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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)], in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

(1) Within the framework of the common transport policy, further measures need to be adopted in order to enhance safety in maritime transport. Those measures should include liability rules for damage caused to passengers, since it is important to ensure a proper level of compensation for passengers involved in maritime accidents.

(2) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on 1 November 2002 under the auspices of the International Maritime Organisation (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol. In any case, the provisions thereof incorporated by this Regulation should apply for the Community from no later than 31 December 2012.

(3) 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), applies to international transport only. The distinction between national and international transport has been eliminated within the internal market in maritime transport services and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

(4) The insurance arrangements required under the Athens Convention must take into consideration the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically

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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. When setting insurance arrangements under this Regulation, account should therefore be taken of the different classes of ship.

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

(6) Appropriate information on rights being conferred on passengers should be provided to those passengers prior to their journey or, where that is not possible, at the latest on departure.

(7) The Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines for the Implementation of the Athens Convention (the IMO Guidelines) to address certain issues under the Athens Convention, such as, in particular, compensation for terrorism-related damage. As such, the IMO Guidelines may be considered a *lex specialis*.

(8) This Regulation incorporates and makes binding parts of the IMO Guidelines. To that end, where it occurs in the provisions of the IMO Guidelines, the verb ‘should’ should, in particular, be understood as ‘shall’.

(9) The provisions of the Athens Convention (Annex I) and of the IMO Guidelines (Annex II) should be understood, *mutatis mutandis*, in the context of Community legislation.

(10) 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 of 17 March 1998 on safety rules and standards for passenger ships[(4)]. 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.

(11) The matters covered by Articles 17 and 17*bis* of the Athens Convention fall within the exclusive competence of the Community in so far as those Articles affect the rules established by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[(5)]. To that extent, these two provisions will form part of the Community legal order when the Community accedes to the Athens Convention.

(12) For the purposes of this Regulation, the expression ‘or is registered in a Member State’ should be considered to mean that the flag State for the purposes of bareboat charter-out registration is either a Member State or a contracting party to the Athens Convention. Necessary steps should be taken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.

(13) For the purposes of this Regulation, the expression ‘mobility equipment’ should be considered to mean neither luggage nor vehicles within the meaning of Article 8 of the Athens Convention.

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(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(6)].

(15) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(16) The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council[(7)], should assist the Commission in preparing and drafting a progress report on the functioning of the rules laid down by this Regulation.

(17) 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.

(18) Member States have taken the firm commitment in their Statement on Maritime Safety of 9 October 2008 to express, no later than 1 January 2012, their consent to be bound by the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996. Member States may make use of the option provided for in Article 15(3*bis*) of that Convention to regulate, by means of specific provisions of this Regulation, the system of limitation of liability to be applied to passengers.

(19) Since the objective of this Regulation, namely to create a single set of rules governing the rights of carriers by sea and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1 This Regulation 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) as set out in Annex I; and

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) as set out in Annex II.

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2 Furthermore, this 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 Article 4 of Directive 98/18/EC, and lays down certain supplementary requirements.

3 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 Article 4 of Directive 98/18/EC.

Article 2

Scope

This Regulation shall apply 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:

(a) the ship is flying the flag of or is registered in a Member State;

(b) the contract of carriage has been made in a Member State; or

(c) 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.

Article 3

Liability and insurance

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, by Articles 1 and 1*bis*, Article 2(2), Articles 3 to16 and Articles 18, 20 and 21 of the Athens Convention set out in Annex I and by the provisions of the IMO Guidelines set out in Annex II.

2 The IMO Guidelines as set out in Annex II shall be binding.

Article 4

Compensation in respect of mobility equipment or other specific equipment

In the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility, the liability of the carrier shall be governed by Article 3(3) of the Athens Convention. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

Article 5

Global limitation of liability

1 This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of

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Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto.

In the absence of any such applicable national legislation, the liability of the carrier or performing carrier shall be governed only by Article 3 of this Regulation.

2 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 paragraph 1 of this Article.

Article 6

Advance payment

1 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.

This provision shall also apply where the carrier is established within the Community.

2 An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation. It shall not be refundable, except in the cases set out in Article 3(1) or Article 6 of the Athens Convention or Appendix A to the IMO Guidelines, or where the person who received it is not the person entitled to damages.

Article 7

Information to passengers

Without prejudice to the obligations of tour operators set out in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours[(8)], the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation.

Where the contract of carriage is made in a Member State, that information shall be provided at all points of sale, including sale by telephone and via the Internet. Where the place of departure is in a Member State, that information shall be provided prior to departure. In all other cases, it shall be provided at the latest on departure. To the extent that the information required under this Article has been provided by either the carrier or the performing carrier, the other shall not be obliged to provide it. The information shall be provided in the most appropriate format.

In order to comply with the information requirement under this Article, the carrier and performing carrier shall provide passengers with at least the information contained in a summary of the provisions of this Regulation prepared by the Commission and made public.