EUROPEISKA GEMENSKAPERNAS KOMMISSION

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Förslag till

RÅDETS FÖRORDNING (EG)

om lufttrafikföretagens ersättningsansvar vid olyckor

(framlagt av kommissionen)

EXPLANATORY MEMORANDUM

A. BACKGROUND

1. Air carrier liability in case of accidents in international carriage by air is basically governed by the 1929 Warsaw Convention (WC) for the Unification of Certain Rules relating to International Carriage by Air - to which all Member States but not the Community are Contracting Parties - and a number of other instruments which, together with the Convention, is generally referred to as the Warsaw System[1] (WS). The WC was established by the worldwide air transport Community in order to provide a worldwide system of standards and rules for the carriage of passengers by air and in particular common rules in respect of liability for passengers and cargo in the event of an accident, loss of baggage and delay for international air transport while at the same time limiting costs for air carriers. It included, inter alia, the very basic provision that the airline is presumed to be liable (Article 17) but that liability is generally limited (Article 22) to about US $10 000 as a maximum. Nevertheless, the passenger and the carrier may, by special contract, agree to a higher limit of liability (Article 22§1).The carrier has the right to defend itself against any claims under the Convention if it proves it took all necessary measures to avoid the damage, in which case it will not be held liable (Article 20§1). Moreover, the carrier is permitted to reduce its liability if it proves the contributory negligence of the injured person (Article 21). Finally, Article 25 prohibits the carrier from availing itself of any clauses limiting or excluding liability if it or its agents are guilty of wilful misconduct.

2. The WS has won broad acceptance in so far as it represents a workable attempt to eliminate, or at least reduce, problems of conflict of law and jurisdictions by means of a uniform international law. However, it is now generally agreed that the WS no longer realizes its economic objectives. In short, the limits of liability established by the WS are too low by today's monetary standards and for today's aviation market.

3. Attempts have been made within the Warsaw framework over the years to increase these limits. But such attempts have not met with any success due to lack of sufficient number of ratifications for such modifications to the Convention.The Warsaw system indeed suffers from a lack of an automatic adaptation mechanism, which would take account of the impact of inflation and the development of real income.

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[1] In addition to the initial Warsaw Convention (WC) the other instruments include The Hague Protocol (1955), the 1961 Guadalajara Convention. Other instruments, related to the System but not yet in force, owing to an insufficient number of countries having ratified these instruments, are: the 1971 Guatemala City Protocol and the four Protocols signed at Montreal in 1975.The 1966 Montreal Inter-carrier Agreement (MIA) must also be mentioned in that it is a "voluntary" agreement between airlines to include certain conditions in their contract of carriage.

4. The only possibility currently available to a victim or next-of-kin for recovering compensation beyond the Warsaw limits is to prove the wilful misconduct of the air carrier. This obligation to prove wilful misconduct in order to break the current limits leads to lengthy and costly litigation for both passenger and carrier and it is the carrier who generally will have to bear the costs of this complex system. This is detrimental to the interests of air transport policy in general.

5. Attempts have also been made outside the Warsaw framework to update the limits.In 1966 the WC was supplemented by a "voluntary" inter-carrier agreement imposed on all carriers flying to, from or with an agreed stop in the US. This agreement, called the Montreal agreement, raised the applicable limit for passengers in case of death or injury to US $ 75 000. It also introduced another important element; carriers waived their right of defence under Article 20§1 of the WC, bringing, therefore, strict liability. By 20 November 1992, Japanese airlines agreed, by special contract incorporated in conditions of carriage and tariffs, that they would waive all restrictions of liability in international transport and would do so under strict liability for claims up to SDR 100 000 (approximately ECU 119 600). The UK, by adopting the Licensing of Air Carriers Regulation 1992 SI 1992/2992, required that a carrier with a valid operating licence granted by the UK Civil Aviation Authority must make an SDR 100 000 special contract with passengers carried for remuneration or hire. It is worthwhile noting that Italy, by adopting Law 274 of 7 July 1988, compelled all airlines serving a point in Italy to adopt a special contract for SDR 100 000. In recent years most European countries have introduced domestically and, for their own national carriers also internationally, a higher passenger limit than that prescribed by the Hague Protocol (see Annex I).

B. COMMUNITY ACTION

6. The third aviation package has created an internal aviation market where the rules for the operation of air services, whether domestic of international, have been largely harmonized. Rules on the nature and limitation of liability for damages of an air carrier in the event of death or injury of air passengers form an essential element of the terms and conditions of carriage in an air transport contract between carrier and passenger. Article 7 of Council Regulation (EC) No 2407/92 introduced with the third package requires air carriers to be insured to cover liability in case of accidents. However, the Regulation does not provide the detailed rules as to compliance with this provision. Given, as stated above, that Member states have variously taken steps to increase the Warsaw limit and even in some cases to modify the nature of liability leading therefore, to different terms and conditions of carriage and given also that differences subsist between the liability rules for domestic and international transport, it is obvious that the situation risks fragmenting the internal aviation market so far achieved.

7. In addition, one of the most important factors in all modes of transport and thus in aviation is the question of safety and quality of service. The inevitable link between safety and the issue of liability cannot be denied. The original low limit set by the Warsaw Convention was in part a protection for an infant industry whose risk factors were largely unknown and therefore considered to be high. In such a climate the interest was to reduce as far as possible the financial liability of the carrier even to the detriment of the passenger. Today, the situation of the aviation sector is totally different; it is perceived to be one of the safest modes of transport. This image of a safe and

high-quality service is at odds with a system whereby the passenger is still treated as taking a risk, which justifies a low level of compensation in the event of death or injury. In addition, the fact that in order to achieve an acceptable level of compensation the wilful misconduct of the carrier has to be proved leads very often to serious damage to the image of aviation as the safest mode of transport. The aim of the EC air transport policy is to ensure that not only will air transport continue to be the safest way to travel but also that it will be perceived as such. Therefore the issues of liability and compensation should now be legislated for in terms which are consistent with today's aviation industry.

8. The objective of the internal aviation market is also to take account of the needs of the air transport user. The low limits currently in place are, as stated above, largely inadequate and unsatisfactory for the passenger victim of an air accident or for his survivors. Moreover, the fact that the passenger has to prove wilful misconduct on the part of the carrier in order to recover compensation above the limits of the WC, makes settlements less predictable, more expensive and time-consuming. Furthermore, due to the complexity of the system - i.e. different limits in force and carriers' differing obligations under national law - the passengers is misinformed or not informed at all as to the applicable scheme. It is worth noting that the "Notice" formats of standard tickets make no attempt to inform the passenger of the precise limit that applies to his particular journey. Although the possibility always exists, of course, for passengers to ensure themselves on an individual basis, given the confusing situation, it is impossible for the passenger to make an informed decision as to which personal insurance he should take. In a nutshell, not only are the passengers or next-of-kin insufficiently covered by the current low limits, but they have also to face the uncertainty and lack of transparency of remedies when having to seek higher damages than the mandatory limit. Generally speaking it has been recognized as witnessed by Article 129a of the Treaty that the Community should contribute to a higher level of consumer protection. This proposal is very much in line with that commitment.

9. In conclusion, it can be seen that the role of liability in the aviation sector is far from negligible.

10. It is against this background of low limits and a risk not only to the unity of the internal aviation market, but also to the protection of air transport users that the Commission felt that a basic reappraisal of the present situation was required. To this end it commissioned in 1989 a study[2] in order to have a full account of the state of ratification, legislation and practices in the field of air carriers' liability in the Member States as well as in other countries. The results of that analysis lead in March 1991 to a study on the "Possibilities of Community action to harmonize limits of passenger liability and increase the amounts of compensation for international accidents victims in air transport"[3]. On the basis of the conclusions of the report, the Commission issued a Consultation Paper entitled "Passenger liability in aircraft accidents - Warsaw Convention and Internal Market requirements"[4]. The Consultation Paper, while

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(2) "La responsabilité du transporteur aérien à l'égard des passagers et des expéditeurs de marchandises", J. Naveau, June 1989, updated in September 1989.

(3) Study delivered on 15 September 1991 by Sven Brise, Consultant

(4) Ref: VII.C.1 - 174/92-8.

acknowledging the need to increase and harmonize the limit of air carrier liability for passenger injury and death in Member States, was intended to promote a discussion on how this might best be done within the European Community framework. Several organizations and interested parties communicated their views to the Commission. They expressed the opinion that an increase of the limits up to amounts between 300 000 and 500 000 SDR (ECU 358 800 - 598 000) was urgently required and that any limits should be subject to regular updating in line with inflation rates. However, increased limits should apply to all air transport within, to, and from the Community, irrespective of the nationality of the airline concerned. As far as the procedures were concerned, opinions were divided between adopting a regulatory approach - for example by means of a modified licensing requirement for insurance - and a voluntary inter-carrier agreement[5].

11. A "Round Table" with Member States and interested parties took place on 23 March 1993. It confirmed these elements and recommended that a study on the cost implications of different limits and the impact of increased limits on litigation costs be commissioned. The Commission launched such a study[6], the results of which were available by February 1994. Its main conclusions were that the way the insurance market will respond to an increase in mandatory liability limits would depend on the state of the market at the time of introduction. Increases in premiums would be based on the perceived exposure of both the individual carrier and the whole market. On the whole, however, it was perceived that the market would react in a moderate way. If the limits are sufficient to accommodate claims or if there are no limits, some reduction in plaintiffs' costs would be likely to result, since a number of plaintiffs would not need to go to litigation. Insurers and other interested parties seem, in general, to be confident that financial capacity would be available irrespective of the level of the limit chosen.

12. Parallel to the Commission's efforts, there have been efforts in other fora to arrive at a solution.Thus ECAC in its Triennial Meeting (22-24 June 1994) adopted a Recommendation aiming to increase limits and to ensure the payment of a lump sum. This Recommendation also urged carriers to conclude an inter-carrier agreement in this respect. In response to this the AEA set up a task force to consider such a voluntary agreement between air carriers. In order to discuss such a system, the air carriers obtained US anti-trust immunity, and a comfort letter from the Commission services. An inter-carrier agreement was agreed in Kuala Lumpur at the IATA Annual General Meeting (30 October 1995) and signed by twelve major world carriers, including the following European carriers: Austrian Airlines, KLM, SAS and Swissair.

13. The solution agreed by IATA waives the limitation of liability in Article 22 of the Warsaw Convention with respect to the liability of the participating air carriers (see Annex II). Recoverable compensatory damages might be determined and awarded by reference to the law of the domicile of the passenger.The inter-carrier agreement is a minimum common denominator. If carriers acting on a voluntary basis, or obliged by their governments, would like to offer more, they would be able to do so. The signing carriers will have to implement the provisions of the agreement no later than 1 November 1996.

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(5) Article 22(1) of the WC allows, by special contract, the carrier and the passenger to agree to a higher limit of liability.

(6) "The cost implications of higher mandatory compensation limits for passengers involved in air accidents", Frère Cholmeley Bischoff, delivered on February 1994.

14. The draft inter-carrier agreement was discussed with interested parties[7] at a meeting held on 23 October 1995. All participants agreed that the agreement would constitute a significant improvement of the situation. However, such an agreement does not solve all issues as to liability. In particular, the effectiveness of the agreement will depend on the degree of participation by airlines. At the moment, as indicated earlier, only certain Community carriers have signed . Without the agreement of all Community air carriers, the risks of differing standards and thus fragmentation of the internal aviation market will not only subsist, but may increase. Thus the situation for the air user would become more confusing.

15. Against this background, and considering the conclusions of both studies mentioned above, the Commission is of the opinion that Community action should be undertaken in order to establish an acceptable situation for the air transport sector by ensuring common rules for liability in the terms and conditions of carriage irrespective of the nature of the operation and by guaranteeing a fair situation for air transport users. In doing so the Commission has taken into account the following elements:

- The fact that there is a universal acceptance that the current mandatory limits are too low, coupled with a recognition that the WS, despite its economic deficiencies, provides a uniform legal foundation enjoying worldwide recognition for the settlement of claims to passengers in aviation accidents. Therefore, any attempts to improve the current situation should maintain the basic elements of the liability system in force.

- The fact that Member States have taken various steps to increase the Warsaw limit and even in some cases have modified the nature of the liability and also that differences subsist between the liability rules for domestic and international transport risk, fragmenting the internal aviation market so far achieved. Consequently, any change should guarantee the equal treatment of the carriers, irrespective of departure point, type of service (domestic or international) etc.

- A priori, compensation amounts should probably be in line with the levels of compensation actually paid to victims in non-aviation accidents in industrialized countries[8].

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(7) Association of European Airlines, European Regional Airlines, International Chamber of Commerce, International Union of Aviation Insurers. The Federation of Air Transport User Representatives of Europe, the European Association of Charter Airlines and the Comité Européen des Assurances provided written statements.

(8) For instance, a 40-year old executive earning[ECU 97 082] a year, survived by a wife and two young children, could anticipate compensation of about [ECU 647 218]. If killed in a road traffic accident, this would be fully recoverable. If killed on board an aircraft operated by a carrier which has contracted for limits within the WS (US$ 20 000), the recovery could be as embarrassingly low as [ECU 17 647], less than 3% of the full value of the claim! (The Journal of Personal Injury Litigation, 2nd issue, Nigel P. Taylor) (see Annex III).

- Simple and speedy procedures for both the air users and the carriers should be guaranteed. It is intolerable that victims or their relatives should have to wait for the results of lengthy litigation. Air accidents normally are of a serious nature with dramatic consequences and involve in most instances a significant number of passengers far away from home. Therefore, it is reasonable to follow the ECAC Recommendation and ensure the payment of a lump sum to take care of immediate financial implications.

- The proposal of the Commission has therefore the following main elements:

  a waiving of all limits;

  the introduction of strict liability up to ECU 100 000 This will protect air users even in the case of a terrorist attack that would otherwise leave the innocent passenger uncovered. Moreover, by doing so the Community would legalize a practice which has been accepted by airlines for many years and officially formalized in some cases[9].

- It would be preferable that all carriers serving a point in the Community adopt the same system. Third-country carriers not subject to Community rules should be requested to inform passengers accordingly, properly and clearly.

- Passengers should have the choice of the jurisdiction before which to bring an action. It should include the option to bring an action before the court of the Member State where the passenger has his domicile.This might circumvent the possibilities of confusion that might arise when referring to the law of the domicile.

- Priority should later be given to improve the situation in respect of passengers' luggage and cargo, if efforts at international level by carriers and/or governments would fail to provide a satisfactory solution.

- Such a Community action, according to the studies referred to above, would have minimal cost implications, because current liability insurance costs for European airlines generally account for about 0.1% to 0.2% of total operating costs. An increase or a removal of the limit will, therefore, only represent a minimal increase in costs[10] of insurance premium - it would comprise about 0.1% to 0.35% of total operating costs.

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(9) The MIA introduced in 1966 increased limits to, from or with an agreed stop in the US to US $75 000 on a strict liability basis. Japanese airlines have, since November 1992, waived liability limits on their flights with a level of strict liability up to SDR 100 000.

(10) It is worthwhile noting that great advances in aviation safety since 1929 allow aviation to qualify as the safest way to travel; the average number of passengers fatalities in recent years has been less than 700 per annum. This situation contributes all the more to the current low premium levels.

- The Community action must be seen as a measure which will help to trigger existing international Conventions (WS). By adopting the Regulation, the Community will act as a catalyst together with similar moves in Japan and the USA. In any event, the Community and the Member States should in cooperation with ECAC use all its efforts in order to urge the appropriate international forum - ICAO - to update the current international instruments into force.

16. These elements and concerns have led the Commission to propose a Regulation which, by establishing certain common rules for liability irrespective of the nature of the air services, will contribute to the internal aviation already established by the third aviation package and will in addition ensure a high level of protection for the air transport user.

C. JUSTIFICATION OF THE ACTION

17. The Community action envisaged can be analysed in terms of subsidiarity principles by answering the following questions:

(a) What are the objectives of the proposal in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and what has been the solution so far)?

The third aviation package has created an internal aviation market where the rules for the operation of air services, whether domestic or international, have been largely harmonized. Rules on the nature and limitation of liability for damages of an air carrier in the event of death or injury of air passengers form an essential element of the terms and conditions of carriage in an air transport contract between carrier and passenger. Given that Member States have variously taken steps to increase the Warsaw limit and even in some cases to modify the nature of the liability, and given also that differences subsist between the liability rules for domestic and international transport, it is obvious that the situation threatens to fragment the internal aviation market so far achieved. Moreover, in the event of death or injury, air transport users or next-of-kin are not only insufficiently covered in respect of the WC limits, but they have also to face the uncertainty and lack of transparency of remedies when having to seek higher damages than the mandatory limit.

(b) Does the envisaged action relate to an exclusive competence of the Community or a competence shared with the Member States?

The envisaged action does not relate to an exclusive competence of the Community.

(c) Which solution is most efficient in comparison between Community measures and measures of the Member States?

Since with the creation of the single aviation market the distinction between domestic and international carriage for the operation of air services is no longer valid, such a solution can best be addressed at the Community level.

(d) What added value does the proposed Community action provide and what are the costs of no action?

The value of the Community action lies in the improvement of the position of air carriers and protection of the air users when the current liability limits have been removed, by ensuring fair compensation and legal certainty. It will also provide the passengers with speedy procedures. It should be emphasized that the current system is extremely complex, the rights of the passengers and the obligations of air carriers currently vary as a function of departure point, type of service (domestic or international), etc. and the average passenger is most of the time misinformed or not informed at all of the precise limit that applies to her/his journey. Passengers involved in accidents abroad have to face different legal situations from what they are used in their home country. The inter-carrier agreement adopted by IATA will not eliminate all difficulties. Moreover, the risk exists that some European carriers will not adhere to this voluntary agreement, thereby adding to the current confusion. The costs of no action would be insufficient protection of air passengers in case of air accidents and persistence of an overly complex system for Community air carriers within the Community.

(e) What kind of action is at the disposal of the Community (recommendation, financial assistance, regulation, mutual recognition, etc.)?

In order to provide for homogenous and effective protection of the air users in this area, it is necessary to introduce legal measures, either in the form of a Directive or a Regulation. By embodying a broad Community system in a legislative framework divergent national measures will be avoided.

(f) Is uniform regulation necessary or is it sufficient to draft a directive which outlines the general objectives while leaving execution to the Member States?

Because of the international mode of operation a uniform action is desirable in order to provide a system that will guarantee equal protection for all air passengers within the Community, avoiding on the one hand, discriminatory treatment and uncertain situations and on the other hand, guaranteeing a proper level of protection. Since the results desired by the action would need to apply to air carriers operating transborder traffic to a very large extent and with passengers of many different nationalities, a Regulation would represent the best legal instrument.

Förslag till

RÅDETS FÖRORDNING (EG)

om lufttrafikföretagens ersättningsansvar vid olyckor

EUROPEISKA UNIONENS RÅD HAR ANTAGIT DENNA FÖRORDNING

med beaktande av Fördraget om upprättandet av Europeiska gemenskapen, särskilt artikel 84.2 i detta,

med beaktande av kommissionens förslag[1],

i enlighet med förfarandet i artikel 189c i fördraget, i samarbete med Europaparlamentet[2],

med beaktande av Ekonomiska och sociala kommitténs yttrande[3], och

med beaktande av följande:

Reglerna för ersättningsansvar vid olyckor regleras av konventionen rörande fastställande av vissa gemensamma bestämmelser i fråga om internationell luftbefordran undertecknad i Warszawa den 12 oktober 1929 eller av samma konvention i dess lydelse efter den ändring som företogs i Haag den 28 september 1955, beroende på vilken som är tillämplig. Warszawakonventionen tillämpas globalt till förmån för både passagerare och lufttrafikföretag och måste upprätthållas.

Reglerna för hur ersättningsansvaret skall vara utformat och begränsat vid passagerares dödsfall eller kroppsskada utgör en del av villkoren för befordran i transportavtalet mellan lufttrafikföretaget och passageraren. Genom rådets förordningar (EEG) nr 2407/92[4], (EEG) nr 2408/92[5], ändrad genom Anslutningsakten för Österrike, Finland och Sverige, och (EEG) nr 2409/92[6] har en inre lufttrafikmarknad skapats, inom vilken det är lämpligt att harmonisera reglerna för hur ersättningsansvaret skall vara utformat och begränsat.

Den gräns för ersättningsansvar som fastställts genom Warszawakonventionen är för låg enligt dagens ekonomiska och sociala normer. Följaktligen har medlemsstaterna höjt gränsen för ersättningsansvar på olika sätt, vilket lett till olika villkor för befordran inom gemenskapen.

Dessutom gäller Warszawakonventionen endast för internationell transport. Åtskillnaden mellan nationell och internationell trafik har avskaffats på den inre lufttrafikmarknaden. Det är därför lämpligt att ha samma regler för utformningen och nivån avseende ersättningsansvaret vid både nationell och internationell transport.

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(4) EGT nr L 240, 24.8.1992, s. 1.

(5) EGT nr L 240, 24.8.1992, s. 8.

(6) EGT nr L 240, 24.8.1992, s. 15.

Den nuvarande låga gränsen för ersättningsansvar leder ofta till långdragna rättsliga åtgärder som skadar lufttrafikföretagens anseende.

Gemenskapsåtgärder på lufttrafikområdet bör också ha som mål att i användarnas intresse uppnå en hög skyddsnivå.

För att harmonisera villkoren avseende lufttrafikföretagens ersättningsansvar och vidare för att säkerställa en hög nivå av effektivt skydd för lufttrafikanvändare är det lämpligt att med beaktande av subsidiaritetsprincipen, vidta åtgärder på gemenskapsnivå.

Det är lämpligt att slopa alla gränser för ersättningsansvar vid en passagerares dödsfall eller kroppsskada.

För att undvika att offer saknar försäkringsskydd vid oundvikliga olyckor bör lufttrafikföretagen vid skadeståndskrav för passagerares dödsfall eller kroppsskada enligt artikel 17 i Warszawakonventionen inte kunna åberopa artikel 20.1 i Warszawakonventionen för krav upp till ett belopp av 100.000 ecu.

Passagerarna eller deras närmaste anhöriga bör så fort som möjligt erhålla ett schablonbelopp för att täcka omedelbara behov.

I händelse av olycka bör rättsläget vara klart för de ersättningsberättigade, och dessa måste på förhand erhålla fullständig information om gällande regler. Det är nödvändigt att undvika långvariga rättstvister och skadeståndsprocesser. Det är dessutom lämpligt att ge de ersättningsberättigade möjlighet att väcka talan vid en domstol i den medlemsstat där passageraren har sitt hemvist eller sin stadigvarande bostad.

För att undvika snedvridning av konkurrensen är det önskvärt att lufttrafikföretag från tredje land på lämpligt sätt ger passagerarna information om sina villkor för befordran.

En förbättring av den situation som gäller bagage och gods behandlas för närvarande på ICAO-nivå och behöver inte åtgärdas lika omgående som situationen för passagerarna.

Det är lämpligt och nödvändigt att de belopp som anges i denna förordning höjs i enlighet med den ekonomiska utvecklingen. Det är lämpligt att bemyndiga kommissionen att besluta om sådana höjningar efter samråd med en rådgivande kommitté.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

Artikel 1

I denna förordning fastställs förpliktelserna för EG-lufttrafikföretag såvitt gäller ersättningsansvaret gentemot passagerare vid olyckor.

Artikel 2

I denna förordning avses med:

a) *lufttrafikföretag:* ett lufttransportföretag med giltig operativ licens,

b) *EG-lufttrafikföretag:* ett lufttrafikföretag enligt rådets förordning (EEG) nr 2407/92,

c) *ersättningsberättigade:* de offer eller de personer som enligt gällande lag är berättigade att representera offren med stöd av en rättsregel, ett rättsavgörande eller ett särskilt avtal,

d) *schablonbelopp:* en förskottsbetalning till den ersättningsberättigade för att täcka de mest akuta behoven, utan att detta påverkar snabbast möjliga reglering av hela skadeståndsbeloppet,

e) *ecu:* den beräkningsenhet som antogs vid upprättandet av Europeiska gemenskapernas allmänna budget enligt artiklarna 207 och 209 i fördraget,

f) *Warszawakonventionen:* konventionen rörande fastställande av vissa gemensamma bestämmelser i fråga om internationell luftbefordran undertecknad i Warszawa den 12 oktober 1929 jämte alla andra internationella instrument som bygger på eller är förbundna med denna konvention.

2. De begrepp som används i denna förordning och som inte definieras i punkt 1 motsvarar begreppen i Warszawakonventionen.

Artikel 3

1. Ersättningsansvaret för ett EG-lufttrafikföretag vid en passagerares dödsfall eller kroppsskada skall inte vara underkastat några författnings- eller avtalsmässiga begränsningar.

2. Ett EG-lufttrafikföretag får inte avvisa eller begränsa sitt ersättningsansvar för skadestånd upp till ett belopp av 100 000 ecu genom att bevisa att företaget eller dess anställda har vidtagit alla nödvändiga åtgärder för att undvika skadan eller att det var omöjligt att vidta sådana åtgärder.

Artikel 4

1. Lufttrafikföretaget skall utan dröjsmål och under alla omständigheter inte senare än tio dagar efter den händelse, vid vilken skadan uppstod till den ersättningsberättigade erlägga eller ställa till förfogande ett schablonbelopp av upp till 50 000 ecu beroende på skadans art och minst 50 000 ecu vid dödsfall .

2. Schablonbeloppet får avräknas mot eventuella efterföljande belopp som utbetalas till följd av EG-lufttrafikföretagets ersättningsansvar, men skall under inga omständigheter återbetalas.

Artikel 5

1. De bestämmelser som anges i artiklarna 3 och 4 skall finnas med i EG-lufttrafikföretagens villkor för befordran.

2. Tillräckliga upplysningar om de bestämmelser som anges i artiklarna 3 och 4 skall på begäran lämnas till passagerarna vid EG-lufttrafikföretagens kontor, på resebyråer och vid incheckningsdiskar, och en sammanfattning av dessa bestämmelser skall finnas på biljetten.

3. Lufttrafikföretag som är etablerade utanför gemenskapen och som inte omfattas av bestämmelserna i artiklarna 3 och 4 skall klart och uttryckligen informera passagerarna om detta vid tidpunkten för biljettinköpet på lufttrafikföretagens kontor, resebyråer och vid incheckningsdiskar belägna på en medlemsstats territorium. Lufttrafikföretag skall på begäran tillhandahålla passagerarna ett formulär med sina villkor. Det är inte tillräckligt att begränsningen anges på biljetten.

Artikel 6

En gång om året skall medlemsstaternas myndigheter överlämna en förteckning över de lufttrafikföretag i tredje land som inte är underkastade reglerna i denna förordning till lufttrafikanvändarnas organisationer och till kommissionen som skall ställa förteckningarna till de andra medlemsstaternas förfogande.

Artikel 7

Ersättningsberättigade vid olyckor där EG-lufttrafikföretag är inblandade kan, utöver vad som anges i artikel 28 i Warszawakonventionen, väcka talan om skadestånd vid domstolar i den medlemsstat där passageraren har sitt hemvist eller sin stadigvarande bostad.

Artikel 8

Kommissionen får, i enlighet med förfarandet i artikel 9.1, genom förordning besluta att på lämpligt sätt höja de i artiklarna 3 och 4 nämnda beloppen om den ekonomiska utvecklingen visar att sådana åtgärder är nödvändiga.

Artikel 9

1. Kommissionen skall biträdas av en rådgivande kommitté. Den skall bestå av företrädare för medlemsstaterna och ha en företrädare för kommissionen som ordförande.

   Kommssionens företrädare skall förelägga kommittén ett förslag till åtgärder. Kommittén skall yttra sig över förslaget inom den tid som ordföranden bestämmer med hänsyn till hur brådskande frågan är, om nödvändigt genom omröstning.

   Yttrandet skall protokollföras och dessutom har varje medlemsstat rätt att begära att få sin uppfattning tagen till protokollet.

   Kommissionen skall ta största hänsyn till det yttrande som kommittén avgett. Den skall underrätta kommittén om det sätt på vilket dess yttrande har beaktats.

2. Kommissionen kan vidare förelägga kommittén alla andra frågor som rör tillämpningen av denna förordning.

Artikel 10

Denna förordning träder i kraft sex månader efter det att den har offentliggjorts i *Europeiska gemenskapernas officiella tidning*.

Denna förordning är till alla delar bindande och direkt tillämplig i alla medlemsstater.

Utfärdat i Bryssel den

På rådets vägnar

Ordförande

IMPACT ASSESSMENT

IMPACT OF THE PROPOSAL ON BUSINESSES
with special reference to small and medium-sized enterprises

Title of the proposal:

Council Regulation on air carrier liability in case of accidents

Document reference number:

The proposal:

The impact on business

1. Who will be affected by the proposal?

   - Which sectors of business?
     Air carriers.

   - Which sizes of business (what is the concentration of small and medium-sized firms)?
     The European market structure is essentially centred on large companies which represent 65.4% of the market. Charter companies represent 26.7% of the European aviation market. Small and medium-sized enterprises represent only 0.5% of the market, with regional air carriers sharing 0.4% of the overall market and general aviation carriers - namely taxi operators and corporate operators - representing 0.1% on the whole[1].

   - Are these companies located in specific geographical areas of the Community?
     No

2 What will business have to do to comply with the proposal?

Council Regulation (EEC) No 2407/92 already requires all holders of operating licences to have liability insurance, the amount of cover has been left so far to the discretion of Member States. To comply with this Regulation, air carriers will have to renegotiate their liability insurance to allow passenger liability limit to be waived.

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(1) "The competitiveness of the European Community's air transport industry " Study by AVMARK Inc., prepared for the Commission, 28 February 1992.

3. What economic effects is the proposal likely to have?

   - On employment:
     None

   - On investment and the creation of new business:
     None

   - On the competitive position of businesses:
     The aviation insurance market will react by increasing somewhat the amount of premiums air carriers will have to pay. The rate of increase will vary according to the state of the market at the time, to the particular characteristics of the air carriers, in particular their safety records and to the particular bargaining power of the airline to renegotiate its premium. Accordingly, regional carriers and general aviation operators would be likely to bear a higher proportional increase due to their weaker bargaining power. Charter air carriers will be affected by a lesser degree.

4. Does the proposal contain any measures intended to take account of the specific situation of small and medium-sized businesses?

   No. In fact, current liability insurance costs for European air carriers generally represent a small proportion of the operating costs. They comprise about 0.1% to 0.2% of total operating costs, with the proportion generally becoming higher the smaller the airline. With a waiving of the limits increased insurance costs would comprise about 0.1% to 0.35%[2] of total operating costs. Which means that the increment will be insignificant, even for the smaller carriers which might be more affected by such an increase.

Consultation:

5. List of the organizations which have been consulted about the proposal and outline their main views

   - Member State government experts have expressed wide agreement on the need to increase the current limits, to guarantee speedy and simple procedures in case of air accidents and to cover all air transportation inside the Community and to and from the Community, irrespective of the nationality of the airline concerned.

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(2) "The cost implications of higher mandatory compensation limits for passengers involved in air accidents", Frère Cholmeley Bischoff, delivered on February 1994.

- All concerned organizations[3] have been consulted. All of them agreed on the need to upgrade the system while keeping the essential elements of the international system currently into force. They were concerned that any improvement of the system within the EC applied to all carriers serving the Community.

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[3] Organizations consulted were: Bureau Européen Union des Consommateurs, International Organization of Consumer Unions, European Community Travel Agents and Tour Operators Association, International Council of Aircraft Owner and Pilot Association, International Air Transport Association, Association of European Airlines, International Chamber of Commerce, Federation of Air Transport User Representatives in the EC, International Union of Aviation Insurers, Association Européenne des Constructeurs de Matériel Aerospatial, European Regional Airlines.

ANNEX I

LIABILITY LIMITS IN EC COUNTRIES[1]

W/H: Limits of Warsaw/The Hague, as converted following national rules (or raised as indicated)[2]

AUSTRIA: Liability under the contract of carriage up to AS 430 000 per person
Obligatory passenger accident insurance AS 550 000 per passenger
SDR 100 000 on the national carrier

BELGIUM: W/H applied to all services
No domestic services
SDR 100 000 on Sabena and affiliates - US$ 58 000 for charters and air taxis

DENMARK: SDR 100 000 applied to all air services
Limits for damages other than death and injury are different for domestic and international air services

FINLAND: W/H applied to international services. If the country of destination is not party to the W/H the limits of MP3 apply (SDR 100 000)
SDR 100 000 for domestic services
SDR 100 000 on Finnair on international services

FRANCE: SDR 100 000 applied to all services
Limits other than death and injury are W/H on all air services

GERMANY: W/H applied to international air services, based on law on conversion rates (e.g. Francs Poincaré 250 000 = DM 53 600)
DM 150 000 for Lufthansa
DM 320 000 on domestic air services

GREECE: W/H applied to all services
In absence of law on conversion rates, some court decisions are contradictory
National legislation specifies a limit of DRS 4 000 000 applied to domestic air services (may not be exceeded if damages are awarded in the form of periodic payments) in the case of death or injury

IRELAND: W/H applied to all services
SDR 100 000 on Aer Lingus (international air services)
Same amount for other Ireland registered operators

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(1) Sven Brise's study, see footnote 3 (Explanatory Memorandum). The study did not examine the situations existing in Austria, Finland and Sweden.

(2) For all limits (except Portugal on domestic carriage), carriers can avail themselves of the defence of Article 20§1 of WC.

ITALY:	W/H as converted by law into SDR (international) and LIT (domestic) applied to all services. Limits specified are: SDR 100 000 international air services LIT 195 000 000 domestic air services N.B. It should be noted that foreign airlines operating to Italy are subject to the law imposing the international limit of SDR 100 000
LUXEMBOURG:	W/H applied to all air services No domestic services SDR 100 000 on all Luxembourg registered passenger carriers
NETHERLANDS:	W/H applied to all air services SDR 100 000 (all Netherlands registered major carriers)
PORTUGAL:	liability without fault (domestic services) on all services: Escudos 12 000 000 per passenger; baggage as per The Hague
SPAIN:	on all services: PTS 3 500 000 per passenger; baggage as per The Hague
SWEDEN:	SDR 100 000 on international and domestic services
UK:	W/H applied to all air services, raised to SDR 100 000.

ANNEX II

IATA INTER-CARRIER AGREEMENT ON PASSENGER LIABILITY

WHEREAS: The Warsaw Convention system is of great benefit to international air transportation; and

NOTING THAT: The Convention's limits of liability, which have not been amended since 1955, are now grossly inadequate in most countries and that international airlines have previously acted together to increase them to the benefit of passengers.

The undersigned carriers agree:

1. to take action to waive the limitation of liability on recoverable compensatory damages in Article 22 paragraph 1 of the Warsaw Convention as to claims for death, wounding or other bodily injury of a passenger within the meaning of Article 17 of the Convention, so that recoverable compensatory damages may be determined and awarded by reference of the law of the domicile of the passenger;

2. to reserve all available defences pursuant to the provisions of the Convention; nevertheless, any carrier may waive any defence, including the waiver of any defence up to a specified monetary amount of recoverable compensatory damages, as circumstances may warrant;

3. to reserve their rights of recourse against any other person, including rights of contribution or indemnity, with respect to any sums paid by the carrier;

4. to encourage other airlines involved in the international carriage of passengers to apply the terms of this Agreement to such carriage;

5. to implement the provisions of this Agreement no later than 1 November 1996 or upon receipt of requisite government approvals, whichever is later;

6. that nothing in this Agreement shall affect the rights of the passenger or the claimant otherwise available under the Convention;

7. that this Agreement may be signed in any number of counterparts, all of which shall constitute one Agreement. Any carrier may become a party to this Agreement by signing a counterpart hereof and depositing it with the Director General of the International Air Transport Association (IATA);

8. that any carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to the Director-General of IATA and to the other carriers parties to the Agreement.

INTER-CARRIER AGREEMENT ON PASSENGER LIABILITY

IATA EXPLANATORY NOTE

The Inter-carrier Agreement is an "umbrella accord"; the precise legal rights and responsibilities of the signatory carriers with respect to passengers will be spelled out in the applicable Conditions of Carriage and tariff filings.

The carriers signatory to the Agreement undertake to waive in accordance with the Agreement such limitations of liability as are set out in the Warsaw Convention (1929), The Hague Protocol (1955), the Montreal Agreement of 1966, and/or limits they may have previously agreed to implement or were required by governments to implement.

Such waiver by a carrier may be made to the extent required to permit the law of the domicile of the passenger to govern the determination and award of the recoverable compensatory damages under the Inter-carrier Agreement. But this is an option. Should a carrier wish to waive the limits of liability but not insist on the law of the domicile of the passenger governing the calculation of the recoverable compensatory damages, or not be so required by a governmental authority, it may rely on the law of the court to which the case is submitted.

The Warsaw Convention system defences will remain available, in whole or in part, to the carriers signatory to the Agreement, unless a carrier decides to waive them or is so required by a governmental authority.

ANNEX III

EUROPEAN DAMAGES LEVEL[1] IN CASE OF MOTOR ACCIDENTS

Table 1: Victim: Man 40, married, 2 dependent children, doctor

Injury	UK	Belgium Bf 59.6	Greece Dr 25	NL HFl 3.26	Italy Lira 2 124	France Ff 9.73	Germany Dm 2.90	Denmark Kr 11.02	Ireland Ir £ 1.08	LUX Lux f 59.55	Spain Pta 178.45	Portugal Esc 254
Instant death	311 000	325 779	195 007	224 540	464 900	307 098	331 034	81 347	461 806	351 098	168 114	229 724
Burns												
(A)	89 000		71 088	18 098	55 085	109 198	132 759		93 981		16 811	
(B)	99 000	81 978	to	to	to	to	to	37 659	126 389	83 985	28 019	24 016
(C)	79 000		86 316	21 166	120 835	127 790	148 276		93 981		16 811	
Paraple-gia	526 500	449 457	310 947	498 466 to 567 485	474 710	705 576	637 931 to 672 414	110 254 to 237 296	607 407	453 830	280 191	288 937
Loss of eyesight-total blind-ness	572 500	531 871	363 333	466 258 (486 258)	674 795	744 853	586 207 to 603 488 (623 448)	225 499	613 889	537 871	56 038	290 465

Source: Davies Arnold Cooper: Personal injury Awards in EC Countries on an unlimited basis in respect of death or serious injury.

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[1] The figures do not include interest, whether pre- or post- judgment. NL and Germany have two sets of figures in the same schedule. The figures in brackets include estimated medical expenses not covered by the State. All the figures have been converted into £ sterling and rounded up to the nearest £. Exchange rate of 21 June 1990.

Table 2: Victim: Woman, 20, single, student doctor

Injury	UK	Belgium Bf 59.6	Greece Dr 25	NL HFl 3.26	Italy Lira 2 124	France Ff 9.73	Germany Dm 2.90	Denmark Kr 11.02	Ireland Ir £ 1.08	LUX Lux f 59.55	Spain Pta 178.45	Portugal Esc 254
Instant death	1 250	6 292	14 912	2 147	210 122	15 416	2 069	1 089	8 102	6 795	67 246	4 528
Burns (A) (B) (C)	44 000 54 000 34 000	47 723	7 579 to 8 870	21 779 to 24 847	61 205 to 83 729	62 025 to 81 398	63 793 to 79 310	26 770	63 426 95 833 63 426	46 434	16 811 33 623 16 811	5 937
Paraplegia	452 250	370 569	234 723	498 466 to 567 485 (1,074,985)	318 710	563 759	431 034 to 465 517	90 290 to 166 515	529 630	376 246	168 114 to 224 152	360 840
Loss of eyesight-total blindness	478 250	415 323	251 404	466 258 (486 258)	517 514	537 196	472 414 to 489 655 (509 655)	157 441	421 296	423 013	67 246	325 465

Source: Davies Arnold Cooper: Personal injury Awards in EC Countries on an unlimited basis in respect of death or serious injury.

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