

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 the incorporation 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.