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From: Presidency  
To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
on passenger rights in the context of multimodal journeys  
- Presidency non-paper on the concept of 'carrier'

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In view of the meeting of Attachés and Experts of the Working Party on Transport - Intermodal Questions and Networks to be held on 30 September 2024, delegations will find attached a Presidency non-paper on the concept of 'carrier'.

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**Non-paper from the HU Presidency on the concept of ‘carrier’  
in the proposal for a regulation on passenger’s rights in multimodal journeys  
(‘MMJ regulation’)**

**A. Objectives of the non-paper**

The MMJ proposal identifies the **contracting carrier** as the carrier holding the primary responsibility for re-routing, handling of reimbursement requests and assistance to passengers in multimodal journeys in the context of single multimodal tickets (Articles 7 and 9). Under the MMJ proposal, the contracting carrier may also decide that the reimbursement be processed through an intermediary (Article 8). Moreover, the contracting carrier (referred to as a carrier offering transport contracts) holds the primary responsibility for information (Articles 4a and 5) and compensation in case of failure to provide information on the passenger rights related to a combined multimodal ticket (Article 5a).

Through this approach, the Commission seeks to make available a **unique and easily identifiable point of contact for the passenger, with clear responsibilities** towards the passengers of multimodal journeys regarding their rights under the MMJ regulation and the intermediaries. It is up to each contracting carrier to define contractually with other carriers involved in the multimodal journeys how to break down the costs and/or to delegate the handling of specific tasks.

However, several delegations raised some concerns with such an approach. In particular, some delegations underlined that the **carrier performing the segment**<sup>1</sup> of the multimodal journey where a delay or a cancellation occurs may **be better placed** to inform, assist, re-route and reimburse the passengers.

The objective of the non-paper is to seek guidance from delegations regarding the carrier with primary responsibility for passengers’ rights under the MMJ regulation.

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<sup>1</sup> In order to avoid confusion with the “operating air carrier” defined in Regulation (EC) No 261/2004, the Presidency would suggest removing the definition of “operating carrier” from Article 3 and using throughout the text, where relevant, the wording “carrier performing (the segment of MMJ / transport service etc.)”.

## B. Background: liability under sectoral legislations

Modes	Air Regulation (EC) No 261/2004	Rail Regulation (EU) 2021/782	Waterway Regulation (EU) No 1177/2010	Bus and coaches Regulation (EU) No 181/2011
Definitions	'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger	Refers to Article 3 of Directive 2012/34/EU : 'railway undertaking' means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only	'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public;	'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public;
Information	operating air carrier	Railway undertaking and station manager	Carrier or, where appropriate, by the terminal operator	Carrier or, where appropriate, the terminal managing body
Assistance	operating air carrier	Railway undertaking operating the delayed or cancelled service	Carrier See also Article 5(1) of the Regulation	Carrier See also Article 5(1) of the Regulation
Re-routing	operating air carrier	Railway undertaking operating the delayed or cancelled service	Carrier See also Article 5(1) of the Regulation	Carrier See also Article 5(1) of the Regulation
Reimbursement and compensation	operating air carrier	Railway undertaking operating the delayed or cancelled service	Carrier See also Article 5(1) of the Regulation	Carrier See also Article 5(1) of the Regulation

## C. Options

### 1. Option 1: Contracting carrier

The contracting carrier is responsible for the obligations under the MMJ Regulation towards the passenger, regardless of who is operating the actual segments of the multimodal journey.

Pros:

- Easy, simple one channel communication between passenger and its contracting carrier and between the intermediary and the contracting carrier.
- Clear line of responsibility.
- Easy to provide that reimbursement is done through the intermediary.
- Contracting carrier can utilize its entire network of partners in different modes for the re-routing.
- NEB oversight can be easily performed.

Cons:

- Contracting carrier may not be informed in real time of disruption and be able to assist and re-route the passenger effectively.
- Need to define contractually the breakdown of costs and/or tasks between the contracting carrier and carriers performing the different segments of the journey.
- Poor arrangements between contracting carrier and operating carriers could disincentivize performance and result in non-compliance.
- Divergence from liability regime under aviation sectoral rules.<sup>2</sup>

### 2. Option 2: Carrier performing the delayed / cancelled service

The carrier performing the delayed or cancelled service leading to the missed connection is responsible for the obligations under the Regulation towards the passenger.

Pros:

- Easy to approach, the carrier performing the service is on the same spot as the passenger. On-site assistance can be provided easily.
- Real-time information.
- Clear line of responsibility.

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<sup>2</sup> Under Regulation (EC) No 261/2004, as set out in recital 7 thereof, to ensure the effective application of the Regulation, the obligations that it creates rest with the operating air carrier who performs or intends to perform a flight, which means that the only carrier that is liable is the operating carrier. Making the contracting carrier responsible under MMJ proposal would therefore deviate from aviation sectoral rules.

Cons:

- Difficult for the carrier performing the service to provide re-routing on other transport modes.<sup>3</sup>
- High risk of non-compliance due to operational difficulties.
- In absence of direct link between the intermediary and the performing carrier, the reimbursement process through the intermediary is more difficult.
- How to address liability in case of cumulative delay of different operating carriers?
- Which NEB is responsible for enforcement?

### **3. Option 3: Carriers performing both the delayed / cancelled and subsequent services**

Both the carrier performing the delayed or cancelled service leading to the missed connection and the carrier performing the subsequent service are jointly responsible for the obligations under the Regulation towards the passenger.

Pros:

- Easy to approach, the carriers performing the services are on the same spot as the passenger. On-site assistance can be provided easily.
- Real time information.
- Re-routing on the planned subsequent service can be easier.

Cons:

- Unclear line of responsibilities.
- Less flexibility to provide better re-routing.<sup>4</sup>
- High risk of non-compliance due operational difficulties.
- Need to define contractually the breakdown of tasks between the operating carriers.
- In absence of direct link between the intermediary and the performing carriers, the reimbursement process through the intermediary is more difficult.
- Which NEB is responsible for enforcement?

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<sup>3</sup> The carrier performing the delayed/cancelled service, other than a contracting carrier, might have no agreement with other carriers to offer the re-routing on their services, so he would have to arrange the re-routing through commercial booking platforms, which might be costly and complicated.

<sup>4</sup> If the re-routing obligation is transferred to the subsequent carrier, which is not responsible for the missed connection, they would in principle re-route within their own services, which might be limited. Expecting them to re-route on other transport modes or other carriers would be disproportionate.

#### **4. Option 4: Mixed responsibilities of contracting carrier and the carrier performing the delayed / cancelled service**

Obligations under the Regulation towards the passenger are split between the contracting carrier and, where different, the carrier performing the delayed or cancelled service leading to the missed connection.

Pros:

- Passenger can turn to the appropriate party directly: e.g. contracting carrier for reimbursement and to the carrier performing the service for real-time information and assistance.

Cons:

- Most complicated setup to regulate the responsibilities properly and comprehensively.
- A clear division of tasks and responsibilities would be necessary to mitigate the high risk of loopholes.
- Which NEB is responsible for enforcement?

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