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STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council with a view to the adoption of a Regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In November 2005, the Commission adopted its proposal¹ for a Regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea and inland waterway in the event of accidents. This proposal was transmitted to the Council on 24 February 2006.

The European Parliament adopted its first-reading opinion on 25 April 2007.

The Economic and Social Committee adopted its opinion on 13 September 2006.²

The Committee of the Regions adopted its opinion on 15 June 2006.³

In the framework of the codecision procedure (article 251 TEC), the Council reached on 30 November 2007 a political agreement on the draft regulation. Following legal/linguistic revision, the Council adopted its common position on xx May 2008.

II. OBJECTIVE

The main objective of the proposed regulation is to incorporate into Community law the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 1974, as amended by its protocol of 2002 (hereinafter referred to as “the Athens Convention”).

¹ Doc. 6827/06 - COM(2005) 592 final

² OJ C 2006/318, 23.12.2006

³ OJ C 2006/229, 22.9.2006

In addition, the Commission's proposal includes several adaptations of the Athens Convention and additional measures such as the extension of the scope of application to domestic traffic as well as to traffic by inland waterways, the removal of the possibility for Member States under the Athens Convention in fixing limits of liability higher than those provided for in the Athens Convention. Furthermore, the proposal includes a provision according to which for damage or loss of mobility equipment/medical equipment belonging to a passenger with reduced mobility, the compensation shall be equivalent at the maximum, to the replacement value of the equipment. And similar to the air and rail sectors, the proposal provides for advance payments in case of death of, or personal injury to a passenger, as well as pre-journey information to passengers.

III. ANALYSIS OF THE COMMON POSITION

General

The common position on the above proposal, as agreed by the Council, updates the regulation, among others, by changing the provisions concerning the scope, the relation between the regulation and other international conventions on global limitation of liability, the advance payments and the transitory provision of the regulation.

The common position incorporates a large number of the European Parliament's first-reading amendments (amendments 1, 2, 3, 5, 9, 10, 11, 16-27, as set out in doc. 8724/07), either verbatim, or in part or in spirit. These improve or clarify the text of the proposed regulation. However, other amendments are not reflected in the common position (amendments 4, 6, 7, 8, 12, 13, 14, 15). The Council is, as the Commission, of the opinion that the review of the tasks of the European Maritime Safety Agency (EMSA) should not be dealt within this regulation as it is a different subject matter (amendment 4). The rejection of the other amendments is further explained in the next section.

The common position also includes a number of changes other than those envisaged in the European Parliament's first-reading opinion as, in a number of cases, provisions from the original Commission proposal have been supplemented with new elements or entirely redrafted, with some completely new provisions inserted.

In addition, a number of drafting changes merely seek to clarify the text or to ensure the overall coherence of the regulation.

The following section describes the changes of substance of the common position and the Council's reaction to European Parliament's amendments.

Specific

(1) Scope

The Council, agreeing fully with the European Parliament (amendments 16-27) has rejected the extension of the application of the Athens Convention to **international and domestic carriage by inland waterways** as proposed by the Commission in its proposal. The Council follows the same reasoning as the European Parliament by considering that the Athens Convention is dealing with carriage by sea and that an extension to carriage on inland waterways may not be appropriate and sufficiently take account of the specificities of the inland waterways sector.

Furthermore, the Council, contrary to the Commission and the European Parliament, specifies that as regards the carriage by sea within a single Member State, it is reasonable that the regulation applies to ships covered by Class A in accordance with Article 4 of Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships.

(2) *Incorporation of the Athens Convention and other IMO measures*

The Council, as the European Parliament (amendment 6), is of the view that not only the Athens Convention but also the IMO Reservation and Guidelines for the Implementation of the Athens Convention (hereinafter referred to as "the **IMO Guidelines**"), adopted by the Legal Committee of the IMO on 19 October 2006 to address some issues within the Athens Convention, in particular, compensation for terrorism related damage, should be incorporated in the regulation. For that reason, the Council, as the European Parliament, added the text of the IMO Guidelines as a new annex to the regulation.

Nonetheless, it should be noted that the Council considers that the inclusion of the entirety of the text of the Athens Convention may create legal uncertainties as several provisions of the Convention are not directly related to the subject matter of the regulation. For that reason, the Council, unlike the European Parliament, enumerates in article 3 paragraph 1 of the regulation the relevant provisions of the Athens Convention for the application in the framework of that regulation. Furthermore, irrelevant or misleading provisions of the Athens Convention have been removed from the annex of the regulation for the sake of clarity.

(3) *Applicable ceilings*

The Council has modified the Commission proposal as regards the non application of **Article 7(2) of the Athens Convention**. The latter stipulates that a State Party may adopt higher limits of liability as those of the Athens Convention. The Council has chosen to apply the provision of the Athens Convention as it currently stands without introducing a particular Community mechanism in order to agree on the use of Article 7(2) such as suggested by the Commission in its proposal as well as the European Parliament in its amendment 7.

(4) *Simultaneous application of other international conventions concerning the limitation of liability of shipowners*

The Council, considering the fact that several Member States have already ratified the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996 (**LLMC 1996**) can not support the European Parliament as regards the non-application of Article 19 of the Athens Convention (amendment 8). In the article 5 of the Council's common position, the relationship between the Athens Convention and the LLMC 1996 is further clarified in order to guarantee legal certainty.

(5) *Advanced payment*

Following closely the European Parliament (amendment 9), the Council supports the idea that in case of an **shipping incident** causing death of, or personal injury to, a passenger, an advancement payment should be paid. In order to assure that that provision may apply in practice, the Council clarified that the provision applies if the shipping incident occurred within the territory of a Member State, or has occurred on board of a ship that was flying the flag of a Member State or is registered in a Member State. Concerning the shipping incident, the Council is of the opinion that the term "shipping incident" is sufficiently and broadly defined in the Athens Convention. Therefore the addition of the term "shipping accident" is not necessary.

The Council fully supports the European Parliament (amendment 10) as regards the clarification that the advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid. The Council, however, further specifies in which cases the advanced payment might be returnable in accordance with the Athens Convention and the IMO Guidelines.

(6) Information to passenger

The Council supports the European Parliament as regards the characteristics **(appropriate and comprehensible)** of the **information** to be provided to passengers at latest on departure. Similar to the aviation sector, the Council proposes that a summary might be used to this end. However, the Council believes that there is no need to refer to the provisions of the Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (amendment 12) because that directive already applies and is independent from the proposed regulation.

(7) Delayed application

Similar to the European Parliament (amendments 13, 14 and 15), the Council has introduced a transitional provision allowing Member States to **defer the application of the Regulation** until four years of its application. Yet, the change of the Council to the Commission proposal applies to carriage by sea within a single Member State onboard ships covered by Class A in accordance with Article 4 of Directive 98/18/EC and not to domestic carriage by regular ferry lines (in the regions covered by article 299(2) TEC) as proposed by the European Parliament.

IV. CONCLUSION

The Council believes that the common position represents a realistic approach, taking due account of the achievability of the proposal and its proposed additional provisions as well as the need for legal clarity.

The Council looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Regulation.