

**Amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2027/97 on air carrier liability in the event of accidents <sup>(1)</sup>**

(2001/C 213 E/21)

(Text with EEA relevance)

COM(2001) 273 final — 2000/0145(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 21 May 2001)*

<sup>(1)</sup> OJ C 337 E, 28.11.2000, p. 68.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

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

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

Whereas:

(1) In the framework of the common transport policy, it is desirable to ensure a proper level of compensation for passengers involved in air accidents.

(1) In the framework of the common transport policy, it is important to ensure a proper level of compensation for passengers involved in air accidents.

(2) A new Convention for the Unification of Certain Rules Relating to International Carriage by Air was agreed at Montreal on 28 May 1999 setting new global rules on liability in the event of accidents for international air transport replacing those in the Warsaw Convention of 1929 and its subsequent amendments.

Unchanged

(3) For some third country carriers the Warsaw Convention may continue to exist alongside the Montreal Convention for an indefinite period.

(3) The aforementioned Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers.

(4) The aforementioned Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers.

(4) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by

(5) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by concluding it.

## INITIAL PROPOSAL

- (5) It is necessary to amend Council Regulation (EC) 2027/97 on air carrier liability in the event of accidents <sup>(1)</sup> in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.
- (6) In the internal aviation market, the distinction between national and international transport has been eliminated and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the European Community.
- (7) In compliance with the principle of subsidiarity, action at Community level is desirable in order to create a single set of rules for all Community air carriers.
- (8) A system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.
- (9) Uniform liability limits for loss of, damage to or destruction of baggage and for damage occasioned by delay, which apply to all travel on Community carriers, will ensure simple rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.
- (10) It would be impractical for Community air carriers and confusing for their passengers if they were to apply different liability regimes on different routes across their networks.
- (11) It is desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (12) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured and it is necessary to take account of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers <sup>(2)</sup> in complying with this provision.

<sup>(1)</sup> OJ L 285, 17.10.1997, p. 1.

<sup>(2)</sup> OJ L 240, 24.8.1992, p. 1.

## AMENDED PROPOSAL

- (6) It is necessary to amend Council Regulation (EC) 2027/97 on air carrier liability in the event of accidents <sup>(1)</sup> in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.
- (7) In the internal aviation market, the distinction between national and international transport has been eliminated and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the European Community.
- (8) In compliance with the principle of subsidiarity, action at Community level is desirable in order to create a single set of rules for all Community air carriers.
- (9) A system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.
- (10) Uniform liability limits for loss of, damage to or destruction of baggage and for damage occasioned by delay, which apply to all travel on Community carriers, will ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.
- (11) It would be impractical for Community air carriers and confusing for their passengers if they were to apply different liability regimes on different routes across their networks.
- (12) It is desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (13) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured and it is necessary to take account of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers <sup>(2)</sup> in complying with this provision.

<sup>(1)</sup> OJ L 285, 17.10.1997, p. 1.

<sup>(2)</sup> OJ L 240, 24.8.1992, p. 1.

## INITIAL PROPOSAL

- (13) The applicable rules on liability in the event of an accident should be included in every airline's conditions of carriage and it is appropriate to make this information easily available to passengers.
- (14) It is desirable to provide basic information on the liability rules applicable to every passenger so that they can make additional insurance arrangements in advance of travel if necessary.
- (15) It will be necessary to review the monetary amounts set down in this Regulation in order to take account of inflation and any review of the liability limits in the Montreal Convention,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2027/97 is hereby amended as follows:

1. The Title shall be replaced by the following:  
'Regulation (EC) No 2027/97 on air carrier liability'

2. Article 1 shall be replaced by the following:

*'Article 1*

1. This Regulation lays down the obligations of Community air carriers in relation to liability for damage sustained in case of death or bodily injury of a passenger where the accident, which caused the death or injury, took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. This Regulation extends certain provisions of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air to cover all carriage of persons and their baggage performed by Community air carriers for reward, including carriage between points within a single Member State. It applies equally to all gratuitous carriage by aircraft of persons and baggage performed by Community air carriers.'

## AMENDED PROPOSAL

- (14) The applicable rules on liability in the event of an accident should be included in every airline's conditions of carriage and it is appropriate to make this information easily available to passengers.
- (15) It is desirable to provide basic information on the liability rules applicable to every passenger so that they can make additional insurance arrangements in advance of travel if necessary.
- (16) It will be necessary to review the monetary amounts set down in this Regulation in order to take account of inflation and any review of the liability limits in the Montreal Convention,

Unchanged

1. The Title shall be replaced by the following:

'Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air'.

Unchanged

*'Article 1*

1. This Regulation implements the relevant provisions of the Montreal Convention in relation to carriage of passengers and baggage and lays down certain supplementary provisions. It also extends the application of these provisions to carriage within a single Member State.'

Deleted

## INITIAL PROPOSAL

## AMENDED PROPOSAL

3. Article 2 shall be amended as follows:

i) Point (c) shall be replaced by the following:

'(c) "person entitled to compensation" shall mean a passenger or any natural person entitled to claim in respect of that passenger, in accordance with applicable law;'

ii) Point (d) shall be deleted replaced by the following:

iii) Point (f) shall be replaced by the following:

'(f) "Warsaw Convention" shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at 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;'

iv) The following point (g) shall be inserted:

'(g) "Montreal Convention" shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28 May 1999.'

v) Paragraph 2 shall be replaced by the following:

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

4. Article 3 shall be replaced by the following:

*'Article 3*

1. The liability of a Community air carrier for damage sustained in case of death or bodily injury of a passenger shall be governed by the provisions set out in Articles 17, 20 and 21 of the Montreal Convention.

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407 shall be understood as requiring that a Community carrier shall be insured up to a level that is adequate to ensure that all natural persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.'

Unchanged

i) Point (c) shall be replaced by the following:

'(c) "person entitled to compensation" shall mean a passenger or any person entitled to claim in respect of that passenger, in accordance with applicable law;'

ii) Point (d) shall be replaced by the following:

'(d) "baggage", unless otherwise specified, shall mean both checked and unchecked baggage in accordance with the meaning provided for in article 17(4) of the Montreal Convention.'

Unchanged

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92 as far as it relates to liability for passengers shall be understood as requiring that a Community air carrier shall be insured up to a level that is adequate to ensure that all natural persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.'

## INITIAL PROPOSAL

## AMENDED PROPOSAL

5. The following Article 3a shall be inserted:

Unchanged

*'Article 3a*

1. The liability of a Community air carrier for damage caused by delay and in the case of destruction, loss, damage or delay in the carriage of baggage shall be governed by the provisions set out in Articles 19, 20, 22 (1), (2), (5) and (6) and 31 of the Montreal Convention.

2. The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, may be demanded by a Community carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.

2. The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, may be demanded by a Community air carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.

3. Within fourteen days of receiving a complaint made in relation to the provisions of this Article, a Community air carrier shall notify the passenger concerned, that the complaint has been received and is being assessed.'

Deleted

6. Article 4 shall be replaced by the following:

Unchanged

*'Article 4*

Nothing in this Regulation shall:

- imply that a Community air carrier is the sole party liable to pay damages.
- prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.'

7. Article 5(2) shall be replaced by the following:

'2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in euro of 16 000 Special Drawing Rights per passenger in the event of death.'

8. Article 5(3) shall be replaced by the following:

'3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.'

## INITIAL PROPOSAL

## AMENDED PROPOSAL

8. Article 6 shall be replaced by the following:

*'Article 6*

1. The provisions contained in Articles 3, 3a and 5 shall be reflected in the Community air carrier's conditions of carriage.

2. Air carriers shall ensure that the provisions is made available to passengers at points of sale shall ensure that adequate information on the provisions contained in Articles 3, 3a and 5 is, on request, made available to passengers at the Community air carrier's agencies, travel agencies and check-in counters and at points of sale.

3. In addition to the information requirements set out in the Warsaw and Montreal Conventions, carriers shall give all consumers in the Community who purchase air transport services a written notice explaining in simple and easily understood terms:

— the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists;

— the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;

— the applicable limit for that flight on the carrier's liability for damage occasioned by delay.

4. In the case of all carriage performed by Community carriers, the limits indicated the written notice shall be those established by this Regulation

9. Article 6 shall be replaced by the following:

Unchanged

2. All air carriers selling air transport services in the Community shall ensure that a summary of the main provisions governing liability of passengers and their baggage, including notification of deadlines for filing an action for compensation and the possibility of supplementary insurance for baggage, is made available to passengers at all points of sale, including sale by telephone and via the Internet. In order to comply with this information requirement, Community air carriers shall avail themselves of the notice contained in the annex to this Regulation.

3. In addition to the information requirements set out in paragraph 2, all air carriers shall provide each consumer in the Community who purchases air transport services with a written indication of:

Unchanged

4. In the case of all carriage performed by Community air carriers, the limits indicated in accordance with the information requirement of paragraphs 2 and 3 shall be those established by this Regulation unless the Community air carrier applies higher limits by way of voluntary under-taking. In the case of all carriage performed by non-Community air carriers, paragraphs 2 and 3 of this Article may only apply in relation to carriage to, from or within the Community.'

## INITIAL PROPOSAL

## AMENDED PROPOSAL

5. Non-compliance with the provisions of paragraph 3 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Regulation.'

Deleted

9. Article 7 shall be replaced by the following:

'Article 7

No later than six years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the Regulation. In particular, the Commission shall examine the need to revise the amounts mentioned in the relevant Articles of the Montreal Convention in the light of economic developments'

10. Article 7 shall be replaced by the following:

Unchanged

No later than three years after the date on which this Regulation begins to apply, the Commission shall draw up a report on the application of the Regulation. In particular, the Commission shall examine the need to revise the amounts mentioned in the relevant Articles of the Montreal Convention in the light of economic developments and the recommendations of the ICAO Depositary.'

Article 2

Unchanged

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall apply from the date of its entry into force or from the date of entry into force of the Montreal Convention, whatever is the latest.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

---

## ANNEX

**INFORMATION NOTICE IN ACCORDANCE WITH ARTICLE 6, PARAGRAPH 2****Liability of Community air carriers to passengers**

This information notice summarises the liability rules to be applied by Community air carriers under EC legislation and the Montreal Convention.

The basis for the rules is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No 2027/97 (as amended). The information is a summary and cannot be used to interpret this legislation. In the event of any inconsistency, the provisions of Regulation (EC) No 2027/97 prevail over this notice.

Passengers are advised to ensure that they have adequate insurance cover when travelling to supplement their rights under the law.

**Compensation for death or injury**

There are no financial limits to liability for death or injury of passengers. For damages up to 100 000 Special Drawing Rights (approximate amount in local currency), the air carrier cannot exclude or limit its liability. Above that amount, the air carrier can defend itself against claims by proving that it was not negligent or otherwise at fault.

**Advance payments**

If a passenger is killed or injured, the carrier must make an advance payment to cover immediate economic needs. In the event of death, this advance payment shall not be less than 16 000 SDRs (approximate amount in local currency).

**Passenger delays**

In case of delay, the carrier is liable for damages unless it took all reasonable measures to avoid it or it was impossible to take such measures. The liability for delay is limited to 4 150 SDRs (approximate amount in local currency).

**Baggage**

The carrier is liable for destruction, loss, damage or delay of baggage up to a limit of 1 000 SDRs (approximate amount in local currency) per passenger. In the case of checked baggage, it is liable even if not at fault, unless the damage results from an inherent defect of the baggage. In that of unchecked baggage, the carrier is liable only if at fault.

A passenger can benefit from a higher liability limit for checked baggage by making a special declaration and paying a supplementary fee.

**Complaints about baggage**

If checked baggage is damaged, the passenger must write and complain to the carrier within seven days from the date the baggage was received. If the baggage is delayed, the passenger must write and complain to the carrier within twenty-one days of the date on which it is placed at his or her disposal.

**Liability of contracting and actual carriers**

If the carrier actually performing the flight is not the same as the contracting carrier, whose name or code is on the ticket, the passenger has the right to address a complaint to or make a claim for damages against either.

**Time limit for action**

Any action in court to claim damages must be brought within two years from the date of arrival at destination or from the date on which the aircraft ought to have arrived.

---