Air transport: insurance for air carriers and aircraft operators

2002/0234(COD) - 23/07/2003 - Modified legislative proposal

The Commission accepts 13 of the Parliament's amendments as they stand as they clarify the text or constitute editorial improvements. These amendments concern the following issues: - depositing evidence of insurance with one national authority shall suffice for all Member States. This will further reinforce the absence of any discriminatory treatment against air carriers and aircraft operators across the Community; - the objective of the proposal, the article concerning this issues has been amended so as to render the text clearer with regard to passengers. It should also be noted that this amendment is closely linked to the new definition of passenger; - the scope of the proposal, the articles concerning the scope of the proposed Regulation has been amended in various ways: the wording of the article has been streamlined so as to reflect the objective of the proposed Regulation; the scope has also been broadened, so as to apply to local flights; at the same time aircraft have been excluded from the scope of the application. These changes constitute partly textual clarifications and to the extent they concern the scope, they do not unduly affect the scope of the proposed rules; - the definition concerning the basis for classifying aircraft to categories (Maximum Take-Off Weight - MTOW or Maximum Take-Off Mass - MTOM as it is also called in the industry) has been textually clarified without changing the meaning of the provisions; - with regard to overflight, Member States have instead of the option the obligation to require that air carriers and aircraft operates produce evidence of insurance, which has been effected in accordance with the Regulation. This will ensure consistency of the measures regarding in compliance; - third party liability, the change introduced in this part of the proposal is considerable. With the new text is clearly stated that in as much as third party cover for risks of war and terrorism is concerned, the insurance amounts will be applicable in the aggregate. This change echoes reactions from both the aviation industry and the insurers, which are still unable to provide insurance cover for risks such according to contractual practice prevailing before the events of 11 September 2001; - sanctions/enforcement, the text of the proposal has been changed in an effort to render the sanctions more effective, by allowing Member States to proceed to additional inspections to verify the existence of appropriate insurance. In the same context, where air carriers and aircraft operators from third countries do not observe the insurance requirements of the Regulation, Member States have the obligation to refuse them access to the Community. At the same time, it should be borne in mind, that when EU air carriers are not adequately insured Member States cannot maintain their operating licence as foreseen in article 3 of Council Regulation 2407/92/EEC on air carrier licensing. Finally, the proposed sanctions are further strengthened, as Member States have the obligation not to allow the aircraft which has been found without appropriate insurance to take-off from airport before it has produced evidence of valid insurance. This measure should ensure that no air carrier or aircraft operator subject to the Regulation is allowed to start uninsured a flight from a Community airport. One amendment isacceptable only in principle: it concerns the definition of "passenger". Some amendments are acceptable only in part and with redrafting. These concern the scope of the Regulation with regard to aircraft operators) can be accepted only in part because the second part thereof is confusing, as aircraft operators are never required to hold an operating licence. Regarding the categories and amounts of insurance to cover third party liability, this can be accepted only in part. The addition of 3 categories of small aircraft below 25 tons and the relevant insurance amounts are acceptable as they clarify the situation of such aircraft. The remaining categories and insurance amounts however, are not acceptable, because they are based on a resolution by the European Civil Aviation Conference (ECAC) of December 2000, which does not reflect any more the reality of the market after the events of 11/9/2001 as they are too low. Concerning the definition of a flight, this can be accepted only in part because even though it follows largely the Montreal Convention it is unnecessary detailed and needs therefore to be shortened. Sanctions /Enforcement) is acceptable only as far as third country carriers are concerned, but not Community ones. The Commission, on the other hand, has to reject a number of proposed changes to the Regulation, which affect the core issues of its proposal. These refer to the state guarantee. This would not be in with the

Commission's state aid philosophy and would distort competition. Therefore, it cannot be accepted by the Commission. Another amendment concerning the validity of insurance is legally not practicable as insurance may be withdrawn during a flight as after the 11/09/2001 and compliance would be impossible to ensure. Therefore, it cannot be accepted by the Commission. Others concerning the definition of short-term leases fall under the scope of other rules. Also, as far as the responsibility to meet minimum insurance requirement in case of short-term lease is concerned, the is legally confusing as the entity that purchases insurance does not always have to be the holder of an Aircraft Operator's Certificate (AOC).