

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0333/2008

5.9.2008

*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents
(6389/2/2008 – C6-0227/2008 – 2005/0241(COD))

Committee on Transport and Tourism

Rapporteur: Paolo Costa

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Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents

(6389/2/2008 – C6-0227/2008 – 2005/0241(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (6389/2/2008 – C6-0227/2008),
- having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2005)0592),
- having regard to the amended Commission proposal (COM(2007)0645),
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 62 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0333/2008),

1. Approves the common position as amended;
2. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Council common position

Recital 3 a (new)

Council common position

Amendment

(3a) 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,

¹ Texts adopted, 25.4.2007, P6_TA(2007)0148.

account must be taken of the seasonal nature of their operations. The transitional period which is provided for in the application of this Regulation must be sufficiently long to enable the compulsory insurance provided for by the Athens Convention to be arranged without affecting existing insurance schemes.

Justification

This amendment reintroduces Amendment 1 from the first reading. If the system of compensation is to function realistically and effectively, insurance companies must be able to fulfil the provisions of the Convention, and there must also be a way to ensure the viability and competitiveness of shipping companies, particularly those of small and medium size.

Amendment 2

**Council common position
Recital 3 b (new)**

Council common position

Amendment

(3b) It is appropriate to oblige the carrier to make advance payment in the event of the death of or personal injury to a passenger, whereby advance payment does not constitute recognition of liability.

Justification

This amendment reintroduces Amendment 2 from the first reading. It should be clarified that any advance payments to a passenger made while the process of establishing fault and/or liability is ongoing should not constitute recognition of liability in legal terms.

Amendment 3

**Council common position
Recital 3 c (new)**

Council common position

Amendment

(3c) Appropriate, full and comprehensible information on new rights being conferred on passengers should be

provided to those passengers prior to their journey.

Justification

This amendment reintroduces Amendment 3 from the first reading. To guarantee a high standard of information for passengers on their new rights.

Amendment 4

**Council common position
Recital 3 d (new)**

Council common position

Amendment

(3d) Any amendment to the Athens Convention will be incorporated into Community legislation, unless that amendment is excluded following the procedure under Article 5(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships¹.

¹ OJ L 324, 29.11.2002, p.1.

Justification

This amendment restores the wording of the original Commission proposal as adopted by the European Parliament.

Amendment 5

**Council common position
Recital 12 a (new)**

Council common position

Amendment

(12a) 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.

Justification

This amendment reintroduces Amendment 4 from the first reading. As with the European Aviation Safety Agency, it appears vital to consider whether the EMSA's powers might need to be extended and, if its powers are indeed increased, whether this would boost the EU's capacity to respond to maritime accidents.

Amendment 6

**Council common position
Recital 12 b (new)**

Council common position

Amendment

(12b) The national authorities, particularly the port authorities, play a fundamental and vital role in identifying and managing the various risks in relation to maritime safety.

Justification

This amendment reintroduces Amendment 5 of the first reading. Reference should be made to the fundamental role played by national authorities and particularly the port authorities in the timely identification and management of the various risks to maritime safety.

Amendment 7

**Council common position
Recital 13**

Council common position

Amendment

(13) In order to fulfil their obligations under this Regulation, Member States may consider ratifying the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, and make use of the option provided for in Article 15(3bis) of that Convention to regulate, by specific provisions of this Regulation, the system of limitation of liability to be applied to

deleted

passengers.

Justification

The LLMC should not be opposed to victims to limit their claims on the basis of the Athens Convention. These global liability ceilings might prevent passengers from recovering a substantial part of their claims under the Athens Convention which entitles passengers to recover 250 000 SDR minimum.

Amendment 8

**Council common position
Article 1 - paragraph 2**

Council common position

Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State ***on board ships covered by Class A in accordance with Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships*** and lays down certain supplementary requirements.

Amendment

Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State and lays down certain supplementary requirements.

Justification

This amendment restores the original wording proposed by the Commission and the scope as adopted by the European Parliament in its first reading: the European Parliament extended the scope of the Athens Convention to all domestic carriage by sea.

Amendment 9

**Council common position
Article 2 - paragraph 1**

Council common position

This Regulation shall apply to any international carriage within the meaning of Article 1(9) of the Athens Convention and to carriage by sea within a single Member State ***on board ships covered by Class A in accordance with Article 4 of Directive 98/18/EC***, if:

Amendment

This Regulation shall apply to any international carriage within the meaning of Article 1(9) of the Athens Convention and to carriage by sea within a single Member State, if:

Justification

This amendment restores the original wording proposed by the Commission and the scope as adopted by the European Parliament in its first reading: the European Parliament extended the scope of the Athens Convention to all domestic carriage by sea.

Amendment 10

Council common position Article 2 - paragraph 2

Council common position

Amendment

***Member States may apply this regulation
to all carriage by sea within a single
Member States;*** ***deleted***

Justification

This amendment restores the original wording proposed by the Commission and the scope as adopted by the European Parliament in its first reading: the European Parliament extended the scope of the Athens Convention to all domestic carriage by sea. There must not be any distinction between domestic and international carriage by sea on the compulsory nature of the Regulation.

Amendment 11

Council common position Article 2 – paragraph 2 a (new)

Council common position

Amendment

***This Regulation shall apply to all ships
providing international or national
carriage by sea which have to operate a
part of the journey by inland waterways
and to all ships providing carriage by
inland waterways which have to operate a
part of the journey by sea.***

Justification

The guarantees of liability have to be the same for a ship covered by the Regulation when these latter operates on an inland waterways.

Amendment 12

Council common position Article 3 - paragraph 1

Council common position

1. The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation and by Articles 1 and 1bis, Article 2(2), Articles 3 to 16 and 18, 20 and 21 of the Athens Convention set out in Annex I and the provisions of the IMO Guidelines set out in Annex II.

Amendment

1. The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation and by Articles 1 and 1bis, Article 2(2), Articles 3 to 16, **with the exception of Article 7(2)**, and Articles 18, 20 and 21 of the Athens Convention set out in Annex I and the provisions of the IMO Guidelines set out in Annex II.

Justification

This amendment reintroduces Amendment 7 from the first reading. As Article 7(2) of the Athens Convention concerns the limit of liability for death and personal injury, it is safer to specify that the application of this provision can be amended only through the co-decision procedure.

Amendment 13

Council common position Article 3 - paragraph 1- subparagraph 1 a (new)

Council common position

Amendment

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 procedure referred to in Article 251 of the Treaty, amend this Regulation to this effect.

Justification

This amendment reintroduces Amendment 7 from the first reading. As Article 7(2) of the Athens Convention concerns the limit of liability for death and personal injury, it is safer to specify that the application of this provision can be amended only through the co-decision procedure.

Amendment 14

Council common position Article 5

Council common position

This 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, including any future amendment to that Convention.

In respect of claims for loss of life or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines the carrier and the performing carrier may limit their liability pursuant to the provisions referred to in the first paragraph provided that the limit of liability calculated according to those provisions shall not exceed, on each distinct occasion, 340 million SDR (Special Drawing Rights) per incident, or 250 000 SDR per passenger, whichever is the lower amount.

Amendment

deleted

Justification

This amendment is in line with the previous amendment: the global liability ceilings of the LLMC might prevent passengers from recovering a substantial part of their claims under the Athens Convention which entitles passengers to recover 250 000 SDR minimum. With this amendment, the LLMC could not be opposed to victims to limit their claims on the basis of the Athens Convention.

Amendment 15

Council common position Article 6 - paragraph 1

Council common position

Where the death of, or personal injury to, a passenger has been caused by a shipping incident ***within the territory of a Member***

Amendment

Where the death of, or personal injury to, a passenger has been caused by a shipping incident, if applicable, the carrier who

State, or has occurred on board a ship that was flying the flag of a Member State or is registered in a Member State, if applicable, the carrier who actually performed the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportional to the damage suffered, within 15 days from the identification of the person entitled to damages. In the event of death this payment shall not be less than EUR 21 000.

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 proportional to the damage suffered, within 15 days from the identification of the person entitled to damages. In the event of death ***or the absolute and permanent invalidity of a passenger, or injuries to 75 % or more of the passenger's body considered clinically very serious***, this payment shall not be less than EUR 21 000.

Justification

This amendment reintroduces part of Amendment 9 from the first reading and strings together the scope of the advance payment with the scope of defined in Article 2, as in the European Parliament's first reading. For reasons of justice, it is important to ensure that passengers have access to advance payment in order to cover economic needs. However, carriers should be able to recover the advance payment if they are cleared of fault. This provision is consistent with the legislation applicable in air transport, i.e. Regulation (EC) No 889/2002 amending Regulation (EC) No 2027/97.

Amendment 16

Council common position Article 6 - paragraph 3 a (new)

Council common position

Amendment

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.

Justification

This amendment reintroduces part of Amendment 10 from the first reading. A similar provision is included in Regulation (EC) 889/2002 of 13 May 2002 amending Council Regulation (EC) 2027/97 on air carrier liability in the event of accidents.

Amendment 17

Council common position Article 7 - paragraph 1

Council common position

The carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation ***at the latest on*** departure. 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. ***That information shall be provided in the most appropriate format.***

Amendment

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. 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 of 13 June 1990 on package travel, package holidays and package tours¹.***

¹ OJ L 158, 23.6.1990, p. 59.

Justification

This amendment reintroduces Amendments 11 and 12 from the first reading. Legal clarification to increase the legal certainty of the regulation and passengers' access to information.

Amendment 18

Council common position Article 8 - paragraph 1 a (new)

Council common position

Amendment

That report may be accompanied by a proposal for amendment to this Regulation, or by a proposal for a submission to be made by the European Community before the relevant international forums.

Justification

This amendment restores a provision originally proposed by the Commission. This report should provide the opportunity to submit amendments to the Regulation.

Amendment 19

Council common position Article 11

Council common position

In respect of carriage by sea within a single Member State ***on board ships covered by Class A in accordance with Article 4 of Directive 98/18/EC***, Member States may choose to defer application of this Regulation until four years after the date of its application.

Amendment

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.***

Justification

This amendment reintroduces Amendments 13 and 15 from the first reading. A different implementation deadline for domestic regular ferry lines should be offered to carriers as to ensure efficient and financially sustainable civil liability coverage. The provision concerning the regions described in Article 299(2) of the EC Treaty makes it possible to set a different implementation deadline for domestic ferry lines in these regions in order to ensure efficient and financially sustainable civil liability coverage that is adapted to the permanent constraints on these regions.

Amendment 20

Council common position Article 11 - paragraph 1 a (new)

Council common position

Amendment

In relation to carriage by inland waterways, Member States may choose to defer application of this Regulation until four years after the date of its application.

Justification

This amendment reintroduces Amendment 14 from the first reading. A longer deadline for inland waterway transport is necessary because carriers are not covered by P&I clubs.

EXPLANATORY STATEMENT

1. Introduction

EU passengers' rights have been firmly present on the agenda of the common transport policy since the publication of Commission's White paper in 2001. As an integral part of this agenda, the protection of EU passengers under an efficient system of liability has been relayed in the different transport modes through the ratification of the Montreal Convention and additional EC rules for air transport and through the publication of Commission's Proposal of Regulation on International Rail Passengers' Rights and Obligations. As far as passengers by sea are concerned, the implementation of a liability system in EC has been more complex.

After the Commission presented on 24 June 2003 a proposal for a Council decision concerning the conclusion by the European Community of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, the Commission proposed that the Community becomes a Contracting Party to the Protocol at the earliest possible moment and that the Member States shall do likewise before the end of 2005.

As no progress has been made on this Proposal within the Council, the Commission proposed on 23 November 2005 to incorporate the Athens Convention into EC law and to add some adaptations to it, in particular on its scope of implementation. The European Parliament adopted its first reading on this proposal on 25 April 2007.

2. The Common position of the Council

The Council adopted its Common position on 6 June 2008. On the elements of the European parliament's first reading, the Council retained a part of the amendments of the Parliament in its Common position. The main insertions concern the restriction of the scope to sea carriage. The Council shared the European Parliament's views to exclude from the scope of the Regulation the inland waterway transport however the European parliament adopted some provisions giving more time to adapt to the operators.

The Council accepted as well the incorporation of the IMO guidelines on damages connected with terrorist attacks. Both Parliament and Council considered important that the special liability scheme concerning terrorist risks, as set up by IMO legal Committee, should be inserted in the text of the Regulation.

Lastly on the elements accepted by the Council, the amendments of the European Parliament on the nature of the information supplied to the passengers on their rights and on the reimbursement of unduly advance payment were partly retained in the text of the Common position. But some differences remain between Council and Parliament on the moment to provide this information and on the full character of this information. Concerning the advance payments, however the Council is not opposed to the principle of this measure, it did not

retain the extension to cases like serious injury and permanent invalidity.

Concerning the elements that were fully or mostly rejected, the extension of the scope to domestic maritime carriage was not retained. Thus the Council restricted the scope to the ships providing carriage within the Member States covered by Class A in accordance with article 4 of Directive 98/18/EC.

On the compensation limits, the Council rejected the amendments of the Parliament, supported by the Commission, which inserted some provisions harmonising the maximum and minimum compensation limits. The Council decided firstly to fully apply the Article 7(2) ("Opt-out" clause) of the Athens Convention, which allows Party to the Convention to adopt higher limits of liability than the ones provided by the Athens Convention. This will have for effect not to have a harmonised limit of liability through the European Union. But on the other hand, the Council maintained also the implementation of the Article 19 of the Convention, which was rejected by the European Parliament. This article allows mechanisms limiting the global liability provided by other conventions, like for example the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) and its 1996 Protocol. Potentially, the compensation limits could be lower than the ones in the Athens Convention.

3. Position of the Rapporteur

The Rapporteur reintroduced the following elements of the first reading of the European Parliament:

- **Extension of the scope of application to domestic maritime transport:** The Rapporteur is of the opinion that this extension is feasible and that the insurance market will have the capacity to insure these types of risks with a reasonable extra cost for the passengers. However, as operators of domestic traffic are not familiar with the schemes implemented at international level and that the insurance market will have to be mobilised to organise the guarantee and direct actions on risks, it is suggested those operators and actors in the insurance market be given a supplementary deadlines for applying the Regulation.
- **Pre-journey information:** this provision has to be upheld and in line with what has been done in other transport modes. The content of obligation to inform could be made more precise later on (attached to the ticket (general sales conditions) and/or inserted in the brochures).
- **The "Opt-out" clause:** the implementation of the Article 7(2) has to be limited, as the Rapporteur considers it is safer to specify that the application of this provision can be amended only through co-decision procedure.
- **The global limitation of liability imposed by other Conventions:** the Article 19 has to be excluded from the implementation of the Regulation, as it 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.

- **The advance payment**: the minimum level of the advance payment should not cover only the event of death, but other cases like serious injury and permanent invalidity.

PROCEDURE

Title	Liability of carriers of passengers by boat in the event of accidents
References	06389/2/2008 – C6-0227/2008 – 2005/0241(COD)
Date of Parliament's first reading – P number	25.4.2007 T6-0148/2007
Commission proposal	COM(2005)0592 - C6-0057/2006
Amended Commission proposal	COM(2007)0645
Date receipt of common position announced in plenary	19.6.2008
Committee responsible Date announced in plenary	TRAN 19.6.2008
Rapporteur(s) Date appointed	Paolo Costa 23.6.2008
Discussed in committee	14.7.2008 25.8.2008
Date adopted	4.9.2008
Result of final vote	+: 40 –: 0 0: 2
Members present for the final vote	Gabriele Albertini, Etelka Barsi-Pataky, Paolo Costa, Michael Cramer, Luis de Grandes Pascual, Arūnas Degutis, Petr Duchoň, Saïd El Khadraoui, Robert Evans, Emanuel Jardim Fernandes, Francesco Ferrari, Brigitte Fouré, Mathieu Grosch, Georg Jarzembowski, Stanisław Jałowiecki, Timothy Kirkhope, Dieter-Lebrecht Koch, Jaromír Kohlíček, Sepp Kusstatscher, Jörg Leichtfried, Bogusław Liberadzki, Marian-Jean Marinescu, Erik Meijer, Seán Ó Neachtain, Reinhard Rack, Gilles Savary, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Silvia-Adriana Țicău, Yannick Vaugrenard, Roberts Zīle
Substitute(s) present for the final vote	Johannes Blokland, Luigi Cocilovo, Zita Gurmai, Lily Jacobs, Anne E. Jensen, Rosa Miguélez Ramos, Vladimír Remek, Dominique Vlasto, Corien Wortmann-Kool