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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 6102/2/2025 REV2.ADD1
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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 Portugal on the compromise proposed by the Polish Presidency

Delegations will find, in annex, comments from Portugal on the compromise proposed by the Polish Presidency.

PORTUGUESE DELEGATION

Compromise proposed by the Polish Presidency regarding amendments to Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air

Comments on doc. 6102/2/25 REV 2 ADD 1

Article 6e

Regarding the proposed re-instatement of article 6e, and considering what we believe to be a more reasonable and balanced approach, we propose the following wording (as well as proposing a new n.º 3):

“1. A Union air carrier shall permit a passenger to carry a musical instrument in the passenger cabin of an aircraft subject to applicable safety rules and the technical specifications and constraints of the aircraft concerned. Musical instruments shall be accepted for carriage within an aircraft cabin provided such instruments can be stowed safely in a suitable baggage compartment within the cabin or under an appropriate passenger seat. An air carrier may determine that a musical instrument shall form part of a passenger's hand luggage allowance and not be carried in addition to that allowance.

2. Where a musical instrument is too large to be stowed safely in a suitable baggage compartment within the cabin or under an appropriate passenger seat, an air carrier may request the purchase of a second ticket, within the same class. Furthermore, passengers may be required to select and purchase adjacent seats for both the passenger and the musical instrument, one always being a window seat for the musical instrument. Where available and if requested, musical instruments shall be carried in a heated part of an aircraft cargo hold subject to applicable safety rules, space constraints and the technical specifications of the aircraft concerned.

3. Air carriers shall clearly indicate in its terms and conditions the list of musical instruments that may be carried in the cabin, the basis on upon which musical instruments will be transported and all applicable charges. Furthermore all information regarding the transportation of musical instruments shall also be available on the air carriers website, on their mobile applications and during the reservation.”

Please note that the requirement to purchase a window seat for the musical instrument is so that in the event of an emergency evacuation, the musical instrument does not prevent passengers from leaving the aircraft.

Article 6d, nr. 1a

Regarding the wording *“The requirements set out by the air carrier shall be reasonable.”*, please note that the use of the word *“reasonable”* may lead to difficulties in interpretation. A more defined concept should be set, i.e, specific measures/size/weight.

Article 6d, nr. 3 and the proposed Recital as mentioned in page 7 footnote

Please note that under the terms of Attachment 4-C of the Annex of Commission Implementing Regulation (EU) 2015/1998, of 5 November 2015, laying down detailed measures for the implementation of the common basic standards on aviation security, umbrellas are not on the list of items prohibited in cabin/hand baggage. However, some umbrellas have a configuration that makes them fall into the category of prohibited items, namely in point c) of the aforementioned Attachment, which states that they are prohibited items in cabin baggage “*objects with a sharp point or sharp edge - objects with a sharp point or sharp edge capable of being used to cause serious injury (...)*”

Since passengers should therefore take this factor into consideration when carrying umbrellas in cabin baggage, and be advised to carry them in hold luggage, we propose removing umbrellas from the wording of the recital.

Annex 2 – The part relating to the Increase of Compensation Amounts

For information purpose only, please take note of the following:

In accordance with:

<https://www.icao.int/Newsroom/Pages/ES/International-air-travel-liability-limits-set-to-increase,-enhancing-customer-compensation--.aspx>

«Montréal, 18 October 2024 – Travelers will soon benefit from higher compensation limits for international flights, with the International Civil Aviation Organization (ICAO) announcing today that the Montreal Convention liability limits for death, injury, delays, baggage and cargo issues, will increase on 28 December 2024.

ICAO has informed the 140 States Parties that the limits would increase in line with the Convention’s built-in review mechanism, to adjust for inflation every five years. This ensures that passenger and cargo compensation remains appropriate over time. This is the fourth review since the treaty came into force in 2003.

The liability limits are indicated in Special Drawing Rights (SDRs), a unit of account defined by the International Monetary Fund. For indicative purposes, 1 SDR was valued at US\$ 1.33318 on 18 October 2024.

The limits will be revised as follows:

- 1. The limit for death or bodily injury will increase from 128,821 SDRs to 151,880 SDRs (about US\$202,500) (originally 100,000 SDRs in 2003).*
- 2. The limit for delay in passenger transport will rise from 5,346 SDRs to 6,303 SDRs (about US\$8,400) (originally 4,150 SDRs in 2003).*
- 3. The limit for destruction, loss, damage, or delay of baggage will increase from 1,288 SDRs to 1,519 SDRs (about US\$2,000) (originally 1,000 SDRs in 2003).*
- 4. The limit for destruction, loss, damage, or delay of cargo will rise from 22 SDRs to 26 SDRs per kilogram (about US\$35) (originally 17 SDRs in 2003).*

ICAO has invited the States Parties to MC99 to “make provisions as necessary in accordance with their domestic legal requirements, to give full effect as of 28 December 2024 to the revised limits.”»

Annex 2 – Liability of Contracting and Actual Carriers

Even though this article reflects the provisions of the Montreal Convention, we propose that regardless of liability (both air carriers may be liable) the complaint should only be addressed to the operating air carrier.

In fact, allowing passengers to choose between the operating air carrier and the contracting air carrier may result in a “*blame game*” between both air carriers, therefore causing a much more time consuming procedure.