

Position Paper

23 January 2008

AEA comments on the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties in case of Unlawful Interference

Since 2002, the Association of European Airlines has actively followed ICAO efforts to modernise the Rome Convention of 1952, prompted by the unprecedented terrorist attacks of September 11th 2001 in the United States.

European air carriers acknowledge the benefits of providing a legal framework to clarify air carrier liability where attacks on aircraft result in significant third party losses. In this respect, AEA supports the main objective of the draft Convention to balance the interests of victims and those of the air transport sector regarding financial compensation in cases of unlawful interference.

If AEA is still convinced that the onus of compensating victims of acts of terrorism should in principal be on the States, as terrorist acts are mainly directed against them, we however understand that preventing all security breaches cannot be guaranteed in the face of today's terrorist threat. Therefore, if air carriers are to accept liability without fault for these acts, it is only fair and reasonable that the liability of the air transport industry, who is also victim of such acts, should be limited.

The present draft Convention to be submitted to the Legal Committee in April 2008 sets out a three layer compensation system. The first layer makes air carriers strictly liable for certain amounts based on the third party limits, as contained in EU Regulation 785/2004. Air carriers are required to purchase insurance for these amounts. The strict liability amounts can only be broken by acts or omissions of the senior management of the air carrier.

The second layer is a Supplementary Compensation Fund (currently set at SDR3 billion per event for discussion purposes) and the third layer is either individual or collective government solidarity or as otherwise determined by governments at the time an event occurs.

AEA recognises that this draft offers a good basis for a reasonable compensation system, where air carriers could take some liability up to certain amounts but be effectively protected from exceeding claims. The proposed breakability level of the liability limits would provide the protection that industry needs in the face of terrorist threat and will help to ensure on-going insurance availability. In this regard, should the

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- TAROM
- Turkish Airlines
- Ukraine International Airlines
- Virgin Atlantic Airways

liability cap and its breakability be reduced to a lower degree of fault (gross negligence instead of intent) or should certain acts or omissions of operator's servants or agents break the cap, AEA members would not see any added value in the modernised Rome Convention and would invite EU Member States not to support its adoption, as the objective of the Convention to protect the interests of the air carriers would be missed.

Besides the breakability of liability, one of the issues AEA would like to see further discussed is the possibility for air carriers to take recourse action against third parties. In AEA view, air carriers should indeed be allowed to take recourse against third parties on a fault basis at least up to amounts covered by insurance of a third party. It is not quite understandable why air carriers should carry the financial burden of having such damages compensated from their insurance policies, which will affect their loss records, while service providers and their insurers will not contribute even if they are the wrongdoers.

AEA hopes these comments are seriously taken into consideration in order to facilitate a sensible compromise between all stakeholders involved.