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'I/A' ITEM NOTE

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

Subject: European Court of Auditor Special report no 15/2021: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts
– Draft Council Conclusions

1. On 29 June 2021, the European Court of Auditors published Special report No 15/2021 entitled “Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts”.
2. Under the rules laid down in the Council conclusions on improving the examination of special reports¹ drawn up by the Court of Auditors, the Permanent Representatives Committee on 14 July 2021 instructed the Working Party on Aviation to examine the report² in accordance with those rules.
3. Consequently, the Special Report was presented to the members of the Working Party on Aviation on 19 July. The members of the Working Party on Aviation examined the draft Council conclusions on 9 and 16 September³.
4. The text as agreed is set out in the Annex to this note.

¹ ST 7515/00
² ST 10584/21
³ ST 10346/21 + REV 1-2

5. In light of the above, the Permanent Representatives Committee is invited to confirm the agreement reached at the Working Party and recommend to the Council to approve the Council conclusions set out in this note as an "A" item at one of its forthcoming meetings.
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COUNCIL CONCLUSIONS

on Special Report No 15/2021
of the European Court of Auditors:

" Air passengers rights during COVID-19 pandemic: key rights not protected despite Commission efforts "

THE COUNCIL

1. TAKES NOTE of the European Court of Auditors' Special Report No 15/2021 *"Air passengers rights during COVID-19 pandemic: key rights not protected despite Commission efforts"*, regarding the impact of the pandemic on air passenger rights and the role of the Commission in this period.
2. TAKES NOTE of the European Court of Auditors' detailed and all-encompassing approach taken to assess the impact of the pandemic on passenger rights and the measures taken by the Commission, by Member States and by the relevant stakeholders.
3. RECALLS the Council Conclusions on Special Report No 30/2018 by the European Court of Auditors adopted by the Council at its 3675th meeting held on 4 March 2019⁴.
4. HIGHLIGHTS the unprecedented nature of the pandemic and the immense and sustained impact on the aviation industry and the world in general.

⁴ ST 6485/19

5. RECALLS the “Study on the current level of protection of air passenger rights in the EU” published by the Commission in January 2020⁵ that shed a new light on the situation of passenger rights since the Commission’s proposal of 2013⁶ such as the lack of provisions to address airline insolvencies in the case of flight only passengers.
6. RECALLS the Communication from the Commission on “Tourism and transport in 2020 and beyond”⁷ and the Commission Recommendation (EU) 2020/648⁸ of 13 May 2020 on the use of vouchers and HIGHLIGHTS its importance as the airlines were facing a significant liquidity crunch.
7. STRESSES that the financial support for airlines which is being made possible under state aid rules, has proved essential for their survival, thus ensuring the reimbursement of millions of passengers whose flights were cancelled.
8. WELCOMES the fact that the Commission accepts the European Court of Auditors' recommendations and INVITES the Commission to reflect on how to improve the current setup, based on the experiences, shortcomings and lessons learnt and the European Court of Auditors' Special report, as announced under the Commission’s Sustainable and Smart Mobility Strategy⁹.

⁵ “Study on the current level of protection of air passenger rights in the EU”, Final report, Directorate-General for Mobility and Transport (European Commission), Steer, Publications Office of the European Union, 2020.

⁶ 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 (COM/2013/0130 final).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Tourism and transport in 2020 and beyond (COM/2020/550 final).

⁸ Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic (OJ L 151, 14.5.2020, p. 10).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Sustainable and Smart Mobility Strategy – putting European transport on track for the Future (COM/2020/789 final).

9. INVITES the Commission to reflect on the possible ways how it can ensure that passengers are treated equally around the EU and that passengers are provided information so that they are aware of their rights.
10. WELCOMES the continuous and ongoing efforts by the Consumer Protection Cooperation authorities and the Commission in the Consumer Protection Cooperation network, as well as the National Enforcement Bodies in ensuring that air carriers and intermediaries take appropriate actions to reimburse passengers still expecting reimbursement of their tickets or vouchers.
11. INVITES the Commission to improve coordination with Member States to ensure that passengers receive timely and updated information regarding measures related to crises.
12. INVITES the Commission, in light of the recommendations by the European Court of Auditors, to reflect on possible solutions to address problems related to insolvencies of airlines and involvement of intermediaries also as highlighted in the Sustainable and Smart Mobility Strategy¹⁰.
13. In light of the unprecedented situation of the pandemic, INVITES the Commission to reflect on the possible tools that could ensure the rights of passengers in future unexpected crises, whatever the magnitude.

¹⁰ Ibid.