

COUNCIL REGULATION (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189 (c) of the Treaty (3),

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

(2) 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 hereinafter referred to, as applicable, as the 'Warsaw Convention'; whereas the Warsaw Convention is applied worldwide for the benefit of both passengers and air carriers;

(3) Whereas the limit set on liability by the Warsaw Convention is too low by today's economic and social standards and often leads 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;

(4) 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;

(5) 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;

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

(7) 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;

(8) Whereas, in order to avoid situations where victims of accidents are not compensated, Community air carriers should not, with respect of 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 defence under Article 20 (1) of the Warsaw Convention up to a certain limit;

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

(10) 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 (4); whereas, in this regard, Community air carriers should be insured up to a certain limit laid down in this Regulation;

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

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

(13) 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, in order to reduce the risk of distorting competition, third-country carriers should adequately inform passengers of their conditions of carriage;

(14) 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 developments in international fora;

(15) Whereas the International Civil Aviation Organization (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,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the obligations of Community air carriers in relation to liability in the event of accidents to passengers 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 an aircraft or in the course of any of the operations of embarking or disembarking.

This Regulation also clarifies some insurance requirements for Community air carriers.

In addition, this Regulation sets down some requirements on information to be provided by air carriers established outside the Community which operate to, from or within the Community.

Article 2

1. For the purpose of this Regulation:

(a) 'air carrier' shall mean an air transport undertaking with a valid operating licence;

(b) 'Community air carrier' shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EEC) No 2407/92;

(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;

(d) 'ecu' shall mean the unit of account in drawing up the general budget of the European Communities in accordance with Articles 207 and 209 of the Treaty;

(e) 'SDR' shall mean a Special Drawing Right as defined by the International Monetary Fund;

(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 - whichever is applicable to the passenger contract of carriage, together with all international instruments which supplement, and are associated with, it and are in force.

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

Article 3

1. (a) The liability of a Community air carrier for damages sustained in the event of death, wounding or any other bodily injury by a passenger in the event of an accident shall not be subject to any financial limit, be it defined by law, convention or contract.

(b) The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92 shall be understood as requiring that a Community air carrier shall be insured up to the limit of the liability required under paragraph 2 and thereafter up to a reasonable level.

2. For any damages up to the sum of the equivalent in ecus of 100 000 SDR, 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. Notwithstanding the provisions of paragraph 2, if the Community air carrier proves that the damage was caused by, or contributed to by, the negligence of the injured or deceased passenger, the carrier may be exonerated wholly or partly from its liability in accordance with applicable law.

Article 4

In the event of death, wounding or any other bodily injury suffered by a passenger in the event of an accident, 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 seek contribution or indemnity from any other party in accordance with applicable law.

Article 5

1. The Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in ecus of 15 000 SDR per passenger in the event of death.

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 3 (3) or in circumstances where it is subsequently proved that the person who received the advance payment caused, or contributed to, the damage by negligence or was not the person entitled to compensation.

Article 6

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

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.

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 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.

Article 7

No later than two years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the Regulation which, inter alia, takes into account economic developments and developments in international fora. Such report may be accompanied by proposals for a revision of this Regulation.

Article 8

This Regulation shall enter into force one year after the date of its publication in the Official Journal of the European Communities.

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

Done at Luxembourg, 9 October 1997.

For the Council

The President

M. DELVAUX-STEHRÉS

(1) OJ C 104, 10. 4. 1996, p. 18 and OJ No C 29, 30. 1. 1997, p. 10.

(2) OJ C 212, 22. 7. 1996, p. 38.

(3) Opinion of the European Parliament of 17 September 1996 (OJ No C 320, 28. 10. 1996, p. 30), Council Common Position of 24 February 1997 (OJ No C 123, 21. 4. 1997, p. 89) and Decision of the European Parliament of 29 May 1997 (OJ C 182, 16. 6. 1997).

(4) OJ L 240, 24. 8. 1992, p. 1.