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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the document
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 delays of flights and Regulation (EC) No 2027/97 on air
carrier liability in respect of the carriage of passengers and their baggage by air

Delegations will find attached Commission document SWD(2013) 63 final.

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1. PROBLEM DEFINITION

1.1. Nature of the problem

Airlines often fail to offer passengers the rights to which they are entitled in instances of denied boarding, long delays, cancellations or mishandled baggage, in particular under Regulations (EC) No 261/2004¹ ("the Regulation") and (EC) No 2027/97².

1.2. Underlying drivers of the problem

1.2.1. *An insufficiently effective and uniform enforcement across Europe*

The enforcement system currently in place is not sufficiently effective and is not applied in a uniform manner across the EU. Three main issues were identified:

- (a) **Grey zones in Regulation 261/2004** create legal uncertainty that hinders the proper enforcement of the air passengers' rights and that leads to many disputes between air carriers and passengers.
- (b) **Inconsistent and insufficiently effective sanctioning policies:** in the absence of formal coordination, the various national enforcement bodies (NEBs) apply different sanctioning policies and they differently interpret various parts of Regulation 261/2004.

No specific enforcement body is required to enforce the provisions of Regulation 2027/97 (and of the Montreal Convention³) with regard to mishandled baggage.

- (c) **Inadequate complaint-handling processes and insufficient means of individual redress:** many passengers face practical difficulties when submitting a complaint to an air carrier.

1.2.2. *Certain costs of the obligations imposed by the Regulation constitute strong disincentives for compliance*

Airlines are **not able to bear or to price in costs and risks** (of care and compensation) in **certain situations:**

- (a) the experience of the volcanic ash cloud in April 2010 has shown that the absence of any limit in time to the carriers' liability in extraordinary events of long duration may constitute a risk to their financial stability.

¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 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 repealing Regulation (EEC) No 295/91, JO L46/1 of 17-2-2004.

² Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285, 17.10.1997, p.1) as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ L 140, 30.5.2002, p.2)

³ Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), OJ L194 of 18.07.2001, http://europa.eu/legislation_summaries/transport/air_transport/l24255_en.htm

- (b) certain costs of care/assistance are out of proportion with regard to the carriers' revenues for certain **small-scale operations**.
- (2) **Certain aspects of the financial compensation** have a strong disincentivizing effect:
- (a) Many delays cannot be absorbed within the current **time threshold of 3 hours** for the right to compensation.
 - (b) The standardized amounts of compensation which compensate a **loss of time** common to all passengers, can go beyond the value of the damage incurred by passengers⁴.
- (3) Airlines are liable for care and compensation where disruptions are due to **third parties**, but national and contractual provisions hinder air carriers from recovering costs from responsible third parties. The latter do not get economic incentives to take measures to reduce the frequency and/or the severity of such disruptions.

2. ANALYSIS OF SUBSIDIARITY

Firstly, there is limited scope for Member States to act alone to protect consumers, as the Air Services Regulation 1008/2008⁵ does not allow scope for them to place additional requirements on Community air carriers seeking to operate intra-EU services.

Secondly, most of the problems identified above refer to divergences of application/enforcement of Regulation 261/2004 across Member States which weaken passengers' rights and the level-playing field between air carriers. Only coordinated EU intervention can address these problems.

3. POLICY OBJECTIVES

In light of the problems identified above and pursuant to article 100(2) of the TFEU, the **general objective** of this initiative is to promote the interest of air passengers by ensuring that air carriers comply with a high level of air passenger protection during travel disruptions, while ensuring that air carriers operate under harmonised conditions in a liberalised market.

The general objective above can be translated into more **specific objectives**:

1. To ensure effective and consistent enforcement of passenger rights across the EU by:
 - 1.1. Clarifying definitions and key principles underlying passenger rights and simplifying the rights;
 - 1.2. Ensuring effective and consistent sanctioning policy;
 - 1.3. Ensuring effective complaint–handling processes and means of redress for passengers

⁴ Studies have estimated the value of time to be, after adjustment for inflation, between €40 per hour (for leisure travel) and €98 per hour (for business travel). As we are referring to standardised amounts covering a damage common to all passengers, it is the lowest value that should be taken as reference.

⁵ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community, OJ L 293 of 31.10.2008.

2. To reduce the disincentivizing effects on airlines of certain costs of the Regulation:

2.1. Ensuring that airlines' obligations with regard to passenger rights cover risks that are limited in time and/or in size;

2.2. Ensuring that financial compensation in certain situations does not translate into decisive disincentives for compliance;

2.3. Ensuring that third parties are incentivized to address the causes of the travel disruptions for which they are responsible.

4. POLICY OPTIONS

4.1. Possible types of EU intervention

Two possible interventions at EU level that were suggested by stakeholders were discarded at an early stage of the assessment:

- A **repeal of the Regulation** would lead to a substantial reduction in the level of protection of passengers' rights.
- An **industry fund** for all expenses linked to care and compensation would be less efficient (especially with regard to rerouting) and would add administrative costs.
- Existing **guidance material and voluntary commitments** have already shown that there is not much scope for further progress via non-regulatory measures.

An update of the current EU regulatory framework is therefore the only form of EU intervention that could address all root causes of the identified problems.

4.2. Initial screening of the policy measures

A preliminary screening discarded the policy measures that did not bring sufficiently high benefits in comparison to their costs and disadvantages. This screening took into account stakeholders' views, legal and practical compatibility, effectiveness and complementarity.

The policy measures have also been assessed in light of the subsidiarity and proportionality principles.

4.3. Description of the policy options

The considered policy options differ in the chosen trade-off between stronger enforcement and adjusted economic incentives for airlines: a heavier cost is an incentive for airlines for reducing compliance while a stronger sanctioning policy is an incentive for compliance. Therefore, for options where the cost imposed by the obligations of the Regulation is higher, the enforcement policy must be stricter and better coordinated, and vice versa:

- (1) **Focus on economic incentives:** focus on the reduction of costs by replacing some of the obligations with regard to care (i.e. catering, accommodation) by optional insurance proposed to passengers.
- (2) **Balancing stronger enforcement policy with economic incentives:** strong coordination of NEBs. Two variants reducing costs:

- (a) Either by increasing the time threshold for the right to compensation in case of delays from three hours to at least five hours;
- (b) Or by extending the scope of "extraordinary circumstances" to include most technical defaults.

Further **sub-variants** of option 2 were assessed with regard to the modification of the compensation amounts and/or further modification of the time thresholds for compensation for delay (e.g. making the threshold dependent on the flight distance).

- (3) **Focus on enforcement:** option 3 entirely focusses on stronger enforcement by NEBs and clarifies existing passenger rights to render their application more effective.
- (4) **Centralised enforcement:** option 4 entirely focuses on a powerful and centralised EU enforcement policy which must counteract the negative incentives from the compliance cost.

	Option 1	Option 2a	Option 2b	Option 3	Option 4
Improved enforcement	"Light" coordination	"Medium" coordination		"Medium" coordination + obligation of means	"Strong" coordination
How?	<ul style="list-style-type: none"> - Better flow of information between NEBs and Commission - separate general enforcement and complaint handling 	<ul style="list-style-type: none"> - Commission can request investigations by NEBs - A formal committee can decide on common procedures (e.g. transfer of complaints, exchange of information) - separate enforcement from complaint handling 		<ul style="list-style-type: none"> In addition to option 2: obligation for airlines to have a representative in each airport competent for decisions with regard to care and compensation 	<ul style="list-style-type: none"> EU enforcement body: - NEBs would be subsidiaries of the central body - separate general enforcement and complaint handling
Economic (dis)incentives	Low cost	Medium cost		High cost	High cost
Care	<ul style="list-style-type: none"> - Optional insurance for passengers 	<ul style="list-style-type: none"> - Time limit on accommodation in extraordinary events of long duration - Partial derogation for small-scale operations 		<ul style="list-style-type: none"> - Industry fund for extraordinary events of long duration 	<ul style="list-style-type: none"> - Industry fund (as option 3) - right to rerouting in case of long delay
Compensation payments	Right of compensation for delay of more than 5 hours	Right of compensation for delay of more than 5 hours	Right of compensation for delay of more than 3 hours	Right of compensation for delay of more than 3 hours	Right of compensation for delay of more than 3 hours
	Strict definition of extraordinary circumstances	Strict definition of extraordinary circumstances	Larger scope for extraordinary circumstances (includes technical defaults)	Strict definition of extraordinary circumstances	Strict definition of extraordinary circumstances
	Reduced lump-sum amounts of compensation with focus on short distances	Further sub-variants: reduced compensation amounts or not – single or multiple time thresholds for delay compensation	Two sub-variants: reduced compensation amounts or not	Unchanged lump-sum amounts for compensation	Unchanged lump-sum amounts for compensation
Common features	<ul style="list-style-type: none"> - Clarification of rights for missed connecting flights, advance rescheduling, mobility equipment, tarmac delays and "no show" policy - Enforcement body for existing rights in case of mishandled baggage - Minimum complaint handling procedures for airlines - Burden sharing with third parties 				

5. ANALYSIS OF IMPACTS

5.1. Economic impacts

Impact on enforcement policies

In all options, enforcement policy – which is currently mainly based on individual complaints - would become more efficient by taking a more **pro-active role** by checking airlines' manuals, terms and conditions and contingency plans for compliance with passengers' rights.

The **coordination** between national enforcement policies becomes stronger from option 1 to 4 but the associated administrative costs also tend to increase.

Clarification and simplification of rights

In all policy options, existing rights for air passengers are clarified, especially with regard to the notion of **extraordinary circumstances**, reducing the room for interpretation.

Under options 2 and 4, the rights are further simplified by the measure implying that **care in the form of meals and refreshments always be provided after a delay of two hours**, irrespective of the flight distance and the origin of the traveller's delay.

Impact on compliance cost

The impact on compliance cost for **airlines** can be summarized in a simplified way as follows:

- under **option 1**, the compliance cost would be significantly reduced; an extraordinary event of long duration would have limited impact; and costs would remain similar for regional carriers.
- Under **option 2** (and its variants), the cost would be similar to baseline but its upward potential would be limited in case more passengers claim their compensation or in an extraordinary event of long duration; the cost for regional carriers would be similar as for other airline types.
- Under **options 3 and 4**, the cost would be similar to baseline, but with a higher upward potential in case more passengers claim their compensation; there would be a limitation on cost developments in an extraordinary event of long duration; but the cost for regional carriers would remain very high in proportion to their revenues.

Impact of the full policy packages compared to the baseline scenario	Total cost at current claim rate (assumed to increase slowly over time)		Theoretical maximum cost of Regulation (if all entitled passengers claim compensation)	
	NPV (2015-2025) In € million	% change compared to baseline	NPV (2015-2025) In € million	% change compared to baseline
Baseline	10.4	-	23.6	-
Option 1	2.1	-80%	8.0	-66%
Option 2a (unchanged compensation levels)	9.8	-6%	18.4	-22%
Option 2b (unchanged compensation levels)	9.6	-8%	17.5	-26%
Option 3	11.3	+9%	26.0	+10%
Option 4	11.6	+12%	26.2	+11%

Source: Steer Davies Gleave + Commission estimates

Airports and other third parties could share a part of the airline costs as the four options give airlines enhanced possibilities to claim compensation for incurred costs from third parties responsible for delays or cancellations.

Other economic impacts

The **impact on SMEs**⁶ is very limited as only few are concerned by this Regulation. Most of them would benefit from the specific measures proposed for small-scale operations in option 2.

All policy options cause some new **administrative costs** for airlines (mainly the preparation of contingency plans) and for NEBs (mainly the implementation of the proactive policy the costs of which could be compensated by a reduction in the number of complaints).

5.2. Social impacts

5.2.1. Impact on consumers

All options present common features:

- Better enforcement of passengers' rights (including for baggage)
- Improved means to enforce individual claims.
- A clarification and strengthening of rights in many instances

⁶ No micro-enterprises are concerned by this Regulation.

Option 1 significantly reduces the obligations of airlines versus passengers during travel disruptions. While passengers can opt for insurance in function of their individual situation, many passengers, in the light of the low occurrence rate of delays and cancellations, may misjudge the risk of needing such insurance.

Under **option 2**, the care and assistance obligations are enhanced, but the right to claim financial compensation is somewhat reduced. Moreover, passengers are less well protected in the case of extraordinary events of long duration (except passengers with reduced mobility) and on regional flights⁷. This is however compensated by a **better enforcement** of the existing rights (see above).

Options 3 and 4 contain many advantages for passengers such as reinforcement and a better enforcement of their rights. However, it may also translate into slightly higher ticket prices and tax payers will contribute to the higher enforcement cost.

5.2.2. *Impact on employment*

The employment impact of the policy options remains limited as they mainly aim at fine-tuning existing passenger rights and better enforcement.

The policy options have no adverse effects on the **fundamental rights** of citizens.

5.3. **Environmental impacts**

The impact of the assessed policy options on **CO2 emissions** remains limited.

5.4. **Comparing the options**

Option 2 is preferable over the others as it is the most effective and efficient to meet the policy objectives.

Option 2a is slightly preferred over 2b because keeping the delay threshold at 3 hours as in 2b might trigger more cancellations⁸ and the fact that the (unchanged) right to compensation already arises after 3 hours, i.e. before the (unchanged) right to reimbursement (5 hours), may confuse passengers.

There is no objective criterion to prefer one **sub-variant of option 2a** over another. It is a matter of political judgement whether an additional cost reduction – via changes in the compensation levels or additional changes in the time threshold for delays - is regarded justified despite the reduced possibilities for compensation for the passengers.

6. **MONITORING AND EVALUATION**

The Commission would properly evaluate the implementation of the Regulation 4 years after its adoption by the Council and the Parliament. The evaluation will be done by the Commission in close cooperation with stakeholders.

The annual reports of the NEBs will be the main tool for monitoring the level of compliance and the consistency of national enforcement policies. The Commission can draw up regular reports based on the national reports, complemented where necessary by its own experience, by ad hoc studies or information from passenger surveys.

⁷ Based on 2011 data, this measure concerns less than 0.05% of all passengers covered by the Regulation

⁸ As shown by airline schedule optimisation models