

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.