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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2008  
COM(2008) 831 final

2005/0241 (COD)

**COMMISSION OPINION**

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty  
on the European Parliament's amendments  
to the Council Common Position regarding the  
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**

**AMENDING THE PROPOSAL OF THE COMMISSION pursuant to Article 250 (2) of the  
EC Treaty**

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### **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**

**(Text with EEA relevance)**

#### **1. INTRODUCTION**

Article 251(2), third subparagraph, point (c) of the EC Treaty requires the Commission to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission hereby sets out its opinion below on the 19 amendments proposed by the Parliament.

#### **2. BACKGROUND**

Date of transmission of the proposal to the European Parliament 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

Date of the opinion of the European Parliament at second reading: 24 September 2008

#### **3. AIM OF THE PROPOSAL**

The objective of this proposal is to give all passengers travelling by ship, whatever their journey, and the carriers themselves a harmonised legal framework setting out their rights and obligations. The level of this harmonisation should aim to ensure not only fairer compensation for loss or damage, but also improved 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 Athens Convention”). The 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 loss or damage 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 claim compensation from the insurer directly.

In parallel with this current proposal, the Member States and the EU are preparing to become contracting parties to the Athens Convention<sup>1</sup>.

Incorporating the Athens Convention into Community law means making a number of adjustments:

- The Athens Convention is confined to international maritime transport. The Commission proposes extending the scope to cover cabotage (maritime transport within a single Member State) and inland waterway transport.
- So that harmonisation will benefit both passengers and carriers, the Commission is proposing to render inapplicable the clause in the Athens Convention whereby a Member State may individually adopt maximum compensation limits higher than those laid down in the Convention. The Commission has also accepted an amendment by the European Parliament at first reading which aims to ensure that victims receive compensation in all cases equal to the levels provided for under the Athens Convention. As things stand, the Athens Convention could be undermined by another Convention limiting carriers’ liability which could reduce the compensation paid to each victim by setting a total compensation ceiling per accident.
- Addition of a measure to increase the compensation for loss or damage caused to equipment used by people with reduced mobility.
- Addition of an obligation to make advance payments.
- Addition of an obligation to inform passengers about their rights.

#### **4. THE COMMISSION'S OPINION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS**

##### **4.1. Amendments accepted by the Commission**

###### *4.1.1. Amendments accepted in full*

- Amendments 2, 7, 8, 9, 10, 12, 13, 16, 18 and 19 are accepted in full.

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<sup>1</sup> Proposal for a Council Decision concerning the conclusion by the European Community of the Protocol of 2002 to the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, COM(2003) 375, 24.6.2003. Under adoption.

#### 4.1.2. *Amendments accepted in part*

- Amendment 1 is accepted, but only in part. The Commission does not accept the last sentence of this amendment, which suggests that setting up a compulsory insurance scheme should not affect existing insurance schemes. In fact, setting up a compulsory insurance scheme of this kind will inevitably have consequences for individual operators, even if it is unlikely to affect the structure of the insurance market generally.
- Amendments 3 and 17 are accepted, but only in part. The Commission takes the view that it is unrealistic to demand that passengers be provided with complete information, since this would involve them being given copies of relevant legislation in full, including legislation relating to civil procedure. Amendments 3 and 17 also state that information should be provided to passengers before boarding. This is not always practical, given the scope of the regulation. The regulation applies in cases where contracts have been entered into in a third country; under these circumstances, it could only be guaranteed that the information would be available at the time of boarding.
- Amendment 14 is accepted, but only in part. The Commission does not accept the deletion of the second paragraph of Article 5 of the common position covering the system for indemnity in the event of a terrorist attack.
- Amendment 15 is accepted, but only in part. The Commission takes the view that it is not appropriate to guarantee a specific minimum advance payment in cases such as permanent invalidity. The Commission would like to draw attention to the fact that advance payments will have to be made in cases of death or injury, but in order for cases of invalidity to be taken into account, a procedure to establish invalidity needs to be followed, which may involve a timeframe too lengthy for the urgency of an advance payment.

#### 4.2. **Amendments not accepted by the Commission**

- Amendment 4 cannot be accepted in so far as it no longer applies. The amendment continues to refer to the procedure whereby any future amendment to the Convention is automatically incorporated into Community law unless a Commission regulation to the contrary is adopted by comitology. In the common position, this approach has changed and the Commission has accepted this change: changes to maximum compensation amounts under the Athens Convention can be incorporated following the adoption of a Commission regulation under the regulatory procedure with scrutiny. Any other amendment to the Convention would be subject to co-decision.
- Amendment 5 cannot be accepted in so far as it involves a general declaration which is not appropriate to this specific regulation reviewing the remit of the European Maritime Safety Agency.

### 5. **CONCLUSION**

Under Article 250(2) of the EC Treaty, the Commission will amend its proposal in accordance with the above.