Air transport: insurance for air carriers and aircraft operators

2002/0234(COD) - 05/12/2003 - Council position

The common position was adopted by qualified majority, with the German delegation abstaining. It integrates 16 out of the 24 amendments adopted by the European Parliament in its first reading. The main modifications operated by the Council are the following: - to exclude "mail" from the scope of the Regulation, since the insurance requirements in respect of the carriage of mail are sufficiently dealt with by Regulation 2407/92/EEC on licensing of air carriers and by the national laws of the Member States; - to exclude certain types of aircraft and 'flying machines' from the scope of the Regulation; - to insert the Gibraltar clauses; - to delete some definitions ["insurer", "insurance", "insurer's principal place of business", "incident", "air service", "scheduling period"], either because the term concerned was sufficiently self-explicatory - in view notably of established Community law - or because the definition had become superfluous because of redrafting exercises in the rest of the text. The Council revised the definitions of "aircraft operator" and "flight", and added new definitions regarding "passenger", "third party" and "commercial operation"; - redrafting the "general principles of insurance" in order to clarify the insurance requirements that air carriers and aircraft operators have to observe; - the Council underlined that the minimum insurance requirements of this Regulation are without prejudice to the rules on liability as defined by rules of international conventions, Community law and national law of the Member States; - to delete the former Article 5(2), relating to alternative security requirements for air carriers and aircraft operators registered in a third country, since this could lead to a situation in which Community air carriers and aircraft operators using aircraft registered in the Community would be discriminated against; - the Council, acknowledging that the enforcement of the insurance requirements could pose practical problems in respect of "overflying aircraft", stated that "Member States overflown may require that air carriers and aircraft operators referred to in Article 2 produce evidence of valid insurance in accordance with this Regulation"; - to confirm that in respect of passengers, the minimum insurance cover should be 250 000 SDRs per passenger. However, in order to take account of the particular situation of operators using small aircraft for private purposes, the Council provided an exception to this rule, according to which in respect of non-commercial operations by aircraft of 2 700 kg or less, Member States have the possibility of setting a lower minimum insurance cover, provided that such cover is at least 100 000 SDRs per passenger. Since these are minimum levels, Member States have the freedom of setting higher levels of insurance cover; - to simplify the Article concerning insurance in respect of liability for third parties. It lowered the minimum insurance cover in respect of third parties, and agreed upon a more detailed classification of aircraft, which allows a more accurate determination of the minimum insurance cover in each case; - on the issue of enforcement and sanctions was clarified by the Council in view notably of existing Community law; - the entry into force of the Regulation has been put at twelve months following its publication in the Official Journal. Concerning the amendments accepted by the Commission and incorporated in full or in part in the common position, these concern : - the validity throughout the Community of the deposit by Community air carriers and aircraft operators of evidence of insurance have been incorporated into the text of the common position. The scope of the measure however, has been restricted to Community air carriers and aircraft operators only, so as not to interfere with the obligations of Member States stemming from the Montreal Convention; - which persons would be covered by the Regulation have been taken on board in the common position by widening the definition of "passenger"; - the exclusion of state aircraft from the scope of the Regulation has been fully incorporated in the common position; - the inclusion of local flights in the scope of the Regulation has been fully incorporated in the text of the common position; - the definition of maximum take-off weight (MTOW) has been redrafted to fit the description (acronym) of maximum take-off mass (MTOM), which is practically the same (and is the acronym used by the European Civil Aviation Conference - ECAC); - the reference to air carriers and aircraft operators falling within the scope of the Regulation has been fully incorporated in the common position with a consistent reference through the Regulation to "air carriers and aircraft operators. - the categories of aircraft and the minimum insurance requirements for damages to third parties has been followed in principle in the common position; - the commercial practice of aggregates currently applicable to insurance cover for risks of war and terrorism, has been fully followed in the common position; - sanctions against third-country air carriers and aircraft operators has been partially taken up in the common position. The part concerning overflights has not been followed; - the sanctions against aircraft which have landed without adequate insurance has been followed in full despite the provision's being redrafted; - the definition of "flight" has been adopted in principle. - the withdrawal of the operating licence of Community air carriers as a sanction for infringing the Regulation has been followed in full in the common position. On the other hand, the amendments not incorporated in the common position are as follows issues: - overflights was accepted by the Commission in its amended proposal. The Council however, considered the practical difficulties linked to the enforceability of controls and sanctions against air carriers and aircraft operators overflying the territory of a Member State and has therefore unanimously supported the relevant text proposed in the Commission's initial proposal; - stricter general enforcement of the insurance requirements provided for in the Regulation through additional unannounced inspections; - the refusal to allow third-country air carriers and aircraft operators to overfly the territory of a Member State as a sanction for infringement of the Regulation; - imposing the obligation on air carriers to ensure that before commencement of the flight their insurance cover would continue to be in force until after safe landing; - specifying the concept of short-term leases; - specifying the cases where Member States may request additional evidence of valid insurance.