



Council of the European Union
General Secretariat

Brussels, 10 April 2025

**Interinstitutional files:
2013/0072 (COD)**

WK 4470/2025 ADD 5

LIMITE

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CONTRIBUTION

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

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

Comments from Hungary

on the 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

Revised compromise proposed by the Polish Presidency, (ST 6102/2/25) – *less contentious issues*

We would like to thank the Presidency for the progress made so far and the results achieved on certain points. In the meantime, as a general remark, we would like to indicate that agreement on the exact scope of the Regulation is needed in order to be able to finalise the wording of all the Articles. Therefore, we have further scrutiny reservation on the text.

If the Presidency's resources allow, we would welcome the publication of consolidated versions, bearing in mind that these would greatly facilitate a coherent examination of the text.

Since the beginning of the negotiations, one of our key guiding principles has been to contribute to the development of a clear and intelligible text. In our view, the consistent and accurate use of terminology, along with the careful and precise drafting of the regulation, plays a crucial role in achieving this objective. With this in mind, we would like to offer the following constructive suggestions.

Article 2 (w) and Art 6-2a – tarmac delay

This Article cannot be examined without the consideration of the definition of tarmac delay provided in Art 2 (w).

- **Art 2(w)**

The meaning of terms „*off-block time*” and „*on-block time*” is not straightforward, their interpretation might lead to debates, therefore, we do not support the proposed wording. Neither the reference to take-off time is clear; this should read as „*actual take-off time*”.

We propose that tarmac delay is counted from the completion of the boarding process (when all passengers are on board) until the actual take-off time or disembarkation in case of departure and from the moment the aircraft engines are shut down after landing until disembarkation in case of arrival.

- **Art 6-2a**

para (1)

- we propose that the second sentence includes reference to security constraints as well. The text should read: „*Subject to safety **and security** constraints...*”
- it is not only the cabin crew that has to be ready for take-off, therefore we propose the following wording: „*If the tarmac delay is longer than 30 minutes, **unless the pilot has already received clearance from Air Traffic Control...***”

para (2)

we propose that

- to amend the text as follows: “*When a tarmac delay upon departure reaches ...*”
- the text “*to passengers mentioned in Article 11(1)*” is replaced with “**to special categories of passengers as defined in Article 11(1)**”.

para (3)

There seems to be a clear understanding that... that passengers disembarked after a tarmac delay are entitled to care and assistance due in case of delay. For more clarity we propose the following wording instead of current text:

“The length of tarmac delay should be counted towards the 2 hours of delay specified under Art 9(1)(a).”

Art 10 - upgrading and downgrading

The issue of reimbursement in case of downgrading is highly complex for the following reasons:

- While it is fair to pay reimbursement for the passenger receiving lower service than the passenger paid for, the difference in on-board service provided on business and economy class on most of intra-EU flights provided by EU carriers is nowadays minimal. The seat pitch is usually the same on both classes of service, the only difference being that business passengers receive meals.
- Even if a business passenger is seated in economy class, s/he still receives the same extra services that are usually provided for business passengers (lounge use, priority boarding, extra baggage allowance, more flexible conditions for changing the travel dates).
- Passengers typically do not buy intra-EU business tickets for extra on board services but because they cannot purchase cheaper tickets for the dates and times they wish to travel.

Therefore, requiring airlines to reimburse 40% of the 'flight price' in the event of downgrading on routes below 3,500 km may not appear to be a proportionate approach.

Further,

- for the sake of clarity, we would like to avoid the use of the word “compensation” here [we would prefer keeping the original wording of the Regulation](#);
- the term “flight price” is not sufficiently clear.

Art 10a – airport contingency plans

We would like to reiterate our earlier comments¹:

- **para (1)** “*the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers and the suppliers of ground handling services, are coordinated*” – we wish to note that ground handling service providers do not qualify as airport users (see Directives 96/67 and 2009/12);

¹ WK 2447/2025 ADD 12

- **para (3)** the exact meaning of the term “*airport authority*” and the difference between “*airport authority*” and “*airport managing body*” is unclear. EU law uses the term “*airport managing body*”.

Art 11 – special categories of passengers

General remark: the term and its definition should be aligned with those applied in Reg. 1107/2006² and Directive 2015/2302³

- **para (0)** – this provision should be moved to Art 14.
- **para (1)** – it is unclear what “*give priority to carrying*” exactly means. Does it mean that “*special categories of passengers*” have priority even to purchase tickets? ~~We would like families travelling with small children to be included and oppose the removal of unaccompanied minors from the text.~~
- **para (2)** – we propose the following text: “*In applying the provisions of Article 8 on rerouting and Article 9, the operating air carrier shall provide priority to and pay particular attention to the needs of persons listed in paragraph (1) and to any persons accompanying them.*” Recognised assistance dogs should be adequately cared for.

In our proposal, we clarify that animals are entitled to appropriate care, rather than to assistance.

Does the Presidency intend to require airlines to provide meals and refreshments to assistance dogs?

- **para (3)**
We propose that the last sentence is deleted as in case of multisector journeys the carrier may not receive the information from a previous carrier if the passenger announced its condition only when the disruption occurred.

Article 12 (1) – Further rights

- **1st indent**

It is unclear how the organiser can “*entrust*” the operating carrier to provide the assistance due under Directive 2015/2302 and how passengers can be effectively informed about such transfer of tasks. It is also unclear who will bear certain costs, i.e. the costs of hotel accommodation (including accommodation exceeding 3 nights) or alternative transport.

The text should clearly indicate that only assistance due under the PTD Directive can be transferred (as assistance under the Regulation must be provided by the operating carrier anyway) and shall specify the types of assistance that can be transferred.

- **2nd indent**

² Regulation (EC) No 1107/2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air

³ Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

It is unclear what “these rights” refer to in the first sentence.

It is also unclear how the organiser or the carrier will be aware whether compensation has been paid by the other.

Article 13 – Right of redress

We kindly ask the Presidency to explain the purpose of the proposed amendments.

Article 14 – obligation to inform passengers

- **para (1)**
 - intermediaries and marketing carriers shall also be required to include such notice on their websites and mobile applications;
 - the notice shall specify the rights of passengers: „*The operating air carrier shall include on its website and mobile application an information notice specifying rights of passengers under this Regulation, including complaint handling process.*”
- **para (2)** should specify in which method the information shall be provided
 - point (a) - the meaning of “type of ticket” is not clear;
 - point (b) – the meaning of the “general conditions applicable to the ticket” is not clear. Does it mean the conditions attached to the fare? Does it mean the general conditions of carriage of the marketing/operating carrier (noting that their general conditions differ)?
 - point (c) – the meaning and purpose of the added text “attached to the air transport contract” is unclear. It is also unclear why the reimbursement process is emphasized (and why for example the compensation process is not);
 - point (e) – the meaning and intended purpose of this point is unclear for us. We would like to ask the Presidency to clarify it;
 - the indent under point (e) refers to “point (c) of the first subparagraph”, which does not exist.
 - The reference to the summary prepared by the Commission is unclear – under which conditions the Commission is empowered to make such summary and who will check the correctness of information indicated by the Commission in that summary?
 - ~~The Commission should only be empowered to prepare such a notice if it contains **nothing else**, only the rights of passengers set out in this Regulation.~~
- **para (3)**
 - it is unclear what the indent following para (3) relates to and what “such information” refers to;
 - it is unclear whether the last indent refers to para (3) only;
 - the term “*language that is used internationally*” is obscure ~~—it could be Chinese or Arabic as well.~~ We propose that English is indicated it should be the choice of the passenger from a list offered by the carrier, which should also include English.
- **para (7)** – the term “*language that is used internationally*” is obscure – it could be Chinese or Arabic as well. We propose that the information shall be available in English.

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Joint Comments on Articles 15a, 16 and 16a of the Proposal - Legal Clarity and Consumer Protection Aspects

It is essential to clearly determine whether the 6 month complaint submission deadline set out in Article 15 constitutes a forfeiture deadline. If so, we consider it disproportionately short, as it may prevent passengers from initiating alternative dispute resolution or administrative procedures at a later stage. In many Member States, including Hungary, such procedures require prior contact with the airline. If the airline is no longer obliged to respond after six months, this precondition may not be formally fulfilled.

While we welcome any provision that encourages passengers to submit complaints as early as possible, this must not result in the forfeiture of their rights. Should the regulation impose a forfeiture deadline, we would recommend setting it at no less than two years, to ensure that passengers have a realistic and fair opportunity to enforce their rights.

Article 15a – Complaint to the air carrier or the intermediary

we would like to reiterate our earlier comments, i.e.:

- It is unclear what a „*complaint handling mechanism*” exactly refers to. Under paragraph 2, if such a „*mechanism*” is used, the passenger has 3 months to submit his/her complaint, but it is unclear what happens if the passenger decides to submit his/her claim by any other means. ~~We do oppose that carriers and intermediaries can define how claims shall be submitted. Passengers should be free to submit their claims in any form they wish. Carriers can then inform them about the information or documents they are still required to submit.~~
- Given that this Article refers to out-of-court dispute resolution, a paragraph should be added to the effect that passengers shall first submit their claims to the carrier/intermediary.
- **para (2)** – the 30 day deadlines are confusing and contradicting. Both deadlines should be calculated from the “*date of submitting the claim*” rather than the date of “*receiving the claim*” and the second deadline must obviously be longer. However, it is unclear which cases can qualify as duly justified, exceptional cases.

Article 16 - Enforcement

- **para (1)** – we propose that the word “*flight*” is used instead of “*journey*” as if the NEB responsible is defined in relation to the journey, multiple NEBs will be competent in respect of the same journey.
- **para (4) and (5)** – we would like to ask the Presidency to shed light on the intended purpose of the introduction of these paragraphs.

Article 16 a – Out-of court resolution of disputes

We would like to reiterate our earlier comments, i.e. that it is unclear why Art 16a (1) allows the exclusion of disputes between intermediaries and passengers.

Article 17 – Review and Report

- **para (1)** – The current wording of this paragraph could benefit from some clarification. Could the Presidency please confirm whether the intention is to request the Commission to report on the type and number of extraordinary circumstances that result in flight delays and cancellations? Additionally, would the Presidency consider specifying that such a report should also cover circumstances beyond those listed in the non-exhaustive list?

Furthermore, could the Presidency elaborate on the type of legislative proposal it envisages regarding extraordinary circumstances?

- **para (2)** – May we kindly ask whether the Presidency is considering requesting the Commission to carry out a review of the effectiveness of the current compensation amounts and the reimbursement percentages in cases of downgrading?

Legislative proposals – we request that a clause is added to the effect that, after studying the Commission's reports, the Council may request the Commission to submit a legislative proposal.