



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

(presented by the Commission)

{SEC(2005) 1516}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Following its 2001 White Paper on Transport Policy (COM(2001) 370), in 2002 the Commission presented a "Communication on the enhanced safety of passenger ships in the Community" (COM(2002) 158) where it outlined its views on certain key elements which should form part of a workable maritime passenger liability regime to be put in place in the European Union in the near future. These key elements were the following.

- Strict liability up to a sufficiently high limit and extended liability in case of fault or neglect. Strict liability is aimed at improving the position of claimants, as the liability is not dependent on an act of fault or negligence by the carrier.
- Compulsory insurance. The liability regime needs to be coupled with rigorous insurance requirements in order to be effective.
- Right to direct action. The possibility for claimants to make their claims directly against the insurer is of key importance in shipping, as the carrier may at times be difficult to trace and/or unable to fully meet its financial obligations.
- National carriage. The EC liability regime should cover all transport in the Community, including carriage within a single Member State.

That 2002 Communication coincided with the revision, under the aegis of the International Maritime Organisation (IMO), of the international rules on the liability for carriers of passengers by sea at international level: the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

The Commission explained in its Communication that the first three elements mentioned above were insufficiently regulated in the Athens Convention. However, it stated that if the reviewed international regime were to satisfy all those key elements, it would be preferable to implement the EU regime within this international context.

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. The Commission considers it satisfies the first three above requirements set out in the 2002 Communication.

Articles 10 and 11 of this Protocol provide for rules on the jurisdiction and the recognition and enforcement of judgments given in accordance with the Protocol. For these matters the Community has, through the adoption of Regulation (EC) No 44/2001 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters on 22 December 2000, acquired exclusive competence. This Regulation is binding upon all EU Member States, with the exception of Denmark.

Articles 10 and 11 of the Protocol affect the provisions of Regulation (EC) No 44/2001. Consequently, Member States cannot, outside the framework of the Community institutions, assume obligations with third countries relating to those Articles.

Therefore, the Commission presented on 24 June 2003 a proposal for a Council decision concerning the conclusion by the European Community of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (COM(2003) 375). With this, the Commission proposed that the Community becomes a Contracting Party to the Protocol at the earliest possible moment and that the Member States shall do likewise before the end of 2005. The Commission regrets that no progress has been made on this proposal within the Council since December 2003.

At the same time, in order to achieve a uniform and adequate passenger liability regime in the Community, the conclusion by the Community of the Protocol needs to be complemented by a Regulation incorporating the provisions of this Protocol into Community law.

Furthermore, the Commission confirmed its intention to present this proposal in its communication “Strengthening passenger rights within the European Union” (COM(2005) 46).

- **General context**

Historical background to the Athens Convention 1974 and its subsequent protocols is provided in the Commission Communication of 2002 on the enhanced safety of passenger ships in the Community. For the purposes of this proposal, the “Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974” will be named hereafter the “Athens Convention 2002”.

The main features of the Athens Convention 2002 are the following:

- Scope of application

The Athens Convention 2002 applies to all seagoing vessels, with the exclusion of air-cushion vehicles.

The Convention is applicable “to any international carriage if:

- (a) the ship is flying the flag of or is registered in a State Party to this Convention;
or
- (b) the contract of carriage has been made in a State Party to this Convention; or
- (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention”.

However, only ships licensed to carry more than twelve passengers are required to carry an insurance certificate under the Convention.

– Strict liability

The Athens Convention 1974 established a fault-based liability regime, in which the carrier can limit his liability up to EUR 53 665 (46 666 SDR) per passenger in case of death or personal injury.

The Athens Convention 2002 makes a distinction between two categories of claims. Damage which is caused by the operation of the ship and where the possibility of passengers to control the events is very limited (shipping incidents) are subject to a strict liability regime while other types of personal injury damage incurred on board are subject to a negligence-based liability system.

– Sufficient limits of liability

The Athens Convention 2002 sets two limits: EUR 287 500 (250 000 SDR) for strict liability and EUR 460 000 (400 000 SDR) for fault-based liability. This represents an important increase compared to the previous applicable limit of EUR 53 665 (46 666 SDR) in the Athens Convention 1974 and EUR 201 250 (175 000 SDR) laid down both in a subsequent revision of the Athens convention (1990 Protocol to the Athens Convention) and in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC).

– Extended liability in case of fault or neglect

The Athens Convention 1974 established a fault-based liability regime with a limitation ceiling of EUR 53 665 (46 666 SDR). The right of carriers to limit their liability could be waived in cases of gross misconduct. The limitation right, both in the Athens Convention 1974 and in the LLMC regime, is lost only where the carrier has acted “with intent to cause such damage, or recklessly and with knowledge that such damage would probably result”. Clearly, there can be very few incidents involving passenger ships that would satisfy those criteria and for practical purposes the limitation right may therefore be considered to be unbreakable at present.

The Athens Convention 2002 sets out two regimes:

- For shipping incidents, a new scheme is created with two layers. A first ceiling of EUR 287 500 (250 000 SDR) for the part covered by strict liability and a higher limitation figure up to EUR 460 000 (400 000 SDR) “unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier”.
- For cases other than shipping incidents, the carrier shall be liable, up to EUR 460 000 (400 000 SDR), “if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant”.

Article 13 of the Athens Convention 2002 adds: “The carrier shall not be entitled to the benefit of [those] limits of liability (...), if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result”.

- Regime applicable to loss or damage to luggage

The Athens Convention 2002 lays down a twofold regime:

“For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.”

“For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.”

The Convention fixes a series of figures for instance: for the loss of or damage to cabin luggage liability shall in no case exceed EUR 2 587 (2 250 SDR) per passenger, per carriage.

- Compulsory insurance

The Athens Convention 2002 introduces a new requirement for carriers to be adequately insured. The absence of insurance requirement on passenger carriers was indeed out of any proportion with the risks involved in the carriage of hundreds or thousands of passengers on board a ship. While it is true that most passenger ships nevertheless are financially protected, usually through entry in one of the mutual Protection & Indemnity (P&I) Clubs, the absence of formal requirements on insurance standards lacked justification.

- Direct action (pro memoria).

- Procedural law

The Athens Convention 2002 provides for rules on civil procedure, such as a two year time bar for actions. It also contains rules on jurisdiction and on the recognition and enforcement of judgements.

It should be noted that such rules are already governed by Regulation (EC) No 44/2001 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters on 22 December 2000. Negotiations on the Athens Convention rendered it possible for the continued application of this Regulation between EU Member States (Article 17 bis (3) of the Convention), but only as regards the recognition and enforcement of judgements. Therefore, the rules on jurisdiction in the Convention will have precedence over the corresponding rules in the Community Regulation.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

This proposal is an element in the EU policy that aims at tackling the risks faced by citizens in their daily life. The establishment of unified liability rules across the EU furthermore contributes to a harmonised and friendly environment for passenger carriers. The above considerations are among the strategic objectives underlined by the Commission in its Communication of 26 January 2005 “Strategic objectives 2005-2009 – Europe 2010: A Partnership for European Renewal - Prosperity, Solidarity and Security” (COM(2005) 12).

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission consulted with Member States and stakeholders in two rounds of consultations in May 2004 and in February 2005 on the main features of the forthcoming proposal, as part of the consultation process for the entire third maritime safety legislative package.

Summary of responses and how they have been taken into account

The Commission initiative to incorporate the Athens Convention into Community law was welcome by all respondents.

However, shipowners' representatives expressed their concerns that the scope would be extended to domestic traffic and inland waterways navigation. The Commission has taken into consideration these objections when assessing the impacts of the proposal. However, the Commission concluded that such an extension is justified because of the differences in the existing respective liability regimes applicable to passengers, as outlined in this impact assessment study. The extension is also justified because the insurance system laid down in the Athens Convention does not apply to small ships, which are not licensed to carry more than 12 passengers. For those ships, the national legislation will continue to apply.

Further concerns were expressed by industry (shipowners and P&I clubs) in relation to the implementation of the Athens Convention 2002 and in particular its Article 3(1) on the liability for incidents caused by terrorism.

The Commission has taken note that these concerns are already addressed at global level within the IMO and should not receive at this stage any solution at regional level. It is reported that a solution will be found in spring 2006 at the next meeting of the IMO Legal Committee, through a commitment by States to issue a certain reservation clause when acceding to the Convention.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Option 1: implementation of the Athens Convention only. This will be achieved with the adoption by the Council of the Commission proposal of June 2003 relating to the accession by the Community and by the Member States to the Athens Convention. The scheme will only be applicable to international transport.

Option 2: incorporation of the Convention without adaptations. The main advantage with this process is to ensure a uniform interpretation of the Convention by the Court of Justice. The impacts will be similar as with option 1.

Option 3: incorporation of the Convention with adaptations, such as the extension of the scope to cover domestic traffic and inland waterway transportation. With this option, all passengers will benefit from the new scheme of the Convention and all carriers will be subject to the same liability regime throughout Europe.

The Commission carried out an impact assessment listed in the Work Programme, whose report is accessible on SEC(2005) 1516.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal aims at incorporating the Athens Convention into EC law but brings the following adaptations to it:

- extension of the scope of application to domestic traffic;
- extension of the scope of application to inland waterway;
- removal of the possibility for Member States under the Athens Convention 2002 in fixing limits of liability higher than those provided for in the Convention;
- for damage or loss of mobility equipment/medical equipment belonging to a passenger with reduced mobility, compensation equivalent at the maximum, to the replacement value of the equipment;
- advance payments as provided in the air and rail sectors;
- pre-journey information.

- **Legal basis**

Article 71(2) and Article 80(2) of the EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

From the perspective of both the industry and passengers, there is hardly a distinction between domestic and international traffic within the Community. It is of the interest of all parties involved to have a uniform and clear regime applicable to the transport of passengers in the Community.

There is a risk that diverging national standards would create unfair competition between national carriers and would create unbalanced treatment between the citizens of the different Member States, when travelling within the Community.

Community action will better achieve the objectives of the proposal for the following reason(s).

Community action in this field will guarantee a uniform set of rules governing liability for all journeys regardless whether there are taking place on international, intra-Community or domestic routes.

Furthermore, this EU initiative will guarantee the uniformity of implementation and interpretation of the Athens Convention between Member States.

The protection of passengers is one of the objectives of the Community transport policy. Issues relating to the liability of the carrier and the rights of passengers following an accident are better addressed at the EU level for reasons explained above.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The adaptations to the Convention brought by the Regulation, such as on the pre-journey information, are natural complements to the scheme of the Convention.

The main financial and administrative burden will fall upon national governments who would have to handle the insurance certificates not only for carriers operating on international voyages (as a result of the Athens Convention) but also for carriers on domestic journeys and on inland waterway.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The Commission hereby follows the same process as for the incorporation of the applicable international Conventions on liability of air carriers and railway undertakings.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5) **ADDITIONAL INFORMATION**

- **Review/revision/sunset clause**

The proposal includes a review clause.

The proposal includes a revision clause.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

Article 1

The Commission is hereby proposing this new piece of Community legislation to ensure full, uniform and simultaneous application of the provisions of the Athens Convention 2002 for all passengers onboard ships, regardless of whether the route sailed is international, intra-Community or domestic, by sea or inland waterway.

Article 2

The scope of application of the proposed Regulation is wider than the scope of the Athens Convention 2002. It comprises the scope of the Athens Convention (in order to make the whole Convention fully enforceable within the EU), and it is extended to: (a) carriage within a single Member State; (b) traffic on inland waterway.

The three conditions set in this Article 2, which reproduces the conditions in the Athens Convention, ensure a large application of the Regulation to cover most the EU citizens, even on a cruise overseas.

Article 3

The proposed Regulation has been drafted in a way to ensure exact alignment with the Athens Convention 2002 by making a reference to the relevant provisions of the Convention. This method was also selected for the incorporation of the Montreal Convention into Community law (Regulation (EC) No 889/2002).

Article 4

The proposed Regulation aims at total uniformity within the EU since it removes the possibility for Member States under the Athens Convention 2002 in fixing limits of liability higher than those provided for in the Convention.

The measure in paragraph 2 is directly inspired from an EP amendment to the Commission proposal for a Regulation on rail passengers' rights and obligations.

Article 5

It has been considered appropriate to introduce in the EC regime an additional measure which is not envisaged in the Athens Convention 2002: the advance payments as provided for in the air and rail sectors.

Article 6

This provision on information to passengers is also an adaptation to the Convention.

Article 7

In order to evaluate the effectiveness of the Regulation and assess the need for adaptations, the Commission will report on its application.

The involvement of the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), created by Regulation 2099/2002 of 5 November 2002, will facilitate, inter alia, the updating of the Regulation in the event of any amendment of the Athens Convention 2002 at international level.

Article 8

As for the entry into force of the Regulation, the Commission would certainly privilege the earliest date compatible with the Community legislative process and the necessary adaptation of the industry.

Since the Community and Member States are to become contracting parties to the Athens Convention 2002, the Commission considers, however, appropriate to envisage a simultaneous entry into force of both the Athens Convention 2002 and the EC Regulation.

Annex

A copy of the Athens Convention 2002 is attached to this proposal for reference purposes only. As indicated in Article 1, the Athens Convention might be amended in the future; any such amendment will be automatically incorporated into the EC legislation unless the Commission, assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) under Article 7, decides to exclude it from the scope of the Regulation.

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**

(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 71(1) and 80(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Within the framework of the common transport policy, further measures must be adopted to enhance safety in maritime and inland waterway transport. Those measures include liability rules for damage caused to passengers, since it is important to ensure a proper level of compensation for passengers involved in maritime and inland waterway 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. [The Community has acceded to this Protocol⁵].
- (3) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by its protocol of 2002, (hereinafter referred to as “the Athens Convention 2002”) is applicable to international transport only. In the internal maritime market, the distinction between national and international transport has been eliminated and it is therefore appropriate to have the same level and nature of liability

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ Insert publication reference to the adopting Council decision.

in both international and national transport within the Community. The Athens Convention 2002 regime should be extended to inland waterways.

- (4) It is appropriate to oblige the carrier to make advance payment in the event of the death of, or personal injury to, a passenger.
- (5) Appropriate information on the new rights being conferred on passengers should be provided to those passengers prior to the journey.
- (6) Any amendment to the Convention will be incorporated into Community legislation, unless such amendment is excluded following the procedure under Article 5(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships⁶.
- (7) The European Maritime Safety Agency (EMSA), 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 new rules and in proposing amendments to the Athens Convention 2002.
- (8) Since the objectives of the action to be taken, namely to create a single set of rules governing the rights of carriers and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need to ensure identical limits of liability in all Member States, 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 those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down a Community regime of uniform liability for the carriage of passengers by sea and inland waterways.

To that end, this Regulation incorporates the relevant provisions of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by its protocol of 2002, hereinafter referred to as “the Athens Convention 2002” and extends the application of those provisions to carriage by sea within a single Member State and to international and domestic carriage by inland waterways.

⁶ OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

⁷ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1)

Article 2

Scope

The Regulation shall apply to any international or domestic carriage, by sea or inland waterway, if:

- (a) the ship is flying the flag of 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.

Article 3

Liability of the carrier

The liability of a carrier and of a performing carrier in respect of passengers and their luggage shall be governed by all provisions of the Athens Convention 2002 relevant to such liability.

The terms “carrier” and “performing carrier” shall be understood in accordance with the definitions set out in Article 2 of the Athens Convention 2002.

Article 4

Limits of liability

Article 7(2) of the Athens Convention 2002 is not applicable to the carriage of passengers falling within the scope of this Regulation, except if all Member States agree on such an application when amending this Regulation.

In the event of loss of or damage to mobility equipment or medical equipment belonging to a passenger with reduced mobility, the compensation may be equal to, but shall not exceed, the replacement value of the equipment.

Article 5

Advance payment

In the event of the death of, or personal injury to, a passenger the carrier shall make an advance payment sufficient to cover immediate economic needs, within 15 days from the identification of the person entitled to damages. In the event of death this payment shall not be less than EUR 21 000.

Article 6

Information to passengers

The carrier, the performing carrier and/or the tour operator shall provide passengers, prior to their departure, with information regarding their rights under this Regulation, in particular with information on the limits of compensation for death, personal injury or loss and damage of luggage, on their right of direct action against the insurer or the person providing financial security and on their entitlement to an advance payment.

This information shall be provided in the most appropriate format.

Article 7

Report and amendments to the Athens Convention 2002

No later than three years after the entry into force of this Regulation, the Commission shall draw up a report on its application, which shall, inter alia, take into account economic developments and developments in international fora.

Such a report may be accompanied by a proposal for an amendment of this Regulation, or by a proposal for a submission to be made by the European Community before the relevant international fora.

In doing so, the Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Article 3 of Regulation (EC) No 2099/2002.

Amendments to the Athens Convention 2002 may be excluded from the scope of this Regulation, pursuant to Article 5(2) of Regulation (EC) No 2099/2002.

Article 8

Entry into force

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [the date of its entry into force or from the date of the entry into force of the Athens Convention for the Community, whichever is the later].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

APPENDIX

ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2002

(Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)

ARTICLE 1 Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

- 1 (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- (b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
- (c) “carrier who actually performs the whole or a part of the carriage” means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;
- 2 “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
- 3 “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
- 4 “passenger” means any person carried in a ship:
 - (a) under a contract of carriage; or
 - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
- 5 “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
 - (b) live animals;
- 6 “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

- 7 “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
- 8 “carriage” covers the following periods:
- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
 - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
 - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
- 9 “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;
- 10 “Organization” means the International Maritime Organization;
- 11 “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 1bis
Annex

The Annex to this Convention shall constitute an integral part of the Convention.

ARTICLE 2
Application

- 1 This Convention shall apply to any international carriage if:
- (a) the ship is flying the flag of or is registered in a State Party to this Convention;
or
 - (b) the contract of carriage has been made in a State Party to this Convention; or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

- 2 Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3 **Liability of the carrier**

- 1 For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250 000 units of account, unless the carrier proves that the incident:
- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
 - (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

- 2 For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.
- 3 For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.
- 4 For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
- 5 For the purposes of this article:
- (a) “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
 - (b) “fault or neglect of the carrier” includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
 - (c) “defect in the ship” means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage

control after flooding; or when used for the launching of life saving appliances; and

(d) “loss” shall not include punitive or exemplary damages.

6 The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7 Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8 Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

ARTICLE 4 **Performing carrier**

1 If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2 The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3 Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4 Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5 Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 4bis **Compulsory insurance**

1 When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250 000 units of account per passenger on each distinct occasion.

- 2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:
- (a) name of ship, distinctive number or letters and port of registry;
 - (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
 - (c) IMO ship identification number;
 - (d) type and duration of security;
 - (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
 - (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.
- 3 (a) A State Party may authorise an institution or an organisation recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.
- (b) A State Party shall notify the Secretary-General of:
- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
 - (ii) the withdrawal of such authority; and
 - (iii) the date from which such authority or withdrawal of such authority takes effect.
- An authority delegated shall not take effect prior to three months from the date from which notification to that effect was given to the Secretary-General.
- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

- 4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.
- 5 The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.
- 6 An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.
- 7 The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.
- 8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.
- 9 Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
- 10 Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

- 11 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.
- 12 A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.
- 13 Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.
- 14 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.
- 15 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7
Limit of liability for death and personal injury

- 1 The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
- 2 A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

ARTICLE 8
Limit of liability for loss of or damage to luggage and vehicles

- 1 The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2 250 units of account per passenger, per carriage.
- 2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12 700 units of account per vehicle, per carriage.
- 3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3 375 units of account per passenger, per carriage.
- 4 The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9
Unit of Account and conversion

- 1 The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

- 2 Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.
- 3 The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

ARTICLE 10

Supplementary provisions on limits of liability

- 1 The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
- 2 Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be enabled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of claims

- 1 Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
- 2 In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

- 3 In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13
Loss of right to limit liability

- 1 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- 2 The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14
Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15
Notice of loss or damage to luggage

- 1 The passenger shall give written notice to the carrier or his agent:
- (a) in the case of apparent damage to luggage:
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
- 2 If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
- 3 The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16
Time-bar for actions

- 1 Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
- 2 The limitation period shall be calculated as follows:
- (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
- 3 The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:
- (a) A period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier
 - (b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.
- 4 Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17
Competent jurisdiction

- 1 An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:
- (a) the Court of the State of permanent residence or principal place of business of the defendant; or

- (b) the Court of the State of departure or that of the destination according to the contract of carriage; or
 - (c) the Court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State; or
 - (d) the Court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.
- 2 Actions under Article 4 bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.
- 3 After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 17bis **Recognition and enforcement**

- 1 Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:
- (a) where the judgment was obtained by fraud; or
 - (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.
- 2 A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.
- 3 A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.

ARTICLE 18 **Invalidity of contractual provisions**

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

ARTICLE 19
Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

ARTICLE 20
Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

ARTICLE 21
Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

ARTICLE 22
Declaration of non-application

- 1 Any Party may at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare in writing that it will not give effect to this Convention when the passenger and the carrier are subjects or nationals of that Party.
- 2 Any declaration made under paragraph 1 of this Article may be withdrawn at any time by a notification in writing to the Secretary-General.

ARTICLE 22bis
Final clauses of the Convention

The final clauses of this Convention shall be Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

FINAL CLAUSES

[Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.]

ARTICLE 17
Signature, ratification, acceptance, approval and accession

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from 1 May 2003 until 30 April 2004 and shall thereafter remain open for accession.
- 2 States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Protocol with respect to all existing States Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those States Parties shall be deemed to apply to this Protocol as modified by the amendment.
- 5 A State shall not express its consent to be bound by this Protocol unless, if Party thereto, it denounces:
 - (a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974;
 - (b) the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 19 November 1976; and
 - (c) the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 29 March 1990,with effect from the time that this Protocol will enter into force for that State in accordance with Article 20.

ARTICLE 18
States with more than one system of law

- 1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall extend to all its territorial units or only to one or more of them, and may modify this declaration by submitting another declaration at any time.
- 2 Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Protocol applies.
- 3 In relation to a State Party which has made such a declaration:

- (a) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
- (b) references to the requirements of national law, national limit of liability and national currency shall be construed respectively as references to the requirements of the law, the limit of liability and the currency of the relevant territorial unit; and
- (c) references to courts, and to judgments which must be recognised in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognised in, the relevant territorial unit.

ARTICLE 19

Regional Economic Integration Organizations

- 1 A Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to this Protocol. A Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.
- 2 Where a Regional Economic Integration Organization exercises its right of vote in matters over which it has competence, it shall have a number of votes equal to the number of its Member States which are Parties to this Protocol and which have transferred competence to it over the matter in question. A Regional Economic Integration Organization shall not exercise its right to vote if its Member States exercise theirs, and vice versa.
- 3 Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.
- 4 At the time of signature, ratification, acceptance, approval or accession the Regional Economic Integration Organization shall make a declaration to the Secretary-General specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organization by its Member States which are signatories or Parties to this Protocol and any other relevant restrictions as to the scope of that competence. The Regional Economic Integration Organization shall promptly notify the Secretary-General of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph. Any such declarations shall be made available by the Secretary-General pursuant to Article 24 of this Protocol.
- 5 States Parties which are Member States of a Regional Economic Integration Organization which is a Party to this Protocol shall be presumed to have competence over all matters governed by this Protocol in respect of which transfers of

competence to the Organization have not been specifically declared or notified under paragraph 4.

ARTICLE 20

Entry into force

- 1 This Protocol shall enter into force twelve months following the date on which 10 States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.
- 2 For any State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument, but not before this Protocol has entered into force in agreement with paragraph 1.

ARTICLE 21

Denunciation

- 1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol comes into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
- 4 As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 25 thereof shall not be construed in any way as a denunciation of the Convention as revised by this Protocol.

ARTICLE 22

Revision and Amendment

- 1 A Conference for the purpose of revising or amending this Protocol may be convened by the Organization.
- 2 The Organization shall convene a Conference of States Parties to this Protocol for revising or amending this Protocol at the request of not less than one-third of the States Parties.

ARTICLE 23

Amendment of limits

- 1 Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3, paragraph 1, Article 4 bis, paragraph 1, Article 7, paragraph 1 and Article 8 of the Convention as revised by this Protocol.

- 2 Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3, paragraph 1, Article 4 bis, paragraph 1, Article 7, paragraph 1, and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all States Parties.
- 3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as "the Legal Committee") for consideration at a date at least six months after the date of its circulation.
- 4 All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 5 Amendments shall be adopted by a two-thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.
- 6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.
- 7
 - (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.
 - (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
 - (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.
- 8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- 9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

- 10 All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- 11 When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

ARTICLE 24 **Depositary**

- 1 This Protocol and any amendments adopted under Article 23 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
- (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) each declaration and communication under Article 9, paragraphs 2 and 3, Article 18, paragraph 1 and Article 19, paragraph 4 of the Convention as revised by this Protocol;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend the limits which has been made in accordance with Article 23, paragraph 2 of this Protocol;
 - (v) any amendment which has been adopted in accordance with Article 23, paragraph 5 of this Protocol;
 - (vi) any amendment deemed to have been accepted under Article 23, paragraph 8 of this Protocol, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that Article;
 - (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
 - (viii) any communication called for by any Article of this Protocol;
 - (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

- 3 As soon as this Protocol comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 25

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this first day of November 2002.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

**ANNEX TO ATHENS CONVENTION
CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY**

IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage.

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security.....

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

.....

This certificate is valid until

Issued or certified by the Government of

.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of

(full designation of the State) by (name of institution or organization)

At On

(Place)

(Date)

.....
(Signature and Title of issuing or certifying official)

Explanatory Notes:

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry "Duration of Security" must stipulate the date on which such security takes effect.
- 5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

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.

2. ABM/ABB FRAMEWORK

Policy area: Energy and transport

Activities: Maritime and inland waterway transport, intermodality.

3. BUDGET LINES

3.1 Budget lines (operational lines and related technical and administrative assistance lines (ex-BA lines)) including headings : Not applicable

3.2 Duration of the action and of the financial impact: Not applicable

3.3 Budgetary characteristics (add rows if necessary) : Not applicable

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
	Comp/ Non-comp	Diff ¹ /Non-diff ²	YES/ NO	YES/ NO	YES/ NO	No [...]
	Comp/ Non-comp	Diff/ Non-diff	YES/ NO	YES/ NO	YES/ NO	No [...]

¹ Differentiated appropriations.

² Non-differentiated appropriations.

4. SUMMARY OF RESOURCES

4.1 Financial Resources

4.1.1 Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Type of expenditure	Section No.		Year n	n + 1	n + 2	n + 3	n + 4	n+5 and later	Total
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Operational expenditure³

Commitment Appropriations (CA)	8.1	a	<u>0</u>						
Payment Appropriations (PA)		b	<u>0</u>						

Administrative expenditure within reference amount⁴

Technical & administrative assistance (NDA)	8.2.4	c	<u>0</u>						
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	<u>0</u>						
Payment Appropriations		b+c	<u>0</u>						

Administrative expenditure not included in reference amount⁵

Human resources and associated expenditure (NDA)	8.2.5	d	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.324</u>
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	<u>0</u>						

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c+d+e	<u>0</u>						
TOTAL PA including cost of Human Resources		b+c+d+e	<u>0</u>						

³ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

⁴ Expenditure within Article xx 01 04 of Title xx.

⁵ Expenditure within Chapter xx 01 other than Articles xx 01 04 or xx 01 05.

Co-financing details

The legislative proposal does not provide for co-financing on the part of the Member States

EUR million (to 3 decimal places)

<u>Co-financing body</u>		<u>Year</u> <u>n</u>	<u>n + 1</u>	<u>n + 2</u>	<u>n + 3</u>	<u>n + 4</u>	<u>n+5</u> <u>and</u> <u>later</u>	<u>Total</u>
.....	<u>f</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL CA including co-financing	<u>a+c+</u> <u>d+e+f</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

4.1.2 Compatibility with financial programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement⁶ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3 Financial impact on revenue

- Proposal has no financial impact on revenue
- Proposal has financial impact – the effect on revenue is as follows:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

EUR million (to 1 decimal place)

<u>Budget line</u>	<u>Revenue</u>	<u>Prior to action</u> <u>[Year n-1]</u>	<u>Situation following action</u>					
			<u>[Year n]</u>	<u>[n+1]</u>	<u>[n+2]</u>	<u>[n+3]</u>	<u>[n+4]</u>	<u>[n+5]</u> ⁷
	<i>a) Revenue in absolute terms</i>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<i>b) Change in revenue</i>	<u>Δ</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

⁶ See points 19 and 24 of the Interinstitutional Agreement.

⁷ Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

- 4.2 Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

No impact on staff expenditure. Management by existing staff.

<u>Annual requirements</u>	<u>Year n</u> <u>(2007*)</u>	<u>n + 1</u>	<u>n + 2</u>	<u>n + 3</u>	<u>n + 4</u>	<u>n+5 and</u> <u>later</u>
<u>Total number of human resources</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

5. CHARACTERISTICS AND OBJECTIVES

- 5.1 Need to be met in the short or long term

The Regulation has to be implemented in the short term so that passengers can enjoy appropriate protection.

The approach adopted is twofold: firstly, the Member States and the Community become contracting parties to the 2002 Athens Convention. Secondly, the Community incorporates this Athens Convention into Community law.

Naturally, the aim of this harmonisation of liability systems is very ambitious. Accordingly, the regime introduced by the 2002 Athens Convention serves as a reference. Certain amendments to this regime will, however, be necessary.

- 5.2 Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The fact that the Community will be a contracting party to the 2002 Athens Convention will ensure that the Court of Justice interprets that protocol in a uniform manner, which public international law does not allow.

The incorporation of the 2002 Athens Convention will moreover allow the extension of its provisions to the inland transport of each Member State and to inland waterway transport. The same approach was adopted in the aviation field with the incorporation of the Montreal Convention.⁸

The Commission is using this occasion to make a number of adaptations to the regime introduced by the 2002 Athens Convention: fair compensation for equipment for people with reduced mobility, an advance payment for all passengers and an obligation to provide information for passengers.

⁸ Regulation 889/2002 as mentioned above.

5.3 Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective is to provide the same regulatory framework for civil liability which clarifies the rights and obligations of both passengers and carriers at European Union level.

5.4 Method of Implementation (indicative)

Show below the method(s)⁹ chosen for the implementation of the action.

Centralised Management

Directly by the Commission

Indirectly by delegation to:

Executive Agencies

Bodies set up by the Communities as referred to in Article 185 of the Financial Regulation

National public-sector bodies/bodies with public-service mission

Shared or decentralised management

With Member states

With third countries

Joint management with international organisations (please specify)

Relevant comments:

Not applicable

6. MONITORING AND EVALUATION

The Regulation will be implemented where necessary by the national courts.

The European Maritime Safety Agency will help to monitor the implementation of the Regulation by the Member States.

6.1 Evaluation

6.1.1 *Ex ante* evaluation

The potential impact of the action is as follows:

Impact on passengers: There is every indication that passengers will have the most to gain from the adoption of this Regulation. It should be noted that the many discussions with the industry have not led to the conclusion that the increase in the level of compensation compared with the current situation will inevitably lead to an increase in fares.

⁹ If a number of methods are indicated, please provide details in the "Comments" section.

Impact on industry: The interests of the various operators converge in the maritime sector insofar as carriers (co-contractors of the passengers) are in most cases shipowners and insofar as the insurance funds (P&I clubs) have been set up by the shipowners themselves. Simply implementing the Athens Convention with no changes will have an impact on the industry. However, the industry has expressed its concerns regarding the amounts laid down by the Convention, which are considered to be excessive. The industry has also pointed out that the Convention should be revised to take account of the specific risks linked to terrorism.

Impact on administrations: The flag and port States are affected insofar as they have to introduce a system for granting financial guarantee certificates and verifying such certificates. This administrative burden already results from the implementation of the Convention and will be significantly heavier with the amendments recommended by the Commission.

6.1.2 Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Not applicable

6.1.3 Terms and frequency of future evaluation

Not applicable

7. **ANTI-FRAUD MEASURES**

Not applicable

8. DETAILS OF RESOURCES

8.1 Objectives of the proposal in terms of their financial cost **Not applicable**

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost								
OPERATIONAL OBJECTIVE No 1 ¹⁰																
Action 1																
- Output 1																
- Output 2																
Action 2																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No 2																
Action 1																
- Output 1																
Sub-total Objective 2																

¹⁰ As described under Section 5.3.

OPERATIONAL OBJECTIVE No. n																
Sub-total Objective n																
TOTAL COST																

8.2 Administrative Expenditure

8.2.1 Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials or temporary staff ¹¹ (06 01 01)	A*/AD	0	0	0	0	0	0
	B*, C*/AST	0	0	0	0	0	0
Staff financed ¹² by Article XX 01 02		0	0	0	0	0	0
Other staff financed ¹³ by Article XX 01 04/05		0	0	0	0	0	0
TOTAL		0	0	0	0	0	0

8.2.2 Description of tasks deriving from the action tasks

Not applicable

8.2.3 Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

¹¹ Cost of which is NOT covered by the reference amount.

¹² Cost of which is NOT covered by the reference amount.

¹³ Cost of which is included within the reference amount.

8.2.4 Other administrative expenditure not included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1. Technical and administrative assistance (including related staff costs)							0
Executive agencies ¹⁴							0
Other technical and administrative assistance							0
- intra muros							0
- extra muros							0
Total technical and administrative assistance							0

8.2.5 Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (06 01 01)	0	0	0	0	0	0
Staff financed by Article XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0	0	0	0	0	0
Total cost of human resources and associated costs (NOT in reference amount)	0	0	0	0	0	0

Calculation– Officials and temporary agents

Not applicable

Calculation – *Staff financed under Article XX 01 02*

Not applicable

¹⁴ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions	0	0	0	0	0	0	0*
XX 01 02 11 02 – Meetings & Conferences	0	0	0	0	0	0	0
XX 01 02 11 03 – Committees ¹⁵	0	0	0	0	0	0	0
XX 01 02 11 04 – Studies & consultations	0	0	0	0	0	0	0
XX 01 02 11 05 - Information systems	0	0	0	0	0	0	0
2. Total other management expenditure (XX 01 02 11)	0	0	0	0	0	0	0
3. Other expenditure of an administrative nature (specify including reference to budget line)	0	0	0	0	0	0	0
Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0	0	0	0	0	0	0

* No impact on the current budget for missions.

Calculation - Other administrative expenditure not included in reference amount

Not applicable

¹⁵ Specify the type of committee and the group to which it belongs.