



EUROPEAN COMMISSION

Brussels, 14.1.2014
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Dear President,

The Commission would like to thank the Senát for its Opinion concerning the 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) 130 final}.

The Commission would like to comment on a number of particular issues raised by the Senát.

Labour disputes and pre-flight check on the list of extraordinary circumstances

The proposal defines "extraordinary circumstances" in line with the European Court's decision in the case C-549/07 (Wallentin-Herman), i.e. an event which, by its nature or origin, is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond its actual control.

With regard to the labour disputes, recital 14 of the current Regulation (EC) No 261/2004 already cites strikes among the extraordinary circumstances that affect the operation of the operating air carrier.

In order not to pay compensation an airline must prove both that the delay at arrival/cancellation was caused by extraordinary circumstances and that this delay/cancellation could not have been avoided even if all reasonable measures had been taken (double test). Therefore, in the Commission's proposal, a strike would not automatically exempt from compensation: the air carrier also needs to prove that it took all reasonable measures it could take in the context of the strike to avoid the delay or cancellation.

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As regards technical defaults found during the pre-flight check, the Commission proposal confirms the point of view of the Sénat that these should not be regarded as extraordinary circumstances.

The Commission also would like to recall that extraordinary circumstances can only lead to an exemption for compensation, but that assistance (such as rerouting, meals/refreshments and, when necessary, accommodation) has to be provided in all circumstances.

By clarifying the notion of "extraordinary circumstances", the proposal provides reassurance to airlines and passengers alike of those circumstances where compensation is expected.

Time threshold for compensation

The Commission has proposed to modify the thresholds for delay compensation to take into account its financial consequences on air carriers and to avoid negative side-effects for passengers such as more flight cancellations or increased ticket prices.

The current compensation for delays of more than 3 hours results from a judgement of the European Court of Justice (Sturgeon case C-402/07). The Commission has proposed to increase the threshold for compensation from three to five hours for all intra-EU journeys and for all extra-EU journeys of less than 3500 km. For extra-EU long-haul journeys this threshold would increase to 9 hours for journeys between 3500 and 6000 km and to 12 hours for journeys of more than 6000 km.

The thresholds were chosen on the basis of objective data which give an indication of the time periods within which air carriers can reasonably deal with the causes of delays. While five hours is a reasonable time period for the large majority of flights, long-haul flights of more than 3500 km often necessitate more time to deal with operational problems. This is due to the distance from the air carrier's home base and the time it would need to provide spare parts, a spare aircraft and/or another crew to a very distant destination. On such long-haul flights, five hours could be unrealistically short to remedy the causes of the delay. The impact assessment accompanying the proposal {SWD(2013) 62} analyses this issue in great depth.

Entry into force of the revised Regulation

With regard to the Sénat's remark according to which there would be insufficient time for the national implementation, the Commission takes note of the suggestion to extend the deadline to at least two years.

Alternative and online dispute resolution

As regards the use of alternative and online resolution tools for resolving the disputes between air carrier and passengers, the Commission shares the views expressed by the Sénat and has to this end included in the proposal Article 16a(3) which reads: 'In accordance with relevant EU and national law, each Member State shall designate a national body or bodies responsible for the out-of-court resolution of disputes between air carriers and passengers with regard to the rights covered by this Regulation'.

The Commission is working with the legislators for fine-tuning the provisions of this Article.

Tarmac delay

The Commission takes note of the position of the Sénat suggesting to reduce the threshold for tarmac delays after which the passenger is entitled to care and compensation.

The Commission hopes that these clarifications address the concerns raised by the Senát and looks forward to continuing this political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*