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(Acts whose publication is obligatory)

**REGULATION (EC) No 889/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 May 2002
amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents
(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 Commission ⁽¹⁾,

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

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (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 ⁽⁴⁾.
- (3) The Warsaw Convention will continue to exist alongside the Montreal Convention for an indefinite period.
- (4) The Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers.
- (5) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by ratifying it.

(6) It is necessary to amend Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents ⁽⁵⁾ in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.

(7) This Regulation and the Montreal Convention reinforce the protection of passengers and their dependants and cannot be interpreted so as to weaken their protection in relation to the present legislation on the date of adoption of this Regulation.

(8) 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 Community.

(9) 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.

(10) 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.

(11) The Community air carrier should not be able to avail itself of Article 21(2) of the Montreal Convention unless it proves that the damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents.

(12) 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.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 68 and OJ C 213 E, 31.7.2001, p. 298.

⁽²⁾ OJ C 123, 25.4.2001, p. 47.

⁽³⁾ Opinion of the European Parliament of 5 April 2001 (OJ C 21, 24.1.2002, p. 256) Council Common Position of 19 December 2001 (OJ C 58 E, 5.3.2002, p. 8) and Decision of the European Parliament of 12 March 2002.

⁽⁴⁾ OJ L 194, 18.7.2001, p. 38.

⁽⁵⁾ OJ L 285, 17.10.1997, p. 1.

- (13) 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.
- (14) It is desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (15) 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⁽¹⁾ in complying with this provision.
- (16) 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.
- (17) 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.
- (18) To the extent that further rules are required in order to implement the Montreal Convention on points that are not covered by Regulation (EC) No 2027/97, it is the responsibility of the Member States to make such provisions,
- (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) "baggage", unless otherwise specified, shall mean both checked and unchecked baggage with the meaning of Article 17(4) of the Montreal Convention;
- (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;
- (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.

2. Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used 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 in respect of the carriage of passengers and their baggage by air.;
2. Article 1 shall be replaced by the following:
'Article 1
This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State.;
3. Article 2 shall be replaced by the following:
'Article 2
1. For the purpose of this Regulation:
(a) "air carrier" shall mean an air transport undertaking with a valid operating licence;

4. Article 3 shall be replaced by the following:

'Article 3

1. The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.
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 persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.;

5. the following Article shall be inserted:

'Article 3a

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.;

6. Article 4 shall be deleted;

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

7. Article 5 shall be replaced by the following:

'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 euro of 16 000 SDRs 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 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.;

8. Article 6 shall be replaced by the following:

'Article 6

1. All air carriers shall, when selling carriage by air in the Community, ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special declaration 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 use the notice contained in the Annex. Such summary or notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of this Regulation or the Montreal Convention.

2. In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air provided or purchased in the Community, provide each passenger with a written indication of:

- 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.

3. In the case of all carriage performed by Community air carriers, the limits indicated in accordance with the information requirements of paragraphs 1 and 2 shall be

those established by this Regulation unless the Community air carrier applies higher limits by way of voluntary undertaking. In the case of all carriage performed by non-Community air carriers, paragraphs 1 and 2 shall apply only in relation to carriage to, from or within the Community.;

9. Article 7 shall be replaced by the following:

'Article 7

No later than three years after the date on which Regulation (EC) No 889/2002 (*) begins to apply, the Commission shall draw up a report on the application of this 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 notifications of the ICAO Depositary.

(*) OJ L 140, 30.5.2002, p. 2.;

10. the following Annex shall be added:

'ANNEX

Air carrier liability for passengers and their baggage

This information notice summarises the liability rules applied by Community air carriers as required by Community legislation and the Montreal Convention.

Compensation in the case of death or injury

There are no financial limits to the liability for passenger injury or death. For damages up to 100 000 SDRs (approximate amount in local currency) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

Advance payments

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. 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 passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 150 SDRs (approximate amount in local currency).

Baggage delays

In case of baggage delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for baggage delay is limited to 1 000 SDRs (approximate amount in local currency).

Destruction, loss or damage to baggage

The air carrier is liable for destruction, loss or damage to baggage up to 1 000 SDRs (approximate amount in local currency). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

Higher limits for baggage

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

Complaints on baggage

If the baggage is damaged, delayed, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days, and in the case of delay within 21 days, in both cases from the date on which the baggage was placed at the passenger's disposal.

Liability of contracting and actual carriers

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

Time limit for action

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

Basis for the information

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002) and national legislation of the Member States.'

Article 2

This Regulation shall enter into force on the day 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 the entry into force of the Montreal Convention for the Community, whichever is the later.

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

Done at Brussels, 13 May 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. PIQUÉ I CAMPS