

Dear partners,

On 28.06.2004, the Montreal Convention took effect in Germany after the EU submitted the ratification certificates before it was joined by the new member states.

Previously, the Warsaw Convention (hereafter: WC), as defined in the Hague Protocol of 1955, applied in Germany. The Montreal Protocol No. 4 (MP4), with its newly-modified terms of liability, has not been ratified by Germany and has therefore not taken effect. In the foreseeable future, the Montreal Convention will achieve global validity and will supersede the Warsaw Convention.

Until then, the Montreal Convention (hereafter: MC) applies solely in cases where both the point of origin and the destination lie within its jurisdiction, i.e., are both in states which have already ratified MC. For a list of all states which have already ratified MC, please visit <http://www.icao.int/icao/en/leb/mtl99.pdf>

As a result, terms of liability vary according to the route flown. Air freight carriers may be liable either under MC, or WC, or neither - in which case international liability standards, and those of the countries involved, apply.

Apart from several changes in passenger transportation, MC also affects cargo transportation. For example, MC foresees the use of all types of documentation (including electronic waybills), rather than just written waybills.

For air freight-related damage to goods, the previously valid WC presumed that liability rested with the carrier; carriers could exempt themselves from this liability by proving that they had either taken, or were unable to take, all necessary preventative measures. Under MC, the liability issue is more strict: liability no longer depends on whether the carrier was to blame or not - the fact that damage occurred is sufficient. Carriers can only exempt themselves from liability in a few exceptional cases - i.e., those defined under Article 18, Paragraph 20 MC, (nature of goods, insufficient packaging of goods, war, sovereign acts), or complicity of the claimant, as per Article 20 MC.

In return, MC introduces an impermeable liability ceiling for carriers. Article 22, Paragraph 1 MC states that the carrier's liability is now limited to a maximum of 17 special drawing rights (SDR) per kilogram. One SDR equals approx. € 1.23 (subject to currency fluctuations), which means the maximum liability per kilo of freight is € 20.91. Under WC, carriers are liable up to € 27.35 per kilo. Also, under MC the possibility of unlimited carrier liability, as previously defined under Article 25 WC, no longer applies.

However, (unlimited) liability extensions are possible (subject to the particular conditions that govern declaration of value), assuming the agreed surcharge has been paid (Article 22, Paragraph 3 MC).

Under MC, the carrier's liability for delay-induced damage in freight transportation is also limited to the same amount: 17 SDR per kilo. Here, however, carriers can exempt themselves from liability by proving that all reasonable precautions were either taken, or could not be taken, to prevent damage occurring.



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To view the contents of the Montreal Convention, go to:
<http://www.luftrecht-online.de/regelwerke/pdf/mc.pdf>

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