



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.03.1997
SEC(97) 417 final

95/0359 (SYN)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

Common position adopted by the Council on 24.02.1997
with a view to the adoption of a
Council Regulation on air carrier liability in case of accidents

Subject: Common position adopted by the Council on 24.02.1997 with a view to the adoption of a Council Regulation on air carrier liability in case of accidents

(COM (95) 724 final - 95/0359 (SYN), amended by COM (96) 663 final - 95/0359 (SYN))

1. HISTORY OF THE FILE

- Date of transmission of the proposal to the Council: 15.02.1996
- Date of opinion of the Economic and Social Committee: 29.05.1996
- Date of opinion of the European Parliament in its first reading: 17.09.1996
- Date of transmission of the amended proposal: 11.12.1996
- Date of adoption of the Common position of the Council: 24.02.1997
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2. SUBJECT OF THE PROPOSAL OF THE COMMISSION

The purpose of the proposal of the Commission is:

- To improve the protection of the air transport users by removing the current outdated limits of liability under the Warsaw Convention so that a passenger or his/her next-of-kin are fully covered in case of death or injury. The rules of the proposed Regulation will apply to international and domestic carriage by Community carriers.
- To introduce a certain level of strict liability, which means that up to that amount the carrier cannot exclude or limit its liability even if it proves it has taken all necessary measures to prevent any accident.
- To impose the obligation that a carrier pays an advance payment to the passenger or next-of-kin.
- To add to the jurisdictions established by the Warsaw Convention, the possibility to bring a case before the court of the EC member State where the passenger has his/her domicile or permanent residence.

3. OUTCOME OF AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT AT ITS FIRST READING

3.1 Acceptance by the Commission and incorporation into the Common Position

The Common Position incorporates (totally, partially or subject to some redrafting) 15 amendments adopted by the European Parliament at its first reading and which were accepted by the Commission and included in its amended proposal.

These 15 amendments concern:

- the addition of two new recitals (1a and 2a (now recitals 5 and 6)) insisting on the need for the revision of the Warsaw Convention and the decisive role a Community action could play in such negotiations;
- the modifications of Recital 8 (now recital 7) and article 3.1(now article 3.1)a) in so far as they make clear that only monetary liability limits are concerned by this Regulation;
- the modification of Recital 10 (now recital 12) in the sense that it clarifies the need for advance payments;
- the modification of Recital 12 (now recital 13) concerning the requirement of information from third country carriers
- the modification of article 1 since it clarifies the scope of the Regulation;
- the modification of article 2.1)c), d) and f) (now article 2.1)c) and f)) as far as the removal of the lump sum, the new definition of persons entitled to compensation and the definition of the Warsaw Convention are concerned;
- the modification of recitals 9 (now recital 8) and article 3.2 in order to increase the level of strict liability from ECU 100,000 to the equivalent in ECU of 100,000 SDR (which is approximately ECU 120,000);
- the modification of article 4 (now article 5) since it introduces more flexibility for the advance payment;
- the modification of article 5.2 (now article 6.2) since it reinforces the right of information of air transport users;
- the addition of article 7a (now 4) which considers the possibility of recourse for carriers;
- the modification of article 8 (now article 7) and addition of article 9A (now article 7) in so far as it requests the presentation of an evaluation report.

3.2 Acceptance by the Commission but no incorporation into the Common position

Four amendments accepted by the Commission were not incorporated into the Common position :

- Former recital 12 and article 6 in so far as a commitment to apply the Regulation will be introduced in negotiations with third countries;
- Former recital 13 in so far as it reaffirms the necessity to revise the cargo and luggage liability systems;
- Former article 7 in so far as it clarifies the requirement to add a fifth jurisdiction to the jurisdictions already provided by the Warsaw Convention.

4. COMMON POSITION OF THE COUNCIL

4.1 The work carried out at the Council level led to a common position adopted on 24.02.1997

4.2 This maintained the main objectives of the Commission's proposal, which were the improvement of the position of air transport users by removing the outdated liability limits of the Warsaw Convention, by introducing a certain level of strict liability, by requiring air carriers to make an advance payment to persons entitled to compensation.

4.3 In relation to the proposal of the Commission, the Common position of the Council presents divergence with regard to:

4.3.1 deletion of former recital 13 and article 7 concerning the addition of a fifth jurisdiction;

4.3.2 deletion of former recital 15 and article 6.2 concerning the acceptance that a commitment to apply the Regulation will be introduced in negotiations with third countries;

4.3.3 deletion of former recital 16 concerning the necessity to address the issue of carriers liability for cargo and lost or damaged luggage;

4.3.4 addition of a new recital (now recital 15) calling for a review of the Regulation as soon as possible after the review of the Warsaw system currently undertaken at ICAO level;

4.3.5 deletion of former recital 17 and article 9 on comitology and merger of articles 8 and 9A (now article 7) requesting the Commission to present an evaluation report 2 years after the entry into force of the Regulation which may be accompanied by proposals for a revision of the Regulation;

4.3.6 addition in article 1 of paragraphs 2 and 3 together with the corresponding recitals (now recitals 1, 10 and 13) , to clarify the scope of the Regulation by recalling the insurance requirements for

Community carriers and the information requirements from third country carriers;

- 4.3.7 addition of article 2.1.(e) defining Special Drawing Rights;
- 4.3.8 addition in article 3.1 of point (b) concerning the obligation for Community carriers to be insured up to a certain level;
- 4.3.9 modification in paragraph 1 of article 4 (now article 5) of the ten days notice into 15 days; addition of a paragraph 2 in article 4 (now article 5) requiring a minimum level of advance payment in case of death; modification in paragraph 3 of article 4 (now article 5) of the principle of non returnable advance payment when there is contributory negligence by the person entitled to compensation or an error of identification of such a person; addition of the corresponding recital;
- 4.3.10 modification in paragraph 3 of article 5 (now article 6) of third country carriers' obligation to inform passengers about their liability regime with a form; it becomes a general obligation and is not anymore delivered only subject to passenger request;
- 4.3.11 deletion of paragraph 1 of the former article 6 concerning the notification by Member States to air transport users organisation of a list of third country carriers not subject to the Regulation and operating to, from and within the Community;
- 4.3.12 modification in article 10 (now article 8) of the period of entering into force of the regulation from six months to one year.

5. **COMMISSION'S POSITION** (The numbers of the subparagraphs below correspond to the subparagraphs in subparagraph 4.3 above)

- 5.1 Considering the important problems associated with the addition of such a fifth jurisdiction, the Commission can accept its deletion.
- 5.2 Since the issue concerning the content of international negotiations in the field of aviation is strictly outside the scope of this Regulation, the Commission can accept its removal.
- 5.3 The issue of luggage and cargo not being dealt with in the Articles of the Regulation, the Commission can accept the removal of the recital.
- 5.4 In order to be able to take account of changes taking place at international level, the Commission considers that the addition of such a recital is justified.
- 5.5 The Commission considers that the obligation to provide a report two years after the entry into force of the Regulation, will allow the Commission to fully evaluate its functioning while taking into account, when appropriate, the possible changes undertaken at international level. Therefore, the

Comitology procedure which was limited to adjustment of the monetary amounts only, is not necessary any longer.

- 5.6 The provisions on insurance for Community carriers and information requirement from third countries clarify the scope of the Regulation, therefore they can be accepted by the Commission.
- 5.7 Such a definition of Special Drawing Rights is deemed necessary in order to align the monetary units used in this Regulation with the ones used in the Warsaw system.
- 5.8 The reference to the level of insurance required from Community carriers clarifies the obligation set in article 7 of Council regulation 2407/92¹. The Commission can accept it.
- 5.9 The Commission can accept the modifications on article 4 (now article 5) . Indeed, the increase from 10 days to 15 days for the availability of the advance payment is necessary for technical reasons in order to allow the carriers and insurers to collect the elements necessary for making the payments; the minimum amount of advance payment in case of death of passenger is an improvement that will benefit consumers; the advance payment should be considered as a hardship payment in order to meet the immediate costs of victims or their next of kin, following an air accident, therefore, it is appropriate that the advance payment is returnable when a person has contributed to the accident or when there is an error in the identification of such a person.
- 5.10 Since it gives air transport users a better protection, the Commission can accept that the third country carriers are obliged to provide passengers, in all instances and not only subject to passengers request, with a form setting out their conditions.
- 5.11 The Commission can accept the deletion of paragraph 1 of the former article 6, since it will represent a too bureaucratic procedure with little added value for the consumers, who would benefit more from the new article 6.3..
- 5.12 Since air carriers negotiate their insurance contract on a yearly basis, it is justified that the period of entering into force of the Regulation is increased from six months to one year.

6. CONCLUSION

The amendments proposed by the European Parliament in its first reading as well as the modifications adopted by the Council are in line with the objectives of the original proposal of the Commission. Therefore, the Commission supports the Common Position of the Council.

¹ Council Regulation (EC) N°2407 of 23 July 1992 on licensing of air carriers (O.J. N° L 240 of 24.8.1992, p.1)