



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.09.1999  
COM(1999) 435 final

Proposal for a

**COUNCIL DECISION**

**on Signature by the European Community of the Convention of 28 May 1999 for  
the Unification of Certain Rules for International Carriage by Air  
(the Montreal Convention)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

On 8 May 1999 a Diplomatic Conference opened in Montreal with a view to agreeing new international rules to govern the liability of air carriers for damage sustained in the course of international air transport operations. The Conference concluded successfully on 28 May with the agreement of a new Convention for the Unification of Certain Rules for International Carriage by Air. The new agreement will be known as the “Montreal Convention” and will replace the seventy year old “Warsaw System”, the first instrument of which was agreed in 1929.

In accordance with the Council Conclusion adopted on 29 March 1999, the main objective of the Community was to ensure that the new Convention was in line with the basic principles of existing Community legislation in this field so that European air passengers and air carriers would be subject to a clear and uniform system whether travelling domestically, within the Community, or more widely in the World. The main Community instrument concerned is Council Regulation (EC) N° 2027/97 on air carrier liability in the event of accidents, which deals principally with liability for the death or injury of passengers.

In addition to ensuring overall compatibility with existing Community law in the area of liability, the Council also concluded that the Community should become a signatory and party to the new Convention in its own right if the outcome of the negotiations was acceptable for the Community and Member States. In order to give “Regional Economic Integration Organisations” the possibility to accede, the Community suggested to its negotiating partners that an appropriate provision be introduced into the new Convention.

### Content of the new Montreal Convention

In the course of negotiations, the Community secured both its key objectives.

In so far as the provisions of the new Convention touch upon matters covered by Community legislation, there are no substantial differences. The limits of liability in the new Convention match those in Council Regulation (EC) N° 2027/97 and the provisions governing the burden of proof and use of legal defences are largely compatible with one another. As in the Regulation, the new Convention sets no limit on the liability of an air carrier for the death and injury of its passengers and the onus is placed on the carrier to prove that it was not negligent. In addition, in line with the Community legislation, for claims up to a level of 100,000 Special Drawing Rights<sup>1</sup>, a carrier is not able to exclude or limit its liability.

The other key element of the Community’s internal regime is the requirement for carriers to provide advance compensatory payments to meet the immediate economic needs of accident victims or and their families. The new Convention specifically permits parties to continue to make such requirements of their own carriers.

Thus, while some technical amendment of the Community legislation will be necessary to ensure complete coherence, the Community will not need to change the

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<sup>1</sup> 1 Special Drawing Right = €1.25 according to information supplied by the IMF.

nature of its liability regime in order to comply with the new Convention. Rather, when it enters into force, the new Convention will raise the Worldwide liability regime for death and injury to passengers up to the high standard currently laid down in European law.

The new Convention permits “Regional Economic Integration Organisations” to become parties to the Convention under certain circumstances. The draft provision suggested by the Community was incorporated into the final agreement to that end. “Regional Economic Integration Organisation” is defined as an organisation “which has competence in respect of certain matters governed by the Convention and has been duly authorised to sign and to ratify, accept, approve or accede to this Convention”. As was confirmed in the declarations made by the Member States who signed the Convention at Montreal, this definition will permit the Community to become party in line with the Council Conclusions of 29 March 1999, subject to the necessary approval from the Community Institutions. At the conference the Community also stated that it intended to present a declaration at the time of ratification specifying the areas where Community competence exists.

### The Significance of Community Signature

Signature by the Community of the new Convention would be the first step towards later approval of the agreement, which, in turn, will be essential for Member States to be able to ratify given the shared competence in this matter. Inside the Community, signature of the new Convention requires a decision of the Council alone, while the ratification proper will require a decision to be taken by the Council after consultation of the European Parliament. The Commission will make a formal proposal for approval together with a proposal to amend Council Regulation (EC) N° 2027/97.

Since the new Convention covers both areas of Community and national competence and since its Article 57 excludes reservations (except for marginal issues), it is necessary both for the fifteen individual Member States and the Community itself to accede simultaneously in order for the Convention to be properly and seamlessly incorporated throughout the Community.

The signature and eventual accession of the Community would also have political value. It would demonstrate Community support for the new Convention and for the new liability system that it will introduce. This is particularly important in this instance, given that the entry into force of the new Convention depends on the number of ratification instruments deposited. Even if the Community’s own ratification instrument will not count towards the thirty ratifications needed to bring the Convention into force, the fact that the Community and its Member States demonstrate support will show a way forward to other countries and strengthen the chances of the new instrument coming into force and being widely ratified. The Warsaw Convention is now very outdated in nature and the fragmented global liability regime should be replaced as soon as possible.

### Practicalities

A representative of the Council and of the Commission would, as is the usual case, sign the Convention on behalf of the Community.

Proposal

In the light of the above, the Commission proposes that the Council adopt the attached decision.

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**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having Regard to the Treaty establishing the European Community and in particular Article 80 in conjunction with Article 300 paragraph 2, first subparagraph, thereof,

Having regard to the proposal submitted by the Commission,

Whereas:

- (1) Negotiations on the new Convention for the Unification of Certain Rules for International Carriage by Air were completed in Montreal on 28 May 1999,
- (2) That Convention provides for a modernisation of the Warsaw System governing liability in the field of air transport and whereas its provisions are in line with the high standards in this area already in force in the European Community,
- (3) Provisions of the said Convention allow regional economic integration organisations with competence in certain matters governed by the Convention to become parties to it,
- (4) The European Community is such an organisation by virtue of its adoption of its legislation on air carrier liability in the event of accidents,
- (5) The decision by the European Community and its Member States to be bound by the Convention will ensure a uniform application of the new rules within the Community and contribute to its acceptance on a global level,
- (6) The Convention should therefore be signed by the European Community without prejudice to the procedure required for subsequent ratification and any necessary revision of existing Community legislation
- (7) Those Member States, which have not already signed the Convention in their own right, should sign as soon as possible

HAS DECIDED AS FOLLOWS:

*Article 1*

The Montreal Convention for the Unification of Certain Rules for International Carriage by Air shall be signed by the European Community.

*Article 2*

The President of the Council shall designate the persons authorised to sign the Convention on behalf of the Community.

Done at Brussels,

*For the Council  
The President*