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CONTRIBUTION

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

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

Austrian written comments on the revision of 261/04

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.

Compromise proposed by the Presidency ST 6102/2/25 REV2

Art 2

lit I

The automatic classification of a landing at an alternate airport or a return to the airport of departure as a cancellation should be questioned as it requires further clarification, in particular in terms of aviation safety perspective (e.g. stopover due to an unruly passenger). The current definition is inconsistent with the regulation in Article 6(6) (Long delay).

Art 4

Paragraph 4

AT does not support the imposition of a "no-show" fee. However, if such a fee is to be charged, it must be clearly disclosed to the passenger prior to booking and the amount of the fee should be proportionate.

Art 5

Paragraph 2

The current provision in Regulation 261/04 regarding avoiding of extraordinary circumstances should be retained.

Current Provision - Paragraph 3:

„An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused **by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.**“

Art 6

Paragraph 2a

If passengers remain confined on board after the aircraft is already on-block, it would be unreasonable for this period of delay not to be taken into account.

For the purpose of calculating the delay, the decisive point in time should be when the aircraft doors are reopened, as only then are passengers once again able to exercise their freedom of presence. Should the point in time of opening the aircraft doors not systematically be registered by the airline and/or airport, another point in time with a similar effect (such as dock-on/dock off of the passenger bridge or the passenger stairs) could be considered.

Art 7

Paragraph 1 and 1a

The reduction to these two compensations amounts and distance thresholds, as well as the extension to five hours, is not supported by Austria. We refer to our previous comments in this regard and kindly request that they be taken into consideration.

Art 8

Paragraph 2a

Inconvenience to passengers must be kept to a minimum. If it becomes apparent prior to the originally scheduled departure time that re-routing or return transportation is necessary and can be provided at an earlier time, the operating air carrier should be required to offer such an option. The obligation to offer the earliest return transport (lit. a) or re-routing (lit. b) should not only be limited to options departing after the originally scheduled departure time. Consideration could be given to deleting the phrase "after the time of departure indicated on the reservation" in both subparagraphs as well as in paragraph 2a, or to amending the provision in another appropriate manner.

Paragraph 4

The provision sets out the circumstances under which passengers may organise alternative transportation on their own initiative. From both a commercial and passenger rights perspective, there are concerns regarding this provision. Therefore, Article 8(4) should be deleted.

Art 9

Paragraph 2

The phrase "at the place of the airport where the passengers are stranded" should be deleted, as it would be overly restrictive for passengers. Waiting time is not necessarily spent exclusively at the airport, and under the current wording, expenses incurred for consumption outside the airport premises would not be reimbursable.

Paragraph 4

Care services should not be discontinued solely because the passenger has opted for alternative transportation. Such services must also be provided in cases of rerouting, and should remain available until the actual departure of the alternative means of transport.

Art 11

We reserve our position on this article and may provide further comments in due course.

Art 12

Due to the complexity of this article, we may provide a detailed position at a later stage.

Art 16

Paragraph 5

In the context of enforcing sanctions under Austrian law, it is necessary to clearly identify the person authorised to represent the airline. To this end, the inclusion of the date of birth of the authorised representative would be particularly helpful. We therefore suggest an appropriate amendment to the relevant provision to ensure that such identifying information is made available. This recommendation is especially pertinent if similar requirements exist in other Member States, in order to facilitate effective and harmonised enforcement across the Union.

Art 16a

Paragraph 3

A clear specification of the types of information that may be amended would be advisable in order to prevent potential data protection violations. Sensitive data is often subject to strict restrictions on disclosure to other entities or authorities. Therefore, a clarification in this regard

would be helpful for the National Enforcement Bodies (NEBs), ensuring legal certainty and compliance with applicable data protection rules.

Annex 1 – Extraordinary circumstances

1 (a) iii:

The wording of this provision is unclear to us. We kindly request a more precise definition. Please provide us with examples of the term “insurrections.” Clarification would help ensure a common understanding and consistent application across Member States, particularly in relation to the assessment of extraordinary circumstances.

1 (a) iv:

We kindly request clarification of this provision by means of concrete examples, particularly with regard to the fact that the imposition of flight bans does not automatically imply that the safe operation of a flight is compromised. In certain cases, the flight may still be operated safely, for instance by implementing specific health measures such as mandatory mask-wearing.

1 (c) v

The current provision lacks clarity. We would appreciate it if you could provide us with concrete examples of situations in which only public authorities are capable of satisfying the claims.

2 ii:

We would like to raise the question of whether de-icing delays are already covered under 1 (a) ii. In this regard, we kindly request clarification to ensure a consistent interpretation and application of the provision.
