Carriage of Passengers and their Luggage by Sea, Protocol of 2002 to the 1974 Athens Convention: accession (excluding Articles 10 and 11)

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PURPOSE: to present and amended proposal concerning the accession of the EU to the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

BACKGROUND: in June 2003, the Commission presented a proposal that the Community should become a Contracting Party to the Athens Protocol and that the Member States should the same before the end of 2005. The Commission recalls that the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 ("the Athens Protocol") adopted under the auspices of the International Maritime Organization ("IMO") is a mixed agreement. Negotiations on this proposal within the Council started but were suspended in December 2003 because of a dispute between Spain and the United Kingdom relating to the Gibraltar authorities in the context of mixed agreements. This dispute was solved in December 2007 and the negotiations on this proposal are to resume. Since 2003, the context to the proposal has substantially changed. The competent Council working party worked upon a text before negotiations were suspended. This amended proposal builds upon this text.

CONTENT: this amended proposal takes into account certain changes as follows:

Legal base: in 2003, the Community had exclusive competence to accede to the Athens Protocol as far as its Article 10 and 11 were concerned. These provisions regulate matters which affect rules of the Union as laid down in Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Brussels Regulation").

The Brussels Regulation was based on Title IV of the EC Treaty. The proposal for the Council Decision was therefore based on Article 65 in conjunction with Article 300(2) and Article 300(3) of the EC Treaty.

In November 2005, the Commission presented a complementary proposal for a Parliament and Council Regulation incorporating most of the other substantive provisions of the Athens Protocol into EC law (COM(2005)592), based on Article 80(2) of the EC Treaty. The adoption of Regulation (EC) No 392 /2009 on the liability of carriers of passengers by sea in the event of accidents ('the Athens Regulation') entails that the Union now has exclusive competence to accede to the Athens Protocol as far as the matters covered by the Athens Regulation are concerned. The principal component of the Athens Protocol concerns maritime transport whilst the jurisdictional rules are to be regarded as an ancillary component. Having regard to the fact that on 1 December 2009 the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force, the legal basis for the Council Decision should be changed into Article 100(2) in conjunction with Article 218 of the Treaty on the Functioning of the European Union ("the TFEU").

Deposit of instruments of accession or of ratification: the Athens Regulation does not incorporate all the provisions of the Athens Protocol. The Athens Protocol remains a mixed agreement where individual Member States are still required to become contracting parties to it. It is indeed most desirable to avoid the possibility that the dates of entry into force of the Athens Protocol differ in each Member State. To that end, Member States and the Union should deposit their instruments of accession (or of ratification for

those who already signed the Athens Protocol) on the same day. This corresponds to the solution found with a recent comparable Council Decision. The proposed Council Decision has been amended along this line.

Reservation for terrorist-related damages: in October 2006, the Legal Committee of the IMO adopted guidelines for the implementation of the Athens Protocol, recommending a reservation for terrorist related damages, in order to take into account the current state of the insurance market. Member States have politically committed themselves to make this reservation. With the adoption of the Athens Regulation, the IMO Guidelines fall within the exclusive competence of the Union. The Union will therefore make the reservation when acceding to the Protocol and this has to be provided for in the Council Decision.

At the latest stages of the discussions within the Council on the proposed Athens Regulation (November 2007), some delegations questioned the functioning of the disconnection clause of Article 11 of the Athens Protocol and insisted that the legislation of the Union should clarify this. This was eventually not included in the political agreement. The proposal suggests adding a declaration on the disconnection clause to the Council Decision.