



## EUROPEAN COMMISSION

Brussels, 18.9.2013  
C(2013) 5727 final

*Dear President,*

*The Commission would like to thank the Camera Deputaților 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 takes note that the Camera Deputaților welcomes its Proposal because it strengthens air passengers' rights while taking into account the financial implications for the air transport sector, enhances the enforcement of passenger rights and clarifies key principles that currently are subject to varying interpretations. The Commission will strive to preserve these main elements of its proposal in the course of the legislative process.*

*The Commission would like to comment on the considerations of the Camera Deputaților on four particular issues.*

### *1. Article 5(1)(c)(iii) of Regulation 261/2004*

*The Camera Deputaților points to a discrepancy between the provisions of Article 5(1)(c)(ii) and the supposedly proposed amendment in Article 5(1)(c)(iii) which concern the right to compensation in case of a flight cancellation. The Commission believes that there is a misunderstanding on this point as the Commission has not proposed any change to Article 5(1)(c)(iii). Indeed, although the Commission has proposed to confirm the right to compensation in cases of long delays (new article 6(2)), it has not proposed any changes to the rights to compensation in case of flight cancellation.*

### *2. Contingency plans*

*The Camera Deputaților considers that air carriers should designate a natural or legal person to represent the air carrier in its relations with the passengers, the airport managing body and the authorities in the event of a flight cancellation or a long delay and to ensure compliance with Regulation 261/2004. When preparing its proposal, the Commission studied this possibility but finally chose not to propose it because it presents some drawbacks:*

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- it is a rather costly measure; given the financial significance of the decisions they would be making, the representative staff would need to be better qualified. The relative cost of such staff would be higher at airports served at low frequencies by the air carriers and could therefore have a more significant impact on regional carriers and low-cost carriers;

- as it is an obligation of means, it is not guaranteed that compliance with this measure would indeed automatically imply better compliance with the obligations of care and assistance (especially in mass disruptions where airline staff may be overwhelmed), thereby raising some doubts as to the cost efficiency of such a measure. The present Regulation already imposes obligations of care and assistance for which air carriers need to dedicate staff, but it gives them more flexibility to organise this in the most efficient way.

This being said, the contingency plans should be designed to address situations where many passengers are stranded at the same time and should plan how and by whom these passengers would be helped. This also implies some precisions as to the deployment of airline and airport staff.

### 3. Compensation for long delays

The Camera Deputaţilor considers that the explicit introduction of a right to compensation in cases of long delays would increase the financial pressure on air carriers. Under the current Regulation, as interpreted by the Court of Justice in the cases *Sturgeon* (C-402/07) and *Nelson* (C-581/10), passengers of a flight delayed by more than three hours should have similar rights to compensation than passengers of cancelled flights. However, if the delay giving rise to the right to compensation is too short, apart from adding financial pressure on the airlines, it may create an economic incentive to cancel flights in certain circumstances instead of operating them with a delay. Therefore, the Commission proposes to increase this threshold to five hours (and more for long-haul extra-EU flights) as data indicate that most delays can be contained within these deadlines.

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### 4. The definition of "extraordinary circumstances"

The Commission notes the support of the Camera Deputaţilor for the introduction of a clear definition of "extraordinary circumstances", based on relevant EU case law, and the introduction of a non-exhaustive list of circumstances in order to increase legal certainty.

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

Yours faithfully,

Maroš Šefčovič  
Vice-President