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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Proposal for a regulation 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 - Political agreement

Delegations will find in Annex the compromise text proposed by the Presidency for Annex I.

Annex 1**'Annex: non-exhaustive lists of circumstances considered as extraordinary circumstances and circumstances not to be considered as extraordinary for the purposes of this Regulation**

1. The following circumstances shall be considered as extraordinary:
 - (a) Circumstances not connected with the operation of the aircraft, such as:
 - i. natural and/or environmental disasters which are incompatible with the safe operation of the flight;
 - ii. meteorological conditions and damage to the aircraft linked to meteorological events which are incompatible with the safe operation of the flight (such as: lightning strikes, hailstones, thunderstorms, severe turbulence, strong wind);
 - iii. war or insurrection which are incompatible with the safe operation of the flight;
 - iv. cross-border threats to health falling within the scope of Articles 2(1) or 2(4) of Regulation (EU) 2022/2371 which are incompatible with the safe operation of the flight; and
 - v. collisions between the aircraft and a bird or another foreign object which are incompatible with the safe operation of the flight.
 - (b) Incidents related to a passenger, including:
 - i. unruly passenger incidents within the meaning of the Montreal Protocol 2014 which are incompatible with the safe operation of the flight or delaying the flight departure;
 - ii. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight;

- (c) the behaviour of a third party, such as:
- i. security risks, damages caused by acts of sabotage or terrorism, or unlawful acts, which are incompatible with the safe operation of the flight;
 - ii. hidden manufacturing or design defect revealed, by the manufacturer or a competent authority and which are incompatible with the safe operation of the flight;
 - iii. air traffic management or airport capacity restrictions, or closure of airspace;
 - iv. partial or full unscheduled closure of an airport, including a general airport system failure, a power outage and an electronic communications collapse, or the activation of the contingency plan by the airport managing body;
 - v. strikes at essential service providers such as airport managing body, Air Navigation Service Providers, groundhandling service providers, or at the operating air carrier where strikes are linked to demands outside the remit of the operating carrier;
 - vi. unexpected absence of a crew member essential to the operation of the flight, due to illness or death, when it occurs outside the operating air carrier's home bases or due to pandemic;
 - vii. damage to the aircraft caused by third parties, for whom the air carrier is not responsible, on the ground and which is incompatible with the safe operation of the flight;
 - viii. damage to an aircraft tyre caused by a foreign object and which is incompatible with the safe operation of the flight;
 - ix. contaminated runway of an airport which is incompatible with the safe operation of the flight;
 - x. unexpected flight safety shortcomings on aircraft equipment not within acceptable levels of operation as defined in the Master Minimum Equipment List or the minimum equipment operating conditions established therein and that could not have been remedied during preventive

maintenance (as provided for under 2(i)); and

xi. after departure, health risks or medical emergencies (such as serious illness) of a crew member necessitating the interruption or deviation of the flight.

2. The following list of circumstances shall not be considered as extraordinary:

i. technical problems that could have been remedied during preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft;

ii. operational decisions, late crew / check-in / boarding procedures; and

iii. unavailability of flight crew or cabin crew (unless caused by strikes covered under 1(c)v or unexpected absences due to illness or death covered under 1(c)vi).'
