

Liability of carriers of passengers by sea in the event of accidents

2005/0241(COD) - 06/06/2008 - Council position

The common position has modified the Commission's initial proposal by amending provisions relating to the Regulation's: scope; its relation to other international conventions on global limitation of liability; advance payments; and transitory provisions. A large number of Parliamentary amendments, tabled at first reading, have been incorporated into the common position either *verbatim*, in part or in spirit.

Scope: the Council is in full agreement with Parliament concerning an extension of the Athens Convention to international and domestic carriage by inland waterways, as originally proposed by the Commission. The Council has accordingly decided to reject the Commission's proposal concerning this matter on the grounds that the Athens Convention relates to carriage by sea only and that extending its scope to carriage on inland waterways would be neither appropriate nor would it take account of requirements specific to inland waterways. Further, the Council, unlike Parliament and the Commission, has included a new specification concerning carriage by sea within a single Member States. It is reasonable that the proposed Regulation should apply to ships covered by Class A in accordance with Article 4 of Directive 98/18/EC on safety rules and standards for passenger ships.

Incorporation of the Athens Convention and other IMO measures: both Council and Parliament agree that not only the Athens Convention but also the IMO Reservation and Guidelines for the Implementation of the Athens Convention (IMO Guidelines) should address certain issues within the Athens Convention such as compensation for terrorism related damaged. For that reason the Council has decided to accept a Parliamentary amendment on this matter and added the text of the IMO Guidelines in a new annex to the draft Regulation. At the same time, the Council considers that including the entire text of the Athens Convention may create legal uncertainty given that several of the Convention's provisions are not directly related to the subject matter. For that reason, unlike the European Parliament, the Council states in Article 3 that the *relevant* provisions of the Athens Convention should apply. Moreover, irrelevant or misleading provisions of the Athens Convention have been removed from the Annex of the Regulation for the sake of clarity.

Applicable ceilings: the Council has modified the Commission proposal regarding the non application of Article 7(2) of the Athens Conventions. On the matter of "higher limits of liability" the Council has decided to apply the provision set out in the Athens Convention as it currently stands without introducing a particular Community mechanism.

Simultaneous application of other international conventions concerning ship-owners' limitation of liability: given that several Member States have already ratified the 1976 International Convention on Limitation of Liability for Maritime Claims (as amended by a 1996 Protocol to the LLMC) the Council can not support Parliamentary suggestions on the non-application of Article 19 of the Athens Convention. The common position therefore clarifies the relationship between the Athens Convention and the 1996 LLMD for the sake of legal clarity.

Advanced payment: in line with Parliamentary amendments, the Council supports the idea that in case of a shipping incident that causes the death of, or personal injury to, a passenger, a payment should be paid. For this to apply in practice, the Council has clarified that the provision applies when the shipping incident has occurred within the territory of a Member State, or has occurred on board a ship that was flying the flag of a Member State, or is registered in a Member State. Concerning clarification of an "advance payment", the Council fully supports the European Parliament's position on this matter. An advance

payment will, therefore, not constitute recognition of liability and may be offset against any subsequent sums paid. The Council, went further by specifying in which cases the advance payment might be returnable in accordance with the Athens Convention and the IMO Guidelines.

Passenger information: as regards information requirements, the Council supports Parliamentary amendments on the kind of information that needs to be provided to passengers. At the same time, the Council believes that there is no need to refer to the provisions of Council Directive 90/314/EEC on package travel, package holidays and package tours given that the Directive already applies and is independent of the proposed Regulation.

Delayed application: the Council, in agreement with Parliament, has introduced a transitional provision allowing Member States to defer application of the Regulation by up to four years. The Council has modified the initial proposal regarding carriage by sea within a single Member State on board ships covered by Class A. This is in accordance with Article 4 of the Directive 98/18/EC and not to domestic carriage by regular ferry lines in the regions.