

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

2005/0241(COD) - 23/04/2009 - Final act

**PURPOSE:** to give all passengers travelling by ship and their carriers a harmonised legal framework setting out their rights and obligations in the event of an accident.

**LEGISLATIVE ACT:** Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents

**CONTENT:** following agreement with the European Parliament at third reading of the codecision procedure, the Council adopted this Regulation which lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

- a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention);
- b) the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (the IMO Guidelines).

The Athens Convention sets out the rights and obligations of passengers and carriers. It provides for a system of strict liability of the carrier in respect of loss or damage in the event of shipping incidents, lays down compensation amounts, requires all carriers to take out an insurance policy and allows the complainant to claim compensation from the insurer directly.

Furthermore, the Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State on board ships of **Classes A and B** under Directive 98/18/EC, and lays down certain supplementary requirements. No later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order, inter alia, to extend the scope of this Regulation to ships of Classes C and D under Directive 98/18/EC.

Accordingly, the Regulation aims at creating a single set of EU rules governing the rights of carriers by sea and their passengers in the event of an accident. It includes several additional requirements related in particular to compensation for damage or loss of mobility equipment, pre-journey information of passengers and advance payments. Compared to the initial Commission proposal, the approved text modified, among others, the provisions concerning the scope, the relation between the Regulation and other international conventions on global limitation of liability and the transitory provision of the Regulation.

**Scope:** currently, the Regulation applies to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, where:

- the ship is flying the flag of or is registered in a Member State;
- the contract of carriage has been made in a Member State; or
- the place of departure or destination, according to the contract of carriage, is in a Member State.

Member States may apply this Regulation to all domestic sea-going voyages.

The text notes that the system of liability provided for by this Regulation should be extended step-by-step to the different classes of ship as set out in Article 4 of Council Directive 98/18/EC on safety rules and standards for passenger ships. Account should be taken of the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights and the seasonal nature of some of the traffic.

The Commission's proposal to extend the application of the Athens Convention to international and domestic carriage by inland waterways was rejected by the Council and the Parliament, since both institutions considered that the sector had specific features.

The main issues settled at the conciliation stage concerned the entry into force of the Regulation and its application to carriage by sea within a single Member State (classes of vessels defined in Article 4 of Directive 98/18/EC). In particular:

- the Regulation will **apply from the date of the entry into force of the Athens Convention for the Community**, but not later than 31 December 2012;
- Member States may decide to defer application of the Regulation to Class A vessels until 31 December 2016 and to Class B vessels until 31 December 2018;
- to extend the scope to Class C and D vessels, the Commission will, if appropriate, present a legislative proposal by 30 June 2013.

**Limits of liability:** Parliament essentially accepted Council's idea of a global cap by using the LLMC 96 Convention which can reduce the amount of compensation per victim below the ceilings of the Athens convention. It also accepted that Member States could opt-out "to the top" of the LLMC 96 and adopt higher ceilings. It managed, however, to obtain important safeguards which ensure that Member States, if they have no national legislation implementing the LLMC as amended by the protocol of 1996 (which provides for higher compensation as its predecessors) have to apply the Athens Convention in full. The possibility to limit responsibility in case of terrorism was also clarified.

**Advance payment:** Parliament convinced Council to accept the scope for the advance payment as initially proposed by the Commission. The Regulation states that where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than **EUR 21 000**.

**Information to passengers:** those provisions were considerably strengthened in several ways. Regarding the point in time of the information of passengers the common position was "at the latest on departure." Parliament achieved an important differentiation: in case of a contract concluded in a Member State the information has to be provided at the point of sale; in case of a point of departure in a Member State it has to be provided prior to departure. Only in all other cases shall the information be provided "at the latest on departure." In addition, the minimum information requirements were better defined and the application of the obligations of tour operators clarified.

**Transitional provisions:** the main issues agreed up on at the conciliation stage concern the entry into force of the Regulation and its application to maritime transport within a single Member State on board ships of classes set out under Article 4 of Directive 98/18/EC, in particular:

- it shall apply from the date of the entry into force of the Athens Convention for the Community, and in any case from no later than 31 December 2012;

- in respect of carriage by sea within a single Member State on board ships of Class A, Member States may choose to defer application of this Regulation until four years after the date of its application (31 Decemeber 2013);
- in respect of carriage by sea within a single Member State on board ships of Class B, Member States may choose to defer application of this Regulation until 31 December 2018.

It should be noted that this Regulation is part of a series of measures, comprising the **third maritime package**, aiming to strengthen the security of maritime transport in Europe by improving accident prevention and investigations into accidents and by strengthening vessel quality control. (See also [COD/2005/0236](#), [COD/2005/0237](#), [COD/2005/0238](#), [COD/2005/0239](#), [COD/2005/0240](#) and [COD/2005/0242](#)).

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