

5 July 2013

**Decision
of the Bundesrat**

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; Council doc. 7615/13

At its 912th session on 5 July 2013 the Bundesrat adopted the following opinion, pursuant to §§ 3 and 5 of the Act on Cooperation between the Federation and the *Länder* in European Union Affairs (EUZBLG):

Regarding the proposal for a Regulation in general

1. The Bundesrat supports the Commission's aim of improving enforcement by clarifying key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past, and by enhancing and better coordinating the enforcement policies carried out on a national level.

It therefore welcomes the Commission's initiative to develop a Europe-wide interpretation of EU legislation on passenger rights and their harmonised and effective enforcement and thus ensure a European standard of protection for citizens.

2. The Bundesrat supports the Commission's objective of eliminating gaps and the lack of clarity in the existing rules on air passengers' rights in the event of denied boarding, cancellation and long delays. Technical improvements leading to greater legal clarity are in the interests of consumers and will reduce the burden on the courts.
3. However, taking account of court rulings, it concludes that the proposal for a Regulation would have to be amended on some points to enable the Commission's aim of removing gaps and the lack of clarity in the current European rules to be achieved. Some of the rules are unclearly formulated, while others obviously play to passengers' disadvantage. As it stands, the Commission's proposal does not fully achieve the objective of changing the wording to avoid problems of interpretation and create legal certainty on all points.

The Bundesrat therefore thinks that some clarification and amendments are called for.

4. In addition, the proposed rules must be improved to strengthen consumer rights. The Bundesrat rejects any lowering of the level of consumer protection vis-à-vis Regulation (EC) No 261/2004 (the EU Air Passenger Rights Regulation) and Regulation (EC) No 2027/97 of 9 October 1997 (OJ L 285, 17.10.1997, p. 1; as amended by Regulation (EC) No 889/2002 of 13 May 2002, OJ L 140, 30.5.2002, p. 2).
5. It therefore requests the Federal Government to push for a review of the following rules:
6. As the Bundesrat sees it, the amendment of Regulation (EC) No 261/2004 is to be used to fully incorporate contracts of carriage for journeys with airports of departure in the EU into the scope of the Regulation and thus, irrespective of the registered place of business of the operating air carrier in question, include disruptions which could occur on a connecting flight between a transfer airport outside the Union and the final destination. With the definition of the term 'flight' proposed in Article 1(1)(e) relating to Article 2(n) of Regulation (EC) No 261/2004, the Commission's proposal rules out the applicability of the Regulation and thus effective protection for passengers in cases in which there are cancellations or considerable delays on a connecting flight between a transfer airport outside the Union and the final destination and the air carrier operating the connecting flight is not registered in the EU or the final destination is outside the Union. This exclusion of passenger rights is unfair, at least in cases which involve a standardised contract of carriage under which either both flights are operated by the same air carrier or the air carriers involved work together under code-sharing agreements, for example.
7. The number of legal disputes relating to the EU Air Passenger Rights Regulation has increased. The main points at issue under these proceedings are claims for compensation under Article 7 of the Regulation for flight delays of more than three hours. Even after the ECJ ruling of 23 October 2012, there are still some airlines which categorically reject compensation for delays. The Bundesrat welcomes the fact that the Regulation introduces reforms, taking account of European Court of Justice case law, and a right to compensation for long delays is to be laid down in the interests of legal certainty and the avoidance of disputes. However, the proposed Article 6(2) of the Air Passenger Rights Regulation, which refers to Article 7, is too complicated. The breakdown according to paragraphs 2(a) to (c) is not convincing. A clearer and more rigorous solution should be found.
8. This provision lays down a right to compensation for passengers suffering long delays. The background to this new provision is the European Court of Justice's judgment in two joined cases (C-402/07 and C-432/07). The ECJ interprets Articles 5, 6 and 7 of Regulation (EC) No 261/2004 to mean that, with regard to the application of the right to compensation, passengers whose flights are delayed are to be treated the same as passengers whose flights are cancelled and can therefore assert a right to compensation when they suffer a loss of time of three hours or more as a result of a delayed flight. However, this new rule provides that, for all journeys within the EU, the delay giving rise to a right to compensation is increased from three to five hours. The reason given is that this will prevent flight cancellations, which as a rule cause greater inconvenience to passengers. This rule is also part of the measures supposed to lessen the impact of those aspects of Regulation (EC) No 261/2004 which generate the greatest costs for air carriers.

In its judgment, the ECJ takes the view that the situation of passengers whose flights are delayed is scarcely distinguishable from that of passengers whose flights are cancelled, who are re-routed in accordance with Article 5(1)(c)(iii) of Regulation (EC) No 261/2004, and who may not be informed of the flight cancellation until they arrive at the airport. There appears to be no objective ground capable of justifying such a difference in treatment between these two groups of passengers. Given that the damage sustained by air passengers in cases of cancellation or long delay is comparable, passengers whose flights are delayed and passengers whose flights are cancelled cannot be treated differently without the principle of equal treatment being infringed.

In the light of this case law, the proposed new rules are highly questionable. This is because the proposal for a Regulation sticks to the previous rule on the right to compensation for passengers whose flight has been cancelled, and in particular the rule under Article 5(1)(c)(iii) of Regulation (EC) No 261/2004, on which the ECJ bases its argumentation to a considerable extent in the judgment referred to. Thus the proposed new rules will lead to unequal treatment between passengers on cancelled flights who are re-routed and who cannot be informed of the cancellation of the flight until they arrive at the airport, and passengers whose aircraft is delayed by three to five hours. However, according to the ECJ's judgment, there is no objective ground capable of justifying such a difference in treatment and it infringes the principle of equal treatment. Also, the fear expressed by the Commission, i.e. that otherwise there could be flight cancellations which are not in passengers' interests, is not accurate either. This is because, in the event of flight cancellations, in particular in cases as referred to in Article 5(1)(c)(iii) of Regulation (EC) No 261/2004, air carriers are obliged to pay compensation which they themselves describe as being particularly costly. Therefore, in their own interests, they are unlikely to cancel flights overhastily.

9. Passengers must be fully informed when there are disruptions to flights which they have booked. This also includes information on the reason for the cancellation, delay or denied boarding, so that passengers are better able to judge whether there are 'extraordinary circumstances' which the air carrier may invoke later on. Other means of transport to the destination must be clearly communicated. Accommodating passengers in hotels until the next scheduled flight by the same air carrier, which is the less expensive option for the carrier, is not sufficient if a considerably earlier onward flight operated by a different airline could be offered. Therefore Article 14(5) is inadequate in this respect. If consumers had a right to complete information subject to penalties for non-compliance, they would be in a better position to weigh up the pros and cons of legal action, which ultimately would reduce the burden on the courts.
10. It should not be possible for passengers to be denied boarding on a return flight because they did not take the outward flight. It should be possible for them to take a different sequence of flights than the one booked. Thus, in this respect, recital 7, the Commission's comments under point 3.3.1.1 of the explanatory memorandum, and Article 4(4) in conjunction with the second sentence of Article 4(3) are inconsistent. The objective of the consumer-protection rule set out in recital 7 is not expressed clearly enough in Article 4 and also runs the risk of being circumvented by clauses in carriers' general terms and conditions. This is not acceptable in the Bundesrat's opinion.

11. The Bundesrat thinks the following amendments to the EU Air Passenger Rights Regulation represent a deterioration of the legal position of passengers:

Unlike under the current wording, passengers opting for ‘re-routing at the earliest opportunity’ in the event of denied boarding will now only receive assistance under Article 9 where the departure time is at least two hours after the initial departure time (amendment of Article 4(3)).

On the basis of the applicable legislation and ECJ case law (judgment in cases C-402/07 and C-432/07; judgment in cases C-581/10 and C-629/10), passengers have a right to financial compensation for delays from three hours upwards and for cancellations. Under the Commission’s proposal, in future passengers will only have a right to compensation (a flat-rate payment) under Article 7(1) when the flight is delayed by at least five hours. Depending on the distance to the final destination, a delay of as much as 12 hours may even be necessary for there to be a right to compensation (Article 6(1) and (2) in the proposed new version).

Whereas up to now there is no upper limit on the costs to be borne for hotel accommodation, under the Commission’s proposal, in the event of cancellation or long delays, under certain conditions air carriers will now only have to pay up to EUR 100 towards the cost of hotel accommodation (Article 9(4) in the proposed new version).

The Bundesrat takes the view that there should be no limit on the accommodation obligation under Article 1(9)(b) relating to Article 9(5). Even for distances of less than 250 km and small aircraft capacities, passengers need care and assistance where, for example, an overnight stay becomes necessary. From a consumer-protection perspective, there is no justification for the limit relating to distance and the size of the aircraft. It is also disconcerting that the obligation to provide hotel accommodation under the proposed Article 9(5) is to be dependent on the size of the aircraft, because passengers have no influence on the size of the aircraft deployed.

Detailed comments on the amendments to Regulation (EC) No 261/2004:

12. The relationship between rights under Regulation (EC) No 261/2004 and rights under package tour legislation still needs some clarification.

The Bundesrat thinks there should be clarification in Article 1(2)(c) relating to Article 3(6) such that the ruling out of cumulative rights under Regulation (EC) No 261/2004 and Directive 90/314/EEC should not prevent passengers, to safeguard their rights and given the possibility of the insolvency of the opposing party, from making claims for cancellation or delayed flights side by side against both the air carrier and the tour operator.

13. The Bundesrat welcomes the fact that in Article 1(5) the Commission proposes specific rules on compensation for long delays.

14. In the proposed Article 6(2) for passengers’ right to compensation for long delays, reference is made to Article 7, the previous paragraph 1 of which is amended only marginally. However, Article 6(2)(a) to (c) lay down different delay periods and distances from those in Article 7. In addition, it seems to have been overlooked that flights of more than 6 000 km must also be regarded as flights within the EU where

they relate to the French overseas departments, for example. This situation does not appear to have been covered in Article 6(2).

15. The Bundesrat sees the lowering of the level of consumer protection as compared with Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97, in particular the increase in the length of delay required for passengers to have a right to compensation from three to five hours, with grave concern. Also, there is no need to divide the compensation periods into three zones. It thinks the proposed thresholds of five, nine and twelve hours are too high. The proposed rules lag behind the ECJ's case-law rulings, which already give passengers a right to compensation from a delay of three hours on. Particularly in the case of shorter routes and time-bound journeys for professional purposes, a delay of two or three hours can already lead to considerable disruption for passengers and reduce the value of the travel service to such an extent that financial compensation in accordance with Article 7 of Regulation (EC) No 261/2004 should be awarded. In addition, the thresholds proposed by the Commission do not create any incentive for air carriers to improve their performance. Therefore the Bundesrat is calling for the maintenance of compensation for delays of three hours on short- and medium-haul journeys and those within the EU.
16. The Bundesrat also sees a need for adjustment, particularly for flights to and from third countries, as well as long-haul routes covering distances of over 3 500 km, and proposes an increase in the delay time to six hours in such cases.
17. Therefore, in the opinion of the Bundesrat, Article 1(5) relating to Article 6(2) (delays and compensation) should be amended so that passengers have a right to compensation from the operating air carrier in accordance with Article 7 where they arrive at their final destination:
 - three hours or more after the scheduled time of arrival for all intra-Community journeys and for journeys to/from third countries of 3 500 kilometres or less
 - six hours or more after the scheduled time of arrival for journeys to/from third countries of more than 3 500 kilometres.
18. In the opinion of the Bundesrat, the threshold referred to in Article 1(5) relating to Article 6(1)(iii), i.e. a delay of five hours required for passengers to have the right to withdraw from the contract in accordance with Article 8(1)(a) of Regulation (EC) No 261/2004, is too long, particularly in the case of short routes. Passengers should already have the possibility of choosing alternative transport and withdrawing from the contract without suffering any financial loss where the foreseeable delay is as little as two or three hours. In addition, in the event of long delays passengers should be given all the assistance referred to in Article 8(1) of Regulation (EC) No 261/2004, including the right to re-routing to the final destination. The restriction to the right to withdrawal in accordance with Article 8(1)(a) of Regulation (EC) No 261/2004, as provided for in the proposal, does not properly protect passengers' interests.
19. In the context of Article 1(5), the question whether passengers have a right to compensation from the operating air carrier in the event of long delays should hinge on the final destination and not the point of departure. Accordingly, airlines whose passengers arrive late at their final destination should have to pay compensation even where the passengers are transported late to the transfer point by another air

carrier involved in the contract. This could endanger the practical implementation of interline agreements between air carriers, because they are always looking to avoid the risk of susceptibility to compensation claims against contractual partners. However, in view of the rules set out later on in Article 1(6), according to which passengers who miss a connecting flight are entitled to compensation from the air carrier operating the preceding flight, it is not clear whether the rules under Article 1(5) apply in such cases.

20. Air carriers often counter passengers' claims by arguing that a delay or cancellation was due to 'extraordinary circumstances' within the meaning of the Regulation. However, Annex 1, which is intended to give concrete examples of the definition of 'extraordinary circumstances' contained in Article 2(m), is not convincing. Some of the formulations on the list are inconsistent. In general, the wording of Annex 1 fails to specify whether these are 'typical examples' (which calling it a 'non-exhaustive list' suggests) or whether it is a list of binding criteria which, if met, must always be regarded as extraordinary circumstances (the word 'are' argues in favour of this). Therefore, new interpretation problems can be expected. Moreover, the term 'extraordinary circumstances' is already sufficiently precisely defined in previous case law. We have reservations about the extension of the list by the Commission.
21. The definition of 'extraordinary circumstances' in Article 1(1)(e) does not provide the clarity needed. According to the list in the Annex, technical problems in particular will only be accepted as extraordinary circumstances if they are not inherent in the normal operation of the aircraft. This would lead to considerable uncertainty in interpretation. The Bundesrat thinks clarification is needed.
22. Paragraph 1(ii) and paragraph 2(i) raise the question as to whether every fault during a flight is to be regarded as an 'extraordinary circumstance' or whether a distinction must be made between technical faults which become apparent during taxiing and faults occurring in the air during the flight.
23. Air carriers must ensure that the aircraft used are in perfect condition. It is therefore irrelevant whether a technical fault is found in a routine check or during the flight.
24. The legal consequences of failure to comply with the new three-month period for complaints by passengers against air carriers (Article 16a(2) of the proposed new version) are unclear. The reference to claims and complaints in the heading of the article and in paragraph 1 raise doubts as to whether the assertion of rights is also covered by paragraph 2, with the result that claims which are not lodged within three months by means of a 'complaint' lapse.

The proposed wording suggests the interpretation that in future as well, no uniform deadlines for the enforcement of rights will apply. The question remains as to whether the time limits laid down in Article 35(1) of the Montreal Convention should be used analogously for the area covered by the Regulation. A harmonised EU-wide time limit of two years for the assertion of rights or for the lodging of complaints as applies under the Montreal Convention would have the advantage that problems on a flight could be resolved without undue delay, the taking of evidence would be facilitated in the interest of all parties concerned, and passengers could have a clear idea of the time periods in which they have to assert their rights before the courts. The time limit should be linked to objectively verifiable criteria, such as the time and date of the flight concerned. If, by contrast, the three-month deadline of

the new Article 16a(2) were to be taken to mean a cut-off date for the assertion of rights before the courts, such a period would be much too short.

The introduction of a single, objective limitation period for claims under the EU Air Passenger Rights Regulation providing legal certainty is also justified given the positive experience with § 651g BGB (German Civil Code) and the rules for rail passengers.

25. The wording of the proposed new Article 4(4) of the EU Air Passenger Rights Regulation (Article 1(3)(b) of the proposal) is unclear. The regulatory aim given in recital 7 of the proposed Regulation, i.e. that passengers may not be denied boarding on the return flight because they did not take the outward flight is not clearly expressed in the wording of the new rules. Also, recital 7 is relativised by the Commission's comments in point 3.3.1.1. of the Explanatory Memorandum, which only refers to a 'partial ban of the "no-show" policy'.
26. It should not be allowed to deny passengers boarding on the return flight on the grounds that they did not take the outward flight. They should be able to take a different sequence of flights from the one booked. Up to now this has been rejected by airlines on the grounds of their terms and conditions and the bases for their pricing calculations. Recital 7 does not unequivocally prohibit this practice. Following the reference to the second sentence of paragraph 3 in Article 4(4), it is conceivable, but not acceptable, that air carriers could re-book passengers who, for whatever reason, did not take the outward flight, on a return flight up to two hours later against their will and without compensation. Article 4(4) of the EU Air Passenger Rights Regulation must therefore be reworded and carefully coordinated with recital 7.

To have paragraphs 1, 2 and 3 of Article 4 of the EU Air Passenger Rights Regulation 'also apply' where the outward flight is not taken does not make sense. It could be interpreted to mean that where passengers do not take the outward flight they may be denied boarding even if there are seats free on the aeroplane. The fact that these rules, designed to tackle overbooking, 'also apply' could also mean that where passengers do not take the outward flight the air carrier is allowed to prompt them to 'voluntarily' give up the return flight and in return only has to offer them unspecified compensation and assistance under Article 8. If the passenger refuses to accept this offer and 'voluntarily' give up the flight, having paragraph 2 'also apply' could mean that the air carrier is allowed to deny the passenger boarding on the return flight. Moreover, having paragraph 3 'also apply' could mean that the passenger essentially only receives the compensatory payment referred to in Article 7(1) for the return flight paid for but on which boarding was denied. The concern is that air carriers will take advantage of the (at least) unclear legal position of passengers where they do not take the outward flight. These rules will lead to large numbers of new disputes.

Under 3.3.1.1. of the Explanatory Memorandum the Commission explains that carriers will still be allowed to impose particular rules for the 'sequential use' of flights. There is therefore a risk that the declared aim of the rules to protect consumers outlined in recital 7 could be circumvented by clauses in the carriers' general terms and conditions.

27. Where several successive flights are booked with different carriers via a third party (tour operator), the planned new wording of Article 6 of the EU Air Passenger

Rights Regulation could lead to problems if a slight delay on one flight triggers a 'long delay' in the journey and the travelling and airport transfer times in the contract are not properly synchronised.

28. The proposed Article 6a of the EU Air Passenger Rights Regulation leaves the question open as to whether the legal consequences also apply if a flight is missed as a result of the cancellation of a preceding flight. If the terms 'change of schedule' and 'cancellation' are equivalent, this should be made clear.
29. The Bundesrat requests that consideration be given to the inclusion of a provision in Regulation (EC) No 261/2004 which generally grants passengers a right of withdrawal if the flight schedule is substantially changed. The rules proposed in Article 1(5) relating to Article 6(3) of Regulation (EC) No 261/2004 only relate to cases in which a change of schedule leads to a delay in arrival. However, bringing forward the departure time can involve considerable inconvenience and, where an overnight stay becomes necessary, for example, financial loss for passengers. Also, the right of withdrawal should be independent of the period within which the air carrier unilaterally changes the flight schedule.
30. The Bundesrat thinks that the time limit of five hours after which air carriers must allow passengers to disembark in the event of a tarmac delay, provided for in Article 1(5) relating to Article 6(5) of Regulation (EC) No 261/2004, is unreasonable. For shorter flights in particular, the maximum length should not exceed two to three hours.
31. For the amendment to Article 7(1) of the EU Air Passenger Rights Regulation, it should be made clear whether the term 'final destination' now refers to the ultimate destination of the journey or the destination of an individual flight within the overall 'journey'.
32. The new Article 7(5) of the EU Air Passenger Rights Regulation allowing a contractual waiver of compensation rights contradicts Article 15 of the Regulation. The word 'voluntary' before 'agreement' is inappropriate because agreements concluded under duress are not automatically valid.
33. Passengers may request re-routing via another carrier or another mode of transport in accordance with Article 1(8), whereby the other carrier or other transport operator may not charge the contracting carrier a price that goes beyond the average price paid by its own passengers for equivalent services in the last three months. However, the originally agreed ticket price would not be taken into account, so that considerable additional and possibly disproportionately high costs could arise for the contracting carrier.
34. The Bundesrat sees a risk that the proposed right to re-routing to the final destination in the event of cancellation will be to no avail if, as proposed in Article 1(8) relating to Article 8(5) of Regulation (EC) No 261/2004, the right exists on condition that the carrier is not in a position to transport the passengers to their final destination within a period of twelve hours of the scheduled arrival time. The time limit of 12 hours is too long, particularly on shorter routes, to protect passengers' interests, i.e. to allow them to reach their destination as quickly as possible. Where the scheduled flight does not take place, passengers must, at least on shorter flights, where the foreseeable delay is two or three hours, have the basic

possibility of switching to another provider or another mode of transport such as the railway, for example, without suffering any financial loss.

35. The Bundesrat welcomes the exemptions provided for in Article 11(3) in accordance with Article 1(11) from the limitations set out in Article 9(4) and (5) for persons with reduced mobility, persons accompanying them, unaccompanied children, pregnant women or persons in need of specific medical assistance. However, the need for notification of the particular needs 48 hours before the scheduled time of departure will lead to further problems of interpretation and practical difficulties. Firstly, it is not clear how the notification should be made and how the burden of proof is to be distributed. Secondly, it would be unreasonable for the above-mentioned groups of persons to have to manage without any further assistance if (allegedly) no notification was made. The Bundesrat thinks this notification obligation as a condition for entitlement should be deleted.
36. Advantage should also be taken of the planned amendment of the Air Passenger Rights Regulation to formulate the second sentence of Article 12(1) of the Regulation more clearly. In particular, the wording according to which further compensation ‘may’ be deducted should be less ambiguous. Also, clarification is still needed as to whether any damages payments received are to be deducted from compensation.
37. In the opinion of the Bundesrat, the obligation to provide information under Article 1(13) relating to Article 14(5) is not user friendly and should be reviewed. Passengers will not understand why they are not informed of the situation until 30 minutes after the scheduled departure time. For air carriers it is reasonable and practicable to inform passengers 30 minutes before the scheduled departure time. In addition, the provision of the information should not, as envisaged in the proposal, be tied to the availability of passengers’ contact details. It is unclear what the information obligations are in cases where the passengers have not given their consent to transmission of data under Article 14(6) and whether information provided shortly before the scheduled departure time does not reach the passengers sooner if it is disseminated at the point of departure or gate instead of via the passengers’ contact details.
38. Engendering greater acceptance of the rules should be a major aspect, in order to prevent disputes and enhance the parties’ willingness to come to out-of-court settlements. Acceptance could be increased by aligning the upper limit for the compensation payable for delayed flights with the fare paid, irrespective of who is at fault. Passengers would still be free to assert additional claims for contractual damages for inadequate performance or non-performance by the carrier.
39. The Bundesrat thinks the specific rules on the enforcement of air passenger rights and out-of-court settlements provided for in Article 1(14) and (15) relating to Article 16 and 16a respectively are sensible and practical. However, the new Article 16 of the Regulation should specify whether and how the ‘enforcement body’ will operate alongside the civil courts and what kind of administrative measures or penalties it may impose.
40. The proposed Regulation does not indicate what transitional or retroactive rules will apply. According to Article 3, flights taking place shortly before or after its entry into force will involve different legal consequences. As a result of the lower

compensation compared to the current legal situation, interpretation and application problems can be expected.

41. The new definition of ‘air carrier’ in Article 1(1)(a) requires clarification with regard to ‘related air carriers’.
42. It makes sense to specify when a flight begins or ends. However, the definitions provided for in Article 1(1)(e)(u), (v) and (w) are likely to conflict with the European Court of Justice’s decision of 9 July 2009 (case C-204/8, paragraph 40). A reference in the recitals to the extent to which the courts can or must refer back to the decision would be helpful.
43. In some cases air carriers replace booked flights by rail journeys. The new wording of Article 3(4) of Regulation (EC) No 261/2004 (Article 1(2)(b) of the Commission proposal) leaves the question open as to whether parts of a flight carried out by a railway undertaking may result in additional compensation under the Railway Regulation and whether and in what way such compensation rights are to be deducted in accordance with Article 12 of the Regulation.

Detailed comments on the amendments to Regulation (EC) No 2027/97:

44. As regards the amendment of Article 6e(1) of Regulation (EC) No 2027/97, the need for a legal entitlement to the transport of musical instruments as hand luggage is not made clear (point 3.3.3 of the explanatory memorandum and Recital 29 do not provide any clarification here) and, in the light of the principle of equal treatment, the rule raises additional questions. Where, for example, a passenger is not allowed to take a musical instrument, a similar article or an animal, and thus boarding as such is denied, the question of the applicability of Article 4(3) of Regulation (EC) No 261/2004 could arise.

Direct delivery of the opinion to the Commission

45. The Bundesrat is forwarding this opinion directly to the Commission.