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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.