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Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 5 June 2014*

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

- Progress report

I. INTRODUCTION

On 13 March 2013, the Commission presented the above proposal in order to revise and improve European legislation on air passenger rights in light of the experience gained in the application of existing rules, and to take into account the implications of the rapidly changing European air transport market.

The proposal's aim is to promote the interest of air passengers by ensuring that air carriers effectively comply with a high level of air passenger protection during travel disruptions. At the same time, the proposal intends to take into account the financial implications that passenger rights create for the air transport sector, and thereby ensure that European air carriers operate under harmonised conditions in a liberalised market.

In particular, it is proposed to couple the clarification of grey areas in existing legislation with the strengthening of the complaint handling mechanisms available to passengers. The Commission also seeks to introduce provisions in order to provide incentives for airlines to quickly reroute passengers, enable them to reach their final destination and minimise the discomfort suffered from long delays at airports. The disproportionate financial costs that some of the obligations imposed by the Regulation may create for the airlines in certain exceptional circumstances are also addressed. Furthermore, the Commission proposes to introduce detailed rules on some of the existing rights, such as the right to information, the right to assistance and compensation, as well as proposing new rights, for example on mobility equipment.

II. WORK WITHIN THE EUROPEAN PARLIAMENT AND OTHER INSTITUTIONS

The European Parliament's Committee on Transport and Tourism appointed Mr George BACH (EPP) as rapporteur, and the European Parliament voted the outcome of its first reading in plenary on 5 February 2014.

The Economic and Social Committee issued its opinion on the proposed Regulation on 11 July 2013, and the Committee of the Regions decided not to deliver an opinion on this file.

III. WORK WITHIN THE COUNCIL BODIES

The Working Party on Aviation examined the Commission proposal and its impact assessment intensively throughout the Lithuanian and Greek Presidencies. The Council held a policy debate on the proposed Regulation at the Transport Council on 10 October 2013. Ministers expressed their support for the objectives of the proposal and welcomed the revision of the existing rules in light of the experience gained since the adoption of the Regulation in 2004. They underlined the importance of clear and simple rules, and agreed with the Commission that the guiding principle of the Regulation should be to minimise travel disruptions and ensure that passengers reach their destination.

At the same time, serious concerns were voiced on the proposed rules on connecting flights, which would have a negative impact on regional connectivity and existing arrangements between airlines. It was also stressed that concerning delays and cancellations, a careful balance of the detailed provisions must be found in order to ensure the desired fairness both for passengers and airlines.

In the light of the above, the Greek Presidency worked systematically with a view to reaching a general approach at the meeting of the TTE Council on 5 June 2014, and tabled several compromise proposals in order to make progress on the file. The Working Party on Aviation examined the Presidency compromise proposals at a series of meetings, taking into account also the opinion of the Council Legal Service regarding the equal treatment of cancellation and delay, and delay at arrival in the context of the extraterritorial application of the Regulation.

As a result, solid progress at working party level has been made on the file. In particular, provisions giving rise to the application of air passenger rights in other modes of transport have been deleted, and the provisions on tarmac delay have been fine-tuned. In addition, the monetary limit on accommodation in case of major travel disruptions has been deleted, and the rules to inform passengers of their rights have been significantly improved. In the latter context, it is proposed to give the Commission the power to draw up a standardised information notice for general use by airlines.

In respect of rules allowing airlines to seek exemption from the payment of compensations, significant attention was devoted to their rigorous delimitation. As a major change, the concept of unexpected flight safety shortcomings has been established, in order to define under what conditions technical defects may be invoked by airlines to seek exemption from the payment of compensations. Although not all delegations are able to accept this approach, it is generally agreed that technical defects should not be abused by airlines to refuse the payment of compensations. In the context of exemptions, the time limitation on the possibility to invoke extraordinary circumstances and unexpected flight safety shortcomings has also been heavily discussed, also with a view to establishing reasonable and objective limits beyond which airlines are expected to re-establish their normal operations.

Ensuring the effective enforcement of the Regulation has also been in the focus of the discussions, and a compromise was reached on a simple, clear procedure for passengers to submit complaints to airlines, and subsequently to out-of-court dispute resolution bodies.

Delegations are also generally keen to introduce clarity for cases of change of schedule, though views are differing to what extent such schedule changes are comparable to "traditional" cases of cancellation or delay. The latest Presidency compromise maintains a separate Article on different cases of change of schedule, while some delegations wish to see a closer alignment to the Articles on delay and cancellation.

Overall, solutions were found on several technical issues, and during the Greek Presidency the Aviation Working Party was able to identify the main direction of some important political compromises. However, despite the intense work carried out, the compromises on a number of significant outstanding issues need further work.

In addition, the ongoing debate between Spain and the United Kingdom on how to reflect the Gibraltar issue needs to be resolved before the Council takes further procedural steps in the process leading to the adoption of the file. Bilateral negotiations aimed at resolving the issue are ongoing.

Taking into account the above, the Greek Presidency has decided to submit a progress report to the Transport Council on 5 June 2014.

The compromise proposals were last examined by the Working Party on Aviation on 19 May 2014, and appear in Addendum 1 to this report. Changes are marked compared to the Commission proposal (doc. 7615/13) and appear in **bold**. Deletions are marked with ~~strikethrough~~.

All delegations, as well as the Commission have a general scrutiny reservation on the whole text. UK has a parliamentary scrutiny reservation on the text.

IV. MAJOR OUTSTANDING ISSUES

Thresholds for compensation

The Presidency text aligns the thresholds for cancellation and delay in order to ensure the equal treatment of passengers suffering a similar inconvenience. However, the modified distance bands and the proposed 5-9-12 time thresholds giving rise to compensation in cases of cancellation and delay do not meet the satisfaction of a number of delegations which have diverging positions on this key issue, as reflected in footnotes 8 and 17 of the Addendum to this report.

Compensation for connecting flights

The Presidency compromise provides a partial exemption to airlines from paying compensation, if the connecting time was relatively short (90 minutes in the current text), and the passenger who purchased the connecting ticket was aware that a short delay of the feeder flight could result in missing the connection. If, however, the originally planned transfer time was more than 90 minutes, the passenger shall receive compensation if his connecting flight is missed due to a delay of the feeder flight. This compromise proposal cannot be accepted by a number of delegations which maintain their serious concerns on the effect of any explicit provision on compensations for connecting flights to regional connectivity and existing arrangements between airlines. They propose the deletion of compensation for connecting flights, and consider that such amounts should be paid on the basis of each individual leg of the flight, and the corresponding delay suffered.

Extraordinary circumstances

Significant work has been carried out mainly in the direction of defining clear rules for extraordinary circumstances of technical nature. However, the underlying debate on the status of any list establishing exemptions from the obligation of compensation payment remains unchanged. Some delegations continue to have difficulties in accepting the fully binding nature of the Annex, which contains a non-exhaustive list of extraordinary circumstances. They would prefer to give the possibility to National Enforcement Bodies and national courts to deviate from the list. As a consequence, these delegations are also opposed to including the concept of unexpected flight safety shortcomings in a definition, which necessarily turns the related list of criteria into a closed list. Other delegations on the other hand, remain keen to remove legal uncertainties in the Regulation and consider that a binding, but open list of extraordinary circumstances provides sufficient flexibility.

Hand luggage

On Regulation (EC) 2027/97 the only major outstanding issue remaining concerns cabin baggage, that is to say whether clear provisions on the so-called 'one bag rule' should be established. Some delegations consider that the commercial freedom of the air carrier should not be limited, and requiring full transparency of the airline towards the passenger is sufficient. On the other hand, other delegations insist on clarifying the limitations on carry-on baggage, including airport shopping, so that all passengers at Union airports can take items on board under the same conditions. The current Presidency compromise allows for baggage limitations to be expressed in dimensions or weight, but not in the number of items. These possible limitations can also apply to personal items and airport shopping.

V. CONCLUSION

Taking into account the above and in order to enable the Council preparatory bodies to continue their work on the above proposal, Coreper and Council are invited to take note of this progress report and the document in Addendum 1.