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► B                                    ► M1 **REGULATION (EC) No 2027/97 OF THE COUNCIL**  
**of 9 October 1997**  
**on air carrier liability in respect of the carriage of passengers and their baggage by air** ◀  
(OJ L 285, 17.10.1997, p. 1)

Amended by:

	Official Journal		
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► <u>M1</u> Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002	L 140	2	30.5.2002

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**REGULATION (EC) No 2027/97 OF THE COUNCIL**

**of 9 October 1997**

**on air carrier liability in respect of the carriage of passengers and their baggage by air**

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189 (c) of the Treaty <sup>(3)</sup>,

- (1) Whereas, in the framework of the common transport policy, it is necessary to improve the level of protection of passengers involved in air accidents;
- (2) Whereas the rules on liability in the event of accidents are governed 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, whichever may be applicable each being hereinafter referred to, as applicable, as the 'Warsaw Convention'; whereas the Warsaw Convention is applied worldwide for the benefit of both passengers and air carriers;
- (3) Whereas the limit set on liability by the Warsaw Convention is too low by today's economic and social standards and often leads to lengthy legal actions which damage the image of air transport; whereas as a result Member States have variously increased the liability limit, thereby leading to different terms and conditions of carriage in the internal aviation market;
- (4) Whereas in addition the Warsaw Convention applies only to international transport; whereas, in the internal aviation market, the distinction between national and international transport has been eliminated; whereas it is therefore appropriate to have the same level and nature of liability in both national and international transport;
- (5) Whereas a full review and revision of the Warsaw Convention is long overdue and would represent, in the long term, a more uniform and applicable response, at an international level, to the issue of air carrier liability in the event of accidents; whereas efforts to increase the limits of liability imposed in the Warsaw Convention should continue through negotiation at multilateral level;
- (6) Whereas, in compliance with the principle of subsidiarity, action at Community level is desirable in order to achieve harmonization in the field of air carrier liability and could serve as a guideline for improved passenger protection on a global scale;
- (7) Whereas it is appropriate to remove all monetary limits of liability within the meaning of Article 22 (1) of the Warsaw Convention or any other legal or contractual limits, in accordance with present trends at international level;

<sup>(1)</sup> OJ C 104, 10. 4. 1996, p. 18 and OJ No C 29, 30. 1. 1997, p. 10.

<sup>(2)</sup> OJ C 212, 22. 7. 1996, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 17 September 1996 (OJ No C 320, 28. 10. 1996, p. 30), Council Common Position of 24 February 1997 (OJ No C 123, 21. 4. 1997, p. 89) and Decision of the European Parliament of 29 May 1997 (OJ C 182, 16. 6. 1997).

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- (8) Whereas, in order to avoid situations where victims of accidents are not compensated, Community air carriers should not, with respect of any claim arising out of the death, wounding or other bodily injury of a passenger under Article 17 of the Warsaw Convention, avail themselves of any defence under Article 20 (1) of the Warsaw Convention up to a certain limit;
- (9) Whereas Community air carriers may be exonerated from their liability in cases of contributory negligence of the passenger concerned;
- (10) Whereas it is necessary to clarify the obligations of this Regulation in the light of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers<sup>(1)</sup>; whereas, in this regard, Community air carriers should be insured up to a certain limit laid down in this Regulation;
- (11) Whereas Community air carriers should always be entitled to claim against third parties;
- (12) Whereas prompt advance payments can considerably assist the injured passengers or natural persons entitled to compensation in meeting the immediate costs following an air accident;
- (13) Whereas the rules on the nature and limitation of liability in the event of death, wounding or any other bodily injury suffered by a passenger form part of the terms and conditions of carriage in the air transport contract between carrier and passenger; whereas, in order to reduce the risk of distorting competition, third-country carriers should adequately inform passengers of their conditions of carriage;
- (14) Whereas it is appropriate and necessary that the monetary limits expressed in this Regulation be reviewed in order to take into account economic developments and developments in international fora;
- (15) Whereas the International Civil Aviation Organization (ICAO) is at present engaged in a review of the Warsaw Convention; whereas, pending the outcome of such review, actions on an interim basis by the Community will enhance the protection of passengers; whereas the Council should review this Regulation as soon as possible after the review by ICAO,

HAS ADOPTED THIS REGULATION:

**▼M1***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.

*Article 2*

1. For the purpose of this Regulation:
  - (a) 'air carrier' shall mean an air transport undertaking with a valid operating licence;
  - (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;

<sup>(1)</sup> OJ L 240, 24. 8. 1992, p. 1.

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- (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.

*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.

*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.

*Article 5*

1. The Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.
2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in euro of 16 000 SDRs per passenger in the event of death.
3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.

*Article 6*

1. All air carriers shall, when selling carriage by air in the Community, ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special

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declaration for baggage, is made available to passengers at all points of sale, including sale by telephone and via the Internet. In order to comply with this information requirement, Community air carriers shall use the notice contained in the Annex. Such summary or notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of this Regulation or the Montreal Convention.

2. In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air provided or purchased in the Community, provide each passenger with a written indication of:
- the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists,
  - the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;
  - the applicable limit for that flight on the carrier's liability for damage occasioned by delay.
3. In the case of all carriage performed by Community air carriers, the limits indicated in accordance with the information requirements of paragraphs 1 and 2 shall be those established by this Regulation unless the Community air carrier applies higher limits by way of voluntary undertaking. In the case of all carriage performed by non-Community air carriers, paragraphs 1 and 2 shall apply only in relation to carriage to, from or within the Community.

*Article 7*

No later than three years after the date on which Regulation (EC) No 889/2002<sup>(1)</sup> begins to apply, the Commission shall draw up a report on the application of this Regulation. In particular, the Commission shall examine the need to revise the amounts mentioned in the relevant Articles of the Montreal Convention in the light of economic developments and the notifications of the ICAO Depositary.

**▼B***Article 8*

This Regulation shall enter into force one year after the date of its publication in the *Official Journal of the European Communities*.

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

<sup>(1)</sup> OJ L 140, 30.5.2002, p. 2.

▼ M1*ANNEX*

## Air carrier liability for passengers and their baggage

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

## Compensation in the case of death or injury

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

## Advance payments

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

## Passenger delays

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 150 SDRs (approximate amount in local currency).

## Baggage delays

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

## Destruction, loss or damage to baggage

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

## Higher limits for baggage

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

## Complaints on baggage

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

## Liability of contracting and actual carriers

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

## Time limit for action

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

## Basis for the information

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