

Regulation (EC) No 392/2009 of the European Parliament and
of the Council of 23 April 2009 on the liability of carriers of
passengers by sea in the event of accidents (Text with EEA relevance)

REGULATION (EC) No 392/2009 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on the liability of carriers of passengers by sea in the event of accidents

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

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

Whereas:

- (1) Within the framework of the common transport policy, further measures need to be adopted in order to enhance safety in maritime transport. Those measures should include liability rules for damage caused to passengers, since it is important to ensure a proper level of compensation for passengers involved in maritime accidents.
- (2) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on 1 November 2002 under the auspices of the International Maritime Organisation (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol. In any case, the provisions thereof incorporated by this Regulation should apply for the Community from no later than 31 December 2012.
- (3) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the Protocol of 2002 (the Athens Convention), applies to international transport only. The distinction between national and international transport has been eliminated within the internal market in maritime transport services and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.
- (4) The insurance arrangements required under the Athens Convention must take into consideration the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically

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acceptable way and, particularly in the case of small shipping companies operating national transport services, account must be taken of the seasonal nature of their operations. When setting insurance arrangements under this Regulation, account should therefore be taken of the different classes of ship.

- (5) It is appropriate to oblige the carrier to make an advance payment in the event of the death of or personal injury to a passenger, whereby advance payment does not constitute recognition of liability.
- (6) Appropriate information on rights being conferred on passengers should be provided to those passengers prior to their journey or, where that is not possible, at the latest on departure.
- (7) The Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines for the Implementation of the Athens Convention (the IMO Guidelines) to address certain issues under the Athens Convention, such as, in particular, compensation for terrorism-related damage. As such, the IMO Guidelines may be considered a *lex specialis*.
- (8) This Regulation incorporates and makes binding parts of the IMO Guidelines. To that end, where it occurs in the provisions of the IMO Guidelines, the verb ‘should’ should, in particular, be understood as ‘shall’.
- (9) The provisions of the Athens Convention (Annex I) and of the IMO Guidelines (Annex II) should be understood, *mutatis mutandis*, in the context of Community legislation.
- (10) The system of liability provided for by this Regulation should be extended step-by-step to the different classes of ship as set out in Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships⁽⁴⁾. Account should be taken of the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights and the seasonal nature of some of the traffic.
- (11) The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the Community in so far as those Articles affect the rules established by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽⁵⁾. To that extent, these two provisions will form part of the Community legal order when the Community accedes to the Athens Convention.
- (12) For the purposes of this Regulation, the expression ‘or is registered in a Member State’ should be considered to mean that the flag State for the purposes of bareboat charter-out registration is either a Member State or a contracting party to the Athens Convention. Necessary steps should be taken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.
- (13) For the purposes of this Regulation, the expression ‘mobility equipment’ should be considered to mean neither luggage nor vehicles within the meaning of Article 8 of the Athens Convention.

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- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁶⁾.
- (15) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (16) The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁽⁷⁾, should assist the Commission in preparing and drafting a progress report on the functioning of the rules laid down by this Regulation.
- (17) The national authorities, particularly the port authorities, play a fundamental and vital role in identifying and managing the various risks in relation to maritime safety.
- (18) Member States have taken the firm commitment in their Statement on Maritime Safety of 9 October 2008 to express, no later than 1 January 2012, their consent to be bound by the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996. Member States may make use of the option provided for in Article 15(3bis) of that Convention to regulate, by means of specific provisions of this Regulation, the system of limitation of liability to be applied to passengers.
- (19) Since the objective of this Regulation, namely to create a single set of rules governing the rights of carriers by sea and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

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- (1) [OJ C 318, 23.12.2006, p. 195.](#)
- (2) [OJ C 229, 22.9.2006, p. 38.](#)
- (3) Opinion of the European Parliament of 25 April 2007 ([OJ C 74 E, 20.3.2008, p. 562](#)), Council Common Position of 6 June 2008 ([OJ C 190 E, 29.7.2008, p. 17](#)), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).
- (4) [OJ L 144, 15.5.1998, p. 1.](#)
- (5) [OJ L 12, 16.1.2001, p. 1.](#)
- (6) [OJ L 184, 17.7.1999, p. 23.](#)
- (7) [OJ L 208, 5.8.2002, p. 1.](#)

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Changes and effects yet to be applied to the whole legislation item and associated provisions

- Annex 1 omitted by [S.I. 2019/649 reg. 6\(11\)](#)
- Art. 1(1)(a) words substituted by [S.I. 2019/649 reg. 6\(2\)\(a\)\(ii\)](#)
- Art. 2(a) words substituted by [S.I. 2019/649 reg. 6\(3\)\(b\)](#)
- Art. 2(b) words substituted by [S.I. 2019/649 reg. 6\(3\)\(b\)](#)
- Art. 2(c) words substituted by [S.I. 2019/649 reg. 6\(3\)\(b\)](#)