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From:	General Secretariat of the Council
To:	Working Party on Aviation

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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 Austria on the Presidency non-paper
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Delegations will find, in Annex, comments from **Austria** on the Presidency non-paper.

## **Austrian comments on the revision of the Air Passenger Rights Regulation 261/04**

Austria welcomes the resumption of negotiations on the revision of the Regulation 261/04 on air passenger rights. It is important to always keep the goal of clear definitions and rules in mind during the negotiations, as only clear and easily understandable rules create legal clarity. This facilitates the application and enforcement of the law and can help to reduce the number of court proceedings. We therefore attach great importance to the creation of clear definitions and rules, in particular regarding extraordinary circumstances, but also regarding the activities of intermediaries and enforcement (see Article 16 of the Regulation). Furthermore, consumers rights to information should be clearly regulated (e.g. how to contact companies).

Austria appreciates the approach of the Polish presidency regarding the 20 questions asked and would like to use this statement to outline the most important topics from an Austrian perspective. At the same time, a fully comprehensive statement in which all stakeholders have been sufficiently involved will only be possible once a specific revision proposal has been submitted.

The following areas are affected:

### **Regarding the thresholds:**

We propose the following compromise:

- **Time limit** for delays:
  - 1st stage: 3 hours as before
  - 2nd and 3rd stages: 5 and 7 hours
- **Amount of compensation: as before (€250-400-600)**
- **Distances:** Extension of the first stage of Article 7 from up to 1,500 km to up to 3,500 km (corresponds to EC Article 6), as proposed by the EC. This would make the distances in both articles identical and reduce complexity.

In comparison to the EC proposal, the 3-hour limit would then apply up to 3,500 km, but only €250 would be allowed, instead of €400 for flights from 1,500 km to 3,500 km.

EC-Proposal 2013	Austrian Proposal
<p>(a) <b>five</b> hours or more after the scheduled time of arrival for all intra-Community journeys and for journeys to/from third countries of 3500 kilometres or less;</p> <p>(b) <b>nine</b> hours or more after the scheduled time of arrival for journeys to/from third countries between 3500 and 6000 kilometres</p> <p>(c) <b>twelve</b> hours or more after the scheduled time of arrival for journeys to/from third countries of 6000 kilometres or more.</p>	<p>(a) <b>three</b> hours or more after the scheduled time of arrival for all intra-Community journeys and for journeys to/from third countries of 3500 kilometres or less;</p> <p>(b) <b>five</b> hours or more after the scheduled time of arrival for journeys to/from third countries between 3500 and 6000 kilometres;</p> <p>(c) <b>seven</b> hours or more after the scheduled time of arrival for journeys to/from third countries of 6000 kilometres or more.</p>
<p>(a) EUR 250 for all journeys of <b>1500</b> kilometres or less;</p> <p>(b) EUR 400 for all intra-Community journeys of more than <b>1500</b> kilometres, and for all other journeys between <b>1500</b> and <b>3500</b> kilometres</p> <p>(c) EUR 600 for all journeys not falling under (a) or (b).</p>	<p>(a) EUR 250 for all journeys of <b>3500</b> kilometres or less;</p> <p>(b) EUR 400 for all intra-Community journeys of more than <b>3500</b> kilometres, and for all other journeys between <b>3500</b> and <b>6000</b> kilometres;</p> <p>(c) EUR 600 for all journeys not falling under (a) or (b).</p>

**Austria does not support an additional, fourth threshold (€125 compensation for distances of <1,500 km) in the interest of simple and clear rules**

**Regarding the information requirements:**

Article 4a GA Multimodal “Information to passengers on their rights” provides for information requirements for carriers and intermediaries. Similar information requirements are not currently provided in Regulation 261/2004, although the following discussion should bear in mind that a multimodal journey is more complex

**Regarding automation:**

Many airlines voluntarily offer meals/drinks, replacement transportation or reimbursements. In this respect, automation would be welcome. In this context, care should also be taken to ensure that automation is designed to be as simple and understandable as possible. In addition, a point of contact should be available. This is particularly important for clarifying individual concerns that cannot be adequately addressed by automated systems. In practice, such tasks are often performed by chatbots, which provide standardized answers and are unable to resolve complex issues. A user-friendly design would therefore be desirable. Consumers should not have to create an account to be able to assert their rights.

**Furthermore, we note as well:**

- Art 8 Abs 5 – the period of 12 hours should be discussed again. A waiting period of 12 hours seems unreasonably long, because, for example, this could make shorter trips obsolete. As an example, a short weekend trip can be mentioned in this regard, in which the outbound flight on Friday at 6:45 p.m. is canceled and then the passenger is rebooked on the next flight of the same airline on Saturday at 6:00 a.m., although a flight of another airline with seats available to the desired destination leaves on Friday at 8:00 p.m.
- A limit on accommodation costs to €100 per night according to Article 9 (4) should be reconsidered, it is questionable how suitable this would be in practice. A specific maximum amount is generally difficult to set due to the wide range of prices. Therefore, extensive discussions should still take place.
- We agree that the delay thresholds for compensation in the event of cancellations and delays should be the same.
- The inconvenience and damage that can arise when a passenger arrives late are independent of the ticket price. We therefore do not support making compensation dependent on the ticket price.
- We are critical of an automatic adjustment of compensation payments to inflation. Rather, a review of the adjustment of compensation payments to inflation should take place at regular intervals, e.g. every five years, similar to the 1999 Montreal Convention.
- If a single contract of carriage exists, the full passenger rights regulation should apply. Therefore, compensation should be paid if the connecting flight is missed and a single contract of carriage exists.
- From an Austrian perspective, a non-exhaustive list and a definition of extraordinary circumstances are supported in order to create more legal clarity in the future. Furthermore, we reject strict liability rules instead of a list of extraordinary circumstances, since such a liability regime appears neither appropriate nor comprehensible.

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