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Copenhagen, 27 March 2026

VN/34680/2022 – Comments on Oikeuslaitostyöryhmän projektiryhmän Siviiliprosessin sujuvoittaminen muistio -lentoviivästysasioiden käsittelyä koskevat ehdotukset

On behalf of Lentoapu, which is the Finnish brand name of the Danish debt-collection company Flyhjælp ApS, subsidiary of the German debt-collection company Flightright GmbH, I was honored to receive the request for comments (Lausuntopyyntö) in the above-mentioned file.

I hope that Project Team 10 will forgive that I give our comments in English. I am happy to provide a translation to Finnish if required.

Introductory remarks

Lentoapu and its sister brands help air passengers enforce their rights to compensation and refund under EU Regulation (EC) No 261/2004 across the Nordic countries: Flyhjælp in Denmark, Flyghjälp in Sweden, Flyhjelp in Norway, and Lentoapu in Finland. Through our parent company, Flightright, we also assist passengers across continental Europe and the UK under the brands Flightright, Flugrecht, and Refundmore.

At the time of writing, we have approximately 5,500 court cases open in Danish courts, around 4,500 in Swedish courts, around 1,000 in Norwegian courts, and around 1,300 in Finnish courts. This breadth of experience across multiple Nordic jurisdictions, complemented by extensive litigation experience elsewhere in Europe through our parent company, informs the observations set out in this submission.

We welcome the working group's initiative and share its commitment to developing the Finnish judicial system without compromising the rule of law. We regard ourselves as a long term and constructive partner of the Finnish courts and have great respect for the justices and court staff. In particular, we have had a productive and open dialogue with Justice Henri Hyvärinen at Itä-Uusimaa käräjäoikeus. This dialogue culminated, at my initiative, in a joint meeting in May 2025 with representatives of both passengers and airlines. At that meeting, we discussed practical ways to improve case handling within the confines of the existing civil

procedure rules and the courts' available resources. We hope that this submission is read in the same constructive spirit.

Before turning to the specific proposals, we wish to be direct about a foundational point. Court cases concerning compensation and or refund under Regulation 261/2004 differ from most civil cases in that, while they are initiated by the passenger as plaintiff, the burden of proof lies with the airline as defendant. The dispute is therefore rarely about the factual circumstances of the flight, but rather about their legal assessment. The airline is in possession of the relevant evidence and can and should present that evidence as early as possible to both the court and the plaintiff.

Against that background, the volume of Regulation 261/2004 cases before Finnish courts is driven primarily by airline behavior, not by litigation appetite on the part of passengers or their representatives. We do not bring cases to court by preference, but when airlines refuse to pay legitimate and well-founded claims without legal compulsion, and when they decline to comply with decisions of non-court bodies such as the Finnish Consumer Disputes Board (KRIL).

As the working group itself notes in its memorandum, airlines do not necessarily comply with KRIL decisions. We also share the perception that certain airlines request oral hearings that are not substantively necessary, but which serve primarily to make proceedings more cumbersome and expensive. If airlines consistently paid meritorious claims voluntarily, the caseload at Itä-Uusimaa käräjäoikeus would be a fraction of what it is today. Any reform that streamlines procedures without also addressing airlines' incentives to comply pre litigation, risks addressing only the symptom, not the underlying cause.

With that framing in mind, we now address each of the four proposals set out in Project Team 10's memorandum dated 4 February 2026, followed by one additional topic which we believe deserves the working group's attention.

Re. 1 Erityisten vakiomuotoisten sähköisten lomakkeiden ja sähköisen asiointi-palvelun käyttöön ottaminen Tanskan mallin mukaisesti

The memorandum proposes introducing standardized mandatory electronic forms modeled on the Danish system. We support the overall objective of digitizing case handling and reducing administrative burden for courts and parties alike. However, based on our direct and extensive experience with the Danish system, we urge the working group to draw a careful distinction between two separate issues, and to avoid repeating mistakes that have proven counterproductive in practice.

The first issue concerns the filing channel. High volumes of emails with large or numerous attachments create inefficiencies for both courts and parties. This is a technical problem, and the appropriate solution is a secure digital filing portal for uploading and accessing documents. For professional users, this should always be complemented by API integration,

which reduces manual handling, duplication of data entry, and administrative friction for courts and parties alike.

The second issue concerns the content of submissions. In our experience, the alleged lack of standardization in pleadings is overstated. The Finnish Code of Judicial Procedure already specifies what a summons and a statement of defense must contain. Where parties comply with those requirements, there is no substantive content problem. If anything, content-related difficulties primarily arise when airlines submit inadequate statements of defense despite bearing the burden of proof, an issue that mandatory plaintiff-side forms do not address.

Our experience with the Danish mandatory forms should therefore be treated as a cautionary example rather than a template. In Denmark, civil cases are brought to court via the portal www.minretssag.dk. While the summons is generated through the portal based on structured inputs, parties must also upload a separate supplemental summons document containing all information required under the Danish Administration of Justice Act. In practice, this supplemental document is required in all cases. As a result, both the summons and the statement of defense consist of two documents plus evidence and appendices.

The introduction of standardized electronic forms for flight compensation cases did not replace any of these existing documents. Instead, it added a third mandatory layer. In practice, both the summons and the statement of defense therefore consist of three documents plus evidence and appendices. This has increased complexity rather than reduced it. Moreover, the standardized form for the statement of defense is very short and does not reflect that the airline bears the burden of proof. The statement of defense is the pleading that should inform the court and the plaintiff of the circumstances of the delay or cancellation, including the evidence relied upon and any reasonable measures taken. The Danish form does not provide for this to be done adequately.

These shortcomings could have been identified and resolved had the Danish judicial authorities conducted a hearing or request for comments on the forms prior to their introduction. No such consultation took place. Because the forms are mandatory, procedural and technical flaws have since been replicated across thousands of cases, increasing administrative work and frustration among experienced practitioners rather than reducing it.

We also note that the Danish court portal has been live for approximately ten years. The most persistent criticism from the legal community is the absence of API connectivity. All submissions, downloads, and data entry must still be done manually, and law firms and other professional users cannot connect their case handling systems or court fee payment solutions to the portal. Any modern electronic filing solution should include published API specifications for its professional users.

Finally, we wish to raise a concern of principle. Mandatory forms with strict character limits that prevent a party from fully setting out its case or evidence risk incompatibility with the right to a fair trial under Article 6 of the European Convention on Human Rights and, domestically, with the constitutional guarantee of the right to be heard under Section 21 of the Finnish Constitution. A procedural mechanism that structurally limits a party’s ability to present its case is not simplification, but a restriction on access to justice.

For these reasons, we recommend that any Finnish electronic service function primarily as a filing channel for submitting pleadings prepared in accordance with existing procedural rules, without imposing additional mandatory data fields or character limits beyond what the law already requires. This could take the form of a portal and, for professional users, API access. Optional guidance templates designed for unrepresented passengers could be a valuable complement. Any further standardization should take the form of principles or guidelines developed in consultation with the parties, rather than mandatory fill-in forms introduced without prior testing or hearing.

Re. 2 Menettelysäännösten keventäminen

Written proceedings as the default
We strongly support expanding the use of written proceedings in Regulation 261/2004 cases. Our experience across Denmark, Sweden, Norway, Germany, France, Spain, United Kingdom, and Finland consistently shows that these cases are almost exclusively document based. If a flight disruption was caused by a mechanical fault, there is a mechanics' report. If the cause was an air traffic control restriction, there is an ATC report. If the cause was weather, there is a weather report. Where facts are disputed, they are established through documents rather than oral testimony. There is no added evidentiary value in having a mechanic, meteorologist, air traffic controller, or airline employee orally confirm the content of written technical reports.

The core disputes in these cases are typically whether an extraordinary circumstance existed and whether reasonable measures were taken. In our experience, these questions can almost always be resolved based on written evidence. Oral testimony is rarely necessary, and there is generally no evidentiary value in oral testimony concerning third-party technical evidence such as mechanics' reports, ATC reports, or weather reports.

Under the current Finnish framework in OK 5:27a written proceedings require the consent of all parties. In practice, this gives airlines an effective veto over written proceedings, which can be exercised for tactical rather than evidentiary reasons. The memorandum itself notes that oral hearings are being requested even when they are not necessary for the clarification of the case. This has placed a significant burden on the courts and is a key contributor to the backlog.

One reference point worth considering is the German approach under §495a of the Zivilprozessordnung (ZPO), under which written proceedings are the default in appropriate cases, while an oral hearing remains available upon request. This approach inverts the current logic in a targeted and proportionate way. Oral hearings are not eliminated, but a party seeking one must explain why it is genuinely necessary. Courts assess such requests against the threshold established by the European Court of Human Rights, namely that an oral hearing may be dispensed with where there are no issues of credibility or disputed facts requiring one, where the legal issues are limited, or where the matter is primarily technical in nature. Regulation 261/2004 cases meet this threshold in the vast majority of instances.

Our preferred outcome would be written proceedings at the court's discretion where the ECHR and Section 21 threshold is met. A ZPO §495a-style default would in practice achieve

much of the same effect, since the strategic value of requesting unnecessary oral hearings lies precisely in the fact that it currently carries no cost. Removing the automatic right to oral proceedings significantly reduces that incentive.

Digital oral hearings (where genuinely needed)
Where an oral hearing is genuinely required, it should be conducted by video or telephone as standard practice, as is already the case in Denmark (telephone) and Sweden (video). This reduces cost and logistical burden for all parties without affecting procedural rights.

In both jurisdictions, courts recognize that the actual need for oral hearings in Regulation 261/2004 cases is limited. Parties may request an oral hearing but are typically asked to explain why it is necessary. Preparatory hearings are rare and are usually held remotely on the court's initiative when the judge considers clarification useful. These practices save time and resources for the courts while preserving the parties' right to be heard.

Deadlines
Standard non-extendable deadlines help keep cases moving, but only if they are realistic. Deadlines that are set too short do not accelerate proceedings. Instead, they generate frequent extension requests, which courts must manage and decide, consuming more judicial resources than a slightly longer deadline would have required. Conversely, realistic deadlines reduce the need for extensions and allow cases to progress more smoothly with less court involvement overall.

In setting deadlines, it must be recognized that the airline bears the burden of proof. It is therefore the airline that must produce evidence explaining the disruption, and doing so often requires coordination across multiple internal departments and external parties, sometimes in different time zones. Deadlines should also account for the fact that cases arrive in seasonal waves, with summer disruptions producing higher filing volumes in subsequent months.

As a general rule, a case should contain a statement of defense from the airline that includes all relevant evidence. Only in exceptional cases should there be a genuine need for a supplemental statement of defense. Airlines are in possession of the evidence in these cases and should be expected to present it as early as possible.

Summaries
The Finnish model where courts prepare written summaries in each case, sometimes more than once, does not exist in any comparable form in Denmark, Sweden, or Norway. In Regulation 261/2004 cases, the parties are typically professional and experienced, and the facts are rarely the core of the dispute. The cases almost always turn on the legal characterization of established circumstances as extraordinary or not. In that context, allocating court resources to preparing summaries adds limited value relative to the resources required and should be discontinued as a default practice in these cases.

A more efficient solution is for the airline to present all relevant evidence early in its statement of defense, after which the plaintiff can comment directly on that material. This allows the court's resources to be focused where they add most value, typically when a judge is required to decide the case.

Written testimony
We support expanding the use of written testimony under OK 17:24 as the default form of witness evidence in Regulation 261/2004 cases, subject to appropriate adversarial safeguards. In these cases, oral examinations should be exceptional rather than routine.

The adversarial element can be preserved by requiring the parties to agree in advance on the questions to be put to a witness, after which the witness provides written answers under threat of perjury. This ensures that both parties have an equal opportunity to test the evidence while avoiding the time and resource costs associated with oral hearings. Oral testimony should be reserved for the limited situations where written testimony proves insufficient to clarify a genuinely disputed fact.

Preclusion
The existing preclusion mechanism under OK 5:22 is an appropriate tool and should be actively used to incentivize early and complete disclosure of evidence by airlines. As the party bearing the burden of proof, the airline should be expected to present all relevant evidence in its initial statement of defense. Late submissions should face genuine preclusive consequences, not merely formal warnings.

Re. 3 Oikeudenkäyntikulujen määristä säätäminen

This topic is correctly identified by the working group as an area with room for improvement, and we welcome the focus on legal costs. In no civil case is time spent litigating and deciding legal costs a value-adding use of resources. At the same time, we wish to be clear about the objective of any cost regulation: costs must remain meaningful, proportionate, and reflective of the work required. Simply making litigation cheaper across the board risks creating a system that is structurally biased in favor of non-compliance.

EU Regulation 261/2004 provides compensation and reimbursement rights for air passengers in cases of denied boarding, flight cancellations, or long delays. As awareness of these rights has increased, Finnish courts are seeing a rising number of such claims. These cases are typically small-value disputes brought by passengers against airlines. While procedurally straightforward in many instances, they nevertheless require careful legal handling, consistent documentation, and engagement with court processes.

Under the current Finnish framework, each party must submit cost calculations at multiple stages of each case, and courts must rule on legal costs on a case-by-case basis. This is administratively burdensome for both courts and parties, and the resources spent litigating costs often do not correspond to the value of the underlying disputes. We support predictable cost outcomes, as they reduce satellite litigation on costs and free up judicial resources. However, predictability must be paired with adequacy: any cost framework must reflect the reasonable work required to properly prepare and conduct a case.

The working group's memorandum correctly identifies a central risk: if cost exposure is too low, airlines may be incentivized to contest claims on a large scale. We agree entirely and consider this the single most important design constraint on any cost reform. A framework that makes litigation cheap for airlines removes the most effective incentive for pre-litigation

compliance. Experience from comparable jurisdictions shows that where court proceedings are slow and inexpensive, airlines have little incentive to settle before judgment, leading to inflated caseloads and delayed compensation for passengers.

Against this background, in the summer of 2025 I approached the major airline representatives in Finland with a proposal for a consensus-based approach to guidelines for legal costs in Regulation 261/2004 cases. The purpose was to spare courts and parties the recurring burden of litigating legal costs in every individual case.

Excerpt from my suggestion to guidelines:

"This guide proposes a practical alternative: a consensus-based approach that establishes reasonable and predictable legal costs based on objective case characteristics. The objective is to:

- *Promote consistency across cost rulings*
- *Eliminate the need for cost calculations in each case*
- *Save time for the parties and the courts*
- *Encourage proportionality and discourage unnecessary procedural steps (e.g., oral hearings unless essential)*

This guide reflects both accumulated experience in similar cases in other Nordic jurisdictions, and the need for procedural efficiency within the Finnish legal system.

These guidelines reflect the unique characteristics of cases under EU Regulation 261/2004, as the case is initiated by the passenger (plaintiff), but the main burden of proof lies with the airline (defendant). Accordingly, both the work related to the plaintiff's subpoena and the work related to the defendant's statement of defense can be seen as the foundational starting submissions of the case.

This guide is grounded in Chapter 21 of the Finnish Code of Judicial Procedure (Oikeudenkäymiskaari (4/1734)), especially section 1, and sections 8–8b.

Key aspects include:

- *The losing party pays legal costs to the winning party. To promote predictability and fairness, the level is the same for both plaintiff and defendant.*
- *Legal costs levels reflect necessary and reasonable costs in these cases.*
- *Legal costs levels reflect a principle of proportionality.*

Accordingly, this guide seeks to help parties' representatives and judges adhere to Chapter 21 more effectively by offering clear benchmarks for standard cost levels. The benchmarks reflect common patterns and procedural burdens while reducing the administrative need for repeated judicial cost assessments based on constant cost calculations."

Not a single airline representative was willing to engage with this proposal. We mention this not to assign blame, but because it is directly relevant to the working group's assessment of incentives. Airlines' reluctance to agree to any voluntary framework that preserves

meaningful cost consequences underscores that the deterrent effect of cost awards is precisely what a well-designed mandatory system must maintain.

It is no secret that airlines have significantly greater resources than courts and passengers to absorb litigation costs. All passenger representatives, including Lentoapu, would prefer to resolve claims out of court. A reasonable and proportionate cost level for in-court work should therefore function as an incentive for airlines to also prefer settlement. In Norway, where court proceedings are relatively fast and reasonably “expensive,” settlement rates are correspondingly higher. In short, slow and cheap court proceedings give airlines little incentive to settle.

Cost levels should therefore reflect not only the procedural steps taken, but also the choices made by the parties. Cost awards should escalate where an oral hearing is requested and held, as oral proceedings are more resource-intensive for courts and parties alike. Such a structure ensures that courts are not subsidizing unnecessary procedural choices, while giving parties a genuine financial incentive to assess whether oral hearing is truly necessary. A party confident in its case on the merits has nothing to fear from such a framework; a party using oral hearings primarily as a delay or cost-inflation tactic faces proportionate consequences if it loses.

If the working group’s concern is to protect unrepresented passengers from disproportionate cost exposure, the appropriate response is targeted protection for individual natural persons acting without legal representation, rather than across-the-board cost caps that equally reduce cost risk for airlines. A differentiated approach that recognizes the asymmetry between private individuals and airline defendants is both more equitable and more consistent with the consumer protection purpose of Regulation 261/2004.

Re. 4 Oikeuspaikkasääntelyn ja asioiden siirtämistä tuomioistuimesta toiseen koskevan sääntelyn uudistaminen / muuttaminen

As a consequence of the jurisdiction rules applicable to Regulation 261/2004 claims, the vast bulk of such cases naturally ends up before the courts whose jurisdiction covers the largest airports. This concentration is a direct result of the ECJ’s ruling in *Rehder v. Air Baltic* (C-204/08), under which claims may be brought before the court in the place of departure or arrival. In Finland, this means that the majority of cases fall within the jurisdiction of Itä-Uusimaa käräjäoikeus, as Helsinki-Vantaa is the country’s largest passenger airport.

In Denmark, the relevant court is the Copenhagen District Court (Københavns Byret), whose jurisdiction covers Copenhagen Airport. Københavns Byret has addressed the high volume of Regulation 261/2004 cases not by dispersing them to less busy courts, but by concentrating them in a dedicated 261 department. This approach has delivered clear benefits of specialization, including accumulated experience and expertise, smoother case handling, opportunities for procedural optimization, more consistent outcomes, and fewer appeals.

By now, Itä-Uusimaa käräjäoikeus has already developed much of this experience and expertise through the diligent work of Justice Hyvärinen and his colleagues. That investment should be deepened rather than diluted. Further gains could be achieved through structured knowledge sharing with courts that manage similar caseloads, in particular Københavns Byret in Denmark and Attunda Tingsrätt in Sweden. We would also be happy to contribute to such exchanges by sharing relevant experience and legal precedent from Denmark and Sweden, where helpful.

We do not support transferring or dispersing Regulation 261/2004 cases to other courts solely for the purpose of leveling caseloads. Such an approach would not reduce the total number of cases but would move them to courts with less experience in handling them, undermining efficiency at precisely the point where specialization offers the greatest benefits. Moreover, transferring cases away from the court closest to the relevant airport increases logistical burden and creates unnecessary access barriers for passengers. It is therefore both natural and appropriate that these cases are heard in the jurisdiction connected to the relevant airport.

An additional observation

We note that the working group's memorandum does not address the role of appellate jurisprudence in managing caseload, and we would like to raise this as an additional observation that we consider important.

A significant share of the litigation burden in Regulation 261/2004 cases does not stem from factual complexity, but from recurring legal questions that have not yet received clear appellate resolution. Airlines routinely argue that each case is factually distinct in order to avoid the precedential effect of prior decisions. In our experience across jurisdictions, the most effective and durable reduction in caseload is achieved not through incremental streamlining of individual cases, but through clear and timely appellate rulings on these recurring legal questions, such as what constitutes extraordinary circumstances in common scenarios, what qualifies as reasonable measures, and how the burden of proof operates in specific evidentiary situations. Once appellate guidance is provided, meritorious cases are resolved more efficiently at first instance, and unmeritorious defenses are often abandoned before proceedings are initiated.

We therefore support mechanisms that facilitate swift appellate review of genuinely contested legal questions and ensure consistent downstream application of resulting rulings to pending and future cases. We also support preliminary references to the Court of Justice of the European Union in appropriate cases, as ECJ rulings provide binding EU-wide clarity that benefits all Member States simultaneously.

We do, however, wish to flag an important cautionary point. Broad stays of first-instance cases pending a single appellate ruling create serious systemic risks. Courts accumulate frozen backlogs, and airlines carry unresolved liability at scale without a clear resolution horizon. No participant in the system benefits from a stalled first instance. The value of appellate clarification lies primarily in its prospective effect on future cases, not in the retrospective resolution of large numbers of stayed cases through a single decision. We

therefore caution against stay mechanisms that effectively shift the backlog problem from the courts to the parties.

With a portfolio spanning multiple jurisdictions and thousands of cases, Lentoapu is well placed to identify the recurring legal questions that would most benefit from expedited appellate consideration. We stand ready to cooperate with the working group and the courts in this regard, should such input be considered useful.

Final remarks and conclusions

We would like to once again thank the working group and Project Team 10 for requesting our comments. The four issues identified in the memorandum are real, substantive, and well chosen, and they deserve the legislative attention proposed. We hope that our observations, grounded in direct operational experience across multiple Nordic jurisdictions and elsewhere in Europe, are useful to the working group's further deliberations.

In summary, our positions are as follows:

- We support the development of a modern digital filing solution, consisting of a court portal complemented by API access for professional users. We caution strongly against mandatory, character-limited electronic forms that risk incompatibility with Article 6 of the European Convention on Human Rights and Section 21 of the Finnish Constitution, and we advise against adopting the Danish mandatory forms model without prior consultation with the parties who will use the system in practice.

- We support written proceedings as the default in Regulation 261/2004 cases, with oral hearings available only upon an active and justified request. Where oral hearings are genuinely required, they should be conducted by video or telephone as standard practice. Court-prepared summaries should be discontinued as a default, preclusion under OK 5:22 should be applied actively to incentivize early and complete disclosure of evidence, and written testimony should be the default form of witness evidence, with oral examination reserved for exceptional cases.

- We support predictable legal costs, but emphasize that cost levels must remain meaningful, proportionate, and reflective of the work required, in order to deter pre-litigation non-compliance by airlines. Cost escalation for oral proceedings, differentiated protection for unrepresented natural persons, and targeted access-to-justice mechanisms are preferable to across-the-board cost caps that dilute incentives for airline defendants.

- We oppose dispersal of Regulation 261/2004 cases to other courts for the sole purpose of leveling caseloads. Instead, we support further development of specialized expertise at Itä-Uusimaa käräjäoikeus, supported by structured Nordic knowledge sharing with courts such as Københavns Byret and Attunda Tingsrätt.

- Finally, we encourage the working group to consider the role of swift appellate clarification of recurring legal questions as a structural tool for reducing caseload

over time, while cautioning against mass stay mechanisms that risk paralyzing first-instance proceedings.

I am of course available should Project Team 10 have further questions or wish to discuss any of these points further, whether by written exchange, video call, or in person.

Kind regards

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