



TWENTY-FIFTH PLENARY SESSION (SPECIAL) OF ECAC

(Paris, 13 December 2000)

Agenda item 2: Adoption of Resolution ECAC/25-1 on minimum level of insurance cover for passenger and third-party liability¹

RESOLUTION ECAC/25-1 ON MINIMUM LEVEL OF INSURANCE COVER FOR PASSENGER AND THIRD-PARTY LIABILITY

(Presented by Mr R. Griffins, Focal Point for Economic Matters)

Summary

This paper presents a draft resolution on minimum level of insurance for passenger and third-party liability, prepared by the EURPOL Task Force.

Action to be taken

The Session is invited to adopt Resolution ECAC/25-1, which is reproduced in the **Appendix**.

¹ [The resolution was finally adopted 13 December 2000, see <<http://www.ecac-ceac.org/uk/activities/activities-economic.htm>>]

1. The Task Force on Intra-European Air Transport Policy (EURPOL) was requested by the sixth meeting of ECOSTRAT, to « undertake work aimed at harmonizing the minimum levels of insurance cover for passenger and third-party liability »(ECOSTRAT/6, Paris, 21 September 1999).

2. The work was to be undertaken with special regard to the following considerations:

Article 50 of the 28 May 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air obliges State Parties to require their carriers to maintain adequate insurance covering their responsibility under the Convention. Furthermore, a carrier may be required by a State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under the Convention. However, the term “adequate” is not defined or explained in the Convention.

Article 7 of EC Regulation 2407/92 on licensing requires air carriers to be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third-parties. This obligation is further defined by Article 3.1(b) of EC Regulation 2027/97, which requires air carriers to be insured up to the limit specified in Article 3.2, that is 100 000 SDRs and thereafter to a « reasonable » level. Here again, the term « reasonable » is not defined.

The European Commission, which has confirmed the strong interest of the European Union in assuring an adequate insurance coverage, has also welcomed the ECAC initiative in trying to harmonize minimum insurance requirements.

3. The aim of the work was accordingly to prepare a draft recommendation or possibly a resolution on harmonizing the minimum level of insurance cover for passenger and third-party liability, with a view to presenting it for adoption to a Plenary Session by the end of 2000.

4. The EURPOL Task Force, which met four times under the chairmanship of Mr A. Gradin (Sweden) to deal with the issue (Paris, 16 November 1999, London, 25 January 2000, Paris, 13 April 2000 and 24 April 2000), was assisted in its work by a « working party », with participants from Bulgaria, Finland, France, Germany, Switzerland, the United Kingdom and the European Commission.

5. The Task Force benefited from the analysis of a questionnaire on current and anticipated insurance requirements for passenger and third-party liability in ECAC Member States, issued on 24 November 1999, which has received a wide response.

6. The Task Force agreed the following scheme:

- In relation to passenger liability: a minimum of 250 000 SDRs per passenger;
- In relation to third-party liability: a scheme per type of aircraft based on the minimum take-off mass (MTOM), with five categories ranging from 2000 kg to about 100 000 kg.

7. Aircraft were then categorized in five groups as follows:

- Cat. 1: « small » aircraft (typically 3-6 seats, single-engined aircraft) up to 2000 kg

- Cat. 2: « medium » aircraft (bigger single-engined aircraft, small twin-engined aircraft, light jets) up to 6000 kg
- Cat. 3: « big » aircraft (commuter air planes, bigger business jets) up to 25 000 kg
- Cat. 4: short haul/medium range aircraft up to 100 000 kg
- Cat. 5: long range aircraft exceeding 100 000 kg

8. The Task Force tried to find a transparent method to establish the minimum level of cover. It concluded that third-party damage consists mainly of two elements: 1) death and injury to individuals on the ground, 2) damage to property. However, it should be noted that this distinction was made only for calculation purposes. With regard to injury to individuals on the ground, the Task Force was of the opinion that the same minimum amount should be used as agreed in relation to passenger liability (250 000 SDRs per person). In order to derive a figure for each category of aircraft, the Task Force set out a certain number of on-ground individuals that might be injured or killed in the event of an accident. In adopting this approach, the Task Force considered carefully statistical data collected by ICAO with regard to the number of ground fatalities in the aircraft categories. The general opinion was however that the insurance requirements should not be based on a statistical average, and it was also agreed that worst-case scenarios should not be included.

9. With regard to the damage to property on the ground, the Task Force based its considerations on its foregoing conclusions. However, taking into account the fact that property damage tends to increase in proportion to the size of the aircraft, it multiplied the amount for individuals on ground by a factor equivalent to the category number (factor 1 for cat. 1 aircraft, factor 2 for cat. 2 aircraft, etc.). The addition of both figures (injury to individuals + damage to property) reflects the minimum cover for third-party liability; it reads as follows:

Cat.	Individuals	Injury to individuals	Damage to property	Total SDR
1	3	750 000	750 000	1 500 000
2	6	1 500 000	3 000 000	4 500 000
3	12	3 000 000	9 000 000	12 000 000
4	40	10 000 000	40 000 000	50 000 000
5	60	15 000 000	75 000 000	90 000 000

It was considered essential to bear in mind that the distinction between injury to individuals and damage to property is made for calculation purposes only. In case of an accident the total minimum cover must be available for any third-party claim, irrespective of whether the damage is caused to individuals or property.

10. The Task Force, after an extensive discussion, decided not to include a category specific to balloons but agreed that Member States should be free to include them if desired. The possible inclusion of gliders, ultralight aircraft and airships was also discussed. The meeting agreed to adopt the wording of Article 1 of Council Regulation No. 2407/92, that is:

« The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultralight power aircraft, as well as local flights not including carriage between airports, are not subject to this Regulation ».

11. The Task Force considered the question whether harmonized minimum insurance requirements also should apply to non ECAC carriers serving the ECAC area. The task force came to the conclusion that this ought to be the case since this would increase the protection of individuals and property. However, bilateral and multilateral obligations of ECAC Member States in this respect should be respected.

12 The Resolution, as approved by the EURPOL Task Force, is reproduced in the **Appendix**.

Action to be taken

13. The Session is invited to adopt Resolution ECAC/25-1 on minimum level of insurance cover for passenger and third-party liability.

APPENDIX**RESOLUTION ECAC/25-1****ON MINIMUM LEVEL OF INSURANCE COVER FOR PASSENGER AND
THIRD-PARTY LIABILITY**

THE CONFERENCE

Recalling Recommendation ECAC/16-1 on air carrier liability with respect to passengers, adopted in June 1994,

Bearing in mind that EC Regulations 2407/92 and 2027/97 apply in a number of ECAC Member States,

Considering that EC Regulation 2407/92 requires air carriers to be insured to cover liability in case of accidents, in particular with respect to passengers, luggage, cargo, mail and third-parties,

Considering that EC Regulation 2027/97 requires air carriers to be insured up to 100 000 SDRs and thereafter to a reasonable level, which is not defined,

Recognizing the significant results achieved by the International Civil Aviation Organization with the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999 in modernizing, harmonizing and consolidating the international regime for air carrier liability,

Considering that Article 50 of the Montreal Convention obliges States Parties to require their carriers to maintain adequate insurance covering their responsibility under the Convention, while not defining the term « adequate »,

Convinced that there is a strong need with respect to consumer protection and in particular to victims of air accidents and their families to define minimum insurance levels for passenger and third-party liabilities,

Convinced that the same minimum insurance requirements should apply to all air carriers serving ECAC Member States,

Noting that it is the responsibility of each air carrier to ensure that it can meet its liabilities in the event of an accident and that nothing in this Resolution should prevent air carriers from insuring themselves at levels higher than those specified in Articles 2 and 3, or from combining these minima in order to derive a single amount of insurance cover,

Reaffirming that while this Resolution aims at harmonizing minimum insurance requirements set by ECAC Member States, nothing in it should prevent those States requiring higher levels of insurance as necessary,

ADOPTS THE FOLLOWING RESOLUTION

Article 1 — Scope

This resolution should apply to air carriers licensed in ECAC Member States, with the exception of the carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultralight power driven aircraft, as well as local flights not involving carriage between different airports.

The resolution should also, to the extent compatible with bilateral or multilateral obligations of ECAC Member States, be applicable to other air carriers serving those States.

Article 2 — Passenger liability

The obligation of insurance for death, wounding or any other bodily injury sustained by a passenger in the event of an accident shall be understood to be a minimum of 250 000 SDRs per passenger.

Article 3 — Third-party liability

The obligation of insurance for third-party damages in the event of an accident shall be understood to be the following minimum levels:

Category 1: Aircraft with a MTOM ² <	2 000 kg	1 500 000 SDRs
Category 2: Aircraft with a MTOM <	6 000 kg	4 500 000 SDRs

² Maximum Take Off Mass – a certified amount specific to all aircraft

Category 3: Aircraft with a MTOM <	25 000 kg	12 000 000 SDRs
Category 4: Aircraft with a MTOM <	100 000 kg	50 000 000 SDRs
Category 5: Aircraft with a MTOM >	100 000 kg	90 000 000 SDRs

Article 4 — Revision

A review of the amounts specified in this Resolution shall be undertaken within 5 years of its adoption, or earlier if circumstances so warrant.

— END —