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From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: Position of the Council at first reading with a view to the adoption of 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
- Preparation for the 1st trilogue after the EP's second reading

I. INTRODUCTION

1. The Commission adopted its proposal for a revision of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 (hereinafter “the 2013 proposal”) in March 2013.¹ In 2023, the Commission made two additional proposals on enforcement (hereinafter the “enforcement file”) and on multimodal journeys (hereinafter the “multimodal file”) which will also apply to air passengers and complement its 2013 proposal.
2. The European Parliament completed its first reading on the 2013 proposal in February 2014.² On 5 December 2024, the Committee on Transport and Tourism (“TRAN Committee”) of the EP appointed a new rapporteur (Andrey Novakov, EPP, Bulgaria).

¹ ST 7615/13

² 5941/14

3. The Council adopted its position on the 2013 proposal at first reading on 29 September 2025.³
4. On 21 January 2026, the European Parliament adopted 243 amendments on the Council's first reading.
5. As a result of the exchange at the Working Party in Aviation, it is clear the Council will not be in a position to accept all the amendments of the European Parliament at second reading, and pursuant to paragraph 24 of the Joint Declaration on practical arrangements for the co-decision procedure⁴, a trilogue is to be organised.

II. NEGOTIATIONS WITH THE EUROPEAN PARLIAMENT

6. A first trilogue was held on 15 October 2025. A second and third trilogue took place on 19 November 2025 and 1 December 2025 and allowed for a provisional political agreement on a number of provisions. Those provisions as well as the lines where the European Parliament did not amend the Council position and which have not then been subject to change are highlighted in green in the third column table contained in 6891/25 ADD1.
7. Since then, 6 interinstitutional technical meetings have taken place. The next trilogue after the European Parliament voted its second reading position will aim to confirm agreement on some texts tentatively agreed at the technical level set out in detail and labelled as "Tentatively agreed" in the third column of the table contained in 6891/25 ADD1.
8. Open political lines for discussion at the trilogue are highlighted in yellow and red.
9. A number of provisions labelled as "Enforcement" are in relation to the enforcement of Regulation 261/2004, and which the Presidency considers would best be negotiated in the context of the interinstitutional negotiations on the enforcement file.

III. PREPARATION FOR THE THIRD TRILOGUE

10. The next trilogue after the European Parliament's second reading is planned for 23 March 2026.

³ 10015/25

⁴ OJ C 145, 30.6.2007, pp. 5–9

11. The aim of that trilogue is to pave the ground for the Conciliation Committee and to render it possible to reach an agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament, at that Committee.
12. The Presidency is seeking a mandate for the next trilogue, bearing in mind the mandate given by the Ministers in June at the Transport Council to achieve a clear and balanced Regulation and to meet the passengers' main wish, which is to reach their final destination without further delays.
13. The Presidency has also conducted in-depth discussions with all delegations and has taken careful note of the objectives and concerns raised therein.
14. Against this background, the Presidency is fully committed to reflect the Ministers' intentions, as recalled during discussions:
 - Air Passenger Rights should be simple, enforceable, and balanced, ensuring high passenger protection while maintaining reasonable operational costs for airlines.
 - Passengers should benefit from seamless processes to exercise their rights and should not have to resort to intermediaries for assistance, which can ultimately reduce compensation the passengers receive.
 - Connectivity should be preserved and a level playing field for the aviation sector within the Union's internal market should be ensured.
 - Competitiveness of Union air carriers against third-country carriers should be improved.
15. Building on the exchange of views at the Working Party on Aviation, and the bilateral discussions with delegations, the Presidency has identified a preferable way forward which fully aligns with the Ministers' intention, whilst acknowledging the various constraints around the table. The Presidency will notably remind the European Parliament what the Ministers' decision entails, as outlined above, and that the Council will not depart from it.
16. The Presidency will also confirm the Council's aim of reaching a political agreement with the European Parliament, provided each of those specific objectives are met. To that extent, the Presidency will seek the assistance of the European Commission to provide the necessary data and modelling expertise.

Time thresholds, amounts for compensation and pre-filled forms

17. On time thresholds and amounts for compensation, and pre-filled forms, the 1 December 2025 trilogue confirmed that the Council's first reading and the European Parliament's guidelines for second reading were too far apart.
18. The Council and the European Parliament differ on the structure of the thresholds for compensation. Whilst the European Parliament seeks a single threshold for the duration of the delay, the Council in its first reading position differentiates the duration of the delay on the basis of the distance. Both co-legislators also diverge on the level of the amounts of compensation and on the scope of the use of pre-filled forms.
19. The Presidency will enter into discussion with the European Parliament bearing in mind any final political agreement on the file must now be agreed in a Conciliation Committee. The Presidency acknowledges the issues of time thresholds and amounts for compensation, and pre-filled forms remain the most difficult.
20. The Presidency will therefore not insist on defined variables but rather recall the Council's specific objectives as outlined in points 12 to 16 in this note and illustrate how those could be met with the policy option set out in ADD 1. To that extent, the Presidency will not seek an agreement on the rows labelled "Italics" in ADD 1⁵. The Presidency nonetheless intends to leverage that trilogue to remind the European Parliament that any agreement could only be found under strict reciprocity and that the Council is also expecting the European Parliament to commit to further work on those issues.

Scope

21. The Presidency suggests maintaining Council text as regards scope. The extension of the scope to all journeys arriving to the Union, requested by the Parliament, is not acceptable by the Council. The current geopolitical context is certainly not favourable, and the Commission should provide a complete analysis of implications as regards enforcement and conflict of jurisdictions before considering such an extension.

⁵ Rows labelled "Italics": 183, 184, 185, 186, 187, 188, 189.

22. The Presidency suggests standing firm on the principle of the liability of the operating air carrier.

Extraordinary circumstances

23. The Presidency suggests maintaining a non-exhaustive list. As per the Council position at first reading, the air carrier must take reasonable measures to mitigate those circumstances and prove the causal link.
24. The Presidency seeks openness to discuss the content of the list of extraordinary circumstances, limited to where the Council departs from case law and to a reciprocal discussion with the European Parliament.
25. The Presidency suggests automating where air carriers shall provide the passengers with a clear and substantiated explanation on the existence of extraordinary circumstances following a disruption. Such measure would simplify the handling of requests of justification by air carriers and improve the passengers' information.

Information, deadlines and means of payment

26. When it comes to the information and various deadlines in case of disruption, the Presidency recognizes further work at technical level needs to be conducted. Therefore, the Presidency will not seek an agreement on the rows labelled "Italics" in ADD 1⁶.
27. The Presidency nonetheless intends to leverage that trilogue to express the Council's objective on that matter which are to streamline the information flow for the passengers, limit the administrative burden for air carriers as well as National Enforcement Bodies and ensure passengers can effectively access their rights under this Regulation.
28. As regards the means of payment, the Presidency suggests insisting on the possibility for air carriers to use vouchers in agreement with the passenger, while showing openness towards aligning the provisions governing the use of vouchers on the recent agreement found with the European Parliament as regard the Package Travel Directive.

No-show policy

⁶ Rows labelled "Italics": 152, 155, 161, 180d, 187a, 192, 193.

29. The European Parliament's amendment regulates more strongly no-show policy for return journeys compared to the Council's first reading but does not depart from the Council's position as regard one-way journeys with a connection. For return journeys, the European Parliament excludes the possibility for the air carriers to request the payment of a specific fee before authorising passengers to board.
30. With a view to meet passengers' expectations and preserve air carriers' freedom policy, the Presidency suggests showing some flexibility, by limiting the possibility for the air carriers to require the payment of an additional fee capped to the difference between the price of the ticket with return and the price of the one-way ticket and provided the passenger has been informed of such at the time of the booking.

Check-in, boarding pass format and transfer of tickets

31. On the issue of check-in at airport, boarding pass format and the transfer of tickets, the Presidency acknowledges those topics largely fall outside the scope of the regulation as they affect the Union internal market for air services, tackled in Regulation 1008/2008⁷ ('Air Services Regulation').
32. The Presidency suggests showing flexibilities limited to the recitals where a reference to the assessment of such matters in the revision of the above-mentioned regulation could be accepted. Recitals could also be amended to describe the current high level of protection offered to passengers for check-in and boarding pass format, stemming from general consumer law and the European Accessibility Act⁸.

Persons with specific needs

33. The Presidency suggests showing flexibility as regard provisions in favour of persons with specific needs (persons with disabilities, persons with reduced mobility, infants, unaccompanied children and children, and pregnant women) while remaining close to the Council's first reading position, namely on information requirements to air carriers, adjacent seating for those passengers under a same air transport contract, priority boarding, and children in need of a pram or pushchair.

⁷ OJ L 293, 31.10.2008, pp. 3–20

⁸ OJ L 151, 7.6.2019, pp. 70–115

34. At the second and third trilogues before it voted its amendments at second reading, the European Parliament insisted on the introduction of a compensation scheme for persons with disabilities or reduced mobility where the airport managing body does not comply with its assistance obligations under Regulation 1107/2006, and for unaccompanied children where the dedicated assistance contractually provided by the air carrier affects their journey. The Presidency seeks flexibility for the introduction of such a compensation scheme in the Regulation 261/2004.

Hand baggage

35. In the context of the ongoing revision of the Air Services Regulation, the Commission is currently assessing the systematic inclusion, in the basic air fare, the possibility to carry, as unchecked baggage, a standardised hand baggage. In light of this, the Presidency is therefore suggesting remaining firm on the Council's first reading, which codified the case-law as regard the right to take personal items constituting a necessary aspect of their carriage into the cabin.

Enforcement

36. All horizontal enforcement aspects of Regulation 261/2004, as outlined in ADD 1, are to be discussed under the enforcement file.
37. With a view to limiting low-value administrative tasks, the Presidency suggests remaining firm on the Council's first reading position as regard the designation of National Enforcement Bodies for Regulation 2027/97.

Additional flexibilities

38. The Presidency seeks additional flexibility as described in ADD 1.

IV. CONCLUSIONS

39. The Presidency seeks the flexibilities listed in point III in order to make progress in the interinstitutional negotiations with a view to preparing the meetings of the Conciliation Committee. Any openness from the Presidency towards the European Parliament will be on the understanding that the Council's flexibility needs to be reciprocated by the Parliament and situated in the overall context of reaching a balanced compromise.

40. The Permanent Representatives Committee is invited to provide the Presidency with a mandate for the next trilogue planned for 23 March 2026, based on the main issues outlined in point III above and the three-column document in ADD 1.
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Agence Europe