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WORKING DOCUMENT

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 Spain on the Presidency non-paper (questions 1 to 5)

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

Spanish Position on the no-paper WK9/2025 by the PL PCY regarding the Regulation on Air Passenger Rights

Spain expresses its appreciation to the Polish Presidency for the informal document prepared on the Regulation on Air Passenger Rights. Spain considers this document to be a solid foundation for the ongoing discussions, as it effectively identifies and encapsulates the key issues within the current Regulation.

General Considerations

- The Spanish delegation acknowledges the importance of ensuring **clarity and uniformity in the implementation** of the Regulation on Air Passenger Rights. This is essential to prevent ambiguities that may necessitate interpretation by the Court of Justice. Currently, the interpretation of the Regulation requires reference to numerous court rulings, which complicates the process for all parties and obscures a clear understanding of the established criteria.
 - Furthermore, the current Regulation lacks specific requirements regarding how passengers should submit claims to airlines if their rights are not upheld. Many complaints are received from passengers who struggle to find clear, accessible procedures for filing claims and understanding the necessary documentation. In numerous cases, airlines fail to respond to claims. To address this issue, **the Regulation should include specific provisions to ensure passengers can easily identify the process for submitting claims to airlines.**
 - The **involvement of intermediaries** as obligated entities presents significant challenges in terms of supervision, both in terms of the volume and the geographical dispersion of these intermediaries. While NEBs interact with a limited number of airlines, the potential number of intermediaries that NEBs may need to oversee is vastly different.
 - **Supervision must be proportional and based on the level of compliance** demonstrated by airlines. To achieve this, it is crucial for airlines to periodically report on the volume of complaints they receive and how they address them.
 - Additionally, there is a pressing need for **greater standardisation in the supervisory activities undertaken by NEBs.** Currently, there is significant disparity across Member States concerning inspections and the imposition of sanctions. This results in imbalances, with passengers and airlines being treated differently depending on the Member State involved. Mechanisms should be established to ensure NEBs maintain an equivalent level of enforcement, supervision, and sanctioning across the EU. NEBs should also report on their activities to ensure the Regulation is implemented in a consistent and standardised manner.
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Responses to questions 1-5

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.

Spain believes there is room for improvement in the care and assistance provisions. One notable omission in the proposal is the absence of a **guarantee fund to address airline insolvency**. Such a fund is crucial to ensure that passengers are compensated in cases of insolvency.

Another aspect to consider is the possibility for passengers to cancel their bookings in unforeseen circumstances. For example, when flights to a certain country are prohibited, and airlines fail to cancel the flights, passengers are left in a legal limbo. Including provisions for cancellation in such cases would provide passengers with greater certainty and protection.

In Article 9 (derived from the 2013 proposal), the newly added paragraphs 4 and 5 include issues that we have not been able to clearly assess. The limit of €100 per night for accommodation, in a regulation that might remain unchanged for 20 years, could pose significant restrictions in major cities. As for the exception in paragraph 5, it must be assessed to what extent it would impact island flights, potentially leaving passengers with canceled inter-island flights without accommodation.

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?

The Spanish delegation considers very important to use the new possibilities offered by technology to remove barriers and avoid unnecessary formalities in the exercise of rights by passengers. However, under no circumstances can these tools lead to a reduction in these rights, such as the possibility of issuing vouchers directly without the passenger having opted for them instead of a cash refund.

These rights would be reinforced by allowing passengers to make their claims (mainly in relation to delays and cancellations) through the airlines' websites only by providing their identification data, since the airlines have the rest of the flight information and any potential delays that may have occurred. Only in case of disagreement with the information recorded by the airline, the passenger would have to provide additional information.

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.

In the Regulation on passenger rights for multimodal journeys, significant progress has been made in defining the concept of the "full cost of the ticket," particularly when intermediaries are involved. Similarly, progress has been achieved in the Omnibus Regulation. Spain supports continuing this line of work. Additionally, the inclusion of

an article regarding legal representatives for third-country intermediaries was a positive step and should be retained.

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)?

Beyond the points mentioned in response to question 1, the Spanish delegation highlights the following gaps:

- Given that the 2023 Commission proposal includes intermediaries, references to "organiser" and "authorised travel agent" should be replaced by "intermediary" unless there are specific legal distinctions under the Package Travel Directive. These distinctions, if any, should be clearly outlined in the text.
- Provisions should also require intermediaries to provide NEBs with the necessary information upon request to facilitate effective supervision. The current text mentions airlines and airport managers but does not address intermediaries.

5. Most of the rights of PRMs 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?

Spain proposes that when an airline requires a person with reduced mobility (PRM) to be accompanied, the accompanying person should travel free of charge. This measure would alleviate the financial burden on PRMs and ensure their right to travel is upheld.

Another important issue is the compensation for mobility equipment, assistive devices and assistance dogs. Mobility equipment is crucial for passengers with reduced mobility or disabilities to remain independent and cannot be easily replaced. This is equipment that can be quite expensive and beyond the liability limits set for airlines in international agreements and EU regulations. This is a problem that should be addressed by finding legally appropriate ways to deal with it.

The new provisions must ensure that all information regarding flight cancellation, assistance, compensation for flight cancellation including reimbursement when the single multimodal ticket was booked through an intermediary, are in universally accessible formats, in accordance with applicable legislation, including the accessibility requirements set out in Annex I of Directive (EU) 2019/882.

Finally, the new provisions need to include the obligation of the operating carrier, in addition to paying special attention to the needs of disabled persons and persons with reduced mobility, as well as those of their companions and assistance dogs, where necessary, the obligation to provide alternative services that differ from those offered to other passengers. In particular, with regard to reimbursement and re-routing it is important to specify that paying special attention to the needs of disabled persons and persons with reduced mobility also means offering, in case of delay or cancellation,

alternative services that meet the needs of disabled persons. This may involve the provision of different services from those offered to other passengers. It is also considered necessary to focus on the training of staff responsible for providing direct assistance to disabled persons and persons with reduced mobility. As regards the scope of assistance to disabled persons and persons with reduced mobility, as set out in Annex I, it is proposed to include travel to toilet and catering facilities as well as the transport of hand luggage.