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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.6.2008
COM(2008) 375 final

2005/0241 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation concerning the liability
of carriers of passengers by sea and inland waterway in the event of accidents**

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(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2005) 592 final – 2005/0241(COD)):	13 February 2006
Date of the opinion of the Committee of the Regions:	15 June 2006
Date of the opinion of the European Economic and Social Committee:	13 September 2006
Date of the opinion of the European Parliament at first reading:	25 April 2007
Date of the revised proposal of the Commission:	22 October 2007
Date of adoption of the common position:	6 June 2008

2. PURPOSE OF THE COMMISSION'S PROPOSAL

The purpose of the proposal is to give all passengers travelling by ship, whatever their journey, and their carriers a harmonised legal framework setting out their rights and obligations in the event of an accident. The level of harmonisation aimed at should be sufficiently ambitious to ensure a fairer system for compensating for damage and to improve accident prevention.

The proposal seeks to incorporate into Community law the 2002 Protocol to the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, adopted under the auspices of the International Maritime Organization ("the 2002 Athens Convention). The 2002 Athens Convention is a modern text setting out clearly the rights and obligations of passengers and carriers; it provides for a system of strict liability – "liability without fault" – of the carrier in respect of damages in the event of shipping incidents, lays down sufficiently high maximum compensation amounts, requires all carriers to take out an insurance policy and allows the complainant to contact the insurer directly in order to obtain compensation.

In parallel with this initiative, the Member States and the Community are preparing to become contracting parties to the 2002 Athens Convention¹.

When incorporating the 2002 Athens Convention into Community law, a number of adjustments should be made:

- the 2002 Athens Convention is confined to international shipping. The Commission proposes extending the scope to cabotage (maritime transport within a single Member State) and to inland waterway transport;
- with a view to harmonising to the benefit both of passengers and of carriers, the Commission proposes to render inapplicable the clause from the 2002 Athens Convention whereby a Member State may individually adopt maximum compensation limits higher than those laid down in the Convention. In its amended proposal², the Commission accepted an amendment by the European Parliament which would ensure that victims can at all events be eligible for compensation up to the maximum limits set by the Athens Convention, thus ruling out the application of competing rules regarding an overall limit on liability;
- addition of a measure to increase the compensation paid for damage caused to equipment for the disabled;
- addition of an obligation to pay advances;
- addition of an obligation to inform passengers about their rights.

3. COMMENTS ON THE COMMON 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. Parliament, for its part, had been somewhat ambiguous on inland waterway transport in its first-reading opinion, though it had clearly come out in favour of including domestic maritime transport while making provision to allow some of the operators concerned more time to adapt. These Parliamentary amendments had been supported by the Commission but have not been taken up by the Council.

Secondly, the Council has rejected two mechanisms for harmonising the maximum compensation limits. As the text currently stands, the maximum compensation limits could in two respects be described as being of a "variable-geometry" nature:

- the maximum compensation limits applicable would not be the same throughout Europe. The Council has in effect chosen to maintain the implementation of

¹ 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 - COM(2003) 375 of 24 June 2003. Under adoption.

² COM(2007)645 of 22 October 2007.

Article 7 of the 2002 Athens Convention, which allows the States that are party to the Convention to exceed individually the maximum limits set by the latter.

- the compensation paid to victims would depend on the scale of the accident. The Council has in effect maintained the implementation of Article 19 of the 2002 Athens Convention, which allows mechanisms for limiting the overall level of liability to be applied in competition with the Convention itself, with the result that the maximum compensation limits may be lower than those set by the Convention.

The Commission notes, also, 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 (Council Regulation (EC) No 44/2001, or the "Brussels I Regulation"). 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.

It will be noted that the common position was adopted only 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 issued the following statement on the occasion of the adoption of the common position:

"The Commission does not wish to stand in the way of a majority agreement on this important proposal that would establish a harmonised legal framework ensuring that passengers on vessels receive adequate compensation in the event of an accident.

The Commission nevertheless regrets that the Council has not stuck to the original aim of its proposal, but has effectively reduced its scope by excluding inland navigation and a large part of domestic carriage. 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.

Lastly, the Commission does not support the wording of recital 3e as it appears to call into question the extent of exclusive Community competence."

4. DETAILED COMMISSION COMMENTS ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

4.1 Parliamentary amendments accepted by the Commission and incorporated in full or in part in the common position

Amendment 6, which is intended to take into account the adoption in October 2006 of IMO guidelines on damages connected with terrorist attacks.

Amendments 2 and 10 on reimbursement of unduly paid advances.

Amendments 3 and 11 on the nature of information supplied to passengers.

4.2 Parliamentary amendments accepted by the Commission but not incorporated in the common position

Amendment 5 on the role of the port State.

Amendments 7 and 8 concerning maximum compensation limits.

Amendment 12 on passenger information arrangements.

Amendment 13 on the gradual implementation of the Regulation in the case of regular ferry lines.

Amendment 14 on the gradual implementation of the Regulation in the case of inland waterway transport.

Amendment 15 on the gradual implementation of the Regulation in the case of regular ferry lines operating in overseas countries and territories.

4.3. Parliamentary amendments rejected by the Commission but incorporated in the common position

Amendment 9 limiting the payment of advances to shipping incidents.

Amendments 16 to 27 on the exclusion of inland waterway transport.

4.4 Parliamentary amendments rejected by the Commission and not incorporated in the common position

Amendment 4 on the role of the European Maritime Safety Agency.

5. CONCLUSION

The Commission takes note of the Council's common position, which was adopted by a qualified majority, while reiterating its view on the scope and on the need for the levels of compensation to victims to be harmonised at EU level.