



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.07.1997

COM(97) 359 final

95/0359 (SYN)

Re-examined proposal for a

COUNCIL REGULATION (EC)

on air carrier liability in the event of accidents

(presented by the Commission pursuant to Article 189 c (d)  
of the EC Treaty)

## Explanatory memorandum

During the plenary session on 29 May 1997 the European Parliament approved at second reading the common position adopted by the Council on 24 February 1997 relating to air carrier liability in the event of accidents.<sup>1</sup> The European Parliament also adopted some amendments to the text put forward.

The Commission has accepted all the amendments.

It accepted amendments related to recital 13 and article 7 since it seeks to achieve that third country carriers apply the same levels of liability as Community airlines while operating to/from or within the Community.

It also accepted amendments concerning article 6 since they abolish the need for several different notices (EU, Warsaw, US where appropriate) attached to the ticket, a system which is burdensome and may confuse the passenger. At the same time they confirm the right of information through the carrier's conditions of carriage, which shall be available to the passenger and which also contain other information of interest to him.

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<sup>1</sup> OJ No C 123, 21.4.1997, p. 89

Re-examined proposal for a

COUNCIL REGULATION (EC)

**on air carrier liability in the event of accidents**

Whereas, in the framework of the common transport policy, it is necessary to improve the level of protection of passengers involved in air accidents;

Unchanged

Whereas the rules on liability in the event of accidents are governed by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or that Convention as amended at the Hague on 28 September 1955 and the Convention done at Guadalajara on 18 September 1961, whichever may be applicable each being hereafter referred to, as applicable, as the "Warsaw Convention"; whereas the Warsaw Convention is applied world-wide for the benefit of both passengers and air carriers;

Unchanged

Whereas the limit set on liability by the Warsaw Convention is too low by today's economic and social standards and often lead to lengthy legal actions which damage the image of air transport; whereas as a result Member States have variously increased the liability limit, thereby leading to different terms and conditions of carriage in the internal aviation market;

Unchanged

Whereas in addition the Warsaw Convention applies only 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 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, at an international level, to the issue of air carrier liability in the event of accidents; whereas efforts to increase the limits of liability imposed in the Warsaw Convention should continue through negotiation at multilateral level;

Unchanged

Whereas, in compliance with the principle of subsidiarity, action at Community level is desirable in order to achieve harmonisation in the field of air carrier liability and could serve as guideline for improved passenger protection on a global scale;

Unchanged

Whereas it is appropriate to remove all monetary limits of liability within the meaning of Article 22(1) of the Warsaw Convention or any other legal or contractual limits, in accordance with present trends at international level;

Unchanged

Whereas, in order to avoid situations where victims of accidents are not compensated, Community air carriers should not, with respect to any claims arising out of death, wounding or other bodily injury of a passenger under Article 17 of the Warsaw Convention, avail themselves of any defence under Article 20(1) of the Warsaw Convention up to a certain limit

Unchanged

Whereas Community air carriers may be exonerated from their liability in cases of contributory negligence of the passenger concerned;

Unchanged

Whereas it is necessary to clarify the obligations of this Regulation in the light of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers<sup>2</sup>; whereas, in this regard, Community air carriers should not be insured up to a certain limit laid down in this Regulation;

Unchanged

Whereas Community air carriers should always be entitled to claim against third parties;

Unchanged

Whereas prompt advance payments can considerably assist the injured passenger or natural persons entitled to compensation in meeting the immediate costs following an air accident;

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 from part of the terms and conditions of carriage in the air transport contract between carrier and passenger; whereas, in order to reduce the risk of distorting competition, third-country carriers should adequately inform passengers of their conditions of carriage;

Unchanged

whereas, in addition, it is desirable that provisions similar to those in this Regulation be applied by all carriers operating to, from or within the Community;

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<sup>2</sup> OJ No L 240, 24.8.1992, P. 1

Whereas it is appropriate and necessary that the monetary limits expressed in this Regulation be reviewed in order to take into account economic developments and development in international fora; Unchanged

Whereas the International civil Aviation Organisation (ICAO) is at present engaged in a review of the Warsaw Convention; whereas, pending the outcome of such review, actions on an interim basis by the Community will enhance the protection of passengers; whereas the Council should review this Regulation as soon as possible after the review by ICAO, Unchanged

## Article 6

1. The provisions contained in Articles 3 and 5 shall be included in the Community air carrier's condition of carriage. Unchanged
2. Adequate information on the provisions contained in Articles 3 and 5 shall, on request, be available to passengers at the Community air carrier's agencies, travel agencies and check-in counters and at points of sale. The ticket document or an equivalent shall contain a summary of the requirements in plain and intelligible language. 2. The liability regime applied by an air carrier shall be clearly set out in its conditions of carriage and shall be made available to passengers at the air carrier's agencies, travel agencies, check-in counters and points of sale.
3. Air carriers established outside the Community operating to, from or within the Community and not applying the provisions referred to in Articles 3 and 5 shall expressly and clearly inform the passengers thereof, at the time of the 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 provide the passengers with a form setting out their conditions. The fact that only a liability limit is indicated on the ticket document or an equivalent shall not constitute sufficient information. 3. The ticket document or an equivalent shall refer to the liability regime and make clear where the detailed conditions of carriage can be obtained.

**Article 7 a (new)**

Whenever the Commission conducts negotiations on civil aviation on behalf of the Community with third countries whose carriers are not already subject to level of liability similar to those outlined in this Regulation, it shall seek to incorporate the provisions of Article 3 and 5 of this Regulation.



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