Basic information

2005/0241(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Liability of carriers of passengers by sea in the event of accidents See also 2008/0237(COD) See also 2000/0145(COD) See also 2001/0305(COD) See also 2004/0049(COD) See also 2005/0007(COD) See also 2006/0130(COD) See also 2008/0246(COD) **Subject** 3.20.03 Maritime transport: passengers and freight	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CODE EP Delegation to Conciliation Committee	COSTA Paolo (ALDE)	24/09/2008

Former committee responsible	Former rapporteur	Appointed
TRAN Transport and Tourism	COSTA Paolo (ALDE)	23/06/2008
TRAN Transport and Tourism	COSTA Paolo (ALDE)	21/03/2006

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs	KAUPPI Piia-Noora (PPE-DE)	23/02/2006

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2908	2008-11-27
Justice and Home Affairs (JHA)	2927	2009-02-26
Transport, Telecommunications and Energy	2805	2007-06-06
Transport, Telecommunications and Energy	2772	2006-12-11
Transport, Telecommunications and Energy	2835	2007-11-29
Transport, Telecommunications and Energy	2875	2008-06-06

European Commission	

Commission DG	Commissioner
Energy and Transport	TAJANI Antonio

Key events

Date	Event	Reference	Summary
23/11/2005	Legislative proposal published	COM(2005)0592	Summary
16/02/2006	Committee referral announced in Parliament, 1st reading		
11/12/2006	Debate in Council		
27/02/2007	Vote in committee, 1st reading		Summary
08/03/2007	Committee report tabled for plenary, 1st reading	A6-0063/2007	
24/04/2007	Debate in Parliament		
25/04/2007	Decision by Parliament, 1st reading	T6-0148/2007	Summary
25/04/2007	Results of vote in Parliament		
06/06/2007	Debate in Council		Summary
22/10/2007	Modified legislative proposal published	COM(2007)0645	Summary
06/06/2008	Council position published	06389/2/2008	Summary
19/06/2008	Committee referral announced in Parliament, 2nd reading		
04/09/2008	Vote in committee, 2nd reading		Summary
08/09/2008	Committee recommendation tabled for plenary, 2nd reading	A6-0333/2008	
23/09/2008	Debate in Parliament		
24/09/2008	Decision by Parliament, 2nd reading	T6-0445/2008	Summary
24/09/2008	Results of vote in Parliament		
27/11/2008	Parliament's amendments rejected by Council		
08/12/2008	Formal meeting of Conciliation Committee		
03/02/2009	Final decision by Conciliation Committee		
03/02/2009	Joint text approved by Conciliation Committee co-chairs	03724/2008	
25/02/2009	Report tabled for plenary, 3rd reading	A6-0102/2009	
26/02/2009	Decision by Council, 3rd reading		
10/03/2009	Debate in Parliament		
11/03/2009	Decision by Parliament, 3rd reading	T6-0110/2009	Summary
11/03/2009	Results of vote in Parliament		

22/04/2009	End of procedure in Parliament		
23/04/2009	Final act signed		
28/05/2009	Final act published in Official Journal		

Technical information

Procedure reference	2005/0241(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also 2008/0237(COD) See also 2000/0145(COD) See also 2001/0305(COD) See also 2004/0049(COD) See also 2005/0007(COD) See also 2006/0130(COD) See also 2008/0246(COD)
Legal basis	EC Treaty (after Amsterdam) EC 080-p2 EC Treaty (after Amsterdam) EC 071-p1
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/67462

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE378.569	22/09/2006	
Amendments tabled in committee		PE380.780	30/10/2006	
Committee opinion	JURI	PE376.322	22/11/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0063/2007	08/03/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0148/2007	25/04/2007	Summary
Committee draft report		PE409.386	26/06/2008	
Amendments tabled in committee		PE409.667	22/07/2008	
Committee recommendation tabled for plenary, 2nd reading		A6-0333/2008	08/09/2008	
Text adopted by Parliament, 2nd reading		T6-0445/2008	24/09/2008	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A6-0102/2009	25/02/2009	
Text adopted by Parliament, 3rd reading		T6-0110/2009	11/03/2009	Summary

Council of the EU

Document type	Reference	Date	Summary

Council statement on its position	08924/2008	08/05/2008	
Council position	06389/2/2008	06/06/2008	Summary
Draft final act	03724/2008/LEX	23/04/2009	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0592	23/11/2005	Summary
Document attached to the procedure	SEC(2005)1516	23/11/2005	Summary
Modified legislative proposal	COM(2007)0645	22/10/2007	Summary
Commission communication on Council's position	COM(2008)0375	13/06/2008	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2008)0831	08/12/2008	Summary
Follow-up document	SWD(2017)0328	29/09/2017	
Follow-up document	SWD(2017)0329	29/09/2017	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	03724/2008	03/02/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2009/0392
OJ L 131 28.05.2009, p. 0024 Summary

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

2005/0241(COD) - 11/03/2009 - Text adopted by Parliament, 3rd reading

The European Parliament adopted by 673 votes to 18, with 2 abstentions, under the third reading of the codecision procedure, a legislative resolution approving the joint text approved by the Conciliation Committee for a **regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents**.

For details of the agreement, see the summary dated 08/12/2008.

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

2005/0241(COD) - 23/11/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea and inland waterways in the event of accidents – COM(2005)0592.

1- POLICY OPTIONS AND IMPACTS

The Commission considered three potential policy options.

1.1- Option 1: implementation of the Athens Convention only: this option would mean that only international maritime traffic would benefit from the regime set in place by the Athens Convention of 2002. EU Member States and the Community have begun the process that will lead to accession to this Convention. This option would thus be limited to completing this process.

1.2- Option 2: adoption of a Community instrument incorporating the Athens Convention without adaptations: this option would involve theincorporation of the provisions of the Convention as they currently stand into Community law. The Community instrument would only be applicable to international passenger transport. This incorporation, coupled with the Community's accession to the Convention, has the advantage of ensuring a uniform interpretation of the Convention by the Court of Justice.

1.2- Option 3: adoption of a Community instrument incorporating the Athens Convention with adaptations: this would ensure that the provisions of the Athens Convention of 2002 would be applied in full in a uniform way throughout the EU and would extend the scope of its application to cover domestic traffic and inland waterway transportation. In addition, the provisions of the Convention would be complemented by the following:

- removal of a clause of the Convention whereby a Member State on a unilateral basis could adopt ceilings for indemnities higher than those in the Convention;
- addition of a measure for greater compensation for damage caused to mobility/medical equipment of passengers with reduced mobility;
- advance payments as provided in the air and rail sectors;
- pre-journey information.

*CONCLUSION:***Option 3 is the preferred option and is in accordance, in particular, with the wishes of the European Parliament.**

IMPACTS

To determine the precise impact of the measure, it is important to recall its scope:

- 1st condition: international, intra-Community transport or transport within a single Member State, by sea or by inland waterway;

- 2nd condition: the ship flies the flag of a Member State, the contract of carriage was concluded in a Member State, or the place of departure or destination is in a Member State.

- **Passengers:** passengers will benefit from an identical maximum compensation level in all the Member States. The Regulation seeks to remove a clause of the Athens Convention of 2002 under which a Member State can unilaterally adopt compensation ceilings that are higher than those of the Convention;

- **Carriers:** the entities with whom passengers have a contract (carriers, but also travel agencies and tour operators) will be affected with the difference that it will no longer simply be operators of international lines, but all operators, who will be covered whatever the route - whether it is international, intra-Community or within a single Member State, by sea or by inland waterway. Under the provisions of the Regulation, carriers will have to ensure the payment of advances and take responsibility for the real value of compensation for equipment for persons with reduced mobility. They are required to inform the passengers on their rights under the terms of the regulation;
- **Ship owners:** ship owners will be affected in that it will no longer be simply the owners of ships on international lines, but all the ship owners, whatever the route covered: international, intra-Community or within a single Member State, by sea or inland waterway;
- **Insurers:** insurers and all other providers of financial guarantees will be affected in that it will be no longer simply insurers of international lines, but all ship insurers, whatever the route travelled: international, intra-Community or within a single Member State, by sea or inland waterway.

Effects on employment: there should not be an immediate impact on employment on board passenger ships. It is unlikely that at European Union level there will be the mobility of personnel that might occur at international level insofar as all the ships and carriers will give the same protection under the future regulation.

Additional expenses for administrations: the flag states and the port states are affected insofar as they have to set up a system for the granting of financial security certificates and the checking of these certificates.

This system should have already been established under the terms of the Athens Convention of 2002, but the extension of the scope under the future regulation will mean an appreciable increase in the number of ships concerned, and therefore the need to monitor their insurance cover.

However, this increase will only be one-off, insofar as, at European Union level, the number of passenger ships flying the flag of one of the Member States is today estimated at 549.

2- FOLLOW-UP

The enforcement of the Regulation will be ensured, where appropriate, by the national courts. Where there is doubt regarding the interpretation of a provision of the Regulation and therefore of the Convention that it integrates, the courts can raise a preliminary question to the Court of Justice under Article 234 of the EC Treaty. The Commission will draw up a report on the implementation of the regulation within the three years which follow its entry into force. This report could highlight the need to make alterations to the regulation, and in parallel to the international Convention.

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

2005/0241(COD) - 24/09/2008 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution amending the Council's common position for adopting a directive of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents. The recommendation for second reading (under the codecision procedure) was tabled for consideration in plenary by Paolo **COSTA** (ALDE, IT) on behalf of the Committee on Transport and Tourism.

Several of these amendments are re-introduced from 1st reading and the main ones are as follows :

Insurance companies: a new recital states that the insurance arrangements required under the Athens Convention must be appropriate to the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically acceptable way and, particularly in the case of small shipping companies operating national transport services, account must be taken of the seasonal nature of their operations. The transitional period which is provided for in the application of the Regulation must be sufficiently long to enable the compulsory insurance provided for by the Athens Convention to be arranged without affecting existing insurance schemes.

Extension of the scope of application to domestic maritime transport: this Regulation extends the scope of application to carriage of passengers by sea within a single Member State and lays down certain supplementary requirements. Parliament states that there must be no distinction between domestic and international carriage by sea on the compulsory nature of the Regulation.

Article 7(2) of the Athens Convention: a new clause states that Article 7(2) of the Athens Convention is not applicable to the carriage of passengers falling within the scope of this Regulation unless the European Parliament and the Council, acting in accordance with the codecision procedure, amend this Regulation to this effect. It is recalled that article 7(2) concerns the limit of liability for death and personal injury.

Pre-journey information: the carrier and/or performing carrier shall ensure that passengers are provided with appropriate, full and comprehensible information regarding their rights under this Regulation prior to their departure (rather than on departure at the latest). To the extent that the information obligation under this Article has been fulfilled either by the carrier or the performing carrier, the other shall not be obliged to report. This information shall be provided in an appropriate, full and comprehensible format and, in the case of information provided by tour operators, in accordance with Article 4 of Council Directive 90/314/EEC on package travel, package holidays and package tours.

The global limitation of liability imposed by other Conventions: Parliament deleted the provision in the common position stating that the Regulation shall not modify the rights or duties of the carrier, or the performing carrier, under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996. Members noted that this would authorise a carrier liable for death or injury to passengers on the basis of the Athens Convention to limit his liability by referring to global liability ceilings imposed by other Conventions, like the LLMC Convention. It deleted a recital stating that Member States may consider ratifying the International Convention on Limitation of Liability for Maritime Claims 1976 and make use of the option provided for in that Convention to regulate the system of limitation of liability to be applied to passengers.

The advance payment: the minimum level of the advance payment should not cover only the event of death, but also the absolute and permanent invalidity of a passenger, or injuries to 75 % or more of the passenger's body considered clinically very serious.

Payment or receipt, as appropriate, of an advance payment shall entitle the carrier, the performing carrier or the passenger to initiate judicial proceedings to establish liability and fault.

Commission's report: the report may be accompanied by a proposal for amendment of this Regulation, or by a proposal for a submission to be made by the Community before the relevant international fora.

Application: in respect of carriage by sea within a single Member State, Member States may choose to defer application of this Regulation until two years after the date of its application for carriage by regular ferry lines and until four years after the date of its application for carriage by regular ferry lines in the regions covered by Article 299(2) of the Treaty.

EMSA: lastly, a new recital states that, owing to the need for greater consultation among the Member States on matters of maritime safety, it is vital to reassess EMSA's competences and possibly consider extending its powers.

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

2005/0241(COD) - 06/06/2007

The Council took note of a progress report on a proposal for a Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents.

The report prepared by the German Presidency takes stock of discussions in Council's bodies so far and identifies the main outstanding issues that will need to be addressed in the coming months. The further work of the Council's bodies will focus in particular on the delimitation of the scope of the Regulation, the application of international conventions on the global limitation of liability simultaneously to the Athens Convention, the delayed entry into force in relation to carriage by sea within a single Member State and the adaptation of the Regulation in the case of amendments to the Athens Convention and/or the International Maritime Organisation.

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).

ENTRY INTO FORCE: 29/05/2009.

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

2005/0241(COD) - 29/11/2007

The Council reached a political agreement on a proposal for a Regulation on the liability of carriers of passengers by sea in the event of accidents.

The Council will adopt its common position at one of its forthcoming meetings after finalisation of the text and will forward it to the European Parliament for a second reading in the framework of the codecision procedure.

Compared to the initial Commission proposal, the text agreed by the Council contains some changes that concern the scope, the relation between the regulation and other international conventions on global limitation of liability and the transitory provision of the Regulation.

Ministers agreed on all outstanding issues and the text also includes those of the European Parliament's amendments which are acceptable to the Council.

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

2005/0241(COD) - 25/04/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Paolo **COSTA** (ALDE, IT) making some amendments to the proposed regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents:

- a new recital states, that owing to the need for greater consultation among the Member States on matters of maritime safety, it is vital to reassess the EMSA's competences and possibly consider extending its powers;

- against the wishes of the rapporteur, the EPP-ED and IND/DEM groups tabled amendments to exclude the inland waterway sector and domestic traffic from the scope of this legislation. These amendments were adopted with a small majority;

- the liability of a carrier and of a performing carrier in respect of passengers and their luggage shall be governed by all provisions of the Athens Convention 2002 relevant to such liability, including the IMO reservation and guidelines for implementation of the Athens Convention 2002 adopted by the Legal Committee of the IMO on 19 October 2006, both annexed to the Regulation;

- the advance payment of EUR 21 000 provided for in the event of death should also be payable in the event of "the absolute and permanent invalidity of a passenger, or injuries to 75% or more of the passenger's body considered clinically very serious";

- Article 19 of the Athens Convention 2002 is not applicable to the carriage of passengers falling within the scope of the Regulation;

- an advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of the Regulation and is not returnable except where the person who received the advance payment was not the person entitled to compensation or the carrier is deemed not at fault. Receipt of an advance payment shall enable the carrier, the performing carrier or the passenger to initiate judicial proceedings to establish liabilities and fault;

- in relation to domestic carriage by regular ferry lines, the Regulation shall apply from two years after the date of its entry into force or from the date of the entry into force of the Athens Convention 2002 for the Community, whichever is the later;

- in relation to carriage by inland waterways, it shall apply from four years after the date of its entry into force or from the date of the entry into force of the Athens Convention 2002 for the Community, whichever is the later;

- in relation to domestic carriage by regular ferry lines in the regions covered by Article 299(2) of the Treaty, it shall apply from four years after the date of its entry into force or from the date of the entry into force of the Athens Convention 2002 for the Community, whichever is the later.

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

2005/0241(COD) - 22/10/2007 - Modified legislative proposal

The amended proposal adapts the original proposal on a number of points as suggested by the European Parliament.

The Commission has decided to accept twelve amendments proposed by Parliament. Amendment 1 is accepted in part. The last sentence of this amendment suggests that setting up a system of compulsory insurance must not affect insurers in anyway. The Commission feels that this sentence should be removed as it does not reflect reality. Setting up a compulsory insurance system will inevitably affect the insurance market.

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.

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

2005/0241(COD) - 08/12/2008 - Commission opinion on Parliament's position at 2nd reading

The Commission accepts in full 6 amendments to the common position, adopted by the European Parliament in first reading.

It also accepts, in part or in principle, 5 other amendments by the European Parliament. With regard to these amendments, the Commission does not accept the last sentence of an amendment which suggests that setting up a compulsory insurance scheme should not affect existing insurance schemes. It also takes the view that it is unrealistic to demand that passengers be provided with complete information and that the information should be provided to passengers before boarding.

The Commission does not accept the deletion of the second paragraph of Article 5 of the common position covering the system for indemnity in the event of a terrorist attack. It also takes the view that it is not appropriate to guarantee a specific minimum advance payment in cases such as permanent invalidity.

Note that the Commission rejected 2 amendments. In particular, an amendment cannot be accepted in so far as it no longer applies. The amendment continues to refer to the procedure whereby any future amendment to the Convention is automatically incorporated into Community law unless a Commission regulation to the contrary is adopted by comitology. In the common position, this approach has changed and the Commission has accepted this change: changes to maximum compensation amounts under the Athens Convention can be incorporated following the adoption of a Commission regulation under the regulatory procedure with scrutiny. Any other amendment to the Convention would be subject to co-decision.

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

2005/0241(COD) - 13/06/2008 - Commission communication on Council's position

The Commission is of the view that the Council has emptied its proposal of much of its content.

Firstly, the common position aims to exclude inland waterway transport and a large part of domestic maritime transport from the scope of the proposal.

Secondly, the Council has also rejected two mechanisms to harmonise compensation levels that would have worked to the benefit of both passengers involved in accidents and the industry: as the political agreement stands, such passengers cannot in all cases be compensated up to the ceilings set by the Athens Convention and, in certain circumstances, carriers could be made to pay higher compensation than is provided for in the Athens Convention.

The Commission also notes the Council's intention to clarify the rules on jurisdiction and the recognition and enforcement of judgments. These rules may be derived either from the Athens Convention itself or from Community legislation. The Commission considers, however, that the wording in the common position (recital 3(e)) is not appropriate. This wording suggests a restrictive delimitation of the scope of the Community's exclusive jurisdiction which does not appear to be in line with the case law of the Court of Justice.

In conclusion, the Commission takes note of the Council’s common position, which was adopted by a qualified majority. By opposing this majority agreement the Commission could have obstructed its passage at second reading, but chose not to do so since it felt that the inter-institutional debate should be allowed to proceed. The Commission reiterates its view on the scope and on the need for the levels of compensation to victims to be harmonised at EU level.

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

2005/0241(COD) - 23/11/2005 - Legislative proposal

PURPOSE: to incorporate the Athens Convention of passenger liability by sea into EU law.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

CONTENT: This proposal is being presented following on from the 2001 “White Paper on Transport Policy” and the 2002 “Communication on enhanced safety of passenger ships in the Community”, in which the Commission outlined its views on certain key elements for a workable EU maritime passenger liability regime.

The purpose of this proposal is to incorporate an IMO Protocol, “The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002”, into EU law. Essentially, the proposed Regulation would incorporate the Athens Convention into EC laws as well as making a certain number of adaptations. They refer to:

- Extending the scope of application to domestic traffic.
- Extending the scope of application to inland waterways.
- Removing the possibility for Member States to fix limits of liability higher than those provided for in the Convention.
- For damage or loss of mobility equipment/medical equipment belonging to a passenger with reduced mobility, compensation equivalent at the maximum, to the replacement value of the equipment.
- To offer advance payments as provided for in the air and retail sectors.
- To offer pre-journey information.

The fact that the Community will be a contracting party to the 2002 Athens Convention will ensure that the Court of Justice interprets the protocol in a uniform manner – which international law currently does not allow for. In addition, provisions will be extended to include Member State's inland waterway transport. At the same time, the Commission is using this opportunity to make a number of adaptations to the Athens Conventions relating to fair compensation for people with reduced mobility, as well as an advance payment for all passengers and an obligation to provide information for passengers.