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**\*\*\*I**

## **REPORT**

on the proposal for a European Parliament and Council regulation amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 – C5-0294/2000– 2000/0145(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Marieke Sanders-ten Holte

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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## PROCEDURAL PAGE

By letter of 7 June 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(2) of the EC Treaty, the proposal for a European Parliament and Council regulation amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 - 2000/0145 (COD)).

At the sitting of 16 June 2000 the President of Parliament announced that she had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and to the Committee on the Environment, Public Health and Consumer Policy and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0294/2000).

The Committee on Regional Policy, Transport and Tourism appointed Marieke Sanders-ten Holte rapporteur at its meeting of 11 July 2000.

The committee considered the Commission proposal and draft report at its meetings of 22 November 2000, 6 February 2001, 19 March 2001 and 20 March 2001.

At the last meeting it adopted the draft legislative resolution by 54 votes to 0, unanimously.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Helmuth Markov, Emmanouil Mastorakis and Rijk van Dam, vice-chairmen; Marieke Sanders-ten Holte, rapporteur; and Pedro Aparicio Sánchez (for Giovanni Claudio Fava), Sir Robert Atkins, Emmanouil Bakopoulos, Theodoros J.J. Bouwman, Philip Charles Bradbourn, Felipe Camisón Asensio, Carmen Cerdeira Morterero, Luigi Cocilovo (for Rolf Berend), Gerard Collins, Thierry Cornillet (for Luigi Cesaro), Danielle Darras, Garrelt Duin, Alain Esclopé, Markus Ferber (for Jacqueline Foster), Jean-Claude Fruteau (for John Hume), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Mary Honeyball, Georg Jarzembowski, Pierre Jonckheer (for Reinhold Messner), Dieter-Lebrecht Koch, Brigitte Langenhagen (for Francesco Musotto), Giorgio Lisi, Sérgio Marques, Erik Meijer, Rosa Miguélez Ramos, James Nicholson (for Francis F.M. Decourrière), Juan Ojeda Sanz, Josu Ortuondo Larrea, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Giovanni Saverio Pittella (for Juan de Dios Izquierdo Collado), Samuli Pohjamo, James L.C. Provan (for Margie Sudre), Alonso José Puerta, Reinhard Rack, Carlos Ripoll i Martínez Bedoya, Isidoro Sánchez García, Gilles Savary, Dana Rosemary Scallon, Ingo Schmitt, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Helena Torres Marques (for Joaquim Vairinhos), Ari Vatanen, Mark Francis Watts and Jan Marinus Wiersma (for Demetrio Volcic).

The opinions of the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy are attached.

The report was tabled on 21 March 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### Proposal for a European Parliament and Council regulation amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 – C5-0294/2000 – 2000/0145(COD))

The proposal is amended as follows:

Text proposed by the Commission <sup>1</sup>

Amendments by Parliament

#### Amendment 1 Recital 1

In the framework of the common transport policy, it is *desirable* to ensure a proper level of compensation for passengers involved in air accidents.

In the framework of the common transport policy, it is *important* to ensure a proper level of compensation for passengers involved in air accidents.

#### *Justification:*

*A proper level of compensation for air passengers involved in air accidents is an elementary and important requirement for a modern and uniform air carrier liability regime.*

#### Amendment 2 Recital 2a (new)

***2a. For some third country carriers the Warsaw Convention will continue to exist alongside the Montreal Convention for an indefinite period.***

#### *Justification*

*Important to recognise that the new Convention will not immediately replace the old one. Passengers should also be aware of the difference in the two regimes which could coexist for quite some time to come.*

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<sup>1</sup> OJ C 337, 28.11.2000, p.68.

Amendment 3  
Recital 4

The Community has signed the Montreal Convention indicating its intention to become a party to the agreement.

The Community has signed the Montreal Convention indicating its intention to become a party to the agreement **by ratifying it.**

*Justification:*

*Based on an authorisation by the Council, the Commission has already signed the Montreal Convention, and the Parliament has been consulted on the ratification by the Communities. As the Community ratification does not count as a separate ratification, all Member States have to ratify the Montreal Convention separately. The EC is a signatory to the Convention as the provisions are a shared responsibility between the Communities and the Member States.*

Amendment 4  
Recital 9

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 rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.

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.

*Justification:*

*It is important that passengers are informed in clear terms about liability limits for loss of, damage to or destruction of baggage and for damage occasioned by delay so that they are able to recognise when additional insurance is necessary.*

Amendment 5  
ARTICLE 1, POINT 1

Title (Regulation (EC) No. 2027/97)

The title shall be replaced by the following:

The title shall be replaced by the following

1. "Regulation (EC) No. 2027/97 on air carrier liability"

1. "Regulation (EC) No. 2027/97 on air carrier liability ***in respect of the carriage of passengers and their baggage by air***".

*Justification:*

*The proposed amending regulation selects parts of the new Montreal Convention to apply in Community law but does not deal with all aspects of liability of air carriers eg. cargo.*

Amendment 6

ARTICLE 1, POINT 2

Article 1 (Regulation (EC) No 2027/97)

***1. This Regulation lays down the obligations of Community air carriers in relation to liability for damage sustained in case of death or bodily injury of a passenger where the accident, which caused the death or injury, took place on board the aircraft or in the course of any of the operations of embarking or***

2. This Regulation extends certain provisions of the Montreal Convention for the unification of Certain Rules for International Carriage by Air to cover all carriage of passengers and their baggage performed by Community air carriers for reward, including carriage between points within a single Member State. It applies equally to all gratuitous carriage by aircraft of persons and baggage performed by Community air carriers.

This Regulation ***implements the relevant provisions of the Montreal Convention in relation to carriage of passengers and baggage and lays down certain supplementary provisions. It also extends the application of these provisions to carriage within a single Member State.***

***Delete***

*Justification*

*Simplification of the text.*

Amendment 7

ARTICLE 1, POINT 3

Article 2, paragraph i, point (c) (Regulation (EC) No 2027/97)

Point (c) shall be replaced by the following:  
“(c) ‘person entitled to compensation’ shall mean a passenger or any *natural* person entitled to claim in respect of that passenger, in accordance with applicable law;”

Point (c) shall be replaced by the following:  
“(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;”

#### *Justification*

*There is no need to retain this definition at all since the only place it occurs in the text is in the context of advance payments which clearly indicates that only natural persons are entitled to compensation. For all other cases the Montreal Convention does not attempt to restrict those entitled to compensation so neither should the EC Regulation.*

#### Amendment 8 ARTICLE 1, POINT 3A (new)

Article 2, paragraph 1, point c (a) new (Regulation (EC) No. 2027/97)

***ca. ‘baggage’, unless otherwise specified, shall mean both checked and unchecked baggage in accordance with the meaning provided for in article 17(4) of the Montreal Convention;***

#### *Justification:*

*Liability for damage to baggage is introduced into the EC Regulation for the first time but the term has not been defined. To avoid any misunderstanding and to remain in conformity with the provisions of Montreal, it should cover both checked and unchecked baggage.*

#### Amendment 9 ARTICLE 1, POINT 4 Article 3, paragraphs 1 and 2 (Regulation (EC) No 2027/97)

1. The liability of a Community air carrier ***for damage sustained in case of death or bodily injury of a passenger*** shall be governed by ***the provisions set out in Articles 17, 20 and 21*** of the Montreal Convention.

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92

1. The liability of a Community air carrier ***in respect of passengers and their baggage*** shall be governed by ***all relevant*** provisions of the Montreal Convention.

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92



shall be understood as requiring that a Community carrier shall be insured up to a level that is adequate to ensure that all **natural** persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.

**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.

### *Justification*

*With this formulation, there is no risk of omission, overlap or incompatibility with the provisions of the Montreal Convention. Paragraph 3(2) of the Commission proposal though is still necessary and can remain. The amendment to paragraph 2 is necessary as the insurance obligation of Regulation 2407/92 covers more than just passenger liability. See also previous amendment.*

Amendment 10  
ARTICLE 1, POINT 5  
Article 3a (Regulation (EC) No 2027/97)

**1. The liability of a Community air carrier for damage caused by delay and in the case of destruction, loss, damage or delay in the carriage of baggage shall be governed by the provisions set out in Articles 19, 20, 22 (1), (2), (5) and (6) and 31 of the Montreal Convention.**

**Delete**

2. The supplementary sum which, in accordance with Article 22 (2) of the Montreal Convention, may be demanded by a Community 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.

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.

**3. Within fourteen days of receiving a complaint made in relation to the provisions of this Article, a Community air carrier shall notify the passenger**

**Delete**

***concerned, that the complaint has been received and is being assessed.***

*Justification*

*Paragraph 1 is covered comprehensively by amendment to Article 3. Paragraph 2 is a provision of the Montreal Convention. It is up to the airlines to find practical ways of implementing it. Paragraph 3 should be deleted here, not because it is wrong to require a prompt response to complaints but because this should be dealt with in a wider context implementing the air passengers' charter and covering all areas of passenger complaint.*

Amendment 11  
ARTICLE 1, POINT 6  
Article 4 (Regulation (EC) No 2027/97)

***Article 4 shall be replaced by the following:***                      ***Article 4 shall be deleted.***

***“Article 4***

***Nothing in this Regulation shall:***

- imply that a Community air carrier is the sole party liable to pay damages.***
- prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.”***

*Justification*

*The safeguards of recourse to third-party liability is already enshrined in Article 37 of Montreal (covered by AM which refers to all relevant provisions) and in Article 5 of Regulation (EC) No 2027 with respect to advance payments.*

Amendment 12  
ARTICLE 1, POINT 7 A (new)  
Article 5, paragraph 3 (Regulation (EC) No 2027/97)

***Article 5(3) shall be replaced by the***

*following:*

*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.*

*Justification*

*Article 5(3) of Regulation 2027/97 refers back to Article 3(3) for exoneration in the event of passenger negligence. However, the Commission is proposing deletion of original Article 3(3) so this text should refer directly to the provisions of the Montreal Convention, without needing to repeat the text of those provisions here (passenger negligence).*

Amendment 13

ARTICLE 1, POINT 8

Article 6, paragraph 2 (Regulation (EC) No 2027/97)

2. Air carriers shall ensure that **adequate information** on the provisions contained in Articles 3, 3a and 5 is, **on request**, made available to passengers at points of sale.

**2. All air carriers selling air transport services in the Community shall ensure that a summary of the main provisions governing liability of passengers and their baggage, including notification of deadlines for filing an action for compensation and the possibility of supplementary insurance 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 avail themselves of the notice contained in the annex to this Regulation.**

*Justification*

*The information should be available in leaflet form, and on the Internet, without the passenger having to submit a request which implies prior knowledge of the document. All carriers with a licence to sell tickets in EU countries should also be subject to this requirement.*

Amendment 14  
ARTICLE 1, POINT 8  
Article 6, paragraph 3 (Regulation (EC) No 2027/97)

3. In addition to the information requirements set out in *the Warsaw and Montreal Conventions*, carriers shall give **all consumers in the Community who purchase air transport services a written notice explaining in simple and easily understood terms:**

3. In addition to the information requirements set out in *Article 6(2)* all air carriers shall provide each consumer in the Community who purchases air transport services with a written indication of :

*Justification*

*This does not need to be a notice in the sense of that required in 6(2), but rather a simple note of the relevant amounts e.g. on the booking confirmation or ticket envelope.*

Amendment 15  
ARTICLE 1, POINT 8  
Article 6, paragraph 4 (Regulation (EC) No 2027/97)

4. In the case of all carriage performed by Community carriers, the limits indicated in *the written notice* shall be those established by this Regulation.

4. In the case of all carriage performed by Community *air* carriers, the limits indicated in **accordance with the information requirement of Articles 6(2) and 6(3)** 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 2 and 3 of this Article may only apply in relation to carriage to, from or within the Community.**

*Justification*

*The Montreal limits on liability are minimum values which carriers are free to increase at their own discretion and may wish to do so e.g. in respect of baggage.*

Amendment 16  
ARTICLE 1, POINT 8

Article 6, paragraph 5 (Regulation (EC) No. 2027/97)

5. *Non-compliance with the provisions of paragraph 3 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Regulation.* **Delete**

*Justification:*

*See amendment 14.*

Amendment 17  
ARTICLE 1, POINT 9  
Article 7 (Regulation (EC) No 2027/97)

No later than **six** years after the **entry into force of this Regulation**, the Commission shall draw up a report on the application of the 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.

No later than **three** years after the **date on which this Regulation begins to apply**, the Commission shall draw up a report on the application of the 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 recommendations of the ICAO Depositary**.

*Justification*

*It seems appropriate to have an update on the application three years after entry into force of the Regulation, as is required in the current Regulation. Earlier than this would be too premature to assess the impact of the Regulation and any issues needing to be changed. However, it is also necessary to take account of the fact that the Regulation will not apply effectively until Montreal Convention enters into force. If we really do aspire to uniform international rules, it makes more sense to continually align the EC regulation with ICAO updates.*

Amendment 18  
ANNEX (new)

## Annex

*Information notice in accordance with Article 6, paragraph 2:*

### "Air carrier liability for passengers and their baggage"

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

*Without prejudice to these airline obligations, all passengers are advised to ensure that they have adequate private insurance cover when travelling.*

### Passenger compensation

*There are no financial limits to the liability for passenger injury or death. For damages up to 100 000 Special Drawing Rights (approximate amount in local currency) the air carrier cannot contest claims for compensation. Above that amount the air carrier can only contest a claim if it can prove that the damage was not its fault.*

### Advance payments

*If a passenger is injured, the carrier must make an advance payment within 15 days to cover immediate economic needs. In the event of death this advance payment shall not be less than 16 000 SDRs (approximate amount in local currency).*

### Delays

*In case of delay, the carrier is liable for damage unless it took all reasonable measures to avoid it or it was impossible to take such measures. The liability for delay is limited to 4150 SDRs (approximate amount in local currency).*

### Baggage

*The air carrier is liable for destruction, loss, damage or delay to baggage up to*

*1000 SDRs (approximate amount in local currency) . The air carrier cannot contest claims for compensation for checked-in baggage. For hand baggage the air carrier is only liable for damage resulting from its fault.*

*A passenger may agree a higher liability limit with the air carrier by making a special declaration and on payment of an additional fee.*

### **Complaints**

*Passengers are advised to write to the air carrier and inform of any damage as soon as possible. If checked baggage is damaged the passenger must write to the carrier within seven days from the date the baggage was received. In the event of delayed or lost baggage the passenger must write to the carrier within twenty-one days.*

*If the carrier performing the flight is not the same as the carrier whose name or code is on the ticket, the passenger has the right to address a claim or a complaint to either.*

### **Time limit for action**

*A passenger or next-of-kin who is not satisfied with the compensation offered by the carrier must go to court within two years from the scheduled arrival time.*

*The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation 2027/97 (as amended) and national legislation of the Member States. The information is a summary and cannot be used to interpret the legislation now referred to.”*

*Justification*

*This is the suggested information notice to be published by all Community airlines at points of sale in accordance with the provision of Article 6(2) above. It would be helpful if each carrier included the local currency equivalent, in addition to the SDR.*



## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the proposal for a European Parliament and Council regulation amending Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 – C5-0294/2000 – 2000/0145(COD))**

#### **(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 340)<sup>1</sup>,
  - having regard to Article 251(2) and Article 80(2) of the EC Treaty pursuant to which the Commission submitted the proposal to Parliament (C5-0294/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy (A5-0093/2001),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 337, 28.11.2000, p.68.

## EXPLANATORY STATEMENT

### Introduction

In the European Union, liability for damages incurred during air transport is currently governed by a combination of the Warsaw Convention and an EC Regulation. The Commission proposal in question contains provisions for the revision of the current regulation (2027/1997) in order to take account of the new Montreal Convention.

Your Rapporteur finds it crucial to ensure a sufficient level of compensation for passengers involved in air accidents. The Montreal Convention and the EC Regulation provide for a regime of unlimited liability in the case of death or injury of passengers.

Under the Commission proposal, the provisions of the Montreal Convention relating to loss of, damage to and destruction of baggage and damage occasioned by delay, would also be incorporated into the Community regime.

It is important that uniform and clear liability rules apply on all travel on Community carriers, and these rules should ideally be followed by all air carriers. Your Rapporteur aims to make the rules on air carrier liability clearer and more transparent to the European consumer. The consumers should be fully informed of their rights at the time of purchase of their tickets.

### Air carrier liability under Warsaw and Montreal Conventions

The Montreal Convention, which was signed in May 1999, is the new global agreement governing liability for damage suffered by airline passengers, baggage and cargo. The Montreal Convention will gradually overtake the old liability system established by the Warsaw Convention of 1929, updated by various instruments such as the Hague Protocol of 1955. A reference to the limited liability regime of the Warsaw Convention can still be found on the back of all airline tickets sold around the world.

The Warsaw Convention of 1929 covers all aspects of liability in air transport, including liability for damage to cargo, baggage and passengers. It only applies to international transport and thus does not cover domestic flights. The maximum sums payable in compensation under the Warsaw Convention are very low. For example, in the case of death, the liability limit could be around € 20 000.

The Montreal Convention establishes a modernised and uniform legal framework to govern the liability of airlines for damage to passengers, baggage and cargo incurred during international journeys. It represents a considerable improvement over the current international regime in this area, based on the Warsaw Convention, and will completely replace that regime over time.

The Warsaw system will continue to exist alongside Montreal for an indefinite period - at least until all parties ratify Montreal. The Montreal Convention will come into force after 30 countries have ratified it. At the moment, there are some 8 ratifications.

At present, European air passengers are reasonably well protected inside the EU and when they travel with European airlines, but the moment they go beyond the EU Member States or

use foreign carriers, they can find themselves subject to outdated rules, which severely limit the amount of compensation they receive in case of accident or injury. Outside the EU, the Warsaw Convention is still widely observed, although a number of major foreign air carriers do observe an unlimited liability regime for passengers, similar to that required by the EU of its own airlines.

Based on an authorisation by the Council, the Commission has already signed the Montreal Convention in December 1999, and the Parliament was consulted on the ratification by the Communities, which was subject to a separate report adopted on 16 January 2001<sup>1</sup>. The EC is a signatory to the Convention as the provisions are a shared responsibility between the Communities and the Member States. The ratification by the Community does not count as a separate ratification, as all Member States have to ratify the Montreal Convention individually.

### **EC Regulation 2027/1997**

In the 1990s, the inadequacy of the Warsaw Convention and its subsequent revisions led to negotiations towards a new replacement Convention, which would completely modernise the liability system, including liability for cargo and baggage, as well as for passengers. The US authorities decided not to pursue the regulatory approach but oblige their carriers through contractual law to maintain the highest standards of liability. The European Union acted in 1997 to remedy this problem by imposing unlimited liability on EU airlines in case of death and injury to passengers in the framework of regulation 2027/1997. The regulation was to be reviewed as soon as possible after the revision of the Warsaw Convention.

Regulation 2027/1997 defines and harmonises the obligations of Community air carriers as regards the nature and limits of liability in the event of accidents to passengers. The Regulation applies to damage sustained in the event of death, wounding or any other bodily injury by a passenger if the accident in question took place on board an aircraft or during any of the embarking or disembarking operations.

The liability of a Community air carrier for damage sustained by a passenger in the event of an accident cannot be subject to any financial limit defined by law, convention or contract. The Community air carrier is obliged to take out insurance. For any damages up to the sum of the equivalent in euros of 100 000 SDR (special drawing rights established by the International Monetary Fund), the carrier cannot exclude or limit his liability by proving that all the necessary measures to avoid the damage had been taken or that it was impossible to take such measures. The carrier can only be discharged of his liability by proving that the damage was caused by the negligence of the injured or deceased passenger.

### **Commission proposal**

The Montreal Convention permits the parties to require the air carriers to provide advance

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<sup>1</sup> Proposal for a Council Decision on the approval of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) COM(2000)446 - Hatzidakis report A5-001/2001.

payments to meet the immediate economic needs of the accident victims and their families, as is already required under Regulation 2027/1997.

Liability for baggage and for damage caused by delay are included in the Montreal Convention, but were not covered in Regulation 2027/1997. Under the proposed amendment, the provisions of the Montreal Convention relating to loss of, damage to and destruction of baggage and damage occasioned by delay, would be incorporated into the Community regime. Maximum liability in case of loss or damage of baggage would be set at approx. € 1,490, up from less than € 20 per kilogram under the Warsaw Convention. Maximum liability in case of damage caused by delay to passengers would be set at approx. € 6,200. These are the only substantial additions to the existing Community regime.

The Commission has chosen to revise the current Regulation by making references to the Articles of the Montreal Convention. This does not make the Regulation very readable, user-friendly nor transparent. It is possible that the Commission wanted to avoid problems with different interpretations due to translations, but it would nevertheless be in the interest of the EU citizens to have all the relevant provisions in one document. Your Rapporteur thinks that the Montreal Convention should have been annexed to this proposal as it was annexed to the Commission proposal on the approval by the EC of the Montreal Convention.

### **Sufficient consumer information on liability to air passengers**

Your Rapporteur considers it important to make sure that adequate information on liability will be made available for passengers before tickets are purchased. It is therefore important that in addition to the information requirements set out in the Warsaw and Montreal Conventions, consumers in the Community who purchase air transport services will be provided with a simple and clear written notice explaining their rights. She proposes to annex an "Information Notice" for use by all EC carriers which recalls the main relevant provisions of the Montreal Convention. It is to be recommended that third country carriers must provide the consumers with the same information as the Community carriers. Thus, the Commission proposal concerning Article 6 on information requirements can be supported, but with some modifications in order to avoid any further legal challenges and avoid inundating the consumers with confusing and contradictory information.

As liability limits for baggage and for damage caused by delay are still relatively low, it is important that the air passengers are able to recognise when additional insurance is needed. It would, however, be possible for the airlines to raise these liability limits by voluntary action.

As a general rule though, it is advisable for all passengers to ensure adequate insurance for themselves and their baggage when travelling (by any means of transport), rather than rely on a transport operator to provide full compensation.

## **Entry into force of the amended Regulation**

As for the entry into force of the revised regulation, the Commission would certainly privilege the earliest date compatible with the Community legislative process and the necessary adaptation of the industry. It is however to be recognised that such an entry into force before that of the Montreal Convention could create some confusion as to the obligations of Community carriers. The Commission suggests therefore that efforts are made to ensure simultaneity as far as possible.

To maximise clarity as to the liability regime the air carrier should follow, your Rapporteur strongly recommends that the Regulation becomes applicable at the same time as the Montreal Convention (and following ratification by all Member States), or, if not possible, slightly after, but in no case before. After all, the Regulation is bringing EC law in line with the provisions of the Montreal Convention, and not *vice versa*. Therefore your Rapporteur is in favour of the Commission proposal as regards the entry into force of the Regulation.

## **Legal uncertainties - why was the European Parliament not informed?**

There seem to be some legal uncertainties regarding Regulation 2027/97, which need to be solved while amending the Regulation. According to Article 7 of the Regulation 2027/1997, the Commission should have drawn up a report on the application of the Regulation no later than two years after the entry into force (i.e. by October 2000). Your Rapporteur is disappointed that the report was never submitted. This is particularly surprising in the light of the legal issues raised due to the Regulation and the way the Regulation has been interpreted in the United Kingdom.

In 1999, the UK High Court found that the EC Regulation was in conflict with the Warsaw Convention. The High Court considered that this situation fell within the scope of Article 307 EC (ex 234 EC). This article, that protects the interests of third countries, stipulates that member States must seek measures to remedy such conflicts but does not say that incompatible EC legislation is therefore invalid. It follows from the Court's case law that that validity of EC law is not affected by this situation, and that international commitments have to be adapted to the EC law.

The UK High Court equally accepted that such conflict did not establish the invalidity of the Regulation. National courts do not have jurisdiction to declare acts of Community institutions invalid. Only in case of serious doubt on the validity of a Community act, the national court may suspend its execution, but needs to refer the case to the Court of Justice for a preliminary ruling. The UK Judge did not refer the case for a preliminary ruling to the Court of Justice, as he found the regulation perfectly valid. The High Court's *obiter dictum* that the regulation was in suspense (though not in the technical legal sense of the word, as this would be incompatible with EC law) might result in a confused legal environment in the UK and potentially in other Member States, though formally the judgement does not apply in the other Member States.

There remains a fundamental legal question yet unresolved with respect to the applicable liability regime on any given flight. Does the Community Regulation indeed provide a “uniform set of rules governing liability for passengers and their baggage for all journeys provided by European Community carriers ...” as stated by the Commission in its explanatory memorandum or does Article 1 of the Montreal (and Warsaw) Convention take precedence ?

Under both Conventions, international law on liability is determined by the points of departure and destination— ie. where a travel document is purchased and not simply according to flight or airline.

This interpretation is in conflict with that outlined by the Commission. It needs to be addressed and clarified with ICAO since it is crucial to the understanding and applicability of the Regulation.

## **Conclusions**

The consumers should be better informed of their rights when travelling by air. The issue of compensation in case of accident or lost/damaged luggage is but one plank of better information provision in the context of the Air Passengers' Charter. In the case of an accident, passengers travelling with a Community airline receive full compensation (unlimited liability) if the airline was to blame, otherwise it would be limited to 100,000 SDRs. Up-front payments are also available if needed to help with immediate economic hardship. The Montreal Convention and the revised Regulation also introduce new provisions regarding loss of baggage (up to approx. € 1,490, compared with less than € 20 per kilogram under the Warsaw Convention) and damage caused by delays (up to approx. € 6,200) in case of damage caused by delay to passengers.

When the revised EC Regulation comes into force, European air passengers will have the best available protection, and will be better informed of their rights when they buy their transport documents in the Community. However, when flying with foreign airlines, they still may find themselves subject to limited liability rules under the Warsaw Convention, which will continue to be applied by the countries who have not ratified the Montreal Convention. Fortunately, a number of major foreign airlines do follow similar liability regimes as the EU airlines.

During the transitional period, when the two Conventions are in force, it is extremely important that the European consumers are well informed about their rights as regards the air carrier liability when they book a flight. Passengers should be informed of their rights in a clear and unambiguous way.

Your Rapporteur is convinced that the Member States of the European Union will do their utmost to ratify the Montreal Convention in the year 2001 and thus make an important step towards the ultimate disappearance of the Warsaw Convention.

6 February 2000

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council Regulation amending Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (COM(2000) 340 – C5-0294/2000 – 2000/0145(COD))

Draftsman: Philip Charles Bradbourn

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Philip Charles Bradbourn draftsman at its meeting of 12 July 2000.

It considered the draft opinion at its meetings of 17 October, 20 November 2000, 8 January, 15 January, 25 January and 6 February 2001.

At the last meeting it adopted the amendments below by six votes to five.

The following were present for the vote: Ana Palacio Vallelersundi chairman; Ward Beysen, vice-chairman; Philip Charles Bradbourn, draftsman; Luis Berenguer Fuster (for Carlos Candal), Raina A. Mercedes Echerer, Janelly Fourtou, Evelyne Gebhardt, Klaus-Heiner Lehne, Manuel Medina Ortega, Gary Titley (for Arlene McCarthy), Diana Wallis.

## SHORT JUSTIFICATION

### Background

#### *The Warsaw Convention*

1. The *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, signed at Warsaw on 12 October 1929 (the Warsaw Convention), was the first step towards uniform international rules on air carriers' liability for injury or death of their passengers and for loss or damage to baggage and cargo. It was followed by a number of Conventions and Protocols, constituting the Warsaw System.

#### *Subsequent Community legislation*

2. In the 1990s it was felt that the international Warsaw System did not ensure adequate levels of compensation so the Community adopted Council Regulation (EEC) N° 2407/92 on licensing of air carriers, which provided that: "*A carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage cargo, mail and third parties*", and Regulation (EC) N° 2027/97 on air carrier liability in the event of accidents. The latter regulation purported to establish a system of unlimited liability (under the Warsaw Convention there is only limited liability unless the limits are specifically waived by a carrier) and in addition, introduced a requirement for advance payments to be made to accident victims and their families to cover their immediate economic needs. Furthermore for claims of up to SDR 100,000 the regulation debarred Community carriers from relying on the defence that they had taken all possible measures to avoid the accident, although they could rely on contributory negligence under the applicable law. Air carriers from outside the Community were not obliged to comply with this regime but were purportedly obliged to inform their European customers of this fact at the time of purchase of the ticket.
3. By judgment of 21 April 1999 in R v. Secretary of State for the Environment, Transport and the Regions, ex parte International Air Transport Association, the Queen's Bench Division of the High Court of Justice of England and Wales found that Regulation No 2027/97 was in conflict with the Warsaw Convention. Since the Convention antedated the Member States' accession to the Community, Article 307 of the EC Treaty applied:

*"The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.*

*To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall where appropriate, adopt a common attitude.*

4. Mr Justice Jowitt therefore held that, although Regulation No 2027/97 was in conflict with the Warsaw Convention, the "suspensory effect" of the first paragraph of Article



307 meant that the Community and the Member States were not in breach of their obligations under public international law. Consequently, the regulation was not invalid but held in suspense until the Member States concerned had taken all appropriate steps within the meaning of the second paragraph of Article 307 to eliminate the incompatibilities. It is observed that no appeal has been entered against this judgment. It is further observed that Mr Justice Jowitt did not "declare that the regulation was in suspense". He made a finding of fact and law that it was in suspense in the process of reaching his conclusion that the regulation was valid. Had he been unable to make that finding, he would have been unable to find that the regulation was valid. Consequently, that finding must be regarded as being part of the ratio decidendi.

5. However, it may be considered that national measures adopted in order to comply with the regulation (such as the UK's Air Carrier Liability Order No 1751 of 1998) constitute violations of treaty law, customary international law and general principles of international law, such as *pacta sunt servanda*, particularly where they impose fines for non-compliance. It can be cogently argued that such measures undermine the uniform international regime of the Warsaw Convention, introduce serious practical difficulties and confusion about the international liability regime and could affect the economic viability of carriers of States party to the Warsaw Convention through increases in insurance costs and the potential loss of customers. There may also be a threat to the interlining system. Certain States party to the Convention could institute proceedings on these grounds for declaratory and/or monetary relief in the International Court of Justice against Member States such as the UK which have adopted national measures of this sort.

### **The proposal for a regulation**

6. The proposal for a regulation under consideration seeks to amend Regulation No 2027/97 "so as to ensure compliance with" the Montreal Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999. The proposed amended regulation aims to lay down liability limits and legal defences harmonised on Montreal standards for all transport carried out by European carriers, regardless of the route on which the accident occurred. This would, it is claimed, ensure a high degree of uniformity within the Community.
7. Under this proposal, the provisions of the Montreal Convention relating to loss of, damage to and destruction of baggage and damage occasioned by delay, would also be incorporated into the Community regime, although Regulation No 2027/97 does not address these matters, leaving it to national law to implement the international treaty rules.
8. For baggage, Community carriers' liability would be subject to a universal limit of SDR 1000 (approximately € 1440). However, given that the liability limit of SDR 1000 established in the Montreal Convention is relatively low, the proposal also requires EC air carriers to ensure that their schemes for accepting baggage with a value in excess of the limit are fair and transparent. As far as damage occasioned by delay is concerned, the proposal would extend the application of the Montreal Convention liability limit of SDR 4150 (or approximately € 6000) per passenger to cover all carriage by Community air carriers. As under the Montreal Convention, EC carriers will not be liable for such

damage if they can prove that they did all they could to avoid the damage or that it was impossible to take any action.

9. The proposal for a regulation does not purport, however, to take "appropriate steps" under the second paragraph of Article 307 of the EC Treaty to eliminate the incompatibilities with the Warsaw Convention and related instruments, which will not be automatically denounced when the Montreal Convention enters into force. This is remarkable given that the latter Convention will not enter into force until 30 countries have ratified it and that, to date, only 7 countries have done so. It may well be two or three or more years before the Montreal Convention enters into force and, even then, the Warsaw and the Montreal regimes will continue to exist side by side. The problems raised by Regulation No 2027/97 will therefore remain in being even if the proposal for a regulation is adopted. This is because Article 2 of the proposal provides (ungrammatically) that the new regulation is to "*apply from the date of its entry into force or from the date of entry into force of the Montreal Convention, whichever is the latest*". Furthermore, in so far as the amending regulation purports to impose obligations on non-Community carriers, it may also create problems under international law. The reason for this is that some provisions of the proposal for an amended regulation deal with matters where the field is arguably occupied by the Montreal Convention and hence are likely to be unenforceable. For instance, the proposed new Article 6(3) of Regulation No 2027/97 is undesirable in that it purports to introduce yet more unproductive notice requirements, and unlawful in that it purports to impose them on both Community and non-Community carriers.
10. Accordingly, despite the provisions of Article 2, the Commission seems to be acting with unseemly haste, indeed presumptuously, in that it has only recently submitted a proposal for a Council Decision to Parliament relating to ratification of the Convention<sup>1</sup>. Moreover, it would seem disingenuous of the Commission, to say the least, not to have made any reference in the explanatory memorandum to the major problems with Regulation No 2027/97, which the amending regulation will not solve, even though the proposal is dated 6 June 2000, i.e. after the date of Mr Justice Jowitt's judgment. In the draftsman's view, the Commission is premature in bringing this proposal forward, hence the amendment proposed to Article 2.
11. Moreover, if Regulation No 2027/97 does amend and override the Warsaw instruments, by definition it negates the IATA Agreements of 1995/1996, which are linked to Warsaw and by which Community and other carriers voluntarily waive the liability limits as permitted by the Convention. Should European airlines, for good order's sake, now proceed to withdraw from the Agreements and in later litigation the Jowitt decision is upheld, airline insurers will be able to insist on reversion to the Warsaw regime limits. Without the IATA Agreements, this leaves open the very real and stark possibility that passengers on Community carriers will be left with the Warsaw/Hague limits of approx € 19,143 - 21,279, absent the ability to prove "wilful misconduct" on the carrier's part.

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<sup>1</sup> Proposal for a Council Decision on the approval by the European Communities of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (COM(2000) 446 final).

## Conclusion

12. In conclusion, your draftsman considers that the proposal is at best premature and arguably even unnecessary. He is alarmed that the Commission has not done anything to tackle the serious problems with Regulation No 2027/97, thus leaving airlines and consumers in a state of uncertainty and potentially exposing Member States to damages claims, arguably in breach of its duty to cooperate in good faith. What is more, the Commission should have provided Parliament with explanations and assurances (not to mention the report referred to in Article 6(3)). Your draftsman finds the Commission's attitude cavalier and contemptuous of Parliament. He deplures it in the strongest possible terms.
13. Nonetheless, the following amendments are proposed to the draft regulation.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

(Amendment 1)  
Recital 5a (New)

***Nevertheless, the rules on liability in the event of accidents foreseen 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 ("the Warsaw Convention") will nevertheless continue in force even when the Montreal Convention has entered into force.***

*Justification:*

*Self-explanatory.*

(Amendment 2)

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<sup>1</sup> OJ C 337, 28.11.2000, p. 68

Article 1(8a)

The following new Article shall be added:

**Article 6a**

***Nothing in this Regulation shall be construed as imposing obligations on non-Community carriers.***

*Justification:*

*Self-explanatory*

(Amendment 3)  
Article 1(9)

Article 7 shall be replaced by the following

*"Article 7*  
No later than **six** years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the 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."

Article 7 shall be replaced by the following

*"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. 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."

*Justification:*

*In view of Article 2 of the proposal, the regulation cannot come into force until the Montreal Convention enters into force. This may not occur for many years in view of the fact that 30 ratifications are needed in order for the Convention to enter into force. A six-year review period is therefore too long.*

27 February 2001

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY**

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council regulation amending Regulation (EC) N°2027/97 on air carrier liability in the event of accidents (COM(2000) 340 – C5-C5-0294/2000 – 2000/0145(COD))

Draftsman: Phillip Whitehead

### **PROCEDURE**

The Committee on the Environment, Public Health and Consumer Policy appointed Phillip Whitehead draftsman at its meeting of 29 August 2000.

It considered the draft opinion at its meetings of 5 December 2000, 8 January and 27 February 2001.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Guido Sacconi, acting chairman; Alexander de Roo, vice-chairman; Phillip Whitehead, draftsman; Per-Arne Arvidsson, Emmanouil Bakopoulos (for Mihail Papayannakis), Jean-Louis Bernié (for Jean Saint-Josse), David Robert Bowe, John Bowis, Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Jillian Evans (for Hiltrud Breyer), Marialiese Flemming, Karl-Heinz Florenz, Anneli Hulthén, Christa Klaß, Hans Kronberger, Torben Lund, Minerva Melpomeni Malliori, Patricia McKenna, Riitta Myller, Giuseppe Nisticò, Karl Erik Olsson, Dagmar Roth-Behrendt, Karin Scheele, Inger Schörling, Renate Sommer (for Horst Schnellhardt), Antonios Trakatellis and Kathleen Van Brempt (for Catherine Stihler).

## SHORT JUSTIFICATION

### Background to Amending EC Regulation 2027/97 and the Montreal Convention

This proposal to amend EC Regulation 2027/97 by aligning it with the Montreal Convention marks the next step in securing and consolidating more rights for the consumer in the field of air transport and, in particular, the liability of EC air carriers. This process began on an international scale by the Warsaw Convention of 1929 which has remained in force for over seventy years, while air travel has been transformed from an expensive option for the few to a global necessity for the many. It is now to be updated by the Montreal Convention, which was agreed by 30 countries in May 1999. The Montreal Convention provides a modern legal framework on airline liability in the event of death or injury of passengers and damage caused to baggage and cargo during flights. But the EU had already set the standards here for the rest of the world to follow with the adoption of EC Regulation 2027/97 which came into force in October 1998. This pre-empted many of the provisions agreed upon in the Montreal Convention and obliged EC air carriers to abandon the low and out-dated liability limits set by the Warsaw Convention on death and injury. For instance, EC Regulation 2027/97:

- establishes the principle of unlimited liability for death and injury;
- requires air carriers to give advance payments to accident victims and their families to meet their immediate economic needs;
- stipulates an exclusion or limitation of liability on the part of air carriers for claims up to SDR 100,000 (or approximately € 144,000) if the damage was caused by the negligence of a passenger;
- obliges air carriers from outside the EU that do not choose to follow the Regulation to inform their European passengers that they are not covered by this Regulation when purchasing a ticket.

Therefore in the words of the Commission's Explanatory Memorandum to COM (2000) 340 final, 'an adoption of the Montreal Convention provisions inside the Community will not have any adverse effects for European Standards.' Indeed by ratifying the Convention and aligning it to the provisions of EC Regulation 2027/97, European consumers have much to gain. This is because the Montreal Convention also provides for increased provisions on liability limits for baggage and damage by delay.

- In the case of destruction, loss, damage or delay of baggage a uniform system of liability for EC air carriers would be fixed at SDR 1,000 (approximately € 1440) and would not apply if passengers made a specific declaration at the time of check-in indicating a special interest in delivery at destination. An additional sum may be requested by the airline to cover such a request with the onus being on air carriers to ensure that their schemes for accepting baggage with a value in excess of the limit are fair and transparent.
- A liability limit of SDR 4150 (or approximately € 6000) per passenger would be set for all EC air carriers for any damage caused by delay. Though EC air carriers would not be liable for damage if they can prove that they did all they could to avoid such damage or that it was impossible to take any action.

The amending Regulation also proposes to:

- update the existing text to include references to the Montreal Convention;
- bring the wording on provisions for advance compensatory payments in line with that of the Montreal Convention and update the amount payable on the death of a passenger to take account of inflation since the adoption of EC Regulation 2027/97;

- improve and simplify information to be given to passengers to ensure that all passengers are properly informed of key information on liability limits covered by this Regulation where they are relevant.

### **Priorities for Consumer Protection**

The amendment to EC Regulation 2027/97 and the Montreal Convention itself provide EU air passengers with a guaranteed level of consumer protection standards throughout the EU. The benefits of this are obvious. But the Commission's proposed amending Regulation does need to be strengthened in terms of transparency of information and ensuring that consumers are well informed of their rights in this area. Amendments proposed by your draftsman are submitted with this aim in mind and are clearly outlined in the justifications to each amendment.

### **Further comments**

Finally a note of concern needs to be expressed regarding the drafting method used by the Commission in presenting this amending Regulation. The Commission has chosen, in COM (2000) 340, to align Regulation 2027/97 with the Montreal Convention by simply cross-referencing to the relevant Articles. Consequently, the key provisions of the amended Regulation cannot be referred to directly in the text, nor is a copy of the Montreal Convention attached to it. This causes unnecessary difficulties when reading the proposal. It certainly does not adhere to the Commission's objective to make legislation more accessible and understandable to EU citizens. Your draftsman suggests that the Commission should insert the text of the relevant provisions of the Montreal Convention into that of the amended Regulation, if they are to be rescued from an undeserved obscurity.

## **AMENDMENTS**

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
(Amendment 1)	
Recital 1	
(1) In the framework of the common transport policy, it is <i>desirable</i> to ensure a proper level of compensation for passengers involved in air accidents.	(1) In the framework of the common transport policy, it is <i>essential</i> to ensure a proper level of compensation for passengers involved in air accidents.

*Justification:*

*Following the spirit of Article 153 of the Treaty, it is essential that consumer protection*

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<sup>1</sup> OJ C 337, 28.11.00, p. 68.

*measures be integrated into all relevant aspects of EU policy.*

(Amendment 2)  
Recital 9

(9) 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 rules for both passengers and airlines **and enable** passengers **to recognise when** additional insurance is necessary.

(9) 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 rules for both passengers and airlines, **with** passengers **to be informed of such limits at the time of purchase, giving the opportunity to seek** additional insurance if necessary.

*Justification:*

*In the Explanatory Memorandum to COM(2000) 340 the Commission stresses that the objective of passenger information provisions is to give passengers advance warning, leaving them the opportunity to make alternative insurance arrangements when necessary. This amendment seeks to reflect this objective, giving the passenger as much advance warning as possible.*

(Amendment 3)  
Recital 11

(11) It is **desirable** to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.

(11) It is **essential** to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.

*Justification*

*This provision is compulsory for air carriers and should therefore be reflected as such.*

(Amendment 4)  
Recital 14

(14) 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.

(14) It is **essential** to provide **clear, easy-to-read and complete** information on the liability rules applicable to every passenger so that they can make additional insurance arrangements in advance of travel if necessary.



*Justification*

*See Amendments 1 & 2.*

(Amendment 5)  
Recital 15a (New)

***(15a) The incorporation of the Montreal Convention into European Community legislation marks another step in strengthening air passenger rights vis-à-vis air carriers, yet this is only part of the overall strategy as set out in COM(2000) 365 on the protection of air passenger rights and Council Resolution 11663 (29/9/2000) to better inform air passengers about their rights and to strengthen them.***

*Justification*

*It should be made clear that this proposal is a further step in strengthening consumer rights vis-à-vis air carriers and should therefore be placed in the broader context of COM (2000) 365 and Council Resolution 11663 which seek to better inform air passengers about their rights and to strengthen them.*

(Amendment 6)  
Article 1(5)  
(Article 3a(2) in Regulation (EC) N°2027/97)

2. The supplementary sum which, in accordance with Article 22 (2) of the Montreal Convention, may be demanded by a Community 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.***

2. The supplementary sum which, in accordance with Article 22 (2) of the Montreal Convention, may be demanded by a Community 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 passenger must be informed, at the time of purchase, of their right to make a special declaration***

*of interest in delivery at destination, and must be provided with full details of any tariff that they are required to pay for this provision.*

*Justification*

*It is essential that air passengers are clearly informed about their rights, with the obligation to inform the passenger placed on the air carrier.*

(Amendment 7)

Article 1(8)

(Article 6(2) in Regulation (EC) N°2027/97)

2. Air carriers shall ensure that adequate information on the provisions contained in Articles 3, 3a and 5 is, ***on request***, made available to passengers at the Community air carrier's agencies, travel agencies and check-in counters and at points of sale.

2. Air carriers shall ensure that adequate information on the provisions contained in Articles 3, 3a and 5 is made available to passengers at the Community air carrier's agencies, travel agencies and check-in counters and at points of sale.

*Justification*

*See Amendment 6.*

(Amendment 8)

Article 1(8)

(Article 6(3) in Regulation (EC) N°2027/97)

3. In addition to the information requirements set out in the Warsaw and Montreal Conventions, carriers shall give all consumers in the Community ***who*** purchase air transport services a written notice ***explaining*** in simple and easily understood terms:

3. In addition to the information requirements set out in the Warsaw and Montreal Conventions, carriers shall give all consumers in the Community, ***when they*** purchase air transport services, a written notice, ***or equivalent, providing*** in simple and easily understood terms ***a complete overview of the applicable liability rules, explaining in particular:***

*Justification*

*It is essential that air passengers are clearly informed about their rights, with the obligation to inform the passenger placed on the air carrier. Moreover, such an obligation must allow for those air carriers that sell primarily through the internet.*

(Amendment 9)

Article 1(8)

(Article 6(5a) in Regulation (EC) N°2027/97) (new)

***5a. Air carriers established outside the Community operating to, from or within the Community shall inform the passenger of the liability regime applicable for that particular flight following the procedure stipulated in Article 6(3) of current EC Regulation 2027/97.***

*Justification*

*This obligation provided for by the current Regulation 2027/97 is missing from COM(2000) 340. As a number of countries have already signed up to the Montreal Convention, this obligation may only be relevant to a very small number of air carriers yet it is imperative that the consumer is not misled in any way.*

(Amendment 10)

Article 1(9)

(Article 7 in Regulation (EC) N°2027/97)

No later than **six** years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the 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.”

No later than **three** years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the 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.”

*Justification*

*Three years is a more adequate period for the Commission to reflect on the workings of this amended Regulation and the need for any subsequent improvements.*

(Amendment 11)

Article 2

This Regulation shall enter into force on the twentieth day following that 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 entry into force of the Montreal Convention, whatever is the latest.***

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities* ***and shall be applicable one year from its publication date.***

*Justification*

*Article 2 of the Commission's proposal ties the amended Regulation's entry into force with that of the Montreal Convention itself. With over 30 countries as signatories to this Convention, it could be many years before it enters into force. Your draftsman does not see why the rights of EU air passengers should be unnecessarily put on hold in this way. In this context, it is also important to remember the precedent set by the EU's stance for regulations on hushkitted aircraft, whereby the EU has pressed forward ahead of agreed international standards.*