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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft 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 **(first reading)** - Adoption of the Council's position at first reading and of the statement of the Council's reasons = Statements

Statement by Estonia

Estonia expresses its appreciation for the great efforts of the Polish Presidency in leading the discussions on the proposal for the revision of Regulation (EC) No 261/2004 on air passenger rights and its efforts to build a compromise among the Member States. Estonia remains committed to establishing clear and straightforward rules that guarantee adequate care and assistance for passengers. At the same time, it is important to maintain a balanced approach that takes into account the obligations of air carriers, thereby supporting the sustainability of the aviation sector.

The Regulation shall primarily ensure that passengers receive appropriate care and assistance and are able to reach their destination as soon as reasonably possible. A clear and straightforward compensation system is essential to minimize inconvenience during disruptions and to incentivise carriers to operate delayed flights rather than cancel them.

During the negotiations, various delay thresholds were proposed. Estonia supports the introduction of a uniform five-hour delay threshold for all flights, regardless of journey length, under article 7 of the Regulation 261 /2004. Our detailed reasoning is as follows:

1. The use of a single threshold simplifies the Regulation, makes calculations of compensation simpler and clarifies compensation rules for passengers.

2. From the passenger's perspective, the impact of flight delays is fundamentally the same, regardless of the distance of the journey. Therefore, there is no need to distinguish compensation thresholds based on distance, as the experience of inconvenience due to delays does not vary.

3. In most cases five hours is sufficient time for air companies to repair the plane, find another aircraft or to provide alternative flights.

Given these considerations, the six-hour threshold proposed by the Presidency in the compromise proposal is unacceptable to us. Estonia finds that delays of five hours or more result in considerable inconvenience for passengers and should be compensated for.

In view of the significance of this issue, Estonia is not in a position to endorse the political agreement on the Air Passenger Rights Regulation and will therefore abstain.

Statement by Lithuania

Lietuva dar kartą patvirtina savo bendrą paramą Oro keleivių teisių pasiūlymo tikslams ir pripažįsta Tarybos pirmininkų bei valstybių narių nuolatines pastangas siekiant susitarti dėl šio svarbaus dokumento.

Vis dėlto, nors pripažįstame pažangą, pasiektą nuo ankstesnių diskusijų, Lietuva išlieka susirūpinusi, kad tam tikri esamo projekto pagrindiniai elementai vis dar gali susilpninti keleivių apsaugą, lyginant pokyčius su dabartiniu reguliavimu. Iššūkių toliau kelia pasiūlymo 7 straipsnio nuostatos, nes jos gali sumažinti keleivių teisių apsaugos lygį tuo atveju, kai skrydis sutrinka arba vėluoja atvykus dėl maršruto keitimo po skrydžio atšaukimo. Tokie pakeitimai gali lemti ilgesnį laukimo laiką ir sumažintas kompensacijas, taip sumažindami keleivių teisėtus lūkesčius dėl paslaugų kokybės.

Lietuva pabrėžia, kad pagrindinis oro keleivių teises ginančių teisės aktų tikslas turėtų išlikti esamų taisyklių supaprastinimas ir modernizavimas, užtikrinant teisinį aiškumą visoms šalims ir kartu garantuojant teisingą bei veiksmingą keleivių apsaugą. Taip pat primename, kad Europos Sąjunga turi kitų priemonių savo aviacijos sektoriaus konkurencingumui palaikyti. Vis dėlto šio tikslo negalima siekti keleivių teisių sąskaita.

Apibendrinant, Lietuva išlaiko nuomonę, kad keleivių apsauga yra šios teisėkūros iniciatyvos kertinis akmuo ir turi likti jos pagrindu, siekiant užtikrinti jos realią ir ilgalaikę vertę Europos visuomenei.

Statement by Hungary

As underlined by Member States during the policy debate organised by the Hungarian Presidency in 2024, the main purpose of the amendment of the air passenger rights Regulation, among others, is the simplification of measures and to strike a balance between the interests of passengers and those of the industry.

From the outset, Hungary has raised the issue of lack of sufficient data and analysis confirming the effectiveness of the proposed measures and the balance between passenger and industry interests. We also raised concerns about the introduction of delay compensation obligation in the Regulation without the necessary background studies analysing its effectiveness and possible different policy options.

Hungary does not per se oppose the introduction of delay compensation. However, we think that further considerations are needed in order to be able to set the right balance between industry interests and passenger protection. This is the reason why at the Transport Council of June 2025 we only supported the start of the negotiations with the European Parliament on the condition that the European Commission prepares for the upcoming interinstitutional negotiations an analysis which contains more detailed data that what we have received previously. According to our request this analysis should include up-to-date information from both passengers and the industry, describing and assessing the expected impacts of the Regulation.

The „technical input" submitted by the Commission fails to provide any substantiated evidence confirming that the delay compensation obligation will effectively reduce the number of flight delays and that this measure is best suited to achieve that result. The Commission still points mainly to old and outdated studies, uses assumptions („delays that could be assumed to be attributable to airlines") instead of real data and analysis and provides delay data only for the month of July 2025 which is clearly insufficient to serve as a basis of any substantive measure. Furthermore, the Commission finds that the measures may put European airlines in a competitive disadvantage and acknowledges that at the moment there is no data on further factors which may have an impact on relative competitiveness. The Commission also notes the increasing burden on NEBs. It „assumes" that listing extraordinary circumstances may alleviate this burden, but the situation is in fact much more complex than that, given that delays are not caused by a single factor, therefore the existence of extraordinary circumstances must still be determined on a case-by-case basis.

Last but not least the text, in our view, is not simplifying but further complicating measures, making it very difficult for the traveling public to understand their rights.

With this background, we would like to underline, once again, that we will not be in the position to support the agreement to be made with the European Parliament unless clear evidence is shown on the effectiveness of the measures and on the achievement of a balance between passenger and industry interests.

For a more detailed explanation of our position, please refer to the Annex.

Annex

The 2001 Commission proposal

Obliging carriers to compensate passengers for delay was not the original intent of the Commission. In its original Proposal, the Commission stated that „Although passengers suffer similar inconvenience and frustration from delays as from denied boarding or cancellation, there is a difference in that an operator is responsible for denied boarding and cancellation (unless for reasons beyond its responsibility) but not always for delays. Other common causes are air traffic management systems and limits to airport capacity. As stated in its communication on the protection of air passengers, the Commission considers that in present circumstances operators should not be obliged to compensate delayed passengers."[1]

CJEU decisions

Although according to the – highly controversial – interpretation of the Court of Justice, airlines are required to compensate passengers for long delays, our understanding is that there is no obligation to codify CJEU decisions.

Even the Commission's proposal for delay compensation diverts from the exact decision of the CJEU.

Lack of data and analysis

We would like to reiterate that at the moment there is no sufficient evidence to support that obliging airlines to pay compensation for delays will achieve the desired objective of reducing the number of delayed flights.

If the purpose of introducing delay compensation is only to ensure the high level of protection of passengers (and not to reduce the number of delayed flights), it should be thoroughly assessed whether it is fair to place all burden on air carriers, whether air carriers can claim the amounts paid as delay compensation from third parties causing or contributing to the delay and whether there are viable alternative solutions. Such analysis have not been carried out so far.

[1] COM(2001) 784 final, at para 23

Before introducing the obligation for delay compensation, it should be investigated to what extent the factors mentioned in the 2001 Commission proposal have changed. The introduction of a new obligation in the Regulation requires analysis regarding its effectiveness to reach the desired objectives and its impact on stakeholders.

More specifically, we wish to refer to the Commission Guidelines on Better Regulation[2] according to which impact assessments collect evidence (including evaluation results) to assess whether future legislative or non-legislative EU action is justified and, if so, how it can best be designed to achieve relevant policy objectives. They must identify and describe the problem to be tackled; establish objectives for the EU action; formulate policy options, assess their potential impacts and, where appropriate, identify a preferred option; and set out how the expected results will be monitored and evaluated. Impact assessment is about gathering and analysing evidence to support policymaking. It involves verifying the existence of a problem, identifying its underlying causes, assessing whether EU action is needed, and analysing the advantages and disadvantages of available solutions.

Such assessments for delay compensation are missing.

It is somewhat unusual that the Commission proposes the introduction of new legislative measures without having gathered and studied the necessary underlying data.

Findings of the 2012 and 2020 Studies regarding delays

In its reply to our concerns, the Commission referred to the 2020 study[3] and the 2013 Impact Assessment[4] (which is based on the 2012 Study[5]), highlighting that the number of delays attributable to airlines decreased from 80% to 70% and that the effect of compensation on the reduction of airline attributable delays is hard to analyse.

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2 https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en.

3 https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1.

4 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0062.

5 https://transport.ec.europa.eu/document/download/4d457d44-253a-4efd-810c-a55fb248f09d_en?filename=2012-07-exploratory-study-on-the-application-and-possible-revision-of-regulation-261-2004.pdf.

The 2020 Study confirms that the "the overall number of delayed flights has increased significantly in recent years and has almost doubled between 2014 and 2018"[6]. The statement referred to by the Commission[7] (i.e. „Based on the delay data provided by CODA, the proportion of delays attributable to airlines, between 2011 and 2018, was between approximately 70% and 80%. Airline-attributable delay has decreased from approximately 80% in 2011 to approximately 70% in 2018, reflecting an increase in delays classed as extraordinary circumstances – such as ATC delays") only shows that airline attributable delays are lower in comparison to higher number of ATC delays, but it is not known whether they decreased compared to earlier numbers of airline attributable delays. Figure 2.6 of this Study clearly shows the increase in airline attributable delays.

The Study finds that "While it is possible that Regulation 261/2004 has a marginal impact on the proportion of flights delayed, it does not appear to be significant compared to other factors."[8]

Moreover, it confirms that it is not easy to precisely pinpoint the responsibilities for delay[9] and regards all delays that are not caused by extraordinary circumstances as airline attributable[10].

The 2012 Study confirms that there is a significant disagreement between stakeholders on the interpretation of extraordinary circumstances.[11]

As per delay compensation costs, the 2012 Study has already shown a significant increase.[12] In this respect, we would like to note that passenger's awareness on their rights may have increased significantly since 2012, leading to even higher compensation costs for airlines.

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6 point 2.31.
7 point 2.45.
8 point 2.37.
9 point 2.46, Note.
10 point 2.43.
11 point 7.41.
12 point 7.53, Figure 7.5.

Essential questions

In our view, the following issues require further consideration:

1. whether there exists any type of delay that serves airlines' interest;

2. whether it is desirable to oblige airlines to pay compensation for delays that are not caused due to their commercial interests and that they are not responsible for, bearing in mind that the airlines are de facto unable to claim these amounts from responsible parties[13];

3. whether the balance between passenger protection and industry interests would be achieved with the introduction of delay compensation, bearing in mind that airlines cannot even invoke the extraordinary circumstances defence in case of knock-on delays and that the existence of extraordinary circumstances are often hard to establish given the multitude of factors leading to the delay of a single flight[14];

4. whether higher compensation costs for airlines will lead to higher fares, possibly also effecting competitiveness;

5. whether there is a better way to ensure high consumer protection while respecting industry interests;

6. whether the workload of NEBs will increase.

We believe that these considerations necessitate further data collection and analysis.

Furthermore, significant efforts are needed to make the Regulation (i.e. the rights of passengers) easily understandable to the traveling public.

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13 see 2012 Study, points 7.113 and 7.123.
14 see 2020 Study, point 2.46, Note.

Proposal

In our view, approving amendments in a hasty manner may once again lead to the adoption of a malfunctioning Regulation. Therefore, we propose that the issues mentioned in this paper are thoroughly analysed in order to be able to establish the desired balance between passenger protection and industry interests and to adopt a Regulation which stands the test of time.

Statement by Portugal

Portugal agradece o trabalho da Presidência Polaca, e das presidências que a antecederam, na negociação das alterações ao Regulamento sobre "Direitos dos Passageiros" do transporte aéreo.

Portugal sempre defendeu que a revisão do Regulamento deve implicar não só uma simplificação na sua aplicação, mas sobretudo manter ou reforçar os direitos dos passageiros, beneficiando de uma proteção que estabeleceu padrões para outras regiões do mundo.

Neste sentido, o acordo político que foi votado maioritariamente não dá resposta às expetativas dos passageiros, nomeadamente nos limiares de distância ou horas de viagem, com especial impacto em Estados mais afastados geograficamente do centro do continente europeu e com regiões ultraperiféricas. Os limiares aprovados configuram-se como um retrocesso do ponto de vista dos direitos dos passageiros e Portugal vota contra o acordo político.

Contudo, Portugal expressa a sua vontade de continuar, na negociação que se seguirá com o Parlamento Europeu, a defender construtivamente uma melhoria substantiva na legislação da União Europeia que dê respostas às expetativas de todos os intervenientes, com destaque para os passageiros cujos interesses este regulamento protege desde 2004.