



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the information of air transport passengers on the identity of the operating carrier
and on communication of safety information by Member States**

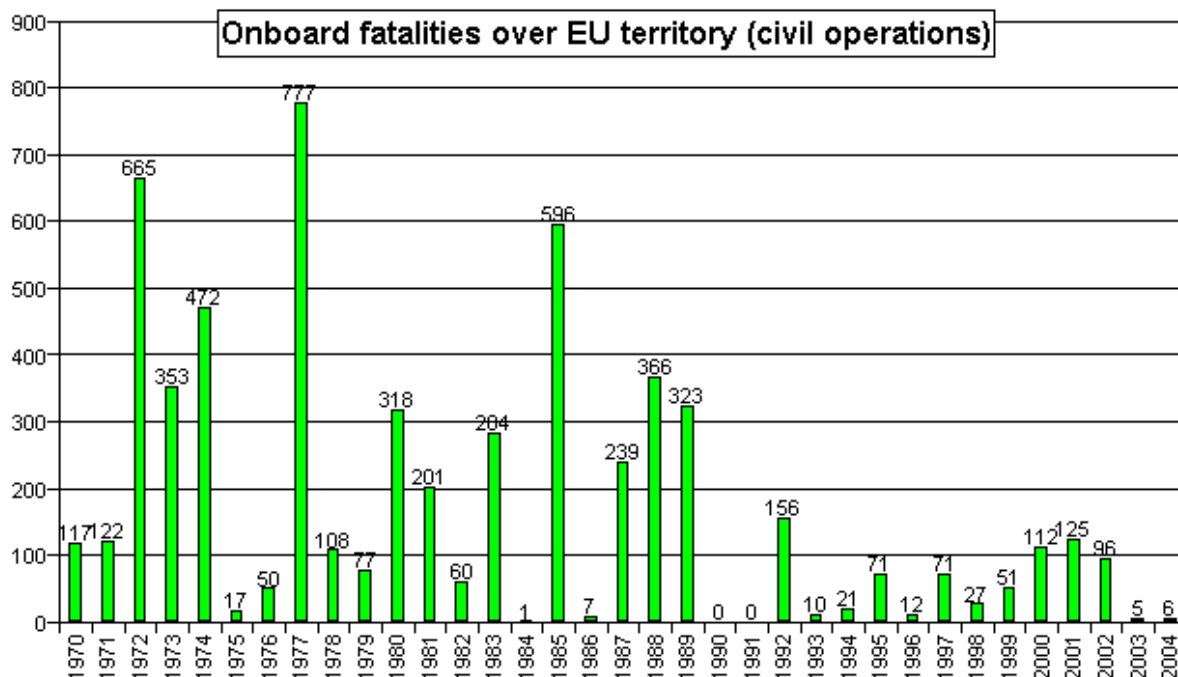
(Text with EEA relevance)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) The need for action to improve safety

Statistics show (see table below) that air transport accidents have become extremely rare in Europe. In 2003, 5 people died in air transport accidents which occurred in the EU territory. This compares for example with more than 63,47 **million** passengers who travelled during the same time through a single large airport (London-Heathrow)¹.



This high level of safety is due to permanent efforts not only to keep operations safe but to continuously improve the level of safety. Accordingly, the rate of fatalities due to air transport accidents is still improving, as the absolute number of people killed in air accidents continues to decrease while the number of passengers is growing.

Safety oversight is regulated worldwide in the framework of the 1944 Chicago Convention on International Civil Aviation and is based on standards developed by the International Civil Aviation Organisation created by that Convention. In essence, air carriers are supervised, concerning in particular their compliance with safety requirements, by their home country, i.e. the country which has delivered their operating licence and/or the country of register of the aircraft they operate. Overwhelmingly, this system has ensured over the last fifty years that safety levels are adequate. However, the stringent application of international standards and the enforcement of quality criteria are currently not guaranteed equally across the world.

¹ Source: airclaims statistics for 2003 and EUROSTAT statistics published in 2003, chapter 3.5.14 « traffic at selected major airports » ; these statistics are based on data correlated from information by Airports Council International, the International Civil Aviation Organisation, the Airports Magazine and local airport authorities.

Within the EU, safety procedures are based on Community legislation² rigorously enforced, ensuring the high levels of safety referred to above. In particular, the creation in 2002 of the European Aviation Safety Agency (EASA) has marked a cornerstone in the uniform application of safety requirements by providing a “one-stop-shop” for the certification of airworthiness to all aeronautical products including their design, manufacturing and maintenance organisations. As already provided for under Regulation (EC) No 1592/2002³, the planned extension of EASA’s competence will ensure that the full range of air operations will soon fall under the responsibilities of the Agency. As a consequence, a strict control of the safety of design, manufacture, maintenance, and operation of aeronautical products and components as well as of the organisations and persons involved in these activities established in the Community, designed to protect the travelling public, air transport workers and the citizens living around airports, is in place.

Outside the EU, safety levels depend on the effectiveness of oversight procedures applicable in third countries. In order to ensure a high level of aviation safety of all aircraft flying into, out of or within the Community, the European Parliament and the Council adopted recently Directive 2004/36/EC on the safety of third-country aircraft using Community airports⁴, which provides for a harmonised system of inspections of foreign aircraft when they use European airports. Besides, this Directive provides for the exchange of information between the Member States and the possibility to extend to the whole Community measures taken by one Member State against a third country aircraft or operator not complying with international safety standards.

This harmonised system of inspection is based on already proven procedures in force in the framework of the so-called “SAFA programme” (Safety Assessment of Foreign Aircraft) developed by the European Civil Aviation Conference since 1996. During so-called “ramp inspections”, a sample of foreign aircraft, which have landed at European airports are examined as to whether they comply with the international safety standards applicable worldwide, contained in the annexes 1, 6 and 8 to the Chicago Convention . Any observed compliance failure, a so-called “finding”, which, depending on the gravity of the breach of safety of the aircraft, may require immediate correction or justify the grounding of the aircraft.

In summary, the “SAFA” Directive obliges Member States to put in place a mechanism to collect information enabling them to identify potentially unsafe operators and to carry out ramp checks to assess if aircraft using Community airport comply with international safety standards. The information collected and the reports of the inspections carried out are subject to an exchange of information between all the Member States in order to enable them to decide on eventual further inspections or to assess if previous shortcomings have been rectified. In addition to that, the directive established a procedure by which the Commission

² See Council Regulation (EEC) No 3922/91 on the harmonization of technical requirements and administrative procedures in the field of civil aviation; European Parliament and Council Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency; Council Directive 94/56/EEC establishing the fundamental principles governing the investigation of civil aviation accidents and incidents; Directive 2003/42/EC of the European Parliament of the Council on occurrence reporting in civil aviation.

³ European Parliament and Council Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, article 7.

⁴ OJ L 143, 30.4.2004, p. 76.

can only recommend that measures taken by a Member State against an operator be extended to the whole of the Community.

However, on 3 January 2004 a passenger jet carrying 148 people to Paris crashed shortly after take-off at the Egyptian resort of Sharm-El-Sheikh, killing everyone on board. It emerged after the accident that this operating carrier was, at the time of the accident, banned from flying to Switzerland because of concerns about its safety level, but authorized in certain Member States. To date, the cause of the accident is not known with certainty. The investigation is on-going and conclusions as to the reasons which led to the catastrophe are therefore premature.

The accident in Sharm-el-Sheikh indicated nevertheless that more stringent rules are needed than the ones in place to make ramp inspections obligatory and to oblige Member States to participate in an wider exchange of information and apply common measures decided on the results of these checks.

The objective of the present legislative proposal is to improve in the first place the position of the travelling public vis-à-vis the air transport industry. To that end it is proposed to give passengers the right to be informed about the identity of the air carrier which will operate the flight(s), for which they have made a reservation and, in parallel, to reinforce the obligation of communication of information related to safety by Member States. It should be noted that aircraft from third countries can be grounded or banned from flying into or out of the Community for various reasons, last but not least those contained in the SAFA Directive.

In due course, the Commission intends to make proposals to reinforce the current system of the safety inspections based on the “SAFA” Directive 2004/36/EC. The Commission is currently examining how best to introduce changes in the most efficient way by making use of the possibilities offered by implementing measures affecting the content of the procedures annexed to the “SAFA” Directive.

Other, more far reaching measures, possibly through a modification of the Directive, could be to introduce an alert system ensuring that important safety issues are drawn to the attention of all the Member States inspectors and to issue a set of detailed procedures to be followed. Such a move would help improving the quality and standardisation of the data, enable a better analysis of the available information and allow an easier detection of problem areas. Also, modification proposals would take into account of international initiatives such as the IATA Operational Safety Audit (IOSA), which consists in providing a standardised audit programme based on internationally recognised standards and a structured system for the sharing of audit related information.

It should be noted, that the above measures would require an improved common training of the staff involved and use the experience of the Community in the field of exchange of staff from the different Member States. In doing that inspectors would gain better knowledge of the best practices which in turn would create the necessary trust and confidence to work in a coherent Community-wide system.

In addition to these technical measures, it could be necessary to envisage more common actions against operators considered as unsafe by giving more publicity to the groundings of individual aircraft and by taking more determined common measures against third countries which do not comply with their oversight responsibilities along the lines of the initial Commission proposal of 1997 which was considerably watered down.

2) The need for action to increase transparency

In order to empower airline passengers to choose a flight with better knowledge of the operating carrier, at the time of booking, passengers must be able to know which carrier is operating the flight.

After the accident in Sharm-el-Sheikh, it was widely felt by the public that passengers should be informed of the precise identity of the company which actually transports them. A higher degree of transparency would lead companies to strengthen their commitment to safety.

Already today, passengers know in most cases which carrier will operate the flight they book. On the one hand, if they purchase a flight as a single product, they purchase the service from a specific and identified airline. There are two industry practices which may sometimes lead to the situation that the carrier which has sold the flight under its brand name does not actually operate it. One such practice is code-sharing, where two airlines agree to sell seats on a number of flights under both of their respective name, although some of the flights are operated by one of the carriers and others are operated by the other carrier. It is thus possible to purchase a ticket from airline x, but to actually be transported by airline y.

Yet, if a passenger books a flight as a single product via a computer reservation system (CRS), the EU Code of Conduct for such CRS⁵ makes the display of the operating carrier already mandatory. This obligation does not exist for direct bookings from airlines without the involvement of a CRS, for example via Internet sales. However, most European airlines practicing code-sharing have signed up to the Airline Passenger Service Commitments (APSC)⁶, committing themselves to provide this information on a voluntary basis. It appears that this commitment is widely respected.

The other practice which may obscure the operating carrier is the so-called wet lease, where an airline rents a plane including its crew from another airline. It is not mandatory for CRSs to display this information. However, this practice is not as widespread as code-sharing, and it is equally covered by the APSC.

On the other hand, concerning flights purchased as part of a travel package, there is currently no obligation or industry commitment to inform the passenger of the identity of the operating carrier. Nevertheless, sizeable parts of the industry already provide that information on a voluntary basis as a commercial tool.

In principle it is an obvious requirement of consumer protection that passengers should have a right to know who will provide a key element of the package holiday or flight they are purchasing. Nobody would for instance expect consumers to be kept ignorant of the hotel in which they are staying. The proposed measures are carefully targeted to ensure passenger safety, while keeping to a minimum any measures that could have a negative impact on the competitiveness of the travel industry, in particular by maintaining flexibility in the choice of operating carrier. While an extended impact assessment could have been justified – notably if more comprehensive measures had been required - the nature of the proposed requirements

⁵ Council Regulation (EC) No 323/1999 amending Regulation (EEC) No 2299/89 on a code of conduct for computer reservation systems (CRS).

⁶ Voluntary Commitment by the Industry, signed on 14 February 2002; website: http://europa.eu.int/comm/transport/air/rights/commitments_en.htm.

(in particular, the urgency of the measures to be taken and the need to prevent the adoption of multiple national rules) requires rapid passage of this proposal.

However, between the time of booking and the service provision there may be a long time, and changes to the original arrangements may be required. The possibility to react flexibly to market developments is a key factor for success in the travel industry. Moreover, technical reasons may make it necessary for service providers, both airlines and tour operators, to change the operating carrier at very short notice, for example if a technical defect of a plane makes the use of a plane of another airline indispensable. It is therefore necessary to balance the requirements of transparency and flexibility. Transparency requires that any change in the operating carrier be notified immediately to the affected passengers; flexibility requires that airline and tour operators be able to switch the operating carrier at short notice without facing further disruption of their operations.

In order to ensure that contracting carriers can offer attractive prices, for example in the case of package holidays provided by tour operators, and taking account of the fact that travel packages are often booked well in advance of the actual journey, it is important that contracting carriers have the flexibility to adjust the operating carrier or carriers they intend to use subject to the passenger being informed of any changes to that carrier or carriers.

Therefore, passengers should have the right to know in any case the identity of the carrier operating their flights. As to the future, the Commission will examine whether the provision of this information offers sufficient protection to passengers.

But transparency is a fundamental principle which shall also apply between Member States. For this reason, the present Regulation shall include a general obligation for Member States to exchange between them information relating to safety of air operators, in order to assure an effective, consistent and unique enforcement of safety decisions all across Europe.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other objectives, at ensuring a high level of protection for passengers from safety risks. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) In order for the competitive framework in air transport to yield the greatest possible benefits for companies and passengers, it is important that consumers receive sufficient information to be able to make informed choices.
- (3) The identity of the air carrier actually performing the service is basic information. However, consumers booking a flight are not always informed about the identity of the air carrier actually operating the flight.
- (4) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours⁵ provides for a set of information to be made available to consumers, but does not include the identity of the operating air carrier.

¹ OJ C , , p.

² OJ C , , p.

³ OJ C , , p.

⁴ OJ C , , p.

⁵ OJ L 158, 23.6.1990, p. 59.

- (5) Council Regulation (EEC) No 2299/89⁶ as amended by Regulation (EC) No 323/1999 on a code of conduct for computer reservation systems (CRS)⁷ entitles consumers booking a flight via a computer reservation system to be informed of the identity of the operating air carrier. Nevertheless, even in scheduled air transport, industry practices exist, such as wet lease, or code-sharing if booked without a CRS, where the air carrier which has sold the flight under its name does not actually operate it and where there is currently no legal right for the passenger to be informed of the identity of the air carrier actually performing the service.
- (6) While these practices increase flexibility and allow a better provision of services to passengers, a certain number of last minute changes for technical reasons is unavoidable and contributes to the safety of air transport. This flexibility must be balanced by transparency for consumers.
- (7) Improving communication of information relating to safety of air operators by Member States is essential to improve general safety level of air transport in the Community.
- (8) The Commission should analyse the application of this Regulation and, after a sufficient period, report on the efficiency of its provisions,

HAVE ADOPTED THIS REGULATION:

Article 1 **Subject matter**

This Regulation establishes rules to ensure that air passengers are informed about the identity of the air carrier operating the flights on which they travel and establishes an obligation of exchange of safety information between Member States.

Article 2 **Definitions**

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘air carrier’ means an air transport undertaking with a valid operating licence;
- (b) ‘contract of carriage’ means a contract for or including air transport services;
- (c) ‘contracting air carrier’ means the carrier which concludes a contract of carriage with a passenger. If the contract comprises a package, the contracting carrier is the tour operator;
- (d) ‘operating air carrier’ means an air carrier that performs or intends to perform a flight under a contract of carriage with a passenger, or on behalf of another person, legal or natural, having a contract of carriage with that passenger;

⁶ OJ L 220, 29.7.1989, p.1.

⁷ OJ L 40, 13.2.1999, p.1.

- (e) 'package' means those services defined in Article 2, point 1, of Directive 90/314/EEC on package travel, package holidays and package tours;
- (f) 'reservation' means the fact that the passenger has a ticket or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator.

Article 3

Scope

1. This Regulation shall apply to the provision of air transport services when the departure of the flight is from an airport in the territory of a Member State to which the Treaty applies or from an airport located in a third country, if the flight is part of a journey which started in the Community, provided the contracting carrier has an establishment in the Community
2. This Regulation shall apply regardless of whether the flight is scheduled or non-scheduled, and regardless of whether the flight is part of a package or not.
3. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC and Regulation (EEC) No 2299/89 on a code of conduct for computer reservation systems.

Article 4

Exchange of information

1. Member States shall publish a list of all air carriers which are banned from its airspace or which are subjected to traffic rights restrictions for safety reasons. This list shall be made available to all the Member States and to the Commission. The Commission shall publish a consolidated list of these air carriers.
2. The Commission shall take the appropriate measures to facilitate the exchange of information mentioned in paragraph 1.

Article 5

Information on the identity of the operating air carrier

1. The contracting carrier shall inform the passenger of the identity of the operating air carrier or carriers upon reservation.
2. The contracting carrier shall immediately notify the passenger if the operating carrier or carriers is changed after reservation irrespective of the reason of the change.

Article 6
Information and revision

No later than five years after the entry into force of this Regulation the Commission shall report to the European Parliament and to the Council on the application of this Regulation. The report shall be accompanied, where necessary, by proposals for revision of the Regulation.

Article 7
Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Brussels,

For the European Parliament
The President

For the Council
The President