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COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2002) 521 final

2002/0234(COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

On insurance requirements for air carriers and aircraft operators

(Presented by the Commission)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

On insurance requirements for air carriers and aircraft operators

EXPLANATORY MEMORANDUM

Background

1. The Commission adopted on 10 October 2001 a Communication concerning the repercussions of the terrorist attacks in the United States on the air transport industry¹. With regard to the specific problem of insurance, it recognised that the terrorist attacks have exposed the vulnerability of the air transport sector with damage exceeding all rational estimates. As insurers withdrew a few days after the events cover for actions of war and terrorism, the question if air carriers operating in the Community had sufficient cover became a serious concern.
2. In this Communication, the Commission undertook to examine the revision of the amounts and conditions of insurance required for the issuance of operating licences in order to ensure a harmonised approach. Also, it considered that Member States should verify whether third country air carriers produce proof of minimum risk cover on the basis of the European Civil Aviation Conference (ECAC) recommendations in absence of a Community rule. It undertook to examine the issue of insurance coverage provided by third country air carriers flying into and within the Community, in order to maintain equal conditions of competition with third country airlines and to avoid diverging responses by Member States. In the absence of such cover, Member States would be obliged to take appropriate, coordinated action, i.e. to withdraw traffic rights and prohibit overflight in accordance with the Community's international obligations.
3. In a second Communication adopted on 2 July 2002 on insurance in the Air Transport sector following the terrorist attacks of 11 September 2001 in the United States,² the Commission concluded that it would continue monitoring the developments of the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the issuance of operating licences. In that respect, it was recognised that *"should the Commission consider that it is appropriate to further address the issues, [...] it will examine whether any legislative proposals are necessary and appropriate"*.
4. The Commission considers it necessary that a legal framework be established setting out the conditions of insurance and minimum amounts that both Community and third country air carriers and aircraft operators have to observe at all times in respect to their liability vis-à-vis passengers, baggage, cargo, mail and third parties. This framework should provide for legal certainty vis-à-vis Community and non-Community air carriers and aircraft operators flying into or within the Community as well as to ensure the transparent, non-discriminatory and harmonised application of minimum insurance requirements.
5. Currently, Community rules in the field of air carrier licensing³ merely require that air carriers "be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties", without, however, setting any criteria, conditions or amounts to be observed by the licensing authorities of Member States. At the same time, the Community, considering that it is important to ensure a

¹ COM(2001) 574 final of 10.10.2001

² COM(2002) 320 final of 2.7.2002

³ Council Regulation (EEC) N° 2407/92 of 23 July 1992, OJ L 240, 24.8.1992, p. 1

proper level of compensation for passengers involved in accidents, decided on 5 April 2001 to conclude and ratify⁴ the Montreal Convention on the Unification of Certain Rules for International Carriage by Air, replacing the Warsaw Convention of 1929 relating to the same subject and to modify the Community rules on air carrier liability⁵.

6. As far as insurance to cover third party liability is concerned, there is currently no Community rule setting limits for such liability, the only obligations for compensation derive from public international law i.e. the Rome Convention of 1933 on the Unification of Certain Rules Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface, as firstly amended in 1952 and later by a Protocol signed in Montreal on 23 September 1978. This Convention has led the European Civil Aviation Conference to undertake further work on the subject with a view to adjusting the levels for minimum insurance requirements for air carriers operating into and within ECAC countries⁶. Their work has resulted in December 2000 in a Resolution (ECAC/25-1) which provides for minimum insurance levels to cover liability vis-à-vis passengers as well as third parties.
7. Examination of the above-mentioned legal instruments indicates that they provide for a reasonable system, which could form the basis for the proposed Community rules. Particular attention should be paid to the structure of the insurance levels covering third party liability. Moreover, given the crisis that has been caused by the events of 11 September 2001, the proposed rules should provide for a regular monitoring of developments in the insurance market, so as to review the minimum requirements and adjust them in due course.

Elements of the proposal

a) The scope of application

8. The rules are designed to apply to all air carriers, including Community and third country, as well as to aircraft operators not disposing of an operating licence. Equally, they should apply to state aircraft. The Commission considers that the insurance requirements should cover all damage, including accidental caused of damage, as well as damage cause by war or terrorist acts.
9. It is also considered necessary for all flights to subject to the rules, namely scheduled and non-scheduled, commercial and non-commercial to ensure a harmonised approach with regard to third party liability.
10. Given that damage may be caused not only where an aircraft lands at or takes-off from a Community airport, but also during the flight over the territory of a Member State, the Regulation is applicable to flights into and out of Community airports and to overflight of Community territory.

⁴ Council Decision of 5.4.2001 on the ratification of the Montreal Convention, OJ L 194, 18.07.2001

⁵ Council Regulation (EEC) 2027/97 on air carrier liability, OJ L 285, 17.10.1997, p. 1

⁶ The following 38 States are members of ECAC: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom.

11. In order to ensure a maximum of compatibility with existing air transport rules and in particular the 3rd Package legislation on market access and air carrier licensing, the Community rights and obligations resulting from the Montreal Convention and the regulation amending the Community rules on air carrier liability, but also with work undertaken to date by ECAC, the terminology used in the proposed Regulation follows these instruments.

b) *The principles of insurance*

12. The proposed Regulation aims at establishing a clear link between what the insurance for passengers, baggage, cargo, mail and third parties should cover and their liability. As far as passenger, baggage, mail and cargo liability are concerned, insurance should cover liability as this has been defined in the following instruments:

(1) The 1999 Montreal Convention applicable to Community air carriers and air carriers from third countries which have ratified and apply this Convention; the 1929 Warsaw Convention which continues to exist alongside the Montreal Convention for an indefinite period, applicable to air carriers from third countries which are bound by that Convention. It should be noted that neither Convention limits liability of air carriers.

(2) Council Regulation 2027/97 on air carrier liability as recently amended by the European Parliament and Council Regulation (EC) No 889/2002 of 13 May 2002⁷ applicable to Community air carriers;

In the light of the events that took place on 11 September 2001 and the developments on the insurance market thereafter, it is considered necessary to clearly state that insurance regarding passenger, baggage, cargo and mail liability shall also cover acts of war and/or terrorism.

13. As far as third party liability is concerned, there are no Community rules defining what such liability should be based on. At international level, the 1933 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface as amended in 1952 and 1978, introduces minimum insurance amounts for third party liability which follows the principle of strict liability for damage sustained on the ground. The Convention excludes from the scope of its application nuclear damage as well as damage caused by acts of war (armed conflicts) and terrorism.

14. This Convention is not applicable in all Member States as not all are signatories to this Convention or have not ratified it⁸. To date, generally Member States provide that air carrier's liability vis-à-vis third parties is based on proven tort arising from negligence or any other wrongful acts (wilful misconduct), as opposed to strict liability. However, some Member States have followed the principle of strict liability as introduced by the Rome Convention - France, Sweden and the United Kingdom provide for unlimited third party liability, while Germany has limited liability to certain levels.

⁷ OJ L 140, 30.05.2002, p. 2

⁸ By July 2002 the following Member States have signed the Convention: Belgium, Denmark, France, Greece, Italy, Luxembourg, The Netherlands, Portugal, Spain and the United Kingdom. Only Belgium, Italy, Luxembourg and Spain have ratified the Convention.

15. The Commission is of the opinion that there are no sufficient grounds demonstrating the need for the introduction of strict liability of air carriers vis-à-vis third parties for risks linked to war and terrorist acts. As far as third party liability of air carriers and aircraft operators in case of incidents is concerned, the Commission is of the opinion that liability has been already sufficiently defined in the Member States.

In the light of the above, at this stage, it is considered necessary to provide for minimum insurance requirements to cover third party liability for damage sustained on the ground and in the air caused accidentally or by acts of war and/or terrorism by providing for a single combined limit. This requirement should ensure that air carriers would now have the obligation to buy such cover on the market or elsewhere as opposed to what was very often the case before the events of 11 September 2001.

16. As not all air carriers and aircraft operators flying into and within the Community may be in a position to observe the financial fitness requirements that are laid down in the Community rules relating to the issuance of operating licences⁹, it is important to allow for some flexibility so that other instruments such as state or bank guarantees are accepted *in lieu* of insurance policies.

c) *Monitoring and sanctions*

17. However, such flexibility calls for increased monitoring obligations for Member States to ensure that air carriers licensed in the Community and elsewhere are capable of providing adequate cover for liability to cover any damage to passengers, baggage, cargo mail and third parties. Therefore, it is proposed that Member States have the obligation to ensure that insurance requirements are met at all times by performing regular inspections and where they have reasonable ground for doubting the existence of insurance, that they require additional evidence from air carriers and aircraft operators. Should such cover not exist air carriers should not be allowed either to take-off, if they have already landed at a Community airport, or not to enter the airspace or to land.
18. This places a particular obligation on the Commission to ensure that the minimum requirements reflect the situation in the market and to ensure that such requirements are adequate to provide coverage for liability in case there is an increase in incidents in terms of accidents and war and terrorist actions. Therefore, there should be a reporting obligation on the Commission on the developments in the insurance market taking into account any incidents which may significantly affect the conditions of insurance and a review clause in the proposed rules to enable any necessary adjustments of the required levels. Also, it should be taken into consideration that there might be considerable changes at the level of international law (possible future modification of the Rome Convention) affecting third party liability.
19. In order to reflect possible changes and developments in the proposed rules, it is foreseen that such decisions should be taken in accordance with the regulatory "comitology" procedure provided for in Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission.¹⁰ In the context of the liberalisation rules for air transport already contain provisions for such a committee (article 11 of Council

⁹ See footnote 2

¹⁰ OJ L 184, 17.7.1999, p. 23

Regulation (EEC) N° 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community routes, OJ L 240 24.08.92). Therefore, it is proposed to use this Committee for the revision of the minimum insurance requirements.

d) *The minimum insurance requirements*

20. There are clear provisions for each and every case of liability: passengers, baggage, cargo, mail and third parties.

(1) Passenger liability: minimum insurance requirement of 250 000 SDRs.

The minimum insurance requirements reflect the amounts currently applicable at ECAC level.

In line with the provisions of the 1999 Montreal Convention and Council Regulation (EEC) N° 2027/97 on air carrier liability, as amended by European Parliament and Council Regulation (EC) No 889/2002 of 13 May 2002,¹¹ passenger liability is based on the notion of strict liability, irrespective of tort found on the account of the air carrier concerned, for claims up to 100 000 SDRs (Special Drawing Rights) as these are defined by the International Monetary Fund).

Beyond that amount (up to the minimum requirement of 250 000 SDRs and above) insurance vis-à-vis passengers and their baggage covers legal liability based on tort.

For air carriers bound by the 1929 Warsaw Convention, passenger liability is unlimited and based on the presumption of liability on the part of the carrier for injury or death, subject to certain defences, and concomitant limitation of liability, subject to certain exceptions (wilful misconduct).

(2) Baggage: is dealt with under the same limits as passenger liability, with the proviso that baggage was checked and in the charge of the air carrier and had not an inherent defect or vice.

(3) Cargo liability minimum insurance 17000 SDRs per ton (17 SDRs per kg).

This type of liability is covered by the Montreal Convention, which limits the liability of the air carrier, *inter alia* in cases of acts of war or armed conflicts. The minimum insurance requirements reflect the amounts currently provided in that Convention.

For air carriers bound by the Warsaw Convention, cargo is subject to liability is unlimited and subject to certain exceptions (diligence during care, negligence and wilful misconduct).

In order to take account of the international environment within which Community and non-Community carriers are currently operating, the present Regulation proposes to treat cargo on the basis of legal liability.

¹¹ See footnote 6

- (4) Mail liability minimum insurance to be set by national administrations reflecting national laws for the carriage of mail.
- (5) Third party liability minimum insurance according to aircraft type.

As explained earlier, there are currently no harmonised requirements among Member States. Currently, the minimum insurance requirements for leased aircraft indicate a sharp increase compared to the levels provided in the Rome Convention¹² or those provided in the ECAC resolution¹³. The proposed minimum requirements reflect this situation.

The particularity of third party liability is that insurance requirements correspond to the Maximum Take-Off Weight (MTOW) of aircraft specified in the certificate of airworthiness, which reflect the potential danger that can be caused by each type of aircraft. Therefore, for reasons of consistency with current insurance practice, it appears appropriate to undertake a clear classification of aircraft to fit specific categories according to their MTOW. For ease of reference, a table summarising the main types of aircraft used in civil aviation is presented in the annex.

¹² Article 11 of the Rome Convention as modified by the Montreal Protocol of 1978 provides for:

- a) For aircraft with MTOW < 2 000 kg 300 000 SDRs.
- b) For aircraft with MTOW < 6 000 kg 300 000 SDRs plus 175 SDRs per kg.
- c) For aircraft with MTOW > 6 000 - 30 000 kg 1 000 000 SDRs plus 62.5 SDRs per kg for aircraft over 6 000 - 30 000 kg.
- d) For aircraft with MTOW > 30 000 kg 1 000 000 SDRs plus 65 SDRs per kg.

¹³ The minimum insurance requirements provided by ECAC 25/1 are the following:

- Category 1: Aircraft with MTOW < 2 000 kg 1 500 000 SDRs
- Category 2: Aircraft with MTOW < 6 000 kg 4 500 000 SDRs
- Category 3: Aircraft with MTOW < 25 000 kg 12 500 000 SDRs
- Category 4: Aircraft with MTOW < 100 000 kg 50 000 000 SDRs
- Category 5: Aircraft with MTOW > 100 000 kg 90 000 000 SDRs

ANNEX

MAIN AIRCRAFT TYPES USED IN CIVIL AVIATION

Aircraft Mainfram	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
A.S.T.A. (GAF)	NMAD	N22 - 24	12 - 17	8500
ATR	AT42	100 - 500	42 - 50	32849 - 41005
ATR	AT72	100 - 500	68 - 74	48501
Aero Commander	1121	A/B	8	16800 - 17500
Aerospatiale	CARV	10A - 11R	99 - 140	95901 - 123459
Aerospatiale	N262	A/B/C/D/E	29	22708 - 23810
Airbus Industrie	A300	B1 - 600 (GE)	295 - 361	291010 - 375888
Airbus Industrie	A310	200 - 320 (GE)	280	291005 - 361558
Airbus Industrie	A318	110 (CFM) - 120 (P&W)	130	131000 -
Airbus Industrie	A319	100 - 130 (CFM) /(IAE)	124 - 154	145505 - 166300
Airbus Industrie	A320	110 (CFM)/230 (IAE)	180	145505 - 166449
Airbus Industrie	A321	100/230 (IAE)	220	181198 - 196211
Airbus Industrie	A330	200 - 340 (GE)	405 -440	467379 - 507000
Airbus Industrie	A340	210 (CFM) - 640 (RR)	361 - 185	566587 - 804686
Airbus Industrie	A380	800 F(GP)/(RR)	555	1208000 - 1285000
Antonov	A124	100		864200
Antonov	A140		52	42218
Antonov	A225			1322750
Antonov	AN10	A	84 -130	112436 - 121475
Antonov	AN12 - 22			134482 - 551155
Antonov	AN24	RT/RV	42 - 52	42990 - 48061
Antonov	AN26	B - D		48061 - 52911
Antonov	AN30 - 32	B - P	45 - 50	50706 - 66390
Antonov	AN38	100/200	26	19400
Antonov	AN70/72	P	8	82670 - 286600
Antonov	AN74	T - 200 D	52	76720 - 80468
Antonov	AN8			88185

Ayres Corporation	LM20	LM200		19000
BAE SYSTEMS (Avro)	AVRJ	RJ100 - RJ70	94 - 112	84000 - 97500
BAE SYSTEMS (Avro)	AVRJ	RJ85/RJX100	112	93000 - 101500
BAE SYSTEMS (BAC)	BRIT	100/252/310F	92 - 99	155000 - 185000
BAE SYSTEMS (BAC)	VANG	950		135000 - 146500
BAE SYSTEMS (BAC)	VC10		150	312000 - 335000
BAE SYSTEMS (BAC)	VISC	700/800	63 - 74	60000 - 72500
BAE SYSTEMS (HS)	AGSY	100/200	85 - 89	88000 93000
BAE SYSTEMS (HS)	AGSY	C.1/E.1/T.2		105000
BAE SYSTEMS (HS)	AGSY	Variant Unannounced		
BAE SYSTEMS (HS)	ATP	PAX/Freighter	72	50550 - 52200
BAE SYSTEMS (HS)	ATP	Jetstream 61	70	52200
BAE SYSTEMS (HS)	B146	100	94 - 146	76000 - 97500
BAE SYSTEMS (HS)	COMT	1 - 4C	36 - 102	105000 - 162000
BAE SYSTEMS (HS)	TRID	1C - 3B	103 - 170	115000 - 159000
BAE SYSTEMS (Jetstream)	J31		19	15212
BAE SYSTEMS (Jetstream)	J31	F (SCD)		15212
BAE SYSTEMS (Jetstream)	J31	Super	19	16204
BAE SYSTEMS (Jetstream)	J41		29	24000
Boeing	B707	420	179 - 189	247000 - 332500
Boeing	B717	200ER	100	114000 - 121000
Boeing	B720	20	165	229300
Boeing	B727	100QC 200C (M) Advanced	131 - 187	160000 - 209500
Boeing	B73N	T-43A - BBJ2	78 - 189	115500 - 174200
Boeing	B747	100B/SR (P&W)	550	600000 - 750000
Boeing	B747	100B/SR (SUD) (P&W)	624	600000
Boeing	B747	200B Combi (SUD) (RR)	660	785000 - 833000
Boeing	B747	200C (SCD) (P&W)	584	775000 - 833000
Boeing	B747	300 Combi 400D (P&W)	563/568	520000 - 610000-833000
Boeing	B747	400F (RR)		833000 - 875000
Boeing	B747	SP (RR)	331	630000 - 696000

Boeing	B747	SR-100	490	520000 - 733600
Boeing	B767	200 EROPS (GE)	290	345000
Boeing	B767	200ER (P&W)	255	282000 - 387000
Boeing	B767	200ERM (P&W)	290	320000 - 345000
Boeing	B767	300 (RR)	309	345000 - 350000
Boeing	B767	300ER (RR)	309	387000 - 407000
Boeing	B767	400ER (GE)	375	400000
Boeing	B777	300 (RR)	440/550	515000 - 660000
Boeing	B777	300ER (GE)	390	750000
Boeing (McDonnell-Douglas)	DC10	40I	380	444000 - 580000
Boeing (McDonnell-Douglas)	DC8	20/51 (Stage 2 Hushkits)	176 - 189	276000
Boeing (McDonnell-Douglas)	DC8	30F (M) / 54CF (Stage 3 Hushkits)	176 - 189	300000 - 315000
Boeing (McDonnell-Douglas)	DC8	73CF	189 - 258	335000 - 355000
Boeing (McDonnell-Douglas)	DC9	14 - 21 (Stage 3 Hushkits)	109	85700 - 100000
Boeing (McDonnell-Douglas)	DC9	31 - 51 (Stage 3 Hushkits)	127 - 139	98000 - 122200
Boeing (McDonnell-Douglas)	MD11	Freighter (P&W)		602500 - 625500
Boeing (McDonnell-Douglas)	MD11	Passenger (RR)/ER (GE)	405	618000 - 630500
Boeing (McDonnell-Douglas)	MD80	87	139	125000 - 149500
Boeing (McDonnell-Douglas)	MD80	88	172	149500 - 160000
Boeing (McDonnell-Douglas)	MD90	10	139	139000
Boeing (McDonnell-Douglas)	MD90	30 / 30T (SAIC)	172	156000
Boeing (McDonnell-Douglas)	MD90	40	217	163500
Bombardier (Canadair)	BCJT		10	37500
Bombardier (Canadair)	CGXP		19	93500
Bombardier (Canadair)	CGXP	ASTOR	5	93500
Bombardier (Canadair)	CL44	J	178 - 214	205000 - 210000
Bombardier (Canadair)	CL60	604	19	45100 - 47600
Bombardier (Canadair)	CRJ7		70	72750
Bombardier (Canadair)	CRJ9		86	80500
Bombardier (Canadair)	CRJT	200LR	50	47450 - 53000

Bombardier (Learjet)	LJ24/25/35/ 36	TF	6 -8	12499 - 18000
Bombardier (Learjet)	LJ55/60	Learjet 60	8	19500 - 22750
Bombardier (Shorts)	S330	200	30	22900
Bombardier (Shorts)	S360	Advanced	39	26453 - 27100
Bombardier (de Havilland)	DHC5	A	41 - 44	41000
Bombardier (de Havilland)	DHC6	300 Vista Liner	19 -20	11579 - 12500
Bombardier (de Havilland)	DHC7	150	59	43500 - 47000
Bombardier (de Havilland)	DHC8	200	40	33000 - 36300
Bombardier (de Havilland)	DHC8	320C/400	56 - 80	41100 - 63750
Bombardier (de Havilland)	DHC8	8M		34500
CASA	C295		78	46297
Century Aerospace	CENT		5	7000
Cessna	C525	1	7	10600
Cessna	C670/750		9/10	22450 - 35700
Cessna	CEXL/CIT2	551	8 - 10	12500 - 18700
Chichester Miles	LPRD		4	2550 - 4000
Dassault Aviation	2000/DA50		12 - 19	35000 - 40780
Dassault Aviation	DA90	B	19	45500
Dassault Aviation	DA90	EX		45000 - 48300
Dassault Aviation	MERC	100	179	124560
Embraer	E110	P2	9 - 22	9921 - 15432
Embraer	E120	ER	30	26437
Embraer	E120	ER Advanced		
Embraer	E135		37	41887 - 48943
Embraer	E140		0	46517
Embraer	E145		50	42328 - 48500
Embraer	E170		70	78153
Embraer	E190	100	98	106922
Embraer	E190	200	110	106922
Fairchild	FH27	D (LCD)	40 - 52	36225 - 45500

Fairchild (Swearingen)	MTRO	Merlin IVC	14 - 20	12500 - 17000
Fairchild/Dornier	D328	100	33	27558 - 30847
Fairchild/Dornier	D328	100	33	
Fairchild/Dornier	D428		44	43650
Fairchild/Dornier	D728		70	79343 - 83753
Fairchild/Dornier	D928			109568
Fairchild/Dornier	DJET		34	33510
Fokker	FK10		122	95000
Fokker	FK27	600RF	48 - 60	40500 - 45000
Fokker	FK28	1000	70	63000 - 71000
Fokker	FK28	4000	85	71000 - 73000
Fokker	FK28	6000	79	70800
Fokker	FK50		68	42990 - 45900
Fokker	FK70		79	81000 - 84000
General Dynamics (Convair)	C600/640		52 - 56	45000 - 55000
General Dynamics (Convair)	C880		110	184500 - 193000
General Dynamics (Convair)	C990		121	246200 - 253000
Gulfstream Aerospace	GLF1	Commuter	24 - 38	36000
Gulfstream Aerospace	GLF1	Freighter		36000
Gulfstream Aerospace	GLF4		19	73200 - 90500
Handley Page	HRLD	100	48 - 60	40000 - 45000
Ilyushin	I114		60	50045
Ilyushin	IL18	B/D	111 - 122	135584 - 141096
Ilyushin	IL18	D Freighter		141096
Ilyushin	IL18	E/V	122	134923
Ilyushin	IL18	V Freighter		134923
Ilyushin	IL62		186	357148 - 368172
Ilyushin	IL86		350	458650
Ilyushin	IL96	300	300	476198
Indonesian Aerospace	N250		54 - 68	48501 - 54674
Israel Aircraft Industries	1125/ARVA		4 - 30	23500 - 40780

Lockheed	1011	1 (Group 1) / Freighter	315 - 400	430000 - 510000
Lockheed	1329	6/6A	10	40921 - 44500
Lockheed	HERC	L-100		155000
Lockheed	L188	A	99	113000 - 127500
Raytheon	1300/1900/ BE99/B400	T-1A Jayhawk	7 - 19	12500 - 16950
Raytheon	HRZN		13	36000
Raytheon	PREM		8	12500
Saab	S200 - 340		37 - 58	28000 - 50265
Tupolev	T104		50 -100	154325 - 167550
Tupolev	T114	AWACS	220	268800 - 413917
Tupolev	T124		56 - 68	83776
Tupolev	T134		72 - 84	98106 - 108026
Tupolev	T144	Prototype		330693 - 396832
Tupolev	T154	100	167 - 180	198416 - 220462
Tupolev	T204	120F (RR)	214	209555 - 244155
Tupolev	T234	120 (BMW RR)	166	87082 - 186950
WSK-PZL Mielec	AN28	B1T/R - M28 Skytruck (P&W)	17	14330
Xian	YUN7	200	52	46295 - 52911
Yakovlev	YK40/42	D-100 (Yak-142)	34 - 168	30203 - 145505

Source: AIRCLAIMS Database (May 2002)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

On insurance requirements for air carriers and aircraft operators

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 Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) In the framework of the common transport policy, it is important to ensure a proper minimum level of insurance to cover liability of air carriers concerned by accidents in particular in respect of passengers, baggage, cargo, mail and third parties;
- (2) In the Community aviation market, the distinction between national and international air transport has been eliminated and it is, therefore, appropriate to have the same minimum level and nature of insurance requirements for Community air carriers;
- (3) Common action is necessary to ensure that minimum levels of insurance also apply to air carriers from third countries so that to ensure a level playing field with Community air carriers and foster consumer protection;
- (4) The Commission has stated in its Communication of 10 October 2001 regarding the repercussions of the terrorist attacks in the United States on the air transport industry, its intention to examine the amounts and conditions of insurance required for the issue of operating licences in order to ensure a harmonised approach; also, the Commission stated in its Communication of 2 July 2002 regarding insurance in the Air Transport sector following the terrorist attacks of 11 September 2001 in the United States, that it would continue monitoring the developments on the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the issuance of operating licences;

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

- (5) The Community has concluded the Montreal Convention for the Unification of Certain Rules Relating to International Carriage by Air agreed on 28 May 1999⁵ setting new global rules on liability in the event of accidents for international air transport of persons, baggage and cargo replacing those in the Warsaw Convention of 1929 and its subsequent amendments;
- (6) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured to cover liability under that Convention; whereas the Warsaw Convention of 1929 and its subsequent amendments will continue to exist alongside the Montreal convention for an indefinite period; whereas both Conventions foresee the possibility of unlimited liability;
- (7) Article 7 of Council Regulation (EEC) 2407/92 of 23 July 1992 on licensing of air carriers, requires air carriers to be insured to cover liability in case of accidents, in particular in respect of passengers, baggage, cargo, mail and third parties, albeit without specifying minimum amounts and conditions of insurance;
- (8) It is appropriate to take into account that the European Civil Aviation Conference has adopted on 13 December 2000 a Resolution (ECAC/25-1) on minimum levels of insurance cover for passenger and third party liability;
- (9) It is necessary to define non-discriminatory minimum insurance requirements to cover passenger, baggage, cargo, mail and third parties for both Community air carriers and other air carriers flying to and from an airport situated in the Community as well as flying over the territory of a Member State;
- (10) It is necessary to require air carriers to provide evidence on request that they respect at all times the minimum insurance requirements to cover liability as provided for in the present Regulation;
- (11) The minimum insurance requirements should be reviewed after a period of time;
- (12) Procedures for monitoring the application of the minimum insurance requirements should be transparent and non-discriminatory and should not impede in any way the free movement of goods, persons, services and capital;
- (13) Since any measures necessary for the implementation of this Regulation with regard to the adjustment of the minimum insurance requirements are of a general scope and they concern the adaptation of certain non-essential provisions of the Regulation within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission⁶, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision;
- (14) The Regulation is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty. The introduction of minimum insurance requirements can contribute to the objectives of the internal aviation market by eliminating distortions of competition. The objectives can therefore be more effectively achieved by the Community by means of harmonised rules. The Regulation

⁵ OJ L 194, 18.07.2001, p. 38

⁶ OJ L 184, 17.7.1999, p. 23

confines itself to the minimum required in order to achieve these objectives and does not go beyond what is necessary for that purpose.

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to define minimum insurance requirements in respect of insurance regarding passengers, baggage, mail, cargo and third parties, that air carriers and aircraft operators have to respect to be allowed to operate services within, into or out of the Community or to fly over the territory of Member States to which the Treaty applies.

Article 2

Scope

This Regulation shall apply

- a) to all air carriers flying to or from an airport situated in the Community as well as flying over the territory of a Member State operating a scheduled or non-scheduled flight;
- b) to all aircraft operators flying to or from an airport situated in the Community as well as flying over the territory of a Member State carrying passengers and their baggage, mail and/or cargo without remuneration or hire;
- c) to carriage by air of passengers and their baggage, mail or cargo performed by a state aircraft of a Member State or any other country.

This Regulation shall not apply to carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, nor to local flights not involving carriage between different airports. In respect of these operations, national law concerning insurance requirements in the event of accidents shall apply.

Article 3

Definitions

For the purposes 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 Council Regulation (EEC) 2407/92 of 23 July 1992 of licensing of air carriers;;
- (c) 'aircraft operator' shall mean a natural person residing in a Member State or a legal person established in a Member State using one or more aircraft in accordance with the regulations applicable in that Member State, as provided for in Council

Regulation (EEC) No 3922/91⁷, or a natural person residing outside the Community or a legal person established outside the Community using one or more aircraft in accordance with the regulations of the country of residence or establishment;

(c) "insurer" shall mean an undertaking, which has received official authorisation in accordance with Article 6 of Council Directive 73/239/EEC⁸, or a non-member-country undertaking, which would require authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered office in the Community;

(d) 'insurance' shall mean the policy contract setting the conditions whereby the insurer agrees to indemnify the insured for all insured loss up to the limit of liability for all insured perils, in respect of incidents which occur during the policy period; insurance shall also mean the policy contract where the insured perils are acts of war, terrorism, hijacking, act of sabotage, unlawful seizure of aircraft, civil commotion or labour disturbances;

(e) 'insurer's principal place of business' shall mean the location of the insurer's headquarters or, alternatively, the place from which the majority of the undertaking's operations are managed on a day to day basis;

(f) 'incident' shall mean the occurrence or series of occurrences having the same origin, in which an aircraft causes damage to passengers, baggage, cargo, mail and/or third parties on the surface and/or in the air. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence. Incidents shall be understood to cause accidentally damage to passengers, baggage, cargo, mail and/or third parties on the surface and/or in the air, or because of acts of war, terrorism, hijacking, act of sabotage, unlawful seizure of aircraft, civil commotion or labour disturbances;

(g) 'flight' shall mean the beginning of the operations of departure until the end of the operations of arrival and where the aircraft has come to a complete stop;

(h) 'air service' shall mean a flight or a series of flights carrying passengers, cargo, and/or mail irrespective of remuneration and/or hire;

(i) 'scheduling period' shall mean either the summer or the winter season as used in the schedules of air carriers;

(j) 'SDR' shall mean a Special Drawing Right as defined by the International Monetary Fund in 1969, as an international reserve asset, to supplement members' existing reserve assets (official holdings of gold, foreign exchange, and reserve positions in the International Monetary Fund)⁹;

(k) 'MTOW' shall mean the Maximum Take Off Weight, which corresponds to a certified amount specific to all aircraft types as stated in the certificate of airworthiness of the aircraft.

⁷ Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, *OJ L 373*, 31/12/199, p.4 - 8
⁸ OJ L 228, 16.08.1973,p. 3

⁹ SDRs are determined daily by the International Monetary Fund. The SDR rate on 5 September 2002 was set at: SDR/Euro 0.747385 -- Euro/SDR 1.338000

Article 4

Principles of insurance

1. Community air carriers registered in the Community and aircraft operators operating aircraft registered in the Community, as well as other air carriers and aircraft operators operating air services into the Community and/or flying over Community territory, shall be insured in respect to their liability for damage sustained on the territory of a Member State and for which a right to compensation exists.

Article 5

Compliance

1. The insurance shall be effected by an insurer authorised to effect such insurance under Community law or the laws of:
 - the country which has delivered an operating licence to the air carrier concerned, or
 - the country where the aircraft is registered, or
 - the country where the insurer has its residence or principal place of business.

This paragraph shall not affect the rights of Member States to define the prudential conditions under which an insurer non-authorised according to Article 6 of Council Directive 73/239/EEC may conduct business in its territory.

2. Air carriers and aircraft operators registered in a third country, shall provide alternatively to the insurance requirements referred to in paragraph 1, any of the following securities:
 - A cash deposit in a depository maintained in the country having granted a valid operating licence to the air carrier concerned, or having delivered the air operator's certificate to the aircraft operator concerned;
 - A guarantee issued by a bank authorised to do so by the country of registration of the aircraft and whose financial responsibility has been verified by that country;
 - A guarantee issued by a bank authorised to do so by the country of registration of the aircraft, if that country undertakes that it will not claim immunity from suit in respect of that guarantee.
3. Air carriers and aircraft operators shall deposit an insurance certificate issued in accordance with paragraph 1 or any of the securities provided for in paragraph 2 with the competent authorities of Member State(s) concerned at the beginning of each scheduling period.

For the purpose of application of the present paragraph, Member State concerned shall mean the Member State(s) which has issued an operating licence to an air

carrier or the Member State where an aircraft has been registered and the Member State responsible for the airport to and from an air service is operated.

Member States overflown may also require that air carriers and aircraft operators produce evidence that insurance has been effected in accordance with the present regulation.

4. Where an air service consists of series of flights, all air carriers or aircraft operators concerned shall meet the requirements stipulated in the present Regulation.
5. Where the insurance or the guarantee or the security expires during a flight, air carriers shall ensure that it shall continue to be in force until the next safe landing of the aircraft specified in the flight plan.

Article 6

Passenger, baggage, mail and cargo liability

1. Where passengers are carried by air, all air carriers shall be insured to cover their liability for death, wounding or any other bodily injury sustained by a passenger for the minimum amount of 250 000 SDRs per passenger. Such insurance shall be understood to also cover damage sustained in the case of destruction or loss of, or damage to checked baggage of a passenger, upon condition only that the event causing the damage took place in the period during which the checked baggage was in the charge of the carrier, or its servants or agents.

This provision shall apply *mutatis mutandis* to aircraft operators.

2. In case of aircraft operated under short term lease agreements with or without crew minimum insurance requirements have to be met by the air carrier actually performing the flight.
3. Where cargo is carried by air, air carriers and aircraft operators shall be insured to cover their liability for damage sustained in the event of the destruction or loss of, or damage to cargo carried for the minimum amount of 17 SDRs per kilogram upon condition that the event, which caused the damage so sustained, took place during the flight.
4. Where mail is carried by air Member States shall set the minimum insurance requirements in value for the carriage of mail by air carriers and/or aircraft operators without discrimination on grounds of nationality or identity of the air carrier or the aircraft operator.
5. The values referred to in this Article may be amended as appropriate including where changes in international law indicate the necessity of such decision, in accordance with the procedure laid down in Article 9 (2).

Article 7

Third Party Liability

1. Insurance to cover liability vis-à-vis third parties shall be understood to cover any damage caused by an aircraft in flight or on the ground or by any person or thing falling therefrom to third parties, for each aircraft and incident, only if the damage is a direct consequence of the incident giving rise thereto, and
 - a) for which the air carrier or aircraft operator concerned is held liable according to national laws of the Member State where the incident has occurred, or
 - b) was due to an act of war, or hijacking, or sabotage, or terrorism, or civil commotion or social disturbance intended to affect the operation of the aircraft and was due to the negligence or other wrongful act or omission of the air carrier or its servants or agents or the aircraft operator.

This provision shall apply *mutatis mutandis* to aircraft operators, where the aircraft is registered in a third country.

2. All air carriers shall be insured for damages sustained by third parties in the event of accidents as well as acts of war and acts of terrorism. The minimum insurance requirements shall be understood to cover the following categories of aircraft:

Category 1: aircraft with a MTOW < 25 000 kg 80 million SDRs

Category 2: aircraft with a MTOW < 50 000 kg 270 million SDRs

Category 3: aircraft with a MTOW < 200 000 kg 400 million SDRs

Category 4: aircraft with a MTOW > 200 000 kg 600 million SDRs

This provision shall apply *mutatis mutandis* to aircraft operators, where the aircraft is registered in the Community.

- .3. Air carriers operating flights to and from any airport situated on the territory of a Member State or flying over the territory of a Member State shall produce evidence that they observe at all times the minimum insurance requirements referred to in paragraph 2.

This provision shall apply *mutatis mutandis* to all aircraft operators.

4. In case of aircraft operated under short term lease agreement with or without crew, minimum insurance requirements have to be met by the air carrier bearing the operating risk of the flight.
5. The values referred to in this Article may be amended as appropriate including where changes in international law indicate the necessity of such decision, in accordance with the procedure laid down in Article 9 (2).

Article 8

Enforcement

1. Member States shall perform regular inspections to verify that air carriers using airports in their territory, or Community air carriers to which they have delivered an operating licence, or aircraft operators to which they have issued an aircraft operator's certificate according to Council Regulation (EEC) N° 2407/92 comply with the provisions of the present Regulation.

This provision shall apply *mutatis mutandis* to aircraft operators whichever the place of registration of the aircraft.

2. Where appropriate Member States concerned may request additional evidence from the air carrier, the aircraft operator or the insurer concerned.
3. Where Member States concerned are not satisfied that the conditions of the present Regulation are met, they shall refuse the air carrier or aircraft operator access to routes into or within the Community or the right to overfly their territory.
4. Where Member States concerned are not satisfied that the conditions of the present Regulation are met after an aircraft has landed at an airport in their territory, they shall not allow the aircraft to take-off, before the air carrier or aircraft operator concerned has produced a valid insurance certificate according to the present Regulation.

Article 9

Committee

1. The Commission shall be assisted by the committee instituted by Article 11 of Regulation (EEC) N° 2408/92.
2. Where reference is made to decisions taken pursuant to paragraph 1, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
4. The committee referred to in this Article may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.

Article 10

Report and cooperation

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation at least three years after its entry into force. The report shall address in particular the functioning of articles 5, 6, 7 and 8.
2. Member States shall upon request submit information on the application of this Regulation to the Commission.

Article 11

Entry into force

This Regulation shall enter into force on the twentieth day following that 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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President