

Air passengers rights in case of crash.

EU regulations: strengths and weakness (Part1)



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The EU Commission and the safeguard of air passengers

- Communication from the Commission to the European Parliament and the Council ***Protection of air passengers in the European Union***, COM(2000)365 final.
- Green paper on services of general interest, COM(2003) 270.
- White paper – ‘***European transport policy for 2010: time to decide***, COM(2001) 370.
- White Paper, Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, of 28 March 2011, COM(2011) 144 final.

The Montreal Convention '99

- **Article 17 - “Death and injury of passengers - damage to baggage”**

“**The carrier is liable for damage sustained** in case of **death or bodily injury** of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking”

- **Article 21 - “Compensation in case of death or injury of passengers”**

• “For damages arising under paragraph 1 of Article 17 not exceeding **113.000 Special Drawing Rights** for each passenger, the **carrier shall not be able to exclude or limit its liability.**

The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger **113.000 Special Drawing Rights** if the carrier proves that:

(a) such damage was not due to the **negligence** or other **wrongful act** or **omission** of the carrier or its servants or agents; or

(b) such damage was **solely** due to the **negligence** or other **wrongful act** or **omission** of a **third party**”

EU legal framework

- **Regulation (EC) No 2027/97** on air carrier liability in the event of accidents
- **Council Decision 2001/539/EC** on the conclusion by the European Community of the Montreal Convention
- **Regulation (EC) No 889/2002** amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents
- **Regulation (EC) No 785/2004** on insurance requirements for air carriers and aircraft operators

Annex of Regulation (EC) 2027/97

- **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 113.000 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 18.096 SDRs** (approximate amount in local currency).

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EU regulations: strenghts and weakness (Part 2)



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ICAO legal framework

- ICAO General Assembly **Resolution A32-7**
- ICAO, **Circular 285-AN/166**
“Guidance on assistance to aircraft accident victims and their families”
- ICAO, **Doc. 9998-AN/499**
“ICAO Policy on Assistance to Aircraft Accident Victims and their Families”
- ICAO, **Doc. 9973-AN/486**
“Manual on Assistance to Aircraft Accident Victims and their Families”

Article 21 of Regulation (UE) 996/2010

• Member States legal obligations

In order to ensure a more comprehensive and harmonised response to accidents at EU level, each Member State shall **establish a civil aviation accident emergency plan at national level. Such an emergency plan shall also cover assistance to the victims of civil aviation accidents and their relatives.**

The Member States shall **audit the assistance plans of the airlines established in their territory and encourage third-country airlines which operate in the Union to similarly adopt a plan** for the assistance of victims of civil aviation accidents and their relatives.

• Airlines legal obligations

All airlines established in the territory of a Member States are required to have **a plan for the assistance to the victims of civil aviation accidents and their relatives.** Those plans must take particular account of **psychological support** for victims of civil aviation accidents and their relatives and allow the airline to react to a major accident

Article 21 of Regulation (UE) 996/2010

• Appointment of a Reference Person

When an accident occurs, the **Member State in charge of the investigation**, the **Member State in which the airline, the aircraft of which was involved in the accident is established**, or the **Member State which had a large number of its nationals on board** the aircraft involved in the accident, shall provide for the **appointment of a reference person as a point of contact and information for the victims and their relatives**.

• State with Special Interest

A **Member State or a third country, which**, by virtue of fatalities or serious injuries to its citizens, **has a special interest in an accident** which has occurred in the territories of the Member States to which the Treaties apply, **shall be entitled to appoint an expert that may assist**, subject to applicable legislation in force, **in the identification of the victims and attend meetings with the survivors of its State**.

Article 21 of Regulation (UE) 996/2010

Related Issues

- Placement
- Adoption and lack of transparency
- System of Sanctions
- Article's area of application
- Extension of the legal protections