## Basic information

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|---|---|
| **2003/0132A(NLE)**<br><br>NLE - Non-legislative enactments<br>Decision | Procedure completed |
| Carriage of Passengers and their Luggage by Sea, Protocol of 2002 to the 1974 Athens Convention: accession (excluding Articles 10 and 11)<br><br>**Subject**<br><br>3.20.03 Maritime transport: passengers and freight | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| TRAN Transport and Tourism | SIMPSON Brian (S&D) | 07/03/2011 |
| | Shadow rapporteur<br>KÓSA Ádám (PPE)<br>MEISSNER Gesine (ALDE)<br>TAYLOR Keith (Verts/ALE)<br>ROSBACH Anna (ECR) | |

| Former committee responsible | Former rapporteur | Appointed |
|---|---|---|
| JURI Legal Affairs | | |
| JURI Legal Affairs and Internal Market | FERRI Enrico (PPE-DE) | 07/07/2003 |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | LEHNE Klaus-Heiner (PPE) | 13/06/2011 |

| Former committee for opinion | Former rapporteur for opinion | Appointed |
|---|---|---|
| TRAN Transport and Tourism | | |
| RETT Regional Policy, Transport and Tourism | The committee decided not to give an opinion. | |

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| Council of the European Union | |

| Council configuration | Meetings | Date |
|---|---|---|
| Transport, Telecommunications and Energy | 3080 | 2011-03-31 |
| Transport, Telecommunications and Energy | 3134 | 2011-12-12 |

| European Commission | |
|---|---|

| Commission DG | Commissioner |
|---|---|
| Mobility and Transport | KALLAS Siim |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 24/06/2003 | Preparatory document | COM(2003)0375 | Summary |
| 01/09/2003 | Committee referral announced in Parliament | | |
| 16/09/2004 | Committee referral announced in Parliament | | |
| 19/10/2009 | Resumption of business from the previous parliamentary term | | |
| 02/12/2009 | Additional information | | Summary |
| 03/05/2011 | Legislative proposal published | 08663/2011 | Summary |
| 11/10/2011 | Vote in committee | | Summary |
| 17/10/2011 | Committee report tabled for plenary, 1st reading/single reading | A7-0356/2011 | |
| 15/11/2011 | Decision by Parliament | T7-0478/2011 | Summary |
| 15/11/2011 | Results of vote in Parliament | | |
| 12/12/2011 | Act adopted by Council after consultation of Parliament | | |
| 12/12/2011 | End of procedure in Parliament | | |
| 12/01/2012 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 2003/0132A(NLE) |
| **Procedure type** | NLE - Non-legislative enactments |
| **Procedure subtype** | Consent by Parliament |
| **Legislative instrument** | Decision |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 100-p2<br>Treaty on the Functioning of the European Union TFEU 218-p6a |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | TRAN/7/00055<br>JURI/5/19764 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE465.005 | 16/06/2011 | |
| Committee opinion | JURI | PE469.964 | 10/10/2011 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0356/2011 | 17/10/2011 | |
| Text adopted by Parliament, 1st reading/single reading | | T7-0478/2011 | 15/11/2011 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | 08663/2011 | 03/05/2011 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Preparatory document | COM(2003)0375 | 24/06/2003 | Summary |
| Supplementary legislative basic document | COM(2010)0686 | 30/11/2010 | Summary |

## Additional information

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

## Final act

Decision 2012/0022
OJ L 008 12.01.2012, p. 0001 Summary

# 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) - 15/11/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 560 votes to 18, with 5 abstentions, a legislative resolution on the draft Council decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof.

Parliament gave its consent to accession to the Protocol.

# 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) - 24/06/2003 - Preparatory document

PURPOSE : to conclude the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 ("the Athens Protocol"). CONTENT : Adequate protection of passengers on board ships is of key concern to the Commission. At present, the liability for carriers of passengers by sea is not subject to fully harmonised rules, either at international or European level. There is no Community legislation in this field and the protection of passengers varies between Member States, depending on what international conventions, and which amendments to them, have been ratified by the State in which the claim is settled. Consequently, maximum compensation amounts for death or personal injury to a passenger show great variations within EU Member States. In addition, none of the applicable conventions or protocols stipulates a strict liability for the carrier or an obligation for carriers to take out insurance to meet claims from passengers. For these reasons, the Commission, in its Communication on the enhanced safety of passenger ships in the Community (COM(2002)158), outlined its views on certain key elements which should form part of a workable maritime passenger liability regime and added that such a regime needs to be put in place within the EU within a near future. The Communication outlined a number of substantive issues (including the nature and extent of the carrier's liability and minimum requirements on insurance) which were insufficiently regulated in the previous version of the Athens Convention. The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, which was adopted on 1 November 2002 satisfies all requirements set by the Commission. Parts of the Protocol belong to the exclusive competence of the Community. Therefore the Community must become a Contracting Party to it before Member States can do so. It is therefore proposed that the Community becomes a Contracting Party to the Athens Protocol the earliest possible moment and that the Member States shall do likewise before the end of 2005.

# 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.

# 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) - 30/11/2010 - Supplementary legislative basic document

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.

# 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) - 12/12/2011 - Final act

PURPOSE: to approve, on behalf of the European Union, the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (‘Athens Protocol’) and improve the legal regime relating to carriers’ liability.

NON-LEGISLATIVE ACT: Council Decision 2012/22/EU concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof.

CONTENT: the Council adopted two decisions providing for 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, following the consent given by the European Parliament.

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.

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:

- this Decision covering the transport part of the protocol and legally based on the Lisbon treaty's transport policy provisions;
- and the other Decision on the civil law part, with the treaty provisions on judicial cooperation in civil matters as a legal basis.

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.

The draft decisions stipulate that Member States should, if possible, accede to the protocol by 31 December 2011, at the same time as the Union.