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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.:	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 Ireland on the Presidency non-paper (questions 1 to 5)

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Delegations will find, in Annex, comments from **Ireland** on questions 1 to 5 of the Presidency non-paper.

## Working Party on Aviation

10 January 2025

### Proposals to amend EU261

#### Comments from Ireland on Presidency Non-Paper (WK 9/25): Questions 1 – 5

##### General Remarks

Overall, Ireland is supportive of the Polish presidency's efforts to restart discussions on the reform of EU261. There is a need for an updated Regulation that provides a clear uniform interpretation of the legal framework and which strikes the right balance between upholding passengers' rights and avoiding undue administrative or economic burdens for enforcement bodies and air carriers.

The Presidency is asked to note the Ireland wishes to maintain a scrutiny reservation over the entire proposal to revise EU261. A general election was held in our country at the end of November and discussions remain underway on the formation of a new Government. We do not, therefore, have a clear political mandate to guide our position at this time.

Nevertheless, IE wishes to make the following observations on the questions circulated by the Presidency in the non-paper.

**1. Please indicate whether there is room for improvement in the care and assistance provisions as proposed by the Commission in 2013 and complemented by the Council General Approaches on the 2023 proposals?**

IE feels there is scope for improvement in the care and assistance provisions, particularly with regards to the provision of adequate meals and refreshments. Common issues under the current regime include passengers only receiving food vouchers after their flight has departed and vouchers not being usable due to shops at the terminal being closed if the delay extends into late night. There have also been instances where passengers have been rerouted to a flight at a different terminal, and the vouchers they received are only redeemable at the terminal of their original delayed or cancelled flight. It is essential that passengers get the sustenance they require – and are entitled to – at the time they need it, which is the purpose of this Article of the Regulation. Where this is not or cannot be provided by the air carrier and/or the airport, passengers should be entitled to claim costs incurred in sourcing refreshments themselves within a certain threshold.

In addition, the existing wording of 'meals and refreshments in reasonable relation to the waiting time' does not always function in practice. IE thinks that it could be strengthened, for example, by specifying that a substantial meal should be provided after a certain period of delay.

The issue of care and assistance also merits consideration in the context of a tarmac delay, which is partially addressed in Article 6(5). Provision of refreshment in addition to access to toilets and drinking water could be considered if the delay exceeds 3 hours.

Ensuring that passengers receive adequate care and assistance should be included as part of provisions on contingency planning, IE given that a certain percentage of flights are affected by delays and cancellations, arrangements should be put in place by carriers, in collaboration with

airport management, to ensure that adequate refreshments can be made available regardless of time of day, flight, terminal etc.

IE also considers that the €100 limit on accommodation does not fully reflect the current costs of such accommodation, especially where it is required at short notice. There is also quite a wide variation in hotel prices depending on location. We are also concerned that the cap discriminates against solo travellers – hotel rooms are generally sold on a per room basis, which means that groups (couples, families etc.) can pool their vouchers to get better accommodation than solo travellers. We support a cap on the value but it must be reflective of reality and also be able to take into account the effect of inflation over the medium to longer term.

**2. Given the increasing digitalisation of the aviation sector, does your delegation consider that some improvements could be made in the automation of care and assistance (for instance through automated vouchers) or of compensation and claim handling beyond the improvements brought by the 2023 proposals?**

IE would be supportive of measures to encourage air carriers to automate the provision of care and assistance and to manage compensation claims. However, it should not be mandatory for air passengers to use these automated tools. This would be of particular importance in the provision of care and maintenance. There will always be some passengers who will not be able to or wish to use digital services and they should not be treated differently to those who do.

Particular care may be needed in respect of using digitalisation to automate care and assistance as this will likely require digital services to be designed and operated in a manner that works not only for the air carriers but also the airports and any airport concessionaires (bars, restaurants, etc.) that may also be involved in the provision of said care and assistance. This could be challenging to implement effectively.

**3. Please indicate whether there are some concepts (e.g. transport contract) or mechanisms agreed in the General Approach on the multimodal journeys proposal that should be considered in the context of the work on the 2013 proposal.**

The General Approach on the multimodal journeys proposal identifies the contracting carrier as the carrier holding the primary responsibility for re-routing, handling of reimbursement requests and assistance to passengers in the context of single multimodal tickets. The contracting carrier also holds the primary responsibility for information provisions for single and combined multimodal tickets. This approach creates a unique and easily identifiable point of contact for the passenger with clear responsibilities. It is up to each contracting carrier to define contractually with other carriers involved in the multimodal journeys how to break down the costs and/or to delegate the handling of specific tasks.

The division of responsibilities between contracting carriers and operating carriers IEs something that could be reconsidered in the context of air passenger rights. In most cases the contracting carrier is the original point of contact with the passenger from the time of booking. It is not always made clear to passengers that there may be separate operating carriers, in some cases more than one for various legs of the journey etc. Confining communication to one channel in the case of flight disruption sets out a clear line of responsibility, making it easier for the passenger to identify the entity responsible for honouring their passenger rights. The contracting carrier would still have recourse to claim back from the operating carrier where there is liability

for delay/cancellation. There may also be the advantage that the contracting carrier would be able to utilize its entire network of partners in different modes if the passenger chooses rerouting. However, consideration would need to be given to how this proposed approach would function with regards to code sharing.

See also comment in response to question 5 with regards to the provision in the multimodal proposal regarding liability for loss of or injury to recognised assistance dogs.

**4. Does your delegation see any gaps in the 2013 Commission proposal that have not been addressed by the 2023 Commission proposals or other Commission proposals (e.g. proposal to amend the Package Travel Directive)?**

IE notes that the proposed amendments to EU261 in the 2023 proposal as regards enforcement of passenger rights in the Union (“the omnibus regulation”) in respect of compliance monitoring by NEBs, the development of service quality standards and the use of risk-based regulation by NEBs were deleted from the General Approach approved at Council last year.

While IE agrees with the majority of Member States that the set of proposals that were put forward in this area were excessively burdensome and not fit for purpose, IE also considers that the underlying principle of trying to strengthen monitoring and enforcement of EU 261 continues to have merit.

IE would be willing to work with like-minded Member States on considering a new approach to this issue if there is sufficient interest.

**5. Most of rights of PRM when travelling by air are in Regulation (EC) 1107/2006. The 2013 air passenger rights proposal so far did not amend Regulation (EC) 1107/2006. On the other hand, the Omnibus proposal aims to amend Regulation (EC) 1107/2006. Considering the General approaches on the 2023 proposals, how could the rights of persons with disabilities and persons with reduced mobility be further improved?**

IE would support amendments to Regulation (EC) 1107/2006 that would introduce specific enforcement powers for NEBs to utilise in investigating complaints and issuing sanctions for infringements of the regulation. In contrast to the PRM regulation, EC261 sets out that national enforcement bodies “shall take the measures necessary to ensure that the rights of passengers are respected” and that “the sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive”.

It is important that carriers, tour operators and airports are held accountable for breaching their obligations to passengers with reduced mobility and disabilities, and sanctions would also act as a deterrent, ensuring that responsibilities under 1107/2006 are taken as seriously as other passenger rights. While Member States may be given flexibility to set their own level of sanctioning for certain infringements, consideration should be given to introducing set levels of compensation for particularly harmful practices, such as failure to provide assistance where adequate notice has been provided. In addition, Ireland would also support the introduction of compensation for denied boarding of persons with reduced mobility and disabilities where they have previously engaged with a carrier and have been assured that they will be able to fly.

The multimodal journeys proposal includes a new provision setting out the liability of terminal managers when transferring passengers from one transport service to another for the cost of

replacement or the treatment of the injury of a recognised assistance dog. While the General Approach on the Omnibus proposal inserts a definition of 'recognised assistance dog' to Regulation (EC) 1107/2006, liability for their loss or injury is not specified in aviation law. In case C-218-24, the CJEU is currently examining the question of whether the Montreal Convention should be interpreted as meaning that the term 'baggage', either checked or unchecked, does not apply to pets. Irrespective, it is self-evident that recognised assistance dogs are of an immeasurable significance to their owners and should be treated legally as separate from standard animal companions. IE would be supportive of the provision for liability from the Multimodal proposal to be extended to Regulation (EC) 1107/2006.