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## CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	WK 3002/25 REV1
N° Cion doc.:	ST 7615 2013 INIT
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 Spain on the Presidency non-paper regarding scope and connecting flights

Delegations will find, in Annex, comments from **Spain** on the Presidency non-paper regarding scope and connecting flights.

**Spanish Position on the non-paper WK3002/2025 Rev1 by the PL PCY on the scope of the regulation and codification of case law in case of connecting flights**

**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?**

Given the conflict between COM and Council over the Agreement with Oman, any consideration of the scope of application cannot lead to an extension of EU competences that would undermine the position of the States before the CJEU.

The question arises as to whether this extension of the scope of application of Regulation 261/2004 can be legally imposed on non-EU operators arriving at an EU airport. In other words, whether there is a legal basis for this extension of jurisdiction, i.e., whether an EU rule can be applied for events occurring outside the EU (delay at departure airport) to a non-EU subject (third country air carrier). In addition, there is the problem of code sharing between EU and non-EU air carriers (IB and BA case). The COM should legally check whether this obligation can be imposed. Spain understands the competitive disadvantage of EU air carriers but we see that from a legal point of view it is difficult to enforce an EU rule in a non-EU State.

**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.**

In general, there are no problems to transfer to the text the jurisprudence that exists so far.

Another possibility to be evaluated by the legal services could be to leave the application open and that it could be modified by international treaties (taking into account the "mirror" part).

The most important thing is to generate certainty and that there is clarity in the application, in other words, that it is clear to which flight it would be applied. Whatever the final solution adopted, Annex II of the document should be updated with the table of possibilities in order to be clear about the concept of flight to which it applies.

**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.**

Spain understands that it is not advisable to disregard the jurisprudence established by the courts.