regulation if at least one operating carrier is an EU carrier and the passengers either depart or arrive in the EU, regardless where the flight disruption takes place. If there is no EU carrier involved then Article 3 (1)(b) applies, meaning that passengers are only covered on outbound flights from the EU.

The table in Annex is an illustration of the Regulation applicability when it comes to delays on connecting flights where the connection occurs outside the EU. The table is also an indication of the asymmetry of Regulation 261/2004 when it comes to the rights of passengers and a level playing field between EU and non-EU operators.

Against this background, the Presidency is seeking the views of delegations on the following questions:

1. Taking into account passengers rights in other jurisdictions and enforceability aspects, does your delegation see the need and the possibility to extend the scope of Regulation 261/2004 to non-EU operators for flights arriving to a Union airport?
2. Does your delegation consider that the co-legislator should codify the case law indicated above and, taking into account enforceability aspects, clarify applicability of Regulation 261/2004 in other cases not covered by the case law to improve the clarity of the legislation and increase the level of passengers' rights on connecting flights? If so, please detail which cases should be covered.
3. Does our delegation consider that, on the contrary, there are strong justifications in terms of EU competitiveness, EU connectivity and level playing field between operators for the co-legislators to depart from certain interpretations by the Court? If so, please detail which cases should be excluded and the justification for such exclusion.

ANNEX II

Itinerary (Journey)	Contracting Air Carrier	Operating Air Carrier leg 1	Operating Air Carrier leg 2	Delay Leg1 Regulation applicability?	Delay Leg 2 Regulation applicability?	potential liability of EU air carrier?
EU - No EU - No EU (Madrid-New York-Toronto) leg 1: Madrid-New York leg 2: New York-Toronto	EU	EU	EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
			No EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
		No EU	EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
			No EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	no
	No EU	EU	EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
			No EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
		No EU	EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
		No EU				

		No EU	No EU	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(a) of Regulation 261/2004) - the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	no
No EU - No EU - EU (Toronto-New York-Toronto) leg 1: Toronto-New York leg 2: New York-Madrid	EU	EU	EU	YES (article 3(1)(b) and Article 2 point (h) of Regulation 261/2004)	YES (article 3(1)(b) of Regulation 261/2004)	yes
			No EU	highly theoretic, since it is unlikely that an EU carrier will operate purely outside the EU	highly theoretic, since it is unlikely that an EU carrier will operate purely outside the EU	yes
		No EU	EU	YES (article 3(1)(b) of Regulation 261/2004)- the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(b) of Regulation 261/2004)- the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
			No EU	NO	NO	
	No EU	EU	EU	YES (article 3(1)(b) and Article 2 point (h) of Regulation 261/2004)	YES (article 3(1)(b) of Regulation 261/2004)	yes
			No EU	highly theoretic, since it is unlikely that an EU carrier will operate purely outside the EU	highly theoretic, since it is unlikely that an EU carrier will operate purely outside the EU	yes
		No EU	EU	YES (article 3(1)(b) of Regulation 261/2004)- the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	YES (article 3(1)(b) of Regulation 261/2004)- the fact that a delay arises on the first leg or the second leg (or any further leg) is immaterial; the main criterion is that the passenger arrives with a long delay at his final destination	yes
			No EU	NO	NO	
No EU - EU - No EU (Cairo-Madrid-Lima)	EU/No EU	EU/No EU	EU/No EU	NO Case C-451/20 Airhelp	NO Case C-451/20 Airhelp	