



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.12.1996  
COM(96) 663 final

95/0359 (SYN)

Amended proposal for a

COUNCIL REGULATION (EC)

**ON AIR CARRIER LIABILITY IN CASE OF ACCIDENTS**

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)



## **Explanatory memorandum**

During the plenary session on 17 September 1996 the European parliament approved the proposal for a Council Regulation presented by the Commission on air carrier liability in case of accidents<sup>1</sup>. It also adopted a certain number of amendments to the text put forward.

The Commission accepted the amendments 1 and 2 introducing new recitals since they express in a cautious wording the need for the revision of the Warsaw Convention at multilateral level and the role, nevertheless, that a Community action could play in such negotiations, serving as a spur for a global solution.

It also accepted the amendment concerning recital 9 since it increases the level of strict liability from ECU 100,000 to ECU 120,000.

It accepted the amendment related to recital 13 since it reaffirms with stronger wording than the original Commission's proposal, the necessity to revise the cargo and luggage liability systems.

It accepted the amendments related to recital 14 and article 8 since it introduces a more precise wording, replacing "values" by "financial amounts".

The Commission accepted the amendment related to recital 10 since it clarifies the need for advance payments.

Likewise it adopts the amendment related to article 7 since it clarifies the nature of the action to be brought before a court, it also defines the domicile at the moment the accident occurred.

The Commission also partially accepted the amendments concerning:

- Recital 12 and article 6 in so far as a commitment to apply the Regulation will be introduced in negotiations with third countries.
- Article 2.1) c) and d) as far as the removal of the lump sum and the new definition of persons entitled to compensation are concerned.

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<sup>1</sup> COM(95) 724 final of 20.12.1995

- Article 4 since it introduces more flexibility for the advance payment.
- Article 5.2) since it reinforces the right of information of air transport users.

The Commission can accept in principle, subject to some redrafting the following amendments concerning:

- Recital 8 and article 3.1) in so far as they make clear that only the monetary liability limits are concerned by this Regulation.
- Article 1 which clarifies the scope of the Regulation.
- Article 3.2) since it increases the level of strict liability from 100,000 Ecu to 120,000.
- A new art.7A which considers the possibility of recourse for carriers
- A new article 9A since it requests an evaluation report by 1999.

**AMENDED PROPOSAL FOR A  
COUNCIL REGULATION  
ON AIR CARRIER LIABILITY IN CASE OF ACCIDENTS**

Whereas a full review and revision of the Warsaw Convention is long overdue and would represent, in the long term, a more uniform and applicable response, on an international level, to the issue of airline liability in case of accidents; whereas efforts to increase the limits of liability imposed by the Warsaw Convention should continue through negotiation at multilateral level;

Whereas Community action is nevertheless still desirable, to improve the level of compensation available to passengers and could serve as a guideline for improved passenger protection on a global scale;

Whereas the rules on liability in case of accidents are governed by the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12 October 1929, hereafter called the Convention, or that Convention as amended at The Hague on 28 September 1955, whichever may be applicable; whereas the Warsaw Convention is applied worldwide for the benefit of both passengers and air carriers, and must be preserved;      Unchanged

Whereas the rules on the nature and limitation of liability in the event of death, wounding or any other bodily injury suffered by a passenger form part of the terms and conditions of carriage in the air transport contract between carrier and passenger; whereas Council Regulations (EEC) N° 2407/92<sup>2</sup>, 2408/92<sup>3</sup>, as amended by the Act of Accession of Austria, Finland and Sweden, and 2409/92<sup>4</sup> have created an internal aviation market wherein it is appropriate that the rules on the nature and limitation of liability should be harmonized;

Unchanged

Whereas the limit set on liability by the Warsaw Convention is too low by today's economic and social standards; whereas in consequence Member States have variously increased the liability limit, thereby leading to different terms and conditions of carriage in the Community;

Unchanged

Whereas in addition the Warsaw Convention only applies to international transport; whereas in the internal aviation market the distinction between national and international transport has been eliminated; whereas it is therefore appropriate to have the same level and nature of liability in both national and international transport;

Unchanged

Whereas the present low limit of liability often leads to lengthy legal actions which damage the image of air transport;

Unchanged

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<sup>2</sup> OJ N° L 240, 28.8.1992, p1

<sup>3</sup> OJ N° L 240, 28.8.1992, p 8

<sup>4</sup> OJ N° L 240, 28.8.1992, p 25

Whereas Community action in the field of air transport should also aim at a high level of protection for the interests of the users; Unchanged

Whereas in order to provide harmonized conditions of carriage in respect of liability of air carrier and, further, in order to ensure a high level of effective protection of air users, action, regard being had to the principle of subsidiarity, can best be addressed at Community level; Unchanged

Whereas it is appropriate to remove all limits of liability in the event of death, wounding or any other bodily injury suffered by a passenger; Whereas it is appropriate to remove all monetary limits of liability in the sense of article 22(1) of the Warsaw Convention or any other legal or contractual limits in the event of death, wounding or any other bodily injury suffered by a passenger;

Whereas in order to avoid situations where victims of unpreventable accidents remain uncovered, carriers should not, with respect to any claim arising out of the death, wounding or other bodily injury of a passenger under article 17 of the Warsaw Convention, avail themselves of any defense under article (20)§1 thereof up to the sum of ECU 100,000; Whereas in order to avoid situations where victims of unpreventable accidents remain uncovered, carriers should not, with respect to any claim arising out of the death, wounding or other bodily injury of a passenger under article 17 of the Warsaw Convention, avail themselves of any defense under article (20)§1 thereof up to the sum of ECU 120,000; whereas under article 21 of the Warsaw Convention, a court can wholly or partly exonerate a carrier from his liability if the carrier proves the contributory negligence of the victim.

Whereas passengers or next-of-kin should receive a lump sum as soon as possible in order to face immediate needs; Whereas prompt advance payments can considerably assist the injured passengers or next-of-kin in meeting the immediate costs following an air accident;

Whereas persons entitled to compensation should have the benefit of legal clarity in the event of an accident, whereas they should be fully informed beforehand of the applicable rules; whereas it is necessary to avoid lengthy litigation or claims process; whereas it is appropriate in addition to give the person entitled to compensation the option of taking action in the courts of the Member State in which the passenger has his domicile or permanent residence;

Whereas it is desirable in order to avoid distortion of competition that third-country carriers adequately inform passengers of their conditions of carriage;

Whereas the improvement of the situation for luggage and cargo is currently taken care of at International Civil Aviation Organization (ICAO) level and does not require the same urgent treatment as the passengers' situation;

Whereas it is appropriate and necessary that the values expressed in this Regulation be increased in accordance with economic developments; whereas it is appropriate to empower the Commission, after consultation of an advisory committee, to decide upon such increases,

Whereas persons entitled to compensation should have the benefit of legal clarity in the event of an accident, whereas they should be fully informed beforehand of the applicable rules; whereas it is necessary to avoid lengthy litigation or claims process; whereas it is appropriate in addition to give the person entitled to compensation the option of taking action in the courts of the Member State in which the passenger had his domicile at the time of the accident;

Unchanged

Whereas it is desirable in order to ensure as a broad protection as possible for the passengers, that the Community shall seek to incorporate in civil aviation agreements with third countries provisions similar to those outlined in this Regulation;

Whereas, for consistency and coherence, Community action aiming at the improvement and harmonisation of the liability of carriers for lost or damaged luggage and cargo will also need to be addressed;

Whereas it is appropriate and necessary that the financial amounts expressed in this Regulation be increased in accordance with economic developments; whereas it is appropriate to empower the Commission, after consultation of an advisory committee, to decide upon such increases,

## Article 1

This Regulation defines the obligations of Community air carriers to cover liability in the event of accidents to passengers.

This Regulation defines the obligations of Community air carriers to cover liability for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

## Article 2

1. For the purpose of this Regulation:

a) "air carrier" means an air transport undertaking with a valid operating license;

b) "Community air carrier" means an air transport undertaking in the sense of Council Regulation (EEC) N°2407/92;

c) "persons entitled to compensation" means the victims and/or persons who, in the light of the applicable law, are entitled to represent the victims in accordance with a legal provision, a court decision or in accordance with a special contract;

d) "lump sum" means an advance payment to the person entitled to compensation to enable him to meet his most urgent needs, without prejudice to the speediest settlement of full compensation;

e) "ECU" means the unit of account adopted in drawing up the general budget of the European Communities in accordance with articles 207 and 209 of the Treaty.

1. For the purpose of this Regulation:

Unchanged

Unchanged

c) "persons entitled to compensation" means a passenger and, in the event of the death of the passenger, any natural person entitled to claim in respect of that death in accordance with applicable law;

Delete

Unchanged

f) "Warsaw Convention" means the Convention for the Unification of certain Rules relating to International Carriage by Air, signed in Warsaw on 12 October 1929, together with all international instruments which build on and are associated with it;

f) "Warsaw Convention" means the Convention for the Unification of certain Rules relating to International Carriage by Air, signed in Warsaw on 12 October 1929; or the Warsaw Convention as amended at the Hague on 28 September 1955; and the Convention Supplementary to the Warsaw Convention done at Guadalajara on 18 September 1961 - whichever is applicable to the passenger's contract of carriage;

2. Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Warsaw Convention.

Unchanged

### Article 3

1. The liability of a Community air carrier for damages sustained in the event of the death, wounding or any other bodily injury suffered by a passenger shall not be subject to any statutory or contractual limits.

1. The amount of the pecuniary compensation that a Community air carrier has to sustain in the event of the death, wounding or any other bodily injury suffered by a passenger in case of accident shall not be subject to any legal, conventional or contractual limits.

2. For any damages up to the sum of ECU 100.000 the Community air carrier shall not exclude or limit his liability by proving that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

2. For any damages up to the sum of ECU 120.000 the Community air carrier shall not exclude or limit his liability by proving that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

3. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

#### Article 4

1. The carrier shall without delay, and in any event not later than ten days after the event during which the damage occurred, pay to or make available to the person entitled to compensation a lump sum of up to ECU 50,000 in proportion to the injury sustained and in any event a sum of ECU 50,000 in case of death.

2. The lump sum may be offset against any subsequent sum to be paid in respect of the liability of the Community air carrier, but is not returnable under any circumstances.

1. The carrier shall without delay, and in any event not later than ten days after the identity of the person entitled to compensation has been established make such advance payments as may be required to meet immediate economic needs.

2. The payments under paragraph 1 shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of the Community air carrier liability, but are not returnable under any circumstances.

#### Article 5

1. The requirements contained in articles 3 and 4 shall be included in the Community air carrier's conditions of carriage

2. Adequate information on the provisions contained in articles 3 and 4 shall on request be given to passengers at the Community carrier's agencies, travel agencies and check-in counters, and a summary of these requirements shall be made on the ticket document.

Unchanged

2. Adequate information on the provisions contained in articles 3 and 4 shall on request be given to passengers at the Community carrier's agencies, travel agencies and check-in counters, and a summary of these requirements, in plain and intelligible language, shall be printed on the ticket document.

3. Air carriers established outside the Community and not subject to the obligations referred to in articles 3 and 4 shall expressly and clearly inform the passengers thereof, at the time of purchase of the ticket at the carrier's agencies, travel agencies, or check-in counters located in the territory of a Member State. Air carriers shall on request provide the passengers with a form setting out their conditions. The fact that the limit is indicated on the ticket document does not constitute sufficient information.

~~3.~~ Air carriers established outside the Community, operating to, from and within the Community and not subject to the obligations referred to in articles 3 and 4 shall expressly and clearly inform the passengers thereof, at the time of purchase of the ticket at the carrier's agencies, travel agencies, or check-in counters located in the territory of a Member State. Air carriers shall on request provide the passengers with a form setting out their conditions. The fact that the limit is indicated on the ticket document does not constitute sufficient information.

#### Article 6

1. Once a year Member States' authorities shall notify the list of third country air carriers not subject to the rules of this Regulation to the Air Transport User Organisations concerned and to the Commission, which shall make them available to the other Member States.

1. Once a year Member States' authorities shall notify the list of third country air carriers not subject to the rules of this Regulation and operating to, from and within the Community, to the Air Transport User Organisations concerned and to the Commission, which shall make them available to the other Member States.

2. Whenever the Commission shall conduct negotiations in relevant fields of civil aviation with third countries on behalf of the Community, it shall seek to incorporate the provisions of this Regulation into the Agreements.

#### Article 7

A person entitled to compensation in the case of accidents involving Community air carriers may, in addition to the rights conferred by article 28 of the Warsaw Convention bring an action for liability before the courts of the Member State where the passenger has his domicile or permanent residence.

An action for damages in the case of accidents involving Community air carriers may, in addition to the rights conferred by article 28 of the Warsaw Convention, be brought before the courts of the Member State where the passenger at the time of the accident had his domicile.

## **Article 7A**

In the event of death, wounding or any bodily injury suffered by a passenger, nothing in this Regulation shall

- a) imply that a Community air carrier is the sole party liable to pay damages or
- b) restrict any rights of a Community air carrier to contribution or indemnity from any other party in accordance with applicable law.

## **Article 8**

The Commission may, after consulting the advisory Committee established according to article 9, decide to increase as appropriate the values referred to in articles 3 and 4 if economic developments indicate the necessity of such a decision. Such decision shall be published in the *Official Journal of the European Communities*.

The financial amounts referred to in articles 3 and 4 may be increased as appropriate, according to the procedure set in article 9 § 2 if economic developments indicate the necessity of such a decision. Such decision shall be published in the *Official Journal of the European Communities*.

## Article 9

1. The Commission shall be assisted by a Committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

2. Furthermore, the Committee may be consulted by the Commission on any other question concerning the application of the Regulation.

1. The Commission shall be assisted by a Committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

2. Unchanged

3. At the Commission request, the Committee may examine any other question concerning the application of the present Regulation.

## Article 9A

The Commission shall present an evaluation report on the operation of this Regulation to the Social and Economic Committee, to the European Parliament and to the Council by 31 December 1999.



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