



ECSA



ICS

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PROPOSAL FOR A REGULATION ON THE LIABILITY OF CARRIERS OF PASSENGERS BY SEA AND INLAND WATERWAYS IN THE EVENT OF ACCIDENTS

ECSA/ICS Comments

The Industry¹ supports the aim of the proposal to incorporate the 2002 Protocol to the Athens Convention relating to the carriage of passengers and their luggage by sea into EC law.

The Industry welcomes the Commission's willingness to include in the proposed Regulation a solution found in IMO on the two remaining issues, notably insurance coverage and carrier's liability in respect of terrorist acts. The Industry hopes that a satisfactory solution on these two issues will be found in the near future.

The Industry has noted with interest the proposal to add some new elements to the 2002 Protocol and would like to comment on them as follows:

1. The proposed extension of the Athens Protocol to domestic traffic and inland waterways

The Industry understands the political willingness to provide passengers with equal compensation for damage suffered regardless the transport mode with which they are traveling. However, the Industry draws attention to the fact that an extension of the Athens Protocol to domestic traffic should not result in unrealistic obligations imposed on small companies providing local ferry services. Imposing unrealistic obligations might render these companies economically unviable and eventually affect the service they are offering to the passengers (e.g. a voyage from the mainland to the island or vice versa).

2. The proposal that carriers should compensate passengers with reduced mobility for damage or loss of their mobility equipment

Though the Industry has sympathy for this proposal, it draws attention to the fact that the proposal must be consistent with and thus not deviate from the Athens Protocol where liability for passengers' luggage is limited to agreed levels.

3. The proposal that carriers should make advance payments in the case of death or personal injury

The Industry is of the opinion that a requirement to make advanced payments should only apply in the case of "shipping incidents" where the carrier's liability is strict. If no liability on the part of the carrier is found (e.g. because of a defence), the passenger should be required to refund the payment. Imposing advanced payments on the carrier in respect of fault-based liability would not be legally sound since a decision should be taken on who is the liable person prior to compensation of the passengers.

¹ The Industry is represented by the European Community Shipowners' Associations (ECSA) and the International Chamber of Shipping (ICS), representing more than 50% of the world's merchant tonnage.

An overriding concern is that the concept of advanced payments was discussed in the International Maritime Organisation (IMO) and rejected in the context of the international discussions on the text of the Athens Protocol itself. Accordingly, the Industry is of the opinion that the Commission's proposal might not be in accordance with the Protocol.

4. The proposal that carriers shall provide passengers with information on their rights under the Regulation, prior to their departure

The Industry notes the proposal that imposes an obligation on carrier to provide passengers with information on their rights under the Regulation, prior to their departure.

The Industry draws attention to the fact that such obligation should not lead to unnecessary bureaucracy for the carrier. However, the Industry fears that this might be the case in particular with small operators providing domestic ferry services.