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

2003/0132A(NLE) - 03/05/2011 - Legislative proposal

PURPOSE: the accession of the European Union to the protocol of 2002 to the 1974 Athens Convention on the Carriage of Passengers and their Luggage by Sea, with the exception of Articles 10 and 11 of the protocol.

PROPOSED ACT: Council Decision.

BACKGROUND: the 2002 protocol to the 1974 Athens convention on the carriage of passengers and their luggage by sea (or the “Athens protocol”) represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea. In particular, it provides for a strict liability of the carrier, including compulsory insurance, with a right of direct action against insurers up to specified limits, and for rules on jurisdiction and the recognition and enforcement of judgments. The Athens Protocol is therefore in accordance with the Union's objective of improving the legal regime relating to carriers' liability.

The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Convention") and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.

EU competences: the majority of the rules of the Athens Protocol have been incorporated into Union law by means of Regulation (EC) No 392/2009 of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents, which is to be applied by 2013 at the latest. Insofar as these rules are concerned, accession to the protocol is a Union competence. There remain, however, a number of protocol provisions not falling within the Union's competence, but rather within that of the member states, for example the possibility of fixing higher limits of liability than those provided for in the protocol. The individual member states therefore also need to accede to the protocol for it to become applicable in full, thus ensuring a coherent legal framework throughout the Union. It is desirable for the protocol to become applicable not later than the regulation, in order to avoid any legal vacuum. A speedy accession of both the EU and the member states is therefore important to make sure that the number of ratifications required for the entry into force of the protocol is reached with enough time to allow its application as from 2013.

Reservation: the Legal Committee of the International Maritime Organization adopted in October 2006 the IMO Reservation and Guidelines for Implementation of the Athens Convention ("IMO Guidelines") to address certain issues within the Athens Convention, such as, in particular, **compensation for terrorism-related damages**. Regulation (EC) No 392/2009 reproduces in its annexes the relevant provisions of the consolidated version of the Athens Convention as amended by the Athens Protocol and the IMO Guidelines. The Union should consequently accede to the Athens Protocol and make the reservation contained in the IMO Guidelines. The making of such a reservation should not be interpreted as altering the current division of competence between the Union and the Member States in relation to certification and the controls by State authorities.

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 100 (2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof.

It should be noted that in view of the protocol's rules on jurisdiction and the recognition and enforcement of judgments, the Council decided for legal reasons to take **two separate decisions on the accession**:

- one covering the transport part of the protocol and legally based on the Lisbon treaty's transport policy provisions,
- another on the civil law part, with the treaty provisions on judicial cooperation in civil matters as a legal basis (see NLE/2003/0132B).

That separation according to the legal bases is due to the special position of Denmark, Ireland and the United Kingdom, which do not, or do not automatically, participate in judicial cooperation under the Lisbon treaty. In the case at hand, though, Ireland and the United Kingdom will be bound by the EU decision, since the EU rules on jurisdiction and recognition and enforcement of judgments already apply to them; Denmark, however, will be bound only as a contracting party to the protocol, as far as civil law matters are concerned. The decision on the transport part automatically applies to all EU member states.

CONTENT: in this proposal for a decision, it is proposed that the European Union approves the 2002 Protocol to the Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea, with the exception of Articles 10 and 11 thereof.

The text of the Protocol is attached to this decision. For further details as to the Protocol’s content, please refer to the summary of the supplementary initial legislative document, dated 30/11/2010.

The protocol, which will enter into force when there have been a certain number of ratifications, will bring about better compensation rights for passengers, in particular by providing for strict liability for the carrier and including compulsory insurance with a right of direct action against insurers up to a specified limit. In addition, it contains rules on jurisdiction and the recognition and enforcement of judgments.

This proposal for a decision (and the parallel proposal for a decision) stipulates that Member States should, if possible, accede to the protocol by **31 December 2011**, at the same time as the Union.

BUDGETARY IMPLICATIONS: the proposal has no impact on the EU’s budget.